

Mechanisms for religious freedom advocacy

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Abstract

While domestic options for redress of violations of religious freedom may be few or futile, there is an array of mechanisms at the international level that religious freedom advocates can access to help bring relief to those suffering persecution and repression. However, to be effective, advocates must have an understanding of international law and be precise with their facts and terminology. The article highlights key points for those who wish to engage, and points to resources that can equip individuals for effective advocacy, including international bodies which can be approached.

Keywords Advocacy, United Nations, European Union, Organization for Security and Cooperation in Europe, Council of Europe, African Union, Organization of American States, United States, persecution.

Having worked in the religious freedom field for almost a decade for the U.S. government, I have observed a real need to equip would-be religious freedom advocates with the knowledge to effectively engage for their coreligionists or other persons of faith being persecuted for their beliefs. I have repeatedly met with many good people from across faith lines who wanted to help their friends, but did not know where to begin or how to present their information in a way that could be effectively used by policymakers. This led to a book *International Religious Free-*

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dom Advocacy: A Guide to Organizations, Law, and NGOs, published by Baylor University Press in 2009.²

The purpose of the book is to be a user-friendly, straightforward tool for empowering would-be advocates to effectively promote religious freedom. It surveys international organizations and highlights relevant mechanisms and offices that can be activated on religious freedom concerns. The book also highlights the unique array of American governmental institutions that exist to promote religious freedom internationally, along with two studies that contextualize how advocates have used international mechanisms to successfully promote and defend this fundamental right.³

1. Using international standards and mechanisms for religious freedom

Around the world persons of faith continue to face serious obstacles to the full and free enjoyment of religious freedom, whether from Christian, Muslim, or other religious communities.⁴ Religious freedom is perhaps the most personal of human rights, as it goes to the very core of a human being. Yet limitations, abuse, and persecution are a daily occurrence, with some estimating that more than half of the world's population cannot fully enjoy this cherished fundamental freedom.

At the same time, religious freedom protections are well established at the international level. International law recognizes religious freedom as a universal human right.⁵ Treaties and international agreements guarantee and reinforce the right of individual and communal religious freedom. Placing limitations on individual belief is never permitted, and communities of believers must be allowed to congregate for worship and study. Because of these wide protections, religious freedom is considered a part of "customary international law,"⁶ and thereby every country in

² Thames, H. Knox, et al., *International religious freedom advocacy: A guide to organizations, law, and NGOs*. Waco, TX: Baylor UP, 2009, <http://tinyurl.com/GE2009>.

³ There are a host of titles that explore the "philosophy" of religious freedom. See Thomas F. Farr, *World of faith and freedom: Why international religious liberty is vital to American national security*, Oxford University Press (2008).

⁴ Brian Grimm, *The price of freedom denied: Religious persecution and conflict in the 21st century*, Cambridge University Press (2011). Also see 2011 Annual Report of the U.S. Commission on International Religious Freedom, www.uscirf.gov.

⁵ For a good overview of the UN and the Universal Declaration on Human Rights see Mary Ann Glendon, *A world made new: Eleanor Roosevelt and the Universal Declaration of Human Rights*, Random House (2001).

⁶ Customary international law is a set of rules derived from the practice of states on issues that are generally accepted as law. It is not founded on international treaties, and in fact exists independent of treaty law. Also see J.L. Kunz, "The Nature of Customary International Law," *The American Journal of International Law*, Vol. 47, No. 4, Oct., 1953.

the world must protect this human right, even if they have not signed any treaties or joined international organizations. Of course, despite states pledging to uphold and defend these norms, implementation is inconsistent, even among European countries.

By moving governments and international institutions to act, religious freedom advocacy can save lives, free prisoners, and increase religious liberties. Within the international system, there are many ways for religious freedom advocates to engage effectively and push for change – they can conduct direct advocacy, meet with governmental and international policymakers, publicize, report on compliance to monitoring bodies, and use international complaint mechanisms. To be effective, advocates generally undertake these activities by joining or working with NGOs committed to religious freedom.

While it is difficult for individuals and NGOs to convince governments to change policies, international organizations can be a force multiplier. A government will care little about the views of private citizens or foreign advocates, but it will become much more focused on problematic policies when an organ of the United Nations (UN) or another international body raises concerns. Advocates should therefore concentrate on engaging international institutions and mobilizing their political leverage towards a government that is violating religious freedom. NGOs often act as the vital catalyst and go-between.

When developing a plan of action, religious freedom advocates should consider the following:

First, before rushing to international organizations, advocates should initially work to resolve the matter domestically. States are primarily responsible for their own compliance with international religious freedom standards. Relationships with local policymakers can often be more effective in resolving a situation than all the international attention in the world. NGOs with strong, positive relationships with governments can play an important role in this process. However, if the situation is life threatening, or if domestic remedies have been exhausted or will not result in a proper response, then advocates should look abroad.

Second, advocates should determine whether the country is a member of any regional multilateral organizations. Many countries are part of regional organizations that have established their own human rights standards, with some maintaining complaint mechanisms that allow individuals to bring petitions about religious freedom violations. Advocates should also research what monitoring bodies receive human rights complaints and take their concerns there, typically under the auspices of a recognized and reputable NGO. If regional systems fail or the country in question does not participate, then one should look higher.

Lastly, at the global level is the UN. There are a variety of UN tools available, providing either some type of redress mechanism or investigative procedure. Advocates should work to activate one of these UN monitoring bodies or complaint mechanisms on behalf of the victims they represent. Advocates can also look for support from sympathetic governments, among others from U.S. institutions and agencies.

2. Standards of excellence

Anyone wishing to advocate for the oppressed and persecuted must act wisely and with great discernment. For every good story about international advocacy freeing a religious prisoner or reforming laws, there is another about an overly aggressive or troublingly ill-informed activist causing more harm than good. The Hippocratic Oath for advocates is “do no harm.” This rule is an absolute. Advocates must coordinate their efforts with the victims or the victims’ families, as they will bear the brunt of any response to international advocacy. Victims and their families must be fully aware of the possible ramifications and consent to action – their lives may literally be at stake.

It is also important for religious freedom advocacy groups to speak out against all forms of religious persecution and repression, even if their coreligionists are not affected or persons of no faith are targeted. There is strength in numbers, and often a positive conclusion in one case will be useful to others in similar situations. Governments will try to “buy” the silence of groups by providing benefits or freedoms exclusive to their communities. Advocates should avoid this temptation: if everyone cannot enjoy religious freedom, then there is not complete religious freedom for anyone.⁷

Advocates must also be very careful about the facts. If they are found to exaggerate or misrepresent, or to be ill informed, then they will have a difficult time persuading persons of power and influence. One key issue is the use of vocabulary. Sometimes, in an attempt to induce a faster international response, advocates are tempted to exaggerate and make a situation sound more compelling. For instance, the word *persecution* is often carelessly thrown around without any thought as to its true meaning. This overuse only cheapens the term and lessens the impact when describing an actual situation of persecution, hindering an advocate’s effectiveness. It is an issue of trust. Once policymakers and monitoring bodies become aware of the loose usage of terminology, they will be much more difficult to persuade and motivate to action.⁸

⁷ Thames (2009) *International Religious Freedom Advocacy* provides cases studies on Turkmenistan and Vietnam, outlining how advocates successfully engaged to bring about improvements in freedom of religion.

⁸ Cf. Boyd-Macmillan (2006:231-253) Ch. 9 “The tricky business of doing more good than harm”.

3. Fundamental human right

Religious freedom is well entrenched in numerous UN human rights treaties, covenants, and conventions. Many jurists therefore agree that religious freedom has risen to the level of customary international law, which means it is a universal right that governments must respect, even if they have not signed any human rights treaties. For instance, Article 18 of the UN Universal Declaration of Human Rights speaks directly to religious freedom.⁹ It recognizes that: “Everyone has the right to freedom of thought, conscience, and religion. This right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship, and observance.” Similar language on religious freedom is found in other UN agreements.¹⁰

In addition to the UN, groups of countries have developed regional organizations, similar in structure to the UN, but limited in geographical scope. These are recognized under Chapter VIII of the UN Charter and bind states together into regional arrangements and agreements.¹¹ Three regions of the world – Europe, the Americas, and Africa – have created specific agreements establishing additional human rights and religious freedom protections that overlap with the Universal Declaration.

Religious freedom is unique from other human rights in that, for its full enjoyment, a variety of other rights must also be protected.¹² The multifaceted and interdependent nature of this right can be seen in several ways: to meet collectively for worship or religious education, the freedom of association must be respected; to allow the sharing of religious views, which is often a part of a belief system, speech freedoms must be enjoyed; to provide for some type of community legal status, laws must not discriminate on religious grounds; to maintain or own a place of worship, property rights must be respected; to obtain sacred books and disseminate religious publications, media freedoms must be protected.

In touching these other rights, it can be either easier or harder to advocate for religious freedom. It may be easier, as activists can attack limitations from a variety of angles and build broader coalitions with organizations not solely focused on religious freedom. It may be harder, however, if religious freedom limitations are an

⁹ <http://www.un.org/en/documents/udhr/index.shtml>.

¹⁰ Cf. Article 18 of the International Covenant on Civil and Political Rights or the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.

¹¹ Article 52, Chapter VIII, Charter of the United Nations, <http://www.un.org/en/documents/charter/chapter8.shtml>.

¹² Cf. Alfred C. Stepan, “Religion, democracy, and the ‘twin tolerations,’” *Journal of Democracy* 11:4 (2000).

unintended casualty of a broader governmental policy focused on other domestic political concerns.

4. Distinguishing types of violations

Violations of religious freedom come in a variety of pernicious forms and are not limited to any one region. The most egregious actions are usually found under nondemocratic regimes, yet even in Western countries, lesser forms of religious freedom violations can arise from governmental and private harassment, limitations, and discrimination.¹³ As the UN Special Rapporteur on Freedom of Religion or Belief stated in a 2006 report, “Acts of religious intolerance or other acts that may violate the right to freedom of religion or belief can be committed by States but also by non-State entities or actors. States have an obligation to address acts that are perpetrated by non-State actors and which result in violations of the right to freedom of religion of others. This is part of the positive obligation under article 18 [of the Universal Declaration].”¹⁴

There is a continuum advocates should be aware of when describing a situation: Persecution – Repression – Harassment – Limitations – Discrimination.

Persecution is ground zero for religious freedom violations. *Webster’s Dictionary* defines persecution as “to harass or punish in a manner designed to injure, grieve, or afflict; specifically to cause to suffer because of belief.” Religious persecution is the most violent, egregious, and extreme repression of religious freedom and can include torture, beatings, imprisonment, loss of property, rape, slavery, murder, and forced conversion. If the circumstances are especially grave, persecution can come in the form of prohibition of religious activities, such as corporate worship, education, and proselytizing. Persecution can occur at the hands of government agents or non-state actors. It can be interreligious, intrareligious or a combination of both. For acts to constitute religious persecution, they should be systemic, ongoing, and on account of religious or nonreligious beliefs. In these circumstances, religious groups are often forced underground and must meet secretly, fearing for their well-being and their lives.¹⁵

The key distinction between persecution and repression is how governments enforce these limitations. *Repression* would describe situations in which believers are prohibited from meeting publicly, religious practice is made illegal, and proselytiz-

¹³ Not all private discrimination is problematic, as some religious discrimination is permissible, and even necessary, for a religious group to function.

¹⁴ A/HRC/2/3, para. 35.

¹⁵ This presentation risks treating these categories as an oversimplification, but provides an overview of how these issues exist on a continuum. However, these categories often overlap and can change positions depending on the situation.

ing is banned. Repressive governments would use temporary detention, fines, court cases not resulting in prison sentences, and police raids to intimidate believers into submission. These actions violate international norms, but they would not evidence a systematic policy using violent force to bring compliance.

Harassment, limitations, and discrimination, while not rising to the level of persecution, can come in a variety of forms that inappropriately limit religious freedom. Examples of harassment would include over-application of neutral laws to limit religious activity, as well as police unexpectedly attending religious services or taking photographs of participants as they leave. Threatening actions taken by non-state actors, through vandalism with little or no response from law enforcement, would also qualify. These incidents would not be part of a wider policy and would occur sporadically. Limitations would include problems with obtaining permits to meet publicly or to use buildings for worship, or restrictions limiting religious speech. Discrimination could come in the form of laws benefiting certain religious communities over others, or through societal actions against particular religious communities.

5. Taking action

A range of international mechanisms exist that advocates can access to promote religious freedom, and there are several special rapporteurs that can engage on behalf of the persecuted or human rights more generally. Every corner of the world is either covered by the UN or regional bodies such as the European Union (EU), the Council of Europe, the Organization for Security and Cooperation in Europe (OSCE), the Organization of American States (OAS), and the African Union (AU). While these advocacy avenues are not perfect and cannot force a country to change its abusive ways, they can help create the political pressure needed to see real change.

The United States has a unique commitment to religious freedom and a variety of special offices that can be engaged.¹⁶

The religious freedom-specific entities in the U.S. government were created by the International Religious Freedom Act (IRFA) in 1998.¹⁷ IRFA concretized religious freedom as a priority in all bilateral and multilateral talks and created new institutions, foremost of which is a special office within the State Department to monitor religious freedom worldwide, headed by the Ambassador-at-Large for In-

¹⁶ There has been increasing discussion about how the United States should engage religion. See R. Scott Appleby et al., "Engaging religious communities abroad: A new imperative for U.S. foreign policy," *The Chicago Council on Global Affairs* (2010).

¹⁷ Cf. Eric Patterson, "Increasing the effectiveness of religious freedom advocacy: a perspective from the U.S." *IJRF* 3:2 (2010):105-125. For a useful review of how IRFA came to pass, see Allen D. Hertzke, *Freeing God's children: The unlikely alliance for global human rights*, Rowman & Littlefield (2004).

ternational Religious Freedom.¹⁸ If religious freedom advocates can successfully mobilize the State Department, it will be a force multiplier to their efforts. IRFA also created the U.S. Commission on International Religious Freedom to act as a watchdog of the State Department's handling of religious freedom concerns.¹⁹

Just recently, Congressman Frank Wolf, a Republican from the state of Virginia, introduced legislation²⁰ to strengthen IRFA and to reauthorize the Commission, which is set to expire in September 2011.²¹ The bill would correct what are perceived as weaknesses in IRFA or make explicit what Congress intended to be implemented by the executive branch. For instance, the bill specifically places the Ambassador-at-Large in the office of the Secretary of State,²² to ensure the Ambassador has a direct line of communication with the United States' top diplomat. It also specifically gives the Ambassador oversight and management authority of the Office of International Religious Freedom and other religiously oriented positions and programs at the State Department, which would include the special envoys on anti-Semitism, to the Muslim communities, and to the Organization of the Islamic Conference.²³

Importantly, the bill would also create a specific timetable for designating countries as "countries of particular concern," which is the worst of the worst list created by IRFA.²⁴ Both Republican and Democratic administrations have been slow in naming countries on this list. The bill would require designations within 90 days of the issuance of the State Department's annual religious freedom report. The bill would also ensure that funds are made available for programmatic grants on religious freedom,²⁵ and requires religious freedom training for every Foreign Service officer at the State Department.²⁶

Outside of the IRFA construction, other bodies exist within the panoply of U.S. government agencies. Regarding the European and Eurasian context, the U.S. Commission on Security and Cooperation in Europe, also known as the Helsinki Com-

¹⁸ www.state.gov/g/drl/irf/index.htm.

¹⁹ www.uscirf.gov.

²⁰ H.R. 1856, "International Religious Freedom Act Amendments of 2011," <http://thomas.loc.gov/cgi-bin/query/z?c112:H.R.1856>.

²¹ *Ibid.*, Sec. 206.

²² *Ibid.*, Sec. 101(a)(1).

²³ *Ibid.*, Sec. 101(b)(5). "The Ambassador at Large shall seek to coordinate all programs, projects, and activities of the United States Government to promote religious freedom and religious engagement abroad, including programs, projects, and activities of the Department of Defense, the Department of State, the Department of Homeland Security, the Department of the Treasury, and the United States Agency for International Development."

²⁴ *Ibid.*, Sec. 302(a)(1)(A)(i).

²⁵ *Ibid.*, Sec. 401.

²⁶ *Ibid.*, Sec. 103.

mission, monitors respect for human rights and religious freedom in Europe and the former Soviet Union.²⁷ The Congressional Executive Commission on China also follows a range of political developments in China, including religious freedom.²⁸ These institutions all represent places where advocates can advance their concerns and push for real action. Congress itself is another valuable venue, with its members and committees engaged on questions of religious persecution.²⁹

6. Conclusion

In short, religious freedom matters. It is often the “canary in the coal mine” for human rights abuses, as religious freedom stands atop other fundamental rights. While persecution will continue, there are international mechanisms that advocates can access to bring about positive results, but they will take persistence and commitment. Using the various legal avenues referred to above can make a difference.

²⁷ www.csce.gov.

²⁸ www.cecc.gov.

²⁹ www.senate.gov; www.house.gov.

Conference on Law and Religion in South Africa

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Annual Meeting of the SA Council for the Protection and Promotion of Religious Rights and Freedoms

20-23 September 2011, Stellenbosch, South Africa

Dates: Tuesday 20 September 14:30 – Friday 23 September 13:00
Wednesday afternoon 21 September: Annual meeting

Venue: Faculty of Theology, University of Stellenbosch,
171 Dorp Street, Stellenbosch, South Africa

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