

Religion and the Secular State in Mexico

I. SOCIAL CONTEXT

In recent decades there have been important transformations in the religious panorama of Mexico. The series of census data obtained from 1895 to 2000 show a clear predominance of Catholicism in the national scene. As a matter of fact, at the dawn of the last century, Catholicism represented 99.5 percent of the population¹ of a country inhabited almost entirely by people settled in rural communities.

Nowadays, most Mexican people consider themselves religious. Religiosity among Mexicans is not a fad or a recent invention; it is a constitutive dimension of the personal and historical identity of the Mexican people. Religiosity not only means the set of expressions and external activities that we conventionally associate with “religion”; it is a reference to the anthropological dimension that undertakes the search for the ultimate meaning of existence. One of the expressions of this religiosity -though not the only one- entails a steady decline in the percentage of the Catholic population in the country.

For instance, in the General Population Census of 2000, 96.48 percent of the population stated that they professed a religion, and only 87.99 percent said that they professed the Catholic religion.² This proportional decline reflects the increase in other Christian religions, especially evangelical religions, as well as the growing number of people who profess no religion.

In the last General Population Census, the total population who chose the Protestant Christian religion was 2.07 percent (including historical religions, Pentecostals, neo-Pentecostals, Church of the Living God, the Light of the World and other evangelical denominations); non-evangelical Biblical religion, 2.07 percent (including the Seventh-day Adventists, Church of Jesus Christ of Latter-day Saints and Jehovah's Witnesses); Jewish religion, 0.05 percent. Other unspecified, 0.31 percent. No religion, 3.52 percent.³

Naturally, religious diversity is not homogeneous across the country. It reaches different percentages at a regional, state and local level. For example, in the state of Chiapas – on the border with Guatemala – the percentage of the Catholic population is 63.8 percent, while in northern states of the Republic, such as Baja California, the percentage dropped from 86.15 percent in 1990 to 81.46 percent in 2000, a difference of 4.74 percent in a span of ten years.⁴ Indeed, the tendency in the Mexican border states is characterized by a decrease in Catholic population in favor of evangelical groups of American origin, predominantly Pentecostal and neo-Pentecostal.

Today, the Catholic Church works to maintain its majority, while Christian minorities strive to increase their population base. As an essential part of its social context, the Catholic Church focuses on topics such as education, population policy, culture, social assistance, access to media, and the defense of human rights. These are topics where the Catholic Church already has had a historical presence (in some more than in others) and through these means and activities it intends to strengthen its majority status.

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1. Thus, the percentage of the Catholic population in Mexico from 1895 to 2000 is the following: 1895: 99.1%; 1900: 99.5%; 1910: 99.2%; 1921: 97.1%; 1930: 97.7%; 1940: 96.6%; 1950: 98.2%; 1960: 96.5%; 1970: 96.2%; 1980: 92.6%; 1990: 89.7%; 2000: 87.9%. Vid. R. González, *Derecho eclesiástico mexicano (Mexican Ecclesiastical Law)*, in J. G. Navarro (coord.), “Estado, Derecho y Religión en América Latina” (“State, Law and Religion in Latin America”), Marcial Pons, Madrid, 2009, 162.

2. Vid. A. R. de la Torre. and C. Gutiérrez, *Reflexión metodológica sobre las categorías censales (Methodological Reflection on Census Categories)*, in M. C. Medina (coord.), “Una puerta abierta a la Libertad Religiosa” (“An Open Door to Religious Freedom”), SEGOB, Mexico, 2007, 378.

3. Id. at 389-92.

4. Id. at 378.

The Christian minorities, formed mainly by evangelical churches, must counteract religious intolerance (present in some indigenous regions) and ensure that the State provides fair treatment to all non-Catholic churches, as a fundamental requirement for their existence, since their population base increases by the natural and social growth of the population. That is, the conversion of believers of other faiths requires respect for plurality, the free will of citizens, and the equitable participation of churches in society.⁵ This does not imply a disregard for other social issues; rather, they intend to engage in those issues based on equity, while ensuring that the Catholic Church does not receive any preferential treatment by government agencies.

A significant fact provides an overview of religious plurality in Mexico in the early twenty-first century. As of September 2009, there were 7,174 religious associations registered at the General Directorate of Religious Associations of the Interior Ministry. Christian associations including Catholic, Evangelical and Protestant associations constitute 7,148, while seventeen are Oriental and nine are Jewish. These data show that Mexico is and will increasingly become a religiously plural country. Knowledge of their geographic distribution allows for the identification of the areas where these changes are occurring. In regions of west-central Mexico, the Catholic religion retains a substantial majority of parishioners, while in the Northern and Southern border states there is a declining trend.

Along with the existence of pluralism, some expressions of religious change have been accompanied by local conflicts and episodes of religious intolerance, especially in indigenous communities governed by a system of cultural customs that date back to colonial times. Awareness of religious diversity is essential to acknowledge plurality and to understand its cultural wealth, especially in the case of religious groups that enter the domain of indigenous communities deeply rooted in a long Catholic cultural tradition. Additionally, it is a fact that anti-Semitism is virtually non-existent and there is usually a peaceful coexistence between religions.

II. SCHOLARLY AND THEORETICAL CONTEXT

Secularism in Mexico has been seen as an opposition to Catholicism for historical reasons. The defenders of the secular State and the liberal principles inherited from the Enlightenment have sought to ensure that governments proceed without recourse to religious elements. In Mexico, these ideas have been championed by liberal intellectuals, Freemasonry, the Institutional Revolutionary Party (PRI) – which ruled the country from 1929 to 2000, the Democratic Revolution Party (PRD) – left-wing tendency – and somewhat by the Evangelical churches. The paladin of them all is President Benito Juárez García, who proclaimed the separation between the State and the Catholic Church.

Some politicians with an enormous amount of influence in the legislative chambers and certain academic sectors of public universities with a liberal ideological position still hold extreme position, intending to confine and subdue the Catholic Church – and by extension other Churches – so that religion is limited to a purely private activity within the spiritual domain. Their reason would be to prevent the Catholic Church from enjoying the privileges it has held for much of the nineteenth century. As a result of the efforts of these groups, a constitutional reform initiative was presented at the House of Representatives on 22 November 2007, in order to establish a lay republic and punish public servants if they do not observe this principle.⁶ Other moderate liberal views acknowledge the existence of a public dimension of religion, and therefore, accept a small participation of religious institutions in public life. However, they also acknowledge that religious ministers may not participate in political propaganda and religious education may not be taught in public schools in accordance with Mexican law.

5. Vid. R. Casillas, *Avances y Pendientes en materia de Iglesias y Política Social en México (Progress and Unresolved Topics Regarding Churches and Social Policy in Mexico)*, in M.C. Medina (coord.), *Una puerta abierta...* supra n. 2 at 353.

6. http://www.senado.gob.mx/comisiones/LX/cenca/content/grupos_trabajo/garantias/garantias_22.pdf.

In the academic sphere, the contemporary discussion of religion-State relations does not entail the rigorous analysis offered by the science of law. Rather, it is anchored in the old discussion of the famous “secular State,” which denies the existence of absolute values because their existence would automatically presuppose a lack of secularism.⁷ On this basis, the main interest of academicians is to impose their particular concept of State secularism, even if this means having to renounce to a rigorous analysis of other legal topics that would contribute to a better understanding of religious phenomena in Mexico, instead of a sterile confrontation that is not useful at all. This analysis must be done from a scientific, critical and constructive perspective, not from a dogmatic or an ideological-confessional view, as some political and academic groups have done.

III. CONSTITUTIONAL CONTEXT

A. *Brief History of State-Religion Relations*

Religion is a central topic in the history of Mexico. Before, during and after independence from Spain, religion has been strongly present in all spheres of national life. It is not irrelevant to remember that there were two conquests: the military and the spiritual. The first was achieved by Spanish soldiers, and the second was made by the Franciscans, Dominicans and Jesuits.

The independence movement was initiated by Miguel Hidalgo y Costilla, a parish priest of Dolores, in the state of Guanajuato, in 1810, while upholding the banner of the Virgin of Guadalupe as the symbol of the struggle that would end eleven years later. However, the author of the political emancipation of New Spain was Agustín de Iturbide.⁸ Through the Iguala Plan, signed on 24 February 1821, the separation of the largest Spanish colony in North America was achieved. Its success was due to the inclusion of three fundamental guarantees: 1) the union of *mestizos*, natives, creoles and the Spanish population; 2) independence from any foreign power; and 3) a commitment to maintain and protect the Catholic religion without tolerance for any other religion, while ensuring both the regular clergy and the secular clergy that their privileges and property would be respected. Once the Independence of New Spain was consummated, the first Federal Constitution of the United Mexican States was enacted on 4 October 1824 and remained in force until 23 October 1835. The Constitutional preamble began: “In the name of Almighty God, author and supreme legislator of society.” Also, a State of Catholic affiliation was approved, not allowing the practice of any other religion in the territory. The defense of Catholicism was so strong that the first president of Mexico changed his original name, José Miguel Ramon Fernandez Felix, to Guadalupe Victoria, in honor of the Virgin of Guadalupe.

In Mexico, the secular State was established in the Constitution of 1857, along with recognition of religious freedom, then understood as religious tolerance. The secular State arose where there was no conflict between religions. Its purpose was to assert the independence and the political sovereignty of the State in regards to the Catholic Church, which then had excessive economic power.⁹ So the Mexican secular State, following the regalist trend inherited from colonial rule, sought to dominate and politically subdue the Catholic Church, while recognizing that it was the majority church and practically the only Church of the Mexican people.

7. Vid. M. Gómez Granados, “Alternancia política, cambios y resistencias en el tema de la laicidad en México” (“Political Alternation, Changes and Resistance Regarding the Topic of Secularism in Mexico”), in *La Cuestión Social (The Social Aspect)*, year 17, number 3 (2009), 260.

8. On September 27, 1821 the Army of the Three Guarantees, led by Iturbide, made its triumphant entrance into Mexico City to celebrate the signing of the Iguala Plan, signed by Juan de O Donoju, the last representative of Ferdinand VII in New Spain, and Agustín de Iturbide, head of the Army. To celebrate that event, a *Te Deum* was sung at the Metropolitan Cathedral. Vid. T. E. ANNA, *El Imperio de Iturbide (Iturbide’s Empire)*, Conaculta and Alianza Editorial, Mexico, 1991, *passim*.

9. Vid. J. Adame Goddard, *Estado laico y libertad religiosa (Secular State and Religious Freedom)*, “Documentos de Trabajo”, number 128, Institute of Legal Research, UNAM, Mexico, 2009, *passim*.

The emergence of the Mexican secular State did not occur, as in some European countries, upon the creation of a system of legal protection for religious liberty so that populations with different religions could coexist. At the time, the objective was to define the rules of the relationship between the State and the majority church. Since the Mexican State was an organization bestowed with a sovereign political power, i.e. not subordinate to other powers, it needed to assert its sovereignty. As a result, the Mexican State eliminated the economic power of the Catholic Church through the process of confiscation of property in mortmain and nationalization of property, and managed to subdue the Church legally and politically, albeit with varying results.¹⁰ As most of the Mexican population was Catholic, the Mexican secular State needed to assert itself more as a sovereign State than as a State that respected religious freedom.

The promulgation of the Constitution of 1857, whose preamble began: “In the name of God and with the authority of the Mexican People,” led to an armed struggle between the Liberal and Conservative parties. The first was in favor of religious tolerance and the latter sought to maintain the Catholic affiliation of the Mexican State.¹¹ While the conflict was in progress, Benito Juárez wrote the famous *Reform Laws* in Veracruz in 1859, which marked a significant moment in the complex history of State-Church relations. The following are some of these laws:

— The *Act of Nationalization of Church Property* (12 July 1859) establishes that all goods of any kind previously owned by the secular and regular clergy shall be owned by the State and determines the independence between the Church and the State. Consequently, it suppresses the religious orders, as well as the archconfraternities, confraternities, brotherhoods or congregations related to religious communities, cathedrals, parish churches or any other churches; those who oppose directly or indirectly or in any way hinder the enforcement of this law shall be imprisoned or banished from the country.¹²

— The *Act of secularization of hospitals and charitable institutions of the Catholic Church*. From this moment onward, the government shall be in charge of these institutions¹³ (2 February 1863).

— The *Act abolishing women's religious communities throughout the Republic* (26/02/1863) established a period of eight days for the nuns to leave their convents.¹⁴

— The *Religious Freedom Act* (4 December 1860) stated: “The protection to profess the Catholic religion and any other religion established in the country, shall be ensured as an expression and consequence of religious freedom”; it forbade the celebration of “solemn acts of worship without permission granted by the authority in each case” and regulated the use of church bells; this act prohibited public officials and members of the Armed Forces “to formally attend religious events,”¹⁵ a legal relic that still exists in Mexican law.

— The *Civil Marriage Act* (23 July 1859) equated marriage to a mere civil contract, signed in the presence of the competent administrative authorities. It did not grant legal effects to religious marriages,¹⁶ a situation that currently prevails for all religious marriages. This act considered marriage as indissoluble and only the natural death of one of the spouses was the natural cause of dissolution, although it recognized some causes of temporary separation.

10. Id.

11. Vid. E. Martínez Albesa, *Catolicismo y liberalismo en México (Catholicism and Liberalism in Mexico)*, Volume II. “De la paz con Estados Unidos a la caída del Segundo Imperio, 1848-1867” (“From the Peace Agreement with the United States to the Fall of the Second Empire, 1848-1867”), Porrúa, Mexico, 2007, 1777 and ss.

12. Vid. J. Saldaña Serrano, “Derecho Eclesiástico Mexicano” (“Mexican Ecclesiastical Law”), in *Enciclopedia Jurídica Mexicana (Encyclopedia of Mexican Law)*, UNAM-Porrúa, Mexico, 2005, 827 and ss.

13. Id.

14. Id.

15. Id.

16. Id.

The *Reform Laws* were added to the 1857 Constitution through the *Additions and Amendments Act* dated 25 September 1873. At this date, the Constitution was also amended to include the principle of “separation between the Church and the State.” To complete the amendment, on 14 December 1874, the Decree of Congress on the *Regulatory Law of Constitutional Norms* dated 25 September 1873 was published in the Official Gazette. This was the legal justification to officially implement secular education in public schools, and to establish other limitations to religious freedom, such as the celebration of religious events at temples, as well as to prohibit the use of cassocks, habits and religious badges in the streets, and to begin the process of nationalization of temples devoted to public worship.

The 1917 Constitution, which is still in force, was promulgated on 5 February 1917 in the city of Queretaro, the capital of the homonymous state. This constitution established social rights for the first time and was undoubtedly one of the achievements of the revolutionary movement that began in 1910. However, in religious terms, this Constitution was characterized by being anticlerical and antireligious. At that time, it guaranteed individual freedom of belief and worship only in churches and under the surveillance of the competent authorities, but it did not recognize churches as legal entities. Therefore, churches could not acquire, own, or manage real estate, nor participate in public or private charities devoted to social assistance, scientific research, dissemination of education, mutual aid, or any other lawful purpose.

Religious ministers were not considered as citizens and were forbidden to criticize the fundamental laws of the country or the authorities; their active and passive vote was deemed void. Local authorities were granted the power to determine the number of religious ministers to be accepted in their towns, and said ministers were also barred from teaching religion in both public and private schools. Contradictorily, the principle of supremacy of the State over the Church prevailed.¹⁷

The constitutional rules contained various provisions contrary to religious freedom. Moreover, the regulatory laws were even more radical.¹⁸ Thus, the laws enacted by the governments of the states intensified the dispute between the State and the Catholic Church, expressed in the denial of the most basic expressions of religious freedom.

In light of these circumstances, on 31 July 1926, the Mexican Episcopate ordered the suspension of worship throughout the Republic. The legislative chambers of Congress did not agree to repeal the anti-religious laws, a request supported by more than two million signatures. As a result, some groups of Catholics turned to armed resistance, initiating the so-called Cristero War or *The Cristiada*,¹⁹ which took place mainly in the states of Aguascalientes, Colima, Jalisco, Guanajuato, Durango, Michoacan and Zacatecas.

The religious conflict ended in 1929, as the government and the hierarchy of the Catholic Church reached “agreements” outside the law. Without repealing the articles contrary to religious freedom, the government agreed to their relative non-application, and

17. Vid. M. R. González, “Relaciones entre Estado e Iglesia” (“Relations between the State and the Church”), in *Derecho Fundamental de Libertad Religiosa (Fundamental Law of Religious Freedom)*, UNAM, Mexico, 199, 127-130.

18. For instance, the Regulatory Law of article 130 was published on 18 January 1927. Some of its provisions included: “The Federal Executive Power, through the Interior Ministry, shall be in charge of the following activities in matters of religious worship and external discipline (art.1°); marriage as a civil contract (art. 2°); notices to celebrate public religious events (art.3°); Churches shall have no legal personality (art. 5°); the Religious Associations called Churches shall have no capacity to acquire, own or manage property, nor capitals related to property (art.6°); religious ministers shall be considered as persons who practice a professional activity (art. 7°); conditions to be a religious minister in Mexico: be of Mexican nationality by birth (art. 8°); permit granted by the Interior Ministry to open an establishment devoted to religious activities (art. 9°); within the temples, donations may be accepted in cash and goods. Donations that are not in cash shall be notified to the Interior Ministry in the Federal District, or to the State Governors (art. 14); the names of political groups shall not contain any word or indication related to any religion (art. 17); religious ministers may not inherit any goods or property (art. 18).”

19. Vid. J. M. Romero de Solís, *El Aguijón del Espíritu. Historia contemporánea de la Iglesia en México (1892-1992) (The Sting of the Spirit. Contemporary History of the Church in Mexico, 1892-1992)*, IMDOSOC-El Colegio de Michoacan-Universidad de Colima, Mexico, 2006, 335 and ss.

thus the stage known as *modus vivendi*²⁰ began. Once the religious conflict reached an end, the Mexican State had to accept a *de facto* coexistence with the Catholic Church and non-Catholic religious groups.

It took more than six decades to reform all five constitutional articles (3, 5, 24, 27 and 130) referring to the issue of religion, and to convince legislators to openly accept the right to religious freedom and establish new regulations governing the relations between the State and the Churches. However, certain provisions were not eliminated, such as mandatory secular education in public schools, non-intervention of religious ministers in political affairs, and prohibition for churches or religious groups to own real property or communication media. On January 28, 1992, the contents of the constitutional reforms were published in the Official Gazette, and the regulatory law of the aforementioned constitutional provisions was published on July 15, 1992, under the title of *Religious and Public Worship Associations Act*. The corresponding regulations were issued on November 6, 2003.²¹ The contents of this legal statute will be discussed in the section devoted to legal context.

B. Constitutional Principles

The regulatory principles governing the relations between the State and the Church arise from the Mexican constitutional system. Said principles are the following:

1. Freedom of Belief and Worship
2. State Secularism
3. Equality of Churches before the Law
4. Principle of Separation between the State and the Church

1. Freedom of Belief and Worship

The first paragraph of Article 24²² does not contain the term “religious freedom”; instead, it uses the term “freedom of belief” to refer to one of the individual Constitutional guarantees granted by the Guarantees of Freedom stated in the Mexican Constitution. On this basis, the Mexican State ensures that: individuals may have or adopt the religious belief of their choice and practice, individually or collectively, the acts of worship or rites of their choice; individuals may refrain from professing any religion, refrain from practicing religious activities and rites, and refrain from belonging to any religious association; individuals shall not be subject to discrimination, coercion or hostility because of their religious beliefs and shall not be required to declare said beliefs; religious motives shall not be claimed to prevent anyone from exercising any work or activity, except in the cases envisaged by law; and individuals shall not be forced to render personal services nor contribute in cash or in kind to support any religious association or Church, nor to participate or contribute in rituals, ceremonies, festivals, services or events related to religious worship.

2. State Secularism

The principle of secularism is not specified in the Constitution. However, Article 3²³

20. Vid. J. L. Soberanes, *Los bienes eclesiásticos en la historia constitucional de México (Ecclesiastical Property in the Constitutional History of Mexico)*, UNAM, Mexico, 2000, 98.

21. Vid. A. Patiño Reyes, “Algunas consideraciones del Reglamento de la Ley de Asociaciones Religiosas y Culto Público de México” (“Some Considerations on the Religious and Public Worship Associations Act”), in J. Saldaña (coord.), *El Reglamento de la Religious and Public Worship Associations Act (Regulations of the Religious and Public Worship Associations Act)*, UNAM, Mexico, 2005, 107-135.

22. “All individuals are free to profess the religious belief of their choice and to perform all the respective ceremonies, prayers or acts of worship, provided that they do not constitute an offense or crime punishable by law. Congress may not enact laws that establish or prohibit any religion. Public religious events shall be ordinarily held in temples. Those extraordinary events held outside temples shall be subject to the pertinent regulatory law.”

23. CONSTITUTION OF MEXICO, art. 3: “Public Education . . . guaranteed by article 24, shall be secular and therefore shall be completely free from any religious doctrine”

establishes the secular nature of the formal education system. The second paragraph of Article 24 of the Constitution prohibits Congress to enact any legislation to establish or prevent any religion. Thus, it is possible to affirm that currently the Mexican State is secular, because it has no religious affiliation. Although the explicit basis for State secularism in Mexico does not appear in the Constitution, its contents are expressed in Article 3²⁴ of the *Religious and Public Worship Associations Act*. Therefore, it is a principle assumed by the Mexican State, without being contained in its Political Constitution. It is evident that before the 1992 constitutional reforms, the Mexican State was a secular anticlerical state, with anti-religious traits.²⁵

The Catholic Church and other religions were very vocal against a 2008 law permitting abortions in Mexico City, and against a 2009 law in Mexico City regarding same-sex marriages. Certain legislators took umbrage at religious associations expressing their views, and called for sanctions against religious ministers. A constitutional amendment was adopted at the House of Representatives on 11 February 2010, calling for a clear expression that Mexico is a lay Republic. The first paragraph of Article 40 would add the word “laica” or “lay” to the description of the Mexican Republic.²⁶ The proposed amendment is as of this writing [July 2010] pending approval in the Chamber of Senators.

Religious laws are ripe for review and being challenged by various seculars groups and legislators who wish to use the concept of a “lay Republic” as a way to exclude, once and for all, religions from opining on issues the general public defines as political.

3. Equality of Churches before the Law

Article 1° of the Constitution discrimination based on one’s religion is strictly prohibited.

Article 24²⁷ of the Constitution states that the prohibition on Congress to enact laws that establish or prohibit any religion entails the obligation to refrain from giving preferential treatment to any religion. That is, Congress shall give equal treatment to all different religious communities. Herein lies the principle of equality of the churches before the law.

4. Principle of Separation between the State and the Church

The status of the State with regard to religion is based on Article 130²⁸ of the Constitution. At the outset, emphasis is placed on the government’s decision to separate the Church and the State as a result of the confrontation between the Mexican State and the Catholic Church during the 19th century and the first four decades of the 20th century. Consequently, the model for relations between the State and the Church in Mexico is the separation of the two institutions - like the French model. This model of exclusion denies any possibility of reaching agreements with churches aimed at obtaining direct funding or preferential treatment. However, this separation is not absolute. For example, Mexican law acknowledges a tax exemption system for religious associations. In the case of federal property used by a Church, the federal government contributes financially to the conservation and maintenance of temples considered as historic or artistic heritage. In the field of promoting religious freedom, the state may provide spiritual care in prisons, hospitals, care centers, and migrant centers. Furthermore, in accordance with the principles

24. The first part of the article states: “The Mexican State is secular. The State shall exercise its authority on every individual or collective expression only in terms of observance of the law, preservation of public order and morality, and safeguard of the rights of third parties . . . Official identification documents shall not contain any mention of the individuals’ religious beliefs.”

25. Vid. R. Gonzalez Schmal, *Derecho Eclesiástico Mexicano, Un marco para la libertad religiosa (Mexican Ecclesiastical Law, A Framework for Religious Freedom)*, Porrúa, Mexico, 1997, 265.

26. Constitutional amendment: “It is the Mexican people will become a Republic representative, democratic, lay, federal...” *Gaceta Parlamentaria*, 11 February 2010, <http://gaceta.diputados.gob.mx>.

27. “Congress may not enact laws that establish or prohibit any religion . . .”

28. “The historical principle of the separation between the State and the Church guides the rules contained in this article. The churches and other religious groups shall be subject to the law . . .”

of Public International Law, Mexico maintains diplomatic relations with the Vatican.²⁹

This does not mean that the State gives priority to any particular Church. From a sociological perspective, the Catholic Church is the majority church in Mexico and still retains considerable influence on Mexican society, most notably in the fields of education at all levels and social welfare for disadvantaged groups, from indigenous people to terminally ill patients in hospitals. But the efforts of other churches for the benefit of the Mexican population are not neglected.

According to the *Regulations of the Religious and Public Worship Associations Act*, the federal, state, and municipal authorities, as well as the authorities of the Federal District, shall conduct activities to promote religious dialogue and coexistence among individuals and groups (Article 32). Today, there is no official representation of Churches before the Mexican government; however, Interfaith Councils have prospered at a local level. Such councils consist of leaders of the main religions. One of the most important is the Interfaith Council of Mexico City, which consists of the Catholic Church, the Anglican Church, the Presbyterian Church, the *Sikh Dharma* Community, the Buddhist Community, the Church of Jesus Christ of Latter-day Saints, the Lutheran Church, the Jewish, and the Muslim Community.

In short, the contribution of Churches to the social development of the country is represented by more than one hundred thousand people of various religions, who are dedicated full time to social assistance, community development in indigenous areas, education, health, and training.³⁰ In addition, there are thousands of volunteers who generously devote some of their free time to these tasks.

C. *The Protection of Religious Freedom*

Freedom of belief and religion (fundamental right to religious freedom) and the other individual rights stated in the Mexican Constitution are protected by the amparo proceedings in federal courts.³¹ The Constitution establishes this instrument to ensure the judicial protection of human rights, but also to safeguard the dogmatic part of the Constitution. In an unprecedented event, on January 7, 2009, by decree ST-JRC-15/2008 issued by the Electoral Tribunal of the Judiciary Power of the Federation, an election held in Zimapan, Hidalgo, was declared invalid due to the intervention of the local priests in favor of one candidate for mayor, as said behavior violated the principle of the separation between the Church and the State.

In Mexico, there is a non-jurisdictional system of protection of Human Rights. First, it is represented by the National Commission on Human Rights (“NCHR”), whose mission is to protect human rights and monitor their observance by state authorities. For example, on June 9, 2003, the NHRC issued the general recommendation number 5, aimed at state governors and the Secretary of Public Education, to refrain from disciplining students who, due to their religious beliefs, refused to honor the flag and sing the Mexican national anthem at civic ceremonies conducted in education centers across the country.³²

Additionally, the non-jurisdictional system of protection and defense of human rights extends to state commissions for the protection of human rights, present in the thirty-two states of the country. On the other hand, in recent years the State has granted legal powers to the government agency called the *National Council to Prevent Discrimination*

29. Vid. AA.VV., *15 años de Relaciones Santa Sede-México (15 Years of Relations Between the Vatican and Mexico)*, Ediciones CEM AR, Mexico, 2007, 11-15.

30. Vid. M. Gómez Granados, “La Libertad religiosa como fundamento de las relaciones entre las iglesias y el Estado” (“Religious Freedom as the Basis for State-Church Relations” in *La Cuestión Social (The Social Aspect)*, num. 2, 2005, 170.

31. Vid. *La Suprema Corte de Justicia y la Cuestión Religiosa 1917-1940 (The Supreme Court of Justice and the Issue of Religion 1917-1940)*, 2d ed., vol. I-II. SCJN, Mexico, 2006.

32. Vid. “Congregación Cristiana de los Testigos de Jehová, A.R.” (“Christian Congregation of Jehovah’s Witnesses, AR”), in M. C. Medina (coord.), *Una puerta abierta a la libertad religiosa... (An Open Door to Religious Freedom)*, supra n. 2 at 288-289.

(“CONAPRED”) to deal with behaviors that limit the free expression of ideas or hinder the freedom of thought, conscience or religion, or religious practices or customs that are not illegal.

In the field of Administrative Law, the General Directorate of Religious Associations, with the aid of state and municipal authorities, has the power to resolve religious disputes. This power extends to disputes either within the churches, while respecting the legal principle of non-intervention in internal affairs of the Church, or in disagreements between two or more churches, between an individual and any church, or between traditional authorities of indigenous communities and any religious group established in their territory. For this reason, it has its own administrative proceedings.

IV. LEGAL CONTEXT

In accordance with the pertinent laws, the Interior Ministry, which is an agency of the Federal Executive Power, shall monitor compliance with the constitutional provisions and laws on public worship, churches, religious groups and associations. This legal mandate is implemented by the Secretary of the Interior through the General Directorate of Religious Associations.

The Mexican regulatory system makes a distinction between religious groups or churches not registered at the Interior Ministry, governed by the common law and without legal personality, and religious groups or churches that are registered as a “Religious Association” at the Interior Ministry; these have legal personality, which results in obtaining a legal status that grants them the rights and obligations of a religious association.

“Religious Association” is a legal concept established by the constitutional reforms of 1992. It belongs to the category of associations that must be adopted by religious groups intending to acquire a legal personality. This status is usually obtained by a unilateral act of the State, acting through the competent authority (General Directorate of Religious Associations). Its character is not declaratory, but rather constitutive. The State does not “recognize” said legal personality, but –even worse– “grants” it.³³

The *Religious and Public Worship Associations Act* and its *Regulations* have already been mentioned. Their importance lies in the fact that they develop the constitutional provisions contained in Articles 24 and 130 of the Federal Constitution in regards to the following topics: registration of Religious Associations, legal status of religious ministers, and origin and purpose of property belonging to Religious Associations.

D. *Registration of Religious Associations*

To obtain registration as a Religious Association at the General Directorate of Religious Associations, the Regulations of the *Religious and Public Worship Associations Act* state that the Churches or religious groups shall provide the following:

- a) Proposed name that in no case shall be equal to that of any other Religious Association registered in accordance with the law.³⁴
- b) The domicile shall be located within the national territory.³⁵
- c) List of the property used, owned or managed by the association, as well as the property intended to integrate its heritage as a Religious Association. In the case of property of the nation, the following information shall be provided: name, location, intended use, name of the person responsible for the property, as well as a document stating under oath whether there is any conflict regarding its use or possession.³⁶

33. Vid. R. González, *Derecho eclesiástico mexicano... (Mexican Ecclesiastical Law)*, supra n. 1 at 169.

34. Art. 8, fraction 1 of the *Religious and Public Worship Associations Act*.

35. Art. 8, fraction 2 of the *Religious and Public Worship Associations Act*.

36. Art. 8, fraction 3 of the *Religious and Public Worship Associations Act*.

d) The statutes.³⁷

e) The evidence supporting that the church or religious group has *evident acceptance* among the population, such as testimonials, documentaries, among others.

E. *Legal Status of Religious Ministers*

In accordance with Article 12 of the *Religious Associations Act*,³⁸ there is no definition of religious ministers; the provision merely mentions them. However, Article 130 of the Constitution and the *Religious and Public Worship Associations Act* and its *Regulations* establish a number of limitations to religious ministers.

They shall not hold public office positions. As citizens they shall be entitled to vote, but not to be voted for. Those who have ceased to be religious ministers with anticipation and in the manner stated by law, may be voted for in a public office election.

Ministers shall not associate for political purposes nor proselytize for or against any political candidate, party or association. They shall not oppose the laws of the country or its institutions in public meetings, acts of worship, events of religious propaganda, nor religious publications, nor offend in any way the national symbols.

Religious ministers, their ascendants, descendants, siblings and spouses, as well as the religious associations to which they belong, shall not inherit any property under the will of people whom the ministers have directed or aided spiritually and have no kinship within the fourth degree.

F. *Property*

The Constitutional reform of Article 27, fraction II, acknowledged the legal capacity of religious associations to acquire, own or administer real property, provided that this is indispensable for the purpose of the associations and with the limitations established by law. After 28 January 1992, religious associations shall own the properties acquired by them, subject to prior authorization by the General Directorate of Religious Associations through the declaration of origin.³⁹

In regards to the buildings used for public worship before the 1992 reform, the Mexican State retains their ownership on behalf of the Federation, but grants a legal permit of use to the Religious Association that has previously expressed interest in using them for a religious purpose. In return, the State may collaborate financially with the Religious Association for the conservation, maintenance and restoration of those buildings considered as historical or artistic heritage.

G. *Funding*

Articles 17⁴⁰ and 19⁴¹ of the *Religious and Public Worship Associations Act* are the basis for the taxes payable by Religious Associations, which clearly state that they are considered as nonprofit organizations.

In this regard, the Ministry of the Treasury and Public Credit, since April 25, 1994 and pursuant to its powers, has announced the fiscal criteria applicable to churches through annual general resolutions.

The following are the contributions to be paid:

37. Art. 8, fraction 4 of the *Religious and Public Worship Associations Act*.

38. "Religious ministers are all adults considered as such by the religious associations to which they belong. Religious associations shall notify the Interior Ministry of their decision thereabout. If religious associations fail to notify the Ministry, or in the case of churches or religious groups, it shall be considered that religious ministers are those whose main occupation is directing, representing or organizing said associations, churches or groups."

39. Art. 20 of the *Regulations of the Religious and Public Worship Associations Act*.

40. The last paragraph indicates that the property owned by religious associations shall comply with "all other applicable obligations contained in other regulations."

41. "Tax regulations shall be applicable to individuals and organizations, as well as the property regulated under this act, according to the law on the subject."

5. Tax-Exempt Income

Religious Associations shall not pay the income tax (ISR) for the income that they obtain in the achievement of the objectives laid down in their statutes, if such income is not distributed among its members. Considering that one of the objectives set out in their statutes is to cover the living expenses of religious ministers and other members as established in the statutes, Religious Associations shall not pay the income tax for amounts received for this concept, provided that the amounts do not exceed three times the general minimum wage in force in the geographical area of the taxpayer during the corresponding year. Those who exceed this amount shall pay the income tax for the surplus. Single Rate Business Tax (IETU): Religious Associations are exempt from this tax.

6. Own Income

Such as the offerings, tithes, gifts and donations received from their members, congregants, visitors and supporters for any reason related to the development of their activities, provided that such income is applied to religious purposes. The income from the sale of books or religious objects obtained by a non-profit religious association shall also be considered as own income.

7. Taxable Income

The income earned from transfer of property, interests and prizes, shall be taxable under the terms of the applicable legal provisions.

H. Value Added Tax ("VAT")

8. Tax-Exempt Income from Acts or Activities

The income obtained by Religious Associations for any reason related to the religious services provided to their members or parishioners shall be considered as tax-exempt income from acts or activities. This tax shall not arise from the transfer of real property intended solely for housing. For these purposes, housing shall comprise ordination houses, monasteries, convents, seminaries, retirement homes, government homes, prayer houses, abbeys and juniorates.

9. Taxable Acts or Activities

As Religious Associations are not taxpayers allowed to receive income-tax deductible donations, the VAT will be applicable to donations received by Religious Associations, if these are made by companies, in the understanding that said donations are considered as transfers and shall not be deductible for the person making the donation.

I. Tax Applicable to Deposits in Cash

10. Exempted Subjects

Given that religious associations are non-profit organizations, pursuant to Title III of the Income Tax Act, they shall not pay this tax.

V. USE OF RELIGIOUS CLOTHES AND SYMBOLS

Due to a custom inherited from the *Reform Laws*, the use of religious clothes is limited to inside the temples or houses inhabited by religious ministers. It should be noted that there is no regulation regarding the use of images and religious symbols. However, in the sphere of politics, the Electoral Tribunal of the Judiciary Power of the Federation ordered the annulment of the elections in Yurecuaro, Michoacan state in December 2007, due to the use of religious images in the campaign of the candidate for mayor.⁴²

42.SentenceSUP-JRC-0604-2007,<http://148.207.17.195/siscon/gateway.dll?f=templates&fn=default.htm>.

In public buildings, normally it is not allowed to place religious images or symbols that could affect the constitutional principle of church-state separation. In recent years, evangelical groups have challenged the popular celebration of the *Day of the Dead* in public schools, considering it as contrary to their religious beliefs. So far this has not resulted in any legal reform. Celebrations in honor of the Virgin of Guadalupe are held in factories, sports clubs, labor unions, among others. It is customary to make pilgrimages or processions to a place of worship of some religious image. In light of these circumstances, the authorities of the three tiers of government (federal, state and municipal) have to be coordinated to safeguard the integrity of the parishioners and the respect for the rights of others.

VI. SENTENCES BY RELIGIOUS TRIBUNALS

According to the *Religious and Public Worship Associations Act*, the civil acts of persons are the sole responsibility of the authorities under the terms established by law and with the force and validity attributed by law. The simple promise to tell the truth and to fulfill the respective obligations, force the person who made the promise, in case of failure to do so, to undertake the penalties established by law (Article 4). For this reason, religious court judgments are not valid for the purposes of Mexican Positive Law.

VII. CRIMES AGAINST RELIGIOUS FREEDOM

In regards to the system of crimes against religious freedom or “crimes against religion,” the Mexican criminal justice system basically follows a system of strict church-state separation. Thus, there is no acknowledgement of any type of crime linked to religion, as in the case of offenses against religious beliefs, religious hatred, disruption of the free exercise of religion, etc. However, the Federal Criminal Code provides some assumptions that refer – albeit indirectly – to the protection of religion. For example, Article 397, fraction IV, concerning damage to property, refers to temples,⁴³ in case of fire, flood or explosion. Also, Article 149 of the Code, punishes genocide,⁴⁴ in regards to the total or partial destruction of religious groups.

As a first step towards the definition of offenses against religious freedom, on August 20, 2009, the Federal District Legislative Assembly approved amendments to Fraction VI, Article 138 of the Federal District Penal Code,⁴⁵ in order to add to the common rules applicable to the crimes of homicide and injury the so-called hate crimes due to discrimination. For this reason, in the Federal Capital of the country, all attacks on people because of their physical appearance, sexual orientation, physical disability and religion shall be punishable as crimes.

43. “Those who cause a fire, flood or explosion damaging or endangering: IV. . . temples. . . shall be punished with imprisonment from five to ten years and a fine from one hundred to five thousand pesos.”

44. “A person shall be considered as committing the crime of genocide when, with the purpose of destroying totally or partially one or more national, ethnic, racial or religious groups, said person commits crimes against the life of the members of said groups or uses massive sterilization to prevent the reproduction of the group. Such crime shall be punished with imprisonment of twenty to forty years and a fine from fifteen to twenty thousand pesos. . . .”

45. “Homicide and injury shall be considered as first degree when committed with: malice, treachery, premeditation, viciousness, or in a state of voluntary alteration. . . VI. There is viciousness when the agent acts with cruelty or hate. The latter shall be considered as occurring when the agent commits the crime due to social or economic condition, links, membership or relation with a defined social group, ethnic or social origin, nationality or birthplace, skin color or any other generic characteristic, sex, language, gender, religion, age, opinions, disability, health conditions, physical appearance, sexual orientation, gender identity, marital status, occupation or activity.”