

Presentation of study

“Freedom of Religion and Belief. Inter-American Standards”

Special Session of the Permanent Council of the Organization of American States (OAS)

October 23, 2024 | Washington, DC

*Remarks by IACHR President, Commissioner **Roberta Clarke***

I would like to begin by thanking the States that requested this special session. It is an honor to have your presence at this presentation of the study on inter-American standards on freedom of religion and belief in a special session of the Permanent Council, as mandated by the 54th OAS General Assembly.

The preparation of the study arose from a mandate given by the 50th OAS General Assembly, which Resolution on “Promotion and protection of human rights” encouraged the technical and autonomous bodies of the organization to conduct a study on the implementation of Article 12 of the American Convention on Human Rights. Within the framework of its autonomy and independence, the Commission prepared this study, in accordance with Articles 13 and 58 of its Rules of Procedure. The study, which was approved in 2023, was published in February 2024 and presented to the Committee on Juridical and Political Affairs of the OAS Permanent Council in March this year.

The Commission and the Inter-American Court of Human Rights have addressed different aspects of the right to freedom of religion and belief over the past decades; in their reports on petitions and cases, through decisions on admissibility and merits, in resolutions on precautionary measures, in thematic reports, country reports, annual reports, and in other relevant documents, such as principles, resolutions and declarations in the case of the Commission, and in judgments and advisory opinions, in the case of the Court. The Commission has also pronounced on violations of the right to freedom of religion and belief through press releases and has held public hearings on this issue.

These approaches have responded to the human rights violations that have occurred (and continue to occur) in our region, with its great religious diversity, its different models of relationship between the State and religious institutions, and its episodes of denial of rights with arguments based on religion and belief. The study systematizes the standards and pronouncements on the right to

freedom of religion and belief developed by the organs of the Inter-American human rights system, therefore reaffirming their binding force and legal effects in OAS member states.

In doing so, this study offers an overview of the historical evolution of this right in the Inter-American system: from interpretations developed decades ago in response to violations committed in contexts of authoritarianism and armed conflict, to more recent pronouncements, for example, relating present persecution of members of the Catholic Church by the Nicaraguan regime. If you allow me, I wish to note the recent murder of priest Marcelo Perez, who was a defender of indigenous rights in Mexico.

The study does not make a diagnosis of the situation of the right to freedom of religion and belief in the region. Neither it is a review of country implementation of standards. It is limited to compiling and presenting the interpretations already made —at the date of the study— by the inter-American system on the elements that compose it, its relationship with other human rights and its specific protection in the case of groups in situations of vulnerability in the region, as derived from existent jurisprudence of the Court and the Commission. The study makes no recommendations, it is not prescriptive on the development of the content of this right. It is a compilation of what has been decided already by the Court and the Commission.

As recalled in the introduction to the study, the inter-American system has recognized that the right to freedom of religion and belief is one of the foundations of democratic societies, and this is stated over and over in the study. The Commission and the Court have also reaffirmed that, in its religious dimension, this right constitutes a transcendental element in the protection of the convictions of believers and their way of life.

The study reaffirms that human rights —including the right to freedom of religion and belief— are universal, inalienable, indivisible and interdependent. The right to freedom of religion and belief does not compete with other rights, but rather all rights are mutually reinforcing. One of the examples addressed by the study is the relationship between the right to freedom of expression and freedom of religion and belief, recalling that religious speech enjoys a special level of protection because it expresses an integral element of personal identity and dignity.

Some rights, like the right to equality and the right to non-discrimination, belong to jus cogens; that is, norms accepted and recognized by the international community, from which no derogation is permitted. Therefore, discriminatory treatment to the detriment of any person, for any reason, is not allowed. The study therefore includes examples from the jurisprudence of discrimination against religious communities, such as the violation of the right to equal opportunities in education of members of the Jehovah's Witness Association during a period of dictatorship. It also refers to more recent pronouncements on cases of discrimination based on religious beliefs, for example, against LGBTI persons.

The study also stresses that no right is absolute. I think we all know that and can agree on that. All rights must be reconciled, both with the rights of others and with the safety of the community. The Commission and the Court have analyzed various situations, in which they have sought to strike a balance between the protection of the right to freedom of religion and belief and the protection of other human rights. For example, whilst parents have the right to ensure that their children receive a religious and moral education in accordance with their convictions, this does not relieve the State of its obligation to act in the best interests of children, even when this may be contrary to the parents' wishes. This right of parents must be interpreted in conjunction with the rights of children and adolescents, and with the State's responsibility to protect children and adolescents.

Nevertheless, the Inter-American human rights system has established a series of strict requirements that restrictions to the right to freedom of religion and belief must meet in order to be considered legitimate, and this is reflected in the study.

The study is complemented by the standards and pronouncements on freedom of religion and belief developed in the universal human rights system, insofar as these elements have also been considered in the Inter-American system. I take this opportunity to thank once again the United Nations Special Rapporteur on freedom of religion or belief, Nazila Ghanea, for her expert contribution, and that of her team, which helped to ensure the consistency of the interpretations contained in this document with those developed by the universal system, thus strengthening the voice of international human rights bodies on the protection of this fundamental right.

The study has been adopted in 2023 by the majority of the Commission, with the dissenting votes of two Commissioners. These dissents have been published at the end of the study, and I think all member States have received them. The dissenting votes address general issues, such as the binding force of inter-American jurisprudence; they also address issues that are specific to the topic of the study, they make recommendation for the development of elements of freedom of expression, the right of parents and guardians to the religious education of their children, the holders of the right to freedom of religion and belief, and conscientious objection, among others. As in all matters, the Commission, as a collegial body, adopts its decisions with the conviction of their value for the protection of human rights, while respecting dissenting voices and fostering constructive debates among actors interested in promoting the observance of human rights in the Americas.

I would like to conclude this presentation reaffirming the Commission's commitment to the protection of the right to freedom of religion and belief on an equal footing with all other human rights. I also recall the Commission's commitment to always having victims of human rights violations at the very center of our work, as well as the centrality of equality and non-discrimination as guides to interpret not only this right, but all human rights. This study, prepared with the technical rigor that characterizes the work of the Commission, is intended to contribute to the debates needed to advance respect for and the guarantee of the right to freedom of religion and belief in pluralistic and democratic societies. We hope that both the study and this special session of the Permanent Council will contribute to that direction.

Thank you very much for your support to the Commission and we look forward to listening to your points of view on the study.