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The Colombian Experience in the Area of Protection of the Freedom of Religion

*Sergio González Sandoval**

I. INTRODUCTION

From its beginnings as a republic, Colombia is a country that has been extensively and productively engaged in matters of public international law. As a result, Colombia is a member of several international organizations and a high-level contracting party to several bilateral treaties and other important multilateral treaties and declarations. Some of these international instruments are specifically related to human rights. However, this long international legal tradition stands in contrast to the precarious internal situation regarding areas of protection, defense, promotion, and the spreading of human rights in Colombia. Although the fundamental right of freedom of religion belongs to the realm of human rights, the affectation that some tolerate is equally worrisome. I elaborated on the seriousness of this statement during the workshops of the 15th Annual BYU International Law & Religion Symposium in 2008.

II. THE DEVELOPMENT OF THE CONSTITUTIONAL RIGHT TO FREEDOM OF RELIGION IN COLOMBIA

From 1811 until the present day, Colombia has had several provincial constitutions and nearly a dozen national constitutions.¹

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In the vast majority of these documents, the issue of religious freedom has been regarded as an issue of freedom of worship, and has almost always been regulated through the concept of religious tolerance. Nevertheless, in the eyes of most treatise writers, Colombia has not had an authentic and effective freedom of religion, especially when taking into account that Colombia has traditionally been a religious state. This opinion is most likely a response by treatise writers to a constitutional amendment in 1957 that sought to unify Colombians under a banner of Catholicism after years of military dictatorship.² In the following sections, I discuss how Colombia has recognized religious freedom throughout its history and how the 1957 amendment was the exception to the constitutional stance regarding freedom of religion.

A. The Early Constitutions: 1811–1863

While the earliest Colombian constitutions practically (if not officially) recognized the Catholic Church as the religion of the state, religious tolerance also became a standard part of domestic policy. The first Political Constitution of the Colombian Republic was adopted in 1821 when Colombia became its own republic.³ Although the founding document acknowledged that Catholicism “is and will be the state religion,”⁴ religious tolerance existed during this important period.⁵ This tolerance persisted throughout the early years of Colombia’s history. Years later, religious tolerance was reaffirmed under the Constitution of 1832, despite the fact that the government considered it one of its strict duties, “to protect the holy

1. *See generally* CONSTITUCIONES POLÍTICAS NACIONALES DE COLOMBIA (Carlos Restrepo Piedrahita ed., 2d ed. 1995). This book is a compilation of the major constitutional developments in Colombia from 1810 to the creation of the 1991 Constitution. While the right to freedom of religion is treated somewhat differently with each constitutional change, it is important to note that it has existed almost since the beginning of Colombia’s history.

2. *See* DECRETO LEGISLATIVO No. 0247 (Oct. 4, 1957), *reprinted in* CONSTITUCIONES POLÍTICAS, *supra* note 1, at 506.

3. CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE COLOMBIA DE 1821, *reprinted in* CONSTITUCIONES POLÍTICAS, *supra* note 1, at 53.

4. *Id.* at 56 (“[E]lla ha sido la Religión de nuestros Padres, y es y será la Religión del Estado . . .”).

5. LUIS ENRIQUE JIMENEZ LLAÑA-VEZGA, EL PENSAMIENTO LIBERAL EN LAS CONSTITUCIONES COLOMBIANAS 39–40 (1990).

Catholic religion.”⁶ Catholicism continued to play a very significant role in both governmental policy and in the lives of most Colombians at that time, but tolerance of other religions did exist.⁷

After this early period, Colombia endured years of war and internal conflict that resulted in a new constitution that limited religious tolerance for a brief period. The Constitution of 1843 was a “conservative” response to the Civil War of 1839–41, in which various provincial leaders tried to overthrow the government on “religious” grounds.⁸ It gave the central government more power over local leaders and set apart the Catholic Church as the “only [religion] sustained and maintained by the Republic.”⁹ The 1843 Constitution was a brief set-back for religious tolerance advocates, but it only lasted until the fractured liberal party took control of Congress and the Presidency in 1849 and began to effectuate major changes in Colombia.

By 1853, the liberal party had introduced significant social and economic changes in Colombia¹⁰ through a new constitution. The Federal Constitution of New Granada, promulgated on May 20, 1853, was characterized as having stimulated freedom of religion, freedom of thought, freedom of the press, emancipation of slaves, and the separation of Church and State.¹¹ This Constitution marked the first time that freedom of religion became an absolute right of worship rather than a mere toleration of faith.¹² A new Constitution,

6. CONSTITUCIÓN POLÍTICA DEL ESTADO DE LA NUEVA GRANADA DE 1832, *reprinted in* CONSTITUCIONES POLÍTICAS, *supra* note 1, at 143 (“[E]l riguroso deber que tiene la Nueva Granada de proteger la santa religión Católica . . .”).

7. LLAÑA-VEZGA, *supra* note 5, at 42.

8. PEDRO PABLO CAMARGO, CRÍTICA A LA CONSTITUCIÓN COLOMBIANA DE 1886 31–32 (1987).

9. CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE LA NUEVA GRANADA DE 1843, art. 16, *reprinted in* CONSTITUCIONES POLÍTICAS, *supra* note 1, at 193 (“La Religión Católica, Apostólica, Romana, es la única cuyo culto sostiene y mantiene la República.”).

10. *See generally* ANTONIO JOSÉ RIVADENEIRA VARGAS, HISTORIA CONSTITUCIONAL DE COLOMBIA 102–04 (3d ed. 2001).

11. *See* CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE LA NUEVA GRANADA DE 1843, arts. 5–6, *reprinted in* CONSTITUCIONES POLÍTICAS, *supra* note 1, at 228–29. (“La República garantiza a todos . . . [l]a profesión libre, pública o privada de la religión que a bien tengan, con tal que no turben la paz pública, no ofendan la sana moral, ni impidan a los otros el ejercicio de su culto.”).

12. LLAÑA-VEZGA, *supra* note 5, at 45.

promulgated in 1858, ratified the freedom of worship that was established in the Constitution of 1853.¹³

Later, 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 the inability of religious entities to acquire real estate.¹⁴

B. The Constitution of 1886 and Subsequent Reforms

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.¹⁵ Thus, its preamble omits any reference to the Catholic Church, and in Article 40, the Constitution of 1886 establishes a system of tolerance in the following terms:

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.¹⁶

Years later, the Constitution of 1886 underwent a recodification, and the former Article 40 became Article 53, which in turn was reformed by the Thirteenth Article of Legislative Act No. 1 of 1936.¹⁷ After that reform, the provision was written in the following terms:

13. CONSTITUCIÓN PARA LA CONFEDERACIÓN GRANADINA DE 1858, art. 56, *reprinted in* CONSTITUCIONES POLÍTICAS, *supra* note 1, at 280.

14. *See generally* CONSTITUCIÓN POLÍTICA DE LOS ESTADOS UNIDOS DE COLOMBIA DE 1863, *reprinted in* CONSTITUCIONES POLÍTICAS, *supra* note 1, at 301.

15. This new constitution was a conservative government's response to the attempted coup of 1884-1885 and as such, it retreated from the more liberal Rio Negro Constitution by essentially turning Colombia into a confessional state supporting the Catholic Church. CAMARGO, *supra* note 8, at 52-59 (“[L]a religión Católica, apostólica, romana, es la de la nación . . .”). Despite this recognition, however, the 1886 Constitution still maintained religious tolerance as a guiding principle.

16. CONSTITUCIÓN DE LA REPÚBLICA DE COLOMBIA DE 1886, art. 40, *reprinted in* CONSTITUCIONES POLÍTICAS, *supra* note 1, at 351.

17. LEGISLATIVE ACT No. 1, art. 13 (Aug. 5, 1936), *reprinted in* CONSTITUCIONES POLÍTICAS, *supra* note 1, at 442-43.

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 that 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 subject to prior approval by Congress to regulate, based on reciprocal deference and mutual respect, the relations between the State and the Catholic Church.¹⁸

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

Although the Constitution of 1886 recognized religious tolerance, many treatise writers continue to opine that Colombia did not have an effective freedom of religion under the document—a viewpoint inappropriately derived from the Preamble to the Constitution adopted later, during a time of political unrest.

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 and to ensure the properties of justice, liberty, and peace, the people of Colombia, in national plebiscite, ORDER . . .¹⁹

The plebiscite of 1957 took place in response to a situation of partisan violence that shook the country for more than a decade, as

18. *Id.*, reprinted in CONSTITUCIONES POLÍTICAS, *supra* note 1, at 442–43.

19. LEGISLATIVE DECREE No. 0247 (Oct. 4, 1957), reprinted in CONSTITUCIONES POLÍTICAS, *supra* note 1, at 506.

well as to a military dictatorship that was imposed in 1953.²⁰ By 1957, the liberal and conservative parties shared an atmosphere of reconciliation as they did not want Colombia to return to a 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 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.

From the above discussion, it is evident from Colombia's constitutional history that despite the 1957 preamble, direct denominational choice is not absolute proof of a habitual preference of the State for the Catholic Church. To the contrary, this denominational episode stands as an exception within the constitutional development.

III. FREEDOM OF RELIGION IN THE CURRENT POLITICAL CONSTITUTION OF COLOMBIA: LEGISLATIVE, ADMINISTRATIVE, AND JURISPRUDENTIAL DEVELOPMENTS OF THE CURRENT CONSTITUTIONAL RIGHT TO FREEDOM OF RELIGION

In the Constitution of 1991, freedom 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, nor 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 religious creeds and churches are equally free before the law.²¹

Although, as we have seen, these freedoms are not novel in terms of constitutional development, they are marked by particular

20. See generally CAMARGO, *supra* note 8, at 79–80.

21. CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE COLOMBIA DE 1991, arts. 18–19, reprinted in CONSTITUCIONES POLÍTICAS, *supra* note 1, at 598.

importance because of two concrete factors: The first has to do with the fact that these freedoms are included in the Charter under the section for fundamental rights,²² which from a positivist viewpoint elevates this category of rights. 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 above 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 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 advancement is the distinction made between the two rights, allowing for an acknowledgement that a confirmation of conscience is possible without necessarily being tied to a religious sentiment. Furthermore, the new text specifies the entitlement to the right of religious freedom. Previous constitutional provisions recognized the freedom of all religions. This meant that there was a freedom of religion that was extended to their members. The new constitutional order recognizes that human beings, both individually and collectively, as well as religious creeds, are entitled to freedom of religion. This said, the new constitutional statute favors the separation of the Church and the State, confirming that at least theoretically Colombia today is no longer a religious state. We can likewise confirm that we are moving beyond the confusion between Church, family, and education that came about as a result of the apparent religiousness of the State.

A. 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.²³ Article 93 gives international treaties a special rank in the internal order and classifies them as special for matters of judicial

22. *Id.*

23. CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE COLOMBIA DE 1991, art. 93, reprinted in CONSTITUCIONES POLÍTICAS, *supra* note 1, at 616.

interpretation.²⁴ This institution, along with other elements, is known in Colombia's justice system as the "block of constitutionality." The corresponding text of this article reads as follows:

International treaties and agreements ratified by Congress, that recognize human rights and that prohibit their limitation in states of emergency, shall prevail in the internal order. The rights and obligations established in this Charter shall be interpreted in accordance with the international human rights treaties ratified by Colombia.²⁵

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 are 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 most important level of our regulatory structure: the constitutional level.

B. The Legislative Development of International Treaties

Without forgetting the block of constitutionality aspect, it is important to point out that Colombia is a party to the United Nations Universal Declaration of Human Rights of 1948.²⁶ As such, through Law No. 74 of 1968,²⁷ Colombia approved the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights. Moreover, through Law No. 16 of 1972,²⁸ Colombia ratified the text of the American Convention on Human Rights, signed in San Jose, Costa Rica in 1969.²⁹ Within this framework of ideas, one must understand that the parts of the aforementioned international instruments, as they refer to freedom of religion, have been approved

24. *Id.*, reprinted in CONSTITUCIONES POLÍTICAS, *supra* note 1, at 616.

25. *Id.*

26. Universal Declaration of Human Rights, G.A. Res. 217A, at 71, U.N. FAOR, 3d Sess., 1st plen. mtg., U.N. Doc. A/810 (Dec. 12, 1948).

27. Law 74 of 1968, Diario Oficial, No. 32682, Dec. 31, 1968, at 731.

28. Law 16 of 1972, Diario Oficial, No. 33780, Feb. 5, 1973, at 321.

29. American Convention on Human Rights, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123.

by the Colombian State, and, pursuant to Article 93 and the block of constitutionality quoted above, they are in full force and effect within the internal order. In particular, I refer to Section 3 of Article 13 of the International Covenant on Economic, Social and Cultural Rights,³⁰ Article 18 of the International Covenant on Civil and Political Rights,³¹ and Article 12 of the American Convention on Human Rights.³²

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 merits special attention.³³ As in the cases of all Declarations, although not legally binding on the State, they represent a wide consensus among the international community. Consequently, Declarations exercise an intense moral influence that guides the practice of States in international relations. Colombia should not be foreign to this 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.³⁴

Furthermore, it is important to include the following laws:

- Law No. 5 of 1960, which approves the final Act and the Covenants signed by the Diplomatic Conference in Geneva on August 12, 1949.³⁵
- Law No. 11 of 1992, which approves the “Additional Protocol to the Geneva Convention of 12 August 1949 relating to the Protection of Victims of International Armed Conflicts (Protocol 1),” adopted in Geneva on June 8, 1977.³⁶

30. International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI), 21 U.N. GAOR, Supp. No. 16, art. 13, § 3, U.N. Doc. A/6316 (1966).

31. International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), 21 U.N. GAOR, Supp. No. 16, art. 18, U.N. Doc. A/6316 (1966).

32. American Convention on Human Rights, Nov. 22, 1969, O.A.S.T.S. No. 36, art. 12, 1144 U.N.T.S. 123.

33. Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, G.A. Res. 36/55, 36 U.N. GAOR, Supp. No. 51, U.N. Doc. A/36/684 (1981).

34. *Id.* at art. 7.

35. Law 5 of 1960, Diario Oficial, Aug. 26, 1960.

36. Law 11 of 1992, Diario Oficial, No. 40510, July 22, 1992, at 1.

- Law No. 171 of 1994, which approves the “Additional Protocol to the Geneva Convention of 12 August 1949 relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II),” made in Geneva on June 8, 1977.³⁷

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 these people.

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 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. FUNDAMENTAL 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.

37. Law 171 of 1994, Diario Oficial, No. 41640, Dec. 20, 1994, at 1.

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”).

- Law 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, 1990.³⁸

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. FUNDAMENTAL GUARANTEES:

1. All persons who do not directly participate in hostilities, or who have ceased to participate in them, regardless of whether or not they have suffered loss of freedom, are 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. PEOPLE DEPRIVED 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 able 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.

38. Law 146 of 1994, Diario Oficial, No. 41444, July 15, 1994, at 3.

ARTICLE 1:

Unless otherwise stated by herein, this Convention shall apply to all migrant workers and their family members without any discrimination due to sex, race, color, language, religion or belief, opinions of political or other nature,

C. 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 received adequate legislative development. In addition to the previously mentioned laws approving international treaties, to this point, laws have been created in regards to a variety of topics. However, these laws either directly or indirectly, 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 freedom of worship is developed.³⁹ In its fundamental structure, this law 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:

national, ethnic, or social origin, nationality, age, financial situation, heritage, marital status, birth, or any other condition.

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 their jurisdiction, without any 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, conscience, and religion. That 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, 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 established by law, and which are necessary to protect public security, order, health, and morality or the fundamental 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, of legal guardians so that children receive a religious and moral education that is in accordance with their own convictions.

39. Law 133 of 1994, Diario Oficial, No. 41369, May 26, 1994, at 1.

The sole limitation to the exercise of the rights arising from 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, constituent elements of public order and protected by law in a democratic society.⁴⁰

Furthermore, Article 5 provides (in full): “The scope of this law does not include activities related to the study of and experimentation with psychic or para-psychological phenomena; Satanism, magical, superstitious, or spiritualist practices or other similar practices that are alien to religion.”⁴¹

Similarly, other laws important to freedom of religion that we might summarize are:

- Law No. 65 of 1993, which sets forth the Code for Correctional Facilities.⁴²
- Law No. 137 of 1994, which regulates states of emergency in Colombia.⁴³

40. *Id.* at art. 4.

41. *Id.* at art. 5.

42. Law 65 of 1993, Diario Oficial, No. 40999, Aug. 20, 1993, at 1.

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 tasks, 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.

43. Law 137 of 1994, Diario Oficial, No. 41379, June 3, 1994, at 1.

ARTICLE 3. PREVALENCE OF INTERNATIONAL TREATIES:

Pursuant to Article 93 of the Political Constitution, the International Human Rights Conventions ratified by the Colombian Congress prevails 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 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,

- Law number 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 ceremonies, damage or injury to persons or to items intended for worship, and the violation of the sanctity of a corpse.
- Law number 890 of 2004, which provides for amendments to the Criminal Code.⁴⁴

D. The Administrative Development of the Freedom of Religion

For the purpose of real efficacy, important legislative advancements had to be regulated through various decrees. Among these, we must refer to Decree 782 of 1995, amended by Decree 1396 of 1997,⁴⁵ which sets forth that in order for churches, religious creeds and denominations, and their federations and confederations of ministers to obtain status as legal persons, these entities must submit a petition to the Legal Office of the Interior Ministry, along

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.

Neither shall the indispensable judicial guarantees for the protection of such rights be suspended.

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.

44. Law 890 of 2004, Diario Oficial, No. 4754, July 7, 2004, at 1. Article 14 of this law states:

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.

Id.

45. DECRETO No. 782, Secretaria General, May, 12 1995, at 1.

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, and the 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 acts⁴⁶ 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.

46. DECRETO No. 1455 de 1997 (regarding the legal representation of churches, creeds, and religious denominations and the recording in the Civil Registry of marriage certificates); DIRECTIVA PRESIDENCIAL No. 12 de 1998 (regarding the regulation and fulfillment of the Internal Public Law Agreement No. 01 of 1997); DECRETO No. 1319 de 1998 (regarding 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); DECRETO No. 1321 de 1998 (establishing the formation of the Committee for the regulation of Internal Public Agreements); MINISTERIO DE SALUD DE PUBLICACIÓN No. 0021 de 1998 (regarding the duties of the health authorities in terms of religious assistance to hospital patients); DECRETO No. 1519 de 1998 (regarding religious assistance of inmates at domestic jail and prison facilities); MINISTERIO DE DEFENSA NACIONAL RESOLUCIÓN No. 03074 de 1998 (regarding the fulfillment of the Internal Public Law Agreement No. 1 of 1997 inside the Armed Forces and Law Enforcement Agencies).

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.⁴⁷ 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.⁴⁸

E. The Development of Jurisprudence

When a new constitution took effect in 1991, it brought with it a set of 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 the Protective Action,⁴⁹ in other systems, its importance is found in the fact that, prior to 1991, Colombians did not have an efficient legal mechanism that would allow citizens to demand effective protection of fundamental rights. As for the Constitutional Court, it was created by the current Political Constitution that took effect on July 7, 1991.⁵⁰ 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. The Court's 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

47. See Bureau of Democracy, Human Rights, and Labor, *International Religious Freedom Report: Colombia*, Oct. 2001, available at [http://www.religlaw.org/template.php?id=523&search_terms\[0\]=PAROCHIAL](http://www.religlaw.org/template.php?id=523&search_terms[0]=PAROCHIAL).

48. Concordat approved by Law 20 of 1974.

49. Translated from the Spanish "acción de tutela." The "Colombian acción de tutela is comparable to the constitutional complaint. . . . It is characterized by the fact that the circle of protected constitutional rights is explicitly defined. [Through the acción de tutela] [i]t is possible to annul legal or administrative acts." [http://www.venice.coe.int/docs/1998/CDL-INF\(1998\)003-e.pdf](http://www.venice.coe.int/docs/1998/CDL-INF(1998)003-e.pdf).

50. CONSTITUCIÓN POLÍTICA DE COLOMBIA DE 1991, art. 86, reprinted in CONSTITUCIONES POLITICAS, *supra* note 1, at 614.

Protective Act for constitutional rights pursuant to Article 86 of the Constitution.⁵¹ 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 as the authorized interpreter, it establishes rules of jurisprudence regarding the extent of the norms contained in the Constitution.⁵²

In terms of the right to 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 one hundred rulings. Through these rulings, the Court has drawn a line of jurisprudence that is characterized by a systematic prevalence of this fundamental right, above even 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 the right to freedom of religion's relationship with the other rights, the Court has resolved to modulate its decisions, the aim being the simultaneous and harmonious exercise of more than one right. Thus, as an example, through different decisions the Court has harmonized the right to freedom of religion with the right to health, or with the right to education, intimacy, free development of personality, 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.⁵³

51. *Id.*

52. *See* Official web page of the Constitutional Court of Colombia, www.constitucional.gov.co.

53. Some of the issues regarding religious freedom that the Court has brought to the national attention are the following: 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; the opposition of science to religion; sanctions for rejecting personal or religious views that lead to refusal to participate in national civic holiday celebrations; the 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.);

IV. THE PRACTICAL APPLICATION OF THE RIGHT TO FREEDOM OF RELIGION IN TODAY'S COLOMBIA

For many long decades, Colombia has gone through a process of violence that has originated in deep social inequalities that appear insurmountable.⁵⁴ This violent process has blended over the years to the point where, depending on the time period, some of its characteristics are highlighted while others are softened. Even so, this violence has exhibited itself through a variety of different groups with the same *modus operandi*: the quest for power at the expense of the human rights of Colombian citizens. Thus, some decades ago the conflict raged between the traditional political parties.⁵⁵ Years later, this phenomenon of violence was characterized by the presence of rebel groups, most of which had communist tendencies.⁵⁶ In more recent years,⁵⁷ the main characteristic of the conflict has been and is

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.

54. See Pedro Ruiz Gutierrez, *Bullets, Bloodshed and Ballots: For Generations Violence Has Defined Colombia's Turbulent Political History*, ORLANDO SENTINEL, Oct. 31, 1999, at A1 (outlining the various stages of violence of Colombia throughout the twentieth century).

55. This violent period lasted from the late 1940s to the late 1950s and is known as "La Violencia." The conflict involved fierce fighting between the Colombian Liberal Party and the Colombian Conservative Party and is thought to have begun with the assassination of a liberal party presidential candidate. See GRACE LIVINGSTONE, *INSIDE COLOMBIA: DRUGS, DEMOCRACY, AND WAR* 42 (2004). As many as 200,000 Colombians died during this decade of violence. *Id.*

56. La Violencia ended with the formation by the two quarrelling political parties of the "National Front." See BERNARD A. COOK, *WOMEN AND WAR* 126-27 (2006). Communist guerilla groups formed to combat the "political repression" of the National Front, including the Revolutionary Armed Forces of Colombia (FARC), the National Liberation Army (ELN), and the April 19 Movement (M-19). *Id.*

57. "Colombia's 3-decade-old conflict, which pits guerrillas against right-wing paramilitaries and state security forces, has claimed more than 35,000 lives and forced more than a million civilians to flee their homes in just the past 10 years." Sibylla Brodzinsky, *Colombian Civilians Fear Repression, Retribution*, USA TODAY, Oct. 25, 1999, at 17A. In the late 1980s and early 1990s, as many as 20,000 Colombians were killed by extrajudicial executions for the purpose of "social cleansing." See Elizabeth F. Schwartz, *Getting Away with*

the boom in drug smuggling,⁵⁸ 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.⁵⁹ Regardless of the time periods and the characteristics, the conflict has brought the same consequences upon the Colombian people: death, poverty, backwardness, pain, exclusion, and despair—all of which are part of serious and systematic human rights violations.

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 of the government to some of the subversive groups that apparently are in the process of demobilizing.⁶⁰ On the other hand, this same government is

Murder: Social Cleansing in Colombia and the Role of the United States, 27 U. MIAMI INTER-AM. L. REV. 381, 383 n.8 (1996).

58. One of the strongest and most well known drug cartels is the Medellín cartel headed by Pablo Escobar. In the 1970s and 80s, these cartels transformed cocaine into a “multinational enterprise.” GUY GUGLIOTTA & JEFF LEEN, *KINGS OF COCAINE* 84 (1989). As the government began to crackdown on the drug trade, the cartels declared “total and absolute war” against the government, leaving politicians and innocent civilians alike dead and injured. See Kevin Noblet, *Drug Lords Start “War” in Colombia*, PHILADELPHIA INQUIRER, Aug. 25, 1989, at A01; *Drug Cartel Tied to Crash of Colombia Jet, 107 dead*, CHI. SUN TIMES, Nov. 28, 1989, at 2.

59. “Colombian citizens are constantly subjected to rampant political and criminal upheaval perpetrated by guerrillas, paramilitary groups, and drug traffickers, as well as by the Colombian military and national police.” Alan Seagrave, Comment, *Conflict in Colombia: How Can Rebel Forces, Paramilitary Groups, Drug Traffickers, and Government Forces Be Held Liable for Human Rights Violations in a Country Where Impunity Reigns Supreme?*, 25 VILL. L. REV. 525, 528 (2001) (citing Julia Mangano, *The Pervasive Immunity that Surrounds Human Rights Violations Committed by Colombia's Military*, 3 DEPAUL DIG. INT’L L. 45, 47 (1997)).

60. In 2003, Colombian President Álvaro Uribe presented the Colombian Congress with a bill that would allow certain paramilitary leaders to avoid prison time if convicted of human rights violations. The bill passed, allowing paramilitaries to receive amnesty after a conviction conditioned upon the payment of a sum of money to certain organizations set up to compensate the victims of human rights violations. See Sarah Sandford-Smith, Note, *A Toothless Tiger: President Uribe's Proposed Amnesty Bill*, 28 HASTINGS INT’L & COMP. L. REV. 167, 168 (2004) (arguing that this agreement demonstrates President Uribe placating the paramilitary leaders who were quoted in 2003 as saying that they would not negotiate with the government for peace unless prison time for the paramilitaries was off the table). Also, a situation known as the “parapolitics” scandal has recently erupted in the Colombian government, opening inquiries into “dozens of current or former members of congress over their alleged ties to the United Self-defence Forces of Colombia (AUC) paramilitaries.” *Profile, Álvaro Uribe Velez*, BBC NEWS, July 3, 2008, <http://news.bbc.co.uk/2/hi/americas/>

receiving high popularity ratings and support for its administration⁶¹ thanks to media results like the liberation of hostages,⁶² economic growth, the recovery of certain territories previously dominated by subversive groups, and a 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 including poverty, pain, death, kidnappings, displacements, backwardness, extrajudicial executions, fear, insecurity, and—perhaps the most painful human rights violation of all: silence.

The silence of the victims of forced displacement could exceed four million people as denounced by UNHCR in Geneva on April 16, 2008.⁶³ 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.

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 schools, jobs, homes, the

3214685.stm. Many of those under investigation are allies of President Uribe, including his cousin Mario Uribe. *Id.*

61. See *Profile, Álvaro Uribe Velez*, *supra* note 60 (“His implacable stance against the rebels has kept his approval ratings above 70% for much of the time.”).

62. Most notably, Ingrid Betancourt, one-time presidential candidate, was recently rescued from FARC rebels after spending nearly six years in captivity. See Simon Romero, *Colombia Plucks Hostages From Rebels' Grasp*, N.Y. TIMES, July 3, 2008, at A1.

63. EL TIEMPO, Apr. 16, 2008. More than four 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 fifty 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.

places where they meet with their parents, siblings, friends—their people. Rarely do we notice the forced abandonment of other values, such as places of worship, temples, parishes, oratories, Sunday schools, prayer groups, tombs of the elderly, and seminaries. 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 because, as shown earlier, legislation exists that is designed to guarantee such populations the right to freedom of religion. However, 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, active, energetic, 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.⁶⁴ 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 humans deserve.⁶⁵ However, they do not inform us of violations of the right to freedom of religion. The reason NGOs fail to report violations of the right to freedom of religion is unclear. 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

64. Steven E. Hendrix, *USAID Promoting Democracy and the Rule of Law in Latin America and the Caribbean*, 9 SW. J.L. & TRADE AM. 277, 278–79 (2002).

65. *See generally id.* at 283–306.

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 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 have 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, the distinguished jurist and human rights martyr, one day they understood that “it is better to die for something than to live for nothing.”