

My comments are very much influenced by some fundamental biases. I am not a law scholar, but rather a practitioner and an advocate for religious freedom, freedom of speech and freedom of association. Also, my comments depend to a great extent on my own experience, which is as a Chilean attorney, practicing on national law.

As a preamble to my comments on what role NGOs can play in advancing religious freedom I briefly want to address what it is I am referring to when I speak of religious freedom? As we have repeatedly heard throughout, there is no real debate on the proposition that religious freedom requires or entails that persons have the freedom to make a free decision on what it is that they believe. This translates into the State (and we could add, private parties) being barred from trying to force any person into believing something at all, or in believing in something different to what they believe. The other side of the coin is that these same outside forces cannot force you into

disbelief or forbid you from holding on to your own faith. Thankfully, and for the most part, neither of this is an issue in Latin America. But at the same time, this creates a false sense of security that there is full respect and enjoyment of religious freedom, simply because the State does not try to force conversions one-way or another.

The actual and more pressing challenge arises when we go one step further and consider whether true freedom of religion has the effect of limiting the State's power in trying to impose and regulate conduct in ways that violate the conscience of the person and his duties towards God. And here we have no agreement. The biggest battles currently being waged over religious freedom involve non-discrimination as well, and a substantive part of our societies – here in the US it includes President Obama – simply dismissed religious freedom because it cannot involve infringing the rights of others. I ask myself: how is this not a violation of the rights of believers?

This issue and the question of how to face it is a relatively new development in Chile, and I would dare say, in the majority of Latin America. Its growing importance is the consequence of various different forces at play. Among them we find the growing number of declared atheists and agnostics in our society; the growing relevance of political progressive liberalism, which has translated into legislation and judicial decisions. In the past we as a society enjoyed a common cultural and moral agreement over shared values and customs, even if this was not built by the law, but rather by the moral code that for the most part sprung out of religious affiliation.

The problems presented regard, for the most part, conscience objections to the moral and practical cooperation with moral wrongs such as abortion or with homosexual sexual relations, adultery and others; the imposition of state mandated education of children, in opposition to the wishes and rights of parents [which has moved from a liberal and “unprejudiced” approach to

sexual relations to a new phase of teaching or indoctrinating on gender fluidity, gender identities and gender expressions]; the criminalization of religious teaching as a form of hate speech [based among other on the conflation between rejection of ideas as a rejection of the idea holder], and this is a threat to the whole of the American states, since this would be the effect of the CAAFDI.

Where do these problems come from? Local governments, national governments, congressional approvals, and recently, the Inter American Court of Human Rights, which has moved in recent years from its previous phase – focused on issues such as forced disappearances, access to justice and freedom of speech – to new issues involving “non-discrimination” as the interpretative key for the rest of the Convention, abortion, the non-definition of family, and the glaring omission of religious freedom. In fact, since its creation the Inter American Court of Human Rights has only issued one decision decided specifically

on religious freedom grounds. But instead, the Court has issued a growing amount of decisions on non-discrimination, many of which are born out of so called LGBT issues.

The assault on religious freedom does not come by way of defining it in a direct and restrictive way. It instead grows out of the expansive and ever stronger definition of an absolute and unbridled non-discrimination principle. For instance, the Court's version is so broad that it is easy to see how, when it actually clashes in a concrete case with other freedoms, the precedents in favor of non-discrimination will be overbearing in opposition to religious freedom.

With all of this being said, and given that my declared goal is to work for the preservation of a robust version of religious freedom that will protect religious believers from having to violate their consciences; to continue to be able to preach the gospel – **including those portions that are countercultural to our current political and social trends, as is the case with**

sexual mores – and to be able to raise their children in accordance with their own moral and religious convictions.

What role can NGOs, as part of civil society, play in helping to preserve all of these? My answer is twofold: VIGILANCE AND ACTION.

Vigilance, because we need to develop further awareness on how these changes have come about and continue to develop.

Social changes are not enacted by invisible and uncontrollable forces but rather by human agency, for better or worse. Legislative enactments and court decisions that shape our social and cultural understanding of religious freedom, freedom of association or parental rights are for the most part pushed by **interest groups and activists** that bring these issues to the forefront. In my country at least, every single major change in our national policy with respect to our **HUMAN ECOLOGY** – abortion, morning after pill, sexual education, children's autonomy in opposition to parental rights, civil

unions and non discrimination measure – have been brought about by the work of committed activists and NGOs. They do it through full time dedication and pervasive presence in all level of decision-making. And they are greatly helped by cross-pollination dynamics at work, especially with the precedents coming out of the Inter American Human Rights System. Think, for instance, of the Artavia Case and the Atala case and how they are successively invoked in our different countries to advance abortion and LGBT agendas.. Think also of the Convention Against Discrimination and Intolerance.

We also need Action, because we need to emulate the work done by existing NGOs in creating precedents and shaping the understating of our legal community on religious freedom. This presents two separate issues.

First, I obviously do not agree with the precedents of the Inter American Court in the Artavia and the Atala case. And I know that even as we speak there are activists in each of our countries

arguing that these precedents are binding on all of the American states and they are an integral part of the American Convention to which most, if not all, of our countries are a part of. The only way of stopping this phenomenon is to meet those exercising human agency in “field of battle”. These legal battles are winnable in our own legal systems and with respect to international human rights law, but they require that we work to oppose them in Court. I see that two University Presidents join me in this panel, and most of those in attendance are academics. To all of you I would suggest that while this much-needed action is fulfilled in part by non-governmental organizations, Universities and Academics could also participate of these processes, through outreach projects out their own law schools, similar in the way that so many schools here in the United States have clinics devoted to advancing religious freedom of freedom of speech. Speaking with respect to my country and my own

alma mater, this is certainly an area in which it is lacking and with much room for improvement.

Second, we need a common push in all American states in order to strengthen religious freedom in our law and in our national judicial precedents. And this is crucial. Time restraints do not allow for me to go into great detail, but in my view, the two major threats to religious freedom for all of Hispanic America are (i) The Inter American Court's newest line of precedents and its conventionality control doctrine and (ii) the possible enactment of the Inter American Convention Against Discrimination and Intolerance, which has been signed by 8 states and waits for ratification. The Court's precedent poses a challenge because it has hugely strengthened non-discrimination, but has made no consideration of the scope and pull of religious freedom. There will come a day, very soon, in which the Court will frame a case as a conflict between non-discrimination and freedom of religion. Since the Court will have

no precedent to go on – because there are no precedents in the system – it will either have to make up a solution or – in keeping with the Vienna Convention rules of interpretation – it should look to the practice of states on how they have interpreted and applied the American Convention in harmonizing non discrimination and religious freedom, and the breadth of protection they have given to religious freedom. If, on the other hand, there are no precedents at the state level, then there will be nothing limiting the Court in its possibilities of action.

Finally, the **Convention Against Discrimination and Intolerance**, however well intentioned as it may be, is a deeply flawed instrument that would fundamentally alter freedom of speech, freedom of association and parental rights. In essence, it creates a right for all persons to be protected by the state from expression or acts of intolerance. Intolerance is defined in such broad terms that it would be the effect of forbidding free speech, and for our purposes, it would probably have the effect of

prohibiting and criminalizing the preaching of the religious doctrine in all of those issues in which it is countercultural, for it will be deemed offensive. If I can leave you all with one thought from my comments here today, I wish for it to be that you take note of the existence of this proposed Convention, study it and take action against it, for it would strike to the heart to many fundamental freedoms, and most importantly, against freedom of religion.