

Guaranteeing the rights of Religious Minorities

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Freedom of conscience and religion as binding factor in the interreligious dialogue.

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The binding factor

Report of union experiences in defence of common values in Uruguay, Chile, Argentina and Brazil, in which the representatives of religious faiths -minorities and majorities – coordinated efforts in the promotion and promoting legislative measures to the benefit of all religions, especially in the full and effective enjoyment of the fundamental right of conscience and faith.

Uruguay, May 2012: the representative of the Episcopal Conference of Uruguay (Jesuits priest of the Catholic Church, majority faith), an orthodox rabbi and one of the conservatory and modern school are seated around a table, shoulder to shoulder, a priest of the Seventh-day Adventist Church and his treasurer, by his side the pastor and president of Evangelical Council of Representativeness of Uruguay and members of his Directive Commission, representatives of the Anglican Church, Methodist Church, Conference of Christian Churches (Lutherans and Calvinists, Federation of Evangelical Churches), of the Jehovah's Witnesses , of the Church of Jesus Christ of Latter-day Saints (Mormons), of the Church of God of Uruguay – Worldwide missions, Afro-Brazilian religions – Afrumbanda y supporting the initiative reuniting the representatives of the practice totally of religious groups existing in Uruguay, an institutional representation of the Jewish-Christian Brotherhood.

Polytheists along with monotheistic, Christians along with Jewish, Christian churches of long history – Lutherans, Calvinists, Mennonite, seated around the same table with neo-Christians, post-Protestants or Modern Evangelical Churches, Catholic-Roman-Apostolic along with protestants; all of them, elbow to elbow, appearing after having requested a common agreement hearing to the Human Rights Commission of the House of Representatives of the State Parliament, in unanimous support for a legislative initiative.

What was the initiative which received a unanimous and unconditional support of minority and majority religions?

It was not any initiative about politics, nor public opinion, or economic issue. It was not any issue of security, nor joining forces for the inclusion of religion in public education. It was not either a shared view towards the defence for life from conception or against legalisation of abort or assisted human reproduction, nor against other legislative measures recently approved, such as same-sex marriage and adoption. It was neither the philosophy of gender nor positions in defence of women's rights.

The topic which reunited the soul of different religious groups was de defence of a common value, the freedom of religion and consciousness.

In December 2000, a bill on the Recognition of Freedom of Conscience and Ideas was presented. It was drafted by myself, which addressed in particular and contemplated the right of peoples and groups of being exempted of fulfilling a normative mandate invoking their beliefs, for instance, both in the work environment (case of Sabbath and other days of religious precept), civic duties (case of pledging allegiance to patriotic symbols), health sector (exception of making any practice against moral or religious conscience), or regarding the animal ritual killings.

Basically, they referred to the dramatic precise moment in which a person or a group face between denying their faith or (which is the most important for them) or violating a law, when is possible, even though is more difficult, to look for a reasonable adaptation, between harmonising the interests at stake allowing to safeguard the freedom without any detrimental of state laws.

The following year, the representatives of the religious faiths were invited to the seminar “Parliamentary Workshop on Freedom of Conscience”, celebrated in the House of Representatives, in which the legislators of the political parties defined and promoted the approval of the project, followed by academics who represented different religions present in society, clarifying the juridical suitability of the bill.

After this event, the representative of the different religions argued to the drafted of the project to build a momentum for the bill, in which during the parliamentary discussion was left to be discussed by the Human Rights House of representatives.

Thus, an “Interfaith Commission” was created, which reunited in person or online several times, and repeated the request for a hearing to the Human Rights Commission of the House of Representatives. In this hearing each one had the opportunity to raise their faith motivations to support the initiative, followed by the juridical justification signalling de adequacy of the bill to become law.

The project is oblivious to economic and political-partisan issues. The is not any financial cost. It is a modest request due to its aims and to those pushing for it. It does not introduce a big constitutional reform. But it enshrines and protects the highest values, and at the same time, the simplest, those of the everyday, the most sacred of human beings: their conscience and the possibility to drive their lives according to them, within the national law. It is a call for securing the freedoms of those supporting the bases of our society, such as the promotion of the freedom of civil and faith liberty in all its imaginable extension.

It was not forgotten the crucial management of the Jewish-Christian Brotherhood of Uruguay (CJC), which since 1958 has been astonishing, hardening and reaping the benefits of the interfaith dialogue which is its main driver. In fact, the CJC in Uruguay, first of the Americas, was founded by a Methodist priest Emilio Castro, a Chief Rabi Frtiz Winter, uncle of Rafael Winter who participates in this encounter, and of the catholic priest – Jesuit, Priest Justo Asiaín, my uncle.

As of today, the project was practically buried, being witness of the only factor that accomplished reuniting the faith and willing of a myriad of religious faiths of the country – minority and majority –, claiming since the beginning the silence to fulfil its duty as guardian of fundamental rights. This

depends upon the men: policy makers, indeed, but also of those interested, both faiths' representatives and academics – *mea culpa* –.

Santiago de Chile, October 26<sup>th</sup>, 2013: Discussion Panel for Conscience Freedom during the “Atrio de Santiago”. Discussion between believers and not believers, in the exCongreso Nacional. The discussion panel was presented with a thematic introduction, proposition of questions, and moderated by myself. The panellists presented a broad range of worldviews on freedom of conscience: The Head of the Great Masonic Lodge of Chile, an evangelic member of the Latin-American Teleologic Brotherhood and an academic of the University Complutense of Madrid. They all defended, with nuances of its limits, the freedom of conscience and the right to drive one's own life according to one's beliefs, especially in cases of conflict between the faith and the law.

There was people from all the races, languages and nations, Islamic and Jewish representatives, and the Catholic Church's highest positions off the country. Civil and military authorities, politicians and academics were also in the discussion panel.

After the fructiferous panel and the replies by the public, the session finished with music of a choir and the subscription by signature of all the faith's representatives on the Declaration of Freedom of Conscience, which is attached to this document.

It was an important milestone for Chile's history. There was not any comment on the text, nor reservations. The representatives of the Christian Churches – Bishops – endorsed with their signature the Santiago Declaration on Freedom of Conscience. They made it once again, in the place where the laws are discussed and approved, which main reason of existence is delivering citizens with their guarantees and basic security for the full and complete enjoyment of their fundamental rights, being this the one of freedom of conscience and faith the origin of all the other freedoms.

The echoes keep resonating in the Atrio de Santiago and they are crossing borders. The freedom of conscience and faith, once again, reunited the majorities and minorities for its defence.

Brazil, 2009: The Chamber of Deputies approved the General Law of Religions, which broadens the rights of Evangelicals. It recognises the freedom of confession and faith, it grants exceptions of taxes for the construction of churches, and which allows them to freely demonstrate their faith in public spaces, among other rights. The Evangelical policy makers reached an agreement with the Catholics for the adoption of such law, in exchange for the support of the Chamber's support for the Concordat established last year between President Lula and the Pope Benedict XVI in the Vatican. This General Law of Freedom of Faith does not only benefit the Evangelicals, but also all the other recognised faiths, such as the Jewish and Islam. Both the so-called Estatuto de la Iglesia Católica and the General Law of Religions were approved late on Wednesday night by a symbolic vote, this is to say, by an agreement between the spokesmen of each political party.

During 2013, many bills on freedom of faith are being discussed in the National Congress, pushed by a multi-faith parliamentary group composed for pushing bills in defence of the freedom of conscience and freedom of faith for all groups. The parliamentary group is composed by Catholic and Protestant representatives. They report the lack of debates on issues that are worth it, many

have showed their willingness to make a parliamentary group or a lobby in fence of common values for these faiths.

The Catholic faith (which is losing adepts in favour of the Evangelical Church) has appeared before court in behalf and helping the position of these churches, as well as on issues on ethics and bioethics.

Sometimes the minority religions question the constitutionality of the 2008 Concordat between Brazil and the Holy See (document attached), questioning: Do all religions have access to constitutional protection?

A few minority Evangelical Churches have supported the project “General Law of Religions”, called “Evangelical Concordat” (attached), to be discussed soon in the plenary (August 2013).

The last constitutional reform proposed, which the Christian parliamentary group supports, would legitimate the faiths by themselves as promoters of an action of unconstitutionality.

Once again, the freedom of faith and conscience and its reception by legislative measures, as a reuniting factor of religious minorities and majorities’ efforts in defence of their common interests.

Lastly, but deserving the merit of the first place due to its long tradition and arduous work developed on dialogue, encounter and interfaith consensus is the case of Argentina.

May 2000, Argentina, the Secretariat of Worship called for an advisory panel composed by lawyers and people recognised by their trajectory on topics of freedom of faith who belong to different faiths and religious traditions, but without institutionally representing them. After finished their duty, and in the private sphere, its members decided to found the Argentine Council for the freedom of faith with the objective of keep working with the same spirit, dedication and interests on important topics for the republic.

The CALIR is formed by representatives of many Christian Churches – Catholics and Protestants of different origin –, of Jewish and Muslim communities. It is very active in its dynamic, permanently developing politics promoting the freedom of conscience and faith for all groups and it is particularly active denouncing the hostile or offensive situations perpetrated against any religious group, acting with promptness and efficacy, shaming in public these violations and publishing related declarations.

It has organised an International Congress in 2008 in order to promote the right to freedom of faith with participants of other religions, academic specialists as lawyers, sociologists, historians, and has called for a second congress to be made in 2014 in Córdoba, to continue the advocacy for this fundamental right.

Some of its successful actions of having promoted the support of all religious groups, has been the draft of a bill, such as the Worships for the Argentine Republic, among others, which is available on its website.

One of its objectives is the advocacy for the positive valuing of religion, encouraging the dialogue and the mutual recognition between different faiths and religions and the cooperation between them

in the promotion of their own good. As well as promoting reforms to update the national and provincial legislation for the complete recognition and guarantying the freedom of faith and religion.

In Uruguay, Chile, Brazil and Argentina, the unifying factor by excellence has been the freedom of conscience and faith, which has achieved the unification of efforts in favour of common values. In all cases, the proposals have been channelled through the legislative way, as the only way to get the protection of the law which is needed in order to protect the complete enjoyment of all the rights and freedoms.

### **Main challenges in the protection of minorities' rights.**

The practical problems which members of different minority religions face, collectively and individually, for the complete enjoyment of their freedom of faith, in public and private, during the manifestation of their faith (practical, enforcement, rites, and education), with eventual effects in the future of people and the autonomy of religions are:

Deficiencies in the educational area:

Inclusion of religion in public education. In some cases, such in Brazil, offering religious education in public schools, by demand, faces practical challenges of providing teachers with this background where the number of students of a minority faith is very reduced. In other countries, the main challenge is including at least the instruction about religion and faiths (Argentina and Uruguay).

In the work environment – religious celebrations, holidays, usage of dynamic symbols, volunteering, protection of the seal of the Confessional.

Some countries, such as Argentina and Chile have legislation which contemplates, at least partially, the religious holidays of minority faiths (document attached).

Other countries have important lacks on this point, forcing the followers of a Church to choose between keeping their jobs, which is their source of livelihood, and abandoning their faith, or conserving their faith but losing their jobs. The same happens in schools, when there are not any exception in the assistance on Saturdays (Seventh-day Adventists and Orthodox Jewish), and other religious holidays.

The legal terminology characteristic of the majoritarian model with a negative impact for the access to state's benefits of minorities, implies an extra charge for last ones since it is not always easy to identify a faith ministry (case of the Afroubandas or Evangelical ministries) nor the place where they practice their faith which can be considered as the 'church' or a faith's followers confessing to a minister. The protections granted for ministers with a Christian model are now easily adaptable for those who do not present the same model.

Tax-exemptions, statute of faiths' ministers, and obtaining legal personality.

The problem raises with the unequal treatment in relation with the Catholic Church, which tends to have constitutional recognition of its legal personality, thus, automatic access to tax-exemptions, and which does not occur with the other faiths which have to apply to the State their recognition and granting of that status, among other needs, such as non-profit seeking and deep-rooted history.

On the right to marriage – civil effects of the religious marriages –.

While the state of some countries recognises civil effects of religious marriages (Brazil, Colombia, and Chile), other states deny it. They force the followers of faiths to make a double celebration with a civil marriage which essential content is not always the same as their beliefs. While within this topic, it has been legislated to include many other collective which were denied having access to it, it has not been the case for the freedom of faith.

Gipsy communities and original indigenous peoples' communities have marriage rituals which their legal validity must be considered.

Animal ritual killings:

Not only the kosher and halal traditions are involved, but also the animal slaughter such as hens, lambs which is part of the Afroumbanda faith, which often faces the opprobrium of animal welfare collectives despite that there exists law legitimating their actions.

Lack of regulation preventing the abuses committed by the so-called 'sects' or new religious movements.

In those countries where the law has neglected on this point, does not protect the potential followers of these religions which could become victims, cause by a state neglecting the legitimate limits of the right to freedom of faith, in respect of the right of others, harming others, public order, public health, etc.

Enforcement of the right of confession by the state' law and its respect.

When the states' jurisdictions apply their law, are not always trained enough on their scope and understanding. Thus, it is needed to extort on external experts who train on laws, instead of substituting faiths' authorities about their faiths' principles.

Conscientious objection and institutional visions as an instrument of defence which applies to all the areas.

While the conscientious objection is recognised by international and regional law in Latin America, its enforcement is not always peaceful. We recall that the initiatives which garnered support of all faiths' groups in the examples given above, lead to proving a legal framework of certainties for the reception and protection against the conscientious objection and visions which enforces de freedom of conscience and visions. Something must be telling governments that the fact that faiths in those countries have reunited in defence of that right as a fundamental value.

In this field, new religious motivations are arising from the conscientious objection, such as the presented above about the Afroubandas and other groups vis a vis laws on organ donations.

The same applies to funeral rites of the faiths that prohibit body exhumations.

**The essential role of the state as public operator of the religious factor in society: achievements and shortcomings.**

Starting from the premise that the religion is for those who profess it “one of the fundamental elements is their conception of life” and thus “freedom of faith or conscience must be respected and guaranteed” (We consider that the “ Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief”, 11/25/1981, United Nations General Assembly (Resolution 26/55)), as well as the confirmation that faiths in general cooperate with the state’s objectives on human, peace, and understanding advocacy, the state must meet its positive duties and not only refraining of invading or affecting the freedom of faith of people and groups, and rather providing with wings and wheels for its complete enjoyment.

It must be noted the crucial importance of the state in the effective enjoyment of the freedom of faith and conscience, which with its power can affect minority groups, or on its place, facilitate for individuals and groups such right through measures of cooperation. Those measures should be on topics awaiting attention for the effective enjoyment of minorities and majorities’ rights.

Examples of specific measures which facilitate the enjoyment and exercise of freedom of faith and conscience are attached in the appendix.

However, the shortcomings listed above are for now more than the achievements.

Suggestions for the real and effective enjoyment of religious minorities (and majorities)’s rights.

The state must be mindful of society’s claims, of democracy, equality, liberty and justice.

It must keep in mind that the faiths – minorities and majorities – cooperate with the state’s objectives for promoting humanity, harmony and peace.

The faiths are reservoirs moral reference, that the state must consult with in order to meet the ethic public needs.

The faiths are claiming for law measures to guarantee the most fundamental right: freedom of conscience.

Tolerance is not enough: public ethics imposes respect and goes much beyond that.

Despite antidiscrimination law is necessary, it is not enough. It constitutes a shield for groups and individuals who can claim their protection against any third-party or state intervention. However, in addition of providing a shield, the state must provide with wings and wheels for minorities and majorities to enjoy their freedom of faith and conscience. The state must meet its positive duties, to develop measures advocating for the right of direct faith freedoms, in concrete fields of the facilitation of exercise and enjoyment of liberty: education, recognition of legal personality, reasonable adaptation in the work environment, etc. It is not enough that the state only abstains from intervening during the exercise of freedom of faith: it must provide with adequate measure for its complete enjoyment, as it does in other areas.

The protection of non-believers, such as atheists and agnostics, can never overpass to force the believers of being against their religion.

Beyond the application of an internal right of faith minorities, an education on human rights must be imposed, especially in terms of freedom of faith, for public servants, lawyers, and decision-makers.

For this reason, experts must be consulted such as the lawyers who are members of the Latin American Consortium for Religious Liberty, which could clarify issues in the region.

Legislation, policies, and suggestions regarding respecting the rights of minorities draw from the premise that majority faiths do not need this special attention due to their rights are already considered. However, where their rights are not considered, they deserve the same protection as minorities.

To the achievement of these objectives, the main challenge concerns the religious groups, which must demand the state the adoption of such measures, as a first step to be heard. The union of these religious in a common front could constitute a platform which must be considered by the state.

Religions of the world, unite! In defence of common values, starting with due respect of all groups' freedom of faith and conscience.