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Session 4

International Religious Freedom Update

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Program Description: This presentation provides an overview to lawyers and judges who are interested in the current state of religious freedom internationally and how religious freedom can be better protected in the future. It begins by highlighting the main threats to religious freedom currently, from violence to refusals to allow religious groups to worship or even have legal status. It then surveys the international legal framework through which religious freedom is protected. This framework includes human rights treaties as well as entities tasked with enforcing those treaties such as the United Nations and the Council of Europe. Finally, the presentation shares successes in the protection of religious freedom as well as challenges still to be overcome.

Target Audience:

Lawyers and judges who are interested in how religious freedom is protected worldwide.

Course Objectives:

1. Understand the main threats to international religious freedom today.
2. Understand the legal framework for protecting religious freedom (including significant documents and enforcement institutions).
3. Understand key achievements and challenges to the protection of religious freedom internationally.

Brief Outline:

- I. Threats to Religious Freedom Around the World
 - A. Violence
 - B. Restrictions on Religious Belief and Practice
 - C. Denial of Legal Personality and Right to Association
 - D. Religious Restrictions in the Name of Equality

- II. Legal Framework for Freedom of Religion or Belief
 - A. Key Documents
 - B. Key Enforcement Institutions

- III. Legal Protections for Freedom of Religion
 - A. Achievements
 - B. Challenges

- IV. Questions

**International Religious Freedom Update
Outline
October 2022**

Introduction: Polycarp's Story

“Eighty and six years I have served Christ, nor has He ever done me any harm. How, then, could I blaspheme my King who saved me?...I bless Thee for deigning me worthy of this day and this hour that I may be among Thy martyrs and drink the cup of my Lord Jesus Christ.”

I. Threats to Religious Liberty Around the World

A. Violence

1. Personal violence

- Center for Study of Global Christianity at Gordon-Conwell Theological Seminary estimates that between 2011 and 2020 as many as 90,000 Christians were martyred per year.¹
- Open Doors USA reported that 5898 Christians were martyred in 2021.² Their report is based on verified data about each death.
- Persecution isn't just against Christians. In 2017 there was a genocide against Rohingya Muslims in Rakhine Province of Burma. It involved mass killings and rape.³ There is a case now at International Court of Justice for violation of Genocide Convention.
- In Afghanistan, Christians are under attack from the Taliban. But Shia Muslims are too. There are reports on executions and forced eviction from homes.⁴

2. Destruction of property

- Open Doors reports 5110 churches and other Christian buildings were attacked last year.⁵ Many more Christians are attacked in homes. Often there is no investigation by police or prosecution.

¹ <https://www.gordonconwell.edu/blog/christian-martyrdom-who-why-how/>

² <https://www.opendoorsusa.org/christian-persecution/>

³ https://www.uscirf.gov/sites/default/files/2022-04/2022%20USCIRF%20Annual%20Report_1.pdf

⁴ Id.

⁵ <https://www.opendoorsusa.org/christian-persecution/>

B. Restrictions on Religious Belief and Practice

1. Restrictions on religious speech

a. Blasphemy laws

- Many nations have anti-blasphemy laws that forbid criticism of Mohammed, Islam, or Muslims. In Iran last year the Arak Criminal Court sentenced two men to death for “insulting the Prophet;” the sentence was upheld on appeal.⁶
- U.S. Commission on International Religious Freedom (USCIRF) reports that “scores” of Christians are arrested, detained, tried, and sentenced on vague charges like “propaganda against the regime.”⁷

b. Anti-proselytism laws

- Example: Nepal 2017 law: prohibits sharing gospel “with intention of conversion.” One individual found guilty; punished 5 years of imprisonment and 50K Nepalese rupees (about 2 months salary).⁸

c. Hate speech laws

- Example: Swedish prosecution of pastor Ake Green in 2004. Sentenced to 1 month in jail for disrespect to homosexuals by speaking of homosexuality as sin (Swedish law would allow sentences up to 4 years for “especially offensive” speech). Overturned on appeal.

2. Restrictions Relating to Conversion

a. Anti-conversion laws

- Very common in Muslim nations, especially for those from Muslim background. Many who convert are prosecuted, lose employment, or suffer violence from family members.
- Muslims themselves – along with Christians – are the victims of such laws in some places. Example: India. According to 2022 USCIRF Report: “Government action, including the continued enforcement of anti-conversion

⁶ https://www.uscirf.gov/sites/default/files/2022-04/2022%20USCIRF%20Annual%20Report_1.pdf

⁷ Id.

⁸ Advocates International 2017 Newsletter

laws against non-Hindus, has created a culture of impunity for nationwide campaigns of threats and violence by mobs and vigilante groups, including against Muslims and Christians accused of conversion activities.”⁹

b. Forced Conversion

- Example: Pakistan: “Abduction, forced conversion to Islam, rape, and forced marriage remained imminent threats for religious minority women and children, particularly from the Christian, Hindu, and Sikh faiths.”¹⁰

3. Other restrictions on belief and practice

- Example: China and crackdown on house churches:

2021: “[A]uthorities throughout China routinely raided churches, detained Christians, and confiscated religious materials. The government also continued to demolish church buildings and crosses—including the Sacred Heart Catholic Church in Xinjiang—under its “sinicization of religion” campaign.”¹¹

- Example: China and Uyghur Muslims:

According to AP (July 2021), in the last 5 years, China has detained a million or more Uyghur Muslims from the western Xinjiang Province in reeducation detention camps.¹² USCIRF 2022 report: “Former detainees and witnesses reported physical and psychological torture, rape and other forms of sexual violence, forced labor, and forced sterilization and abortion while in custody.”¹³ Further, authorities separated as many as 880,000 Muslim children from their parents and destroyed or desecrated important religious and cultural sites throughout Xinjiang.¹⁴ US and some European nations in 2021 declared this to be a genocide.¹⁵

C. Denial of Legal Personality and Right to Association

1. Seizure of property and closing of churches

- Example: Algeria – Since 2017, the government has closed 20 Protestant churches; they were told that they were violating a law that requires authorization

⁹ https://www.uscirf.gov/sites/default/files/2022-04/2022%20USCIRF%20Annual%20Report_1.pdf.

¹⁰ Id.

¹¹ Id.

¹² <https://apnews.com/article/business-religion-china-only-on-ap-f89c20645e69208a416c64d229c072de>

¹³ https://www.uscirf.gov/sites/default/files/2022-04/2022%20USCIRF%20Annual%20Report_1.pdf

¹⁴ Id.

¹⁵ Id.

for non-Muslim worship.¹⁶ But the organization that would give need to give authorization (National Commission for Non-Muslim Religious Groups) never meets to consider authorization requests. The government has also prosecuted Protestants (and some minority Muslims) who have continued to worship.

2. Refusal to register churches and religious groups.

- Example: Russia – Government (supported by Russian Orthodox Church) uses registration system to restrict operations of religious groups viewed as threats. Example: Salvation Army. According to USCIRF report, the government uses “undesirable organization” designation.¹⁷

D. Religious Restrictions in the Name of Equality

- Example: *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission*, 138 S. Ct. 1719 (2018).¹⁸
- Example: UK Equality Act (2006) – Because Catholic Church wouldn’t treat homosexual and heterosexual parents the same for adoptions, most Catholic Church organizations were forced to stop doing adoption work in the UK.¹⁹ Previously they had facilitated 1/3 of UK adoptions.

E. Where is persecution taking place?

- #1 place for verified martyrdom: Nigeria. In 2021, 4,650 killings took place in Nigeria.²⁰
- USCIRF identifies nations that are biggest persecutors. In 2022 it recommended to the U.S. State Department to designate 15 “Countries of Particular Concern”²¹:

Afghanistan
Burma
China
Eritrea
India
Iran
Nigeria

¹⁶ Id.

¹⁷ Id.

¹⁸ *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission*, 138 S. Ct. 1719 (2018).

¹⁹ <https://www.bbc.com/news/uk-england-leeds-20184133>; Sophia Kuby, ADF International

²⁰ <https://www.opendoorsusa.org/christian-persecution/>

²¹ <https://www.uscifr.gov/countries/2022-recommendations>

North Korea
Pakistan
Russia
Saudi Arabia
Syria
Tajikistan
Turkmenistan

II. Legal Framework for Freedom of Religion or Belief

A. Key Documents

1. National constitutions and laws
2. United Nations documents

Universal Declaration of Human Rights (1948) – Article 18

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.

International Covenant on Civil and Political Rights (in force 1976) – Article 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief (1981) – Article 6

[T]he right to freedom of thought, conscience, religion or belief shall include, inter alia, the following freedoms:

- (a) To worship or assemble in connection with a religion or belief, and to establish and maintain places for these purposes;
- (b) To establish and maintain appropriate charitable or humanitarian institutions;
- (c) To make, acquire and use to an adequate extent the necessary articles and materials related to the rites or customs of a religion or belief;
- (d) To write, issue and disseminate relevant publications in these areas;
- (e) To teach a religion or belief in places suitable for these purposes;
- (f) To solicit and receive voluntary financial and other contributions from individuals and institutions;
- (g) To train, appoint, elect or designate by succession appropriate leaders called for by the requirements and standards of any religion or belief;
- (h) To observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of one's religion or belief.

3. Regional Documents

European Convention on Human Rights (in force 1953) – Article 9

1. 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 worship, teaching, practice and observance.
2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

American Convention on Human Rights (in force 1978) – Article 12

1. Everyone has the right to freedom of conscience and of religion. This right includes freedom to maintain or to change one's religion or beliefs, and freedom to profess or disseminate one's religion or beliefs, either individually or together with others, in public or in private.
2. No one shall be subject to restrictions that might impair his freedom to maintain or to change his religion or beliefs.
3. Freedom to manifest one's religion and beliefs may be subject only to the limitations prescribed by law that are necessary to protect public safety, order, health, or morals, or the rights or freedoms of others.
4. Parents or guardians, as the case may be, have the right to provide for the religious and moral education of their children or wards that is in accord with their own convictions.

African Charter on Human and Peoples' Rights (in force 1986) – Article 8

Freedom of conscience, the profession and free practice of religion shall be guaranteed. No one may, subject to law and order, be submitted to measures restricting the exercise of these freedoms.

B. Key Enforcement Institutions

1. United Nations Institutions

Human Rights Council

- 47 member states
- Tasked with strengthening the promotion and protection of human rights around the globe and addressing situations of human rights violations and making recommendations on them
- Important functions:
 - Universal Periodic Review
 - Creating special mandates – including Special Rapporteur on the Freedom of Religion or Belief
 - Complaint system

Human Rights Committee

- 18 experts on human rights serving as individuals
- Important functions: review periodic reports; create general comments; review individual complaints (if nation has ratified 1st Optional Protocol).

- Views are not binding as a matter of international law.

2. Regional Institutions

Council of Europe: European Court of Human Rights

- 46 full-time judges (one from each member state) serving as individuals
- Reviews tens of thousands of cases each year filed by individuals alleging a violation of human rights.
- Most powerful human rights court in the world.
- Judgments are binding as a matter of law

Organization of American States: Inter-American Commission on Human Rights and Inter-American Court of Human Rights

- Commission has 7 members serving as individuals.
- Commission drafts documents, advises the OAS, and examines communications regarding human rights.
- Court has 7 judges serving as individuals.
- Court hears both advisory and contentious cases regarding human rights.
- Court decisions are binding as a matter of international law.

African Union: African Commission on Human and Peoples' Rights; African Court on Human and Peoples' Rights

- Commission has 11 members serving as individuals.
- Commission drafts documents and resolutions and hears complaints regarding human rights.
- Court has 11 judges serving as individuals.
- Court hears both advisory and contentious cases regarding human rights.
- Court decisions are binding as a matter of international law.

III. Legal Protections for Freedom of Religion: Achievements and Challenges

A. Achievements

1. Extensive monitoring of violations of the freedom of religion.

- Special Rapporteur on Freedom of Religion and Belief – Advocates for and brings attention to the freedom of religion. Current special rapporteur is Ahmed Shaheed.²²

²² <https://www.ohchr.org/en/special-procedures/sr-religion-or-belief#:~:text=On%201%20November%202016%2C%20Mr,the%20Essex%20Human%20Rights%20Centre.>

- United States Commission on International Religious Freedom – Created pursuant to the International Religious Freedom Act. As amended by the Frank R. Wolf International Religious Freedom Act of 2016, the act:

seeks to make religious freedom a higher priority in U.S. foreign policy through a range of mechanisms and tools. These include governmental institutions (USCIRF as an independent legislative branch agency, the ambassador at large and the State Department’s IRF Office, and a position on the White House NSC staff); ongoing monitoring and annual reports on religious freedom violations; and the imposition of consequences for the worst violators.

2. Important decisions

- *Kokkinakis v Greece (1993)* – 1st Article 9 case decided by European Court of Human Rights; Court ruled that Greece violated Article 9 by prosecuting (for “unlawful proselytism”) Jehovah’s witness who sought to convert Greek Orthodox woman. The Convention protects right to “manifest” one’s religion, not just believe. “Manifest” includes words and deeds. “Bearing witness in words and deeds is bound up with the existence of religious convictions.”
- *Moscow Branch of Salvation Army v Russia (2006)* – European Court of Human Rights ruled that Russia violated the Salvation Army’s freedom of religion when it denied the Salvation Army permission to register as an official organization. The Salvation Army was allowed to continue its activities and ordered Russia to pay thousands of rubles in damages.

3. Effective work of advocates and non-governmental organizations.

- Example: Asia Bibi blasphemy case. Ultimately Pakistan Supreme Court ruled that hers was a wrongful conviction.²³

B. Challenges

1. Lack of rule of law. Constitution or laws provide protections, but those provisions often go unenforced for religious minorities.
2. The Shari’a Law Reservation – Islamic nations ratify convention, but that ratification is subject to the reservation that all interpretation and enforcement is “subject to Shari’a.”

²³ <https://www.bbc.com/news/world-asia-47040847>

3. Disagreement over meaning of religious freedom.

Example: “Defamation of Religion” – Limitations on speech are justified in the name of protecting human rights. Must protect people from “defamation of religion:” speech deemed critical of Islam, Mohammed, Muslims. See UN Human Rights Council resolutions in 2008 and 2010.

4. Strong limitation clauses in international conventions

- Africa: “No one may, **subject to law and order**, be submitted to measures restricting the exercise of these freedoms.”
- Europe: “Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.”

Examples of limitation clause in action:

- **SAS v France (2014)** – European Court of Human Rights upheld France’s ban on Muslim women wearing face veils in public. The court deferred to France’s position that the face covering ban was necessary to preserve public safety and the values of an open and democratic society (the concept of “living together”).
- **Wunderlich v Germany (2019)** – The European Court of Human Rights upheld Germany’s 3-week removal from the home of the Wunderlich children after their parents insisted on home schooling them in violation of German law. The court deferred to Germany’s judgment that the removal of the children was necessary in the face of risks to the children from a lack of knowledge and development of social skills.
- **Otto-Preminger-Institut v Austria (1994)** – European Court of Human Rights upheld Austria’s ban on showing a film that Austria deemed sacrilegious and deeply offensive to the nation’s Catholic majority. The court deferred to Austria’s conclusion that banning the film was necessary to protect the rights of others (“particularly the right to respect for one’s religious feelings”) and to prevent disorder.