

EROSION OF RELIGIOUS FREEDOM IN LATIN AMERICA: EXTREME SECULARISM AND DEINSTITUTIONALIZATION AS A PATH TO A FUTURE RELIGIOUS PERSECUTION

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This Essay aims to develop a topic that was apparently nonrelevant in Latin America for the last decades. Indeed, a significant Christian majority coexisted peacefully—despite their differences—with indigenous peoples and other beliefs for at least a century in most territories. However, based on demographic changes and the regulatory landscape in the region, an incipient erosion of the content and scope of freedom of religion and belief has been evidenced in Latin America, which, in some cases, may pave the way for persecution under international law standards. This is facilitated by administrative and judicial means that add obstacles to their exercise even through limitations established by enforcing other fundamental rights. In addition, the generalized deinstitutionalization in all areas of social life reaches religious entities and their relationship with both the State and its affiliates. Nevertheless, several examples provided by this Essay allow us to understand why it is necessary to insist on the collaboration and contributions to the common good developed by faith-based organizations in the region.

INTRODUCTION

Persecution on religious grounds has generally been linked to a situation of extreme violation of human rights. It typically constitutes the rejection of the State or those who hold political power to organize

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citizens around their religious convictions or beliefs. However, not every act or omission that infringes religious freedom is itself capable of being considered persecution under international law standards. Indeed, many cases account for violations not only of religious freedom but also of other human rights by states, without necessarily being faced in themselves with a violation of international criminal law.

The concept of persecution is based on the definition of “refugees,” a term which according to the Geneva Convention shall apply to any person who, “owing to well-founded fear of being *persecuted* for reasons of race, *religion*, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country”¹ Although the concept of “persecution” is not actually defined under International Refugee Law,² it has evolved significantly using doctrine and caselaw. It is clear from Article 33 of the same Convention³ that a threat to life or freedom on religious grounds is considered persecution.⁴

Now, a first approach to consider acts as religious persecution, must be that those acts are sufficiently serious by their nature or repetition as to constitute a severe violation of fundamental human rights. However, they may also be a result of an accumulation of various measures, even if the violations of human rights concerned are not “systematic” or “persistent,”⁵ and “harassment in some

1 Convention and Protocol Relating to the Status of Refugees art. 1 (A) (2), July 28, 1951, 19 U.S.T. 6223 [hereinafter Geneva Convention] (emphases added).

2 See José H. Fischel de Andrade, *On the Development of the Concept of ‘Persecution’ in International Refugee Law*, in 2 III ANUÁRIO BRASILEIRO DE DIREITO INTERNACIONAL 114, 114 (2008).

3 Geneva Convention, Article 33 states:

1. No Contracting state shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.”

Geneva Convention, *supra* note 1, art. 33.

4 See United Nations Refugee Agency, *Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection Under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, ¶ 51, U.N. Doc. HCR/IP/4/ENG/REV.4 (2019).

5 See, e.g., Council Directive 2004/83/EC, art. 9(1), 2004 O.J. (L 304) 16–17, which establishes:

circumstances may constitute persecution if sufficiently serious and if it occurred over such a long period of time that it may be said that . . . physical or moral integrity is threatened.”⁶ In this sense, severe discrimination, harassment, or the cumulative effect or combination with other adverse factors, can lead to a “well-founded fear of persecution.”⁷

Under this scenario, a first look at international criminal law standards could show that almost none of the violations of religious freedom in Latin America—that exist—can be qualified as persecution.⁸ However, there are a few exceptions of regimes that severely restrict the authority and activities of the religious communities, such as the case of Mexico, whose laws contain remnants of a state of control over religion and its practice.⁹ At the same time, the current process of deinstitutionalization in the region has also affected religious entities, undermining the exercise of the person’s spiritual dimension in the public sphere.

This Essay aims to describe the complex reality of Latin America, the current challenges of religious freedom in the region, and how the erosion of religious belief, severe cases of violence against religious communities, extreme secularism, and the deinstitutionalization context, among other factors, are issues of concern in the way of prevention of religious persecution in the coming years.

1. Acts of persecution within the meaning of article 1 A of the Geneva Convention must:

(a) be sufficiently serious by their nature or repetition as to constitute a severe violation of basic human rights, in particular the rights from which derogation cannot be made under Article 15(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms; or

(b) be *an accumulation of various measures, including violations of human rights which is sufficiently severe as to affect an individual in a similar manner as mentioned in (a).*

(emphasis added).

6 Fishel de Andrade, *supra* note 2, at 135 (citing *Rajudeen v. The Minister of Emp. and Immigr.*, [1984] 55 N.R. 129, 129 (Can. F.C.A.); *Retnem v. The Minister of Emp. and Immigr.*, [1991] 132 N.R. 53 (Can. F.C.A.); *Ovakimoglu v. The Minister of Emp. and Immigr.*, [1983] 52 N.R. 67 (Can. F.C.A.)).

7 See Erika Feller, *Statement by Ms. Erika Feller, Director, Department of International Protection, UNHCR, SCIFA (Brussels, 6 November 2002)*, UNHCR (Nov. 6, 2002), <https://www.unhcr.org/admin/dipstatements/42bab1b52/statement-ms-erika-feller-director-department-international-protection.html> [https://perma.cc/4ZT7-KPA4].

8 See UNDER CAESAR’S SWORD, IN RESPONSE TO PERSECUTION: FINDINGS OF THE UNDER CAESAR’S SWORD PROJECT ON GLOBAL CHRISTIAN COMMUNITIES 32 (2017).

9 See *id.*

I. RELIGION DEMOGRAPHICS IN LATIN AMERICA

One of the measures in which Latin America does well, and leads for its high standards, is religious freedom.

For this reason, it is natural to experience modesty when referring to the delicate and dramatic issue of religious persecution in a region in which at least the last century has been peaceful. Even in times of the arrival of the Spanish and Portuguese at the end of the fifteenth century that modified the beliefs and religion among indigenous peoples, the effort of Christian inculturation meant the translation of sacred scripture and liturgy into the native language. It also meant the abandonment of some native religious practices, such as human sacrifice practices or forced marriages.

The religious homogeneity that has persisted since then, with a greater preponderance of Catholicism, has meant that it is an area in which greater religious pluralism has just begun to be observed, together with growing social deinstitutionalization which includes the spheres of religion and beliefs.¹⁰

10 Regarding the religious composition at the regional level, for the purpose of this research, it is convenient to dwell on various studies by the Pew Research Center that have approached the matter from different perspectives and that, as a whole, offer an updated panorama of the region. This is also justified because not all national censuses inquire into religious demography and, even when data is available, sometimes they are discredited in their own countries of origin or, an impossibility of comparing data is appreciated since, neither the questions asked, nor the proposed answers, are usually similar. Basically, there is a principle of unity behind the various investigations of the Pew Research Center even though the analysis does not correspond exactly to the same territories. For this research, three relevant investigations have been used: a) "Religion in Latin America: Widespread Change in a Historically Catholic Region" (2014), b) "Global Religious Diversity: Half of the Most Religiously Diverse Countries are in Asia-Pacific Region" (2014), and c) "The Changing Global Religious Landscape" (2017). The first investigation includes Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Puerto Rico (a territory of the United States of America), Dominican Republic, Uruguay, and Venezuela. PEW RSCH. CTR., RELIGION IN LATIN AMERICA: WIDESPREAD CHANGE IN A HISTORICALLY CATHOLIC REGION (2014) [hereinafter PEW RSCH. CTR., RELIGION IN LATIN AMERICA]. In addition, the study includes Latinos—Hispanics—from the United States of America. *See id.* at 12. Although the authors indicate that Latin America and the Caribbean are covered, Cuba and Haiti are missing to cover the region, and Puerto Rico or the so-called Hispanics are not interesting for the purpose of this study. *See id.* at 1. The second study, on diversity, includes forty-six territories located in Latin America and the Caribbean, this time including Cuba and Haiti, but certainly exceeding the regional delimitation proposed on this occasion. PEW RSCH. CTR., GLOBAL RELIGIOUS DIVERSITY: HALF OF THE MOST RELIGIOUSLY DIVERSE COUNTRIES ARE IN ASIA-PACIFIC REGION 14 (2014) [hereinafter PEW RSCH. CTR., GLOBAL RELIGIOUS DIVERSITY]. The 2017 research refers to changes in the religious landscape, estimating a future prevalence of Muslims, although this will not be the case in Latin America. PEW RSCH. CTR., THE CHANGING GLOBAL RELIGIOUS LANDSCAPE: BABIES BORN TO MUSLIMS WILL BEGIN TO OUTNUMBER CHRISTIAN BIRTHS BY 2035; PEOPLE WITH NO RELIGION FACE A BIRTH DEARTH 4, 31 (2017). In fact, the study indicates that "[b]abies born to Muslims will

According to data on the analysis of eighteen countries in the region of Latin America—including the Caribbean—almost 40% of the total world Catholic population is found in these territories—equivalent to 425 million.¹¹ Even so, a significant change in religious identity has taken place peacefully: from 84% raised Catholic, there has been a transition to 69% who currently declare themselves Catholic.¹² This has influenced the increase of believers, but under no institutional denomination. The results indicate that “[j]ust one-in-ten Latin Americans (9%) were raised in Protestant churches, but nearly one-in-five (19%) now describe themselves as Protestants [(considered synonymous with Evangelical in the report)]. And while only 4% of Latin Americans were raised without a religious affiliation, twice as many (8%) are unaffiliated today. . . . Indeed, in most of the countries surveyed, at least a third of current Protestants were raised in the Catholic Church, and half or more say they were baptized as Catholics.”¹³

The report notes that: “Fewer than a quarter of Protestants in most countries surveyed said they belong to a historical Protestant church. Roughly half say they belong to a Pentecostal church. And, in most countries, at least a quarter say they belong to another Protestant church or that they do not know their denomination. Among those who belong to Pentecostal churches, Assemblies of God is one of the most commonly cited affiliations.”¹⁴ In any case, both Catholics and Evangelicals even participate in Afro-Caribbean, Afro-Brazilian, and indigenous beliefs and practices, including a third of

begin to outnumber Christian births by 2035; people with no religion face a birth dearth”. *Id.* at 4. It is pointed out that between 2010 and 2015 the changes regarding religions occurred naturally comparing births with deaths and that from 2015 to 2060 the percentage growth of Muslims will be from 24.1% to 31.1% while in the same period, Christians will grow from 31.2% to 31.8%. *Id.* at 7, 10. It is established that both Muslims and Christians have more children per woman than other religious groups and also that changes in religion will negatively affect Christians and favor Muslims: “In Latin America and the Asia-Pacific region, the number of Christian births will continue to exceed the number of deaths through 2060, but the natural increases in the 2055 to 2060 time period will be much smaller than they are now as these regions experience significant declines in fertility.” *Id.* at 28. In this recent research, twenty-nine countries are studied, including the twenty Latin American member states of ECLAC and some Caribbean territories (Bahamas, Belize, French Guiana, Guadeloupe, Guyana, Jamaica, Puerto Rico, Suriname, and Trinidad and Tobago).

11 PEW RSCH. CTR., RELIGION IN LATIN AMERICA, *supra* note 10, at 4.

12 *Id.*

13 *Id.* at 4–5, 7.

14 *Id.* at 7.

adults who believe in the so-called “evil eye,” and just over 20% believe in witchcraft and reincarnation.¹⁵ Thus, it is possible to establish that:

- a) Latin America is transitioning peacefully from being a Catholic region to a Christian one. Since Christianity is the majority—reaching 90%—the region is inevitably considered to have a low rate of religious diversity.¹⁶
- b) In the region, Christianity coexists with the worldviews of indigenous peoples as well as with beliefs that are not supported by traditional religions. Many Latin Americans—including substantial percentages of both Catholics and Protestants—say they subscribe to beliefs and practices often associated with Afro-Caribbean, Afro-Brazilian or indigenous religions.¹⁷

So, even at the risk of oversimplifying the panorama, the aspects related to the current religious formation in the delimited territory illustrate that, despite the religious homogeneity, the region is

15 *Id.* at 8–9.

16 According to the 2014 Pew Research Center Report called *Global Religious Diversity: Half of the Most Religiously Diverse Countries are in Asia-Pacific Region*, which explored religious diversity in 232 countries, Suriname would be the only territory that includes Latin America and the Caribbean with greater religious diversity. PEW RSCH. CTR., GLOBAL RELIGIOUS DIVERSITY, *supra* note 10, at 4. The report also states:

Looking at the percentage of each country’s population that belongs to the eight major religious categories included in the study, 12 countries have a very high degree of religious diversity. Six of the 12 are in the Asia-Pacific region (Singapore, Taiwan, Vietnam, South Korea, China and Hong Kong); five are in sub-Saharan Africa (Guinea-Bissau, Togo, Ivory Coast, Benin and Mozambique); and one is in Latin America and the Caribbean (Suriname). No countries in Europe, North America or the Middle East-North Africa region have a very high degree of religious diversity as measured in this study.

Id. And further on it is indicated:

Religious diversity differs substantially by geographic region. Among the six regions analyzed in this study, the Asia-Pacific region has the highest level of religious diversity, followed by sub-Saharan Africa. Europe and North America have a moderate level of religious diversity, while the Latin America-Caribbean and Middle East-North Africa regions have a low degree of religious diversity.

Id. at 7.

17 For example, at least a third of adults in every country surveyed believe in the “evil eye,” the idea that certain people can cast curses or spells that cause harm. PEW RSCH. CTR., RELIGION IN LATIN AMERICA, *supra* note 10, at 8. Beliefs in witchcraft and reincarnation also are widespread, held by 20% or more of the population in most countries. *See id.* at 8–9. Other beliefs and practices vary widely from country to country. Also, “a majority of Mexicans (60%) and more than a third of Bolivians (39%) say they make offerings of food, drinks, candles or flowers to spirits, but just one-in-ten Uruguayans (9%) do so. Overall, the survey finds the highest levels of indigenous or Afro-Caribbean religious practice in Panama, where most people (58%)—including 66% of Panamanian Catholics and 46% of Protestants—engage in at least three out of the eight indigenous beliefs and practices mentioned in the survey.” *Id.* at 9.

considered diverse. Along with traditional religions, there are those ancestral and even tribal (of African origin) that provide a characteristic originality to the religious fact in the region. For this reason, it is still particularly interesting that Panama is at the same time a country in which there is a high level of indigenous or Afro-Caribbean practices, even among Catholics, while its constitutional text declares that “[i]t is recognized that the Catholic religion is that of the majority of Panamanians.”¹⁸

This coexistence between ancestral beliefs and traditional religions is connatural in the region and very difficult to observe externally or to translate into concrete laws. And for example, in general, ritual animal slaughter for meat used for consumption by Jews and Muslims is protected. Still, there have been different treatments in Brazil regarding animals used for sacrifices by religions of African origin—mainly Umbanda and Candomblé that correspond to 0.3% of the population according to the 2010 Census—that sacrifice animals in certain rites. Professor Leite points out that these are animals—such as goats, sheep, pigs, pigeons, quail, ducks, chickens, and hens—that are not in danger of extinction and are even used for domestic consumption.¹⁹ Notwithstanding this, state legislation protecting the suffering, damage, and death of animals warned about the eventual difficulty for the animal sacrifices of the minority groups of Umbanda and Candomblé believers.

This reality, almost imperceptible for those who do not live in the region, corresponds to the dynamism of the religious factor that does not coincide with the figures of religious homogeneity.

II. NORMATIVE OVERVIEW AMONG LATIN AMERICAN COUNTRIES IN INTERNATIONAL TREATIES AND CONSTITUTIONAL LAW

Latin American countries share the same legal heritage: the Roman-Germanic legal system. In fifteen constitutions, the preambles include some kind of reference to God or religion. In general, God is invoked directly:²⁰ His Name²¹ or His Protection.²² In fact, a

18 Constitución Política de la República de Panamá, art. 35.

19 Fábio Carvalho Leite, *Libertad Religiosa y Acomodación Razonable en Brasil*, 3 REVISTA LATINOAMERICANA DE DERECHO Y RELIGIÓN 1, 21 (2017).

20 Such as in Bolivia, Paraguay, and Peru's preambles.

21 See Constitución Política de la República de Costa Rica, pmbl.; Constitución de la República del Ecuador, pmbl.; Constitución Política de la República de Guatemala, pmbl.; Constitución pmbl. (Dom. Rep.).

22 See Constitución de la Nación de Argentina, pmbl.; Constituição da República Federativa do Brasil, pmbl.; Constitución Política de Colombia 1991, pmbl.; Constitución Política de 1982, pmbl. (Hond.); Constitución Política de la República de Panamá, pmbl.;

comparative study on the Latin American and Caribbean constitutions shows that in their preambles and text more than two-thirds of them refer to God or some religious authority and even spiritual or religious principles.

In recent preambles—Bolivia and Ecuador—the drafters have taken advantage of making explicit references to *Pacha Mama*, and the national heroes or the values of the nations have also been invoked.²³ Something different happens in the preambles of Cuba and Haiti. Without alluding to God or religion, the Cuban text refers to what can be considered the founding ideas and precursors of the Cuban revolution.²⁴ In this way, the terms used by the Costa Rican

Constitución de la República Bolivariana de Venezuela, pmbl. In the case of El Salvador, it declares to put trust in God, and in Nicaragua it is indicated in the preamble that it is made in the name—among others—“of those Christians who from their faith in God have participated in and inserted themselves into the struggle for the liberation of the oppressed.”

23 See Constitución Política del Estado, pmbl. (Bol.); Constitución de la República del Ecuador, pmbl.

24 The Cuban Constitution states:

WE, THE PEOPLE OF CUBA, inspired by the heroism and patriotism of those that fought for a free, independent, sovereign, and democratic homeland of social justice and human solidarity, forged through the sacrifice of our ancestors; by the indigenous peoples who resisted submission; by the slaves that rebelled against their masters; by those that awoke the national conscience and Cuban desire for our liberty and homeland; by the patriots that started and participated in our struggles for independence against Spanish colonization beginning in 1868 as well as those whose final efforts of 1895 were denied victory with the beginning of the military intervention and occupation of Yankee imperialism in 1898; by those that fought for over fifty years against imperialist domination, political corruption, the lack of rights and liberties, unemployment, the exploitation imposed by capitalists, landowners, and other social evils; by those who promoted, participated in, and developed the first organizations of laborers, farm workers, and students; disseminated socialist ideas; and founded the first revolutionary, Marxist, and Leninist movements; by the members of the vanguard of the generation of the 100th anniversary of Martí's birth, who, nourished by his teaching, led us to the victorious popular revolution in January of 1959; by those that, in sacrificing their lives, defended the Revolution and contributed to its definitive consolidation; by those that completed heroic international missions together; by the epic resistance and unity of our people; GUIDED by the most advanced revolutionary, anti-imperialist, Cuban-Marxist, Latin American, and universal thought, in particular by the ideal and example of Martí and Fidel, as well as the social emancipation ideas of Marx, Engels, and Lenin; SUPPORTED in proletariat internationalism, fraternal friendship, the help, cooperation, and solidarity of the peoples of the world, particularly those of Latin America and the Caribbean; DETERMINED to carry forward the triumphant Revolutions of Moncada and Granma, of the Sierra, of the underground struggle, and of Girón that, sustained in the contribution and unity of the principal revolutionary forces and the people, conquered full national independence, established revolutionary power, realized the democratic transformations and initiated the construction of Socialism; COMMITTED to Cuba never returning to capitalism as a regime

Constitution draw attention: “The Roman, Catholic, Apostolic Religion is that of the State, which contributes to its maintenance, without preventing the free exercise in the Republic of other beliefs that do not oppose themselves to the universal morality or good customs.”²⁵ In other words, the recognition of the Catholic Church, although it is carried out in unique terms in the region, does not undermine the exercise of religious freedom of other beliefs. And although Costa Rica does not have a special law on religious freedom, some regulations reflect the recognition of other confessions.

The fundamental right to religious freedom is formally recognized in the thirty-four Latin American and Caribbean constitutions. Sometimes, the guarantee is formulated in the style of nineteenth-century constitutions concerning the free expression of all religions, but there is no doubt about it. Some of the differences are:

- a) about either unique or privileged place of the Catholic Church by celebrating international agreements with the Holy See as it happens in twelve countries, or when it is mentioned at the constitutional level because its majority, its historical relevance, or its legal status;
- b) in some constitutions there is a privatization of the religious-based on the secularism of the State; and,
- c) from the twenty-first century, the establishment of *plurinational* states has meant a special recognition of ancestral cultures and worldviews, as does Bolivia, which enshrines a right to their cultural identities, religious beliefs, spiritualities, and practices and customs.²⁶

sustained by the exploitation of man by man, and that it is only in socialism and communism that a human being can achieve his or her full dignity; CONSCIOUS that national unity and the leadership of the Communist Party of Cuba, born through the unitary will of the organizations that decisively contributed to the triumph of the Revolution and legitimized by the people, constitute fundamental pillars and guarantees of our economic, social and political order; IDENTIFIED with the tenets displayed in the concept of Revolution, as expressed by the Commander in Chief Fidel Castro on the 1st of May of the year 2000; WE DECLARE our will that the law of the laws of the Republic be presided over by this profound yearning, finally achieved by José Martí, ‘I wish that the first law of our Republic be the devotion of the Cubans to the full dignity of man;’ WE ADOPT by our free and secret vote, through a popular referendum, one hundred and fifty years after our first Mambí Constitution, approved in Guáimaro on April 10, 1869, the following.

Cuba 2019, CONSTITUTEPROJECT, https://www.constituteproject.org/constitution/Cuba_2019?lang=en [<https://perma.cc/QKQ6-MULJ>].

25 Constitución Política de la República de Costa Rica, art. 75.

26 See ANA MARÍA CELIS, PATRICIO BERNEDO, PAOLO G. CAROZZA, JAVIER GARCÍA OLIVA, MIGUEL GONZÁLEZ, PATRICIA IMBARACK, MAUREEN NECKELMANN, MARÍA ELENA

The necessary integration of international instruments has contributed to the proper updating of this right in the region's countries, although sometimes, reservations are made.²⁷ In the same way, still, some countries have not signed the American Convention on Human Rights,²⁸ and both Trinidad and Tobago and Venezuela have denounced the Convention.²⁹

In any case, the Inter-American Court of Human Rights has delivered decisions in which freedom of conscience and religion were invoked but with almost no proper development of Article 12—freedom of religion—of the American Convention.³⁰ The first core approximation occurred in 2022 when the court delivered its decision in the case *Pavez Pavez v. Chile*. This significant case addresses religious freedom provisions regarding a schoolteacher who used to instruct confessional religion in a public school, who was deprived of her certificate of suitability from the religious community, understanding

PIMSTEIN & JOAQUÍN SILVA, *CREENCIAS Y NUEVA CONSTITUCIÓN: PERSPECTIVAS Y PROPUESTAS* (2021).

27 See Carmen Asiaín Pereira, *Religion and Religions in the Latin American Constitutional Framework*, in LAW, RELIGION, CONSTITUTION: FREEDOM OF RELIGION, EQUAL TREATMENT, AND THE LAW 125 (Cristiana Cianitto, W. Cole Durham, Jr., Silvio Ferrari & Donlu Thayer eds., 2013).

28 See *American Convention on Human Rights*, ORG. OF AM. STATES, https://www.oas.org/dil/treaties_b-32_american_convention_on_human_rights_sign.htm [<https://perma.cc/8KZD-XU7F>] (illustrating that Antigua, the Bahamas, Belize, Canada, Guyanese, Saint Kitts and Nevis, Saint Lucia, and Saint Vincent and the Grenadines have not signed the American Convention on Human Rights).

29 Trinidad and Tobago declared its withdrawal from the American Convention on Human Rights on May 26, 1998, and Venezuela denounced the Convention on September 10, 2012. See *id.* In addition, the Secretary General of the Organization of American States received from the Bolivarian Republic of Venezuela a note dated April 27, 2017, by which said country expressed its decision to denounce the Charter of the Organization of American States in the indicated terms. See Letter from Nicolás Maduro Moros, President of the Bolivian Republic of Venezuela, to Luis Almagro, Sec'y Gen., Org. of Am. States (Apr. 27, 2017) (available at http://www.oas.org/en/sla/dil/docs/a-41_note_venezuela_04-28-2017.pdf [<https://perma.cc/6W2F-3ZXK>]).

30 See, e.g., “The Last Temptation of Christ” (Olmedo-Bustos et al.) v. Chile, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 73 (Feb. 5, 2001); Mayagna (Sumo) Awas Tingni Cmty. v. Nicaragua, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 79 (Aug. 31, 2001); Plan de Sánchez Massacre v. Guatemala, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 105 (Apr. 29, 2004); Girls Yean and Bosico v. Dominican Republic, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 130 (Sept. 8, 2005); Moiwana Cmty. v. Suriname, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 124 (June 15, 2005); Miguel Castro-Castro Prison v. Peru, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 160 (November 25, 2006); Río Negro Massacres v. Guatemala, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 250 (Sept. 4, 2012).

that she taught religion as a representative of such faith.³¹ In the end, that practice was declared by the Inter-American Court conventional and according to the scope provided in Article 12.4 of the American Convention.³² Furthermore, in some cases regarding indigenous peoples, some observations have been made about state persecution against native peoples, emphasizing their right to bury the members of their people, taking into account their worldviews.³³

In the case of members of indigenous peoples, requests have been granted in procedures in which—although linked to their beliefs—they have not been presented from the perspective of religious freedom. In some way, the ILO 169 Convention has consolidated the requirements of the indigenous peoples, with which conflicts have arisen in cases of unduly not consulting them as the Convention mandates or when suspending the concession or execution of energy projects, among others. The aforementioned was particularly important in the decision for the case of *Río Negro Massacres v. Guatemala* where the Inter-American Court of Human Rights held:

This Court has already indicated that the special relationship of the indigenous peoples with their ancestral lands is not merely because they constitute their main means of subsistence, but also because they are an integral part of their cosmovision, religious beliefs and, consequently, their cultural identity or integrity, which is a fundamental and collect right of the indigenous communities that must be respected in a multicultural, pluralist, and democratic society, such as that of Guatemala.³⁴

It also referred to the displacements that generated, among others, the “loss of . . . cultural and traditional practices,” in addition to the Mayan Achí language.³⁵

However, the most characteristic element at the regional level in normative matters is not concentrated in their constitutions, adherence to international instruments, or the termination of agreements with the Holy See. Instead, the generalized and growing

31 CNA Staff, *Petition to Preserve Religious Liberty in Chile Launched*, CATH. NEWS AGENCY (Feb. 23, 2021), <https://www.catholicnewsagency.com/news/246612/petition-to-preserve-religious-liberty-in-chile-launched> [https://perma.cc/3LPA-L24F].

32 See *Pavez Pavez v. Chile*, Inter-Am. Ct. H.R. (ser. C) No. 449, ¶ 97.

33 Considering the celebration of funeral rites and cemeteries as sacred places would be “an integral element of their cosmovision, religious beliefs and, consequently, their cultural identity or integrity, which is a fundamental and collect right of the indigenous communities that must be respected in a multicultural, pluralist, and democratic society, such as that of Guatemala.” See *Río Negro Massacres v. Guatemala*, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 250, ¶ 160 (Sept. 4, 2012).

34 *Id.*

35 *Id.* ¶ 162.

trend is found in the proliferation of administrative regulations that modify or innovate in matters related to religious freedom. That is the case of regulations on life or health that do not contemplate the conscientious objection of healthcare professionals, impose the performance of specific procedures that violate the principles of the entity that owns the healthcare center, and that restrict freedom of speech, among many others.

III. EXTREME SECULARISM AS A THREAT OF RELIGIOUS PERSECUTION

The erosion of religious beliefs in Latin America brings the potential for religious freedom violations in some countries that have embraced extreme secularism. In this sense, Mexican law provides a few examples of cases that could potentially be a case of persecution if other factors appear in the future. This has been faced due to the Mexican court's interpretation of the principle of church-state separation of the domestic Constitution,³⁶ including the provision

36 Constitución Política de los Estados Unidos Mexicanos, CP, Diario Oficial de la Federación [DOF] 05-02-1917, últimas reformas DOF 2015. Article 130 states:

The historic principle of separation between the State and religion shall guide the provisions established in this article. Churches and any other religious groups shall observe the law. Only the Congress of the Union can legislate on matters of public worship, churches and religious groups. The respective public statutory law shall develop and detail the following provisions:

- a. Churches and religious groups shall have a legal status as religious association after the registration procedures. The law shall regulate the religious associations and shall establish the requirements to get registration;
- b. The government shall not intervene in the internal affairs of the religious associations;
- c. Mexicans can become ministers of any religious denomination. For this purpose, Mexicans and foreigners must meet the requirements established by law;
- d. Religious ministers cannot hold public offices, according to the statutory law. As citizens, religious ministers have the right to vote, but they do not have the right to be elected. Those who have ceased being church ministers with the required anticipation and by the procedures established in the law may be elected;
- e. Church ministers cannot join together for political purposes nor proselytize in favor of certain candidate, party or political association or against them. Neither may they oppose the laws of the Nation or its institutions, nor insult patriotic symbols in any form, in public meetings, in worship or in religious literature.

The formation of any kind of political group with a name containing any word or other symbol related to any religion is strictly prohibited. No meeting of a political character may be held in churches or temples. The simple promise of truthfulness and fulfillment, subjects the person to the penalties established by

under which religious ministers are barred from running for office since 1933.³⁷

The judicial branch has opened criminal proceedings against priests and bishops for speaking up on moral issues that relate to the electoral contests. One of them is the prohibition for priests from speaking during election times on matters of importance to their religious organizations. While this rule has existed at least since 1917, after a new constitution was enacted, national courts are pushing its application out of any reasonable limit.

A recent example is the annulment of the elections in Tlaquepaque by the Superior Chamber of the Electoral Tribunal of the Federal Judicial Branch (“TEPJF”) of Mexico, over the fact that the local bishop called on the faithful not to vote for those in power who support abortion laws and other regulations in conflict with the Christianity.³⁸ The difference between other comparative law examples is evident since the sanction is applied to both religious ministers and candidates, affecting freedom of religion provisions, free speech, and democratic principles harmed by the annulment.

In a different case, the TEPJF confirmed the decision against two cardinals and two priests for encouraging a Catholic vote in defense of life, the family, and the common good, within the framework of the same 2021 federal elections.³⁹

The complaint was filed in June 2021 against various ministers of worship derived from videos on social networks during the 2020–2021 electoral process. They held demonstrations allegedly proselytizing against Morena, the political party of the Mexican President Manuel Lopez Obrador. The Superior Court found that it constituted a

law in the event of failing to fulfill them. Church ministers, their ascendancy, children, siblings and spouses, as well as their religious associations, cannot inherit by will from their followers, who do not have a family relationship of up to fourth grade. Acts of marital status pertain only to the administrative authorities under the terms established by law. The law shall define the effect and validity for the marital status acts. The law shall confer powers and duties on civil matters to the federal, state and municipal authorities.

Id. art. 130.

37 Article 55(VI) of the Mexican Constitution states: “Requirements to be a Representative: Not to be priest or minister of any religion.” *Id.* art. 55(VI).

38 *Declara el TEPJF la nulidad de la elección de integrantes del Ayuntamiento de San Pedro Tlaquepaque, Jalisco*, TRIBUNAL ELECTORAL DEL PODER JUDICIAL DE LA FEDERACIÓN (Sept. 30, 2021), <https://www.te.gob.mx/front3/bulletins/detail/4253/0> [<https://perma.cc/W4HJ-Y7RA>].

39 *See El TEPJF confirma la violación al principio constitucional de separación Iglesia-Estado atribuida a dos ministros de culto*, TRIBUNAL ELECTORAL DEL PODER JUDICIAL DE LA FEDERACIÓN (Jan. 19, 2022), <https://www.te.gob.mx/front3/bulletins/detail/4407/0> [<https://perma.cc/6DNH-PZZC>].

violation of the principle of separation of Church and State, as well as the electoral ban, “considering that they made demonstrations that impacted on the federal electoral process by trying to influence the direction of the vote of the citizenship.”⁴⁰

On the other hand, the ministers of worship alleged mainly that the expressions were made in exercise of their freedom of expression and their character as citizens, not as representatives of the Catholic Church. Moreover, they maintained that they did not induce the vote and, therefore, did not violate the principle of the separation of Church and State.

Finally, in a session of January 19, 2022, the TEPJF decided that the Archbishop Emeritus of Guadalajara, Cardinal Juan Sandoval Íñiguez, and Fr. Mario Ángel Flores Ramos—former rector of the Pontifical University of Mexico—transgressed the “principle of separation of Church and State” recognized in the Mexican Constitution.⁴¹

The TEPJF determined that the Ministry of the Interior of the López Obrador government must define the sanction against Cardinal Sandoval Íñiguez and Fr. Flores Ramos, ranging from a simple reprimand up to a fine equivalent to \$150,000.⁴² However, if the same conduct is repeated in the future, they also could be sentenced to go to jail after a new criminal procedure.⁴³

The main question is whether these cases of extreme secularism may constitute persecution based on religious grounds. In this sense, and acknowledging the difference between human rights violations and criminal acts, the Special Rapporteur on Freedom of Religion or Belief has stated:

The Special Rapporteur is of the opinion that a distinction should be made between whether these actions raise a human rights concern or whether they could constitute criminal acts. Certain acts may constitute an offence under the criminal code of the State concerned and should therefore be prosecuted. In view of the Special Rapporteur, however, it would not be advisable to criminalize non-violent acts performed in the context of manifestation of one’s religion, in particular the propagation of

40 *Id.*

41 *Id.*

42 *See id.*

43 Código Penal Federal [CPF], art. 404, Diario Oficial de la Federación [DOF] 14-08-1931, últimas reformas DOF 12-03-2015 (Mex.). Article 404 states: “Up to 500 days will be imposed on ministers of religious cults who, in the development of public acts of their ministry, expressly induce the electorate to vote for or against a candidate or political party, or to abstain of the exercise of the right to vote.” *Id.*

religion, including because that might criminalize acts that would, in another context, not raise a concern of the criminal law and may pave the way for persecution of religious minorities.⁴⁴

Although this report does not constitute caselaw or binding international law, special rapporteurs are guided by the provisions of general or customary international law, the commitments accepted by a particular state through acceptance of international treaty obligations, and the normative commitments contained in other documents adopted by the United Nations. Therefore, the authoritative interpretation from the Special Rapporteur on Freedom of Religion or Belief is quite important, since the aforementioned cases are actually a criminalization for nonviolent acts performed in the context of manifestation of one's religion, such as the Mexican priests' behavior, that may pave the way for persecution based on religious grounds.

For sure, it is difficult to disagree with this interpretation because persecution consists of acts that are sufficiently serious by their nature or repetition as to constitute a severe violation of fundamental human rights, such as the situation of religious ministers in Mexico, even if the violations of human rights concerned are not "systematic"—although in this case, it appears systemic—and also considering that it is a clear case of harassment, which could constitute persecution in some cases, as we mentioned *supra*. In summary, the sustained breach of religious freedom in Mexico surely could pave the way for a religious persecution case in the future if the situation does not change shortly.

IV. THE CHILEAN CASE. FROM CATRILEO TO CATRILLANCA: THE CHANGE OF PLACE OF RELIGIOUS ENTITIES IN A DEINSTITUTIONALIZATION CONTEXT

Matías Catrileo was twenty-two years old when the police⁴⁵ murdered him in 2008, during a confrontation for the so-called *Mapuche cause* seeking their independence from Chile.⁴⁶ Ten years later, a twenty-four-year-old man, Camilo Catrillanca, was also shot

44 Asma Jahangir (Special Rapporteur of the Commission on Human Rights on Freedom of Religion or Belief), *Elimination of All Forms of Religious Intolerance*, ¶ 63, U.N. Doc. A/60/399 (Sept. 30, 2005).

45 The Chilean police force is called "Carabineros de Chile." See *Carabineros de Chile*, ARCHIVO NACIONAL DE CHILE, https://www.archivonacional.gob.cl/616/w3-article-37945.html?_noredirect=1 [<https://perma.cc/M7TJ-BU5R>].

46 See *CS confirmó fallo y condena al Fisco pagar indemnización por muerte de Matías Catrileo*, DIARIO CONSTITUCIONAL (Dec. 17, 2015), <https://www.diarioconstitucional.cl/2015/12/17/cs-confirmo-fallo-y-condena-al-fisco-pagar-indemnizacion-por-muerte-de-matias-catrileo/> [<https://perma.cc/Z755-C8AA>].

dead by the police in a different encounter. Between one event and the other, the circumstances of the Catholic Church in the country radically changed: while for the death of Catrileo, a bishop was expected to hand over the body to the police, nobody proposed something like that when Catrillanca's death occurred, which had critical political repercussions.⁴⁷ Moreover, intentional fires of Christian temples—primarily Catholic—already happened in the Araucanía region during that time.⁴⁸

How did the Catholic Church go from being a conflict mediator to not playing a role? Are the fires that started in Araucanía and continued in the Chilean social outbreak in 2019—with intentional burnings and looting even of cathedrals⁴⁹—indicative that there is persecution towards Christians and that they went from a mediator role to being persecuted?⁵⁰

47 *Caso Catrillanca: Corte de Temuco ordena cumplimiento efectivo de condenado por disparo injustificado y obstrucción a la investigación*, DIARIO CONSTITUCIONAL (May 29, 2021), <https://www.diarioconstitucional.cl/2021/05/29/caso-catrillanca-corte-de-temuco-ordena-cumplimiento-efectivo-de-condenado-por-disparo-injustificado-y-obstruccion-a-la-investigacion/> [https://perma.cc/S3WQ-WJQC].

48 See INSTITUTO NACIONAL DE DERECHOS HUMANOS, INFORME ANUAL 2016: SITUACIÓN DE LOS DERECHOS HUMANOS EN CHILE 10 (2016).

49 Unlike before, on that occasion the religious entities did not set themselves up as facilitators of the dialogue; rather, there were serious attacks on temples. In the Annual Report of the Chilean National Institute of Human Rights, it is mentioned that the external dimension of religious freedom admits restrictions, but it does not refer to the nature of these limitations or to the fact that human rights cannot be suspended during states of constitutional exception. Then, it was pointed out that “[i]t is of special attention to the INDH that a total of nine Catholic churches and one Evangelical church have been subject to damage of varying intensity and that some are armored to protect themselves from possible acts of vandalism.” *Id.* at 73. At least one update to the numbers should be included: only towards the end of November, the Episcopal Conference of Chile said that there were forty Catholic temples (eleven cathedrals, seventeen parishes, and twelve chapels). Later, damage was known to another two cathedrals, five churches, and five chapels. Obviously, the count in the case of evangelical temples is more complex and, in general, the information is obtained from the press. Even so, at least they suffered attacks of various sizes in six temples. The NGO Comunidad y Justicia—among others—presented the situation of religious freedom during the visit of a delegation from the Inter-American Commission on Human Rights. See COMISIÓN INTERAMERICANA DE DERECHOS HUMANOS, VULNERACIONES A LA LIBERTAD RELIGIOSA EN CHILE (2020) (available at <https://comunidadyjusticia.cl/wp-content/uploads/2020/05/informe-libertad-religiosa-cyj-febrero-2020-1.pdf> [https://perma.cc/P4DB-WPTF]).

50 See Ana María Celis Brunet & René Cortínez Castro SJ, *Religión y Coronavirus: Los Desafíos en Chile en Tiempos de Estado de Excepción Constitucional*, 54 REVISTA GENERAL DE DERECHO CANÓNICO Y DERECHO ECLESIASTICO DEL ESTADO (2020). Catholics continue to be the majority in the country and, although some criteria for the liturgy at the national level, the diocesan provisions were diverse according to the territory, with which, in some places the Eucharist, baptisms, and marriages continued to be celebrated, while in others they are just being resumed after a time of suspension. The impossibility of participating in person in acts of worship led the Catholic Church to deploy its activity through social

In Latin America, religious organizations, far from contributing to the usual fractures or getting involved in theological discussions, play a crucial role in building or maintaining national peace. Some examples of the contribution of religious organizations in the public sphere are expressed in their role to the disarmament process of the FARC in Colombia or as mediators in the face of social difficulties in Nicaragua. However, in the latter case, the Catholic cathedral of Managua has apparently suffered attacks in retaliation for its involvement. This permanent and classic contribution does not eliminate friction between religious groups in the region, nor has total religious freedom or equality between the various religious entities been achieved.

Nonetheless, even with the historical role of religious institutions in the peaceful resolution of secular and political conflicts, the collective dimension of religious freedom and belief is undergoing an accelerated process of deinstitutionalization that has already been evidenced in the data from 2014 just mentioned in the previous section.⁵¹ The aforementioned is also a phenomenon shared by all the institutions in the region that can well be considered a cultural paradigm shift accompanied by a social fragmentation that does not recognize the existing institutionality, including the religious one.

The indexes of persecution or religious hostility in the region do not reach the same levels of conflict as in other parts of the world. The severe and systematic human rights violations over religious liberties that attract attention among the international community have not existed in Latin America, at least generally. However, what is happening in the region can be seen as an erosion of religious freedom, partly caused by this deinstitutionalization, partly due to the extreme secularism mentioned in the previous paragraphs. Of course, an alert message is necessary in order to take measures to avoid this deinstitutionalization and radical secularism and impede paving the way for religious persecution in Latin America in the coming years.

networks, offering a large and diverse range of activities to the faithful, who responded very positively. Although there are no statistics available, however, the pastoral of a Catholic school in Santiago gathered a weekly average of 100 people for the celebration of the Eucharist on a weekday. At the same time, it generated initiatives from lay communities and within families, all of the above being a phenomenon of great interest to know the reality of the institutional linkage and religious practice of the Chilean Catholic faithful.

51 PEW RSCH. CTR., RELIGION IN LATIN AMERICA, *supra* note 10, at 4–5 (“And while only 4% of Latin Americans were raised without a religious affiliation, twice as many (8%) are unaffiliated today. . . . Indeed, in most of the countries surveyed, at least a third of current Protestants were raised in the Catholic Church, and half or more say they were baptized as Catholics.”).

The situation in Chile is sufficiently illustrative since the Catholic Church enjoyed a social recognition that was not shared by other entities in the country or Latin America. The latest polls show a drop in confidence to levels never seen before.⁵² This is not an isolated situation but rather takes on various forms in a region where legal systems recognize or constitute religious entities as legal persons. That means that they enjoy a legal status with which they operate in legal life. Indeed, the decisions of religious organizations are being challenged before the state courts and, to decide, tribunals have taken account of aspects such as worship,⁵³ baptism,⁵⁴ or the resurrection.⁵⁵ In this way, it is inevitable to observe them as if they were the so-called *resources of force*, the same were at the origin of the times and led to the separation between the Catholic Church and State in various countries (late nineteenth and early twentieth centuries). But, in addition, the reality is that there are few special laws on religious freedom or on at least religious entities⁵⁶ that promote their exercise actively. Instead, administrative or judicial decisions proliferate that violate doctrines held by certain organizations, thus making illegal those beliefs that until less than ten years ago seemed to be the common substratum of Latin American societies. On the occasion of those social debates, phrases offensive to religious feelings have been written both inside and outside of temples, protected by social and state indifference.

Moreover, the restrictions on the exercise of religious freedom in Cuba, Nicaragua, and Venezuela that appear in various international reports⁵⁷ usually do not refer to direct restrictions but to indirect ones,

52 According one survey, only 42% declared being Catholics in 2021. PONTIFICIA UNIVERSIDAD CATÓLICA DE CHILE, SEMINARIO ANHELOS Y EXPECTATIVAS DE LA SOCIEDAD CHILENA: RESULTADOS ENCUESTA BICENTENARIO UC 2021 (2021).

53 See Corte Suprema de Justicia [C.S.J.] [Supreme Court], 29 marzo 2021, “Diego Alberto Vargas Castillo con Óscar Enrique Paris Mancilla, Ministro de Salud,” Rol de la causa: 19.062-2021., recurso de protección (Chile). The Court said, “[The plaintiff] holds the fundamental right that enables him to attend Sunday worship in person, so the respective authority must establish a system of permits for this purpose.” *Id.* at 20.

54 See Tribunal Constitucional de la Republica del Peru, 12 setiembre 2011, “José Manuel Campero Lara en Representación de Ricardo Luis Salas Soler y Otra,” STC 00928–2011-PA/TC, ¶ 17 (Peru).

55 See Corte Constitucional [C.C.] [Constitutional Court], 16 septiembre 2016, Sentencia T-507/16 (Colom.). The case is related to a man who professes the Catholic religion and believes that his amputated leg should be buried in a holy field “where he is certain that on the day of his resurrection his entire body rests complete in a holy place and as God sends for the resurrection and not as they have been told, that it is a waste that must be voted and eliminated because it no longer serves and is not important.”

56 We can mention Mexico (1992), Colombia (1994), and Chile (1999), among others.

57 See, e.g., U.S. DEP’T OF STATE, OFF. OF INT’L RELIGIOUS FREEDOM, 2020 REPORT ON INTERNATIONAL RELIGIOUS FREEDOM (2020).

using other fundamental rights such as freedom of expression and association.

The region's erosion and violations of religious freedom—no matter how hateful the generalizations are—are currently the most significant regional challenge. The accelerated deinstitutionalization requires careful observation so that pluralism in a democratic society does not undermine the exercise of the person's spiritual dimension in the public sphere.

CONCLUSION

This Essay has intended to stress the multifactorial and interdependent factors that interplay in the religious freedom scenario in Latin America. As we mentioned, the significant Christian majority coexisted peacefully with indigenous peoples, other beliefs, and even secular societies for at least a century. Nevertheless, demographic changes, the erosion of the contents and scope of freedom of religion or belief in Latin America, the complex scenario of deinstitutionalization, and cases such as Mexico may pave the way for persecution under international law standards if the situation becomes severe and even systematic.

The open question for the future is about the necessary measures to avoid extreme secularism, the erosion in the religious belief heritage for Christian and indigenous people, and finally, the violence against religious and indigenous communities in several places of the region. The normalization of all those acts constitutes an unduly omission, which may lead to future religious persecution, generally absent in Latin America.