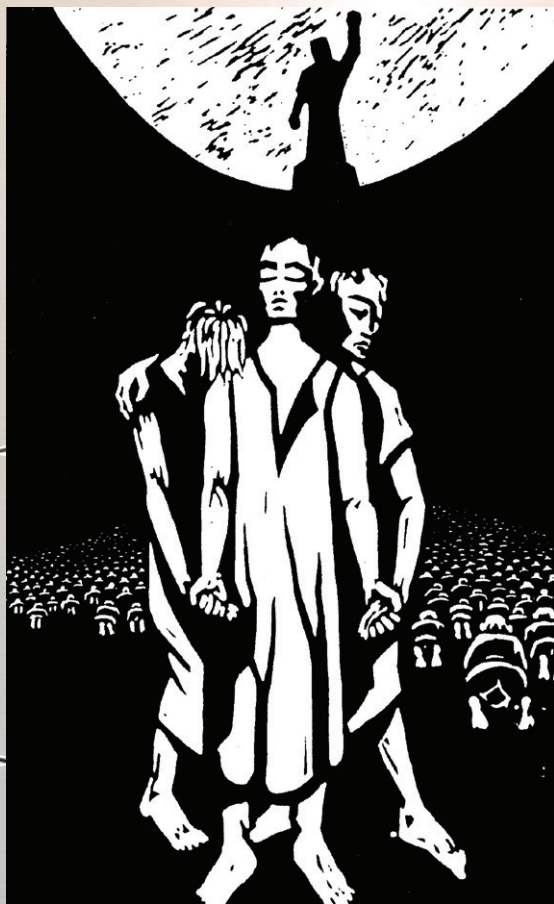




Responding to Persecution

International Journal for Religious Freedom (IJRF)

Journal of the International Institute for Religious Freedom

The **IJRF** aims to provide a platform for scholarly discourse on religious freedom and persecution. 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** is listed on the DoHET "Approved list of South African journals" and subscribes to the Code of Best Practice in Scholarly Journal Publishing, Editing and Peer Review of 2018 as well as the National Code of Best Practice in Editorial Discretion and Peer Review for South African Scholarly Journals and the supplementary Guidelines for Best Practice of the Forum of Editors of Academic Law Journals in South Africa.

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Cover Art

Three young Jewish men cling to each other in the face of potential suffering. Obviously, it is not easy to resist the pressure of authority and the maelstrom of the masses who are going along with the king's command. But for these three men, the choice is obvious: they would rather die in the fiery furnace than bow down in front of the idol King Nebuchadnezzar has erected. They trust that their God will help them. But their faithfulness does not depend on whether a miracle occurs. "But even if He does not ... we are not going to serve your gods" (Daniel 3:18 NAS), they affirmed. This attitude towards persecution can be an example for followers of the true and living God today.

The linocut on the cover, depicting Daniel's three friends, was created by Johannes Schöne (1916–2006), artist, author and Lutheran pastor under communist governance of the Saxony region of the former German Democratic Republic. We publish it with permission from his son, Gerhard Schöne.

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Heiner Bielefeldt

Freedom of Religion or Belief:

Thematic Reports of the
UN Special Rapporteur 2010 – 2016



Thomas Schirrmacher (Ed.)

Editorial: 10 years of IJRF

As we are celebrating the tenth volume of IJRF, we are glad that IJRF is continuously catching up on its backlog. While this volume comes under the label of 2017, some of the articles have in fact been written later, and the publication occurs at the beginning of 2021.

There is also transition among the contributing staff. We warmly thank Dr Byeon Hei Jun, Cape Town, for his many years of faithfully organizing and gathering book reviews since 2009. In 2020 he has handed over to Dr Werner Nicolaas Nel, Johannesburg, under whose coordination the book reviews from this issue onward emanate.

Our guest editor for this special issue is Dr Wolfgang Häde. He has contributed articles to IJRF in the past from his doctoral thesis on the perception of Christians in Turkish daily newspapers, accompanied by reflections on appropriate Christian responses to negative perceptions or false accusations. His complete work appeared in German: *Anschuldigungen und Antwort des Glaubens – Wahrnehmung von Christen in türkischen Tageszeitungen und Maßstäbe für eine christliche Reaktion* (Berlin: LIT 2017).

Dr Häde is the co-convenor of the study group on “Religious freedom, persecution and mission” of the International Association for Mission Studies (IAMS).

Dr Häde helped coordinate one of the parallel conferences of IIRF and partners in Sao Paulo on 17-18 September 2020 at MacKenzie Presbyterian University in Sao Paulo, Brazil, namely the International Consultation on Mission and Theology in the Context of Persecution. It was held in tandem with the 2nd International Researchers Consultation on Freedom of Religion or Belief and the 7th Brazilian Symposium on Law and Religion. The conferences focused on “Exploring responses to religious discrimination and persecution”. Papers from these conferences form the foundation for this issue of the IJRF. We appreciate Dr Häde’s work in editing this issue of IJRF.

*Yours for religious freedom,
Prof Christof Sauer and Prof Dr Dr Thomas Schirrmacher, editors,
and Prof Dr Janet Epp Buckingham, managing editor*

Special issue on Responding to Persecution

This issue of IJRF deals with responses by those who are persecuted, as well as responses by those advocating on behalf of the persecuted.

The opinion piece emanates from the 2019 *Ministerial to Advance Religious Freedom* in Washington, DC, that was concerned with a greater coordination of

responses to violations of religious freedom and persecution. Paul Marshall is hopeful because of the great variety of participants from secular and different religious background participating.

Among the peer reviewed scholarly articles, Joel Edwards opens by dealing with the reservations of parts of the Christian community to embrace a general engagement for “Freedom of Religion and Belief” (FoRB) as part of their missional calling. Edwards argues that because of the biblical concept of each human being created in the image of God, working together with people of different faiths for religious freedom is a theological necessity.

Werner Nicolaas Nel examines responses to persecution by those doing advocacy for people suffering persecution. Nel pleads for “decisive but sensitive responses”, for “situational awareness and respect for the wishes of the affected religious group”. Looking at the situation from the perspective of advocates for the persecuted shows the crucial importance of wise responses.

The remainder of the contributions are case studies from various contexts.

Sang Hnin Lian writes about his own country, Myanmar, that is rightfully covered in the media for persecution against the Muslim Rohingya, but certainly under-researched in terms of persecution against Christians. The different strategies for responses against persecution and various coping mechanisms of the Christian Chin people demonstrate resilience. However, as Lian concludes, without major political changes towards religious freedom repression will probably continue.

Dennis P. Petri goes beyond a case study in trying to develop a “Resilience Assessment Tool” in order to observe and categorize responses to persecution by religious minorities. To test his findings he applies this tool to three very different contexts of Latin America where Christians are under pressure for their faith, namely in Mexico, Columbia and Cuba. Petri comes to the conclusion that coping mechanisms may be “underdeveloped” because of a “complex set of theological reasons”.

Another majority world setting is examined by Fernando Caldeira da Silva in his article on “religiously motivated violence in Cabo Delgado, Northern Mozambique”. Da Silva provides insights into the sociological, economical, and political background of Muslim terrorist attacks in Mozambique’s province of Cabo Delgado that have been going on since 2017 and culminated with mass displacements in 2020. This article is not mainly about responses by the persecuted group, but about a humanitarian tragedy that requires urgent responses by the global (Christian) community.

Barry W. Bussey’s paper on “Responding to limitations of the public square” deals with growing secular intolerance in countries of the West against Christians and their institutions. The article covers the Canadian Christian institution “Trinity

Western University" (TWU). When a law school was planned as an expansion of the university, the question arose whether the institution is allowed to give standards for sexual behavior to its students. The final decision of the Supreme Court of Canada of 2018 denied this right to a religious institution. As a result, TWU had to change its policies in order to get approval to establish the law school. Starting from this case, Bussey evaluates ways forward in the balancing between secular and religious interests.

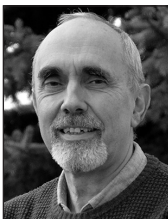
Similarly, Mark Hill's article "Religious discrimination in the English workplace: balancing competing interests" is about a necessary balance of equality laws in England and the protection against discrimination. Hill comments on court cases that deal with topics like wearing a cross at the workplace, a counselor who doesn't want to give sexual counselling to same-sex-couples and a Jewish worker not willing to work on Saturdays. Hill concludes that beside the cases that came to the courts many conflicts are pragmatically solved at a local level.

The Documentation section presents a high level Christian response to persecution, the "Tirana Message" of the Global Christian Forum on "Discrimination, Persecution, Martyrdom - Following Christ Together". The other documentation returns to the *Ministerial to Advance Religious Freedom* where a remarkable Roundtable was held. World Evangelical Alliance envoy Thomas K. Johnson shared his reflections on the potentially historic significance of Humanitarian Islam.

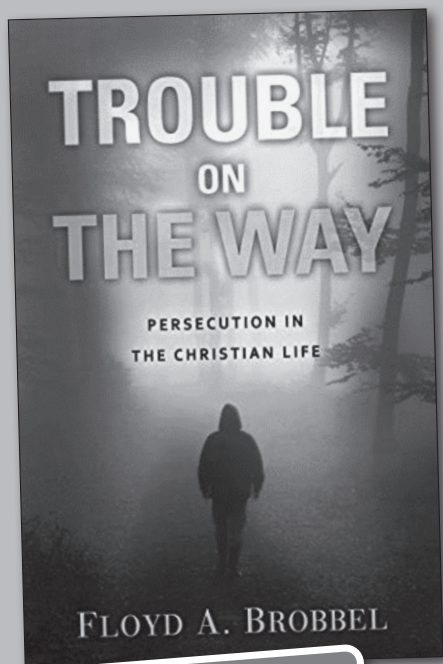
Among book reviews that cover a wider range of topics concerning persecution there are two reviews related very directly to our guiding topic: "Under Caesar's Sword: How Christians respond to persecution" and "Vernon J. Sterk, Surviving persecution".

According to Sterk the response to persecution is crucial for its outcome: "It is how the individual believer in Christ, his or her family, and the local congregation of believers react to persecution that will determine the positive or negative results of persecution." (p. 193) An appropriate response to persecution is the critical variable.

We hope and pray that IJRF 2017 encourages scholars and others who are interested alike to respond to pressure experienced or pressure observed in a sensitive, intelligent and helpful way.



*Yours with appreciation,
Wolfgang Häde, DTh (Unisa)
Guest editor*



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***Remember Those
Who Are Bound
As Bound With Them.
Hebrews 13:3***

NEW BOOK

Trouble on the Way: Persecution in the Christian Life

While most of us have heard about Christians suffering for their faith, we tend to think “persecution” mainly impacts believers in times past or in hostile nations today, far removed from our daily lives.

Trouble on the Way describes the various stages of persecution, revealing that persecution is something all followers of the Way can expect to face in this fallen world.

The book does not promote a “doormat” Christianity but rather asserts quite the opposite—a victorious, resilient faith that not only survives but thrives as it encounters the very gates of hell.



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Tribute to Lovell Fernandez (1950-2020)

The International Institute for Religious Freedom (IIRF) pays tribute to the member of its Academic Board, Prof Dr. Lovell Fernandez, who passed away at the age of 70 on 18 December 2020. In his advisory function he focused on the field of transitional justice in which he was considered a leading scholar. He equally was a member of the Editorial Board of the International Journal for Religious Freedom from 2010.

He contributed from his vast legal experience to the International Consultation on Religious Freedom Research in Istanbul, Turkey in March 2013 organized conjointly by IIRF with various universities. His contribution was published in *IJRF* 2013 under the title “Religious persecution as a crime against humanity: Ending impunity”. He concluded:

Religious persecution is a matter of constant concern which continues to manifest itself in the present day. Traditional ways of intervening on behalf of the victims of religious persecution are estimable and useful, but remain limited in their effectiveness. The advent of international criminal law and the creation of international criminal tribunals to try persons accused of committing international crimes, of which the crime against humanity of persecution is one, reaffirms the international community's push to hold individuals accountable, for crimes are committed by people and not states. The ICTY [International Criminal Tribunal for the former Yugoslavia] in particular has played a hugely important role in elaborating the definition of the crime of “persecution”, thereby setting legal precedents in the area of religious persecution upon which the ICC [International Criminal Court] can draw in the future.

According to the University of the Western Cape (UWC), Cape Town, South Africa, Lovell attained the BA and LLB degrees from UWC in the 1970s, as well as a Master's degree in Comparative Law from New York University, and a Doctorate in Philosophy (Law) from the University of the Witwatersrand. He lived in exile in Germany from 1978 until 1990, studying at the Max Planck Institute for Comparative and International Private Law in Hamburg, and working for Amnesty International as well as the Hamburg Foundation for Politically Persecuted People. He returned to South Africa with his family in 1990.

He became a member of the UWC academic staff in the early 1990s until his retirement in 2015. Lovell was seconded to the South African Department of Justice in 1996 and 1997 as adviser to the then Minister of Justice, Dullah Omar. At the time of his retirement he was a Professor of Law in the Department of Criminal Justice and Procedure. During his tenure, he served inter alia as Head of Department, as Deputy Dean of the Faculty, and as the UWC Director of the SA-German Centre

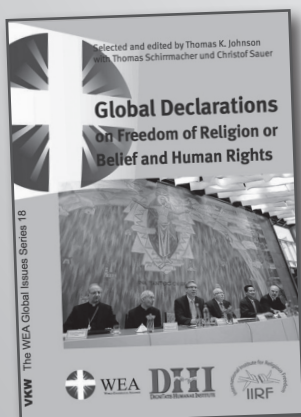
for Transnational Criminal Justice (a centre of excellence funded by DAAD, in collaboration with Humboldt University, Berlin). Lovell played a leading role in the establishment of the Law Faculty's Journal of Anti-Corruption Law, and served as co-editor of the Journal. He further served on the Board of Directors of the Institute for Justice and Reconciliation.

In the Festschrift published in his honour in 2016, he is referred to by his colleagues as 'Lawyer, Linguist, Mensch' and as 'someone of honesty, humility and compassion'.

We remember Lovell Fernandez as a colleague, advisor and encourager of younger scholars, deeply interested in freedom of religion or belief as a human right and putting his skills at the service of society and the Christian church.

*Profs Dr Dr Thomas Schirmmacher and Christof Sauer, DTh,
as directors of the International Institute for Religious Freedom
and Prof Dr Janet Epp Buckingham as managing editor of IJRF,
on behalf of its boards and staff*

Global Declarations on Freedom of Religion or Belief and Human Rights



**Free
online**

www.iirf.eu

by Thomas K. Johnson,
Thomas Schirmmacher,
Christof Sauer (eds.)

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Religious Freedom has never drawn a bigger crowd (from all walks of faith)

Paul Marshall¹

On 15–18 July 2019, the U.S. State Department, under the auspices of Secretary of State Michael Pompeo and directly hosted by Ambassador-at-Large for Religious Freedom Sam Brownback, held its second Ministerial on religious freedom in Washington, D.C.

The word “Ministerial” is an unusual one and, until the first one, in 2018, neither I nor anyone I knew had heard it. It is rare and refers to a high-level conference between senior government officials. It is not in the first place a diplomatic negotiation intended to produce a common policy, nor is it simply a conference. It is an unusual blend of the two, which allows diplomatic flexibility with diplomatic possibility.

The first Ministerial, in the summer of 2018, was a very good gathering, but was convened at short notice. This one had much advance, arduous and very careful planning, and it showed.

The official conference drew 1,000 invited people, and invitations had to be closed off months in advance. It was the largest human rights conference ever held at the State Department and spilled over into massive tents erected in the inner courtyards. People from 100 countries were represented, with several dozen cabinet and ambassadorial-level representatives. It was also probably the world’s largest-ever religious freedom gathering.

But the official gathering was only part. Most human rights and religious freedom groups cooperated in arranging conjunct conferences, workshops, seminars and celebrations throughout the city. There were over 80 such sessions, plus innumerable other gatherings not listed in central programs. For example, Falun Gong followers, still defying their long repression by the Chinese government, held a march that brought downtown D.C. to a standstill.² This latter frustrated me and many others, who then missed sessions, but since they represent people whose repression include the removal and selling of organs while their members are still alive, I could wait.

¹ Paul Marshall is the Wilson Distinguished Professor of Religious Freedom at Baylor University, a senior fellow at the Hudson Institute’s Center for Religious Freedom, Washington, D.C., and a contributor to Religion Unplugged. This article was first published on <https://bit.ly/2KsbyDz> (reprinted with permission). Contact: pmarshall@hudson.org.

² Sabrina Eaton, “Ohio Falun Gong practitioners rally in Washington to end persecution in China”, cleveland.com, 18 July 2019 [online]. Available at: <https://bit.ly/32ZDm24>.

How to summarize this? People from all over the world and every religion met and heard one another. There were over 1,000 presentations during the week. It was like, as the cliché really has it, trying to drink from a fire hose. But here, from one who was not of course everywhere, are a few highlights and impressions, with my apologies to the many others who should be included.

The most striking presentations, which took place in every official session, were from those who were neither diplomats nor activists nor academics, but from those who had and were directly suffering from religious persecution. To hear back-to-back the messages of forgiveness from the rabbi of the Tree of Life synagogue in Pittsburgh, where 11 people were massacred in October 2018, then the imam of the mosque in Christchurch, New Zealand, where 51 people were massacred in March 2019, then representatives of churches in Sri Lanka, where over 300 people were massacred on Easter this past April, is unforgettable.

Another highlight was the panel of old friends Nancy Pelosi, the current (Democratic) Speaker of the House of Representatives and retired (Republican) House Representative member Frank Wolf. In their shared concern and devotion to international religious freedom, especially in China, they evoked an older, and despite inflammatory news reports, continuing political congeniality in key issues, such as international religious freedom. Pelosi came despite political pressure not to do anything that might imply cooperation with the current administration, and at a time when the House of Representatives was in more immediate turmoil than usual.

Yet another was the address by Lord David Alton of the U.K.³ I have known and heard Lord Alton many times over the last decades and have always been impressed. He is a humble man who has usually focused on the immediate issues clearly, directly and quietly. This time he did all of the above, except this time not so quietly but with a powerful and ringing challenge and call to action. With apologies to many others, I think this was the highlight of the conference.

1. Nearly every religion of which I know was represented and had a voice.

Was this simply an all-too-common conference high? Only the future will tell, but I think not.

Many countries have now appointed senior foreign policy personnel focused on religious freedom. The U.K. foreign office announced that it has accepted without reservation the recent report it commissioned⁴ on the current persecution of Chris-

³ Lord David Alton, "Speech at the Ministerial on Religious Freedom in Washington DC" [online]. Available at: <https://bit.ly/2IPWRmx>.

⁴ Philip Mounstephen. 2019. Bishop of Truro's Independent Review for the Foreign Secretary of FCO

tians around the world, which found that in the Middle East, the situation was and is near genocide. And nearly every religion of which I know was represented and had a voice. This not only adds diplomatic clout to the struggle for religious freedom but also removes the common slur that this is simply a parochial domestic-politics-driven American preoccupation. There is now an increased governmental apparatus focused on religious freedom, but also promised follow-up on regional gatherings, including in Muslim countries on this issue. And numerous NGOs are developing working links across regional, national and religious boundaries.⁵

What are the negatives? Some worried that, comparatively, the persecution of Christians was underrepresented. This is perhaps true, perhaps to head off domestic criticism that the event was simply an event to appeal to the American Christian right, but this current persecution was given more attention than at any governmental I have witnessed. Indian representatives also raised that religious persecution⁶ in their country did not receive due attention, especially since a fifth of the world is Indian. This might be true but is likely simply a reflection of the limits of trying to cover the world in a conference.

The larger negatives came from outside the conference, especially in media coverage and perhaps occasional sniping by secular human rights organizations, who may have felt slighted since their major foci were elsewhere. The major problem was simply the comparative lack of media coverage of what was a major international event. And much of the American coverage retreated, perhaps of lack of resources to deal with world trends, to treating it simply through the prism of domestic politics: that the administration was simply appealing to its purported Evangelical base. But it was impossible to listen to Vice President Pence's, or Secretary of State Mike Pompeo's, or host Ambassador-at-Large for Religious Freedom Sam Brownback's speeches and not realize that these were issues drawn from their hearts.

But the vast majority of the wonderfully varied religious and secular participants of the Ministerial would have found these analyses strange and symptomatic of a secular myopia, wherein religion is all too often seen as a mask for other, purportedly deeper, motives.

The effects of the Ministerial might dissipate, but so far, the trends are hopeful, for which our increasingly religious world should be glad.

Support for Persecuted Christians. Final Report and Recommendations. Available at: <https://bit.ly/3d5vnnR>.

⁵ Adelle M. Banks, "As religious freedom summit ends, State Department announces new alliance, sanctions", Religion News Service, 18 July 2019 [online]. Available at: <https://bit.ly/391V7Sn>.

⁶ Surinder Kaur Lal and M. Clark, "Hindu extremists and banning Christian churches across India", Religion Unplugged, 2 April 2019 [online]. Available at: <https://bit.ly/3IPeKAF>.

Kay Bascom

Overcomers

*God's deliverance through the
Ethiopian Revolution as witnessed
primarily by the Kale Heywet Church community*



VKW

FoRB as a call to mission

Joel Edwards¹

Abstract

This paper argues for a confluence between the principles of Freedom of Religion or Belief (FoRB), which are enshrined in Article 18 of the Universal Declaration of Human Rights, and the missional impulse which contributed to its formation. Drawing from a study of Christian Solidarity Worldwide, I offer three arguments for Christian engagement in FoRB. First, FoRB is consistent with ideas found in early Christian reflection and mission. Second, as a call to mission FoRB is reflected in two theological ideas: the *imago dei* and Christian universalism. Third, engagement in FoRB creates the potential for dialogical partnerships with people of all faiths and none.

Keywords FoRB, UDHR, image of God, mission of God, kingdom of God, CSW.

1. What is FoRB?

Many Christians, in particular evangelicals, have appeared inclined to approach the ‘secular’ instruments of the Universal Declaration on Human Rights (UDHR), including its provisions for the protection of Freedom of Religion or Belief (FoRB), with foreboding. FoRB (United Nations 1948) is here presented as the right to hold a belief or to change one’s religion without coercion. It is to be understood as religious freedom for people of all faiths and none. This principle was further enunciated in subsequent human rights instruments between 1966 and 1981.²

Sceptical Christians view the UDHR’s articulation of FoRB as incongruous because supporting it entails defending a non-Christian’s religious freedom, which seems antithetical to evangelism or to fulfilling God’s mission. Where some Chris-

¹ Rev Dr Joel Edwards (DThM, St John’s College, Durham, UK) is a writer, coach, Bible teacher and international inspirational speaker on issues of social justice, leadership, faith and society. He was general director of the British Evangelical Alliance for 11 years and has also served as Advisor to the Foreign Secretary’s Advisory Group on Human Rights as well as a Commissioner on the UK Equalities and Human Rights Commission. This paper is based, in part, on his unpublished thesis (Edwards 2019) Article received: 20 November 2020; accepted: 11 January 2021. Contact: jnpe2015@googlemail.com.

² For example, in July 1964 the CCIA presented a statement to the Thirty-Seventh Session of ECOSOC urging that Article 18 be retained in the 1966 Covenant and that freedom of religion or belief should include atheists. The fact that the 1966 International Covenant on Civil and Political Rights (ICCPR) retained Article 18 and that Article 4.2 of the ICCPR stipulates ‘non-derogation’ from Article 18 was a recognition that FoRB was regarded as a cornerstone of all human freedoms and a testament to the Christian engagement which went beyond 1948 to include the Declaration on the Elimination of All Forms of Intolerance and Discrimination based on Religion or Belief in 1981.

tians ostensibly adopt the language of FoRB, it is not necessarily reflected in a clear commitment to people of all faiths or none.³ Moreover, as Jonathan Chaplin (2008:17) suggests, where human rights claims confront religious freedom, there seems to be an assumption within secular human rights circles that the latter is expected to capitulate.⁴ Consequently, where Christian praxis has ventured into this precarious terrain, it has been with considerable caution rather than with theological certainty. One such example was Christian Solidarity Worldwide (CSW), a UK based human rights ministry specialising in FoRB (Edwards 2019).

2. CSW as a case study

CSW offers a helpful model for exploring Christian engagement in FoRB. My ethnography study, which took place between 2015 and 2017, provided a portrait of the organisation's understanding of its existential journey and highlighted its own tensions between its evangelical convictions and its praxis.

As an international agency "working for religious freedom through advocacy and human rights, in the pursuit of justice" (CSW n.d.a.), CSW was anxious to make its evangelical identity cohere with its intuitive commitment to FoRB. A case study of CSW's unique work as an evangelical human rights agency provides insight into the wider issues surrounding Christian support of FoRB.

2.1 Missional ambiguity

The perception of FoRB as a missional enterprise, was a key feature in the organisation's self-perception. Unambiguously, CSW's mission strictly excluded proselytising. The interview process included seventeen CSW staff, five church leaders and seven individuals who had experienced some element of persecution. All interviewees agreed that Christian engagement in FoRB was consistent with their understanding of the mission of God. However, when measured against a qualifying question, "Does the church understand this?" it was evident that in their mind, the church did not share this belief. As one respondent suggested, the church was "afraid of FoRB."

Engagement in FoRB unveiled layers of organisational ambiguities. These ranged from the meaning of 'mission' to concerns about the loss of the charity's Christian

³ For example, in an APPGFORB report, '2017 World Watch List Launched in Parliament: Persecution Increasing' (11 January 2017). Available at: <http://bit.ly/2Ln286m>. Open Doors integrated its advocacy with bodies such as All Parliamentary Party Group on FoRB (APPG) and the FCO whilst promoting an almost exclusive focus on persecuted Christians.

⁴ The case against Asher, a Christian Bakers in Northern Ireland is one such example. BBC News, "Gay Cake" Row in Northern Ireland: Q&A' (10 October 2018). Available at: <https://www.bbc.co.uk/news/uk-northern-ireland-32065233>.

identity and a vocabulary which used 'religious freedom', 'human rights' and FoRB interchangeably. Critically, there was a recognition that whilst the board historically avoided the language of FoRB, the staff embraced it as the basis for its praxis.

2.2 Reactions to persecution

Given that FoRB is concerned with marginalisation and suffering on the basis of belief, the study briefly considered responses to the relationship between persecution and church growth. CSW's professional staff and church leaders struggled with the idea that persecution could lead to church growth. Both groups suggested that whilst persecution was unacceptable, it may in some instances actually contribute to church growth. Conversely, respondents with personal experience of persecution were far less ambiguous about the symbiotic relationship between the two.

Moreover, critical questions were raised in relation to Christian advocacy on behalf of those whose worldview was diametrically opposed to or hostile to the Christian faith. One respondent identified this tension: "When we talk about the religious persecution of Christians, we often whip out Bible verses and talk about it like a spiritual attack on the church. But then we work for a Muslim and we don't." This raises an important question: how far can Christians authentically defend a faith beyond their lived reality and religious vocabulary?

Such questions emerging from the study were illustrative of the tensions involved in FoRB. They also revealed the theological vacuum in which CSW operated.

3. Theological inhibitions related to FoRB

CSW's equivocations, despite its experience as an espoused practitioner in FoRB, had to do with an inadequate theological narrative which the charity previously identified. The chasm between its emerging praxis and its profession of faith was largely the result of an unformed theological basis for its intuitive response to the human rights agenda.

Although there is a wealth of theological material on religious freedom issues generally (Johnson 2016), arguments specific to FoRB as a missional paradigm have not been extensive. Christian institutions such as the Religious Freedom Institute with considerable global expertise in religious freedom have given only scant attention to a theology of FoRB. Andrew Walker's unpublished evangelical perspective on religious freedom (2018) made no reference to human rights. More recently, the Stefanus Alliance (Brown, Storaker and Winther 2017) and the World Council of Churches (WCC), a founding influence in the UDHR, have provided brief biblical studies supporting FoRB (World Council of Churches n.d.).

Christian engagement in human rights has not received universal approbation. Ethna Regan (2010:63-76) identifies Stanley Hauerwas, Oliver O'Donovan and

John Millbank as scholars who approach human rights language with “theological disdain”. Even where Christians have developed considerable expertise in advocacy, practitioners such as Ronald Boyd-MacMillan (2006:100) doubt the efficacy of human rights instruments.

4. An embryology of FoRB ideas

What follows cannot be described as a systematic theology on FoRB. However, it points to elements of earlier Christian thinking that could be described as ‘forb-like’. These themes emerged in the earliest Christian apologists and also found important resonances in the drafting process of the UDHR.

First, the right to worship free from coercion was a cornerstone of early Christian apologist-missionaries such as Tertullian and Lactantius. Free worship, Tertullian claimed, was a human right (*humani iuris*) and a privilege of nature (*naturalis potestatis*). It was therefore “no part of religion to compel religion to which free-will and not force should lead us” (Tertullian 1885:105-106). Lactantius, who evidently wielded influence in the imperial household and brought critical analysis to ideas about justice (O’Donovan and O’Donovan 1999:46-47), was equally vociferous on this issue.

What is noteworthy about this early Christian thinking is that Christian freedoms were being defended along with all religious freedoms. For example, Kahlos (2009:9) suggests that Lactantius’ approach “resembles modern ideas of tolerance in which it is usually understood that, despite the disapproval of the religious, moral or political views of other people, one does not take action against them.”

Second, the concept of natural law, to which Tertullian alluded, would later become pivotal in shaping an enduring Christian anthropology. The catholicity of natural law extended from the work of Thomas Aquinas, through the missionary work of thinkers like Bartolomé de las Casas, to John Locke and Jacques Maritain who described natural law as “an order or a disposition which human reason can discover and according to which the human will must act in order to attune itself to the necessary ends of the human being” (1944:35).

In Thomas’ thinking, the image of God makes us “fit for God”, for natural law is “nothing else than an imprint on us of the Divine light ... and the rational creature’s participation of the eternal law” (ST 1-II.91.2). Because God’s wisdom rules over creation (ST 1-II.91.1 and ST 1-II.93), everyone has a “natural inclination to know the truth about God, and ... avoid offending those among whom one has to live” (ST 1-II.94.2).

These ideas governed the development of Christian thinking and were formative in las Casas’ radical mission among the Peruvian Indians, which championed their right to worship free from the juridical power of Spain and contrary to Catholic

teaching. As Roger Ruston (2004:85) suggests, las Casas' missiology was premised on the image of God in which the Indians and conquistadores shared alike.

As a Christian philosopher, Locke, whose ideas played a pivotal role in the American revolution and the development of rationalism, was equally indebted to the idea of the *imago dei*. Religious and civil toleration, he claimed, was therefore owed to "the Presbyterians, Independents, Anabaptists, Arminians, Quakers and including pagans, Mahomedtan, and Jew" who were all included in "the commonwealth" (Locke 2005:150).

There is insufficient space here to expand on the development of Christian reflection which flowed into advocacy for human rights and religious freedom for all. These earlier protagonists for religious freedom did not create perfect political crucibles in which FoRB was forged. Indeed, their designs created a complex alloy of freedom of conscience in tension with public consensus and stability.

5. Jacques Maritain, 'personalism' and human dignity

As a Thomist who lived and taught in America during the post-war years, Maritain contributed to the development of ideas which arguably had a direct impact in including the concept of dignity in the wording of the UDHR. Based on natural law, two principal ideas were critical in shaping the work of drafters such as Charles Malik: personalism, as differentiated from individualism, and a correlated belief in human dignity. Maritain's personalism reacted to individualism as much as it did to the totalitarian power of the state. This is because each person has a direct relationship with the Trinity so that "it is in society with God" that we possess the common good (Maritain 1946:22). Each "concrete person" was entitled, therefore, to full independence "by the economic guarantees of work and property, political rights, civil virtues, and the cultivation of the mind" (Maritain 1944:27). Personalism and dignity were coterminous ideas in which "the transcendent dignity of our human person was made manifest" (Maritain 1944:41).

Ruston states that Maritain's approach to human rights began "not from the sovereign individual, but with the social person made in God's image, endowed with reason and freedom of choice" (2004:11). In Song's view, Maritain's religious freedom set a precedent for other liberties (1997:131).

Allied to this profound concept of personalism, the Christian understanding of dignity had a discernible influence on the contested process of the UDHR. Richard Moyn (2015:2) states that ideas of dignity which gained prominence during the French revolution later accelerated in 1937 with Pope Pius XI's *Divini Redemptoris* and the introduction of the Irish Constitution, culminating with Maritain and the 1942 Christmas Message of Pope Pius XII.

The association between ideas of personalism and dignity should not be understated. First, it was clear that Christian UDHR drafters such as René Cassin and Charles Malik

championed the ideas of human dignity which were missing from earlier drafts of the document but which eventually became included in the preamble and Article 1 of the UDHR.⁵ Indeed, the relationship between Christian reflection and human dignity has been widely acknowledged (Moltmann 1984; Moltmann 1999; Glendon 2013; Hollenbach 1979; Spencer 2016). Second, these ideas put individual autonomy above the overbearing power of the state so that, at least in the spirit of the UDHR, the responsibility to define and protect human rights was not determined by the political foibles of statism.

6. Missional impulse

Arguably, the apologetic response to religious freedom led by thinkers such as Tertullian and Lactantius may be understood as a part of a missional argument for freedom of conscience. This missional imperative became even more pronounced in the later work of Catholic missionaries such as Francisco de Vitoria⁶ and las Casas.

The list of Christian thinkers who stressed religious freedom for all also includes Roger Williams. Exiled from England, Williams, who founded the American colony of Rhode Island, championed the religious freedom of the Indian community in Massachusetts. In opposition to British imperialism Williams contended for the freedom of “Jewish, Turkish or anti-Christian conscience” because, freedom was due “to all men in all nations and countries” (2001[1644]:3).

No single or unbroken influence can be traced from these earlier missionaries and thinkers to the specific statements of the UDHR. However, through these ideas of human dignity and personalism, an anthropology premised on the image of God asserted that the individual superseded the state. This idea which created the foundation for religious and civic freedom remains the basis on which religious freedom for all is monitored today. In addition, Christian reflection and activism clearly demonstrated that Christian missionaries saw human rights as a critical instrument for all religious freedoms and actively campaigned for it.

In 1942, for example, the International Missionary Council of North America and the Federal Council of Churches of Christ commissioned a study of human rights under the Joint Commission on Religious Freedom which resulted in *Religious Freedom*, an influential study of freedom of choice (Bates 1945). Across Europe and the US, missionary movements regarded human rights as integral to their

⁵ On 12 April 1944 the US Joint Committee on Religious Liberty issued a statement on Religious Liberty in which human dignity was located in the image of God, (WCC and CCIA Archives, Box: 428.3.01 1948-1964). In the first draft Charles Malik argued that there was insufficient reference to dignity in the preamble Commission on Human Rights 1947a:4). Subsequently, the chair, Mrs Roosevelt and Mr Chang the China representative both agreed that dignity should be included in the Art 1. (Commission on Human Rights 1947b:2).

⁶ Vitoria (AD 1483-1546) also applied Thomist reflection to his missionary work during the volatile period of Spanish expansionism in Peru.

work (Nurser 2005:20). As a key drafter and someone who believed in Christian conversion (Moyn 2015:149), Malik was fully convinced that the Church had a duty to set the pace on human rights (2000:137).

When the Commission on Human Rights held consultations on the wording of international human rights instruments, the government of the Netherlands argued powerfully that freedom of religion should include:

the freedom of religious denominations or similar communities (including missionary societies) to organise themselves, to appoint, train and support their ministers to enjoy civil and civic rights, to perform educational, medical and other social work. (Commission on Human Rights 1948:21)

So pervasive was the missionary zeal that human rights became a part of the church's "missionary need" (Lindkvist 2017:66). Christian investment was so significant that Christian values could be construed as the ideological hegemony in the process (Moyn 2010:75). Indeed, this influence almost certainly contributed to the resistance of non-Christian delegates during the drafting process. Whilst Christians may disparage the pushback from non-Christian communities who "feared the machination of certain missions" (UN General Assembly 1948), it is well to recall that even some Western delegates feared the potential for proselytising (Lindkvist 2017:100-102).

It would be naïve to assume that these Christian activities were devoid of self-interest. What the records suggest, however, is that the development of human rights ideals was entirely consistent with a post-war Christian narrative in which peace, social harmony and economic security were highlighted. The combination of missional zeal and political activism provided an important feature of Christian engagement during a period in which totalitarianism was a potential threat to human freedoms as well as the proclamation of the Christian message. As in 1948, this tension remains at the heart of Christian engagement in FoRB today.

7. Theological Proposition

7.1 CSW's search for theology

CSW's ambiguity arose in part from an absence of a clear theological framework for their praxis. The interviews highlighted a cluster of theological themes which informed their intuitive praxis. Inevitably for a Christian organisation, Jesus or Christ emerged as a dominant focus. This was followed by other themes such as justice, the kingdom of God, suffering, the image of God and the 'good' Samaritan.⁷ These important ideas were managed under two areas of study which I offer

⁷ Luke 10:25-37. I have opted for 'good' Samaritan as this adjective was not included in Jesus' teaching

as an initial theological framework for praxis: a Christian anthropology shaped by the idea of the *imago dei* and a Christian universalism which complies with an evangelical ethos.

7.2 ForB and the *imago dei*

A Christian anthropology is inconceivable without reference to Genesis 1:26, 27 as “the *locus classicus* of the doctrine of the *imago dei*” (Middleton 2005:15). Discussion of the ‘image’ and ‘likeness’ of God is saturated in hermeneutical complexities. For our purposes, it is sufficient to acknowledge a broad agreement that these texts provide the most foundational idea that all people share something of the nature of God.

On this basis, the Bible points further to a relationship with God in which human beings carry responsibilities of stewardship for the planet (Genesis 2:15-17). Brueggemann suggests that these three verses contain “a remarkable statement of anthropology” in which everyone stands before God in “vocation, permission and responsibility” (1982:46). The image-obligation commissions all humanity as God’s emissaries who steward the world. As Christopher Wright advocates, the ‘image’ involves God “passing on to human hands a delegated form of God’s own kingly authority over the whole of his creation” (2006:426).

Similarly, as Cain discovered, this status also makes us morally liable in human relationships (Genesis 4:1-16). To kill another human being is therefore to kill someone made in God’s image, and every murder or persecution becomes “a direct attack on God’s right and dominion” (Westermann 1984:468).

Far from being an afterthought, the *imago dei* is therefore the premise on which human dignity is built, for it proposes a radical anthropology which demands the well-being of other human beings.

7.3 Christian universalism and ForB

By ‘universalism’ here, I do not refer to universal salvation, or the idea that all people will be saved. Rather, I mean the recognition that in the image of God, everyone belongs to a human commonwealth. This commonality exposes everyone to the ubiquitous nature of God’s grace and protection held together in the Noahic covenant (Genesis 9:1-17) and the generosity of the kingdom of God.⁸ Understood in this way, universalism acknowledges Christ’s complete and unique death for human sin whilst recognizing that its scope extends beyond salvation from sin.

and can distract us from the purpose of the story: the meaning of neighbour.

⁸ David VanDrunen argues plausibly that a biblical defence of religious freedom is supported by the covenant with Noah rather than Romans 1:18-32 (VanDrunen 2012:135-146).

I can provide only a short overview here of the biblical foundation for this understanding of universalism. I will include a reference to Isaiah's Suffering Servant (Isaiah 52:13-53:12), the idea of a fellowship of suffering, a fleeting reference to Jesus' Sermon on the Mount (Matthew 5:1-7:29) and some comments on the kingdom of justice.

Isaiah's Servant raises difficult hermeneutical challenges associated with the identity and nature of the Servant's suffering. Nevertheless, across the spectrum of opinions there is an agreement that this suffering should not be limited to a substitutionary death. As Motyer suggests, the Servant dealt with the problem of sin and shalom as a "rounded wholeness comprising personal fulfilment, harmonious society and a secure relationship with God" (1993:429).

The repercussion of an all-encompassing suffering raises the potential of a universal 'fellowship of suffering' in which all human oppression has been experienced in the complete suffering of the Servant. As the one who bore sin and carried sorrow, Christ understood as the Servant⁹ creates a soteriological bond between atonement for human sin and redemption from oppression.

In his own poignant reflection on a fellowship of suffering, written during World War II, Wheeler Robinson suggests that God suffers "in us, with us and for us" (1940:6) and that such suffering should not be limited exclusively to Christians (1940:210). The suggestion is that the Servant offers a Christological narrative in which personal salvation and the non-atoning work of Christ coexist.

A universal ethic which legitimises FoRB as a call to mission is also implied by Jesus' expansive teaching including the 'good' Samaritan and the parable of the sheep and goats (Matthew 25:31-46). Moreover, the Sermon on the Mount offers further evidence of a universal ethic of the kingdom of God.

There are good grounds for assuming that the Sermon on the Mount was addressed exclusively to Jesus' inner circle of disciples.¹⁰ Indeed, the happiness of obedience may aptly be ascribed to Christians who suffer persecution for Christ, or the meek who will inherit the kingdom of heaven. However, the text also offers a broader application which suggests a universal ethic to which all human conduct should aspire. In this sermon, Jesus illustrates "God's dispositions toward human beings, both redeemed and unredeemed" (Mouw 2002:33). This is because the

⁹ In relation to the Servant's identity, I argue that there is sufficient New Testament evidence to equate Isaiah's Servant with Jesus' sacrificial death. For example, Matthew 1:21; 20:28; 26:28; Mark 10:45; Acts 4:8-12; 5:31; 10:43; 13:38,39; 22:16; Romans 3:23-25; 4:25; 5:6-8; 10. 9; I Corinthians. 15:3, 14-17.

¹⁰ For example, *μακάριοι* is overwhelmingly descriptive of those who have been identified as followers of Christ. (Matthew 11:6; 13:16; 21:9; 23:39; Mark 10:16; Luke 2:34; 6:20-22; 7:23; Romans 4:6; 4:8. I Peter 3:14).

passage presents us with two realities: demanding teachings exclusive to Jesus' followers, as well as universal ethical imperatives including murder, adultery and revenge which should be exemplified in the disciples, but which may also be applicable to all human relationships.

Clearly, the blessings of 'mercy' is most frequently associated with God's action toward people.¹¹ However, 'mercy' between individuals occurs sparingly in this text and again in Matthew 18:33 where Jesus' parable castigates a servant who failed to show mercy. Matthew is clear that ἔλεος includes secret gifts to the needy (Matt 6:2). Significantly, Jesus challenged pedantic worship that omits the greater matters of "justice, mercy and faithfulness" (Matt 23:23). It is precisely this hypocrisy that is highlighted in the story of the 'good' Samaritan who, as the outsider, demonstrated a quality of 'mercy' toward the stranger who had been robbed (Luke 10:37).

Although the Sermon on the Mount was addressed principally to the followers of Jesus, it also introduces a universal ethic open to all humanity. This is entirely consistent with our understanding of Old Testament ethics and its universal applicability to all humanity beyond the prescribed relationship with Israel.¹²

Such a reading of the Sermon on the Mount is consistent with the kingdom which Jesus taught and which was so central to CSW's intuitive framework. Again, there is insufficient scope here to explore this theme, but there is something of an expansive generosity in Jesus' kingdom of righteousness which exceeds the more prescriptive ecclesial reading of the Sermon.

In the kingdom, God rules justly¹³ and delegates this order of justice to leaders.¹⁴ According to Timothy Keller, this involves "more than just the punishment of wrongdoing. It also means to give people their rights" (2010:3), and "righteousness is inevitably 'social' because it is about relationships" (2010:10). As Christian ethicist Stephen Mott says, "the justice that characterises God's defence of the poor is the justice that is demanded of humanity" (1993:79). Beyond mere *mitigation*, "Justice is deliverance" (1993:80). In this kingdom Christians assert that there is no gap between soteriology and ethics (Padilla 2010:47).

Whilst an ecclesial reading may suggest a narrow hermeneutic of the Sermon, the kingdom of justice offers the perspective of a wider understanding of righteousness consistent with God's care for people of all faiths and none. Christian universalism exposes us, therefore, to joint activism with everyone.

¹¹ See for example, Matthew 15:22; 17:15; 20:30; Luke 1:58; Romans 9:15-18.

¹² Amongst many examples one might cite the Ten Commandments, the Wisdom literature and numerous ethical injunctions to Belteshazzar (Daniel 4:24-27) and the Minor prophets, including celebrated passages such as Micah 6:8, Amos 5:24.

¹³ Among the many references, Psalm 89:14; 97:2 may be noted.

¹⁴ Genesis 49:16; Deuteronomy 16:2; Micah 3:1; Proverbs 13:34.

8. FoRB as dialogical partnership

8.1 Ethics and the language of human rights

With over 80 percent of the world's population living in countries with some degree of religious restrictions (Pew Research Center 2017), engagement in FoRB includes people of all beliefs and none. Beyond the narrow task of evangelism, the biblical ethic provides an entrée for a wider missional discourse about shalom. From this perspective, ignoring religious freedom or any element of human rights could be regarded as an abdication of our mission. With no global consensus on religious ethics, FoRB offers an agreed basis for discourse about persecution and the moral basis for disapproval where freedom of conscience has been violated.

Despite its deficiencies, human rights provide what Regan calls a “dialectical boundary discourse” about human flourishing (2010:2) and, in Hollenbach's helpful observation, provides “intellectual solidarity” with non-Christians committed to human flourishing (2002:154-155).

8.2 Partnership and the mission of God

A Christian anthropology premised on the *imago dei* inevitably includes everyone in the ministry of stewardship mentioned earlier. In addition, the fact that God demands just behaviour from everyone suggests that everyone is fully implicated in the mission of God. This also follows from an awareness that in the *missio dei* God is already at work in the world and the church has the privilege of participating (Bosch 1991:390).

God's mission liberates Christian praxis to work collaboratively with people of all faiths and none in ways which conform to the teachings of Jesus. In such settings, engagement in FoRB is entirely consistent with the call to mission.

My research made it clear that this was CSW's experience. Far from compromise, the quest for theological affirmation led the charity to reassert its identity. In its final rebrand which flowed from the research, CSW declared, “As Christians, we stand with everyone facing injustice because of their religion or belief. Everyone. Free to believe.” (CSW n.d.b.)

Such a position is not without its considerable challenges. However, the research suggests that a firm Christian commitment to an evangelical position is reconcilable with a non-proselytising engagement in FoRB and that this praxis may be regarded as consistent with the mission of God.

9. Conclusion

Given the ambiguities associated with the politicisation and secularisation of human rights and human dignity, Christian engagement in FoRB will increasingly become

a challenging enterprise as human rights violations continue to increase.¹⁵ In a climate where human rights and equality claims are increasingly at variance with faith claims, much caution and ambiguity remain.

The overall indication of this study is that human rights and FoRB owe an intellectual debt to Christian reflection. As has been shown, Christian engagement in this arena presents a number of important hurdles. I have argued, however, that Christian engagement in FoRB is not only in keeping with the mission of God but is also demanded by it.

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¹⁵ The UN Sec Gen Antonio Guterres conceded this point in an interview with the BBC, Radio 4 Today on 3 May 2018.

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Counteractive responses to religious persecution

Selective contextualised overview

Werner Nicolaas Nel¹

Abstract

Advocating on behalf of people who are persecuted on the basis of their religious identities can require a wide range of interventions, including judicial, political or other measures. An appropriate response intended to counteract incidents of religious persecution is essential. Viewed holistically, persecution can comprise a spectrum of concurrent contextual perceptions, which may result in a variety of responses. A fitting response to religious persecution depends on situational awareness; therefore, responses should not be mindlessly reproduced and applied to other contexts. Decisive but sensitive responses can counteract the detrimental impact of religious persecution, especially in relation to religious freedom, and show solidarity with those who have been persecuted.

Keywords religious persecution, counteractive responses, freedom of religion or belief, human rights advocacy, discrimination.

1. Introduction

Even though “religious freedom protections are well established at the international level,”² the global prevalence of religious persecution constitutes a contemporary affront to human dignity, freedom and equality. Manifestations of intolerance, discrimination and hostility against various communities because of their religious beliefs still prevail in many areas of the world,³ limiting people’s right to freely practise their beliefs.⁴ Accordingly, appropriate interventions are required to counteract religious persecution.

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² Knox H. Thames, Chris Seiple, and Amy Rowe, *International Religious Freedom Advocacy: A Guide to Organizations, Law and NGOs* (Waco, TX: Baylor University Press, 2009), 1.

³ UN General Assembly, Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, UNGA Res 36/55, 73rd plenary meeting, 25 November 1981.

⁴ UN Report, United Nations World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (2001), UN DocA/CONF.189/12, para 59.

Inconveniently, the global phenomena of religious persecution are based on a diversity of contextual understandings, conceptualizations and applications. On one hand, religious persecution may be considered from an international legal perspective, including refugee law, international criminal law and international human rights law. Each of these legal dimensions of 'persecution' has specific contextual understandings and purposes, along with a relatively high threshold of severity of harm. On the other hand, the phenomenon of persecution also includes an existential dimension, which entails sociological, philosophical, psychological and theological perspectives. To complicate matters further, religious persecution may be triggered by a multiplicity of root causes or motives and may be instigated by state or non-state actors, or by a combination of both.⁵ As a result, a holistic view of religious persecution requires a multidimensional understanding.

This scattered spectrum of persecution phenomena may result in a variety of responses to persecution. Determining an appropriate response in a given situation requires 'human rights defenders' and those engaged in advocating on behalf of the religiously persecuted⁶ to possess a working knowledge of the spectrum of possible responses. In this article, I provide a non-exhaustive overview of common responses to persecution by various stakeholders,⁷ including religious communities, governments, humanitarian organizations, religious freedom advocates, human rights mechanisms and international criminal prosecutions.

2. The notion of responses to religious persecution

An appropriate response to incidents of religious persecution is essential.⁸ However, prevention is better than cure. Thus, although adequate responses to persecution may remedy a certain situation; addressing the origins of such discriminatory mindsets is the only way to prevent recurrences of the problem. As the United Nations General Assembly has stated:

⁵ For a discussion of the motivational triggers of religious persecution, see Nel, "International Criminal Accountability for Religious Persecution", 291-309.

⁶ In the context of this study, the term 'religiously' is used in the sense of religiosity, i.e. 'pertaining to a religion' or 'related to religion', and is used so as not to disturb the syntax in certain instances. 'Religiously' is not used in relation to its secondary meaning, signifying a 'devotion' to a cause, acting 'meticulously' or 'regularly.'

⁷ Other perspectives, such as contributions by public and private media, the role of neutral and pluralistic school education, and the appropriate response from civil society organisations, will not be considered in this paper.

⁸ Heiner Bielefeldt, *Freedom of Religion or Belief: Thematic Reports of the UN Special Rapporteur 2010-2016*, 2nd ed. (Bonn: International Institute for Religious Freedom, 2017), 209.

Persecutions and such discrimination constitute a total disregard of the most elementary humanitarian principles and ... give rise to serious and complex social problems requiring urgent remedies, which remedies will, needless to say, be entirely without effect unless the evil is attacked at its root.⁹

Manifestations of religious hatred, discrimination and religious persecution are not natural phenomena but are caused by human action and/or omission.¹⁰ Consequently, humanity itself has the ability, and the shared responsibility, to address such manifestations. The full realisation of basic human rights requires developing effective preventive measures at the national, regional and global levels to deter such manifestations. States and other stakeholders, including political, religious and community leaders, may be the pivot on which the successful implementation of policies and counter-narratives aimed at combatting religious intolerance hinges.¹¹ As a starting point, States must (1) respect all human beings as holders of profound, identity-shaping convictions; (2) commit to an ideology of respectful non-identification in issues of religion; and (3) operate as trustworthy guarantors of religious freedom for everyone.¹²

Even so, an appropriate response requires effective cooperation by governments and their representatives, religious communities, civil society organisations, the media and other relevant stakeholders and role players.¹³ Coping strategies must present a fitting response through diplomatic, judicial and even confrontational measures. However, even in extreme situations affecting national security, measures that restrict religious freedom must comply with all the criteria laid down in respective international human-rights instruments.¹⁴

A suitable entry point for discussing adequate responses to religious intolerance and persecution is the *Rabat Plan of Action*.¹⁵ This programme was the culmination of a series of regional expert workshops concerning the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to real acts of dis-

⁹ UN General Assembly, General Committee: Resolution on Persecution and Discrimination: Request for the Inclusion of an Additional item in the Agenda from the Delegation for Egypt, A/BUR/51, 11 November 1946.

¹⁰ Bielefeldt, *Freedom of Religion or Belief: Thematic Reports*, 214.

¹¹ Bielefeldt, *Freedom of Religion or Belief: Thematic Reports*, 215.

¹² Bielefeldt, *Freedom of Religion or Belief: Thematic Reports*, 215.

¹³ Bielefeldt, *Freedom of Religion or Belief: Thematic Reports*, 275.

¹⁴ Most notably, Article 18 of the United Nations International Covenant on Civil and Political Rights, 16 December 1966.

¹⁵ Office of the UN High Commissioner for Human Rights, *Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence*, adopted 5 October 2012 in Rabat, Morocco.

crimination, hostility or violence.¹⁶ The main aim was to conduct a comprehensive assessment of the implementation of effective strategic responses to incitement of hatred, both non-legal and legal in nature. Consequently, the intersection between freedom of expression and hate speech, especially in relation to religious issues, was a core concern for the expert panel.¹⁷ Although a comprehensive discussion of the outcomes of the *Rabat Plan of Action* falls outside the scope of this article, some of its conclusions and recommendations in the areas of legislation, judicial infrastructure and policy may facilitate more effective and appropriate responses to religious discrimination and persecution. Therefore, some of these relevant responses have been incorporated into the following discussion.

3. Response from the perspective of the religious community

From an anthropological viewpoint, perspectives on and consequent responses to persecution may differ inter-religiously and intra-religiously, as well as in terms of temporal and territorial suitability. The various possible responses to persecution are too broad to consider fully in depth here. Instead, the religious communities' response to religious discrimination and persecution will be considered from internal and external perspectives. The internal perspective will consider the appropriate reaction by a religious community in whose name hostility, violence and persecution occur. The external perspective refers to the response by a persecuted religious community.

3.1 Internal response to persecution in the name of religion

An appropriate internal or introspective response by those religious groups in whose name religious persecution is being committed is very important. Arguably, the most important function of responding to persecution in this context is to distance the religion itself from such manifestations.¹⁸ As Bielefeldt observes:

Perpetrators of violence typically represent comparatively small segments of the various religious communities to which they belong, while the large majority of believers are usually appalled to see violence perpetrated in the name of their

¹⁶ Rabat Plan of Action, paras 1 and 2.

¹⁷ Rabat Plan of Action, para 2.

¹⁸ Other appropriate responses, depending on the gravity of such situations, could include immediate and public condemnation combined with, amongst other actions, allowing international and trans-boundary cooperation and investigation, considering the establishment of an ad hoc court or tribunals, referring the matter to the International Criminal Court so as to bring perpetrators to justice, and requesting or allowing humanitarian intervention by the UN Security Council or responsive States where such situations have gone beyond the control of the de facto authority.

religion. It is all the more important for the majorities and their leaders, who do not endorse the violence, to speak out against it.¹⁹

Religious distancing can occur only when the associated religious group “visibly and audibly reject[s] advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence [which] can have very practical effects in discouraging such advocacy, while at the same time showing solidarity and support for their targets.”²⁰ In this regard, religiously motivated extremism is a prime example.

Although religious extremism may be based on radical or fundamentalist interpretations of certain religious texts and teachings, religious persecution and other acts of terror cannot and should not be considered representative of a religious community as a whole.²¹ Making such a distinction prevents inter-religious or intra-religious retaliation by separating the human-rights abuses from their claimed religious affiliation. When we declare that the actions of a religious extremist group do not speak on behalf of a religion,²² we are distinguishing between the extreme or fundamentalist interpretation of the terror group and the nature of the religion in whose name they justify their actions. In the hearts and minds of those affected, the ideology of such a religious extremist group becomes impulsively associated with the religious foundation of the associated religion, resulting in negative stereotyping, hatred, hostility and reprisal, especially in areas of the world where the associated religion constitutes a minority. In any such instance, religious and community leaders must behave in ethically conscious and socially responsible ways, including (1) refraining from using messages of intolerance or expressions which may incite violence, hostility or discrimination;²³ (2) strongly condemning such hatred and violence; and (3) distancing their beliefs and religious ideologies from such atrocities.²⁴

¹⁹ Bielefeldt, *Freedom of Religion or Belief: Thematic Reports*, 267.

²⁰ Bielefeldt, *Freedom of Religion or Belief: Thematic Reports*, 213.

²¹ UN Security Council, *Security Council Resolution 2170* (on threats to international peace and security caused by terrorist acts by Al-Qaida), 15 August 2014. However, some maintain that we cannot rule out the possibility that violence and hatred are core choices innate to the origins and development of some belief systems. They therefore reject as idealistic and wishful thinking a neat differentiation between extremist ideology and the supposed ‘real nature’ of a religion in such cases. Nonetheless, this consideration does not detract from the need to prevent escalation and stereotyping.

²² However, it is not a law of nature that the ‘silent majority’ always opposes the persecutory acts of extremists. They could also be silently or publicly applauding the acts of extremists while they themselves live peaceful lives. They may even provide financial support.

²³ Rabat Plan of Action, para 24.

²⁴ Rabat Plan of Action, paras 23 and 24.

Furthermore, the teaching of radical or fundamentalist ideology by religious leaders may hamper dialogue between and within religions, thereby resulting in radical or extremist ideological interpretations. Unfortunately, radical and fundamentalist ideologies in the name of religion will continue as long as religious clerics and leaders publicly indoctrinate a radical, literalist interpretation of an associated religion. For example, in Muslim countries such as Saudi Arabia, Qatar and Turkey, radical teachings associated with Islam result in extremist incitement to intolerance and hostility against dissenting religious groups.²⁵ In such a situation, it is the moral obligation of the majority not to remain silent.

3.2 External response to persecution by victimised religious groups

From a broader sociological perspective, the experience of religious groups may differ greatly based on the nature and severity of religious persecution. Religious groups subjected to severe religious persecution experience a relentless assault on their human dignity, equality and basic freedoms.²⁶ Such persecuted communities may remain where they are, living in fear and seeking to endure the oppression and suffering, or they may flee their homes as refugees. In contrast, religious groups subjected to less significant forms of persecution²⁷ may have more response options available to them. Nevertheless, they too suffer religious intolerance, threat of harm, and fear.

Religious groups will differ in their response to discrimination and persecution depending on their theological or ideological doctrines. In this article, for the sake of brevity, only Christian responses to persecution will be considered. This selection should not be construed as a parochial choice or favouritism. Nearly one-third of the world's population are Christians,²⁸ making this the largest and most internationally widespread religious movement. Moreover, available information indicates that Christians have consistently endured the most religiously motivated harassment of any religious group.²⁹ In other words, this focus is justified on the supposition

²⁵ Patrick Sookhdeo, "Editorial: The Two Faces of Islam" (2014), <https://barnabasfund.org/news/Editorial-The-Two-Faces-of-Islam>.

²⁶ UN Office of the High Commissioner for Human Rights, Report of the Independent International Commission of Inquiry on the Syrian Arab Republic (IICISAR). Rule of Terror: Living under ISIS in Syria, 14 November 2014, para 2.

²⁷ The use of the term "less significant forms of persecution" should not be construed so as to diminish the harm associated with forms of persecution that may not constitute deprivations of human rights. I do not intend to depreciate the damaging physical and psychological effects such acts may have on individuals or communities.

²⁸ See Todd M. Johnson and Gina A. Zurlo (eds.), *World Christian Database* (Leiden and Boston: Brill, 2018).

²⁹ This claim is based on the number of countries in which each religious group is affected by restrictions of religious freedom and by social hostilities. See Pew Research Center, *Global Uptick in Government*

that “Christians suffer the denial of religious freedom and heavy discrimination more than the members of any other religion.”³⁰ Consequently, some brief observations about Christian responses to persecution may be useful:³¹

- The persecuted Christian community’s response to persecution is based on its theology of suffering, church and culture, which is cultivated by an expectation of persecution and a determination to rejoice in suffering. Specific responses typically include intercession, prayer and solidarity.
- Christian communities most commonly adopt survival strategies, such as going underground, fleeing or displaying respect for repressive regimes in their outward behaviour. These strategies are the least proactive form of opposition to persecution, but they often involve creativity, determination and courage.
- Strategies of association with sympathisers are the second most common response. In this regard, Christian communities seek to strengthen their resilience and secure their religious freedom by developing ties with other actors, including other Christian denominations or communities, non-Christian religions, and secular figures.
- Strategies of confrontation are the least common response. If used at all, they are usually non-violent and, with very few exceptions, do not involve acts of extremism or terrorism. Rather, confrontational strategies bear witness to the faith, expose and publicise injustice with the hope of ending it, mobilise others to oppose injustice, and engage positively with the aim of replacing oppression with religious pluralism. In relatively open political systems, confrontation may take the form of legal intervention, even if the rule of law has failed. Ronald Boyd-MacMillan suggests three positive effects of taking the legal route: (1) providing critical testimony for the exertion of political pressure from outside the country (although political pressure may also be achieved through other advocacy efforts); (2) the “embarrassment effect” of making known a State’s lack of international commitment to the rule of law and human rights, rendering that State vulnerable to foreign criticism and the possibility of other political or economic consequences; and (3) an empowering effect helping the

Restrictions on Religion in 2016 (2018), <https://www.pewforum.org/2018/06/21/global-uptick-in-government-restrictions-on-religion-in-2016/>.

³⁰ Daniel Philpott and Timothy S. Shah (eds.), *Under Caesar’s Sword: How Christians Respond to Persecution*, Cambridge Studies in Law and Christianity (Cambridge: Cambridge University Press, 2018), 4. See also Pew Research Center, *Trends in Global Restrictions on Religion*, (2016), 20, <https://www.pewforum.org/2016/06/23/trends-in-global-restrictions-on-religion/>.

³¹ University of Notre Dame, *In Response to Persecution: Findings of the Under Caesar’s Sword Project on Global Christian Communities*, 20 April 2017, <http://ucs.nd.edu/report/>, 5; an in-depth explanation of the findings is on pages 34–44. See also Ronald Boyd-MacMillan, *Faith That Endures. The Essential Guide to the Persecuted Church* (Lancaster, UK: Sovereign World, 2008), 254–83.

persecuted to stand up for themselves. Other forms of confrontation include resistance by or outside assistance to the persecuted community. These actions may involve methods that contravene legal norms and rules, such as smuggling Bibles to oppressed or 'underground' churches.

- Strategies adopted by persecuted Christian communities may also exhibit intra-denominational differences. Evangelical and Pentecostal Christians are more likely to be persecuted. They are thus more likely to engage in strategies of survival or, on rare occasions, confrontation and less likely to engage in strategies of association. On the other hand, mainline Protestants, Catholics, Orthodox Christians, or other Christians associated with ancient churches are less likely to be persecuted. In response to persecution, they are more likely to respond through strategies of association.
- The intensity or severity of persecution and the level of commitment by adherents only partly explains Christians' responses, implying that the level and type of persecution that Christian communities face do shape, enable and constrain their responses.

Although some of these response strategies have produced tangible results worthy of emulation, the effectiveness of each strategy is related to temporal, geographic and other context-specific factors. Often, the most effective approach takes into careful consideration the particular circumstances, the interests of the target society, and the persecuted community's theology regarding persecution.

4. Governmental responses in line with human-rights obligations

Governmental responses to religious persecution can include a wide spectrum of reactions through different branches of authority (judicial, executive and administrative) and exercised at various levels, including the international level. These possible responses depend on a seemingly endless set of factors, ranging from politics and policy to law and religion. In terms of the focus of this article, a governmental response should be in line with human-rights obligations and responsibilities under national, regional and international law. In this regard, international human-rights law has developed a comprehensive legal system that recognizes, protects and promotes fundamental human rights, especially religious freedom.

Religious freedom forms a core part of human rights and was amongst the first such rights to be recognized and codified as a fundamental human freedom.³² Religious freedom is part of customary international law,³³ implying that such principles

³² Christian Walter, "Religion or Belief, Freedom of, International Protection," in Rüdiger Wolfrum (ed.), *Max Planck Encyclopedia of Public International Law* (Heidelberg: Oxford University Press, 2009), 864.

³³ UN Human Rights Committee, General Comment No. 24: Issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to declara-

and values are binding upon all States, regardless of any formal recognition.³⁴ The significance of religious freedom means that its recognition and protection are vital at domestic, regional and global levels.

[F]reedom of thought, conscience and religion is one of the foundations of a 'democratic society' ... [and as such is] one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, sceptics and the unconcerned. The pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it.³⁵

Religious freedom is an inherent right of all persons, and it places upon States certain responsibilities regarding its protection. Generally, States have a duty to take effective measures to protect and promote religious freedom, equality and tolerance, and to prevent and eliminate discrimination on the grounds of religion or belief.³⁶ The scope of protective and legal obligations of States in this regard is extensive.³⁷ Based on the core international documents regarding religious freedom,³⁸ the following fundamental principles are applicable:³⁹

1. To respect or recognise the normative status of fundamental human rights of all people, including religious freedom, which applies similarly to States and non-state actors as potential perpetrators;
2. To protect, on an equal basis, all its population, whether nationals or not, against infringements of human rights, including religious freedom;

tions under article 41 of the Covenant, 12 May 2004, HRI/GEN/1/Rev.7.

³⁴ Magdalena Sepúlveda et al., *Human Rights Reference Book* (Costa Rica: University for Peace Publisher, 2004), 23.

³⁵ Council of Europe, *Freedom of Thought, Conscience and Religion: A Guide to the Implementation of Article 9 of the European Convention on Human Rights* (June 2007), 12.

³⁶ See UN General Assembly, Resolution 103(I) *Persecution and Discrimination*, 19 November 1946, Articles 2 and 7 of the Universal Declaration of Human Rights and Articles 2 and 3 of the International Covenant on Civil and Political Rights.

³⁷ For a more comprehensive analysis of a State's obligations in relation to the right to freedom of religion or belief, see Heiner Bielefeldt, Nazila Ghanea and Michael Wiener, *Freedom of Religion or Belief: An International Law Commentary* (Oxford: Oxford University Press, 2016), 33-38, and also Rabat Plan of Action, para 8 regarding recommendations to States.

³⁸ The core international documents regarding religious freedom include Article 18 of the Universal Declaration of Human Rights (UDHR); Article 18 of the International Covenant on Civil and Political Rights of 1966, written by the UN Human Rights Committee, General Comment No. 22: *The Right to Freedom of Thought, Conscience, and Religion in Terms of Article 18 of the ICCPR*; the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief of 1981 (Religious Discrimination Declaration); and the various reports of the UN Special Rapporteur on freedom of religion or belief.

³⁹ See also Bielefeldt et al., *Freedom of Religion or Belief: An International Law Commentary*, 33.

3. To enact constitutional and legislative reforms that bring domestic law in line with international law and, if applicable, regional human-rights obligations;
4. Obligations on all spheres of government and at different levels to take all appropriate measures in compliance with their international obligations and with due regard to their respective legal systems. These include, amongst others:
 - Refraining from discriminatory practices or policies, whether they amount to formally prescribed (*de jure*) or actual (*de facto*) discrimination;⁴⁰
 - Committing to a deliberate ideology of impartiality or 'respectful non-identification' in relation to all religions or beliefs, in order to be equally fair, open and inclusive to all people living on the State's territory;⁴¹
 - Implementing a consistent policy that prohibits and condemns any discrimination on the grounds of religion or belief as a serious violation of a fundamental human right;
 - Preventing and eliminating discrimination on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms, which again applies similarly to non-state actors as potential perpetrators;
 - Promoting and encouraging, through legislative, judicial, administrative, educational and other means, understanding, tolerance and respect in all matters relating to religious freedom in order to cultivate a general climate of societal openness and acceptance in which all citizens can actually enjoy their human rights;
 - Condemning any advocacy of religious intolerance or hatred that constitutes incitement to discrimination, hostility or violence;
 - Refraining from inciting violent stereotypes, discrimination or persecution, both nationally and in other countries;
 - Guaranteeing equality and effective protection under the law and in legal proceedings, including effective remedies for victims of discrimination at national, regional and international levels; and
 - Exercising its criminal jurisdiction over those responsible for serious forms of religious discrimination and persecution and, if such infringements amount to international crimes, applying the principle of *aut dedere aut judicare* (duty to extradite or prosecute) with regard to such persons.⁴²

⁴⁰ De jure discrimination refers to discrimination enshrined in laws, whereas de facto discrimination results from the effect of laws, policies and practices; see Bielefeldt et al., *Freedom of Religion or Belief: An International Law Commentary*, 316.

⁴¹ Heiner Bielefeldt, "Misconceptions of Freedom of Religion or Belief," *Human Rights Quarterly* 35(1): 53.

⁴² See M. Cherif Bassiouni and Edward M. Wise, *Aut Dedere Aut Judicare. The Duty to Extradite or Prosecute in International Law* (Leiden: Martinus Nijhoff, 1995).

In the context of religious persecution, States are responsible for ensuring that a culture of impunity does not exist within their territory. Participants who commit or who are complicit in acts of violence and persecution on the basis of religion must be brought to justice.⁴³ In this regard, States should consider enacting a penal code of international crimes, including crimes against humanity of religious persecution, into national law.⁴⁴

5. International humanitarian responses

A decline in the territorial autonomy of States, along with the increased awareness that mass atrocities and gross deprivations of human rights do not fall exclusively within the internal affairs of States, constitutes a significant and progressive development in international human-rights politics and law.⁴⁵ Consequently, States' respect for, protection of, and promotion of human rights have become matters of international concern.⁴⁶ Furthermore, following the transition from a State-centric to an individualistic approach, the recognition, protection and enforcement of human rights filtered into international criminal law.⁴⁷ As a result, the international community has created a number of appropriate responses directly aimed at stopping severe human-rights violations and providing early warning of developing human-rights concerns, including violations and abuses of religious freedom.⁴⁸ These responses, which will be referred to as humanitarian responses to persecution, relate to actions or reactions aimed at saving human lives and mitigating human suffering. They encompass, amongst others, assistance to persecuted communities through humanitarian aid; asylum and refugee protection; and traditional international humanitarian law responses.⁴⁹

Hereafter, two specific humanitarian responses are discussed: human-rights protection mechanisms and individual criminal responsibility for persecutors who have committed gross deprivations of human rights.

5.1 Religious freedom advocacy and human-rights protection mechanisms

In view of the fundamental influence that religious freedom has in shaping a person's sense of belonging, identity, conception of life, and engagement with society, depriva-

⁴³ Bielefeldt, *Freedom of Religion or Belief: Thematic Reports*, 275.

⁴⁴ For example, Germany's Act to Introduce the Code of Crimes Against International Law, 26 June 2002, Section 7(10).

⁴⁵ Bielefeldt, *Freedom of Religion or Belief: Thematic Reports*, 359.

⁴⁶ Bielefeldt, *Freedom of Religion or Belief: Thematic Reports*, 360.

⁴⁷ Thames et al., *International Religious Freedom Advocacy*, 7.

⁴⁸ Bielefeldt, *Freedom of Religion or Belief: Thematic Reports*, 360.

⁴⁹ Charter of the United Nations, 24 October 1945, 1 UNTS XVI, chapter 7, makes provision for such measures, including the use of force against acts or threats of aggression, the right to exercise self-determination, and humanitarian intervention measures.

tions or impermissible restrictions of religious freedom transcend regular categories of harm.⁵⁰ Religious pluralism and religious freedom depend continuously on advocates and human-rights defenders to ensure their normative development and protection.⁵¹ Therefore, advocacy for those persecuted on the basis of their religious identity is best approached with an eye towards protecting human rights. Such religious freedom advocacy efforts may take many forms and avenues, whether judicial, political or administrative. Unfortunately, a detailed discussion in this regard falls beyond the scope of this article, so only a few relevant observations are considered.⁵²

Human-rights defenders come in various forms, and they serve as “indispensable counterparts to States in advancing freedom of religion or belief.”⁵³ The term “human-rights defenders” generally refers to those persons who, individually or with others, act to promote or protect human rights through various efforts.⁵⁴ In relation hereto, some human-rights defenders advocate specifically for persecuted religious groups or simply for religious freedom generally.⁵⁵

In a general sense, religious freedom advocacy refers to the efforts of all individuals, institutions and even governments, operating at the international, regional, national and local levels, that tirelessly confront oppression, discrimination and persecution on behalf of those who are persecuted because of their religious identities.⁵⁶

In a more formal sense,⁵⁷ religious freedom advocacy implies taking certain official measures to act as a catalyst for change.⁵⁸ Such measures may include, amongst others, making use of legal protections and remedies in the domestic arena; petitioning and leveraging those who wield political influence regarding policy matters, whether they are governmental authorities, political leaders or international officials; collaborating with non-governmental organisations (NGOs), international

⁵⁰ Scott Rempell, “Defining Persecution,” *Utah Law Review* 2013, No. 1, 24.

⁵¹ Bielefeldt et al., *Freedom of Religion or Belief: An International Law Commentary*, 581.

⁵² For a detailed discussion, see Thames et al., *International Religious Freedom Advocacy* and Bielefeldt et al., *Freedom of Religion or Belief: An International Law Commentary*, 581-92.

⁵³ Bielefeldt et al., *Freedom of Religion or Belief: An International Law Commentary*, 582.

⁵⁴ Bielefeldt et al., *Freedom of Religion or Belief: An International Law Commentary*, 588.

⁵⁵ In this regard, the activities of the UN Human Rights Council’s special rapporteur on the situation of human-rights defenders is not exclusively related to religious freedom, but its mandate often overlaps the work of the special rapporteur on freedom of religion or belief and of human-rights defenders working in this area, prompting regular cooperation. See Bielefeldt et al., *Freedom of Religion or Belief: An International Law Commentary*, 584.

⁵⁶ Examples of such efforts may include disseminating information, complaining or submitting proposals, and organising peaceful protests.

⁵⁷ As provided in UN General Assembly, *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, A/RES/53/144, 8 March 1999.

⁵⁸ Thames et al., *International Religious Freedom Advocacy*, 5.

institutions and other concerned groups committed to religious freedom;⁵⁹ utilising individual human-rights complaint measures at a regional and/or international level; and researching and reporting on compliance to monitoring bodies.⁶⁰ It is imperative that when advocating for policies that impact on religious freedom, such proposals must strive for universal religious pluralism, and they must appropriately prevent and react to incidents of religious discrimination and persecution.⁶¹

In terms of regional and international human-rights instruments, complaint recourse mechanisms offer judicial recourse through international courts or quasi-judicial review systems, in pursuit of justice for those deprived of rights.⁶² As a general course of action, a matter should be escalated to a regional or international level only if the situation is life-threatening, if the right to judicial remedies in the national legal system has been exhausted, or if domestic legal recourse has proven to be unsuitable in providing a proper response.⁶³ Similarly, international control mechanisms must be viewed as a last resort, should regional systems prove inadequate or if the country of concern fails in its legal duties.

At the international and regional levels, various international human-rights mechanisms address issues related to freedom of religion or belief.⁶⁴ Under the UN system, there are three main ways to bring complaints about violations of human-rights treaties before the appropriate treaty bodies: (1) individual complaints, (2) inter-State complaints, and (3) inquiries upon receipt of reliable information on serious, grave or systematic violations by a State party of the conventions that the treaty body monitors.⁶⁵

⁵⁹ Thames et al., *International Religious Freedom Advocacy*, 4.

⁶⁰ Such monitoring bodies may include special oversight agencies or commissions, rapporteurs, ombudsmen and even research centres. The efforts of such monitoring bodies may include systematic examination of countries or issues of serious concern for religious freedom, tracking governmental compliance with human-rights obligations, issuing reports, responding to and raising concern regarding governmental violations, and providing education, awareness and dissemination of academic or public publications on human-rights concerns or issues. See Thames et al., *International Religious Freedom Advocacy*, 3.

⁶¹ Other aims include building public trust, imparting an atmosphere of inclusiveness, and furthering public discourse, freedom of speech, debate and critical thought on issues of religion or belief.

⁶² Thames et al., *International Religious Freedom Advocacy*, 4.

⁶³ Thames et al., *International Religious Freedom Advocacy*, 5.

⁶⁴ For a detailed discussion of these mechanisms, see Bielefeldt et al., *Freedom of Religion and Belief: An International Law Commentary*, 41-51.

⁶⁵ See the UN Office of the High Commissioner for Human Rights (OHCHR) website, <http://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/HRTBPetitions.aspx>. Two of the established committees are directly engaged with control mechanisms regarding deprivations of religious freedom and the elimination of religious discrimination, respectively. Under the International Convention on the Elimination of All Forms of Racial Discrimination, the Committee on the Elimination of Racial Discrimination (CERD) may consider individual petitions or inter-State complaints or conduct inquiries regarding alleged infringements. Similar mechanisms are provided for in the ICCPR, affording the Committee on

Furthermore, within the scope of the UN's special procedure mechanisms, the Human Rights Council mandates that independent experts must report and advise on human-rights aspects from a thematic or country-specific perspective.⁶⁶ Religious freedom is one of the identified themes. In this regard, the special rapporteur on freedom of religion or belief is an independent expert acting in his or her personal capacity without financial remuneration. In principle, the special rapporteur is mandated "to identify existing and emerging obstacles to the enjoyment of the right to freedom of religion or belief and present recommendations on ways and means to overcome such obstacles."⁶⁷

5.2 The suitability of international criminal prosecutions as a response to religious persecution

In the context of religious persecution that results in *severe* deprivations of human rights, the responses outlined above may be inadequate or insufficient to properly address injustice. In such instances, those who commit or are complicit in "grievous religious persecution"⁶⁸ must be brought to justice.⁶⁹ The international community views such gross human-rights violations as a global concern, justifying direct criminal intervention in some instances. In this regard, the two relevant legal fields – international human rights and international criminal law – are not mutually exclusive but can be applied simultaneously and in support of each other. Although most, if not all, international crimes have harmful consequences for human rights, not every denial of a human right will be directly punishable under international criminal law.⁷⁰ Direct criminalisation and subsequent individual criminal responsibility are limited to serious deprivations of fundamental human rights. This

Economic, Social and Cultural Rights (CESCR) the capacity to consider complaints regarding infringements of any of the relevant rights, including the right to freedom of thought, conscience, religion or belief.

⁶⁶ For more information, see the OHCHR web page on special procedures of human-rights bodies, <https://www.ohchr.org/en/hrbodies/sp/pages/welcomepage.aspx>.

⁶⁷ Thomas Schirrmacher, "The United Nations Special Rapporteur on Freedom of Religion or Belief: An Introduction to the Role and the Person," in Bielefeldt, *Freedom of Religion and Belief: Thematic Reports*, 17. For a detailed analysis of this mandate, see Michael Wiener, "The Mandate of the Special Rapporteur on Freedom of Religion or Belief: Institutional, Procedural and Substantive Legal Issues," *Religion and Human Rights – An International Journal* 2(1/2), (2007): 3-17.

⁶⁸ 'I have coined the term "grievous religious persecution" to refer to situations that satisfy the intensity threshold for crimes against humanity of religious persecution in terms of the Rome Statute of the International Criminal Court, Doc. A/CONF.183/9 of 17 July 1998, in force 1 July 2002 (Rome Statute). It serves to distinguish such extreme forms of persecution from other 'subsidiary' forms of persecution.

⁶⁹ Bielefeldt, *Freedom of Religion or Belief: Thematic Reports*, 275.

⁷⁰ Gerhard Werle and Florian Jessberger, *Principles of International Criminal Law* (Oxford: Oxford University Press, 2014), 53; see also Robert Cryer et al., *An Introduction to International Criminal Law and Procedure* (Cambridge, Cambridge University Press, 2007), 10.

represents the highest level of protection that specific human rights can achieve under international law.⁷¹

International human rights law “has expanded or strengthened, or created greater sensitivity to, the values to be protected through the *prohibition* of attacks on such values.”⁷² In furtherance hereof, international criminal law has contributed “significantly to strengthening and further developing the protection of human rights”⁷³ by suppressing, prosecuting and punishing individuals responsible for committing mass crimes and/or severe human-rights deprivations. Thus, international criminal prosecutions speaks to the right to judicial remedies for breaches of human rights,⁷⁴ in order to counteract impunity and establish accountability for those most responsible for international crimes; render justice to the victims and give them a voice; deter further crimes;⁷⁵ and protect and encourage respect for fundamental human rights.⁷⁶

The idea of humanity as the foundation for human-rights protection and of international criminal law is particularly influential concerning persecution. It has led to the notion that persecution, more directly than any other crime against humanity, attacks the core aspects of humanity.⁷⁷ In essence, religious persecution attacks two fundamental features of ‘humanness’:

1. The persecuted victim’s individuality, given that persecution reduces a victim to a specific religious identity based on his or her identification with or membership in a group; and
2. The victim’s ability to freely choose a religious identity, and in terms thereof, associate with others.⁷⁸

As a result, ‘grievous religious persecution’ finds itself naturally placed between international criminal law (as it is an underlying inhumane act of crimes against humanity) and international human-rights law (as it involves the discriminatory deprivation of fundamental human rights, constituting a global human-rights problem).⁷⁹

⁷¹ Werle and Jessberger, *Principles of International Criminal Law*, 53.

⁷² Antonio Cassese et al., *International Criminal Law*, 1st ed. (Oxford: Oxford University Press, 2016).

⁷³ Werle and Jessberger, *Principles of International Criminal Law*, 53.

⁷⁴ Article 8 of the UDHR; Articles 2(3), 9(5) & 14(6) of the ICCPR; and Article 2(1) of the ICESCR.

⁷⁵ Miša Zgonec-Rožej (principal author), *International Criminal Law Manual* (International Bar Association, 2013), 77. Other aims include the following: to restore and maintain peace and security; to help in the process of reconciliation and peace building; to provide for a historical record of events and crimes; to strengthen the rule of law; and to assist in reforming or setting up national judiciaries.

⁷⁶ Dinah Shelton, “Human Rights, Remedies,” in Rüdiger Wolfrum (ed.), *Max Planck Encyclopedia of Public International Law* (Oxford: Oxford University Press, 2011), 1097.

⁷⁷ Helen Brady and Ryan Liss, “The Evolution of Persecution as a Crime Against Humanity,” in Morten Bergsmo et al. (eds.), *Historical Origins of International Criminal Law*, vol. 3 (Brussels: Torkel Opsahl Academic EPublisher, 2014), 430.

⁷⁸ Brady and Liss, “Evolution of Persecution,” 554.

⁷⁹ Article 7(1)(h) read with Article 7(2)(g) of the Rome Statute.

Consequently, international concern and criminalisation of 'grievous religious persecution' are justified. However, despite the internationalised concern for victims of grievous religious persecution, international courts and tribunals cannot prosecute all persons suspected of having perpetrated such crimes. For international criminal justice truly to be achieved, the national legal order has the primary responsibility to prosecute the great majority of offenders.

National prosecutions of international crimes are often preferable to international prosecutions, for various political, sociological and practical reasons. National prosecutions are more directly grounded in justice for the affected people and circumvent the legitimacy concerns of international law and the political pitfalls of international relations. Unfortunately, in many cases the government itself, through State organs or government officials, commits or participates in, at least tacitly, the commission of persecution and is effectively above national law.⁸⁰ In such instances, the relevant national legal system may not be willing or in a position to properly prosecute mass atrocities or severe human-rights deprivations.⁸¹ Without the internationalisation of human-rights protection in such cases, victims would remain unprotected and impunity would prevail. Accordingly, where national prosecutions fail to provide an effective and unprejudiced remedy, international prosecution systems should be invoked in the pursuit of criminal accountability for the protection of fundamental human rights and the punishment of grievous religious persecution.⁸²

Although various human-rights conventions explicitly authorise criminal prosecutions of related violations,⁸³ individual criminal responsibility for international crimes remains a mechanism of last resort. However, in some instances, States have chosen to deal with crimes committed during a war or civil turmoil by seemingly opting for peace to the exclusion of justice. Such 'alternatives' to criminal prosecutions often include the granting of amnesties⁸⁴ and/or the establishment of Truth

⁸⁰ Emily Chertoff, "Prosecuting Gender-Based Persecution: The Islamic State at the ICC," *Yale Law Journal* (2017): 1066.

⁸¹ Otto Triffterer, *Commentary on the Rome Statute of the International Criminal Court: Observers' Notes, Article by Article*, 2nd ed. (Beck Publishers, 2008), 24.

⁸² Theo Van Boven, "Racial and Religious Discrimination," in Rüdiger Wolfrum (ed.), *Max Planck Encyclopedia of Public International Law* (Oxford: Oxford University Press, 2009), 22.

⁸³ In the context of religious persecution, see the UN General Assembly resolution, *Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, 16 March 2009, A/RES/63/181, para 9(b).

⁸⁴ Amnesty laws have been defined as a "sovereign act of forgiveness for past offences." See Micaela Frulli, "Amnesty," in Antonio Cassese (ed.), *The Oxford Companion to International Criminal Justice* (Oxford: Oxford University Press, 2009), 243. Blanket amnesties are, at least in general, considered impermissible by international law in cases of serious international crimes or gross human-rights atrocities. Consequently, domestic amnesties do not prevent prosecution before international criminal courts or ad hoc tribunals.

and Reconciliation Commissions.⁸⁵ Although both alternatives might be effective tools in the process of national reconciliation, both allow for immunity in law from criminal responsibility for gross human-rights abuses. It is doubtful that utilising such alternatives exclusively can ever produce a lasting and meaningful peace,⁸⁶ especially in the context of ethnic, religious or political discrimination and persecution. Therefore, it is argued that “peace and justice go hand in hand.”⁸⁷ In societies transforming themselves after a period of pervasive human-rights abuses, the restoration of peaceful relations and national reconciliation can truly be achieved only by balancing the legal accountability of perpetrators with non-judicial mechanisms aimed at contributing to a sense of truth and justice, which is essential in the healing process of victims and witnesses.

Thus, in relation to occurrences of grievous religious persecution, international criminal prosecution mechanisms constitute a justifiable and appropriate response, and they may be complemented by other non-judicial measures intended to promote reconciliation and sustainable peace. Unfortunately, international prosecution mechanisms are a legal and political minefield. As a result, the current system often lacks adequate resolve to address emerging patterns of human-rights atrocities.

6. Conclusion

Responding appropriately and effectively to religious persecution depends on various contributing factors, including the nature of the victim group, the nature of the relevant concerned role-players, the nature and severity of the harm caused, and other surrounding circumstances. Remaining conscious of the underlying systemic root causes of religious persecution and the surrounding circumstances in each case will help to guide the most fitting response in a particular situation. In this article, several possible responses have been considered:

1. An introspective response by fellow believers, sincerely and unequivocally denouncing the justification of religious persecution as a manifestation of devotion in the name of their religion.⁸⁸ It is crucial for the majority of members of a religious group and their leaders, who do not endorse such religious persecution, to publicly condemn it. Appropriately distancing a religion from discriminatory or extremist religious ideologies shows solidarity with and support for those persecuted, and

⁸⁵ Truth and Reconciliation Commissions provide a forum where perpetrators are encouraged, with the incentive of immunity, to disclose the whole truth about their misdeeds, which the victims of repression seek so desperately. See Azanian People's Organization (AZAPO) and Others v. President of the Republic of South Africa (1996) 4 SA 562 (CC), para 17.

⁸⁶ Zgonec-Rozej, *International Criminal Law Manual*, 357.

⁸⁷ Antonio Cassese, President of the International Criminal Tribunal for the former Yugoslavia, made this statement in November 1995, upon the conclusion of the Dayton Peace Agreement.

⁸⁸ Bielefeldt, *Freedom of Religion and Belief: Thematic Reports*, 213.

it may prove pivotal in preventing inter-religious or even intra-religious stigmatisation, hatred and reprisals against members of associated religious groups.

2. Response strategies useful to a persecuted religious community, based on documented observations about Christian responses to persecution. How the persecuted religious group responds will depend on that religious community's theology of suffering, persecution and martyrdom. While enduring extensive and consistent persecution, some Christian communities have adopted theologically based strategies of responses that have produced tangible results and deserve measured emulation. These approaches were described as a strategic model of a predominantly non-violent and non-extremist response to persecution.
3. Governmental response in line with human-rights obligations and responsibilities. In the context of religious persecution, States have a duty to take effective measures to protect and promote religious freedom, equality and tolerance, and to counteract impunity by bringing persecutors to justice.
4. Finally, humanitarian responses to religious persecution based on the internationalised concern for severe deprivations of human rights, including freedom of religion or belief. In this regard, religious freedom advocacy efforts broadly entail identifying existing and emerging obstacles to the enjoyment of religious freedom and utilise legal, political, co-operative, or international control mechanisms to overcome such obstacles. In addition, it was noted that the most appropriate response to pernicious human-rights deprivations requires the use of criminal prosecution systems in the pursuit of criminal accountability. Although national prosecutions of international crimes are often preferable, international criminal prosecution mechanisms constitute a justifiable and appropriate response to grievous religious persecution if the relevant national prosecution system proves unwilling or unable to properly bring to justice those responsible. Disconcertingly, the criminalisation of religious persecution has failed to materialise in consistent and reliable criminal prosecutions.

Advocating on behalf of those who are persecuted on the basis of their religious identities calls for the use of any conceivable interventions. Most importantly, a fitting response to religious persecution depends on situational awareness and respect for the wishes of the affected religious group. Although certain response strategies may produce tangible results worthy of measured emulation, counteractive responses should not be mindlessly replicated and applied to other occurrences of religious persecution. Responding decisively and sensibly to religious persecution reiterates the significance of religious freedom and acknowledges the severe impact that religious discrimination and related persecution may have on human dignity, freedom and equality. A meaningful response may serve to counteract the detrimental impact of religious persecution and demonstrates solidarity with those who have been persecuted.

Christian strategies in response to repression

The example of the Chin people in Myanmar

Sang Hnin Lian¹

Abstract

Despite the political reforms in Burma/Myanmar since 2010, there is still a growing threat to religious minorities. The paper focuses on different strategies of the Chin people, a religious and ethnic minority in Myanmar, to respond to the threat to their religious freedom. Interviews with key informants were conducted shortly after the 2015 general election. In response to repression, the Chin people developed various coping strategies, including relatively subtle resistance methods such as civil disobedience and non-cooperation as well as direct confrontation with local and higher authorities. Despite such suppression, the Chin people continue to preserve their faith, culture, and language under the guidance of religious institutions.

Keywords Religious freedom, repression, responses, Myanmar, Chin.

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. – Article 18 of the Universal Declaration of Human Rights

1. Introduction

Religion is an important factor in the creation and consolidation of people's identity and a key element of sub-cultural integration, but one that may be considered problematic by politicians in emerging states (Dobbelaere 2008:xi). The nation now known as Myanmar² is in a period of democratic transition, during which

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² In 1989, the military government changed the name of Burma to Myanmar. However, the renaming remains a contested issue to this date. This paper uses "Burma" when referring to events that happened before 1989 and "Myanmar" for more recent events. Founded by Chin, Kachin, Shan and Burma in 1947 Palong Conference, Union of Burma gained independence in 1948 from Britain. The population of Myanmar is 51.4 million (2014 census) and it is made up of 7 States, those are ethnic nationalities

religion has been seen as both an opportunity and a problem and the majority religion of Buddhism has been continually used for political interests. Politically, as an emerging state, the Myanmar government has started to end its harsh press censorship and reduced restrictions on freedom of expression, speech, assembly and religious freedom. As former U.S. President Barack Obama said, genuine democracy and political stability require freedom of religion, because when people are free to practice their faith as they choose, this freedom helps to hold diverse societies together (Thames 2015).

A country made up of multi-ethnics and diverse religious groups with different historical backgrounds,³ Myanmar has undertaken a series of political and economic reforms in the last decade. There were great hopes that its human rights situation would improve under former President Thein Sein's quasi-civilian government, which came to power in early 2011. Myanmar has surprised the world's expectations in some ways: by releasing political prisoners, reaching a cease-fire agreement with certain ethnic armed organizations (Nitta 2018) and suspending large dam projects. The country also entered into constructive engagement with Western powers, and it allowed Daw Aung San Suu Kyi to return to mainstream politics as the main opposition figure after the 2012 by-election (Chalk 2013; Min Zin and Joseph 2012), which the National League for Democracy (NLD) had boycotted in 2010.

It initially appeared that the government was exhibiting increased recognition of human rights and civil liberties generally, as indicated by such factors as the increased international presence in the country and the opening up of domestic media (Burma Partnership 2015). The quasi-civilian government, under President Thein Sein, also officially claimed that it wanted to restore permanent peace and stability in the country (Mang 2012:169). However, things have not turned out to be as well as hoped. Religious intolerance and hate speech have increased, and the destruction of Christian churches and crosses and of Muslim mosques continues in many remote parts of the country. For example, in January 2015 the government of Chin State ordered the dismantling and removal of a 54-foot-high Christian cross (Zaw 2015; Unrepresented Nations and Peoples Organization 2015). Discriminatory practices are also common in Chin State, such as schoolteachers and civil servants being forced to attend meetings and do office work on Sundays in conflict with their worship time, Christian Chin government employees being ordered to prepare food for Buddhist offerings against their will, and Christian Chin children being recruited to attend state-run Buddhist schools and coerced to convert to Buddhism.

and 7 Regions where the Burmese majority are domiciled.

³ Myanmar has 135 distinct ethnic groups, of which eight are officially recognized by the government. The majority Burmese comprise 68 percent of the population; the Chin represent roughly 2.5 percent.

2. The state's religious racism

While Myanmar was in the process of democratization under quasi-civilian government after decades of dictatorship, at the national level four laws known collectively as the “national race and religious protection bills” were submitted to the Hluttaw (Parliament) in December 2014. They were adopted by the Hluttaw in 2015 and signed into law by President Thein Sein (Lone 2015; Hnin 2015). One of the laws requires a Buddhist woman and a non-Buddhist man wanting to marry to apply for permission from local authorities (Walton, McKay and Daw Khin Mar Mar Kyi 2015:70). The Religious Conversion Law mandates that someone seeking to convert must submit an application and be interviewed by a township registration board so that it can ascertain whether “the person truly believes in the said religion” (Kuok 2015).

This law thus restricts people's right to freely choose a religion, in explicit violation of the United Nations' 1948 Universal Declaration of Human Rights, which states in Article 16 (1) that “men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family” and stipulates religious freedom provisions in Article 18. In practice, the four laws have little impact on the people, as civil society organizations also opposed the measure and called for its repeal, declaring that it contravened domestic and international laws. Indeed, there have been no reports on the implementation of this package of four laws, although some religious leaders said they were used in some areas to threaten minority religious groups. In particular, the Religious Conversion Law has been used by Buddhist monks to threaten those who wanted to become Christians.

The biggest threat to religious freedom is religious extremism, which is sponsored by the state in Myanmar. There is a systematic and growing threat to the religious freedom of minorities, including Christians, Muslims, Hindus, animists and other non-Buddhists. Section 34 of the country's constitution states that every citizen is equally entitled to freedom of conscience and the right to freely profess and practice religion; however, it also gives Buddhism a special position under section 361, whereas other religions such as Christianity, Islam, Hinduism and animism are simply acknowledged as existing religions in the country.⁴ Other laws, such as the national race and religious protection bills, and existing practices show clearly that religious minorities are viewed as threats to the Buddhists. Myanmar appears to have consciously adopted a socio-political strategy that aims to assimilate the country's ethnic and religious minorities, with the majority exerting its dominance over non-Burman and non-Buddhist groups.

⁴ Constitution of the Republic of Myanmar, 2008 (the Constitution), Sections 34, 361 and 362.

Historically, Burma's minority relations have been amongst the most complex in Southeast Asia (Berlie 2008). Successive governments have seemed relentless in seeking to 'Burmanize' the country by systematically destroying significant and symbolic identities of non-Burman ethnic groups (Ling and Mang 2004:22; Berlie 2008). The threat to religious freedom of the Christian Chin, who live in the north-western part of the country, dates back to the military takeover of Burma in the 1960s. In August 1961, Buddhism was made the state religion through a controversial constitutional amendment that alienated religious minorities such as Christians and Muslims. At that point, Christians were not actively threatened as their existence was recognized by Article 21 of the 1947 Constitution (Gutter, 2019:7; Mang 2016:155).

However, the government has applied more systematic methods since the late 1980s to expand both Buddhism and military establishments and thereby gain effective control over the Chin population, which had previously remained relatively free from direct Burmese control (Ling and Mang 2004:73; Sakhong 2010:53; Bagnall 2010). The justification for these actions was the presence of a Chin insurgent movement that began after 1988 with the formation of the Chin National Front/Army (CNF/A) by a few exiled politicians, students and youth who fled to India in the aftermath of the 1988 uprising. Organizations representing other ethnic groups, beginning in the mid- to late 1990s, documented human rights abuses by the Tatmadaw (Myanmar armed forces) in ethnic states (Fink 2008:456-57). In Chin State, which has the largest percentage of Christians, the regime brought in both a large military contingent and Buddhist religious forces.

Also, in the name of the "Hill Regions Buddhist Mission," the junta dispatched Buddhist monks as well as army members to various towns and villages across Chin State (Chin Human Rights Organization 2012:9). With military protection, the Buddhist monks have considerable power over the Chin population (Ling and Mang 2004:23; CHRO 2012:44). This practice has continued under the government of Aung San Suu Kyi as the State Counsellor, the *de facto* leader of the country paid an official visit to Chin State on Sunday – a practice maintained by several successive governments.

The reason why visiting Chin State on Sunday causes offence is that most Chin Christians are traditionally highly conservative about observing Sunday. All businesses are closed on Sunday and people attend worship services that usually run till mid-day. After that, many churches conduct additional worship programs for women's groups, or people spend the rest of the day visiting with relatives and friends. Under the military junta, official visits to Chin State happened mostly on Sundays, leading people to believe that they were deliberate attempts to disrupt Christians' worship practices. Local government employees would be busy prepar-

ing for the visits and entertaining dignitaries while ordinary people were required to participate in the welcoming ceremony and make long lines by the roadside to greet the visitors. These requirements prevented people from attending church on Sundays, as failure to give the dignitaries a proper welcome would often result in fines or other types of reprisals from the local authorities. Local Christians had hoped that such practices would end after the 2010 elections, but this has unfortunately not been the case.

The Chin, however, had practiced their faith with little interference until the 1990s. Since, the military regime has been involved in attempts to coerce some Chin to convert to Buddhism and to prevent proselytizing by Christians. It also destroyed churches and Christian crosses, harassing, arresting and even abusing pastors. The Chin appear to have been particularly targeted due to their resistance to the military government, as well as their beliefs and their ethnic identity, since the early 1990s.

According to the CHRO (2012:87), local authorities have recruited Chin children to receive formal education in cities, but have then sent them to monasteries where they received Buddhist instruction against their will, or to the government's Border Areas and National Races Youth Development Training Schools (known locally as Na Ta La⁵ schools). In the name of development and helping the impoverished parents, their children got free schooling and boarding at Na Ta La Schools run by the Border Affairs Ministry, which is controlled by the military. Informants indicate that the democratic transition in Myanmar has not reached remote areas such as Chin State; as a result, there has not been much change in the schools' structure, teaching method and management under three different governments including the State Peace and Development Council (SPDC) and Union Solidarity and Development Party (USDP). Aggressive, state-funded propagation of Buddhism is still persistent, ongoing and arguably part of the regime's policy of forced assimilation, and it occurs in a context of widespread and systematic violations of religious freedom and threats against the Chin.

In these circumstances, a response to violations of religious freedom is needed because they could lead to the extinction of the Christian Chin ethnic group. Sangtinuk (2006:41) noted that despite such suppression and repression, the Chin people continue to preserve their faith, culture, language, literature and art. The present study examines why this threat to religious freedom is occurring in Chin State, how the situation is affecting people's lives, and how the existing institutions coordinate and support each other in the process. I also sought to understand how

⁵ Na Ta La is the Burmese acronym for Progress of the Border Areas and National Races Development Affairs Program.



Figure 1. Map of Chin State, Myanmar

the local stakeholders – community members, churches, youth groups, local NGOs, private firms and many others – were resisting these threats. Chin people face a threat to their ethnicity and identity simply because they are Chin and Christian, which is different from the majority in Myanmar.

My primary research question was how and why the Chin, especially those in the social and religious hierarchy, used different strategies to respond to the threat to their religious freedom. To answer this question, I interviewed Chin religious and community leaders as well as retired government staff, NGO workers and members of the media.

With regard to my research methodology, I must acknowledge the risk of bias since I am Chin and Christian myself. My intention in using an ethnographic method, as a Chin researcher studying my own people, is to attain what Esterberg (2012) calls “first-first experience.” I have shared, as a Chin, the experience of being treated as inferior to the Burmese majority. However, I have attempted to maintain objectivity in carrying out my ethnographic research.

My interviews for this research took place in two areas of Chin state, shortly after the general election of November 2015 that brought the new NLD government into power. I visited Matupi, in the southern part of the state, in January and April 2016 and interviewed local stakeholders. I did the same in Hakha in January and February 2016 (see Figure 1). Some follow-up data collection from key informants occurred in March 2017. My interviews mainly covered the situation under previous governments, with little discussion of the situation under the present NLD government.

3. Public opposition and everyday resistance: the Christian Chin's responses to repression

The Christian Chin people have been facing threats to their religious freedom since the 1960s. In response, they have adopted various strategies. As Matthew Mullen (2016:38) stated, "Contentious politics scholars note that diverse types of repressive government are met with equally diverse displays of contentions." The responses by Christian Chin people have differed across individuals, churches, circumstances and times. There are also differences between the northern and southern parts of the state. In a study of Sri Lanka, Bauman and Ponniah (2018:284) stated that "these response strategies and methods differ from momentary survival systems to increasingly far-reaching and long-term comprehensive plans including commitment to engage with civil society for increasing and gaining equal rights, benefits and privileges for people of all faiths." In a similar way, the Chin's forms of organized public opposition and everyday activities in response to their oppressed situation have varied widely. As Mullen (2016:38) explained:

The relationship between public and hidden response can be contextualized by analyzing a separation between two camps: one that focuses on open collective opposition, and the other that focuses on struggles that are rarely seen and heard. There are theoretical and practical useful partitions between these two camps: the former being contentious politics, the latter being everyday resistance.

3.1 The strategy of downplaying their Christian identity

One everyday response by the Chin has been to reduce their individual and collective visibility as Christians. In the face of legal barriers to their official existence, some Christian Chin organizations registered themselves as "foundations," "associations" or "community-based organizations" connected with an important local place, river or mountain or with individual names. For example, the Chin Association for Christian Communication (CACC) registered with the government as the

Bawinu Foundation for its social and development-related work in Chin State. Rev. Paul Tum Ceu stated that they registered both their land and the church in an individual's name to circumvent legal restrictions. Others have obscured their identity by applying for licenses as "community centers" or by constructing a building very quickly – even working through the night to finish in just a few days, before legal opposition could mount. A church deacon from Hakha who requested anonymity described such an instance:

We started our church building construction though we did not receive permission from the government. A small building was secretly completed as a result of toiling day and night. We sometimes do the work at nighttime, as they were very strict and did not allow the construction. Likewise, a community center and memorial building [Carson Hall, described below] was also constructed without getting proper permission. (Interview, 26 January 2016)

The government's State Peace and Development Council (SPDC) has blocked construction and development of places of worship in numerous towns in Chin State since the late 1990s. Many church buildings were left partially completed due to the government's refusal to grant permission for their construction. According to CHRO, Carson Memorial Hall in Hakha, the capital of Chin State, was to be opened on the hundredth anniversary of the arrival of the first American missionaries, Arthur and Laura Carson, in the late 1890s (Ling and Mang 2004:80). Nevertheless, the military halted construction in midstream, stating that the church had not obtained official approval from the regime, even though the hall was constructed on church land.

As a result of these restrictions, the Chin pursue creative ways to secure places for worship, prayer and study. Fleming (2016:11) explained:

In order to have a place of worship, Christians have to circumvent the restrictions. With the backing of their church, individuals usually purchase property in their own names and apply for residential building permits, and in some cases pay bribes, so that they can have a place of worship. In ethnic regions like Chin State, Kachin State, and the Naga area – where traditional land use practice is as yet accepted somewhat – this practice is endured, yet the church and related places are effectively illegal. In 2014, all the churches in Hakha applied to have the ownership changed from private individuals to churches, but to date, none have received a response.

Similarly, the buildings at Chin Christian University (CCU) are also under various individual or private names rather than that of the institution. Explaining the situation, the school's academic dean said:

We are not allowed by the laws but we still have to build a church, school, and other buildings. We have no other choice but to break the government rules, regulations or orders. We used an individual name, not the name of the institution. Consequently, in the face of authority, all the buildings here hold different individual names for official licensing and ownership of the properties. It is most often registered under the name of the principal and academic dean or pastor. (Interview in Hakha, 26 January 2016)

Most of the key informants did not think that they were challenging the government; rather, they saw themselves as avoiding the authority's laws or rules so that their basic needs could be fulfilled. This uncoordinated strategy of downplaying one's identity has been deployed for decades. The principal of United Theological College at Matupi in southern Chin State, Thawng Hnin Zam, said:

I checked all our land ownership documents but all I saw was under a private [individual] name – principals and academic deans of the respective years. After I became the principal, I decided to change it into an organization name under the institution again, but I have not yet been successful.

In Chin State, no church denominations or religious institutions have been registered with the government. Instead, they use national-level organization names such as Myanmar Baptist Convention for legitimacy. The discriminatory restrictions on the Chin's uses of their land effectively make Christian infrastructure illegal. As a result, the Chin have no choice but to circumvent these limitations by downplaying their Christian identity. Some of these inventive strategies are obviously illegal, but their application demonstrates the strength and resilience of Chin State's Christian communities. One pastor even said in our interview, "I think I can say what we do is civil disobedience."

3.2 The strategy of institutional engagement

Christian Chin have also responded to state pressure and promotion of Buddhism through institutional channels, similar to the institutional engagement observed by Bauman and Ponniah (2018:285) in Sri Lanka. The Chin are institution builders. There exist numerous unregistered local umbrella organizations such as the Hakha Baptist Association (HBA), Matupi Baptist Association (MBA) and 26 others that belong to the Chin Baptist Convention (CBC), headquartered in Falam in northern Chin State. The creation of another umbrella organization, the Chin Association for Christian Communication (CACC) based in the Chin State capital of Hakha, was part of an innovative response to growing restrictions. These institutions have a clear

organizational structure and identified leaders who serve as grassroots educators and development practitioners, as environmental awareness promoters, and as the public face for Christian Chin, representing their interests to those in power. These institutions, likewise, give an extra layer of assurance and protection to Christian Chin. They represent the local Christian communities, for instance, when high-level official visitors from the central government come to Chin State.

However, the process of registering such organizations, whether large or small, is difficult if not impossible. Rev. Thuk Laeng, a pastor from Matupi in southern Chin State, said in an interview on 14 January 2016:

We tried many possible different ways but it turns out that they did not work. For example, we cannot get permission to build a church in the township level office, or at the state level from Hakha either. We met with the ministers who came to Matupi and went to the central government, letting them know about the situation here. We make requests all the time, but we have not been successful.

Churches have had their applications repeatedly denied by administrators who refer them to the central government authority or simply refuse to register them. Or the applications have disappeared amidst administrative red tape. According to Rev. Victor Lai Lian, a leader of the organization of churches in Matupi, the application needs to go through different departments including “Forestry, Land Record, Immigration, Construction, Agriculture, Police, Religious Affairs and General Administration,” most of which are controlled by the central military (interview in Matupi, 5 April 2016). Even after one has secured all signatures and approval stamps, one must submit all the application materials to the General Administrative Department (GAD) township officer for further processing. That’s where, in the Matupi case, the application went missing and was never returned. Christian churches in many parts of Chin State have had similar experiences. As a result, Christian churches and organizations often affiliate with an established national institution and therefore fall under their legal designation.

In Myanmar, the government has not allowed any minority religious group to register officially since the 1960s. Therefore, state and local Christian institutions affiliate with national Christian organizations that were registered before the restrictions began. For instance, most Baptist churches in Myanmar use the official registration of the Myanmar Baptist Convention. Rev. Paul Tum Ceu described what the local churches in Hakha have done:

We cannot have official registration locally, so we used the registration number of the Myanmar Baptist Convention which was given in 1950-1951 (Regd. no. 34/50-51).

You can see that all the Baptist churches in Hakha have put that registration number on their signboards. (interview, 26 March 2016)

The registration challenge, then, is generally solved through coordination with a national organization. However, as one pastor said, “I still feel that we are unrecognized or systematically neglected.” The Christian Chin communities still cannot engage freely in many types of activity, as they need to go through many different layers of formalities, which are very difficult to fulfil. Pastor Khen Chum Bik said, “We still need to be very careful in doing any religious-related activities and in finding ways to circumvent the law and orders.” Since the Christian Chin cannot obtain proper official permission to build churches or use church-related land for construction or even to hold programmes, their only alternative is to circumvent the restrictions by connecting with a bigger institution.

After the general election in November 2015, the NLD government gave the ceremonial position of vice president to a Chin ethnic leader who is Christian. This move, however, created tension between the majority Buddhist Burmese and other ethnic minorities, which was expressed on various platforms including social media. Since the vice presidency is largely a symbolic position, Christians still struggle even to get official permissions or to register religious land and other properties.

3.3 Strategies of enduring, coping and accommodating

Christian Chin communities and their leaders choose to endure repression and threats to their religious freedom. They remain in areas where repression and threats are common, but they practice their religion quietly or secretly, outside the authority's gaze. An ordained pastor from southern Chin State who looks after churches of different villages in Matupi Township, Rev. Thuk Laeng, explained in a 14 January 2016 interview, “When you're Christian in Chin State, you are controlled completely and discriminated against by the authorities.” In the view of many informants, Chin State has been systematically neglected in terms of development but has been targeted by Myanmar's systematic assimilation programme for many years. On many occasions, the government has imposed different types of restrictions.

In 2012, the ethnic armed group the Chin National Front (CNF) along with its armed wing, the Chin National Army (CNA), signed a comprehensive, bilateral ceasefire agreement with the government. Under this agreement, Chin people are guaranteed protection from human rights abuses by both CNF and the Myanmar army, freedom of religion and the ability to own land for religious purposes, to build churches and freely proselytize (Myanmar Peace Monitoring, 2012). However, community members have complained of severe restrictions on their freedom of religious assembly

as township orders from Matupi curtailed the ability to worship freely. Township-level orders stated that conducting any religious gathering or training would be allowed only after an application was approved. Many times in the past, such measures or the detention of locals has prevented churches from holding evening worship services. The restrictions are worst when somebody dies or there is a special programme or other emergency issues in town. Community members have often been taken to the government office for violating the limited hours permitted for evening services; local leaders have felt threatened when questioned by officials.

The Chin have sought to protect themselves in this difficult situation by a policy that Rev. Thuk Laeng described as “follow the orders and obey the rules,” without any verbal or physical protest. As Reimer (2018:320) also stated, endurance is the most common response to persecution. At one end of the spectrum, endurance can mean reluctant and grudging acceptance. In most instances, endurance is not voluntary (Reimer 2018:320). It can be summarized concisely in these words, which I heard from many informants: “We have no choice but to follow the orders and obey. They have power. And after all, they have guns.”

Sometimes, churches arrive at a mutual understanding with the government. Tadros, who studied Arab countries, confirmed that such agreements often preserve the interests of the church as an institution, but that they do not necessarily secure the rights of individual believers (Tadros 2018:122). A similar situation has developed in Chin State during the military regimes and has continued under the present government. For instance, the General Secretary of the Hakha Baptist Association (HBA), who was also a leader of the Hakha Christian Minister Fellowship (HCMF), commented:

We had a meeting with President Thein Sein during his official visit to Hakha. We raised different issues, one of which was the issue of holding meetings with local officials on Sundays. We informed him that when officials from the central government came to Chin State, they often arrive on Sunday with helicopters and hold meetings on the same day, which disturbs participation in worship services for many civil servants, town elders, and others. When we raised this issue, the President responded that they don't intentionally do that and will not do so in the future. (interview with HBA/HCMF leader from Hakha, capital of Chin State, on 31 March 2016)

The chance to meet with the president was encouraging, but his promise has never materialized. Rather, the practice of visiting and holding meetings on Sundays continues even under the present government. This issue was raised again during a public meeting between State Counsellor Aung San Suu Kyi and Hakha residents

during her visit. Nevertheless, nothing changed as the State Counsellor replied to the question by saying that she had visited Chin State on Sunday as she is free only on Sundays.

Another understanding reached between the local government and the Chin people was shown to have failed when the Chin State government ordered removal of a cross erected on the west side of Hakha in 2015 and imposed other restrictions, including requiring permission for any meetings or training at local level authority. In some cases, both religious and other organizations still need state permission to operate. Despite these circumstances, Chin churches continue to try to manage the situation through strategic alliances and networks as described above.

After the military coup in 1988, as heavy militarization started and the establishment of the Buddhist Hills Mission took place in the 1990s, it became apparent to most Christian Chin that they had no other option than to figure out how to live under a military dictatorship, unless they could escape the country. As part of an attempt both to build legitimacy for direct military rule and to prepare for a potential transition away from it, the State Law and Order Restoration Council (SLORC) in September 1993 established a mass-membership Union Solidarity and Development Association (USDA) to promote its political agenda and interests (David and Holliday 2018:4). When the military initially engineered the USDA, most Christian Chin leaders and citizens appeared reluctant to join. However, large numbers of Chin eventually signed on, whether voluntarily or under duress, after severe pressure and the offer of various incentives such as exemption from forced labour or favourable treatment by the government.

In March 2010, the Union Solidarity and Development Party (USDP) was launched from within the USDA to participate in the upcoming general election, and in July 2010 the USDA was dissolved (David and Holliday 2018:4). In view of the USDP's authority, Christian Chin need to be in close contact with military officials or USDP leaders in any possible way, so as to find ways around any laws or restrictions while exhibiting politeness, courtesy and compassion. Sometimes, Christian Chin have to tell calculated untruths to the authority in order to accomplish things. For instance, one key informant from the north said, "We have enabled many of us [pastors] to go abroad by changing our job title, e.g. from 'pastor' to 'farmer,' when applying for travel documents. That's the only available way to attend meetings or study theology abroad."

3.4 Strategies of escaping and migrating

Because of all this discrimination and unequal treatment, one frequent and obvious option for Christian Chin living in areas with significant levels of militarization, anti-Christian harassment and violence is flight or migration. A pattern of Chin peo-

ple leaving and not returning to Chin State started after the 1988 coup. Traditionally, Chin people always returned from places such as Aizawl in Mizoram State or Hpakant in Kachin State, where they travelled as migrant workers. However, since the 1990s some have migrated out of Chin State permanently in search of greater peace, religious freedom and security. Some have sought refuge in such countries as India and Malaysia under the protection of the United Nations High Commissioner for Refugees (UNHCR). A far more common pattern is the internal migration of Christian Chin from areas where they are a threatened minority to places where they are not acutely threatened. According to *Life Under the Junta: Evidence of Crimes against Humanity in Burma's Chin State*, a systematic study done by the Physicians for Human Rights (PHR) in 2010:

The Burmese Army, Tatmadaw, was responsible for 94.2% of the reported instances of ethnic or religious persecution. Of the 86 households reporting instances of persecution, 51% experienced physical harm, which they ascribed to their Chin ethnicity or Christian faith. (Richards, Sollom and Parmar 2011)

Because of the systematic nature of human rights violations, threats to religious freedom, and lack of educational opportunities and physical security due to being Christians, a good number of Chin have migrated to other areas. The PHR (Richards, Sollom and Parmar 2011:10) reported that “since 1988, estimates place more than 75,000 displaced Chin in India, and another 50,000 in Malaysia.” (According to the 2012 Myanmar National Census, the total population of Chin State was 478,801.) Although the exact amount of internal migration is not known, many people left the state entirely, moving to nearby urban centres such as Kalay or to regions like Yangon and Mandalay where they would be more invisible.

Many informants believed that, although there has been a continuous migration amongst youth searching for education opportunities and a better life, the number of Chin moving elsewhere is declining. The end of the military dictatorship in 2010, followed by the creation of quasi-civilian rule and the transitional government in 2012 and 2015, respectively, has brought some changes in the country. However, threats to religious freedom have not totally gone away. As Rev. Peng Thang summarized the situation, “We have learned that there are changes happening in big cities like the capital Nay Pyi Taw, Yangon or Mandalay, but it seems as if that kind of change has not reached us.”

3.5 Strategies of resistance

Christian Chin leaders and members of the general public have responded to repression in many different ways. They endure, escape, migrate, reach out to indi-

viduals who share a religious identity with the oppressors, fight back or engage in peaceful protest to defend their communities. Or they may use some combination of these responses.

Chin State government authorities frequently select Sunday as the day to disseminate information, orders, rules, regulations and any other necessary announcements. In the past, the military government also targeted and disturbed Sunday church services for forcible recruitment of labour, as many people are gathered together in one place at that time. In some cases, to avoid being recruited, all the men in a village would run and hide in the forest without attending church, Rev. Thuk Laeng said (interview, 14 January 2016).

Mullen describes this type of indirect reaction: "In some undemocratic societies, the absence of a social movement or resistance is replaced by another contentious performance, which reacts to specific type of oppression" (2013:38). For instance, Chinese believers are prepared for harassment, detention, jail and even torture in some cases. Their resistance to the authority can have many unintended consequences, but they nonetheless preserve their faith pure and whole without political compromise (Yang 2018:351). Also, there may be no overt popular social movement, but there are often sporadic micro-protests against particular policies and government behaviours (Mullen 2013). There are various kinds of repression and threats to religious freedom, and the ways in which Christian Chin respond to them also vary. Individual as well as collective-level factors can explain these differences.

During the military dictatorship, Christian pastors were not allowed to go abroad for meetings, mission work or study. The Christian community in rural areas also faced problems, particularly with regard to forced labour. A pastor who looks after churches in rural parts of Matupi Township mentioned that he sometimes needed to tell the military authorities a lie when they seemed frightened or furious:

There was a time I was the only man in the whole village when the military came. I told the armies that I just got back from travel a day before and didn't know where all the men had gone. In fact, the hideout was very well planned as soon as we heard that the military troops were coming to the village. So we used to tell lies as necessary when dealing with the authority. (interview with Rev. Thuk Laeng from Matupi, Southern Chin State on 14 January 2016)

The ordinary people have engaged in behaviour similar to the Christian Chin leaders when needed. For instance, everyone in Matupi Township joined in closing their shops to show their objection to the removal of the town's cross, even though this action was not coordinated or organized by any leaders. A pastor who was also a

shop owner in Matupi said during an interview that the policemen came to their house and asked them to open the shop, but they refused, giving excuses such as that they were not feeling well or had an ill son. These behaviours can be described as passive resistance strategies designed to support the continuation of church programmes and other mission activities.

3.6 Petitions and mass prayer rallies in the church

The somewhat increased openness in Myanmar has provided greater access to and contact with different organizations, and the resulting sharing of information has led to more effective responses. “Before, it was not by any means conceivable to raise concerns or anything to the government,” a pastor from Hakha stated. Since 2012, a large number of Christian petitions have been sent to government offices ranging from the state level to the president’s office, appealing for an end to violations of religious freedom, ethnic-based discrimination and abuse, and the denial of official registration to Christian churches. When the government ordered removal of Matupi’s cross, a female church leader said, “All the churches in Matupi town came together and argued against it by giving a letter of petition to the authority.” The demand, however, was unsuccessful and the cross was demolished by the military, while the locals held a mass prayer rally at the church to emphasize their stance.

There has also been increased contact with international actors, whereas in the past the main source of information about the outside world came from the streams of fleeing refugees. When international visits to Chin State became possible in late 2012, contact with church communities abroad resumed. Not only religious-based organizations but also the Chin Human Rights Organization, formed of exiles, came into the country, and local Chin communities were trained to write accurate accounts of incidents of persecution and to submit petitions to officials. A youth leader from Hakha said of this human rights training:

It gave us the strength to move forward on what to do about our freedom. It is very difficult to say whether it was fruitful. However, I think that different responses have their own impact depending on the particular time. For instance, a petition letter signed by the youth and community leaders was very successful in 2012. Moreover, that was the only thing we could do then. (interview with youth leader from Hakha on 25 January 2016)

Since the shift from military to USDP rule in early 2011 after the first general election in decades, it has been hard to take a stand against or criticize the government, although things were worse under the previous military government. Some signifi-

cant positive changes have occurred; for example, victims of ethnic and religious-based persecution could be interviewed directly by international organizations such as Physicians for Human Rights, whose detailed 2011 report made the situation of Christian Chin more widely known, and CHRO. These efforts have also unearthed previously unseen government orders and official documents that contained plans to eradicate or contain the Christian Chin movement. Strengthened by contacts amongst local organizations and international advocates and a growing knowledge of basic human rights through training, Christians in Myanmar have been more active in standing up for religious freedom. In recent years, with the support of NGOs, some Christian Chin community leaders have tried to use the existing laws and regulations to protect their civil and human rights. They have organized large protests over the destruction of Christian crosses or land confiscation, although since demonstrations were not allowed, they referred to these events as ‘prayer days.’ Perhaps the best-known such protest occurred in Matupi after the military destroyed large crosses in 2005. A woman who was among the organizers in Matupi explained:

We organized a fasting and prayer programme after the military destroyed the 30-foot-high cross at Boltlang in order to show our sadness and response to what they did. As we could not do a demonstration, we just did a ‘prayer day.’ Many people came to the church for fasting and prayer on that day. (interview with woman leader from Matupi, southern Chin State on 15 January 2016)

The most recent demonstration of this type occurred when the government of Chin State ordered the dismantling of a cross at Hakha in 2015. It had been installed by locals without government permission, since they presumed that they would not receive official permission if they requested it. According to Pu Tial Cem, a 74-year-old man who has been hauled into court 14 times over issues related to crosses, “We did not apply for permission as none of the Christian churches have official status here in Chin State.” After tensions between the government and the general public, the demonstrators achieved a victory as the cross is still standing in the same place. It can be argued that the erection of crosses was a response to what the Chin regarded as a state-sponsored importation of Buddhism into their state, with the construction of pagodas and temples in certain urban centres beginning in the 1990s.

3.7 Strategies of peaceful demonstration, non-cooperation and civil disobedience

Scott, author of *Weapons of the Weak*, describes regular obstruction strategies as a generally safe form of “self-help” (Scott 1985:1) or as weapons of “first resort”

(Scott 1989:34), used by individuals who seek to achieve oppositional ends without making themselves targets. The list of methods he provides includes “dissimulation, feigned ignorance, desertion and so on” (Scott 1989:5). The Chin have used these resistance methods in their own way, which has not been coordinated but has still had a noticeable impact. For instance, the authorities were infuriated when all shops closed in Matupi town immediately after a cross, planted in 1984 and replaced with a 30-foot-high solid concrete structure in 2001, was targeted for removal by the military in March 2005 (Ling and Mang 2004:33).

For many years, the State has attempted to use government-funded education as an influential tool to ‘Burmanize’ the country’s ethnic people. The education programmes were set up in a manner designed to demoralize critical thinking skills. They were openly both pro-Burmese and pro-military. Ethnic groups were not allowed to teach their own language or about religion or history. However, many informants explained that the Christian churches continue to play an important role in promoting Christianity and in preserving local languages and histories. Mullen (2013:115) also found that private teachers, as well as some public teachers, throughout the country followed their own curricula, adopted their own teaching style, and taught in their own language. This strategy appears in contemporary Chin State as the main method of ensuring that local culture and literature are sustained. Local languages are used, historical accounts are taught, and students learn about their religion in Sunday school as well as at summer camp programmes.

Many informants stated that they avoid cooperating with the government, feign ignorance of the law or pay bribes to obtain help from the officials or get away with noncompliance. Most are reluctant to pay for favourable treatment. Sometimes, government staff directly request payments in exchange for completing paperwork. William Khen Chum Bik, a pastor and lecturer from Hakha, told officials that “we couldn’t pay [a bribe] because the money we receive is for the church, including widows who contribute specifically towards its support.”

To construct churches, Christian Chin have sometimes resorted to other more creative and non-cooperative tactics, registering their land in the name of a congregation member. This would allow them to erect a building, after which the individual would transfer ownership to the church upon the completion of construction. This practice has continued under the SPDC, USDP and the present NLD government. Rev. Paul Tum Ceu explained the process as follows:

The government told us to apply for permission. We have followed the procedures exactly in accordance with what they said, and with our church name, but it’s been more than two years and there is still no response. We did try to change our institution’s legal status from a private individual to the church name, in order

to have legal permission to build other buildings, but we got no response. So we have to practice our old strategy – using the name of a church member to request permission to build, and then having the church member surrender ownership to the church again. (interview in Hakha on 31 March 2016)

In the face of severe restrictions on the construction of churches and the lack of alternative avenues to have these sanctions lifted, non-compliance with bureaucratic requirements is often employed as a means of non-cooperation, which essentially amounts to active defiance. The change in government since 2010 has caused people to become emboldened to take such actions in a more open manner. This is in contrast to the widespread climate of fear enabled by the tight stranglehold on fundamental human rights and civil liberties under the previous military regime. However, this does not necessarily mean any loosening of restrictions. Rather, people have become somewhat less afraid of repercussions and thus have felt more willing to engage in visible civil actions, such as street demonstrations to protest violations of religious freedom and other fundamental human rights, which would have been unimaginable under the previous military regimes. As one community leader explained, “Now, even when the authority asked the local people to destroy [the cross] in 2015, we strongly stand against the order unlike before. . . . We were not alone; we were supported by all the community and the churches.”

Many of the restrictive policies and practices as well as other bureaucratic red tape used to limit religious freedom under the previous military regimes remain unchanged. The mere fact that people are less afraid to openly challenge perceived injustices is indicative of how they will respond to any future arbitrary measures so as to protect their fundamental freedoms. Since 2010, Myanmar has gone through two election cycles with a third one on the horizon. Although the pace of progress towards democratic transition has been rather slow and frustrating, some believe that more citizens will become accustomed to democratic practices through the transition period. At a minimum, the periodic electoral exercise enabled by the 2008 constitution can create greater responsiveness to civilian demands by political leaders, at least during an election season. Similarly, the people can take advantage of the limited opportunity to expand their democratic space and better protect their fundamental freedoms, including religious freedom.

4. Conclusion

It is hard to assess the effectiveness of the different responses by the Christian Chin to the restrictions and threats to religious freedom described in this paper. As we have seen, Christian Chin communities survived the military dictatorship period, and in a few cases, their beliefs seem to have been strengthened. However, many

people have left their communities, emigrating in search of a safe haven. On the other hand, the Chin's responses have constituted important advocacy for religious freedom. Many of the Chin leaders interviewed for this study agreed that if religious freedom is to be established and sustained, it must be grounded in a culture of tolerance and mutual respect. A pastor from Hakha said, "We don't want any special favours, just equal treatment under the law. We are not asking for special privileges, just our basic rights." Unfortunately, these requests have been only moderately successful.

Over time, the Christian Chin communities have developed various coping strategies and mechanisms in response to repression and persecution, including relatively subtle resistance methods such as civil disobedience and non-cooperation, as well as more pronounced approaches such as direct confrontation with local and other higher authorities, using formal channels of complaint and reporting specific incidents of abuse. However, the lack of substantive change in the system even after the semi-civilian government has emerged since 2010 remains a serious barrier to the enjoyment of religious freedom, not just for Chin Christians but for other minorities across the country. Similarly, in the early stages of NLD government, there were no changes in policies, laws and regulations. Therefore, with regard to religious freedom in Chin State, it could be argued that the situation has remained mostly the same even though there are some changes in practice.

If any meaningful lesson can be drawn from the experience of the past decades, it is that without serious political will to address the issue of religious freedom as a fundamental human right, the status quo will persist. Otherwise, the various forms of resistance to injustice will continue, with potentially serious complications for long-term peace or any efforts to build a pluralistic society that could sustain Myanmar in the long run. Although more research is necessary, the experience of the Christian Chin offers evidence that people who care about the status of religious freedom in the world can do something to produce positive change.

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Resilience to persecution

A practical and methodological investigation

Dennis P. Petri¹

Abstract

Religious minorities should not only be viewed as passive victims of persecution; they also have agency and can develop mechanisms to cope with the human security threats they face. This study proposes a novel categorization of the broad array of coping mechanisms religious minorities have at their disposal and develops a “Resilience Assessment Tool” as an instrument to observe the resilience of religious minorities. This categorization is then illustrated by discussing three Latin American cases based on original field research. Finally, a number of implications of these empirical findings are formulated for religious minorities and faith-based organizations.

Keywords Resilience, vulnerability, coping mechanisms, religious freedom, Cuba, Colombia, Mexico.

1. Introduction

To offset the victimization of religious minorities as a result of persecution, in this study I discuss the concept of resilience, based on the premise that religious minorities have agency and can develop mechanisms to cope with the human security threats they face. Persecution cannot always be avoided, but religious minorities can certainly respond proactively to it. First, I discuss the broad array of coping mechanisms religious minorities have at their disposal, proposing a novel theoretical framework in which I distinguish between eight categories of coping mechanisms: avoidance, spiritual endurance, compliance, social wisdom, moral standing, solidarity, collective action and taking up arms. Based on this categorization, I develop a Resilience Assessment Tool as an instrument to describe the resilience of religious minorities. I then illustrate my tool by using empirical elements from three Latin American cases where I conducted original field research. I conclude by formulating a number of implications of my empirical findings for religious minorities and faith-based organizations.

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2. The Resilience Assessment Tool

How can vulnerable religious minorities develop coping mechanisms and become resilient?² *Under Caesar's Sword* highlights three typical strategies Christian communities adopt to respond to persecution: “survival, association and confrontation” (Philpott and Shah 2018). These three strategies are not mutually exclusive but can overlap to a great extent. Survival refers to the range of creative strategies of preservation of life that can be applied while staying true to essential elements of church life, often in secret. Association is the active strategy of building networks, such as interdenominational partnerships, interreligious dialogue and international cooperation, to stand stronger against external threats. Confrontation is the often-risky strategy of openly challenging the persecution.

Within a human security framework, Glasius proposes four types of survival strategies people adopt when confronted with violent conflict: (a) avoidance, (b) compliance, (c) collective action and (d) taking up arms (2012:9-16). Avoidance comprises fleeing but can also include refraining from making statements that could be considered as ‘politically deviant’. Compliance refers to the obedience to the demands of armed parties – this can be expanded to any actor causing human security threats – including forced labor, the payment of charges or bribes, giving information, betraying others, or even sexual services. Collective action includes not only resistance but also other forms of collective resilience such as information sharing, the preservation of community facilities, informal gatherings or collective negotiation. Taking up arms refers to the direct confrontation of armed power, for example through the creation of self-defense militias.

These four types of survival strategies can take different forms when applied to religious minorities. In *Blessed Are the Organized*, Jeffrey Stout analyzes ways in which religious communities in the United States combat social injustice through organized collective action (2010). An illustration of the avoidance strategy is the ‘internal exit movement’ that formed under the East German dictatorship before the fall of the Berlin Wall, which was essentially composed of people, including Christians, who mentally withdrew from the regime and gathered in churches, private flats and reading clubs as private acts of protest (Grix 2000:93).

In a way, the avoidance and compliance strategies can be viewed as the opposites of the collective action strategy, although it is possible for people to engage in both strategies at different moments in time. Avoidance (or compliance) can be the result of fear or of a feeling that resistance is useless in given contexts, but it can also be the result of theological options that do not value any form of social engagement or collective action (Freston 2001, 2008; Petri 2012).

² In this article, I use the concepts of coping mechanisms and resilience interchangeably.

Indeed, when we consider the role of religion in inspiring social engagement, two theological alternatives are possible: one that inscribes itself in a tradition of isolation and sometimes even rejection from the world, and one that connects with traditions of social engagement and an active role in civil society (Buijs, Dekker and Hooghe 2009; Philpott and Shah 2018). The differences between the two religious traditions are particularly visible in the Protestant world, in which the Anabaptist tradition views the church as a “contrasting community”, an alternative to society with an inner focus, whereas the Calvinist tradition calls for an active contribution to social transformation through participation in social initiatives and the denunciation of social injustice (Kennedy 2009; Hunter 2010). The active theological option can in turn be divided between a conservative and a transformative approach to society.

Whereas collective action is essentially nonviolent, taking up arms can be considered an extreme, violent form of collective action. Again, the engagement of religious people in armed resistance is determined to a large extent by their theological preferences, i.e., whether they adhere to pacifist traditions or, on the contrary, follow more militant religious teachings (Wellman 2012). In the Christian tradition, for example, the long tradition of just war theory, which developed with Augustine, coexists with ever-present pacifist traditions. Taking up arms, including counterinsurgency, is not necessarily morally wrong when it serves the purpose of enforcing human security, provided that it follows certain principles regarding the use of force (Salmon and Kaldor 2006; Glasius 2008).

Glasius's categorization of coping mechanisms can be expanded by some additional categories of coping mechanisms that are specific to religion. The first element of religion that comes to mind is the spiritual endurance it provides, as religion is often a source of increased self-awareness, moral strength, and hope in difficult times for its adherents. This is also the central point of Boyd-MacMillan's *Faith That Endures* (2006). Spiritual endurance is essentially an internal feature. It is not limited to religious people, but actively religious people would have this trait almost by default.

In many religious traditions, vulnerability is viewed as something positive or beneficial, as a good attitude to have, and even as a virtue, indeed a source of resilience. A biblical concept close to vulnerability is *praus* (Greek), which can be translated as mildness, gentleness, or meekness, and is viewed as a virtue (a “fruit of the spirit”). In connection with this theme, a theology of suffering has developed, highlighting the benefits of suffering and persecution because of its purifying effect (Lewis (2002 [1940], 2002 [1961]); Boyd-MacMillan 2006; Harries 2016).

Beyond Christianity, vulnerability is valued in other religions. For example, in Judaism, vulnerability is considered as something that “can lead you toward connecting to something greater than yourself, connecting to others and to the divine,” leading to resilience or *chosen* in Hebrew, understood as “to be inoculated, impermeable”

(Mandell 2016). In Buddhism, the notion of *karuna*, which is generally translated as compassion, refers to “the wish that all beings are relieved of suffering” which is a direct result of the awareness of the interdependence of everything in nature. It follows that the vulnerable deserve special protection (Hongladarom 2011).

Many works of literature and fiction highlight that vulnerability and suffering, however difficult it may be, leads to character development, new insights, and a deeper understanding of the world and is key to realizing the human good. Examples hereof are the novels *The Power and The Glory* by Graham Greene (2010 [1940]), *Silence* by Shūsaku Endō (1966), and *Till We Have Faces* by C. S. Lewis (1956) as well as the film *The Mission* (1986). It is also a central theme in the work of Greek tragic playwrights, as described in Nussbaum’s *Fragility* (1986), and in the novels by Fyodor Dostoevsky (2018 [1866]). In social psychology, vulnerability is often presented as a key quality of a successful, creative, innovative and resilient leader. Brené Brown’s TED talk, “The Power of Vulnerability,” which had over 35 million views, brought this theme to the core of leadership studies. Brown’s book *Daring Greatly: How the Courage to Be Vulnerable Transforms the Way We Live, Love, Parent, and Lead* (2012) develops the same theme.

The acknowledgment of the ‘blessings in disguise’ of vulnerability and suffering has an important downside, because it gives the perpetrators of attacks against religious groups the ability to justify their violence by alleging that the victims chose to be vulnerable. Nietzsche follows a similar line of thinking. In *The Anti-Christ* (1999 [1895]), he argues that religion, in particular Christianity which he refers to as “the religion of pity,” increases vulnerability: “Pity stands opposed to the tonic emotions which heighten our vitality: it has a depressing effect. We are deprived of strength when we feel pity. That loss of strength which suffering as such inflicts on life is still further increased and multiplied by pity. Pity makes suffering contagious” (172-73). This is, of course, a fallacy, because acknowledging the purifying effect of suffering does not mean that one voluntarily embraces suffering itself or even that suffering is a choice.

Religion itself can also be a source of resilience, however. In *On Human Nature*, Roger Scruton suggests that religion provides increased self-awareness. He contends that religious people have a practical advantage over non-religious people, in that they have “a ready supply of stories and doctrines that make sense of those truths [pertaining to the human condition]” (2017: 46). The Christian tradition, for example, provides a narrative that explains the origin of evil (in Genesis) and the eschatological foretelling that Jesus’ followers would suffer tribulations (John 15:18-16:33).

Another type of coping mechanism related to religion can be the moral standing of religious people in society, such as the respect that religious ministers com-

mand or the superstitious belief that religious people benefit from supernatural protection. Furthermore, because religious groups gather in communities, solidarity among members of a religious community can also be a coping mechanism. An example of solidarity is the sharing of humanitarian supplies to mitigate the impact of human security threats. In a study of the rescue of Jews in the Netherlands during the Holocaust, Braun (2016) demonstrates that religious minorities (Protestants in dominantly Catholic regions and Catholics in dominantly Protestant regions) are generally more inclined and better able to help other threatened minorities. In a way, this finding connects with Butler's (2016) argument that vulnerability is an important resource for resistance: being a vulnerable religious minority encourages and enables people to reach out to help other minorities. (This does not mean, however, that religious people are by default drawn to engage injustice, or that non-religious people are never drawn to do so.)

I use the word 'solidarity' to refer to support systems that exist within religious communities. I use the concept 'collective action' to refer to the engagement in political advocacy by members of a religious minority. Both solidarity and collective action can transcend the religious minority in question, as Hannah Arendt stresses in *Eichmann in Jerusalem: A Report on the Banality of Evil* (2006 [1963]), where she discusses how non-Jews could have spoken out on behalf of the Jews during World War II.

A final type of coping mechanism related to religion is Jürgen Habermas's (2006) interpretation of John Rawls's concept of "the use of public reason", which I refer to as social wisdom. Habermas argues, among other things, that both religious and secular citizens need to recognize that they live in a plural context (a post-secular society), and that in the public sphere they need to be willing to listen to and learn from each other's arguments. Earlier, Nicholas Wolterstorff had insisted that every citizen has a right to express his or her own views, using the vocabulary of one's preference, as long as normal decency standards are observed (Audi and Wolterstorff 1997; Buijs, Sunier and Versteeg 2013). Such an attitude, which Rawls has referred to as a "duty of civility," requires of citizens to be capable of "self-reflection" and to make "an effort to learn and adapt" as part of "an ethics of citizenship" that avoids misunderstanding and resentment. Social wisdom thus presupposes such notions as tolerance, respect, fairmindedness and prudence.

Although Habermas (2006) is concerned with the issue of religious expression in the public sphere and not with resilience, social wisdom can be viewed as a coping mechanism. Indeed, religious minorities can decrease their vulnerability by avoiding words and actions that could be perceived as provocative (Casanova 2008; Philpott and Shah 2018). In missiology, concepts such as 'contextualization' and 'cultural sensitivity' stress this exact point (Engle 1983). The theological ap-

appropriation of Max Weber's distinction between *Gesinnungsethik* (ethics of conviction) and *Verantwortungsethik* (ethics of responsibility) by Helmut Thielicke, a Christian ethicist held in high regard among the more conservative and evangelical branches of Christianity, is also applicable here. The former concerns the noble ideals and convictions that one desires to realize; the latter considers what the possible negative consequences of those convictions and ideals could be (Thielicke 1969:512-15). As Buijs puts it, "one is enjoined to act concretely, wisely, in a limited manner; not to change the world, but to take one step, in line with concrete commandments (that includes the commandment not to kill)" (2013:34). (Considering social wisdom as a coping mechanism, an interesting question about the story of the stoning of Stephen, the first Christian martyr [Acts 6:8-8:11], is whether he could have avoided his death had he refrained from insulting the Sanhedrin.)

Of course, social wisdom is no guarantee that religious minorities will be safe from threats. Depending on the circumstances, a seemingly inoffensive act can be perceived as a provocation. This was the case of Ahok, former governor of Jakarta, Indonesia, who quoted the Quran in a positive sense but was subsequently accused of blasphemy because he was a Christian (*Al Jazeera* 2017). Moreover, the lack of social wisdom can never be an excuse to cause harm to others. Religious minorities certainly have a responsibility to avoid unnecessary provocations, but a lack of self-reflection can never be used as a justification for human rights abuses committed against them.

Figure 1 synthesizes how I propose to order the coping mechanisms. The distinction between these categories is not watertight, as they can overlap, and religious minorities can engage in different strategies at the same time or at different moments, as alternative or complementary strategies. Albert O. Hirschman's (1970) classic threefold categorization of exit, voice, and loyalty as "responses to decline in firms, organizations and states" or "recuperation mechanisms" could be adapted as an ordering principle of these coping mechanisms. In the framework of this study, I retain the categories of exit and voice, but I substitute loyalty, which Hirschman strongly connects with the private or family spheres, by caution, which is more applicable to human security contexts. Exit covers avoidance strategies, including flight, internal exit (spiritual endurance), and the evasion of any kind of interaction with the powers that be. Compliance is clearly a caution response, involving tacit acceptance of the human security situation and obedience to any requirements made by the powers that be, and so is social wisdom. Moral standing, solidarity, collective action, and taking up arms are all distinct types of voice responses.

Before moving to the empirical section of this study, I would like to observe that my categorization of coping mechanisms should not be taken as a prescriptive list. Rather, I seek to provide a framework enabling the observation of coping mechanisms that religious groups do or could use, without making a normative statement about

Responses to human security threats	Coping mechanisms	Definition
Exit	Avoidance	Not interacting with the actors responsible for the human security threats, leading to flight or internal exit in the most extreme case.
	Spiritual endurance	Withdrawal within oneself, seeking comfort in personal religious beliefs.
Caution	Compliance	Obedience to any requirements presented by the actors responsible for the human security threats.
	Social wisdom	The ability, based on self-reflection, to anticipate how one's words and actions might be received in order to avoid being perceived as provocative.
Voice	Moral standing	Credibility with people outside the religious minority as a result of the respect given to religious roles or religious beliefs (moral authority).
	Solidarity	Mitigation of the humanitarian impact of human security threats within a religious community.
	Collective action	Engagement in advocacy or any form of (organized) nonviolent resistance or protest to the actors responsible for the human security threats.
	Taking up arms	Direct confrontation of armed power through the creation of self-defense militias or counter-insurgency units.

Figure 1. Categorization of coping mechanisms of religious minorities

how or whether they should use them. From a New Testament perspective, taking up arms is obviously problematic (cf. Jesus' rebuke of Peter when he wanted to prevent him from being arrested in Luke 22:49-51), although the Anabaptist/pacifist and Reformed perspectives give very nuanced interpretations of the use of physical force in different contexts. Moreover, in spite of their differences, these perspectives would be in agreement that social wisdom, which I also identified as a coping mechanism, is probably the most important element in decisions on how to use coping mechanisms.

3. Illustrations using Latin American cases

Since 2010, I have conducted field research in three Latin American contexts: (1) actively practicing Christians in the states of Nuevo León, Tamaulipas, and San Luis Potosí, Mexico, (2) cultural dissidents among the Nasa ethnic group in the *resguardos*

dos indígenas (indigenous reserves) of the southwestern highlands of Colombia, and (3) Christians in Cuba. After briefly introducing my cases, which correspond to very different sources of persecution and political-institutional contexts, I summarize and compare the anecdotal evidence of the coping mechanisms of these Christian groups.

Because this study is primarily a practical and methodological exploration, I use my empirical material merely as an illustration of my tool. A detailed description of the fieldwork I conducted can be found in my dissertation (Petri 2020). In this article, I present only some of the results of my interviews pertaining to the resilience of the religious minorities I surveyed, which mainly serve to illustrate the categorization of coping mechanisms I presented above. I do not engage with the literature about religious persecution in these countries, because, to my knowledge, no sources discuss responses to persecution, which is the topic of this article.

My first case concerns actively practicing Christians who have suffered human rights abuses at the hands of organized crime in three states of northwest Mexico. The time frame for this case study covers the second half of President Felipe de Jesús Calderón Hinojosa's term (2009-2012) and the first half of President Enrique Peña Nieto's term (2012-2015), during the height of the Los Zetas ("the Z's") insurgency. Los Zetas was the dominant drug cartel in northeast Mexico at the time of my research. Because Los Zetas and other criminal groups seek to preserve their interests, their activity is not threatened by people who simply declare their Christian identity. However, people involved in organized crime view Christians who openly oppose their activities as a threat, especially when Christians become involved in youth work, drug rehabilitation programs, or human rights initiatives.

My second case corresponds to an intra-ethnic (minority within a minority) conflict. I studied converts from the majority religion in an indigenous context, to whom I refer as 'cultural dissidents' among the Nasa ethnic group living in the southwestern highlands of Colombia (Cauca and neighboring departments). I chose to identify this minority as cultural dissidents, because they include Christians who, often after a conversion experience, decide to reject some tenets of the cultural and religious traditions of their community, but expressly declare that they continue to identify as Nasa and as indigenous. Their dissent focuses almost exclusively on aspects of Nasa culture that they disagree with, but they effectively maintain the same holistic worldview that characterizes their community and do not reject other elements of their indigenous heritage. The timeframe for this case study overlaps with the first six years of the administration of President Juan Manuel Santos Calderón (2010-2016), roughly until the signing of the peace agreement with the Revolutionary Armed Forces of Colombia (FARC).

My third case considers all Christians in Cuba, with special attention to the most active Christians. Unlike the previous two case studies, I do not focus on a sub-national area, mainly because there are no noteworthy geographical differences

within Cuba, although some human security threats, such as the intensity of surveillance and administrative restrictions, are reportedly higher in the eastern half of Cuba. The time frame for this case study begins in 2011, after Fidel Castro resigned as First Secretary of the Central Committee of the Communist Party of Cuba, and ends in 2018 when Raúl Castro stepped down as President of Cuba.

3.1 Actively practicing Christians in the states of Nuevo León, Tamaulipas, and San Luis Potosí, Mexico

Civic participation can be effective and instrumental in increasing the resilience of actively practicing Christians in northeast Mexico. In many cases, however, civic participation by actively practicing Christians also increases their vulnerability, especially when it threatens the operations of organized crime. Moreover, reducing human security risks is not really on the agenda of actively practicing Christians; none of the interviewees for this case study spoke about strategies devised by churches or Christian institutions to cope with the threats they face. Indeed, apart from some exceptions such as the positive involvement of Christian leaders in the police department of Guadalupe or the security protocol issued by the Mexican Catholic Church, there is no noteworthy reflection or self-awareness among Christian leaders as to how the threats posed by organized crime could be mitigated. Most interviewees seemed to have accepted the violence as normal and did not seem to be conscious of the specific restrictions it places on their religious freedom.

The lack of reflection on coping mechanisms is a missed opportunity in my view, because actively practicing Christians, if organized and united, can contribute their knowledge and experience to combat impunity and corruption. Often, the focus of most Christian leaders is restricted to church-related issues, leaving aside the potential contribution churches could make to national debates on the major issues affecting society, including the pervasiveness of organized crime.

3.2 Cultural dissidents among the Nasa ethnic group in the *resguardos indígenas* of the southwestern highlands of Colombia

At first sight, when one observes the social and political activism of the cultural dissidents among the Nasa ethnic group in Colombia, it might seem that their coping mechanisms are quite developed: they actively denounce the numerous injustices committed against them. However, as I discuss in my dissertation (Petri 2020), they have at times taken positions that have tended to polarize rather than develop common ground. In this case, activism increases the vulnerability of this religious minority. The spiritual endurance of the cultural dissidents is perhaps their greatest coping mechanism, but it turns into a pitfall when it is combined with an at times unnecessarily confrontational attitude.

The sense of belonging (loyalty) to the Nasa ethnic group of the cultural dissidents, makes Hirschman's (1970) category of voice their primary means of expressing dissent. This does not mean, however, that the ways in which the cultural dissidents express voice are effective. Voice is certainly used with great determination, but not with great creativity or resourcefulness, let alone social wisdom.

3.3 Christians in Cuba

Although there is certainly room for improvement, a great number of the threats to which Christians are subjected in Cuba are mitigated by the various coping mechanisms they routinely use. In particular, their clever avoidance strategies, spiritual endurance and exceptional solidarity, which have developed over the course of several decades, are all inspired by much social wisdom and are important sources of resilience of Cuban Christians.

Of course, there is a clear difference between the more active Christian individuals and groups and those who deliberately steer clear from any form of activism. Moreover, avoidance in the form of leaving the country continues to be very frequent, especially among those people who previously have been very outspoken in their missionary and human rights activism, but who eventually reach a point where they can no longer cope with the ubiquitous discouragement and harassment. The various voice strategies are thus neutralized by the fact that exit is always an option, at least theoretically. Advocacy, as a form of collective action, is gaining some traction but continues to be the effort of a lonely few, which inevitably decreases its effectiveness.

Finally, moral standing, solidarity in the form of humanitarian work or education, and very visible forms of collective action, although they can be thought of as sources of resilience, can work against actively practicing Christians. The exposure that comes with these mechanisms can transform a coping mechanism into a source of additional vulnerability. The same is true for engagement in social work, which can cause conflict with the ideological position of the communist state concerning private initiatives.

3.4 Comparison of the case studies

Most of my interviewees seemed to have little awareness of how they could equip themselves against human security threats. The reasons for this lack of awareness ranged widely, including adherence to pietistic theological options that discourage any involvement in society (in all cases), fear (northeast Mexico and Cuba), the acceptance ('normalization') of violence (in northeast Mexico) and the internalization of a restrictive definition of religious freedom as imposed by the regime (Cuba). Braun's (2016) finding that religious minorities are more inclined to help other vulnerable religious minorities or themselves seems only partly applicable

to my case studies. The cultural dissidents in the Nasa *resguardos*, by contrast, are very militant, but this stance has actually increased the threats they have faced.

Possibly because of the low level of awareness of the need to reflect on the development of resilience, social wisdom is also underdeveloped, with the notable exception of Cuban Christians, who have learned to be cautious so as to survive within the system. The few outliers in Cuba who adopt a more militant path are criticized by their peers for not having any actual impact. In the Nasa *resguardos*, notwithstanding the warnings of a select few, most cultural dissidents are convinced that they act in obedience to their faith and are willing to suffer the consequences. In northeast Mexico, the drug cartels are rarely confronted by actively practicing Christians, who often prefer to take refuge in avoidance and compliance strategies. In such a context, fear, not social wisdom, prevents actively practicing Christians from openly confronting the drug cartels, but it also implies that other coping mechanisms, such as the establishment of early warning networks or the engagement of private security to at least mitigate some of the risks, are rarely considered.

At the same time, coping mechanisms were by no means absent in my case studies. Avoidance and compliance, including formal compliance with government regulations while disrespecting their spirit, are common in Cuba. Cuban Christians and Nasa cultural dissidents both benefit from international support, which also translates into the implementation of solidarity mechanisms to mitigate some threats; this is largely absent for actively practicing Christians in northeast Mexico.

The relation between religion and resilience is unquestionably complex and multifaceted. Many people are attracted to a religion because of the expectation that it can provide some sort of relief from the hardships of the world. My case studies confirmed that religious convictions can at times be a source of resilience, because they help people make sense of difficult situations and offer hope and because religious communities can also provide solidarity. In all three cases, there are situations where spiritual endurance and moral authority command some respect that can serve to mitigate threats.

Collective action exists in all cases, but it is understandably difficult to use this coping mechanism in the face of severe human security threats and paralyzing fear. Its impact is also limited when it is not combined with social wisdom. The discreet advocacy work by Cuban Christians and the collaboration between Christian leaders and the police department in Guadalupe, Mexico are positive exceptions.

Collective action can be a double-edged sword. Sometimes, the very initiatives that religious minorities undertake to defend themselves lead to increased vulnerability. For example, the creation of solidarity networks or the establishment of advocacy initiatives, which are initially designed to mitigate threats, can have the opposite effect of drawing attention to a religious minority, thereby increasing its vulnerability.

This evidently happened in the Nasa *resguardos*, where political advocacy was initially conceived as an instrument to combat several forms of injustice but actually increased them. In northeast Mexico, initiatives to mitigate the influence of organized crime on youths encounter hostility as faith-based organizations and drug cartels compete for influence. This problem recalls the philosophical paradox that Nussbaum (1986) identifies as “the fragility of goodness.” If one seeks to improve one’s conditions, one must confront the world, but the mere fact of doing so also exposes oneself. As Butler (2016) puts it, protesting against precarity increases risk.

Beyond internal theological explanations, differences between actors and contexts also help to explain the differences in coping mechanisms among vulnerable religious minorities. The coping mechanisms of Cuban Christians are more developed than those in the sub-national areas of Mexico and Colombia that I studied, but this could be because Cuba is characterized by a prolonged vertical (state) oppression of religion, whereas the other two contexts suffer more sudden forms of repression by non-state actors. More research on the impact of the type of repression (i.e., prolonged or sudden) could help us understand the development of coping mechanisms in different contexts.

4. Implications for religious minorities, faith-based organizations implementing relief projects for victims of religious persecution, and human rights agencies

As we reflect on how religious minorities can apply coping mechanisms in the face of human security threats, the controversial point made by Hannah Arendt (2006 [1963]), that Jewish leaders may not have done enough to prevent the Holocaust, is worth mentioning: “The whole truth was that if the Jewish people had really been unorganized and fearless, there would have been chaos and plenty of misery but the total number of victims would hardly have been between four and a half and six million people” (1963:125). Although Arendt received severe criticism for ‘blaming the victims’ of the Holocaust, this was not her intent. The Nazis (and the silent collaborating majority) were evidently guilty of the Holocaust, and Arendt recognizes that it would have been insensitive to expect the Jewish leaders to have resisted the Final Solution because of fear, ignorance of the Nazi projects, and the (in retrospect) naïve expectation that cooperating with the Nazis could have mitigated the harm (Elon 2006). However, Arendt features the courageous examples of the Danish population and Dutch Jewish leaders who resisted the implementation of the Final Solution on moral grounds. Their resistance had some impact on the attitude of Nazi officials.

Two recommendations for vulnerable religious minorities and for organizations wishing to help them can be inferred from Arendt’s reflections on the Holocaust. The first is the need to raise awareness about the human security threats faced by

religious minorities, like the desperate attempts by SS officer Kurt Gerstein, the protagonist of Rolf Hochhuth's play *Der Stellvertreter. Ein christliches Trauerspiel* (The Deputy, a Christian Tragedy) (1975 [1963]), portrayed in the 2002 film *Amen*, to get the Vatican to take notice of the Final Solution. Lack of awareness of the Holocaust typified not only the international community but also the Jewish community itself, which was largely ignorant of the unfolding genocide. In my case studies, I observed a similar lack of awareness among religious groups. Issues such as the normalization of violence in northeast Mexico and the internalization of the restrictive definition of religious freedom as imposed by the communist regime in Cuba limit believers' full understanding of the human security situation in which they find themselves.

Second, regarding the documentation of human rights abuses, the overwhelming number of organizations in Latin American civil society, including faith-based organizations, neglect their responsibility to collect data. Most organizations are generally very good at talking about issues, creating attention-grabbing campaigns on social media, performing social diagnostics, and even making recommendations for public policy, but they rarely undertake the tedious, time-intensive, and sometimes dangerous task of documenting incidents. This is also true for the documentation of violations of religious freedom.

Having a clear picture of the threats to which religious minorities are vulnerable is strategically relevant because it can inform tactics that can contribute to making a religious minority more self-reliant and mitigate the risks it faces. This leads me to my second recommendation: develop and facilitate reflections about coping mechanisms. Avoidance and compliance seemed to be the default response of most members of the vulnerable religious minorities I studied. This is understandable considering the fear that results from the very real human security threats they face, but an adequate understanding of these threats as well as careful reflection on how they could possibly be mitigated could nevertheless be very beneficial.

Clearly, it is extremely difficult for many Christians in Latin America to even start considering coping mechanisms. Beyond fear of repression, there is a broadly shared sense that resisting the oppressors, whether they are the drug cartels or the Cuban government, is useless. In my interviews, I observed a sense that publicly addressing issues will not lead to a radical change in society. As a Colombian pastor from Cali stated, "When evil is so present, it kills all hope for change" (Harold Segura, personal interview, 2011).

Coping mechanisms are further underdeveloped because of a complex set of theological reasons. An insight from psychology about bullying illustrates how moral convictions, which may be rooted in religion, about compassion and the rejection of aggression – even when it is necessary for self-protection – can indeed make people vulnerable (Peterson 2018:23-24).

The predominance of certain theological options that rule out any form of social engagement, particularly in Pentecostal denominations that teach a strict segregation between ‘spiritual’ and ‘earthly’ matters, also explains an overall limited involvement in the pursuit of social justice and the underdevelopment of coping mechanisms.

In view of the multiple factors that discourage social engagement, it may not be surprising that the communities I surveyed have not developed a reflection about the concept of resilience. A logical response by faith-based organizations would therefore be to stimulate an active theological reflection on the value of resilience, while at the same time offering practical real-life examples of resilient religious communities, expanding the direction taken by the *Under Caesar’s Sword* project (Philpott and Shah 2018). As Stout (2010) argues, grassroots religious groups, if they adopt effective strategies, can exercise real influence over policy and promote social justice. Compiling a manual of best practices of the application of coping mechanisms, similar to Gene Sharp’s (1993) catalogue of 198 “methods of nonviolent action,” could also serve a didactic purpose.

Along with the need to raise awareness and to stimulate reflection on coping mechanisms, the central importance of social wisdom is highlighted in all three case studies. The value of this skill resides in the fact that it informs how best to apply all other coping mechanisms, notably solidarity, collective action, taking up arms, and formal compliance with regulations even though their spirit is disrespected, as described in the case study on Cuban Christians.

To be effective, coping mechanisms must be used strategically. If not, they could have the counterproductive effect of increasing vulnerability instead of reducing it. This is not only a philosophical question but also a practical one. International advocacy in support of the human rights of Cuban Christians provides one example. When its tone is too confrontational and sensitive information is not handled carefully, Cuban Christians complain that they are hindered more than helped because the advocacy triggers more hostility from the government.

In the most extreme cases, it may be a form of social wisdom to remain silent about one’s faith, as did the Portuguese Jesuit missionaries to Japan who are portrayed in *Silence* by Shūsaku Endō (1966). Similarly, in the Bible, Queen Esther stayed silent about her Jewish background for strategic purposes, positioning her to be instrumental later in achieving her people’s salvation.

The importance of social wisdom is also illustrated by the case of the cultural dissidents in the Nasa *resguardos*. Contrary to the general trend I described, there is no lack of collective action among cultural dissidents, but this collective action may be too confrontational and uncompromising, contributing to a worsening of the conflict instead of solving it. The *Under Caesar’s Sword* project reminds us that “Domestic advocacy is most effective when done quietly and respectfully by Christian leaders

who have nurtured relationships with local and national officials” (University of Notre Dame 2017:48). If the cultural dissidents would move away from their adversarial logic and instead adopt a “collaboration logic” (Vargas and Petri 2009), they might have better chances to succeed without increasing their vulnerability.

This is of course easier said than done, and it is especially difficult when religious minorities have antagonized the powers that be. It is nevertheless a direction worth exploring, in line with Habermas’s recommendation to religious traditions to undertake the “arduous work of hermeneutic self-reflection” (2006:14). Generalizing, Christian converts should critically analyze the impact and meaning of their religious behavior in their community, as is the essence of Thielicke’s *Verantwortungsethik* (1969). The religious rights of individual Christian converts should be respected, but it would be beneficial if they realized that, in their context, a church building is more than just a place of worship; it can also be seen as a symbol of political subversion, as Mexican sociologist José Refugio Arellano argues (personal interview, 2016). Buijs similarly encourages religious groups to “define orthodoxy in such a way that the reflective distance, the wisdom and serenity that are required to live in a non-perfect world is cultivated. Orthodoxy should be defined and transmitted to next generations as the opposite of radicalism” (2013:34).

It is also critical for both foreign and indigenous missionaries to understand the need for cultural sensitivity. As José Casanova observes, “Global denominationalism [international Christian missions] would also defend the principle of individual religious freedom, which includes the right to conversion and the attendant right to evangelize, but would recognize that there are both appropriate and inappropriate ways to evangelize” (2008:15).

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Understanding the religiously motivated violence in Cabo Delgado, Northern Mozambique

Fernando Caldeira da Silva¹

Abstract

Since October 2017, an Islamic insurgency has spread extreme suffering across the predominantly Muslim province of Cabo Delgado in northern Mozambique. More than 2,000 people have been killed, hundreds of villages have been burned, farms have been destroyed, and nine municipalities have been controlled by Muslim extremists. The severe violence is the result of various factors in northern Mozambique and neighbouring Tanzania, including a wealth of natural resources, illicit trade, widespread government corruption, and the skill of the extremist movement in disseminating and promoting its ideology. This article examines the characteristics of the people of northern Mozambique, who is behind the killings, why they are doing it, and the impact on Christianity in the region.

Keywords Contemporary Christianity, persecuted Christians, religious extremists, al Ahlu Sunnah Wa-Jamo/Ansar al-Sunna (ASWJ), Al-Shabaab, and Islamic State (IS).

Northern Mozambique has been severely impacted by Islamic extremist activity since October 2017. This article examines aspects of the “Mozambican Al Shabaab,” the rise of a culture of fear, and its consequence for Christians in the region.

1. Background

1.1 The geography of northern Mozambique

The province of Cabo Delgado, with 2,320,000 inhabitants, is on the northern tip of Mozambique, bordering Tanzania, and the Indian Ocean (see Figure 1 for a description of the jihadist insurgent attacks). According to the *World Population Review* (2020:1), 56% of Mozambique’s 31.26 million people are Christians and 17.9% are Muslims, but the north is predominantly Muslim. Perkins (2019:5) states, “Presently, the majority of Mozambique’s Muslim community is located in northern provinces, with upward of 58 percent of Cabo Delgado following Islam.”

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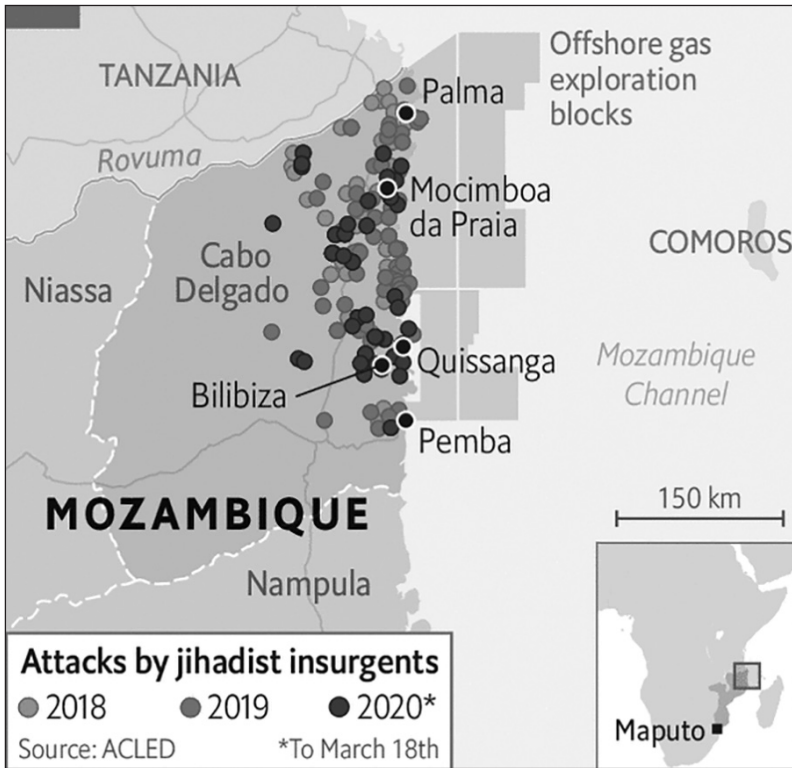


Figure 1. Illustration of terror activities in Cabo Delgado in northern Mozambique, perpetrated by Islamic extremist groups such as the Al-Sunnah wa Jama'ah (ASWJ). Source: Boro (2020:1)

The three main tribes in Cabo Delgado are the Makonde, the Macua and the Mwani. The other tribal groups of Swahili ancestry, living mostly in the coastal areas, also tend to follow Islam (Afonso, 2011:4).

Figure 2 illustrates the terror activities in the area of Cabo Delgado in northern Mozambique, perpetrated by Islamic extremist groups such as Al-Sunnah wa Jama'ah (ASWJ). According to West (2018:1), "Ansar al-Sunna [ASWJ] started as a religious organization in Cabo Delgado in 2015 ... and only later became militarized. Its early members were followers of Aboud Rogo Mohammed, the radical Kenyan cleric who was shot dead in 2012." However, confusion has been present from the start because others, such as Habibe et al. (2019:10), have stated that although the initial group was called ASWJ, "The group is called Al-Shabaab [and sometimes even Mozambican Al-Shabaab] not only by local communities but also by its members." Indeed, in this situation confusion is quite widespread.

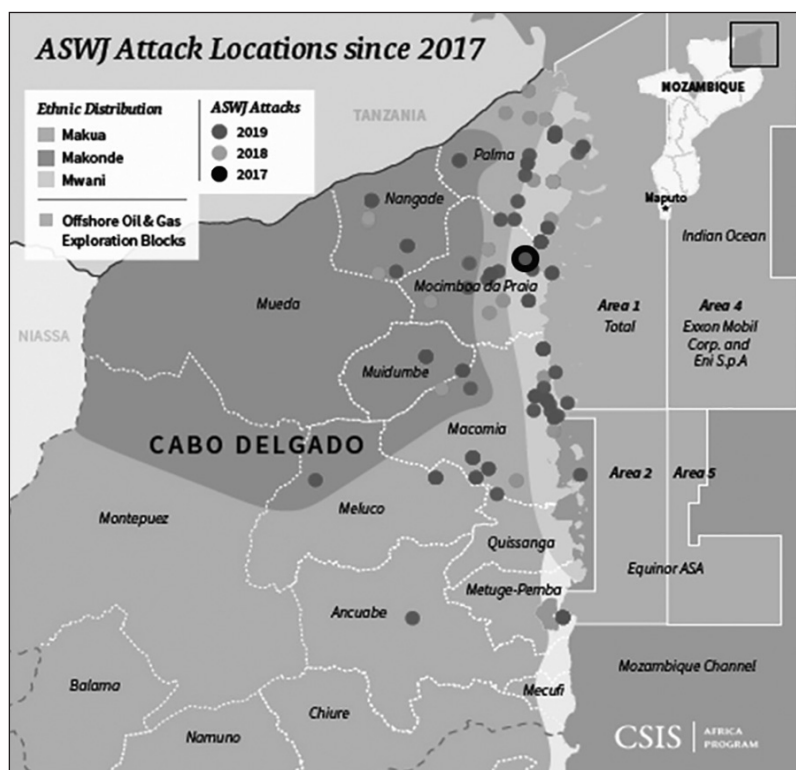


Figure 2. Location of the three main tribal groups in northern Mozambique. The map also identifies locations of attacks by the Al-Sunnah wa Jama'ah (ASWJ) Islamic extremist group. Source: Columbo (2019:5)

Despite pressure from the national government to suppress tribalism and regionalism, ethnicity still plays a significant role in social control in Cabo Delgado.

Three essential aspects of the region's background must be considered: the characteristics of the people of northern Mozambique, the illicit international trade routes, and the growing presence of Islamic extremists.

1.2 The bold people of northern Mozambique

Interpreting the violent crisis in Cabo Delgado requires a comprehensive understanding of the people living in the area and their tribal affiliations, which cross the border with Tanzania. The Berlin Conference (1884-1885) imposed boundaries in Africa by which the three main tribes discussed in this article were divided between northern Mozambique and southern Tanzania (Michalopoulos and Papaioannou 2011:1).

Colonial influence and international laws have pushed for a detribalization of the 83 ethnolinguistic Mozambican groups (Cardoso 2005:66). This trend has exacerbated hard feelings over the division of tribal groups through national borders determined by colonizers. Consequently, the people of Cabo Delgado have long been living in a sensitive region potentially aspiring towards independence (Funada-Classen 2012:170-171), one in which political violence can be easily triggered.

In describing the daring attributes of the African tribes responsible for the introduction of Islam into Mozambique, Cardoso (2005:66) stated that the Swahili population “is Islamised.” According to Bonate (2010:574), there is archaeological evidence suggesting that since “the eighth century, ... coastal northern Mozambique was part of the Swahili world, [sharing] Islamic religious conceptions and practices.” Cardoso (2005:66) added that the Macua tribe has been Islamized for hundreds of years.

The Makonde tribe initiated the fight for Mozambican independence in 1961 (Funada-Classen 2012:221) and fiercely resisted the Portuguese presence (Regalia 2017:7). According to Funada-Classen (2012:222), since that time of resistance, the Makonde elders of the Mozambican counterpart have “had an extensive network and links with the Makonde in Tanganyika [Tanzania], and the bond was strong enough to be used for exchanging political information.” The Makonde tribe tends to be Roman Catholic or practitioners of traditional religion (Cardoso 2005:66).

Based on the northern Mozambican coastal shores of the Indian Ocean, the Mwani have been described as a “clan of ‘leopards’ who live a long time.” Most violent attacks have targeted the Mwani tribe’s territory, which is located close to the maritime borderland from the Tanzanian border down to Pemba (Columbo 2019:5), even though they are also predominantly Muslim, which may suggest the presence of motives other than religion. In a 2020 interview, Bishop Germano Grachane, of the Diocese of Gurué in northern Mozambique, stated that some of the Mwani tend to adhere readily to extremist positions. The regions of the more powerful Makonde and Makua tribes have generally been less affected, although those regions are also being attacked in an area spanning up to 200 kilometres from the beaches inland (Columbo 2019:5).

1.3 Natural resources and illicit international trade routes that altered the social balance

The immense wealth of natural resources discovered in northern Mozambique’s four provinces (Cabo Delgado, Niassa, Nampula and Zambezia) during the last two decades, combined with the existence of illicit international trade routes, has contributed further to traditional tribal and violent tendencies, altering the social

balance. Criminal lords control these natural resources and commercialize them by their various routes of illicit trade. These criminal lords have also established international networks that benefit from the deep-water ports and small airports in the region. Haysom (2018:6) explains, “Within this region, there are several organized criminal operations for the trafficking of ivory, rubies, timber, drugs and people, and ... [several] other trades that create a dynamic criminal economy, operated by multiple criminal actors.” The Niassa Game Reserve provides a location for game-related trafficking, particularly in ivory (Haysom 2018:10).

The economic situation is quite unstable, as no single group has strong territorial control (Haysom 2018:6). This illicit trade has “driven corruption” and “created both grievance and opportunity for the local community,” conditions that have made the region ripe for extremist influence. Unfortunately, “The alleged members of this mafia ... [have] their links to the ruling party and control of key port infrastructure” (Haysom (2018:7). Besides, the judicial system does not always fulfil its function; as Haysom (2018:7-8) asserts, “They have never been charged with trafficking or convicted as such. The nature of their relationship to the state we characterized as an elite pact.”

Therefore, the natural resources discovered in Cabo Delgado have become a curse instead of a blessing to the local populations. For example, the *Mail and Guardian* (2018:1) states:

Nearly a decade after rubies were first found in northern Mozambique; the discovery has proven a poisoned chalice, says traditional local ruler Cristiana Joaquim. Instead of riches and reward, what could have been a windfall has brought harassment, violence and even a local ban on farming.

Obviously, not all resources are easy to sell via illicit trading. However, according to Haysom (2018:10-11), many of these natural resources travel via illicit routes, involving migrants from various other African countries. “Some of these networks have strong ties with Southern Tanzania. At several points along the Tanzania-Mozambique border, traffickers ... [can] find routes” (Haysom, 2018:11). Elephant poachers from Niassa travel to Tanzania and heroin is carried to South Africa and other places. Human trafficking also occurs.

Haysom (2018:12) explains that “Migrants fleeing from recruitment by Al-Shabaab [the Somali extremist group], famine and poverty” have settled in Cabo Delgado. However, others have established “networks, [which] also laid the basis for ex-fighters to establish links with local communities – particularly in Mocímboa da Praia and Palma” (Haysom, 2018:12). To add to the problem, “The profits have not translated into basic services or broad employment opportunities. ... The state

has participated directly in the illicit economy. Northern Mozambique exhibits a classic compound set of factors that allow several problems to fester” (Haysom 2018:13-14).

The level of corruption amongst state employees at border posts is very high. Despite the apparently tight control, “Customs officers are allowing people to pass with such goods as guns, wildlife trophies, drugs and mineral resources, in exchange for bribes that amount to a decent income” (Haysom 2018:15). The proliferation of corruption has caused residents to question the legitimacy of the Mozambican authorities present on the ground (Funada-Classen 2012:30). Additionally, “Illicit trade [is] strongly socially and economically embedded in the north, and this makes it more difficult to disentangle them from the militant funding sources or shut them down entirely” (Haysom, 2018:21). As Haysom (2018:16) puts it, “This illicit economy has been facilitated by relationships between overtly corrupt (but never prosecuted) senior government figures and the businessmen making a killing from illicit trade.” Even foreign companies exploit and abuse “local people, with the backing from the state” (Haysom, 2018:16). Consequently, the illicit international trade routes have encouraged the increasing presence of Islamist extremists, which is discussed next.

1.4 The growing presence of Islamic extremists in Cabo Delgado

The initial extremist group to be established in northern Mozambique was Al-Sunnah wa Jama’ah (ASWJ) with “its origins in Somalia since 1991” (Vuuren, 2020:1). According to Vuuren (2020:1):

In Mozambique Al Sunna has been active militarily since October 2017, when they first attacked the town of Mocímboa da Praia, capital of the similarly named district within the Cabo Delgado province. However, research indicates that they may have been active in the Cabo Delgado province since at least 2015, albeit not under that name.

Habibe et al. (2020:11) state that the group “focussed its recruitment efforts both locally/nationally and abroad, notably Tanzania or the Great Lakes region.” Since then, the movement “has slowly built a resilient and diverse economic base in Mozambique, recruiting young men ... [and] providing them with capital to enter ... both the illicit and licit economies” (Haysom 2018:16-17). The initial intentions of the extremist leaders were disguised; they “began to recruit young people into their mosques and madrassas (rather than an armed movement) with the offer of business loans” (Haysom 2018:17). These young people could then invest the money as they wished.

According to Haysom (2018:17), ASWJ's recruits had generally not attended school beyond eighth grade. "All of them owned small businesses selling miscellaneous commodities, such as rice, sugar, and mobile-phone credit. At the same time, some of them were involved in illicit businesses, such as illegal ruby mining, elephant poaching and the smuggling of the proceeds of wildlife and mineral-resources crime." Over time, these men all developed their businesses into international and interregional trade. When the call to arms came, recruits were required to sell the assets they had acquired, presumably to fund the attacks that began in October 2017. "In the week before the Mocímboa firefight, young men across the towns of Cabo Delgado sold their stock, stores and houses and left their home areas to travel to Mocímboa da Praia" (Haysom 2018:18).

There is apparently a link between the Mozambican Islamic extremists and the Al-Shabaab group in Tanzania (Haysom 2018:18). Al-Shabaab is seeking to control the entire region from Kenya to northern Mozambique (Haysom 2018:22). The movement is "referred to with a generic term – *waloke wa Kiislamu* (born-again Muslims)" (Haysom 2018:19), and its members have a strong hatred for Christians.

1.5 Who is behind the Islamic attacks in northern Mozambique? Al-Sunnah wa Jama'ah (ASWJ), Al-Shabaab and the Islamic State (IS)

The confusion of who really is driving the Islamic extremists' attacks in Cabo Delgado and beyond is enormous when some call them Al-Sunnah Wa-Jama (ASWJ), others label them as Mozambican Al-Shabaab, and recently the Islamic State (IS) has appeared in the terror scene. Columbo (2019:3) stated that on "June 4, 2019, IS claims presence in northern Mozambique following alleged attack on June 2."

As Fabricius (2020a:1) underscores, although ASWJ has been the first insurgent Islamic group to emerge in the attacks in Cabo Delgado, "ASWJ has taken no public 'credit' for the attacks, the Islamic State (IS) ostensibly has." The answers to the following questions are still a mystery:

[IS] ... has so far claimed responsibility for 27 of the attacks, according to some security analysts. This raises questions about how IS and ASWJ are related. Is ASWJ the local affiliate of IS? Is IS simply claiming credit to boost its public stature, especially since the loss of face caused by the fall of its caliphate in Syria and Iraq?" (Fabricius 2020a:1).

In addition, another name given to the perpetrators of the Islamic insurgents is the Mozambican Al-Shabaab, because of its apparent link to the Somali terrorist organization (Ali 2008:1). Opperman (2018:1) states, "On 11 October 2018, an

article published in *Shabada News* gave way to speculations that the Mozambican Al-Shabaab has officially associated the group with the current violence in Northern Mozambique, attributed to cells ... referred to as 'Shabaab.'" Nevertheless, the Mozambican Al-Shabaab is different from other Islamic terrorist groups bearing the same name. As Opperman (2018:1) points out:

Initial attacks in October 2017 introduced al Ahlu Sunnah Wa-Jamo/Ansar al-Sunna as a group embedded in a geographical confined space seeking an alternative in religious custom and culture in Cabo Delgado. However, since the initial attacks, Shabaab cells remain blurred by the lack of a centrifugal ideology, structure, and leadership. An extremist ideology as a commonality between the cells cannot be discarded, but the lack of precise information implies that motivation for attacks remains speculative.

2. The extremists' activity in Cabo Delgado

Beginning in October 2017, there has been a "wave of violence in Cabo Delgado ... attacks on villages have continued sporadically" (Mavhinga 2018:1). Approximately 1,100 people were killed in the first year of violence (Opperman 2018:3) and an estimated 150,000 Mozambicans have been displaced. However, according to a report by *Nlabu* (2020:1) as of the date of its publication on 27 November 2020, there were

at least 424.000 individuals ... displaced as of late September, a 17 percent increase from the previous month. Of the total displaced, over 144,000 are in areas that are hard to reach due to security concerns.

VOA-News (2018:1) commented, "Residents of the affected area suggest the attackers include people from east and central Africa and have often forced local communities to observe Sharia law."

Pabst (2018:2) explains, "Ahlu Sunnah Wa-Jama kicked off its campaign of violence with attacks on police stations and government buildings, but quickly moved on to attacking villages and churches." The government responded with what President Nyusi himself described as a "ruthless" campaign that has included hundreds of arrests. Consequently, Pabst (2018:2) believes that "The current situation sounds like the recipe for a long-term, low-level insurgency." Although the government has control over the villages and towns, terrorist attacks are perpetrated as "hit and run" (Pabst 2018:2), that is, attacking swiftly and immediately running away to hide in the forests or across the border into Tanzania.

Many of the extremist fighters entered Mozambique from Tanzania. *VOA-News* (2018:1) reported, "Police in Tanzania have arrested 104 militants it accused of

planning to set up bases in neighbouring Mozambique. ... They say the suspects admitted they were going to Mozambique to join radical camps.”

On both sides of the border between Mozambique and Tanzania, police have sought to control the violence. Kenyan weekly newspaper *The East African*’s correspondent in Mozambique Emídio reported in 2018, “Armed Tanzanians are seeking to establish a base in Mozambique, police said Friday, after the arrest of dozens of suspected militants from Tanzania in connection with deadly Islamist attacks across the border” (Josine 2018:1). According to Fabricius (2020a:1), “Senior Kenyan prosecutors and analysts have said there are jihadist links all the way from Somalia, through Kenya and Tanzania, to Mozambique.”

As of late 2018, Mozambican authorities said they had arrested 470 suspected extremists, of whom 52 were Tanzanian (Opperman, 2018:3).



Figure 3. The police headquarters in Quassanga attacked and destroyed by Islamic insurgents on March 23, 2020. Source: Standard (2020:4).

The Mozambique government’s response to the attacks was swift but not decisive. The government deployed armed forces including Russian military contractors in an attempt to maintain order. However, periodic violence continued unabated.

Then, in late March 2020, ASWJ achieved its greatest military success, overrunning the port town of Mocímboa da Praia. The attack was carried out by both land and sea. The attackers captured the town’s military base, as was confirmed by a Mozambican police spokesperson (Fabricius 2020b:1; see Figure 3).

According to a report I received from a Christian missionary working in the region, the resulting devastation was terrible. Thousands fled for their lives, without anything other than their clothes. Hundreds of villages containing thousands of houses were burned to the ground, including the nearby *machambas* (small farming grounds) that provide food for the families.

The informant indicated that many people now prefer the risk of sleeping in the bush rather than going back to their homes. Alternatively, some agglomerate in the main towns such as Mocímboa da Praia, in homes that now have as many as 50 people living in them.

The local informant stated that the terrorists' tactic is to rapidly attack, spread terror, run away swiftly, and then return afterwards to make sure their plan worked out. Reportedly, they aim "to establish an Islamic caliphate based on Sharia Law" (Swart n.d.:11) in the resource-rich region of Cabo Delgado and southern Tanzania.

Furthermore, women, including church members, have been kidnapped and raped, according to Filho (2020:1). One of those abducted was Cacilda Elias Eugénio, wife of the senior pastor of the International Church in Mocímboa da Praia. In Namaluco, the Assemblies of God church was destroyed, and 109 houses of church members were also ruined. The killings have affected Christians from all denominations; however, the extremists' targets have been indiscriminate.

The United Nations High Commission for Refugees' delegate in Cabo Delgado, Eduardo Burmeister (2020:1), indicated that 100,000 people had been displaced throughout the province due to the recent escalation of violence. Burmeister stated that as of the date of his report (7 February 2020), "In total, at least 28 attacks were carried out in the province since the beginning of the year. The attacks have now spread across nine out of the 16 districts in Cabo Delgado." Mira (2020:1) claimed a total of "156,400 people affected by loss of property or forced to abandon home and land in search of safe locations." However, as mentioned above, the number has climbed to 424,000 displaced people (Nlabu, 2020:1), or even to more than half a million according to information provided by one on-site source (who requested not to be identified) in personal conversation. A recent Portuguese news report by *SIC Notícias* (2020) states that the situation is out of control, there are abandoned corpses and many children walking around lost in the forests because their parents were killed.

According to a BBC News/Africa report on 9 November 2020, "Militant Islamists beheaded more than 50 in Mozambique. ... The militants turned a football pitch in a village into an 'execution ground,' where they decapitated and chopped bodies" (Tembe 2020:1). The report indicated, "Up to 2,000 people have been killed and about 430,000 have been left homeless in the conflict in the mainly Muslim province. The militants are linked to the Islamic State (IS) group, giving it a foothold in southern Africa" (Tembe 2020:1).

Additionally, as the attacks spread towards southern districts of Cabo Delgado and came within 100 kilometres of the provincial capital, Pemba, thousands were fleeing to that city. The villages left behind in the face of the Islamic extremists' advances are now destroyed and abandoned. Most populations have no belongings and minimal provisions, including food, shelter, or personal identification documents.

In my function as deputy director of the World Evangelical Alliance's Religious Liberty Commission, I visited Pemba twice to meet with pastors in distress, on 1-6 August 2018 and 17-23 December 2019. The experience in Pemba was chaotic, with most hotels closed because the tourists who usually flock to the area due to its beautiful beaches and pleasant weather had stopped coming. Without tourists, the fishermen have few customers, as most local people have no resources to pay for fish as tourists do. Participants said that living conditions had worsened greatly due to the Islamic attacks, which had impeded business from flourishing. Just about two weeks before my visit in 2018, according to my local Christian missionary informant, the police had closed one mosque in Pemba after finding an arsenal of AK-47s, ammunition and other types of weapons there.

Even though the ASWJ extremists appear not to be specifically targeting Christians, many of those killed or displaced have been Christian. One participant showed a video from 24 June 2018, depicting ten young men who had been beheaded while leaving their Church Service (International Institute for Religious Freedom 2020:1).

In a seminar that I conducted in Pemba on 5 August 2018, several pastors spoke of how their members had been affected by the violence and killings. Surprisingly, all of them displayed the courage to continue their evangelistic work and plant new churches. They said, "If we die, we die for Christ." A local church member who had visited the town of Palma said that although there Christians experienced fear immediately after the attacks, many have returned to rebuild their homes. She and other informants said that Christians in general were engaging in fervent prayer and were encouraged to speak out about their faith in Jesus and establish new churches under the trees.

3. Factors contributing to the crisis

3.1 Wahhabism and its link to the militancy in Mozambique

Blanchard (2008:1) defines Wahhabism as "a puritanical form of Sunni Islam ... practiced in Saudi Arabia and Qatar, although it is much less rigidly enforced in the latter." "The word 'Wahhabi' is derived from the name of a Muslim scholar, Muhammad bin Abd al Wahhab, who lived in the Arabian Peninsula during the eighteenth century (1703-1791)" (Blanchard 2008:2). In present days "the term 'Wahhabism' is broadly applied outside of the Arabian Peninsula to refer to a Sunni Islamic movement that seeks to purify Islam" (Blanchard 2008:1).

The arrival and spread of Wahhabism in Mozambique represent the most recent of several historical transformations of Islam in this country (Perkins 2019:5). Wahhabism has been present in Mozambique since the 1960s. Bonate (2007:56) states that Wahhabism "began emerging in the 1960s [in Maputo]"

but was not accepted by the local chiefs in Northern Mozambique. However, in response to a 1976 government decree that outlawed associations, including religious entities, the Wahhabi group initiated a process to counter the government move (Bonate 2007:57). In a meeting held in the Anuaril Isslamo mosque in Maputo on 23 December 1978 and led by Abubacar Ismael Mangira, a decision was reached to create the *Conselho Islâmico de Moçambique* (Islamic Council of Mozambique) (Bonate 2007:57). In addition, Mozambican Muslims remained divided as many Muslim associations affiliated with a new organization, the Congresso Islâmico de Moçambique (Islamic Congress of Mozambique) (Bonate 2007:57). Despite the two competing Islamic organizations' efforts to unify Islam in Mozambique,

the Northern Mozambican Muslim leadership, perceived as both “un-modern” and either completely African “traditionalist” or following an Islam which had “syncretized” with these “traditions,” were not able to play any significant roles in the official Islamic public sphere or be considered as unequivocally and legitimately “Islamic” (Bonate 2007:57).

3.2 Stigmatization

The response to the attacks by Mozambique's armed forces and police has included widespread stigmatization of Muslims. According to Opperman (2018:1), the armed forces were “regularly targeting and harassing Muslim members” and as a result “Muslims have expressed concern about unwarranted prosecution in Cabo Delgado.” Trust in police enforcement is low, and “finger pointing and fear within communities inevitably lead to increased aggressive behaviour” (Opperman 2018:1).

When dealing with the situation, the Mozambican police frequently base their actions on religion, family connections and nationality rather than on facts that could help them gain convictions in criminal prosecutions. In this unpredictable context, local citizens can be expected to have little trust in outsiders, whether they are criminal culprits or representatives of humanitarian organizations (Opperman 2018:2).

3.3 Rumours and lack of reliable news

The local populations are reacting in panic (Opperman 2018:2). They do not comprehend the developments taking place around them. The fluidity of the situation is such that the people are unable to plan rational responses and instead act in unpredictable, diverse ways.

One reason for this attitude is the lack of reliable local information. Opperman (2018:2) commented:

A lack of verified and detailed information on Cabo Delgado is a result of the security sector releasing blurred statements coupled with media outlets lacking access and resources. . . . [The lack of detailed information] results in the proliferation of unverified or fake information which [tends] to inflate attacks, beheadings, and casualties.

Strangely, national, and international news agencies have been almost silent about the killings in northern Mozambique. National legislation may be partly responsible for this silence. The Mozambican Decree No 40/2018 of 23 July 2018 includes a statement that this law

establishes the legal framework for fees to be charged for registration, licensing, renewals, endorsements, advertising inserts by the print, radio and television media, including digital platforms, as well as for accreditation and accreditation of journalists and national correspondents, foreigners and autonomous collaborators, in the Republic of Mozambique.

This new legislation has made media activity in the region extremely difficult and expensive, “resulting in reporting being [overly] controlled, and not necessarily a shared and survival stream to those who need it the most: the people of Cabo Delgado”; moreover, the minimal media coverage has contributed to “the lukewarm response to the crisis by the regional and international community” (Opperman 2018:2).

3.4 Radicalization of local Muslims

Both Al-Shabaab’s influence and negative reactions to broad-brush enforcement tactics and unwarranted use of force are creating an ever-growing schism between the local population – or at least its Muslim component – and the Mozambican government. Opperman (2018:3) states:

Excessive use of force could lead to the affected families joining cell structures, refraining from sharing information on cell presence and planned attacks or food and shelter to cell members. Sheikh Saide Habibe, quoted in the *Mail and Guardian*, warned that “These young people begin to feel marginalised and seek to gain space, but . . . traditional leaders occupy this space, and they find in Al-Shabaab an opportunity to be realised.”

Opperman concludes that the extremist organization has “adapted to the new security plans so that it has influence today in northern Mozambique. It benefits from the discontent of the people and the injustice of governments.”

Mark Pabst (2018:2) agrees with this assessment, stating that the “attacks appear to have some sympathy, if not outright support, from a portion of the local population” and that “the government’s heavy-handed response could even increase sympathy for the militants among certain groups.” Amongst the Muslim population, there is an increasing preference for sharia law, “something unlikely to be popular in a religiously diverse province like Cabo Delgado” (Pabst 2018:2).

3.5 Oil and gas reserves

Pabst (2018:2), a senior correspondent for *Oil Security* magazine, stated that “The country’s newfound gas wealth has the potential to either improve the situation or make it worse.” He explains, “Mozambique is poised to become the next big thing in liquefied natural gas. If it fails to settle its security situation in the Cabo Delgado Province, it could also become the next big thing in African insurgencies” (Pabst 2018:1). Opperman (2018:3) noted that “the Mozambican Government does not want much international focus on the current instability, for fear of scaring off potential investors.”

4. Conclusion

Since ancient times, tribes inhabiting the northern region of Mozambique have been relatively independent in thought and action, with a tendency to embrace dark witchcraft involving supernatural powers. However, they have accommodated other religions such as Islam and Christianity. The wealth of natural resources and the availability of illicit trade routes have attracted Islamic extremists to the region. These extremists have perpetrated violence against Christians and also against Muslims who do not support their terrorist activities.

There appear to be two main reasons for the killings and violence in northern Mozambique. The first is the opportunity to acquire easy wealth to fund the extremists’ operations; the second is to gain increasing control over the entire area, with the eventual goal of imposing sharia law in the region. The extremist activity has had a severe negative impact on Christianity in the region; however, Christians persevere in their worship and Christian service.

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Responding to limitations of the public square

Barry W. Bussey¹

Abstract

True freedom is dependent upon respect for a diversity of views, including religious beliefs and practices. However, the law appears increasingly reluctant to accommodate religion. Instead, it seeks to force religion into its own image on sexual identity politics, by exerting legal pressure on religious communities to make them conform to the prevailing social norms. The Trinity Western University law school case in Canada vividly illustrates the current tensions between law and religion, which are likened to a cross-cultural interaction. Moving forward, we must choose between treating religion as the nemesis of equality and accepting differences within a pluralist democracy.

Keywords Accommodation of religion, law and religion, traditional marriage, public square, ideologies, sexual equality, conformity.

1. Introduction

“If liberty means anything at all,” George Orwell (1972:SM12) observed, “it means the right to tell people what they do not want to hear.” In an age of “de-platforming,” where speakers may be denied the right to speak if their message is considered unacceptable,² Orwell’s adage is as revolutionary today as it was prescient when he said it.

If freedom of religion means anything at all, it means the right to believe and practice what other people find objectionable on important matters of belief, human life and the public good. Religious freedom is possible only when mainstream society respects the fact that other people have different opinions and practices.

With an emphasis on the Canadian context, this paper discusses how law is seeking to force religion into its own image on sexual identity politics, by exerting legal pressure on religious communities to make them conform to prevailing social norms. This is the case even when the religious group has done nothing illegal. Such an imposition is an attempt to exclude non-compliant religious communities from the public square.

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² In Britain, for example, the National Union of Students has a “no-platforming” policy whereby “people or groups on a banned list for holding racist or fascist views are not given a platform to speak on student union premises” (Bell 2016).

First, I will consider a recent case before the Supreme Court of Canada (SCC) which illustrates the tensions between law and religion that Benjamin Berger describes as a “cross-cultural interaction.” Then I will consider two alternatives moving forward: to treat religion as the nemesis of equality, with resultant pressure either to nudge or coerce religion into conformity with secular norms, or to accept differences within a pluralist democracy.

2. Trinity Western University’s School of Law

Christians have been operating universities for a long time – at least since the sixth century (Riché 1978). Although secular law schools may not acknowledge this reality, they are, to a large extent, beneficiaries of a Christian heritage (Berman 2000:351). So it should not have been surprising when Trinity Western University (TWU), a private Christian university in British Columbia, Canada, envisioned a law school as part of its future expansion. Yet, even though Canada professes to be a multicultural society that celebrates diversity, the prospect of one small, faith-based school of law among eighteen secular, common law schools caused an unparalleled level of antagonism within the legal fraternity.

Despite vocal opposition from academics and journalists, the Federation of Law Societies of Canada (FLSC) gave “preliminary approval” for the law school in 2013. Days later, the British Columbia government also approved the proposal, noting it “met the degree program quality assessment criteria” (BC Government News 2013).

With the necessary approvals granted, what could possibly go wrong? Plenty, it turned out. Thanks to pressure from activists across the country (Fish 2014; Craig 2013; Newman 2014), three provincial law societies decided not to accredit the proposed school, leading to five years of legal challenges that culminated in two SCC decisions in 2018 (referred to collectively in this paper as *TWU* 2018).³ Ultimately, the SCC upheld the law societies’ position, in effect “de-platforming” a Christian university because its religious beliefs were seen to conflict with LGBTQ rights.

This hostility against TWU arose not because of concerns about the academic merits of the program, but because of the university’s faith-based policies. At issue was its “Community Covenant Agreement” (CCA), which, amongst other expectations, required all students to abstain from “sexual intimacy that violates the sacredness of marriage between a man and a woman.” This traditional definition of marriage stood in contrast to the secular view of marriage that was redefined in Canada in 2005 (*Civil Marriage Act* 2005). It was deemed discriminatory and offensive to the LGBTQ community. Prominent lawyer Clayton Ruby declared that “this

³ The decisions were *Law Society of British Columbia v. Trinity Western University*, [2018] 2 SCR 293, 2018 SCC 32 (hereinafter “LSBC v TWU 2018”) and *Trinity Western University v. Law Society of Upper Canada*, [2018] 2 SCR 453, 2018 SCC 33 (hereinafter “TWU v LSUC 2018”).

[policy] alone makes [TWU] incompetent to deliver legal education in the public interest” (Green 2013).

Ironically, TWU had faced a similar case in the late 1990s, when the British Columbia College of Teachers denied accreditation for TWU’s education degree because of the school’s beliefs on sexuality. In 2001 the Supreme Court of Canada ruled in TWU’s favour (*Trinity Western University v. British Columbia College of Teachers*, hereinafter “TWU 2001”). The Court urged respect for a “diversity of views,” affirming that “freedom of conscience and religion . . . co-exist with the right to equality” (paras 33, 25). But in 2018, the same Court insisted that the law societies had a “heightened duty to maintain equality” (*LSBC v TWU* 2018: para 150).⁴ This dramatic change in sentiment is indicative of a legal revolution unfolding against the accommodation of religion. It demonstrates that identity politics, not law, motivated the SCC’s 2018 decisions on TWU (Bussey 2018).⁵ Those decisions were the crowning result of opposition in the legal profession to religious institutions that do not accept current sexual moral norms.⁶

The implications are troubling, to say the least. Given the Court’s rejection of TWU’s law school proposal based on its religious beliefs, what is to prevent the profession from turning on those legal practitioners who hold the same “discriminatory” views?⁷ Although the direct judicial effects of this decision are restricted to the Canadian setting, Christian universities in other Western nations may well experience similar barriers to their operation, unless we can find a more productive way forward (see section 6). The perceived conflict between religious freedom and LGBTQ rights is pervasive in the contemporary West, making the TWU case and its ramifications relevant far beyond Canada’s borders.

3. TWU changes its policy

Less than two months after the 2018 SCC decisions, TWU’s Board of Governors decided that it would no longer require students to sign the CCA. TWU President Bob Kuhn (2018) stated that the university would continue to live out its “Christian

⁴ Meanwhile, the limitation on religious freedom was deemed “of minor significance” (*LSBC v TWU* 2018: paras 104 and 87).

⁵ Moreover, specific provincial and federal human rights exemptions, federal legislation (including protections in the *Civil Marriage Act* and *Income Tax Act*) and the TWU 2001 decision, reached on similar facts, all granted TWU the right to operate according to its religious beliefs. None of these proved to be adequate protection in the face of elite opposition.

⁶ The term “Sexular Age” may be applicable here. I used this term in my PhD dissertation to describe a socially complex convergence of sexual identity politics and radical individualism that demands societal approval and accommodation of sexual identity, even at the expense of other identities such as religious identity (Bussey 2019).

⁷ Faisal Bhabha (2016:283) warned that the denial of TWU’s law school “would be like saying ‘evangelical Christians are not welcome’ in the legal profession.”

identity, mission and ministry” while “simultaneously welcoming and affirming the unique value of each member of our diverse student body.” He further emphasized that even though the CCA would not be mandatory, the institution would “remain a Biblically-based, mission-focused, academically excellent University, fully committed to our foundational evangelical Christian principles.”

This was a stunning development, given the extent to which TWU had fought to maintain its code of conduct not once but twice, all the way to the SCC. However, critics were still unsatisfied with the concession, arguing that the covenant ought to be made optional for staff as well as students (Bouwman 2018; Craig 2018). Professor Richard Moon even expressed concern that “discriminating based on religious commitment raises similar problems as discriminating based on sexual orientation” (Brean and Selley 2018). These objections overlook the fact that TWU is a private, religious institution designed by and built for Christians. Indeed, rights claims are inflationary in their incremental demands for greater recognition and accommodation (Bussey 2016-2017:197, 200).

4. Law's religion

According to Benjamin Berger, the interaction of law and religion is not a juridical or a technical problem to be resolved by better laws but is “profitably understood” as a cross-cultural interaction that is “endlessly unstable and provocative” (2015:18). The “guiding metaphor,” says Berger, is jurisdiction: “the conceptual means of ‘mapping’ authorities within the legal world” (2015:46). Jurisdiction organizes and interprets territorial or spatial relations.

Law's organization of space includes the private-public divide. Private space is the area where “the state has the weakest claim to authority. The public [realm], by contrast, is the domain of state power and, concomitantly, is governed by the demands of public reason over personal interest or preference” (Berger 2015:48). When law interacts with religious practice, then religious freedom is subject to the court's ability to reconcile a certain practice within a given space (Berger 2015:50-51).

According to Berger, Canadian constitutional law's imagining or understanding of religion has three components: (1) religion is based within the individual; (2) religion is valuable and deserving of protection because it expresses personal autonomy; and (3) religion is a private matter centred on the individual's personal choices and preferences, not reason (Berger 2015:66).

In other words, law (at least according to Berger's characterization) assumes religion “is quintessentially private” (Berger 2015:98). Yet human experience has shown just the opposite: religion often takes on a very public function. As Rex Ahdar and Ian Leigh explain, “There is an ineradicable collective or communal dimension to religion. ... An individual's religious life is very much tied to and de-

pendent upon the health of the religious community to which that believer belongs” (2013:376; see also Domingo 2016). The failure to account for the public nature of religion is to the law’s detriment and has created confusion as to when or how religion or religious institutions may operate in the public square.

Berger’s explanation of law as culture suggests that law has a mesmerizing quality that seeks to fashion “religion in its own cultural image and likeness” (2015:19). In other words, law affirms or restricts religion according to its own preferences, whereby religion is seen as a private, individual choice. Berger’s insight allows us to better comprehend the complex machinations of law when it does not appreciate or respect religious claims for deference in managing institutional codes of conduct. If the law accepts the presuppositions of the sexual equality claimants that a certain code – as in the case of TWU – is discriminatory, then the law’s intuition, at least from Berger’s assessment, would be to force the institution into its likeness, demanding compliance with non-discriminatory principles. That is indeed what happened.

TWU’s decision to make the CCA voluntary seems to fulfil Berger’s observation that the law will remould religion into its own image. In effect, law is an instrument by which those in power seek to export their own ideology. In the minds of the legal elite, religion no longer merits a special status to demand accommodation when it runs counter to sexual identity politics.

5. Religion as nemesis

In an essay titled “Equality’s Nemesis?” Queen’s University law professor Beverley Baines (2006) advocates for an interventionist, three-pronged approach to deal with religion and sex equality. Although she writes in the context of women’s equality, her contentions are applicable to equality rights generally.

Baines asserts first that there should be a hierarchy of rights wherein religious and cultural claims are subject to the guarantee of equality. She states that “no reason exists to immunize [religious societies] from the constitutional guarantee of sex equality” (75). Her description accurately captures recent legal developments; as Matthew Harrington concludes, “It is quite clear that a new hierarchy of rights has emerged and that ‘equality’ is, in fact, at the top of the pyramid” (2019:340).

Second, Baines asserts that religious communities should operate jointly with the state in certain areas (77). If a member of a religious community finds that his or her equality right is not accepted by that religious community, then he or she can appeal to the state for redress.

Third, Baines advocates for the privatization of religion. Since religious communities are private by nature, she writes, they should not be given any special protections (78) such as the fundamental freedom of religion found in section 2 of the

Canadian Charter of Rights and Freedoms (hereinafter “the *Charter*”). Rather, religious communities should rely on the freedoms of expression and association. Unfortunately, this argument ignores the fact that religion is an enumerated ground in section 15 of the *Charter* (“equality before and under the law and equal protection and benefit of law”) and therefore has its own equality rights.

Framing religion as equality’s nemesis ignores its long sociopolitical history in promoting human rights (Witte and Green 2011). However, this diminution of religion is beginning to take shape, and Baines’ vision is not far from becoming reality. In the SCC case *Loyola High School v. Quebec (AG)*, (hereinafter “*Loyola*”), Justice Abella questioned whether a private, religious school should be allowed to teach from an “ethical framework” that contradicts “national values” (*Loyola* hearing 2014, transcript:7; webcast 11:27-12:10). Writing for the majority, Justice Abella went on to define those values as “equality, human rights and democracy.” She argued, “Religious freedom must therefore be understood in the context of a secular, multicultural and democratic society with a strong interest in protecting dignity and diversity, promoting equality, and ensuring the vitality of a common belief in human rights” (para 47, citations omitted). The groundwork is now set for future decisions to elaborate on how those “values” interact with religion – as, indeed, the SCC majority did in *TWU* 2018, to the detriment of religious freedom (para 41).

Writes Richard Moon, “If equality, including sexual orientation equality, is an important public value, it should be affirmed in the schools and should underpin classroom learning, even in the face of religiously based opposition from some parents” (2011:336). He insists that if religion wants to participate in the public square, it “must be treated as contestable and as open to public repudiation” (2011:337). Bruce MacDougall of the University of British Columbia echoes Moon’s position, arguing, “Religious ideology cannot be used to determine what people who are not of that religion can do or how they should lead their lives” (2000-2001:247-48).

There is an obvious problem with this line of argument, in that “religious ideology” in a pluralistic society has the same right as any other ideology to seek to advance a position in public discourse. Through a process of deliberative dialogue, society establishes its norms – but even when there is a consensus, debate does not suddenly stop. Public debate on issues must continue if we are to remain free and democratic. The fact that a particular opinion is rooted in a religious worldview should not prevent it from being considered.

MacDougall further contends that religions should not be able to maintain their religious views on marriage and sexuality even within their own communities. He suggests that “children being raised in a particular religious tradition should not be exposed to ideology that excludes and refuses to accommodate homosexuality in

their education. The state has an interest in all education of the young and this ideal should prevail” (2000-2001:248, footnote 63).

According to this line of argument, the distinction between private and public spheres suddenly becomes obsolete in the area of human sexuality. Rather, the public norm of human sexuality must prevail because “the state has an interest”. There is no room for the individual to recognize the sovereignty of God in matters of sexuality; instead, the sovereignty of the state is now supreme.⁸

Amongst many other problems, framing the issue this way fails to present a complete picture of the situation. From the very beginning, humanity has struggled with the issue of sovereignty, as states have demanded sole allegiance at the expense of the individual conscience. Liberal democracies replaced the absolutist state paradigm with one that intentionally leaves protected space for religious belief and practice. The special status given to religion was what made other rights possible – it was prototypical.

Indeed, virtually all of what we consider fundamental freedoms today had their origin in the protection of religion and its practice. Therefore, it is illogical to suggest that religious views that do not accept non-traditional sexual norms are somehow a “negative animus” (Corbett 2002:415) and not worthy of protection. Rather, there is an overt anti-religious bias here that seeks to cancel religion’s firmly established legal protection in matters of sexuality. Religion is now seen as the nemesis of equality.

6. The way forward

The legal community’s revolt against religious accommodation has created a heightened sense of incompatibility between the current legal norm on sexuality and the traditional religious sexual norm (as exemplified in the TWU case). Two crucial questions arise concerning how the law will address this crisis.

First, how should the law balance religious and secular interests going forward? The solution cannot be a zero-sum result where one is removed or restricted at the expense of the other. Many religious communities will certainly maintain their traditional teachings and practice on sexuality for some time to come. A two-thousand-year-old, foundational understanding of human relationships does not simply disappear overnight. Furthermore, an effort by a supposedly liberal society to im-

⁸ David Corbett (2002:415) has characterized the tension between religion and sexual orientation as “a struggle to protect our public policy from being infused with religious ideals for the purpose of denying a particular and disapproved group their equal place within Canadian society. ... It is a conflict between the fundamental principles of our secular state – the Rule of Law, the principle of equality, and the primacy of the Constitution on the one hand, and a religiously based negative animus against homosexuality on the other.”

pose a sexual ethic upon the traditional religious view strikes at the very heart of religion's status in the law.

Second, what does society do with a voluntary community of members who establish internal rules of conduct? The emerging consensus on liberalism's new moral understanding of sexuality will have to address the issue of whether religious communities may continue their internal governance on sexual lifestyles that are anchored in ancient religious texts, opinions and religious cultures.

I see three possibilities for the future of religion in the public squares of Western society.

6.1 Be strategic: Don't rock the boat, nudge it

The first possibility is a strategic approach that seeks to gradually nudge religion until it agrees with the mainstream. Academics who predict that religion will evolve into conformity with the "Sexular Age" advocate short-term accommodation rather than coercion. They assume that religious beliefs and practices will eventually coalesce into the new paradigm of equality – or, more accurately, uniformity.

Yale law professor William Eskridge (2011), for instance, suggests giving religious communities time and space to get on the "right side" of history. Eskridge points out that religious groups often change their views on moral issues over time. The United States has experienced such change on the issues of slavery, interracial marriage and civil rights – although in actuality, there was never uniformity in the religious community regarding support for the now-abandoned positions on any of these issues. In fact many leading anti-slavery voices came from within the religious community. Nevertheless, Eskridge sees indications that religious objections to sexual equality will fade over time.⁹

This approach appears to show respect for religion, but only temporarily. It presupposes that religion will eventually "get through" this transition or crisis period and reach a new paradigm. However, sexual norms have not been contested, at least in Christian circles, in the same way that slavery and racial relations were, nor can the theological and hermeneutical perspectives or traditions on these topics be equated.

At the same time, TWU's policy change as discussed above suggests that Eskridge's gradual approach could be successful.

6.2 Be dogmatic: No-holds-barred enforcement of state sexual norms

A second, more aggressive or dogmatic attitude contends that all religious exemptions should be removed; religious objections to sexual equality rights are seen as a threat

⁹ Robert Wintemute similarly predicts that religions, through the "courageous efforts of LGBT individuals working from within," will realize that "they have been wrong all these years" (2002:154).

to all groups. Advocates of this position, such as Harvard law professor Mark Tushnet (2016), insist that the public debate on sexuality has ended: marriage has been redefined, the culture wars are over, and the state ought to enforce sexual norms.

Proponents of this view are intent on destroying any differences of opinion and, in so doing, characterize all differences as offensive. Entities that refuse to acquiesce to political demands are deemed discriminatory and barred from operating in the public square. In short, opponents of religious accommodation require compliance with their social values. The British Columbia Court of Appeal declared that “there is no Charter or other legal right to be free from views that offend and contradict an individual’s strongly held beliefs” (*Trinity Western University v. The Law Society of British Columbia* 2016: para 188). That may change. The SCC has now shown itself sympathetic to sexual identity politics and creative in reaching decisions that it sees as consistent with the majority’s norms.

Examples of this approach include seeking to deny registered charitable status for religious groups who “discriminate” (see Bussey 2020); “de-platforming” conservative or religious speakers;¹⁰ or imposing a particular worldview as a precondition for funding, licensing, or other forms of state recognition.¹¹

However, carrying a heavy stick against religious communities that refuse to accept the state’s version of the good life has never been the approach of liberal democratic societies. Instead, liberalism’s strength has been the tradition of accommodation. The ability to compromise and allow space for religious expression has given us a rich legacy of freedom.

6.3 Be accepting of differences

Both Tushnet’s “hard line” strategy and Eskridge’s vision of voluntary change (without state enforcement) may well be frustrated. The reason is simple: history does not always go the way revolutionaries expect. Christianity has advocated for traditional, heterosexual marriage for two millennia. It is unlikely that this practice will ever disappear completely. Christians run organizations in accordance with principles which have endured for thousands of years. And if we are to remain a

¹⁰ For example, Michelangelo Signorile (2015) argues that mainstream media must prohibit religious leaders who support traditional marriage from appearing on their talk shows, “to stop legitimizing defamation as rational debate, particularly when genuine debates on many of these issues have long since ended.” According to Signorile, “that debate has come to an end. ... Every individual has a constitutional right to free speech – but no one has a right to appear on a television talk show” (126–37).

¹¹ In 2018, the Canadian federal government required charities to attest to certain partisan “values,” including support for abortion, in order to receive grants for summer jobs. Thousands of religious charities refused to “check the box” and were denied funding. As a result of the furor, the government modified the application forms for 2019 to remove the problematic attestation.

liberal democratic society, these organizations – and the individuals who operate them – are entitled to protection of their beliefs and practices.¹²

The ramifications of the emerging legal revolution against the current legal paradigm of accommodating religion will bring disruption to law, society and the democratic project. Such an environment will not encourage ongoing dialogue or respect between competing views of the public good. We need a deliberative approach that accepts dissonance as a strength, not a failure. The following suggestions introduce an attempt to move forward.

6.3.1 Religion matters

In 1927, an Ontario provincial judge opined, “Our conception of God is ... an integral part of our national life. So much is this the case that we are prepared to say that love to God and trust in Him are the very foundation of our nation’s greatness. ... We look upon the Bible as the basis of every good law in our country” (*R. v. Sterry* (jury charge), cited in Patrick 2010:144). Several decades later, Justice Ivan Rand of the SCC concurred that “a religious incident reverberates from one end of this country to the other, and there is nothing to which the ‘body politic of the Dominion’ is more sensitive” (*Saumur v. City of Quebec* 1953:97). Today, however, there is a troubling lack of respect for religion, especially among legal and political elites.

Religion matters. It is central to the identity of believers, and people are willing to pay a high personal cost to practice their beliefs. In the past, the law made sense of this reality by seeking accommodation. The present is no different. The law must be willing to engage in conversation that does not simply put religion in a private corner as if it had no bearing on our mutual well-being. Given the importance of religion to our increasingly diverse and pluralistic society, we must allow religious individuals and their institutions to operate without fear of state reprisal.

6.3.2 Legal knowledge of religion

The legal profession ought to reacquaint itself with religion and its societal impact. It is not helpful to characterize religion as equality’s nemesis when even a cursory review of history reminds us of religiously motivated individuals who sought to break down barriers of inequality. Examples include Mahatma Gandhi, Martin Luther King Jr. (1967), and Nellie McClung (1945), one of the “Famous Five” who championed women’s equality.

¹² “The individual and collective aspects of freedom of religion are indissolubly intertwined. The freedom of religion of individuals cannot flourish without freedom of religion for the organizations through which those individuals express their religious practices and through which they transmit their faith” (*Loyola* 2006:para 94, per Chief Justice McLachlin).

The law must understand the historic and current place of religion. Secular education will not “cure” people of religious belief or cause religion to disappear. Religion may change over time to some degree, but its basic principles will remain salient for a significant portion of society. By maintaining religion’s legal status, the state acknowledges that it can never be the sole determiner of individual conscience.¹³ Unanimous agreement will never be achieved on such intimate issues as human sexuality. Maintaining an attitude of tolerance is a practical application of the Golden Rule: do unto others as you would have them do unto you (Matt 7:12). All human beings, religious or non-religious, have the right to be respected and allowed to live as their consciences dictate. This is the very essence of liberalism.¹⁴

6.3.3 State neutrality

In his analysis cited earlier, Professor Berger rightly calls out the liberal democratic conceit that claims to be neutral toward religion when it is not. Law is not neutral. It remains a very interested player in maintaining a dominant position over and against any religious practice that challenges the current power structure. To the extent that a religious culture harmonizes with the law’s assumptions, religious practice will not be as problematic (2015:101). However, the moment religious practices are dissonant with the law’s underlying assumptions, then all bets are off. Law will at that moment become antagonistic.

Berger’s position is reminiscent of Roland Bainton’s observation that religious freedom “has come to depend upon a diversion of interest” (1958:15). As long as religious concerns are less important than other issues of state, the liberal state will leave religions alone. However, when religious issues become politically salient, one can expect the state to interfere in its own self-interest.

Given the historical, philosophical and practical reasons for accommodating religious beliefs and practices, the Western state would do well to remain truly neutral in matters of religion while permitting religion to retain a public role. Certainly, the state should not simply ignore the practical impact of religious practices, but it should be very reluctant to interfere with religion.¹⁵ When religious communities

¹³ This is true whether the state maintains accommodation of religion or not. There will always be individuals and communities who acknowledge a higher sovereign than the state, be it self or God.

¹⁴ What is considered to be on the “right side of history” today may not be so tomorrow. Liberal democratic pluralism ought to provide a check against dramatic swings in public or political sentiment by accommodating, as much as possible, the differing views of its citizens, religious or otherwise. William Galston warns that to remain liberal, democracies “must safeguard a sphere in which individuals and groups can act, without state interference, in ways that reflect their understanding of what gives meaning and value to their lives” (1999:907).

¹⁵ Justice LeBel stated, “The concept of neutrality allows churches and their members to play an important role in the public space where societal debates take place, while the state acts as an essentially

run enterprises such as universities, the state has a “democratic imperative,” to use the words of Justice Gascon in a 2015 SCC case, to ensure that it does not favour “certain religious groups and is hostile to others. It follows that the state may not, by expressing its own religious preference, promote the participation of believers to the exclusion of non-believers or vice versa” (*Mouvement laïque québécois v. Saguenay (City)* 2015: para 75).

7. Conclusion

Citizens of a modern Western democracy can expect dissonance between their beliefs and practices and those of fellow citizens, or even those of the state. The fact that another person maintains different beliefs and practices in private matters such as sexuality must not put that citizen, or the religious institution with which he or she is affiliated, at a disadvantage. As the SCC has declared:

[T]he demand for tolerance cannot be interpreted as the demand to approve of another person’s beliefs or practices. When we ask people to be tolerant of others, we do not ask them to abandon their personal convictions. We merely ask them to respect the rights, values and ways of being of those who may not share those convictions. . . . Learning about tolerance is therefore learning that other people’s entitlement to respect from us does not depend on whether their views accord with our own. (*Chamberlain v. Surrey School District No. 36* 2002:para 66)

When an institution such as TWU is private, peaceable, non-commercial, and presents no “grave and impending public danger” (*Thomas v. Collins* 1945), and when there is no evidence of abuse of private power (Inazu 2012:184), then the law should allow that institution to maintain an ambience in accordance with its religious sensibilities. The choice comes down to whether we are a free and democratic society that allows for differences and the expression of those differences, or whether we require sameness in all areas. Entities such as TWU depend upon the ability to lawfully discriminate for their very existence.

Unfortunately, TWU’s 2018 experience is a troubling harbinger for those religious organizations that are involved in government-regulated industries. The SCC has made it abundantly clear that state actors will be given deference in carrying out their statutory mandates. The ability of these state actors to self-define the “public interest,” as did the law societies in the TWU case, will mean a further expansion of government into the private sphere. What was once private has now become public.

neutral intermediary in relations between the various denominations and between those denominations and civil society.” *Congrégation des témoins de Jéhovah de St-Jérôme-Lafontaine v. Lafontaine* [2004], para 67.

The implications are sobering. Christopher J. Eberle observes, “Since freedom of religion underwrites pluralism, and since pluralism enhances the vitality of religion, members of religious groups have a deep and abiding interest in affirming a political culture that values freedom of religion and a constitutional order that enshrines it” (2002:44). Former Chief Justice Brian Dickson of the SCC stressed that the emphasis on individual conscience and individual judgement “lies at the heart of our democratic political tradition”; each citizen’s ability to “make free and informed decisions is the absolute prerequisite for the legitimacy, acceptability, and efficacy of our system of self-government” (*R. v. Big M Drug Mart Ltd.* 1985: para 122).

Therefore, limiting religious accommodation removes the religious individual’s incentive to support the political system itself. This possibility must not be taken lightly, as the health of our democratic project depends upon each citizen’s support.

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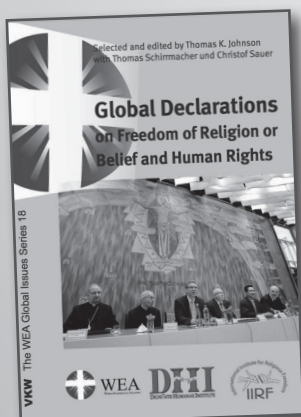
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Religious discrimination in the English workplace

Balancing competing interests

Mark Hill QC¹

Abstract

This paper considers discrimination in the workplace on the grounds of religion, as a matter of English law and practice. It explores the extent to which the law both prohibits discrimination on grounds of religion and also, in certain circumstances, permits discrimination on grounds of religion. It examines English jurisprudence under the Equality Act 2010 in which the provisions relating to direct and indirect discrimination have been applied in relation to religious claims. Through a review of cases decided in the Employment Tribunal, this paper addresses the scope of religion or belief as interpreted by the judiciary and the extent to which relief will be granted when those of a particular faith group are subject to particular disadvantage in the workplace.

Keywords Religious discrimination, United Kingdom, workplace, Equality Act 2010, freedom of religion or belief.

1. Introduction

Many countries have constitutional protection for religious freedom, whether contained in a bill of rights or other constitutional provision.² This protects religious adherents from state infringements of their religious rights. This may not, however, protect against discrimination by individuals and corporations. One of the most significant changes in the last decade to the way in which English law regulates religion has been the extension of discrimination law specifically to include religion or belief. The law on religious discrimination marks something of a watershed since previously only some religious groups were protected, indirectly, under racial discrimination laws.³ But this is not the

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² For a general introduction, see Mark Hill, “Locating the Rights to Freedom of Religion or Belief across Time and Territory,” in Silvio Ferrari, Mark Hill, et al, *The Routledge Handbook of Freedom of Religion or Belief* (Routledge, 2021).

³ *Mandla v. Dowell Lee* [1983] 2 AC 548; *Seide v. Gillette Industries Limited* [1980] IRLR 427; *J H Wal-*

only way in which discrimination law impacts upon religious groups. A number of specific exceptions from general prohibitions are afforded to religious groups. Thus, this article explores the extent to which English law both prohibits discrimination on grounds of religion and permits discrimination on grounds of religion.

Until fairly recently, English law only prohibited discrimination on grounds of race, sex and disability. In 2000, EU Directive 2000/78/EC stated that, in addition, discrimination on grounds of sexual orientation, age and religion or belief “should be prohibited throughout the Community” in employment and occupation. This led to new laws prohibiting discrimination on grounds of sexual orientation,⁴ age⁵ and religion or belief⁶ covering discrimination in relation to employment. Subsequent legislation has extended protection to cover the provision of goods and services and other related matters.⁷ The law is now to be found in the Equality Act 2010, which also protects gender reassignment, marriage and civil partnership, and pregnancy and maternity as “protected characteristics.”

Most of the case law has concerned discrimination in relation to employment and has been heard at the level of the Employment Tribunal and also occasionally by the Employment Appeal Tribunal.⁸ The Employment Tribunal is an independent tribunal that hears claims from applicants who maintain that an employer or potential employer has treated them unlawfully.⁹ The Employment Appeal Tribunal hears appeals from the Employment Tribunal.¹⁰ It should be noted that although the decisions of the Employment Tribunal do not serve as binding precedent for subsequent cases,¹¹ in practice later tribunal decisions often refer to earlier decisions and generally judges seek to ensure a level of consistency in decision making.

In July 2008, the Commission of the European Communities published a new draft Directive which would prohibit discrimination on grounds of disability, religion or belief, sexual orientation and age in relation to goods and services, housing, education, social protection, social security and social advantage.¹² In July 2009,

ker Limited v. Hussain and Others [1996] ICR 291; Crown Suppliers (PSA) Limited v. Dawkins [1993] ICR 517.

⁴ Employment Equality (Sexual Orientation) Regulations 2003.

⁵ Employment Equality (Age) Regulations 2006.

⁶ Employment Equality (Religion or Belief) Regulations 2003.

⁷ Equality Act 2006, Equality Act (Sexual Orientation) Regulations 2007.

⁸ For background, see Andrew Hambler, *Religious Expression in the Workplace and the Contested Role of Law* (Routledge, 2014).

⁹ Available at: <https://www.gov.uk/courts-tribunals/employment-tribunal>.

¹⁰ Available at: <https://www.gov.uk/courts-tribunals/employment-appeal-tribunal>.

¹¹ Secretary of State for Trade and Industry v. Cook [1997] ICR 288 at 292, Per Morison. See Halsbury's Laws of England, vol. 16: Employment, 4th ed. (2000), para. 684.

¹² See Michal Rynkowski, “The Background to the European Union Directive 2000/78/EC”, in Mark Hill (ed.), *Religion and Discrimination Law in the European Union* (Trier, 2012), 395.

the Swedish Presidency published an amended version. The proposal had a first (and only) reading in the European Parliament. The fact that this Directive has not been approved means that English law currently goes beyond existing European obligations, which only prohibit discrimination in the context of employment.¹³ However, the United Kingdom Supreme Court has held that, although domestic courts are not obliged to follow EU jurisprudence in discrimination claims not concerning employment, “for the sake of consistency and coherence it is highly desirable that we follow the same approach.”¹⁴ Thus, in *Lee v. Asbers Baking Company Limited*¹⁵ the Supreme Court held that there had been no direct discrimination where a bakery had refused to provide to a gay customer a cake, iced with the message “Support gay marriage,” because of the sincere religious beliefs of the bakery owners that same-sex marriage is inconsistent with Biblical teaching. Lady Hale observed that there was no less favourable treatment “because anyone else would have been treated in the same way ... the objection was to being required to promote the message on the cake.”¹⁶ Judicial attitudes to religious discrimination in the provision of goods and services provide a useful comparison when considering the approach to discrimination in the workplace on the ground of religion or belief.

2. Prohibiting discrimination on grounds of religion

Discrimination on grounds of religion or belief has been expressly forbidden since 2003 in relation to employment and since 2006 in relation to goods and services.¹⁷ The law is now to be found in the Equality Act 2010.¹⁸

One of the most contentious aspects of the new law on religious discrimination has been the vexed question of the definition of religion.¹⁹ Although the original EU Framework Directive gave no further definition of the terms “religion or belief,” the

¹³ Unlike the current law (discussed below) the Directive would have covered harassment on grounds of religion or belief in relation to goods and services.

¹⁴ *Bull v. Hall* [2013] UKSC 83, para. 29.

¹⁵ [2018] UKSC 49. A fuller discussion of this recent judgment is beyond the scope of this article. It received a high level of media publicity, but was ultimately determined on the grounds of freedom of expression (compelled speech) rather than discrimination in the provision of goods and services.

¹⁶ Para. 47.

¹⁷ Employment Equality (Religion or Belief) Regulations 2003 SI 2003/1660; Equality Act 2006 Part 2.

¹⁸ For an overview, see Lucy Vickers, *Religious Freedom, Religious Discrimination and the Workplace*, 2nd ed. (Oxford: Hart Publishing, 2016); Peter Edge and Lucy Vickers, ‘Review of Equality and Human Rights Law Relating to Religion or Belief’, Equality and Human Rights Commission Research Report 97 (2015).

¹⁹ See Peter Griffith, “Protecting the Absence of Religious Belief? The New Definition of Religion or Belief in Equality Legislation,” *Religion & Human Rights* 3, no. 2 (2007): 149; Russell Sandberg, “A Question of Belief,” in Nick Spencer (ed.), *Religion and Law* (Theos, 2012), 51; John Adentire, *Religious Beliefs and Conscientious Exemptions in a Liberal State* (Oxford: Hart Publishing, 2019).

2003 Regulations originally defined ‘religion or belief’ as any “religion, religious belief, or similar philosophical belief.”²⁰

Early employment tribunal decisions suggested that the Regulations took a broad conception of “religion” and a narrow conception of “belief.” *Hussain v. Bhuller Bros*,²¹ for instance, found that “attendance at home for bereavement purposes formed part of the Claimant’s religion or religious belief” and seemed to go further than current human rights principles in recognizing that “If a person genuinely believes that his faith requires a certain course of action, then that is sufficient to make it part of his religion.”²²

By contrast, claims were excluded on the basis that the belief professed was not a “similar philosophical belief.” In *Williams v. South Central Limited*,²³ loyalty to a national flag or to one’s native country did not constitute “a religious belief, or similar philosophical belief”; while in *Baggs v. Fudge*²⁴ it was held that discrimination on the basis that someone was a member of the British National Party (BNP) was outside the scope of the Regulations. The BNP was a political party and not a “religion, or a set of religious beliefs, or a set of similar philosophical beliefs”.

The Equality Act 2006²⁵ has changed the definition explicitly to include lack of religion or belief and to remove the requirement that philosophical beliefs needed to be “similar” to religious ones in order to be protected. The definition provided in section 10 of the Equality Act 2010 is in substance the same as in the Equality Act 2006.

In *Grainger PLC v. Nicholson*,²⁶ the Employment Appeal Tribunal concluded that an asserted belief in man-made climate change, together with the alleged resulting moral imperatives arising from it, was capable of constituting a “philosophical belief” for the purpose of the 2003 Regulations provided that (i) it was genuinely held; (ii) it was a belief and not merely an opinion or viewpoint based on the present state of information available; (iii) it was a belief as to a weighty and substantial aspect of human life and behaviour; (iv) it attained a certain level of cogency, seriousness, cohesion and importance; and (v) it was worthy of respect in a democratic society, was compatible with human dignity and did not conflict with the fundamental rights of others. Mr Justice Burton held that European Court of Human Rights (ECtHR) jurisprudence was directly relevant. Employment Tribunal Chairs have considered the *Grainger v. Nicholson* tests to be met in cases concern-

²⁰ Employment Equality (Religion or Belief) Regulations 2003, reg 2(1).

²¹ ET, Case no: 1806638/2004 (5 July 2005).

²² Compare *Arrowsmith v. United Kingdom* (1981) 3 EHRR 218.

²³ ET, Case no: 2306989/2003 (16 June 2004).

²⁴ ET, Case no: 1400114/2005 (23 Mar. 2005).

²⁵ Equality Act ss. 44, 77(1).

²⁶ [2009] UKEAT 0219/09/ZT (3 Nov. 2009).

ing: beliefs in spiritualism and psychic powers;²⁷ anti-fox hunting beliefs;²⁸ beliefs in the virtue of public service broadcasting;²⁹ and humanist beliefs.³⁰ In contrast, other Employment Tribunal Chairs have concluded that the tests have not been met in cases concerning beliefs in conspiracy theories regarding 9/11,³¹ a belief that a poppy should be worn during the week prior to Remembrance Sunday,³² and Marx-ist / Trotskyite beliefs held by trade union members.³³

Given the adoption of the ECtHR jurisprudence, it would appear that the decision in *Baggs v. Fudge* stating that political beliefs are unprotected is no longer good law.³⁴ Tribunals have suggested that some political beliefs may be protected. In *Kelly v. Unison*³⁵ it was suggested that a distinction could be drawn between “political beliefs which involve the objective of the creation of a legally binding structure by power or government regulating others,” which are not protected, and the beliefs that “are ‘expressed by his own practice but where he has no ambition to impose his scheme on others’”, which may be protected.³⁶ However, this distinction has not found favour with subsequent Employment Tribunal decisions. In *Maistry v. The BBC*,³⁷ in reaching its conclusion that a belief in public service broadcasting could be a philosophical belief, the Tribunal stated that he did not accept that the claimant’s belief was a political opinion or based on a political philosophy. However, he commented that “even if it had been, the appellate courts have not yet definitely determined that question”.³⁸

More recently, the case of *Forstater v. CDG Europe and Others*³⁹ concerned the claimant’s belief that sex is biologically immutable: her contention was that her opinions constituted a philosophical belief and she had been discriminated against because of them. The judge considered that “the Claimant’s view, in its absolutist

²⁷ Greater Manchester Police Authority v. Power [2009] EAT 0434/09/DA (12 Nov. 2009).

²⁸ Hashman v. Milton Park (Dorset) Ltd [2011] ET 3105555/2009 (31 Jan. 2011).

²⁹ Maistry v. The BBC [2011] ET 1213142/2010 (14 Feb. 2011).

³⁰ Streathfield v. London Philharmonic Orchestra Ltd [2012] 2390772/2011 (22 May 2012).

³¹ Farrell v. South Yorkshire Police Authority [2011] ET 2803805/2010 (24 May 2011).

³² Lisk v. Shield Guardian Co Ltd & Others [2011] ET 3300873/2011 (14 Sept. 2011).

³³ Kelly v. Unison [2009] ET 2203854/08 (22 Dec. 2009).

³⁴ Political beliefs are considered to be protected under Article 9 in the ECHR jurisprudence; see *X v. Austria* (1963) 13 CD 42.

³⁵ [2009] ET 2203854/08 (22 Dec. 2009).

³⁶ Para. 114.

³⁷ [2011] ET 1213142/2010 (14 Feb. 2011). In a judgment of the Employment Tribunal (Scotland), it was held that a belief in Scottish independence does amount to a philosophical belief for the purposes of the Equality Act 2010: *McEleney v Ministry of Defence* [2018] ET S/4105347/2017.

³⁸ At para. 19. As to the status of vegetarianism, see *Conisbee v Crossley Farms Ltd*, unreported, 6 Sept. 2019, discussed in Frank Cranmer and Russell Sandberg, “A Critique of the Decision in *Conisbee That Vegetarianism Is Not ‘a Belief,’*” (2020) 22 (1) Ecclesiastical L.J. 36.

³⁹ Case No. 2200909/2019.

nature, is incompatible with human dignity and fundamental rights of others”;⁴⁰ adding “people cannot expect to be protected if their core belief involves violating others’ dignity and/or creating an intimidating, hostile, degrading, humiliating or offensive environment for them.”⁴¹ A similar decision was reached in *Mackereth v. Department for Work and Pensions and Another*.⁴² In that case, also the rights of transgender individuals not to be discriminated against prevailed against the religious sensibilities of the doctor.

A different approach was taken by the High Court in *Miller v. College of Policing and Another*,⁴³ which concerned the lawfulness of the College’s operational guidance on “non-criminal hate speech.” Having posted a number of tweets, the claimant was contacted by a police officer and warned that if his tweeting escalated it may be treated as a criminal offence. The judge held:

The effect of the police turning up at his place of work because of his political opinions must not be underestimated. To do so would be to undervalue a cardinal democratic freedom. In this country we have never had a Cheka, a Gestapo or a Stasi. We have never lived in an Orwellian society ... the police’s actions, taken as a whole, had a chilling effect on his right to freedom of expression. That is an interference for the purposes of Article 10(1).⁴⁴

It has been argued that, in respect of *Miller*, whilst the claimant’s right to speak on transgender issues was protected by Article 10, it does not follow that the same views would qualify as a philosophical belief under the Equality Act 2010.⁴⁵ In other words, freedom of expression is one thing, protecting the belief that underpins the expression is another. Note also *JV v AM*,⁴⁶ which concerned private law proceedings between the mother and father of five children, the father having left the family home in order to live as a transgender woman. The family were Charedi Jews, which the judge described as “ultra-Orthodox.” Accommodating transgender people within the community was said to be entirely inconsistent with Charedi beliefs, such that the strong views of the community were that the father should have no contact with the children. The judge observed:

⁴⁰ Para. 84.

⁴¹ Para. 87.

⁴² Case no: 1304602/2018.

⁴³ [2020] EWHC 225 (Admin).

⁴⁴ Paras. 259-261.

⁴⁵ See Paul Johnson, “Gender Critical’ Beliefs and the European Convention on Human Rights,” *European Human Rights Law Review* 2 (2020):120.

⁴⁶ [2020] EWFC 3.

Many would disagree with this approach. Indeed, it is offensive to those who believe in a tolerant, diverse, pluralistic society. In a mature society, however, accommodations have to be found, and this includes recognising and respecting religious and cultural beliefs that are outside what might loosely be called “mainstream opinion.”⁴⁷

The public debate concerning the clash of rights, including transgender issues, will doubtless continue: it will ultimately be for the courts to determine where the balance should be struck on a case-by-case basis.

3. Direct discrimination

Direct discrimination occurs where A treats B less favourably (because of religion or belief) than they would treat others in circumstances which are materially the same.⁴⁸ This would apply, for instance, if A refuses to offer the job to B because B is a Hindu, if A sacks B because B's wife is an atheist, or if A refuses to teach B because he thinks B is a Muslim. A can discriminate against B even if A and B are of the same religion, provided that A discriminates on the grounds of B's religion or belief and not A's own religion or belief.⁴⁹

There is no general defence of justification to direct discrimination.⁵⁰ The claimant must prove facts from which the Tribunal could conclude that unlawful discrimination has occurred. If the claimant makes such a *prima facie* case, then the burden of proof passes to the respondent. In direct discrimination cases, the respondent can prove that there was no discrimination but cannot justify the discrimination.⁵¹

Direct discrimination claims have seldom been successful. However, *Bodi v. Teletext*⁵² provides one exception to this rule. Bodi claimed that he had not been short-listed for the job of Duty Editor for Teletext on the grounds of his Asian race or Muslim religion; he compared his treatment with that of the short-listed candi-

⁴⁷ Para. 3.

⁴⁸ Equality Act 2010, s. 13. Prior to the Equality Act 2010, the requirement was that direct discrimination needed to be “on grounds of religion or belief”. The Equality Act 2010 replaces the words “on grounds of” with “because of”, and according to the Explanatory Notes, this had the intention not of changing the meaning but of making the legislation more accessible: See Equality Act 2010 Explanatory Notes, para. 61.

⁴⁹ This is not explicitly stated in the Equality Act 2010 due to the broadness of the new definition of direct discrimination: See Equality Act 2010 Explanatory Notes, para. 59. Under the former law, this was explicit: Employment Equality (Religion or Belief) Regulations 2003, regulation 3(1)(a); Equality Act 2006, s. 45(1).

⁵⁰ However, the Supreme Court has held that direct discrimination can be justified in relation to the protected characteristic of disability: *Seldon v. Clarkson Wright and Jones* [2012] UKSC 16.

⁵¹ The court or tribunal must be satisfied that the explanation for the less favourable treatment was discriminatory: see *Ladele v. London Borough of Islington* [2009] EWCA (Civ) 1357: para. 30.

⁵² ET, Case no: 3300497/2005 (13-14 Oct. 2005).

dates with equivalent or lesser experience. The Employment Tribunal found that Bodi had been directly discriminated against on grounds of race and/or religion.

Most other direct discrimination cases fail because unlike *Bodi* the claimant is unable to make a prima facie case. The Employment Appeal Tribunal has found that if the employer's objection is to an employee inappropriately promoting his religion (rather than to the employee's religion per se), then there is no direct discrimination.⁵³

Tribunals have found that in order to establish that there has been discrimination on grounds of religion or belief, the tribunal must be satisfied that the prohibited ground is one of the significant reasons for the treatment, 'significant' meaning more than trivial.⁵⁴ For instance,⁵⁵ in *Ferri v. Key Languages Limited*⁵⁶ a Roman Catholic was told not to wear certain necklaces at work as they were rather loud and overtly religious. She was later dismissed due to alleged poor performance. She claimed that the dismissal constituted direct discrimination. The Tribunal found that she had not made her case: she had not proved that she was sacked for her religious belief rather than her poor performance. The Court of Appeal in *Ladele v. London Borough of Islington*⁵⁷ stated that the acts of alleged discrimination must be "motivated" by the claimant's religious beliefs.⁵⁸ A failure to accommodate religious difference rather than a complaint that the claimant had been discriminated against because of that difference will not amount to direct discrimination. Treating people in precisely the same way cannot constitute direct discrimination.⁵⁹

Other cases have failed because the claimant has not couched his claim as religious discrimination as such. For instance,⁶⁰ in *Devine v. Home Office*⁶¹ Devine claimed that he had been rejected for a job at the Home Office due to his sympathy

⁵³ Chondol v. Liverpool City Council [2009] UKEAT/0298/08 (11 Feb. 2009). See also Monaghan v. Leicester Young Men's Christian Association [2004] Employment Tribunal Case no. 1901839/2004 (26 Nov. 2004).

⁵⁴ Ladele v. London Borough of Islington [2008] EAT Case no: UKEAT/0453/08/RN (10 Dec. 2008).

⁵⁵ See also Mohamed v. Virgin Trains ET, Case no: 2201814/2004 (12-14 Oct. 2004; 20 May 2005); EAT (2006) WL 25224803 (30 Aug. 2006).

⁵⁶ ET, Case no. 2302172/2004 (12 July 2004).

⁵⁷ [2009] EWCA (Civ) 1357.

⁵⁸ Para. 36. The Court of Appeal also stated that remarks must be taken in context. Lord Justice Dyson rejected what he perceived to be "a pedantically literal, unrealistic or a contextual interpretation" of a comment by a line manager's that it was wrong to "be accommodating people's religious beliefs in the Registry Services". He held that this did not show that she was motivated by the claimant's religious beliefs. See para. 35.

⁵⁹ Para. 29. In *Eweida and Others v. United Kingdom* (2013) 57 EHRR 8, the Court held that the direct discrimination claim brought by Ladele was inadmissible since the applicant had failed to exhaust domestic remedies: para. 55.

⁶⁰ See also Harris v. NKL Automotive Ltd & Anor [2007] UKEAT/0134/07/DM; 2007 WL 2817981 (3 Oct. 2007).

⁶¹ ET Case no: 2302061/2004 (9 Aug. 2004).

for underprivileged asylum seekers. He claimed that he had been discriminated on grounds of religion or belief since his care for disadvantaged people was a demonstration of the Christian virtue of charity. The Tribunal found his claim to be “far too vague and ill-defined to amount to a case to answer for.” Similarly, in *McClintock v. Department of Constitutional Affairs*,⁶² concerning a Lord Justice of the Peace who resigned since he could not in conscience agree to place children with same-sex couples, both the Employment Tribunal and the Employment Appeal Tribunal held that there had been no direct discrimination since McClintock had never made it plain that his objection was underscored by conscientious or religious objection.

The distinction between direct and indirect discrimination was discussed by the Supreme Court in *Bull v. Hall*.⁶³ The case concerned whether refusing it was discrimination on grounds of sexual orientation to refuse to provide a double-bed room in their private hotel to a couple in a civil partnership, on the grounds that as Christians they believed that sexual activity should take place only within the context of (heterosexual) marriage. The Supreme Court, though unanimous in dismissing the appeal, was divided as to whether the discrimination complained of was direct or indirect. Lady Hale, Lord Kerr and Lord Toulson held that the appellants’ policy constituted direct discrimination on grounds of sexual orientation. Lord Neuberger and Lord Hughes held that the appellants’ policy constituted indirect discrimination. Lord Hughes held that the sexual orientation was not the ground for the less favourable treatment; the ground was that they were unmarried.⁶⁴

4. Indirect Discrimination

Indirect discrimination occurs where A applies or would apply a provision, criterion or practice (a PCP) equally (i) which puts, or would put, persons of B’s religion or belief at a particular disadvantage compared with others; (ii) which puts, or would put, B at that disadvantage; and (iii) which A cannot show to be a proportionate means of achieving a legitimate aim.⁶⁵ For example, A applies ‘no headwear’ policy to staff. B, an employee, is a Sikh. This rule disadvantages Sikhs in general and B in particular.

The key point about indirect discrimination is that it can be justified, for example, by security or health and safety concerns. Its operation is therefore similar to the analysis of the right to manifest under Article 9, where the focus is on interference rather than justification. Indirect discrimination is more common than direct discrimination and there have been some successful cases, including the first case

⁶² [2007] UKEAT/0223/07/CEA (31 Oct. 2007).

⁶³ [2013] UKSC 83.

⁶⁴ Para. 91.

⁶⁵ Equality Act 2010, s. 19.

argued under the goods and services provisions of the Equality Act 2006, *R (on the application of Watkins-Singh) v. The Governing Body of Aberdare Girls' High School*.⁶⁶ The jurisprudence on discrimination in the provision of goods and services informs the approach to the case law concerning discrimination in the workplace and is worthy of study.

Watkins-Singh concerned a fourteen-year-old girl of Punjabi-Welsh heritage who was told to remove her Kara bangle⁶⁷ at school. While the school saw the case as concerning Article 9, Watkins-Singh's legal team argued that the refusal to allow Watkins-Singh to wear the Kara at school was unlawful as indirect unjustified race and religious discrimination contrary to the Race Relations Act 1976 and the Equality Act 2006.

In relation to the indirect discrimination claim, Mr Justice Silber noted that it was not disputed that Sikhs were both a racial and religious group⁶⁸ and that the school's uniform policy constituted a provision, criterion or practice which had a disparate impact upon pupils who shared Watkins-Singh's race and religion compared with those "pupils whose religious beliefs or racial beliefs were not compromised by the uniform code on the issue of the Kara or any other similar item of jewellery".⁶⁹ Mr Justice Silber rejected the defendant's contention that there would only be a "particular disadvantage" where a member of the group is prevented from wearing something that they are required to wear.⁷⁰ Rather, the judge concluded that a "particular disadvantage" would occur – but would not only occur – where a pupil is forbidden from wearing an item where "that person genuinely believed for reasonable grounds that wearing this item was a matter of exceptional importance to this or her racial identity or his or her religious belief" and where "the wearing of the item can be shown objectively to be of exceptional importance to his or her religion or race, even if the wearing of the article is not an actual requirement of that person's religion or race".⁷¹ He concluded that both these subjective and objective elements were satisfied on the facts of the case: nothing had been suggested to undermine the truthfulness of Watkins-Singh's comments⁷² and the wearing of the item could be shown to be of exceptional importance to her religion and race as a Sikh even if not a requirement of the religion or race.⁷³

Having decided that there was a particular disadvantage, Mr Justice Silber turned to the question of justification, holding that the indirect discrimination was

⁶⁶ [2008] EWHC (Admin) 1865.

⁶⁷ The Kara bangle is a steel bracelet worn as a matter of obligation by all initiated Sikhs and as a gesture of solidarity by many uninitiated Sikhs.

⁶⁸ *Mandla v. Dowell Lee* [1983] 2 AC 548; Equality Act 2006, s. 44(a).

⁶⁹ Para. 46.

⁷⁰ Paras. 51-55.

⁷¹ Para. 56B.

⁷² Paras. 59-62.

⁷³ Paras. 63-66.

not justified by a legitimate aim. He held that it could not be said that allowing pupils to wear a Kara caused substantial difficulties because pupils may stand out, nor that it undermines the uniform policy's aim of fostering community spirit, because the Kara is small and is usually hidden by a long-sleeve sweater. Moreover, it could not be said that the ban was justified in that it minimized pressures resulting from wealth and style. The claim of indirect discrimination therefore succeeded. The contrast between Mr Justice Silber's judgement and the much more restrictive approach taken in the Article 9 case law⁷⁴ has led commentators to question whether the litigants may be best advised to argue discrimination law claims in preference to Article 9 claims, at least in relation to the wearing of religious dress and symbols.⁷⁵

A further example of a successful claim of indirect discrimination in relation to religious dress and symbols is the Employment Tribunal's decision in *Noah v. Sarah Desrosiers (Wedge)*.⁷⁶ The claimant, Mrs Noah, applied for a job as an assistant stylist at the respondent's hairdressing salon. When Noah attended the interview wearing a headscarf, the interview was terminated on the basis that the hair salon was known for "ultra modern" hair styles which staff were supposed to display to clients. No other person was ultimately appointed to the job. The Tribunal held the provision, criterion or practice (PCP) that an employee would be required to display their hair at work for at least some of the time put persons of the same religion as the claimant at a particular disadvantage and disadvantaged the claimant notwithstanding the fact that she would not in fact have been offered a job given that no assistant stylist was ever appointed. The 2003 regulations sought to make unlawful discrimination in relation to job applicants and did not merely make reference to whether or not they were offered a job but also covered discrimination in relation to other arrangements made as part of the recruitment process. This indirect discrimination was not justified. Although it was reasonable for the respondent to take the view that the issue posed a significant risk to her business, too much weight was accorded to that concern.

Another area where the law on indirect discrimination has had a significant impact is in relation to making employees work on their holy day.⁷⁷ For instance,⁷⁸ in *Fugler v. MacMillan-London Hairstudios Limited*,⁷⁹ a new "no Saturdays off work" rule at a hairdressers was held to constitute indirect discrimination since this put Jews at a disadvantage and actually put the Jewish claimant at a disadvan-

⁷⁴ See Part II.

⁷⁵ Russell Sandberg, "The Changing Position of Religious Minorities in English Law: The Legacy of Be-gum," in Ralph Grillo et al. (eds.), *Legal Practice and Cultural Diversity* (Ashgate, 2009), 267.

⁷⁶ [2008] ET, Case no. 2201867/07 (29 May 2008).

⁷⁷ However, see the litigation culminating in *Mba v. Mayor and Burgesses of the London Borough of Mer-ton* [2013] EWCA (Civ) 1562.

⁷⁸ See also *Williams-Drabble v. Pathway Care Solutions* ET, Case no: 2601718/2004 (2 Dec. 2004).

⁷⁹ ET, Case no: 2205090/2004 (21-23 Jun. 2005).

tage on a particular Saturday. Although serving clients on a Saturday was a legitimate aim, the employers should have considered how or if they could rearrange Fugler's duties and customers for that Saturday.

However, many indirect discrimination claims fail because the respondent can justify the discrimination. For instance, in *Azmi v. Kirekles Metropolitan Council*,⁸⁰ concerning a teaching assistant who was suspended for insisting on wearing a full-face veil when male members of staff were present contrary to a school instruction not to wear the full-face veil when teaching children, both the Employment Tribunal and the Employment Appeal Tribunal held that the indirect discrimination was justified. Although the "no face-veil when teaching rule" put Muslims at a disadvantage and actually put Azmi at a disadvantage, it could be justified as a proportionate means of achieving the legitimate aim of children being taught properly.

In *Ladele v. London Borough of Islington*,⁸¹ in respect of a registrar refused on grounds of conscience to register civil partnership ceremonies, the Court of Appeal held that although there was no doubt that the Council's policy decision to designate all registrars as civil partnership registrars put a person like Ladele at a disadvantage, this was justified.⁸² The "only way" in which the Council could have achieved their aim of promoting equal opportunities and requiring its employees to act in a non-discriminatory way was to require all registrars to conduct civil partnerships.⁸³ For Lord Justice Dyson, the aim of the Council's equality policy "was of general, indeed overarching, policy significance [having] fundamental human rights, equality and diversity implications, whereas the effect on Ms Ladele of implementing the policy did not impinge on her religious beliefs: she remained free to hold those beliefs, and free to worship as she wished".⁸⁴

Ladele was followed in *McFarlane v. Relate*⁸⁵ concerning a counsellor who refused on grounds of his Christian beliefs to counsel same-sex couples on sexual matters. He originally worked in couples counselling but volunteered to undertake a diploma course in psycho-sexual therapy. When he asked to be exempt from advising same-sex couples on sexual matters, he was told that he had to comply with Relate's equal opportunities policy and was later dismissed. In terms of indirect discrimination, the Court of Appeal found *Ladele* to be definitive on this point.⁸⁶ It

⁸⁰ ET, Case no: 1801450/06 (6 Oct. 2006); [2007] UKEAT 0009 07 30003 (30 Mar. 2007).

⁸¹ [2009] EWCA (Civ) 1357.

⁸² At para. 43.

⁸³ At paras. 45, 46 and 50.

⁸⁴ At para. 51. Lord Justice Dyson held that this conclusion was reinforced by Article 9 of the ECHR (see paras. 54-61).

⁸⁵ [2010] EWCA (Civ) 880.

⁸⁶ The application was also noteworthy because the case was supported by a witness statement by the former Archbishop of Canterbury, Lord Carey of Clifton, in which he argued for "a specially constituted

was held that, although McFarlane had been disadvantaged, the employer's actions had had a legitimate aim (the provision of counselling services to all sections of the community regardless of their sexual orientation) and was proportionate.

The decisions in *Ladele* and *McFarlane* were both appealed to the European Court of Human Rights in *Eweida and Others v. United Kingdom*⁸⁷ contending that the United Kingdom had breached Article 9 because domestic law had failed adequately to protect their right to manifest their religion.⁸⁸ In respect of *Ladele*, the ECtHR held that any discrimination on grounds of religion had been justified. The Council's actions had a legitimate aim and the means pursued was proportionate.⁸⁹ It was noted that the Court "generally allows the national authorities a wide margin of appreciation when it comes to striking a balance between competing Convention rights".⁹⁰ This wide margin of appreciation had not been exceeded in this case. In respect of *McFarlane*, the ECtHR held that there had been an interference with the applicant's Article 9 rights but that this was justified due to the margin of appreciation.⁹¹

Other indirect discrimination claims, however, have failed on the interference point rather than the justification point. For instance,⁹² in *Eweida v. British Airways*,⁹³ a member of check-in staff wore a silver cross in breach of BA's uniform policy which prohibited visible religious symbols, unless their wearing was mandatory. The tribunal held that there was no indirect discrimination: although there was a provision that personal jewellery should be concealed by the uniform unless otherwise expressly permitted, which was applied equally, it did not put Christians at a particular disadvantage and did not disadvantage the claimant. There was no evidence that practising Christians considered the visible display of the cross to be a requirement of the Christian faith and no evidence that the provision created a barrier to Christians employed at BA.

*Chaplin v. Royal Devon & Exeter NHS Foundation Trust*⁹⁴ concerning a nurse who was asked to remove the crucifix she wore around her neck at work on grounds of health and safety. Although Chaplin had been a nurse for thirty years and

Court of Appeal of five Lords Justices who have a proven sensibility to religious issues." See further Russell Sandberg, "Laws and Religion: Unravelling *McFarlane v. Relate Avon Ltd.*", 12(3) Ecclesiastical L. J. (2010): 361.

⁸⁷ (2013) 57 EHRR 8.

⁸⁸ For a discussion of the new interpretation of Article 9 in the decision, see Mark Hill, "Religious Symbolism and Conscientious Objection in the Workplace," 15 Ecclesiastical L.J. (2013): 191.

⁸⁹ Paras. 105-106.

⁹⁰ Para. 106.

⁹¹ Para. 109.

⁹² See also *Harris v. NKL Automotive Ltd & Anor* [2007] UKEAT/0134/07/DM; 2007 WL 2817981 (3 Oct. 2007).

⁹³ [2010] EWCA (Civ) 880.

⁹⁴ [2010] ET Case no: 17288862009 (6 Apr. 2010).

had always worn the crucifix, a change to a v-necked uniform had now made the crucifix visible and the concern was that there was a risk of injury when handling patients. When she refused to remove her crucifix, she was redeployed to a non-clinical role where the hospital had no objections to her wearing the crucifix when undertaking those duties. The Employment Tribunal dismissed her claims of direct and indirect discrimination. In terms of indirect discrimination, the Employment Tribunal held that the uniform policy did not “place ‘persons’ at a particular disadvantage.” Despite evidence that another nurse, Mrs Babcock, had been asked to remove her cross and chain,⁹⁵ the Employment Tribunal held that Mrs Babcock had not been put at a particular disadvantage since the word “particular” meant that the disadvantage suffered needed to be “noteworthy, peculiar or singular” and this criteria had not been met since Mrs Babcock’s religious views were not so strong as to lead her to refuse to comply with the policy.⁹⁶ The Employment Tribunal added that if they had needed to decide whether the disadvantage was justified they would have held that it was since health and safety concerns provided a legitimate aim and the actions by the respondent were proportionate.⁹⁷

The decisions in *Eweida* and *Chaplin* were considered by the ECtHR in *Eweida and Others v. United Kingdom*.⁹⁸ In respect of *Eweida*, the ECtHR held that her wish to wear a crucifix “was a manifestation of her religious belief, in the form of worship, practice and observance, and as such attracted the protection of Article 9”.⁹⁹ Moreover, BA’s refusal for her to remain in post whilst visibly wearing the cross “amounted to an interference with her right to manifest her religion”.¹⁰⁰ The question was whether this interference was justified under Article 9(2). The Court concluded that a fair balance had not been struck.¹⁰¹ Although the national courts were afforded a margin of appreciation, they had given too much weight to the employer’s wish to project a certain corporate image and not enough to the applicant’s desire to manifest her religious belief. This meant that the State had “failed sufficiently to protect the first applicant’s right to manifest her religion, in breach of the positive obligation under Article 9”.¹⁰²

In relation to *Chaplin*, the Court held that her wearing of her crucifix at work was a manifestation of her religious belief and the refusal of the health authority to

⁹⁵ Para. 15.

⁹⁶ Para. 27. This was the decision of the majority. Mr Parkhouse, by contrast, held that both nurses had been placed at a disadvantage.

⁹⁷ Para. 29.

⁹⁸ (2013) 57 EHRR 8.

⁹⁹ Para. 89.

¹⁰⁰ Para. 91.

¹⁰¹ Para. 94.

¹⁰² Para. 95.

allow it constituted a manifestation.¹⁰³ However, here the Court held that there was no violation of Article 9 since this interference was justified. The Court noted that the reason for asking her to remove the crucifix and neck-chain was the protection of health and safety on a hospital ward and this ‘was “inherently of a greater magnitude than that which applied in respect of Ms Eweida”’.¹⁰⁴ This was a matter where a “wide margin of appreciation” was allowed since the “hospital managers were better placed to make decisions about clinical safety than a court, particularly an international court which has heard no direct evidence.”¹⁰⁵

In *Mba v. Mayor and Burgesses of the London Borough of Merton*,¹⁰⁶ the Court of Appeal considered the impact of *Eweida v. United Kingdom* upon the domestic law of indirect discrimination. The claim concerned whether Sunday working constituted indirect discrimination on grounds of the claimant’s Christian beliefs. The original Employment Tribunal had dismissed the claim and as part of its reasoning had taken into account how the claimant’s “belief that Sunday should be a day of rest and worship upon which no paid employment was undertaken, whilst deeply held, is not a core component of the Christian faith.”¹⁰⁷ The Court of Appeal dismissed the claimant’s appeal because, although there had been errors of law in the Employment Tribunal’s decision, their ultimate conclusion that the disadvantage had been proportionate was plainly and unarguably right.¹⁰⁸

For Lord Justice Maurice Kay, the Employment Tribunal had made an error in law by stating that the belief was not a core component. The Employment Tribunal “went wrong” in that, although for indirect discriminations it is necessary to show that “persons” were put (or would be put) at a disadvantage, “it is not necessary to establish that all or most Christians, or all or most conformist Christians are or would be put at a particular disadvantage”.¹⁰⁹ The description of the claimant’s belief as “not a core component of the Christian faith” erred in that “it opened the door to a quantitative test on far too wide a basis.” This left open, however, “the question whether there is a quantitative element to be considered alongside the qualitative factor of genuine belief to be considered as part of the proportionality exercise”.¹¹⁰ Lord Justice Maurice Kay expressed the view that he was “not convinced that there is, over and above the requirement of group disadvantage.”¹¹¹

¹⁰³ Para. 97.

¹⁰⁴ Para. 99.

¹⁰⁵ Para. 99.

¹⁰⁶ [2013] EWCA (Civ) 1562.

¹⁰⁷ Para. 8.

¹⁰⁸ Paras. 23-24.

¹⁰⁹ Para. 17.

¹¹⁰ Para. 19.

¹¹¹ Para. 19.

Lord Justice Elias agreed that the question of whether the belief was a core component “ought not to have been weighed into the balance in relation to the justification defence” but reached this conclusion for different reasons than Lord Justice Maurice Kay.¹¹² For Lord Justice Elias, the Employment Tribunal did not err in law by having regard to the matter “purely in terms of establishing indirect discrimination”.¹¹³ Rather, the error was that considering whether the belief was compulsory breached Article 9 ECHR, following *Eweida v. United Kingdom*.¹¹⁴ Article 9 was directly engaged in this case since the defendant was a public body and, although Article 9 cannot be enforced directly in employment tribunals, domestic law must be read as to be consistent with Convention rights where possible.¹¹⁵ It was “the Article 9 dimension of this case which made it inappropriate for the Employment Tribunal, when assessing justification, to weigh in the employer’s favour the fact that the appellants religious belief was not a core belief of her religion so that any group impact was limited”.¹¹⁶

5. Conclusions

This paper has explored equality laws in England and, in particular, the protection against discrimination on the basis of religion or belief. Most of the cases relate to discrimination in employment where the rights of the workforce are enforced by the Employment Tribunal and the Employment Appeal Tribunal, with a few cases being appealed to the higher appellate courts and fewer still to the ECtHR in Strasbourg. The interpretation of “religion or belief” has been quite broad, often even including political opinions. As it is difficult to prove direct discrimination on the basis of religion or belief, the successful cases have tended to relate to indirect discrimination. This occurs when an employer applies a practice – on its face neutral – that disadvantages persons of certain religions. This can include dress codes or the requirement that employees work on one of their religious holy days. Tribunals will consider whether the belief or practice is core to the adherent’s religion. In certain cases, the employer may be able to justify the discrimination, for example, if there are health and safety considerations.

Although this paper has focussed on cases which came before Employment Tribunals – some of which were the subject of further appeal – anecdotal evidence suggests that at a local level, reasonable accommodations were often made in individual workplaces on a case-by-case basis. It may be that the full picture is rather more positive than the hard cases which find their way into courts and tribunals.

¹¹² Para. 30.

¹¹³ Para. 33.

¹¹⁴ Para. 34.

¹¹⁵ Paras. 34-35.

¹¹⁶ Para. 37.

Documentation

“Tirana Message”

Discrimination, Persecution, Martyrdom: Following Christ Together

Global Christian Forum

Global Consultation, 1-5 November 2015, Tirana, Albania

Consultation Message

04 November 2015

“If one member suffers, all suffer together;
if one member is honoured, all rejoice together.” (1 Corinthians 12:26)

1. For the first time in the modern history of Christianity high level leaders and representatives of the various Church traditions gathered together to listen to, learn from, and stand with discriminated and persecuted Churches and Christians in the world today.
2. This global gathering of 145 people took place from 2–4 November 2015, in Tirana, Albania, a country that was declared by its constitution to be an atheist state in 1967, and now has flourishing churches in a framework of religious freedom even though some discrimination may remain.
3. The Consultation, entitled *Discrimination, Persecution, Martyrdom: Following Christ Together*, was convened by the Global Christian Forum together with the Pontifical Council for Promoting Christian Unity (Roman Catholic Church), the Pentecostal World Fellowship, the World Evangelical Alliance, and the World Council of Churches. It was organized in close collaboration with the Orthodox Autocephalous Church of Albania, the Albanian Bishops' Conference, and the Evangelical Alliance of Albania.
4. We have come together because discrimination, persecution and martyrdom among Christians and people of other faiths in the contemporary world are growing due to a complex variety of factors in different realities and contexts.
5. As we follow Christ, Christians can be exposed to any form of persecution, suffering and martyrdom, because the sinful world is against the Gospel of salvation. But from earliest times Christians experienced the hope and reality of the Resurrection through walking the way of the Cross. Together we follow Christ as we “hunger and thirst for righteousness” (Matthew 5:6) for all.
6. The life of the Church for centuries has been a constant witness in two ways: the proclamation of the Gospel of Christ, and the testimony through the shedding of the martyr's blood. The 21st century is full of moving stories of faithful people who have paid for their dedication to Christ through suffering, torture and execution. Christian martyrs unite us in ways we can hardly imagine.

7. We acknowledge that solidarity among Christian churches is needed to strengthen Christian witness in the face of discrimination, persecution, and martyrdom. In the 21st century, we need to urgently strengthen the solidarity of all Christians, following up on what has been accomplished with insight and discernment from this Consultation.
8. We repent of having at times persecuted each other and other religious communities in history, and ask forgiveness from each other and pray for new ways of following Christ together.

In communion with Christ we commit ourselves:

- a. *To listen more* to the experiences of Christians, Churches, and of all those who are discriminated against and persecuted, and deepen our engagement with suffering communities.
 - b. *To pray more* for Churches, Christians, and for all those suffering discrimination and persecution, as well as for the transformation of those who discriminate and persecute.
 - c. *To speak up more* with respect and dignity, with a clear and strong voice together, on behalf of those who are suffering.
 - d. *To do more* in mutual understanding to find effective ways of solidarity and support for healing, reconciliation, and for the religious freedom of all oppressed and persecuted people.
9. Listening to the experience of those going through challenging times, praying and discerning together ways of following Christ in these harsh realities, the Consultation calls on:
 - a. *All Christians* to include more prominently in their daily prayers those who are discriminated against, persecuted, and suffering for the fulfilment of God's Kingdom.
 - b. *All Christian organisations on regional, national and local levels* from various traditions to learn, pray and work together in their localities for the persecuted to ensure they are better supported.
 - c. *All Churches* to engage more in dialogue and co-operation with other faith communities, and be "as wise as serpents and innocent as doves" (Matthew 10:16) by remaining vigilant, watchful and fearless in the face of discrimination and persecution.
 - d. *All persecutors* who discriminate against and oppress Christians and violate human rights to cease their abuse, and to affirm the right of all human beings to life and dignity.
 - e. *All governments* to respect and protect the freedom of religion and belief of all people as a fundamental human right. We also appeal to governments and international organisations to respect and protect Christians

and all other people of goodwill from threats and violence committed in the name of religion. In addition, we ask them to work for peace and reconciliation, to seek the settlement of on-going conflicts, and to stop the flow of arms, especially to violators of human rights.

- f. All media* to report in an appropriate and unbiased way on violations of religious freedom, including the discrimination and persecution of Christians as well as of other faith communities.
- g. All educational institutions* to develop opportunities and tools to teach young people in particular about human rights, religious tolerance, healing of memories and hostilities of the past, and peaceful means of conflict resolution and reconciliation.
- b. All people of goodwill* to work for justice, peace and development, knowing that poverty and disrespect of human dignity are major contributing factors to violence.

10. We recommend that the Global Christian Forum evaluates within two years the work of this event, and reports to all four bodies for their follow up.

May God the Father who created us equal by His grace, strengthen our efforts to overcome all forms of discrimination and persecution.

May His Holy Spirit guide us in solidarity with all those who seek peace and reconciliation.

May He heal the wounds of the persecuted and grant us hope as we look forward to the glorious coming of our Lord Jesus Christ who will make all things new.

World Evangelical Alliance envoy highlights the potentially historic significance of Humanitarian Islam

This was originally published by the World Evangelical Alliance as a Political Communiqué. It is available at: <https://bit.ly/350MNDm>

On 18 July 2019, Reverend Professor Thomas K. Johnson, Special Envoy to the Vatican and Senior Advisor on Religious Freedom for the World Evangelical Alliance (WEA) – which represents more than 600 million evangelical Christians worldwide – delivered a penetrating analysis of the Humanitarian Islam movement and its theology on the sidelines of the U.S. State Department's Ministerial to Advance Religious Freedom. Hosted by the DC-based Institute on Religion & Democracy the event was attended by a range of delegates to the Ministerial, including Kyai Haji Yahya Cholil Staquf, General Secretary of Indonesia's Nahdlatul Ulama and co-founder of the global Humanitarian Islam movement.

The roundtable event was titled, “An Exploration of Religiously Motivated Violence”. Other panel members included: Faith McDonnell (Institute on Religion and Democracy); Dr. Paul Marshall (Hudson Institute); and Jacob Rudenstrand (Swedish Evangelical Alliance).

Professor Johnson began his presentation by sharing a heartfelt account of the martyrdom of one of his seminary students and two other Christians, who were murdered by Islamist radicals in Malatya, Turkey, in 2007.

Humanitarian Islam offers a more hopeful vision, believes Professor Johnson, who lauded its representatives in both oral and written versions of his speech, for their “serious response to religiously motivated violence and thoughtful attempt to establish a better paradigm for how religions [may] relate to society.”

“Within the spectrum of Islam, the Indonesian humanitarians represent the opposite end from ISIS and Al-Qaeda, but claim to be fully orthodox Muslims, not liberal half-Muslims. And it is precisely as orthodox Muslims that they fully endorse human rights for all people, religious freedom for those of other faiths, and constitutional democracy. This merits attention from scholars, diplomats and activists.”

Professor Johnson told the audience that “drawing on several hundred years of experience within Indonesia, the theologians of Nahdlatul Ulama are publishing a series of declarations and manifestos in well-edited English for the international reading public. They employ a hermeneutic that distinguishes between eternal, unchanging moral norms and religious norms that are limited in their application to a particular time and place. The current crisis of Islam arises, they claim, from taking contingent norms from previous centuries, whether the seventh century CE or a ‘mere’ 500 years ago, and then applying them in the 21st century, as if they are eternal and unchanging norms.”

According to these Nahdlatul Ulama theologians, “the way in which the Muslim community should re-contextualize eternal norms into religious norms suitable for our era has to do with attaining defined human goods. ‘The purpose of religious norms (*maqasid al-shari’ah*) is to ensure the spiritual and material well-being of humanity.’ (*Gerakan Pemuda Ansor Declaration on Humanitarian Islam*, para 1). They add, ‘The authoritative Sunni jurists, Imam al-Ghazali and Imam al-Shatibi, identified five primary components of *maqasid al-shari’ah*, viz., the preservation of faith, life, progeny, reason and property’ (ibid., para 2).

“This is a strikingly teleological way of reasoning about religious norms that is also found at times within the Christian tradition. Properly formulated religious norms preserve the [above-mentioned] five primary human goods. This hermeneutic for properly applying religious norms is related to a transcendental definition of *shari’ah*, not a concrete or specific definition of *shari’ah*. Such a definition of *shari’ah*, if followed by the global Muslim community, would undermine many reasons for Islamophobia.”

Noteworthy

The noteworthy items are structured in three groups: annual reports and global surveys, regional and country reports, and specific issues. Though we apply serious criteria in the selection of items noted, it is beyond our capacity to scrutinize the accuracy of every statement made. We therefore disclaim responsibility for the contents of the items noted. The compilation was produced by Janet Epp Buckingham.

Annual reports and global surveys

World Watch List

Open Doors, USA, January 2017

<http://opendoorsanalytical.org/world-watch-list-documentation/> (Password: freedom)

The World Watch List (WWL) represents the 50 countries where persecution of Christians is the worst and is compiled from a specially designed questionnaire of numerous questions covering various aspects of religious freedom. The top three countries for persecution are North Korea, Somalia and Afghanistan.

International religious freedom report for 2017

US Department of State, May 2018

<https://bit.ly/3k3Nxcy>

The US Department of State produces a comprehensive annual report on international religious freedom.

Annual interim report 2017

European Parliament Intergroup, EU, June 2017

<http://www.religiousfreedom.eu/2017/06/20/annual-interim-report-2017/>

The European Parliament Intergroup on Freedom of Religion or Belief and Religious Intolerance released its third annual report on freedom of religion or belief around the world.

United Nations Special Rapporteur reports

Special Rapporteur on freedom of religion or belief,

Ahmed Shaheed, March 2017

<https://undocs.org/A/HRC/34/50>

The UN Special Rapporteur on freedom of religion or belief issued a report, A/HRC/34/50, setting out his vision for the mandate.

Special Rapporteur on freedom of religion or belief,**Ahmed Shaheed, August 2017**<https://undocs.org/A/72/365>

The UN Special Rapporteur on freedom of religion or belief issued an interim report that focused on the increase in religious intolerance worldwide and the gap between international commitments to combat intolerant acts and national practices.

Regional and country reports**A right for all: freedom of religion or belief in ASEAN****US Commission on International Religious Freedom, September 2017**<https://bit.ly/351gr6T>

Tina Mufford wrote this report on the state of religious freedom in the 10 countries of the Association of Southeast Asian Nations (ASEAN), on the occasion of ASEAN's 50th anniversary. The report concludes that the ASEAN countries have an uneven record with regard to the protection of human rights, and particularly concerning freedom of religion or belief.

Cuba: freedom of religion or belief**Christian Solidarity Worldwide, February 2017**<https://www.csw.org.uk/2017/02/06/report/3451/article.htm>

CSW published a report on the brutal and public strategies used by the Cuban government to target religious groups. The report documents over two thousand incidents of religious freedom violations.

Human rights in China**Christian Solidarity Worldwide, October 2017**<https://www.csw.org.uk/2017/10/16/report/3754/article.htm>

CSW published a report by Gao Zhisheng documenting religious freedom violations in China.

Egypt: freedom of religion or belief**Christian Solidarity Worldwide, February 2017**<https://www.csw.org.uk/2017/02/14/report/3457/article.htm>

CSW published a report documenting the deterioration of freedom of religion or belief in Egypt since the revolution of 25 January 2011.

Freedom of religion or belief 2017 database: North Korea**Human Rights without Frontiers, 2017**<http://hrwf.eu/wp-content/uploads/2017/08/NorthKorea2017.pdf>

HRWF has documented abuses of the right to freedom of religion or belief in North Korea.

Report on human rights violations in Rakine State

Christian Solidarity Worldwide, January 2017

<https://www.csw.org.uk/2017/01/12/report/3423/article.htm>

CSW published a report documenting human rights violations against Rohingya Muslims since 9 October 2016.

2016 human rights violation report: Turkey

International Institute for Religious Freedom, 2017

<https://www.iirf.eu/journal-books/iirf-reports-english/iirf-reports-2017-1/>

The Association of Protestant Churches' annual report on religious freedom violations in Turkey.

Special issues

Beirut Declaration

United Nations Human Rights, March 2017

<https://bit.ly/2FBbMQm>

The Beirut Declaration establishes a framework for cross-disciplinary reflection and action on the deep and mutually enriching connections between religions and human rights, with the goal of establishing peaceful relations among all people. It came out of a conference in Beirut organized by the UN High Commissioner for Human Rights.

Women and religious freedom: synergies and opportunities

US Commission on International Religious Freedom, July 2017

<https://bit.ly/3433xWy>

This report looks for synergies between women's rights to equality and freedom of religion or belief. It is often assumed that the two conflict, but a closer study shows areas of intersectionality.

Bernhard Reitsma (Ed.)

Fruitful Minorities

*The Witness and Service of
Christian Communities in
Predominantly Islamic Societies*



VKW

Book Reviews

Under Caesar's sword: How Christians respond to persecution

Daniel Philpott and Timothy Shah (eds.)

Cambridge: Cambridge University Press, 2018, ISBN 9781108425308, hardcover, 523 pp., US\$140.00; ISBN 9781108441766, paperback, US\$44.99.

Under Caesar's Sword fills a gap in the literature on how Christians respond to persecution. Its main conclusion is that these responses “evinced a *creative pragmatism* constituted by short-term efforts to ensure security, accrue strength through associational ties with other organizations and actors, and sometimes mount strategic opposition to the government” (3).

The volume contains contributions from many experts in the field of religious freedom. There are chapters on the persecution of Christians in the most challenging countries: Iraq and Syria; Kenya, Nigeria and Sudan; Egypt, Libya and Palestine; Iran and Saudi Arabia; Central Asia; Russia; Pakistan and Afghanistan; India and Sri Lanka; Vietnam and Laos; China; Indonesia; and Latin America. Many chapters include interviews and stories from the frontlines describing violence, imprisonment and displacement.

The editors identify three categories of Christian response “arrayed from reactive to proactive: strategies of survival, strategies of association, and strategies of confrontation” (11). Some authors use these categories; while others add nuance or create additional categories.

The type of persecution – whether it is societal or state-sponsored – matters in determining how Christians respond. Differences in denominational affiliation ideas and beliefs also influence Christian reactions.

In the chapter on Nigeria, Kenya and Sudan, Robert Dowd explains that Christians may choose to endure, flee, fight, appeal to the government, or reach out for help to those who share a religious identity with the persecutors. Inter-religious dialogue has been somewhat successful in Kenya and Nigeria, where the persecution is societal. Appeals to government have also helped. However, these strategies have not been successful in Sudan.

The tragic exit of Christians from Syria and Iraq due to civil war and persecution by ISIS has largely erased the historic Christian communities that have existed for millennia. This chapter is aptly titled, “On the Brink of Extinction.”

The Muslim-majority countries of Pakistan and Afghanistan face significant political challenges, particularly political instability. “Church bombings, suicide bomb-

ings, assassinations, and targeted killings are common in both nations” (229). However, the main responses by the Christian communities in Pakistan has been public engagement and resistance to oppression. Sara Singha summarizes, “Christians are not passive recipients to persecution but active participants in political reform” (229). In Afghanistan, Christians are a very small minority.

Sadly, in Russia and Central Asia, the Russian Orthodox Church has collaborated with state agencies to preserve its dominance and threaten the religious freedom of other Christians in the process. Although the dominant religions differ in India and Sri Lanka, other faiths are viewed as threats to Hinduism and Buddhism, respectively. Christianity in particular is seen as a foreign influence there. To be a real member of any of these societies means following the traditional or indigenous religion.

China has imposed serious and ongoing restrictions on Christians, who have taken very different approaches to persecution. Unfortunately, conflicts have resulted between those who have accommodated and those who have resisted oppression.

With regard to Latin America, the primary focus is on Colombia and Mexico, where drug lords have kidnapped pastors and Christian leaders and where, in some areas, Catholic leaders oppress Protestants. A section of this chapter focuses on Brazil, a country with low levels of persecution but where some evangelical leaders denounce any restrictions on religious freedom. The juxtaposition of the situations in Colombia and Mexico with that in Brazil is striking and somewhat incongruous.

Paul Marshall addresses rising pressures on Christians in the West due to the expansion of secularism and state authority, as well as a narrowing of the definition of religion. He details strategies of litigation, politics and lobbying, while highlighting the effectiveness of cooperation and compromise.

The final chapter, authored by Maryann Cusimano Love, covers transnational advocacy networks – religious orders, international development agencies, Christian denominations and other advocacy groups. She includes examples where various organizations have worked together to effect change, and she explains how players in this field are pressing for the creation of international governmental networks to advance religious freedom globally (487).

Overall, this book is highly recommended and worth the steep price tag. The chapters are well researched and insightful. There is no glossing over the fissures that have occurred in Christian communities where members take different approaches in responding to persecution. The large number of countries covered is an important strength of this book. I also appreciated the fact that it ends on a hopeful note with Love’s chapter on transnational advocacy networks. That chapter presents much for religious freedom advocates to work towards.

Prof Dr Janet Epp Buckingham, Trinity Western University

Surviving persecution: How to understand, prepare, and respond

Vernon J. Sterk

Eugene, OR: Wipf & Stock, 2019, ISBN 9781532638589, paperback, 245 pp., US\$32.

Vernon Jay Sterk has been working for more than 40 years as a missionary among different people groups of the Mayan in Mexico's Southern state of Chiapas. The book obviously builds on Sterk's PhD dissertation at Fuller Theological Seminary (*The Dynamics of Persecution*, 1992) although I didn't find this fact mentioned in the book.

While working in Mexico, the US-American Sterk personally lived through different stages of church planting and of persecution together with the people he served. That makes his contribution to "surviving persecution" very valuable. Each of his thoughts about persecution is supported by practical experience. Very helpful are thesis-like summaries that are included at the end of each topic.

After giving the "Historical Context of Persecution in Chiapas", the author asks about the role of worldview in persecution. If a community feels that its fundamental worldview is threatened by the Christian message, persecution is one of the options to react. Sterk argues for knowing and appreciating the existing worldview of a given community as much as possible in order to avoid unnecessary and early confrontation.

In systematic order the author then writes about the origins and the stages of persecution, about the role of the missionary in the process, the results of and the responses to persecution. After exploring appropriate responses of the persecuted, Sterk emphasizes the responses of the national and the international church.

Compared with other books about a Christian view of suffering for Christ's sake Sterk's book is very vocal about the negative results that persecution may have: church growth may be stopped, young Christian communities may be dispersed. Because persecution certainly doesn't lead to growth and maturity automatically, it is the responsibility of the missionary/leader to properly teach and prepare young Christians about persecution and appropriate responses.

Sterk's book is not a systematic theological treatise about persecution. To build on very practical experience in the historical and geographical context of young churches in Chiapas is a strength, but brings with it certain limitations. Taking this into account the book can be a very helpful guide for practical approaches to persecution.

Dr Wolfgang Häide, Martin Bucer Seminar e.V., Turkey and Germany

The church and religious persecution

Kevin R. den Dulk and Robert J. Joustra

Calvin Shorts, Grand Rapids, MI: Calvin College Press, 2015, updated version 2018, 58 pp., ISBN 9781937555139, US\$9.99. Also available as an Ebook, US\$4.41.

This short book is in the series Calvin Shorts. These are books for the global church on specific issues. “Each book examines a single topic and suggests ways to think and act faithfully.” (“Calvin Shorts”, n.d.) This is a good description of this book. It is both theological and practical. The two authors are both political science professors at Christian universities. Both address religion and global politics in their research. Thus, they are well qualified to pen this helpful volume.

The book is divided into four chapters, leading the reader from introducing the topic, through a detailed examination of the scope of religious persecution globally, to the failure of the Church to respond and concluding with how the Church can and should respond. While the book is intended primarily for the North American church, it will be a helpful resource for the global church.

The introductory chapter defines the key concepts of religion, religious liberty and religious persecution. As we know, these are contested both in the academic community and among practitioners who report on the persecuted church. The authors argue strenuously for an inclusive understanding of religious freedom; that is, for pluralism. In other words, the authors urge Christians to promote religious freedom for adherents of all religious faiths. They contend that it is the “duty and calling of Christians to advocate for freedom of religion or belief as fundamental to recognizing both the image of God in humans and the sovereignty of God over them.” (p 8) The authors conclude this chapter by distinguishing persecution from social disapproval and note that religious liberty is not absolute but subject to reasonable limits.

The second chapter elucidates the scope of religious persecution worldwide. The authors identify that we have much more accurate information than just two decades ago because governments and non-governmental organizations, such as Pew, have begun publishing annual reports on the state of global religious freedom. Pew’s research, in particular, shows the growing hostility and persecution against Christians. In the Middle East, in particular, Christian populations that have thrived since the time of Christ are being decimated. As well, Islamic countries have become less tolerant of Christians in their midst.

The most difficult chapter for Christians and churches to read will be Chapter 3. It is titled “Their Blood Cries Out, But Are We Listening?” This is based on Paul Marshall’s book, *Their Blood Cries Out*, published in 1997. Marshall’s book similarly asked why churches tend not to speak out to encourage governments to act

to protect Christians who are being persecuted for their faith around the globe. Joustra and den Dulk identify theological issues that might prevent denominations from engagement on religious freedom. One of the main practical reasons is that it is hard to identify 'success' to show supporters that it is a cause worth pursuing.

The final chapter is both a plea for the North American church to engage on religious freedom and an action plan to carry this out. Getting churches to engage requires the development of a social movement to promote religious freedom as a matter of social justice. This involves reorienting the church. The most important practical way to do this is informed prayer. Most denominations are global so denominations can glean information from Christian brothers and sisters in other countries. As well, the authors highlight the International Day of Prayer for the Persecuted Church as a source of information and a call to prayer.

Calvin University Press has additional resources for churches and Christians wishing to engage further on religious persecution posted on the website for the book. Hopefully, this can serve as an on-going resource for churches.

This short book can be a helpful resource for churches and Christians who want to learn the basics about religious persecution who also want to take action. It is from a Christian Reformed foundation but does not limit itself to that tradition's perspective. It is also primarily addressed to the North American church, although it will also be a useful resource for global Christians. For a short book, it is packed with information and suggestions for action.

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Religion, liberty and the jurisdictional limits of law

Iain T. Benson and Barry W. Bussey (eds).

Toronto: LexisNexis Canada, 2017, 414 pp., ISBN 9780433495628, Softcover, CAN\$120.00.

This book compiles sixteen papers presented at a University of Toronto symposium. All references below are to authors whose works appear in this publication. Whilst

the opinions contained in the book differ as to, for example, how far the state and the law should encroach upon religious life, there is less disagreement amongst the authors than might have been expected.

As contributor Janet Epp Buckingham notes, religion and law are both systems with much to say about society, but are somewhat incomprehensible to each other. Iain Benson explains how the healthy interaction of religion and law can be threatened in two opposite extremes, merger and alienation – both of which have their proponents. Additionally, the book is permeated with discussion of taboos such as those related to sex (same-sex marriage, in particular, is featured in most chapters) and politics (especially the role of the state); the liberal democratic social totem of equality is deconstructed (for example, by John von Heyking referring to Tocqueville); and Paul Cliteur discusses where free speech should be curbed (such as that of religious radicals). These subthemes could undoubtedly have generated more fundamental differences of opinion amongst academics in other contexts.

Identifying common threads, most of the authors (1) depict an aspect of the dialectical relationship between law and religion as systems whose structures and agents can further or constrain human freedom and well-being; (2) argue for greater protection of religious freedom; and (3) in terms of scope, discuss these topics within the context of Western liberal democracies, illustrating their points by means of prominent rulings on cases involving freedom of religion or belief in Canada and the UK in particular.

This book is a useful resource in the light of rising religious illiteracy in the West and a lowering tolerance of religious morality claims, which are not in sync with ‘progressive’ social norms. The authors underscore the importance of safeguarding freedom of religion or belief in order to protect a pluralistic social fabric and avoid a tyranny of the majority in an ever-changing world. They do not provide many answers, but they raise interesting questions and provide useful insights.

Several authors in this publication seek to dispel some urban myths common amongst university students and legal practitioners: that religion is easily separable from other areas of human activity (e.g. David Cayley’s preface); that religion is violent (e.g. Cayley, von Heyking and Alvin Esau); that secularism equals neutrality (whatever the latter means in practice); that law creates (rather than simply recognizes) religious rights (e.g. Benson); that radical religious beliefs can be controlled by the progress of secular reason (e.g. Cliteur); that some human rights are more important than others, rather than being part of a mutually reinforcing framework (e.g. Buckingham); that beliefs are simply chosen (e.g. Leigh); that religious beliefs can be fully excluded or insulated from political decision-making, and that exit from religious groups is costless (e.g. Richard Moon); or, that religious associations divide society, rather than contributing to its cohesion vis-à-vis modern individualism (e.g.

Buckingham). As Cliteur points out, Martin Luther King would certainly have qualified as a provocateur with unwelcome views. This raises difficult questions as to when it is indeed necessary to limit dissenting voices or provocateurs in public spaces.

Journalists and politicians could find this book useful as they consider how religious freedom can be responsibly discussed in a public square that seeks to enhance diversity but not conformity. The authors offer welcome analyses of why religious freedom is necessary in pluralistic societies, with some describing religion's place in the paternity of key ideas in political philosophy. In this vein, Benson and van Heyking's respective reminders that individual freedom precedes law and that rights precede states' claims on them are particularly valuable. Practically, one key lesson that emerges is the value of identifying concrete disputes when tensions arise between human rights, rather than engaging in abstractions or trivialities; in addition, it is essential to examine the broader context when trying to resolve tensions (e.g. Newman). As such, the book provides a firm basis for reflection on the importance of legal presumption favouring diversity (Benson), and on the need to get the relationship between accommodation and convergence right so as to avoid a pile-up of victims where the legal pursuit of equality effectively undermines the place of religion (as discussed e.g. by Peter Lauwers).

Context is key. The current situation concerning freedom of religion or belief in contemporary Canada cannot be compared to that in the countries from which some of its forebears fled because of their religious identities. However, healthy pluralism requires hard work. This book serves as a reminder that, as Benson notes, concepts of equality, neutrality and inclusion are also context-dependent.

Susan Kerr, Senior Researcher at the Religious Freedom and Business Foundation

Advancing Freedom of Religion or Belief for All

Elizabeta Kitanovic and Fr Aimilianos Bogiannou (eds.)

Globethics.net, 3, Geneva 2016, 192 pp., ISBN 9782889311361. Available at: <https://bit.ly/3o2GXfg>.

Established in 1959, the Conference of European Churches (CEC) resulted from the Cold War and the need to deal with fragmenting European politics. The CEC worked closely with churches of the former Soviet Union to provide a forum to encourage and support ministers and churches suffering discrimination or persecution by placing them in contact with other ministers from the rest of Europe. On the practical level, in the last two decades, the CEC has collaborated with several international organisations such as the United Nations, the Organization for Security

and Co-operation in Europe (OSCE), the Council of Europe, the European Union and others. Now, the CEC represents 114 Orthodox, Protestant, Anglican and Old Catholic churches from all countries of Europe.

The CEC's activities reflect its commitment to the promotion of human rights and religious freedom. An example of this commitment was the conference held from 6 to 9 September 2015 at the Theological School of Halki in Istanbul, Turkey. The various keynote addresses, as well as papers presented at the conference, demonstrate a commitment to advocacy for religious freedom across all European countries, far beyond the European Union's borders.

Advancing Freedom of Religion or Belief for All includes the contributions from the five sessions of the Conference. The keynote address by the Ecumenical Patriarch Bartholomew underscored the churches' need to adopt non-violent approaches even in the face of persecution and deprivation of the most basic human rights. A Christian approach should always express forgiveness and peace, which is the only acceptable response capable of prophetically changing the conditions in communities. The Christian call is for churches to be prophetic communities with a culture of engaging in dialogue and conflict management and the goal of reconciliation.

CEC president Christopher Hill's keynote address focused on the organization's dedication to addressing religious freedom and human rights. Hill called on conference delegates to collaborate in implementing freedom of religion or belief (FoRB) within the European Union (EU), the European Commission and the European Parliament. Conference delegates must verify if EU countries respect and implement FoRB and must then report on the status of FoRB within those countries. Additionally, Hill emphasized the need for conference delegates to encourage the same high standards and implementation of human rights concerning migrants and asylum seekers. Hill believes that European institutions must support human rights, including the fundamental human right to belief and the practice of one's religion, through such unbiased reporting. He stressed the importance of churches' engagement in the promotion of human rights and FoRB.

The basic structure of the book follows that of the conference's five sessions, each of which had a specific focus. Session I, "European Churches' Engagement: Human Rights, Democracy, and the Rule of Law," included presentations by Katrin Hatzinger, Lena Kumlin, Pasquale Ferrara and Katharina von Schnurbein. Session II focused on "European Perspectives on the Implementation of International Legal Standards of Freedom of Religion or Belief," which was addressed by Yiannis Kiistakis, Sema Kılıçer and Dr Mine Yıldırım. "European Perspectives on the Implementation of International Legal Standards of Freedom of Religion or Belief: Religious Responses" was discussed in Session III, which included the following participants: Colin Dürkop, Emre Öktem, José Luis Bazán and Altana Filos. Session IV dealt with

“Present Challenges for Religious Tolerance, Non-discrimination and Freedom of Religion or Belief,” with messages by Michael Büunker and Katerina Karkala-Zorba. Session V addressed “The Role of Religious Communities in Promoting and Protecting Freedom of Religion or Belief,” based on a paper by Anna Hyvärinen.

This collection of messages addresses the critical issues related to promoting peace and social harmony based on human dignity, forgiveness and non-violence. It reminds us of the importance of respecting human rights and religious freedom everywhere. It also helps us understand that in the case of persecution, Christian suffering will be crowned with God’s glory being revealed in us (Rom. 8:18). By going to the cross, Jesus showed us the more excellent way of love, demonstrating what is the natural outcome expected of a Christian as His follower.

Every presentation builds on these fundamental guiding thoughts, leading up to the final statement in which the conference participants declared, “For CEC a concern for human rights and freedom of religion or belief is part of our DNA. CEC stands for the promotion and protection of all human rights and freedom of religion and belief – for every human being, nation and people.”

Rev Dr Fernando da Silva, deputy director of the World Evangelical Alliance’s Religious Liberty Commission

Sacred fury: Understanding religious violence (3rd ed.)

Charles Selengut

Lanham, MD: Rowman and Littlefield, 2017, xi + 237 pp., paperback, ISBN 9781442276840, US \$27.00.

Charles Selengut is Professor of Sociology at County College of Morris and a former Professor of Religion at Drew University. This third edition of his work adds mainly a discussion on “white supremacy groups” as well as some observations regarding Eastern religions. The introductory “Study of Religion and Violence” starts with a question that guides his research: “Why is it that religious communities whose holy scriptures call for peace are engaged in so many wars and violent conflicts all over the globe?” (1). He describes the “unique” relationship between religions and violence, offers five perspectives for studying the topic, and emphasizes his determination to avoid stereotypes. These perspectives are then applied to the book’s five main chapters: “Fighting for God: Scriptural Obligations and Holy Wars”; “Psychological Perspectives”; “Apocalyptic Violence”; “Civilizational Clashes, Culture Wars, and Religious Violence”; and “Religious Suffering, Martyrdom, and Sexual Violence.” Selengut’s conclusion seeks to develop a holistic approach to religious violence.

Unfortunately, the entire book does not describe the crucial idea of religion in an appropriate way. Following Durkheim, Selengut states, “Religious faith and commitment ... are based upon sacred and ultimate truths and are, by definition, moral, desirable, and good” (6). This description may be helpful and may further the cause of his study. However, Selengut subjects this understanding to another important idea that becomes a heuristic and epistemological premise: “Religious faith is different from other commitments, and the faithful understand the rules and directives of religion to be entirely outside ordinary social rules and interactions” (6). This strict separation between religious and non-religious beliefs (like Stalin’s or North Korea’s ideology) obstructs the fact that beliefs (or worldviews) and the question of violence interact in many complex and varied ways. When reading Selengut’s statement in light of these two examples, the reader senses the need for some qualifications and, however, finds this statement tied to far-reaching phrases like this one: “Religion is an imperialistic institution that not only demands the conventional loyalties and commitments of mind and soul but also claims proprietorship over the physical being of the faithful” (153).

Various passages indicate the author’s strong personal opinions, which are significantly shaped by Western forms of monotheistic religions. Moreover, some generalizations seem to be founded on Western understandings of religion, such as this one in the introduction: “At the centre of all religions is the yearning for the *eschaton*, an end time when all the peoples of the world will live together in peace and harmony, without war or conflict” (1).

Selengut’s approach turns out to be both an essential strength of the book and a noteworthy weakness. Approaching his topic with a Western, modern perspective facilitates perception and helps Western readers to understand better what may at first seem to be strange and incomprehensible aspects of the relation between religion and violence. Selengut’s analyses and conclusions fit neatly into a familiar narrative of state, society, and religion. However, they are accompanied by a significant danger. For Selengut, the development of state, society and philosophy known to the West indiscriminately becomes normative, the only possible way of distinguishing and separating religion and violence. When this happens, it hinders sympathetic understanding. Ziya Meral’s book *How Violence Shapes Religion?* (2018) offers a better idea of how complex the relationship between religion and violence may be. Moreover, Meral’s title highlights the fact that Selengut overwhelmingly approaches the relationship in one-way fashion – i.e., religion’s impact on violence, not the reverse. As Meral shows, this direction is only part of the story.

Selengut addresses the lack of understanding of religions’ impact on violence, but sometimes in an incomplete or one-sided way. It does not seem appropriate to me, for example, to reduce the civil war in Ireland to a conflict between Irish Catho-

lics and Irish Protestants (4). Also, some statements are quoted without accounting for their literary, theological or historical context. For example, when Selengut refers to Deuteronomy 20:16-18, he describes God's instruction as absolute, introduces this passage by talking about "Judaism's approach to holy war" (18) without even mentioning the framing verses (which seem to dominate the entire passage) or other passages in Deuteronomy, let alone other passages in the Pentateuch.

Sometimes Selengut hints at important distinctions but then bypasses them with breath-taking ease. For example, he states, "Although in its beginnings Christianity was pacifist and opposed violence of any sort, many historians argue it could hold onto these sensibilities so long as it remained a sectarian and minority religion" (19). This observation hints at a more complex perspective on history and reality. But a subsequent statement derails the previous one without rationale, as Selengut makes Christianity's shift into a warlike mode seem inevitable: "Christianity, as a world religion, also had to protect its doctrines from theological contamination, and the just use of war and violence was understood as a way of preserving the genuine and authentic Christian faith" (20). The logic seems to be tied to the idea with which Selengut closes the book: "So long as religion is about ultimate truth and commitment to the sacred, to a vision of a utopia described in holy scripture, men and women will be defenders of the faith and willing soldiers in the battles for God" (195-196).

In a similar vein, Selengut's argument frequently lacks awareness of the complex relationship between people and religions. His argument is dominated by the conviction that religion regularly and inexorably justifies violence: "Religion can tell us that it is ultimately right to love our neighbours, but it can also instruct us that it is sacred duty to kill them" (2). This perspective does not account for the reality that people also preserve and mould religions, following a religious tradition but also changing it. There is a constant interdependence and interplay, which makes it inappropriate to conceive people only as merely obedient followers of religious commands. At the risk of oversimplifying, religions do not go to war – people do; people are the authors of violence. Therefore, it is confusing rather than helpful to portray religions as subjects and authors of convictions and actions.

I do not mean to ignore the positive value of this book. Selengut argues in engaging fashion that the relationship between religion and violence must not be ignored. He is frequently informative, raises important questions and offers some helpful answers. However, his perspective on the topic must be qualified and supplemented.

Heiko Wenzel, formerly professor of Old Testament and Islamic Studies at the Giessen (Germany) School of Theology and currently a post-doctoral researcher in Old Testament at the Evangelische Theologische Faculteit, Leuven, Belgium




Global Christian Forum

Discrimination, Persecution, Martyrdom: Following Christ Together

Report of the global consultation
Tirana, Albania, 2-4 November 2015



Bonn: VKW, 2018, 294 pp., Paperback ISBN 978-3-86269-155-5
Eugene, OR: Wipf & Stock, 2018, ISBN 9781532653650, US\$32.
Free: <https://globalchristianforum.org/important-papers/>

Guidelines for authors

Version 2020-1 (February 2020)

This document combines essential elements of the editorial policy and the house style of IJRF which can be viewed on www.iirf.eu.

Aims of the journal

The IJRF aims to provide a platform for scholarly discourse on religious freedom and religious persecution. 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 contains research articles, documentation, book reviews, academic news and other relevant items.

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 Code of Best Practice in Scholarly Journal Publishing, Editing and Peer Review of 2018 (<https://sites.google.com/view/assaf-nsef-best-practice>) as well as the National Code of Best Practice in Editorial Discretion and Peer Review for South African Scholarly Journals (<http://tinyurl.com/NCBP-2008>) and the supplementary Guidelines for Best Practice of the Forum of Editors of Academic Law Journals in South Africa. As IJRF is listed on the South Africa Department of Higher Education and Training (DoHET) "Approved list of South African journals", authors linked to South African universities can claim subsidies and are therefore charged page fees.

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- All other contributions: research or review articles, opinion pieces, documentation, event reports, letters, reader's response, etc.:
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