

## **Abstracts Group 1**

David Taylor, CSW

### **A methodology for an Early Warning System relating to religious persecution**

Abstract:

There has been considerable interest among the agencies serving the persecuted church and particularly in the Religious Liberty Partnership (RLP) in the idea of devising and establishing an early warning (EW) system to give advance warning of potential threats to religious freedom. I have set out to realise this aspiration, which I also shared, with the help and support of RLP members. After researching EW systems in various fields and discovering that no such system exists in the human rights or religious freedom worlds, I decided on a methodology comprising a list of indicators accompanied by a set of explanatory notes and a numerical rating system, which I have drafted. These indicators at present focus exclusively on potential persecution of Christian minorities, but could (and should) be expanded to include other minorities at risk. They are designed to be used to monitor changes on the ground in countries where there is little current trouble but where the situation could deteriorate. After agreement among stakeholders on initial ratings for each indicator, they will be monitored for changes in the light of events, and, where appropriate, early warnings will be issued leading to possible prophylactic action. Potential beneficial outcomes for religious freedom from such a system appear significant. The methodology of the monitoring phase in particular will undoubtedly need refining in the light of live testing. Various other aspects of the system might also need further work to ensure they are sufficiently rigorous – while at the same time remaining user-friendly enough to be used by local partners/contacts who will provide much of the information from the ground. In the paper/talk I will share the key features of the methodology and highlight areas where further work may be needed.

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**Abhijt Nayak**

### **The Culture Clash: A Civilizational Approach to Hindu-Christian Conflict and Religious Freedom in Post-Independence India**

This paper reviews some of the contemporary theories of religious conflict and evaluates the importance of understanding Hindu-Christian conflict from a different perspective. It argues that even though recent atrocities between Hindus and Christians in India have stimulated laudable efforts at understanding the longstanding Hindu-Christian conflict, constructing and developing an alternative framework for mapping Hindu-Christian conflict faces three formidable challenges: the entrenched religion and violence saga, the materialistic political and economic approach and fundamentalism discourse to explain religious conflict. Hindu-Christian conflict occurs in civilizational lines and therefore, civilizational approach is a productive analytical framework for understanding Hindu-Christian conflict in post-Independence India. It concludes with a brief examination of credible solution, including the need for Indian expression of Indian Christianity and a proper understanding of religious freedom in the Indian context.

## Proposal for the International Consultation on Religious Freedom Research

**Presenter:** Rodrigo Vitorino Souza Alves

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**Title:** Religious Freedom in Brazil and Latin America

### Abstract:

This paper presents the current institutional configuration, the rules prescribed by the Constitution and other laws, as well as social and judicial practice regarding religious freedom in Brazil, with brief remarks about other Latin American experiences. Brazil is a country characterized by plurality of beliefs. After its Independence in 1822, until the late nineteenth century (during the entire period of the Monarchy), it was adopted in Brazil Roman Catholicism as the official religion. Any other faiths suffered restrictions, but they could be practiced privately or in specific places, however, without the form of a religious temple. During this period, almost 99% of the population was Catholic. Since then, Brazilian religious settings has changed. According to the last census in 2010, 64.6% of the population remains in Roman Catholicism, while 22% are Protestant, 8% have no religion, 3.2% declared themselves followers of other religions and 2% are spiritualists. This pluralism is made possible by law, since the 1988 Federal Constitution and legislation are quite advanced in terms of religious freedom. The Constitution guarantees all individuals the right to religious freedom, prohibiting any discrimination based on grounds of belief. In law, there are a number of predictions that ensure religious freedom and the following may be cited as examples: religious organizations are free to define their organizational structure; religious practices are protected by the Brazilian Penal Law, being crime to mock someone for their religion or interrupt ceremony or worship service; religious temples are endowed tax immunity; religious marriage may produce legal effects; among others. Currently, the Brazilian state faces some delicate issues involving the relationship between state and religion. About this, the following examples can be highlighted: the questioning about the inscription "God be praised" in the Brazilian Real bills and the use of crucifixes in courts and other public offices; the relationship between state sovereignty, self-determination and religious freedom of the indigenous groups, especially on the killing of newborn children due to physical disability; the positioning of the Brazilian Judiciary about hate speech; discussion about religious education in public schools and state support on cultural activities with a religious character; the social implications of the Sabbath; the relationship between medical practice and rejection of blood transfusion by patients or their legal guardian. Certainly, although there is no significant religious persecution in Brazil (although minorities suffer prejudice in some areas), there are situations endowed with a high degree of importance that need to be thought. Within Latin America, stands out, among others, the Colombian experience. Although it is constitutionally guaranteed the religious freedom, Colombia remains internationally recognized as a country in which there are serious violations for religious reasons, especially in areas dominated by illegal armed groups. At last, therefore, there are some issues related to religious freedom in Brazil and other Latin American countries that deserves special attention from human rights groups and religious freedom researchers.

**Martin Weightman**

**An examination of restrictions and repression on religious minorities in Europe**

When it comes to religious minorities (in particular new religious minorities) the last 30 years has been plagued with battles between those minorities wishing to exert their right to practice their religion and various forces (manifested through governments and anti-cult groups) characterising the religious minorities as groups that are not religious but have other destructive intentions (money, power, control of children). Whilst there may well be a few such examples this is certainly not the general case. At European level there have been attempts in the European Parliament, the Council of Europe and the Organisation for Security and Cooperation in Europe to bring about restrictive legislation or reports that would strengthen the case of either side. The overriding principles by which to determine the 'rightness' of either position are human rights principles. This paper will examine the main attempts to affect freedom for religious minorities against this background and according to these principles.

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**S.K. Baskerville**

**Professor of Government, Patrick Henry College**

**Emerging Social and Sexual Issues**

**with Implications for Religious Freedom**

Threats to religious freedom today come increasingly from emerging social issues, and from the role of the state in confronting those issues, as well as from direct government persecution of believers and their practices.

In the Western world, the principal threats to religious freedom today come from the demands of an innovative agenda of sexual radicalism. As I have argued elsewhere, the vast preponderance of challenges to religious freedom in the English-speaking world and Western Europe come from issues connected with sexuality, the family, children, and education. Similar observations have been made by other scholars (including Nicholas Kerton-Johnson, Helen Alvare, Gerard Bradley, Jose Casanova, and Mike Donnelly). Yet this trend is only beginning to be recognized, and scholarly exploration is in the very earliest stages. The idea of a “sexual agenda” or “sexualityism” (in Alvare’s phrase) is not yet recognized as a field of scholarly inquiry, despite the fact that sexuality and gender have constituted one of the most active areas of scholarly publication over several decades, to the point of dominating entire fields of study.

Further, this trend may not be limited to the northern democracies. Evidence indicates that the trend toward growing sexual freedom, and its export from the global North to the South, is closely connected with the rise of religious militancy in the Islamic world and possibly in Hindu and other societies as well. This relationship is highly complex. (While Islamism and feminism are usually assumed to be mutually hostile, for example, this is not always the case.) Here too it has been explored in only the most rudimentary stage.<sup>1</sup>

Issues of sexuality – and especially the politicization of sexuality by ideological movements and governments – are central to the existence of global Christianity, Islam, Hinduism, and other faiths. “Religion is central to sexual regulation in almost all societies,” writes gay scholar Dennis Altman.

“Indeed, it may well be that the primary social function of religion is to control sexuality.”<sup>ii</sup> This suggestion is obviously very simplistic and inadequate. But it does indicate that the emerging confrontation between sexual and religious freedom is not incidental or accidental or the result of misunderstanding. On both sides it is existential.

Scholars of religious freedom cannot expect the generality of the scholarly community to undertake this path of research of its own accord. Large segments of the global scholarly community are openly hostile to religious faith to the point of being incapable of approaching it with appropriate scholarly detachment. Conversely – and an even more formidable barrier – most are decidedly and openly sympathetic to the sexual agenda to the point of discarding any pretense of scholarly detachment and even excluding colleagues who attempt to approach it with what is normally considered appropriately critical disinterest and balance. If scholars of religious freedom wish to understand this urgent trend, they must undertake this research themselves. To ignore this is to bury our heads in the sand.

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**Roshini Wikremesinhe, LLM**

Director, IIRF Colombo Bureau

**'Religious tolerance - emerging trends in Sri Lanka'**

This study examines the role of government policy, judicial action and politics in the context of the fundamental right of religious freedom and religious persecution with emphasis on the experience of Sri Lanka. In 2004 the Jathika Hela Urumaya (JHU) National Heritage Party, the first Buddhist political party, sought to amend the constitution of Sri Lanka, making Buddhism the state religion. There were also three attempts to introduce anti-conversion laws, both by the government and this party. While there is no legal requirement for registration of religious bodies, there are tendencies to harass churches on the basis that they are not registered. Three court rulings denying registration to Christian bodies effectively closed the door to incorporation of Christian ministries. There are arbitrary moves to restrict legitimacy of Christian religious institutions by state machinery.

Werner Nicolaas Nel

Lecturer in law, Department of law, Tshwane University of Technology

**Classifying the persecution of Christians as genocide and crimes against humanity: A hypothetical study on the use International Criminal law to combat impunity for religious persecution.**

The South African Constitution of 1996 affords all South Africans the right to exercise their religious freedom openly and without fear of prejudice or retribution. The principles of public international law similarly provides for the protection of civil, political and religious rights. Regional mechanisms for the protection of human rights such as the African Commission on Human and Peoples' Rights (ACHPR) is tasked with promoting and protecting human rights, including the freedom of religion.

Religious freedom is a right which most Christians in democratic societies around the world have rarely if ever considered to be more than just a human right that they are entitled to. Many Christians believe that the persecution of Christians for practicing their faith is a historical and archaic remnant of a barbaric antiquity long since buried by the internationalization of human rights and freedoms, it is not.<sup>1</sup> “In this past century alone, more Christians were murdered for their faith than any other century in human history, an estimated 200 million.”

The right to religious freedom is no longer a right, it is a privilege.

The aim of this article is to create awareness of this global human rights concern which seems to be the last topic that anyone in the international community is willing to address out loud. To achieve this aim it is firstly important to understand the severity of the persecution of Christians as a human right violation. Secondly, identify an effective definition of the concept of religious persecution. Thirdly, using an effective definition of contemporary Christian persecutions in order to advocate a sanction-based solution to curb religious intolerance and impunity. The sanction-based solution that will be proposed is the criminal prosecution of the individuals responsible for religious persecution in terms of the Statute of the International Criminal Court (ICC).

The ICC is the first permanent, treaty based, international criminal court established to help end impunity for the perpetrators of the most serious crimes of concern to the international community. This article is a hypothesis study that will attempt to validate the persecution of Christians as a crime of serious concern to the international community, therefore necessitating the prosecution of acts of persecutions under the Rome Statute. To be able to corroborate the submission that the persecution of Christians validate prosecutions under the Rome Statute as genocide and crimes against humanity, factual evidence of contemporary persecutions of Christians in the form of case studies will be used, for example:

- Syria where more than 200 people were recently killed in violent clashes between government forces and rebels.
- In Iran, where pastor Youcef Nadarkhani was on death row for about two years. Pastor Nadarkhani “... has rejected an offer to be released from prison if he publicly acknowledges Islam’s prophet Mohammed as ‘a messenger sent by God’.”
- Burma which has been designated as a – country of particular concern (CPC) since 1999 for systematic, egregious and on-going violations of religious freedoms, including Christian Protestants.
- Ethiopia – “There is substantial and independently verified evidence and a massive amount of anecdotal evidence in the form of testimony by victims of violations of religious freedom that the ruling regime in Ethiopia has engaged and continues to engage in acts that flagrantly violate the constitutional and legal rights of citizens to freely exercise their religion.”
- Nuba in Sudan – “Reports documents systematic aerial bombardment of Christian villages throughout the Nuba Mountains as part of a genocidal *Jihad* against the Christian Nubans.”

The international community has created effective mechanisms for the protection of human rights and the restriction of impunity, will we be able to use these international mechanisms to safeguard religious freedom and prosecute religious persecution?

*“The general opinion is that violations of international humanitarian law are not due to the inadequacy of its rules. Rather, they stem from an unwillingness to respect the rules, from insufficient means to enforce them, from uncertainty as to their application in some circumstances and from a lack of awareness of them on the part of political leaders, commanders, combatants and the general public.”*

After having fought so hard and paying such an enormous price in the fight for the universal recognition of basic human rights on many battlefields; in many court houses, political arenas and churches; the world over, are we not persuaded to use any and all instruments at our disposal to peacefully savor religious freedom for our children and the generations to come?

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### **Prof Lovell Fernandez, PhD**

Director: South African-German Centre for Development Research and Criminal Justice  
Faculty of Law, University of the Western Cape, South Africa

### **Religious Persecution as a Crime against Humanity: How accessible are national courts?**

The crime of “persecution” does not exist in the major criminal justice systems of the world today. And whereas several international instruments prohibit discrimination that results in persecution, none of them criminalizes persecution, except the Apartheid and Genocide Conventions. The lack of a definition of “persecution” was thus a major problem confronting negotiators on the Statute of the International Criminal Court. Yet, throughout the ages, it religious groups in particular that have borne the brunt of persecution. In fact, what springs to mind first when one reflects on the history of Christianity, is the persecution of Christians under the Roman Empire, especially in the 3<sup>rd</sup> Century. Since then, and up to the present times, none of the major religions has escaped persecution at the hands of tyrants, orthodox patriarchs or extremist non-state actors.

Following the massacre of thousands of Armenian Christians in Turkey in 1915, the Allied governments undertook to hold all members of the Ottoman government personally reliable for these crimes. But nothing came of this. It was only in the wake of the atrocities perpetrated by the Nazis against Jews, that the right to practise one’s religion became a non-derogable right under customary international law. This means that while a state may adopt its own national religion, it may not restrain the practice of other religions. Furthermore, implicit in the right to freedom of religion or belief, is the right to change one’s own religion, the right not to be compelled to convert, and the right to persuade others without the use of force to convert.

The proposed article will elucidate some of the points stated above, and more importantly, will study the way in which the major legal systems respond to gross violations of the right to freedom of religion or belief. Until only about a decade ago, persecution on religious grounds prompted international concern mostly where it occurred in the context of cataclysmic events, such as national uprisings, pogroms, internal strife or wars. But with the advent of international criminal law in the late 20<sup>th</sup> Century, it is now widely accepted that the crime of persecution as a crime against humanity is committed not only in the ambit of armed conflict, but in peacetime as well. We know, for example, that following the 9/11 attacks, some European governments enacted measures aimed particularly at regulating the internal affairs of minority religions. Muslim groups, for example, complained to the European Court of Human Rights about the way they were discriminated against in Greece and in Bulgaria, and they won. But what about victims of religious discrimination where there are no regional human rights courts and where the discrimination is widespread, systematic and in pursuance of a state or organisational policy? Does it matter that the perpetrators are non-state actors? How accessible are the national courts in such countries? And what recourse, if any, do the victims have? Does impunity reign? How has the

international community responded to such situations, and what could be done to afford a measure of relief?

These are the themes that the article will explore.

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Dr. Daniel Ottenberg LL.M.  
Persecution Analyst WWL Unit  
Open Doors International

### **“Old and new findings on Freedom of religion and belief – a legal perspective”**

Freedom of religion is a very special Human Right:

- Historical derivation
- Scope of protection and early debates
- Covers all dimensions of Human Rights (at least concerning the first generation)
- Has to be understood in a broader context (minority rights, right of education...)
- Can serve as a litmus test for all other Human Rights
- Is heavily debated and has come under strong pressure nowadays (right to conversion)

Human Rights Protection mirrored in decisions by international fora/courts:

- United Nations (HRC, SR, GA debate on protection of religion)
- Key dimension of regional protection
  - ❖ Europe as a “lighthouse”, carrying large responsibility, classical appreciation of freedom of religion, narrow understanding of limitations; today’s importance of OSCE
  - ❖ Inter-American Court starting to cover the topic
  - ❖ Africa limping, but moving at least
  - ❖ Asia discussing
  - ❖ Special approach of the Islamic States (Cairo Declaration etc)

Some (old) decisions shed new light on today’s discussions:

- On mocking about religions
- On registration of religious groups
- On definition of religions
- On protection for security reasons (today: anti-terror protection)

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**Professor Iain T. Benson**, Department of Constitutional Law and Philosophy of Law, University of the Free State, Bloemfontein, South Africa; Senior Associate Counsel, Miller Thomson, LLP, Canada; Senior Fellow, Chester Ronning Centre, University of Alberta, Canada.

*“ Re-Understanding the Freedoms of Association and Religion in Relation to Contemporary Challenges Based Upon Equality and Non-discrimination ”*

**Abstract:**

Many legal challenges in the United Kingdom, Europe, Canada and South Africa (to name but four jurisdictions) in recent years have used notions of “equality” and “non-discrimination” to challenge the status, rule-making authority or existing rights of religious believers and their institutions. Equality itself is assumed to exist as a singular general homogeneous conception which exists apart from other rights within constitutions such as the freedoms of association, expression and religion. The freedom of religion is, often implicitly, and sometimes overtly, argued to be less significant than the advancement of this narrow conception (narrow since de-contextualized) of equality. Equality varies in relation to context though this is often overlooked. For example, the rules relating to the roles of men and women in positions of religious leadership and rules in relation to employment for religious employers are not the same approach to “equality” generally understood outside these settings. There is a tension between plural and univocal viewpoints regarding equality.

To illustrate further: in the last few years, cases in employment law have examined work-place settings in a religious context in order to determine such things as whether the job for which a religious employer wishes to assert a religious rule is “sufficiently connected with the core religious work of the organization.” If the job functions are deemed central then the employer’s rights to a religiously based rule enforcement are generally respected, if the job aspects are not viewed as “core” they are not. What this approach fails to note is that the freedom of religious association is not just to accomplish ends which to some who are external to the association are viewed as narrow religious ends (“education” or “proselytization”) but is an aspect of religious life itself. In other words, for religious people, working together no matter what the tasks, is what constitutes a critical part of their personal religious liberty. The context of religious life is being ignored. Similarly, the legitimately different ways in which religions view “equality” can be overlooked.

“Equality” itself logically needs to adjust given the contestable nature of various claims (such as the nature of marriage, or gender roles in relation to religious beliefs) in civil society. Religion is unfairly placed as in opposition to an undifferentiated (de-contextualized) equality and then one view (usually that of an asymmetrical rights challenger) is deemed the correct one as opposed to a more searching inquiry that looks at competing rights claims and other rights in the context of diversity, pluralism and multi-culturalism (which includes religion).

Seeing through the associational lens (rather than some de-contextualized notion of “equality”) and through a specifically religious conception of association is essential to maintaining other goods in the contemporary society - - such as diversity and pluralism. Multi-culturalism, recently identified by Tariq Madood and others as “a term in crisis” and pluralism can support diversity but new claims for equality or, in Canada, “deep equality” suggest that principles of religious diversity and accommodation and tolerance stand in the way to this new super right and its realization. Notions of a homogeneous conception of equality being advanced in courts and recent academic literature, pose a real threat to religious liberty in the future.

The threat can best be met by legal strategies which view religious liberty through the lens of the freedom of association and the principles of diversity, pluralism and multi-culturalism rather than allowing an asymmetrical application of de-contextualized “equality” to trump associational and religious freedoms. This paper is a gesture in that direction.



Prof. Phd Antonio FUCCILLO

Associate Professor of Ecclesiastic Law, Department of Jurisprudence - Second University of Naples

### **"Merchants in the temple: law, economy and religion"**

#### Abstract

The research has found its inspiring reason in the perception of important confessional belonging reflexes on economic and financial choices, both under causal profile and legal tools selection by which to spread and satisfy the need of the believer to contribute to his/her own denomination and to allow it to self-finance.

This complex phenomenon which now "contaminates" the economic system can surely be numbered among the reflexes of a widest globalization process which if on the one hand absorbs the individual in a global relationship in which national border and formal citizenship are replaced by new criteria for personal identification, on the other hand consults the jurist, both interpreter and legislator, to research new suitable standards for the renewed *modus convivendi* characterized by the cohabitation between "same differences" and "diverse differences".

Such a dynamics submits legal institutions, practically involved into the implementation of the religious freedom right, to new interpretations even because of the problems raised by postmodern society.

The same secularization, meant as separation of the society and the culture from the influence of religious institutions, or more in general from the influence of the sacred, which has originated a progressive loss of the central role of religion in men's life, appears submitted to a strong withdrawal. In fact, always more evident are the "signs of a religious awakening" which are embodied in the interest for religious facts and in a new need to find reference points in the sacred sphere, enough to talk of "God's revenge" even in the rules governing economy and finance.

The present research has therefore verified the influence of the religious element on economic and financial choices made by the believers from the moment it acquires a "normative dimension". However, notwithstanding deep differences, religions arise from normative systems which orient and influence not only ideals, inner beliefs, deep reasons and ambitions but also outer and socially significant behaviours; imposing, forbidding or at least suggesting or warning off the accomplishment of wider acts usually defined as worship acts.

The choice of the believer to finance his/her own denomination, that is to opt for financial tools which are compatibles with concerning precepts, summarizes more and more often a sense of belonging through which members react to the syndrome of eradication caused by the contact with new normative cultures and traditions.

*I mercanti nel tempio: economia, diritto e religione.* Such a research verifies the influence of religious precepts on economy and finance and investigates the role that "social" can have in economic system and how it can orient not only choices concerning legislative politics applied to enterprises but also how it allows people who want to be in keeping with their religious precepts to get to legal and financial tools. In particular, the relationship between globalized market and social factor and which is the role of religious behaviour in the market is considered from a multicultural and multi-faith point of view. The influence that religious factor has on legal and financial matters causes the clearing of informative asymmetries through economic operators connected with denominations: religions act as competitors on the market.

Active participants to reaserch project:

- Prof. Phd Antonio FUCCILLO, Associate Professor of Ecclesiastic Law – Second University of Naples (Scientific Responsible);
  - Prof. Phd Raffaele SANTORO, Aggregate Professor of Canonic Law – Second University of Naples;
  - Dr. Elisa MATTU; Dr. Antonella ARCOPINTO; Dr. Giovanni CROCCO; Dr. Gennaro FUSCO; Dr. Piefrancesco RINA; Dr. Phd Francesco SORVILLO; Dr. Angela VALLETTA.
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Mustafa Tekin

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### **PROJECTIONS OF RELIGIOUS FREEDOM IN ISLAM AND MUSLIM TRADITIONS**

We are confronted with different problems in a world, we live in. Doubtless, religious freedom as a problem heads a list. Today, it is possible to mention some problems that we can consider within religious freedoms. We can take in hand three different stages.

- 1- Freedom in choosing a religion.
- 2- Freedom in choosing a religious sect and/or a denomination.
- 3- Differences in religious comments.

We can see different projections of these problem in today's world. We, in this paper, try to analyze islamic theory and historical experiences on religious freedom with some samples throughout the history.

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Prof. Thomas Schirrmacher

### **The member States of the Organisation of the Islamic Cooperation (OIC) have 300 million Christian citizens**

Abstract:

The 52 member and 5 observer states of the Organisation of the Islamic Cooperation (OIC) have 1.8 billion inhabitants. Roughly 70%, that is 1.275 billion are Muslims, **30% are non-Muslims (= 0,53 billion)**. *Roughly two thirds of the non-Muslims are Christians, that is 0.335 billion*, or 18.6 % of the inhabitants of the OIC-states. (This is research in progress, the figures might change.)

The research paper lists all member states of th OIC with the number of of Muslim and non-Muslim citizens and calculates from the tables, how many non-Muslims, especially Christians as the largest groups, are represented by OIC, that claimes to work on behalf of Muslim worldwide only.

The paper then discusses the human rights situation in the OIC, especially the situation concerning the freedom of religion, opinion and press