

## THE COLOMBIAN EXPERIENCE IN THE AREA OF PROTECTION OF THE FREEDOM OF RELIGION

By: Sergio González Sandoval<sup>1</sup>

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From its beginnings as a republic, Colombia has been a country that has been extensively and productively engaged in matters of public international law. As a result of this, it is a member of several international organizations, and it is a high-level contracting party to several bilateral treaties and important multilateral treaties and declarations. Some of these international instruments are explicitly related to Human Rights. However, this long, international legal tradition stands in contrast to the precarious internal situation in the areas of protection, defense, promotion, and spreading of Human Rights. Although the fundamental right of freedom of religion belongs to the realm of Human Rights, the effect that some suffer is equally worrisome. The seriousness of this statement deserves a detailed analysis, which I propose to share with you during the workshops of this 15th Annual BYU Law & Religion Symposium 2008.

**Brief Historical Summary of the Development of the Constitucional Right to Freedom of Religion in Colombia.** From 1811 until the present day, Colombia has had several provincial constitutions and almost 12 national constitutions. In the vast majority of these, the issue of freedom of religion has been taken as an issue of freedom of worship, and it has almost always been regulated through the concept of religious

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An attorney and graduate of the National University of Colombia (1992) and a specialist in Constitutional Law at the same University (2006). Baccalaureum in Canonical Law at the Javeriana Pontifical University of Bogota (1994) and a Licenciante in Canonical Law from the same University (1995). Certificate in Applied Constitutional Law from the University of the Rosary in Bogota (1996). Certificate in Church Social Doctrine from the Javeriana Pontifical University in Bogota (2002). Assistant Professor at the Faculty of Theology at the Javeriana Pontifical University in charge of Theological Appointments in various faculties, including the Faculties of Legal and Political Science, among others (2000-2007). From 2001, Associate Professor at the Military University of New Granada's Faculty of Law, where he taught Colombian Constitutional Law. Professor at the Free University of Colombia's Faculty of Law where he taught Human Rights from 2008. Advisor in constitutional and administrative affairs, particularly in the area of protection and defense of fundamental rights. Member of the Latin American Consortium for Freedom of Religion. Speaker at various national and international events for scholars.

tolerance. Nevertheless, in the eyes of most of the treatise writers, Colombia has not had an authentic and effective freedom of religion, especially when taking into account that imprinted in the most recent memory is the idea that what we have had has traditionally been a religious state. The most likely reason why this viewpoint gained strength can be derived from the fact that the text of the Preamble to the constitutional reform of 1957, adopted by plebiscite, reads as follows:

*“In the name of God, supreme source of all authority, and for the purpose of assuring national unity, one of whose pillars is the acknowledgment by the political parties that the Roman, Apostolic and Catholic Religion is the National Religion, and that as such, the public powers shall protect it and shall make it respected as an essential element of the social order; hence, for the purpose of ensuring the properties of justice, liberty, and peace, the people of Colombia hereby ORDER in national plebiscite that: ...”*

The plebiscite of 1957 took place in response to a situation of partisan violence that had been shaking the country for more than a decade, as well as to a military dictatorship that had been imposed in 1953. By 1957 the liberal and conservative parties shared an atmosphere of reconciliation as they did not want Colombia to return military dictatorship. For this reason, it is no wonder that the leaders of the plebiscite (the leaders of the various political parties and the interim Military Junta, whose mission was to serve as a transition between the military government and the new democratic government) would take advantage of the deeply-rooted Catholic sentiment, professed by a vast majority of Colombians at the time, to generate a national sentiment in accordance with the great bipartisan agreement known as the National Front. However, this direct denominational choice is not absolute proof of a habitual preference of the State for the Catholic Church; quite the contrary, this denominational episode stands as an exception within the constitutional development. Thus, the Center Federal Constitution of New Granada was promulgated on May 20, 1853. It was characterized

by having stimulated the freedom of religion, the freedom of thought, and the emancipation of slaves, as well as the separation of the Church and the State. A new constitution, this one promulgated in 1858, ratified the freedom of worship that was established in the constitution of 1853. Later on, in 1863, a constitution was proclaimed that became a milestone in Colombian constitutionalism: the so-called Rionegro Constitution, which ignored the Catholic Church entirely and allowed the different states in the Union to establish, in their constitutions and in their civil legislation, the principle of inability of religious entities to acquire real estate. With the proclamation of the Constitution of 1886, which determined the destiny of the Nation for more than a century, the National House of Representatives inherited the tendency of its predecessor. Thus, its preamble omits any reference to the Catholic Church, and in Article 40 it establishes a system of tolerance in the following terms:

*“Article 40. The exercise of all religions is allowed insofar as they are not contrary to Christian morals and laws.*

*Acts that are contrary to Christian morals or subversive to public order, and which are exercised on grounds of, or under the pretext of, the exercise of a religion, shall be prosecuted according to the law.”*

Years later, the Constitution of 1886 suffered a re-codification, and the former Article 40 became Article 53, which in turn was reformed by the 13<sup>th</sup> Article of Legislative Act No. 1 of 1936. Subsequent to that reform, Article 53 was written in the following terms:

*“Article 53. The State guarantees the freedom of conscience.*

*None shall be harassed by virtue of his/her religious opinions, nor shall anyone be compelled to profess beliefs nor observe practices contrary to his/her conscience.*

*The freedom of all religions is guaranteed, insofar as such religions are not contrary to Christian morals and to the law. Acts that are contrary to Christian*

*morals or subversive to public order, and which are exercised on grounds of, or under the pretext of, the exercise of a religion, shall be prosecuted according to the law.*

*The Government may enter into agreements with the Holy See to regulate the relations between the State and the Catholic Church. Such agreements shall be subject to prior approval by Congress and shall be based on reciprocal deference and mutual respect."*

Despite the re-codification and the reform, these rights were a part of Title IV (Religion and the Relationship between the Church and the State).

**Freedom of religion in the current Political Constitution of Colombia.** In the Constitution of 1991, the freedoms of conscience and religion are established separately and encompass Articles 18 and 19, respectively, as follows:

*"Article 18.- The freedom of conscience is guaranteed. No person shall be harassed because of his/her convictions or beliefs, compelled to reveal such, nor obligated to act against his/her conscience.*

*"Article 19.- The freedom of religion is guaranteed. Any person is entitled to freely profess his/her religion and to spread it individually or collectively.  
All churches and religious creeds are equally free before the law."*

Although, as we have seen, these freedoms bring nothing new in terms of constitutional development, they are, indeed, marked by particular importance because of two concrete factors: The first one has to do with the fact that these freedoms are included in the Charter in the section for fundamental rights, which from a positivist viewpoint raises these freedoms to the fundamental level. This means that these rights are recognized from a perspective of human dignity, and not from the focus on the relationship between

the Church and the State. Secondly, the initial text expresses a notable social reality that has been undeniable for some decades: The existence of various religious creeds and a significant number of churches that are different from the Catholic Church, and that had been operating within our national territory.

With a synthetic formula, the Constitution of 1991 achieved a recognition that is more technical than the previous constitutional norm. The first important step is for a distinction to be made between the two rights, allowing for an acknowledgement that a conformation of conscience is possible without necessarily being tied to a religious sentiment. Furthermore, the new text specifies the entitlement to the right to freedom of religion. The previous constitutional provisions recognized the freedom of all religions. This meant that it was a freedom of religions that was extended to their members. The new constitutional order recognizes that both individual and collective human beings, as well as religious creeds, are entitled to the right to freedom of religion. This said, the new constitutional Statute favors the separation of the Church and the State, allowing us to confirm that Colombia is no longer a religious state. We can likewise confirm that we are moving beyond the confusion between Church, family, and education that had emerged as a result of the apparent religiousness of the State.

**The relationship between the Constitution and the international treaties and agreements.** In this area, it is important to note that Article 93 of the Political Constitution of Colombia anticipates complete efficiency of the internal order of the various international treaties in terms of human rights, as long as they meet certain requirements for approval. Article 93 of the Constitution grants the international treaties a special rank in the internal order and can be interpreted to constitute such rights. This institution, along with the other elements, is known in our justice system as a “*block of constitutionality*.” The corresponding text of this article reads as follows:

*“Article 93.- International treaties and agreements that are ratified by Congress, that recognize human rights, and which prohibit the limitation of human rights in states of emergency, shall prevail in the internal order. The rights and obligations set forth in this Charter shall be interpreted in accordance with the international human rights treaties ratified by Colombia.*

*(...)”*

Thus, the block of constitutionality is the first and most important answer to the concern expressed within the theme of this Symposium. Theoretically, all international treaties that recognize human Rights – and the freedom of religion is such a right – prevail within the internal order as long as they have been ratified by Congress. Hence, by the simple virtue of their having been approved, the treaties are being applied on a national level and on the best level of our regulatory structure: the constitutional level.

**The legislative development of international treaties.** Without forgetting the block of constitutionality aspect, I ought to point out that Colombia is a party to the United Nations Universal Declaration of Human Rights of 1948. As such, through Law No. 74 of 1968, Colombia approved the International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights; and the Facultative Protocol. Moreover, through Law No. 16 of 1972, Colombia ratified the text of the American Convention on Human Rights, signed in San Jose, Costa Rica, in 1969. Within this framework of ideas, we need to understand that the special parts of the aforementioned international instruments, as they refer to freedom of religion, have been approved by the Colombian State, and, pursuant to Article 93 as quoted above, they are in full force and effect within the internal order. In particular, I am referring to Section 3 of Article 13 of the International Covenant on Economic, Social and Cultural Rights; Article 18 of the International Covenant on Civil and Political Rights; and Article 12 of the American Convention on Human Rights.

Because of its magnitude and specificity, the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief of 1981 deserves special mention. As in the cases of all declarations, although it is not legally binding for the State, it does represent a wide consensus among the international community. Consequently, it enjoys an intense, moral influence that guides the practice of the States in international relations. Colombia should not be foreign to that principle, and it needs to pay particular attention to the aspirations of the United Nations as set forth in Article 7, which provides that the rights and freedoms established in that Declaration shall be granted by domestic legislation in such a manner as to allow everyone to enjoy them in practice.

However, it is furthermore important to include the following laws:

- ❖ No. 5 of 1960, which approves the final Act and the Covenants signed by the Diplomatic Conference in Geneva on August 12, 1949.<sup>2</sup>
- ❖ No. 11 of 1992, which approves the Protocol Additional to the Geneva Convention of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol 1), adopted in Geneva on June 8, 1977.<sup>3</sup>

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<sup>2</sup> THE CONGRESS OF COLOMBIA HEREBY RESOLVES: Article One: The approval of the final Act and of the following Conventions signed by the Diplomatic Conference convened in Geneva on August 12, 1949:

- I. Convention to improve the fortune of members of the Armed Forces who are wounded or ill during campaigns.
- II. Convention to improve the fate of members of the Armed Forces who are wounded, ill, or shipwrecked at sea.
- III. Convention regarding the protection of civilians in wartime.

TO BE NOTIFIED, PUBLISHED, AND FULFILLED. Issued at Bogota, D.E., on this 26<sup>th</sup> day of August, 1960.

<sup>3</sup> ARTICLE 8. TERMINOLOGY. For the purposes of this Protocol:

(...) d) "Religious personnel" is understood as individuals, whether military or civilian, such as chaplains, who are exclusively dedicated to the exercise of their ministry, and who are assigned to:

- i) The armed forces of a Party to a conflict; and
- ii) The medical units or medical transportation units of a Party to a conflict;
- iii) The medical units or transportation units mentioned in Article 9, Paragraph 2; or
- iv) The civil protection units of a Party to a conflict.

The enlistment of religious personnel may be permanent or temporary. The corresponding provisions of Subsection k) shall apply to such personnel. (...)

ARTICLE 15. PROTECTION OF MEDICAL AND CIVIL RELIGIOUS PERSONNEL.

(...) 5. Civil religious personnel shall be respected and protected. The provisions of the Conventions and this Protocol as they relate to the protection and identification of medical personnel shall apply to such individuals. (...)

ARTICLE 53. PROTECTION OF CULTURAL PROPERTY AND PLACES OF WORSHIP. Without detriment to the provisions of the Hague Convention of May 14, 1954, for the Protection of Cultural Property in the event of Armed Conflict and of other

- ❖ No. 171 of 1994, which approves the “Protocol Additional to the Geneva Convention of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), made in Geneva on June 8, 1977.”<sup>4</sup>
- ❖ No. 146 of 1994, which approves the "International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families," made in New York on December 18, 1990.<sup>5</sup>

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applicable international instruments, it is prohibited to: a) Commit acts of hostility against historical monuments, artwork, or places of worship that constitute the cultural or spiritual heritage of the people; b) Utilize such properties in support of the military effort; c) Make such properties the object of reprisals.

**ARTICLE 75. BASIC GUARANTEES.**

1. When in one of the situations referred to in Article 1 of the Protocol, individuals who are in power of a Party to a conflict, and who do not enjoy a more favorable treatment in virtue of the Conventions or this Protocol, shall be treated humanely under all circumstances and shall, as a minimum, benefit from the protection provided by this article without any regard to race, color, sex or language, religion or beliefs, opinions of political or other nature, national or social origin, fortune, birth, or any other similar condition or criteria. Each Party shall respect the person, the honor, the convictions, and the religious practices of all such persons.

<sup>4</sup> **ARTICLE 2. SCOPE OF PERSONAL APPLICATION.**

1. This Protocol shall apply to all persons affected by an armed conflict as set forth by Article 1 without any unfavorable discrimination due to race, color, sex, language, religion or belief, opinions of political or other nature, national or social origin, fortune, birth or other condition, or any other similar condition (henceforth labeled “unfavorable discrimination”).

2. At the conclusion of the armed conflict, all persons who have been subject to loss or restriction of freedom for reasons related to the armed conflict, as well as all persons who might be subjected to such measures for the same reasons subsequent to the conflict, shall enjoy the protection set forth by Articles 5 and 6 throughout the term of said loss or restriction of liberty.

**ARTICLE 4. BASIC GUARANTEES.**

1. All persons who are not direct participants to the hostilities, or who have ceased to participate in them, regardless of whether or not they have suffered loss of freedom, shall be entitled to respect toward their person, their honor, their convictions, and their religious practices. They shall be treated humanely under all circumstances without any unfavorable discrimination. It is unlawful to order that there not be survivors. (...)

**ARTICLE 5. INDIVIDUALS WHO HAVE BEEN SUBJECTED TO LOSS OF LIBERTY.**

1. In addition to the provisions of Article 4, as a minimum the following provisions shall be respected with regards to individuals who have been subjected to loss of liberty for reasons related to the armed conflict, whether they be inmates or detainees:

a) The wounded and the sick shall be treated pursuant to Article 7; b) The individuals referred to in this paragraph shall receive the same rations of food and drinking water as the local population, and they shall enjoy guaranteed health, hygiene, and protection against the elements of weather and the dangers of the armed conflict; c) They shall be authorized to receive individual or collective assistance; d) They shall be enabled to practice their religion and, when they so proceed to request, receive spiritual assistance from persons who exercise religious functions, such as chaplains; (...)

**ARTICLE 9. PROTECTION OF MEDICAL AND CIVIL RELIGIOUS PERSONNEL.**

1. Medical and religious personnel shall be respected and protected. All available help shall be provided for the performance of their functions, and they shall not be obligated to perform tasks that are not compatible with their humanitarian mission.

**ARTICLE 16. PROTECTION OF CULTURAL PROPERTY AND PLACES OF WORSHIP.** Without detriment to the provisions of the Hague Convention of May 14, 1954, for the protection of cultural property in the event of armed conflict, it shall be unlawful to commit acts of hostility against historical monuments, artwork, or places of worship that constitute the cultural or spiritual heritage of the people, and to utilize such in support of the military effort.

<sup>5</sup> **ARTICLE 1.**

1. Unless otherwise stated by herein, this Convention shall apply to all migrant workers and their family members without any unfavorable discrimination due to sex; race; color; language; religion or belief; opinions of political or other nature; national, ethnic, or social origin; nationality; age; financial situation; heritage; marital status; birth; or any other condition. 2. This Convention shall apply during the full extent of the migration process of migrant workers and their family members and includes



**The legislative development of the constitutional principle.** The aforementioned constitutional principle could have suffered the same fate as its predecessors of the last two centuries had it not had an adequate, legislative development. In addition to the previously mentioned laws approving the international treaties, thus far laws have been created in regards to a variety of topics. However, either directly or indirectly, they recognize and are intended to protect and guarantee the right to freedom of religion. The most important of these laws is Statutory Law No. 133 of 1994, through which the exercise of the freedom of worship is developed. In its fundamental structure, Law No. 133 of 1994 covers, among other areas, the following aspects of freedom of worship: the right to freedom of religion, the status of churches and religious creeds as legal entities, and the prescribed limits for exercising such rights. Thus, Article 4 states that:

*“Article 4.- The sole limitation to the exercise of the rights arising from the freedom of religion and worship is the protection of the rights of others to exercise their public freedoms and fundamental rights, as well as the safeguarding of public safety, public health, and public morals, which is an element that is constituent to public order and protected by law in a democratic society.”*

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preparation for the migration, departure, transit, and the entire stay and exercise of any paid activity in a State of employment, as well as the return to the State of origin or the State of habitual residence.

ARTICLE 7.

In accordance with international human rights instruments, the States that are Parties to this Convention shall commit to respecting and ensuring the rights of all migrant workers and their family members that are located within their territory, or who are subject to the jurisdiction of such States, without any unfavorable discrimination due to sex; race; color; language; religion or belief; opinions of political or other nature; national, ethnic, or social origin; nationality; age; financial situation; heritage; marital status; birth; or any other condition.

ARTICLE 12.

1. Migrant workers and their family members shall be entitled to freedom of thought, of conscience, and of religion. This right shall include the freedom to profess or adopt the religion or belief of their choice, as well as the freedom to express their religion or belief individually or collectively, in public as well as in private, through worship, the performance of rites, practices, and instruction. 2. Migrant workers and their family members shall not be subjected to any action that might limit their freedom to profess and adopt a religion or belief of their choice. 3. The freedom to express their own religion or belief can only be subject to the limitations provided by law, and which are necessary to protect public order, health, and morality or the basic rights and freedoms of others. 4. The States that are Parties to this Convention commit themselves to respect the freedom of parents insofar as at least one of them is a migrant worker, and, if applicable, the freedom of the legal guardians in order to ensure that the children receive a religious and moral education that is in accordance with their own convictions.

Furthermore, the provisions of Article 5 state that:

*“Article 5.- The scope of this law does not include activities related to the study of and experimentation with physic or parapsychological phenomena; Satanism; magical, superstitious, or spiritualist practices; or other similar practices that are alien to religion.”*

Other laws that we can summarize are:

- ❖ Law No. 65 of 1993, which sets forth the Code for Correctional Facilities.<sup>6</sup>
- ❖ Law No. 137 of 1994, which regulates states of emergency in Colombia.<sup>7</sup>
- ❖ Law No. 599 of 2000 (Criminal Code).- Sections 201 to 204 of this code classify crimes against religious feelings and respect for the dead. These crimes are: The violation of the freedom of religion, hindrance and disturbance of religious

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<sup>6</sup> ARTICLE 37. EXTERNAL COLLABORATORS. Individuals who document their qualifications and planned activities before the Director shall have access to detention facilities in order to perform educational work, work, religious training, legal counseling, or scientific research related to the detention facilities. The internal rules and regulations shall establish the time periods and limitations within which their work shall be performed.

ARTICLE 152. ACCESS TO THE EXERCISE AND PRACTICE OF RELIGIOUS WORSHIP.

Inmates at correctional facilities shall enjoy the liberty to practice religious worship without detriment to proper security measures.

<sup>7</sup> ARTICLE 3. PREVALENCE OF INTERNATIONAL TREATIES. Pursuant to Article 93 of the Political Constitution, the International Human Rights Conventions ratified by the Colombian Congress shall prevail in the internal order. In all cases, the rules for international human rights shall be respected as provided by Article 214, Section 2 of the Constitution. The enunciation of the rights and guarantees contained in the Constitution and in the international conventions in effect must not be understood as an exclusion of other rights that, since they are inherent to human beings, are not explicitly stated in the Constitution and in the international conventions.

ARTICLE 4. INTANGIBLE RIGHTS. Pursuant to Article 27 of the American Human Rights Convention, and other treaties on this matter as ratified by Colombia, the following rights shall be intangible during states of emergency: the right to life and personal integrity; the right not to be subjected to forced disappearance, torture, or cruel, inhumane, or degrading treatment or punishment; the right to recognition of legal entity; prohibition of slavery, servitude, and human trade; prohibition of punishments of exile, life imprisonment, and confiscation; the freedom of conscience; the freedom of religion; the principle of legality, favorability, and non-retroactivity of criminal law; the right to elect and be elected; the right to enter into marriage and the protection of the family, children’s rights, protection in behalf of family members, society, or the State; the right not to be sentenced to prison for civil debts; the right to habeas corpus; and the right for Colombian nationals by birth not to be extradited.

The indispensable judicial guarantees for the protection of such Rights be suspended, either.

Pursuant to Article 29, subsection b) of the American Human Rights Convention, no provision of the Convention can be interpreted to the effect of limiting the enjoyment and exercise of any right or freedom that may be recognized in accordance with the laws of any of the States that are Parties to said Convention or in accordance with any other Convention to which any of these States might be a party.

ceremonies, damage or injury to persons or to items intended for worship, and the violation of the sanctity of a corpse.

❖ Law 890 of 2004, which provides for amendments to the Criminal Code.<sup>8</sup>

**The administrative development of the freedom of religion.** For the purpose of its real efficacy, the important legislative advancements had to be regulated through various decrees. Among these we must inescapably refer to Decree 782 of 1995, amended by Decree No. 1396 of 1997, which sets forth that in order for churches, religious creeds and denominations, and their federations and confederations of ministers to obtain status as legal entities and persons, they must submit a petition to the Legal Office of the Interior Ministry, along with original documentation for their foundation or establishment in Colombia; their denomination and additional identifying information; the statutes that indicate their religious purposes; rules of operation, organizational charts; and legal representatives with a statement of their powers and authority and the requirements for the validity of their designation. By obtaining the status of legal entities, all churches and religious creeds are recognized as being entitled to the following rights: the right to engage in worship and establish places for such purpose; to produce, acquire, and utilize the necessary articles and utensils for the performance of their rites; to publish and distribute printed and audiovisual material for the spreading of their doctrines; to teach their faith and morals in places that are appropriate for such purpose; to educate their followers in dietary practices and prohibitions as counseled by the respective faith; to solicit and receive voluntary financial contributions; to train their ministers; to designate their leaders by election or appointment; to observe resting days in accordance with their particular precepts; to carry out festivities and ceremonies according to their respective liturgy; as well as the

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<sup>8</sup> ARTICLE 14. The minimum penalties provided for the types of criminal offenses contained in the Special Section of the Criminal Code shall be augmented by one third, and the maximum penalties shall be augmented by one half. In all cases, the application of this general rule of increase must respect the maximum limit to sentences of imprisonment according to the types of criminal offenses pursuant to the provisions of Article 2 of this law. (...)

right to establish and maintain communications of religious character on a national and international scale.

In addition to the foregoing decree, the National Government has issued an important series of administrative acts<sup>9</sup> that have provided for the regulation of issues as important as the performance of religious marriages (both as it pertains to their formalities as well as to their legal effects); divorce; the enrollment and registration of religious ministers; education; educational plans and texts; the freedom to choose religious education; and spiritual and pastoral assistance to law enforcement officers, hospital patients, inmates at prisons and jails, and participants of social assistance programs. Within these administrative acts, special mention should be made of the Internal Public Law Agreement No. 1 of 1997, entered into by the Colombian State and some non-Catholic, Christian religious entities. This special interest stems from the fact that this type of administrative act did not exist in Colombian public law, and it emerges as a novel legal alternative to create relative conditions of equality for certain non-Catholic, Christian religious denominations before the Catholic Church, with which the state has maintained a valid concordat for several decades.<sup>10</sup>

**The development of jurisprudence.** When a new Constitution took effect in 1991, it brought with it a set of judicial-political institutions that renewed the judicial system and placed Colombia on the front line of the development of rights and their guarantees. Two of these new institutions are the Protective Action and the Constitutional Court. As for

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<sup>9</sup>Decree No. 1455 of 1997 on the legal representation of churches, creeds, and religious denominations and the recording in the Civil Registry of marriage certificates.

Presidential Directive No. 12 of 1998 on the regulation and fulfillment of the Internal Public Law Agreement No. 01 of 1997.

Decree No. 1319 of 1998 on the originality of the necessary documents for churches and religious creeds and denominations to achieve status as legal entities and how to apply for such status.

Decree No. 1321 of 1998, which establishes the formation of the Committee for the regulation of internal public agreements.

Publication No. 0021 of 1998 by the Ministry of Health on the duties of the health authorities in terms of religious assistance to hospital patients.

Decree No. 1519 of 1998 on religious assistance of inmates at domestic jail and prison facilities.

Resolution No. 03074 of 1998 by the Ministry of National Defense on the fulfillment of the Internal Public Law Agreement No. 1 of 1997 inside the Armed Forces and Law Enforcement Agencies.

<sup>10</sup> Concordat approved by Law No. 20 of 1974.

the Protective Action (the right to protection in other systems), its importance lies in the fact that prior to 1991, we Colombians did not have an efficient legal mechanism that would allow us to demand effective protection of our fundamental rights. As for the Constitutional Court, it was created by the current Political Constitution that took effect on July 7, 1991. The Court is an organism that belongs to the judicial branch of government, and it is entrusted with guarding the integrity and supremacy of the Political Charter. Its functions, which are set forth in Article 241 of the Constitution, consist of deciding on constitutionality suits that the citizens file against the laws, legal decrees issued by the Government, and legislative acts to reform the Constitution. It further decides on the enforceability of the international treaties signed by the Colombian State and of the laws that approve them, and it reviews legal decisions related to the Protective Act for constitutional rights pursuant to Article 86 of the Constitution.

As head of the constitutional jurisdiction, the Court is the exclusive body that hears and analyzes matters of constitutionality as authorized by the Political Charter; and by virtue of its status of authorized legal interpreter, it establishes rules of jurisprudence regarding the extent of the norms contained in the Constitution.<sup>11</sup>

In terms of the right to the freedom of religion, the rulings issued by the Constitutional Court have been a prudent work of administration of justice that thus far consists of a little more than a hundred rulings. Through these rulings, the Court has drawn a line of jurisprudence that is characterized by a systematic prevalence of this fundamental right, even on top of other rights of the same category. Without a doubt, the only principles that prevail against the right to freedom of religion are the right to life and respect for human dignity. In its relationship with the other Rights, the Court has resolved to modulating its decisions, the aim being the simultaneous and harmonious exercise of more than one right. Thus, as an example, through different decisions it has been resolved to harmonize the right to freedom of religion with the right to health, or with the

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<sup>11</sup> Source: Official web page of the Constitutional Court of Colombia, [www.constitucional.gov.co](http://www.constitucional.gov.co), consulted on September 15, 2008.

right to education, to intimacy, to the free development of personality, to work, etc. Moreover, in the instructional part of its rulings, the Court has contributed to the national doctrine with valuable knowledge about the constituent elements of the right to freedom of religion and the internal relationship between these elements.<sup>12</sup>

**The right to freedom of religion in today's Colombia.** Over the last many decades, our country has undergone a process of violence that has originated in deep, social inequalities that appear insurmountable. This violent process has blended over the course of the years to the point where, depending on the time period, some of its characteristics are highlighted while others are softened. Thus, some decades ago the main characteristic was violence between the traditional political parties. Years later, this phenomenon was characterized by the presence of rebel groups, most of which had communist tendencies. In more recent years, its main characteristic has been and is the boom in drug smuggling, and currently it is characterized by the presence of armed groups on the edge of the law that fight for political; territorial; economic; and, of course, military power. Regardless of the time periods and the characteristics, the conflict has brought the same consequences upon our people: death, poverty, backwardness, pain, exclusion, and despair – all of which are part of serious and systematic human rights violations.

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<sup>12</sup> Examples: limits to the freedom of religion of a minority group and the protection of human dignity, infringement by omission or avoidance of agreement and cancellation of enrollment, termination of employees for exercising their freedom of religion and worship, the re-hiring of a female worker who was terminated for exercising her freedom of religion and worship, agreement between public and private educational institutions and students to not follow the regular academic calendar or other student obligations by virtue of their religious convictions. The holiness of the “Sabbath” among active members of the Seventh Day Adventist Church should be considered. The opposition of science to religion. Sanctions for rejecting personal or religious views that lead to refusal to participate in national civic holiday celebrations. Assignment of space and time for the practice of religious activities at correctional facilities. Within the university environment, the protection is different from that provided within the context of elementary or middle school education; it implies the correlative duty of the State to prohibit the establishment of a particular religious view. Reasonable limits for the employer to plan work schedules. No violation because of the requirement to attend weekly and monthly training in the Army Brigade. The National University did not grant authorization to members of the Adventist Church to take an admission exam on a day other than Saturday. In the future, the National University will not be able to turn down petitions by members of the Adventist Church to take admission exams on days other than the Sabbath. Limited by the effectiveness of the dignity of the individual, cancellation of enrollment by the Sena for failure to attend classes, coherence between the interior world and its outward projection, the decision to opt for a specific religion. Official entities cannot make it mandatory for their officials to attend religious ceremonies. Guaranteeing that parents have the option to choose their younger children’s education. Equal protection of religions by the State, etc. End of form.

Describing the current characteristics of the conflict becomes difficult. Today the conflict is in the midst of one of its most uncertain phases. On the one hand, it is obvious that the current Government is sinking into the turbulent waters of doubt when it comes to corruption, impunity, and human rights violations – in addition to the serious signs of a certain closeness to some of the subversive groups that apparently are in the process of demobilizing. On the other hand, this same Government is receiving high popularity ratings and support for its administration, thanks to media results such as the liberation of hostages, economic growth, the recovery of certain territories previously dominated by subversive groups, and a hesitant recovery of the authority of the State.

In the midst of so much uncertainty, only one thing is clear: regardless of the characteristics, the consequences are the same then and now. Specifically speaking, we are referring to systematic human rights violations, poverty, pain, death, kidnappings, displacements, backwardness, extrajudicial executions, fear, insecurity, and – perhaps the most painful one of them all – silence.

The silence of the victims of forced displacement could exceed four million people as denounced by UNHCR in Geneva this past April 16, 2008.<sup>13</sup> It is the silence of the victims of disappearance followed by extrajudicial execution, victims for whom no numbers exist, not even estimates. It is the silence of those who remain in their captors' power in the middle of the dense jungle. Day by day they are forgotten by a homeland that is growing increasingly more accustomed to acts of violence, acts of death, treacherous attacks in the darkness of night, grief, and despair.

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<sup>13</sup>El Tiempo, April 16, 2008

More than 4 million people have been displaced in Colombia because of violence, according to a statement issued by the Internal Displacement Monitor in Geneva, Switzerland. The organization specified that the displacement phenomenon got worse during 2007 in various regions of the world such as Iraq, The Congo, Somalia, Sudan, and Colombia. According to the report, the investigation revealed that the constantly displaced population had to withstand assaults, hunger, diseases, and lack of a livable home. The facts reveal that in more than 50 nations, these people, primarily children and women, “were much too often victims of the worst kinds of human rights violations,” according to the authors of the annual IDMC report. Antonio Guterres, UN High Commissioner for Refugees (UNHCR) who presented the report, indicated that “the failure of certain States to help providing protection for and adequate assistance to their own homeless populations” is to blame for this complicated situation.

The freedom of religion is not foreign to conflict. Every day, hundreds upon hundreds of Colombian men and women must abandon their lands to save their lives. Not only do they leave behind their land; they also leave behind their school, their job, their home, the place where they meet with their parents, their siblings, their friends, and their people. Rarely do we notice the forced abandonment of other values, such as the place of worship, the temple, the parish, the oratory, the Sunday school, the prayer group, the tombs of the elders, the seminary. Rarely do we realize that the displaced can no longer practice their religion in the place where they learned to practice it as children in their community, regardless of the denomination with which the law classifies their church and religion. Perhaps they would prefer to be prisoners or ill; as we saw before, legislation exists that tries to guarantee such populations the right to freedom of religion. For the displaced there is no Constitution, no law, no decrees, and no Courts that protect their legitimate right to have a relationship with their idea of divinity, nor to worship as a community like a living, acting, throbbing, creative, and renewing force of love, service, and forgiveness. What fate, then, can we expect for the hostages? What fate, then, can we expect for the young man who is snatched away from his family, executed with impunity, and then displayed as having fallen in combat, only to be added to the numbers that show that the state is winning the war? And what about the unionists, those victims of silent, yet efficient selective death campaigns? Are they not subject to freedoms, including the freedom of religion?

NGOs exist whose mission is to denounce human rights violations. Despite the difficulties, they succeed in their quest, informing us about the painful consequences of war. These reports are centered on violations of the rights to life, to physical integrity, to personal freedom, and to the dignified treatment that all we humans deserve. I believe that all of this is totally legitimate, but they do not inform us of violations of the right to freedom of religion. We do not know the reason for this. Perhaps the idea still prevails that rights only count if they can be measured, quantified, and compensated for. Since



the right to freedom of religion largely belongs to the transcendent vocation of the human being, it is impossible to measure it, calculate it, or give it an equivalence in money or grams of gold. Perhaps this is why it does not appear in numbers, statistics, or complaints. In Colombia there is still no monitor for the right to freedom of religion, but it is possible it might exist in the future. Meanwhile, the few of us who are interested in this sacred right will lift our voices in the halls of academia or in buildings such as the one that welcomes us today, to denounce the systematic violation of the right to religious freedom, its silence, and – hopefully not much longer – its impunity. May our voice of solidarity reach those whose right to freely exercise their faith and their beliefs has been infringed upon. Likewise, may our voice of encouragement reach those who with valor, selflessness, determination, and silence serve the victims of the atrocity that pounds our country. We are sincerely grateful to them, because in the words of Eduardo Umaña Mendoza, that distinguished jurist and Human Rights martyr, one day they understood that *"it is better to die for something than to live for nothing."*

Thank you very much.

Beginning of form.