

Emerging Issues: Freedom of Religious Expression

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by David Matas

I am a lawyer in private practice engaged in refugee, immigration and international human rights work. The clients I see in my office are mostly refugee claimants or relatives in Canada trying to help family member refugees abroad. The international human rights work I do is mostly advocacy for NGOs on matters relating to grave violations of international human rights law.

In doing this work, I have come across several situations where the violations of human rights I am addressing are breaches of the right to freedom of religious expression. I want to address seven of these situations here:

- 1) anti-Zionism and freedom of religious expression for Jews;
- 2) the Saccab on the balcony case in the Supreme Court of Canada;
- 3) the practice of Falun Gong and Communist Chinese repression;
- 4) Sunni fundamentalism of Al Shabab in Somalia;
- 5) Shiite fundamentalism of the mullahs in Iran;
- 6) polygamy and the Fundamentalist Church of Jesus Christ of Latter Day Saints; and
- 7) Buddhism and the civil war in Sri Lanka.

1) Anti-Zionism

I personally have been heavily involved in combating anti-Zionism through my efforts as senior honorary counsel to B'nai Brith Canada. I have written a book on the subject titled *Aftershock: Anti-Zionism and Antisemitism*.¹ I have gone to Geneva to the United Nations

¹ Dundurn Press, 2005

Human Rights Commission and then, after the transformation of the Commission to Council, to the United Nations Human Right Council, regularly for many years, as part of a B'nai Brith International delegation.

Anti-Zionism takes many forms. Some of it is military, which has had to be answered by Israeli defence forces. Some of it is terrorism not just in Israel, but globally, which has to be answered by global counter-terrorism efforts.

A lot of it, the part which I have been addressing, is global attempts at delegitimization, double standards and demonization through international instances, what Natan Sharansky has called the three Ds. The anti-Zionist effort works backwards from the existence of Israel rather than forwards from evidence of human rights violations. The ultimate goal is the destruction of Israel. The human rights vocabulary, institutions and organizations are means to the end, regardless of the actual facts on the ground or existing human rights law.

This propaganda directed against the Jewish state in turn has led to demonization of the Jewish people as actual or presumed supporters of this supposedly demon state. This anti-Zionism has led to an increase in antisemitism, not just antisemitic rhetoric, but antisemitic property destruction and physical assaults.

The bigotry that is antisemitism is directed against Jews whether they are religious or not. However, being visibly Jewish has become in many parts of the world visibly dangerous. Anti-Zionism is a form of incitement against Jews world wide which leads Jews to disguise their Jewish identity and religious practices as a form of protection. Anti-Zionism incites to repression of religious expression.

Let me give just a few examples. In 2015, Swedish journalist Peter Ljunggren donned a Jewish religious head covering, a kippah, and filmed himself walking through the streets of

Malmö. Within an hour, he was insulted, warned to leave for his own safety, and pelted with eggs. He eventually fled, his walk uncompleted. Similar 'kippah walks' by journalists in Manchester, Rome, Copenhagen, Paris and Milan have resulted in insults, threats and attacks.

In November 2015, three men stabbed a kippah wearing teacher outside a Jewish school in Marseilles, in France. In January 2016, Binyamin Amsalem was injured by a teenager wielding a machete who tried to kill Jews leaving a synagogue in Marseille after morning prayers. In February 2016, Tzvi Amar, president of the Marseille office of the Consistoire, a community organization responsible for providing Jewish religious services, called on Jews to remove their kippahs as a security measure.²

I realize that the overall title of this course is "Emerging issues in human rights". To call antisemitism an emerging issue may seem odd, since antisemitism is the world's oldest hatred. It has existed since pre-historic times; it is the subject of much of the second book of the Old Testament, the Book of Exodus.

Yet, antisemitism is a shape shifting monster. It adapts itself to whatever is the current ideology, perverting it to antisemitic ends.

Zionism is the expression of the right to self determination of the Jewish people. Anti-Zionism is a form of antisemitism, the denial of the Jewish people specifically and only amongst the peoples of the world, to the right to self determination.

Incitement to hatred works more slowly than military invasion. Moreover its victims are different. Jews in Israel are the first victims of military invasion. Jews in the diaspora are the

² "Wearing a Kippah in France"
<http://www.aish.com/jw/s/Wearing-a-Kippah-in-France.html>

first victims of the spread of antisemitism.

How do we respond to that spread? The answer of the Chief Rabbi of France Haim Korsia was to tough it out, urging Jews to keep wearing kippot. He further urged everyone else to wear kippots. He called on soccer fans in Marseille to arrive at a match in January 2016 wearing a kippah.³

I have no objection to such a solution, but I would propose one which is more direct, which addresses the problem at its source. To end incitement to hatred, ideally, we should target the incitement, and not just camouflage ourselves to minimize the harm generated by it. That means contesting boycotts, divestment and sanctions against Israel, combatting University and college Israel anti-apartheid weeks, and rejecting at international instances attempts to gang up on Israel through abuse of human rights discourse, instruments and mechanisms.

Attempting to repress incitement to hatred, while itself a human rights cause, raises a human rights issue, the limits to the right to freedom of expression and indeed the limits to the rights of religious expression. That issue was played out in the case of Malcolm Ross, a case which went to the Supreme Court of Canada.⁴

Malcolm Ross was an elementary school teacher who in his spare time actively engaged in a wide variety of antisemitic propaganda. David Attis, a parent in the school district in which Ross taught, filed a complaint with the New Brunswick Human Rights Commission in April

³ "French lawmakers wear kippah to parliament following Jew's stabbing Jerusalem Post" 01/15/2016
<http://www.jpost.com/Diaspora/French-lawmakers-wear-kippah-to-parliament-following-Jews-stabbing-441643>

⁴ *Ross v. New Brunswick School District No. 15*, [1996] 1 S.C.R. 825

1988 claiming that the school board, by allowing Ross to continue to teach, had discriminated against his children on the basis of ancestry or religion. In August 1991, Professor Brian Bruce, appointed as a Board of Inquiry by the Commission, found that the school board had discriminated against the Attis children by creating a poisoned environment in the school district.

Bruce ordered the school board to remove Ross from the classroom. Ross challenged the order of Bruce in the courts as a violation of his rights to freedom of expression and religion under the Canadian Charter of Rights and Freedoms. In the Supreme Court of Canada, I argued on behalf of B'nai Brith Canada that the Court should uphold this order; in April 1996, they decided they would.

The Court held that the religious views of Malcolm Ross serve to deny Jews respect for dignity and equality and these are among the fundamental guiding values of the Charter. Malcolm Ross could not be permitted to use the Charter as an instrument to roll back advances made by Jewish persons against discrimination.

For each of these topics, I will identify only one emerging issue and only one recommendation. For this topic, the emerging issue I suggest is this: Claims of human rights violations are sometimes made without legal or factual foundation by human rights violators as a technique for discrediting their targets and camouflaging their own violations. The recommendation I would make is not to take claims of human rights violations at face value, especially when they emanate from perpetrators, and to assess yourself both the facts and law on which the claims are based.

2) The Succah on the Balcony

A condominium association asked the courts to issue an order prohibiting Moise Amselem

and three other owners of individual units from building a symbolic religious makeshift shelter, called in the Jewish religion a succah, on the balconies of their condominiums⁵. The reason the condominium owners were opposed was that the succahs, in their view, impacted adversely on the appearance of the buildings and violated the condominium agreement. According to the Jewish religion, Jews are supposed to live in a succah during a nine day Jewish autumn holiday. I participated in the case at the Supreme Court of Canada as counsel for intervener League for Human Rights of B'nai Brith Canada.

The trial judge heard religious expert rabbi witnesses from the two sides. The rabbi expert witness for the building co-owners testified that there was no Jewish religious duty to erect one's own succah and no religious commandment about where they were to be erected; a succah near the local synagogue would do. The rabbi expert witness for the condominium unit owners testified that Jewish obligation of dwelling in a succah for nine days must be complied with festively and joyously, without causing distress to the individual. Distress, such as that caused by forced relocation to a communal succah, would run contrary to the obligation of dwelling in a succah.

The trial judge, who was not Jewish, found the evidence of the rabbi expert witness for the condominium association more compelling as an explanation of what the Jewish religion required and issued the order sought. The unit owners appealed.

The League, in support of the principle of freedom of religion, took the position that the courts had no business deciding what the Jewish religion dictated. The Supreme Court of Canada agreed. The Court reasoned:

"Secular judicial determinations of theological or religious disputes, or of contentious matters of religious doctrine, unjustifiably entangle the court in the affairs of

⁵ *Syndicat Northcrest v. Amselem*, 2004 SCC 47, [2004] 2 SCR 551

religion.⁶

In the result, the request of the condominium owners for an injunction prohibiting the setting up of succahs on balconies was denied.

One does not have to get very far into any religion to find that, whatever the religion, there are disputes about its meaning and obligations. Freedom of religious expression does not mean just freedom to express the religious beliefs of one particular doctrine within the religion or what one particular religious authority says is the religion. The right to freedom of religion is a right of individuals not a right of religious authorities or the Government or the courts. The *Amselem* case from 2004 is a useful reminder of that principle.

The emerging issue I would identify here is that parties in religious disputes sometimes come to state organs to settle those disputes. The recommendation I would make is that state organs should stay out of those disputes and not take sides in debates about religious doctrine.

3) The practice of Falun Gong and Communist Chinese repression

Falun Gong is a set of exercises with a spiritual foundation begun in 1992 with the teachings of Li Hongzhi. It is a blending and updating of ancient Chinese traditions - Buddhism, Taoism and Qi Gong, Chinese exercises the best known of which is Tai Chi. Falun Gong is a Chinese form of yoga.

Chinese Communist authorities initially encouraged, awarded and propagated Falun Gong on the basis that it was beneficial to health. It quickly became popular, by 1999, reaching, according to the Government of China, 70 to 100 million practitioners, more numerous than the membership of the Communist Party, which at that time stood at 60 million. There were

⁶ Paragraph 50

3,000 outdoor practice stations in Beijing alone.

The Communist Party, confronted with the popularity of Falun Gong, began to fear for its own ideological supremacy. So, without legally banning the practice, the Party, in July 1999 began a campaign of oppression against it.

By November 1999, the campaign, which up to that point had been ineffective, became deadly. Practitioners were arrested and asked to recant. If they did not recant, they were tortured. If they did not recant after torture, they disappeared into the Chinese re-education through labour camp system, in the hundreds of thousands. The disappeared became a vast forced organ donor bank, killed for their organs sold for large sums to transplant tourists and wealthy local Chinese.

Former Canadian Government Minister and Parliamentarian David Kilgour and I did a report on organ transplant practices abuse in China released in July 2006,⁷ a second version released in January 2007,⁸ and a third version, in book form, we wrote in November 2009,⁹ all under the title *Bloody Harvest*. Ethan Gutmann, an American journalist based in England in August 2014 published his own book on the subject under the title *The Slaughter*¹⁰. The three of us have done a collective update on our work released in June 2016 which has been posted on the internet at our joint website.¹¹

⁷ <http://organharvestinvestigation.net/report20060706.htm>

⁸ <http://organharvestinvestigation.net/>

⁹ Seraphim Editions

¹⁰ Prometheus Books

¹¹

http://endorganpillaging.org/wp-content/uploads/2016/06/Bloody_Harvest-The_Slaughter-June-23-V2.pdf

Viewed from the perspective of freedom of religious expression, the repression of Falun Gong presents a number of distinctive features. One is that religious expression and the threats to freedom do not come just from traditional beliefs. They also come from new beliefs, in this case a belief dating from 1992.

Second, religious intolerance does not just come from the religious. It also comes from atheists. Indeed, one motivating factor for the Communist Party in repressing the practice of Falun Gong is that the Falun Gong is spiritual and the Party is atheist. It was this conflict which is a direct confrontation with Communism more than any political agenda of Falun Gong, since the Falun Gong beliefs do not have a political agenda.

Third, a religious belief which is not organized faces a greater risk in a repressive society than one that is. Falun Gong is neither a movement nor an organization; it is not even people. It is rather a set of exercises with a spiritual foundation. The exercises can be done by anyone, anywhere, at any time, though commonly they are done once daily in groups. Those who are interested can begin the exercises whenever they want and stop whenever they want. A person need not register with anyone or join anything to practice the exercises. All information about how to do the exercises is publicly available for free.

Those who practise Falun Gong have no organizational leadership. Li Hongzhi got things going. He has written books and given public lectures widely available in print and on the internet which have inspired individual Falun Gong practitioners. He is the founder of the practice, its first teacher, a spiritual leader, but not an organization leader.

There are some Falun Gong practitioners who have formed and joined support organizations, Falun Dafa associations. Falun Dafa associations are local or national.

There is no one international Falun Dafa Association.

These associations encompass only a portion of Falun Gong practitioners. They may facilitate some Falun Gong activities, but they do not represent or lead or organize all Falun Gong practitioners.

These associations make representations to government on behalf of Falun Gong practitioners. In formulating these representations, they operate by consensus of all and any of the practitioners who volunteer to participate in the discussion about what those representations should be.

The amorphous nature of Falun Gong meant that it was impossible for the Communist Party to control it. Because other beliefs are organized, the Government of China has responded in part by attempting to take over the organizations.

There is a Chinese government appointed Buddhist Panchen Lama, Chinese government selected Roman Catholic bishops, Chinese government chosen Muslim imams. These designations mitigate the attacks the Government of China launches against these beliefs, since the Communist Party does not want to undermine its own appointees.

If Falun Gong had a leadership, the Communist Party, as it had done with the major religions, would have appointed some of its cronies and said that they were the leadership of the Falun Gong. But Falun Gong does not lend itself to this sort of usurpation. Not being inhibited from undermining its own appointees, the Government of China attacks on the Falun Gong know no bounds.

Fourth, Communist Party repression against the practice of Falun Gong is not just restricted to China. It is global, in a wide variety of ways. I will give just one example, the repression at

universities, including Canadian universities.

Sonia Zhao was an employee of the Confucius Institute at McMaster University and is a Falun Gong practitioner. When she was in China before joining the Institute, Zhao had to sign a statement promising not to practice Falun Gong. After she arrived in Canada and began work, she made a complaint against McMaster University to the Ontario Human Rights Tribunal. I was her lawyer. The complaint was settled; the terms of the settlement agreement are confidential. There are nonetheless some things I can say.

Hiring for Confucius Institutes is done by its headquarters in China, called Hanban. Hanban's hiring policy excludes persons who practice Falun Gong. McMaster University determined that this policy violates its principles of equality.

McMaster University announced in February 2013 that it decided to close its Confucius Institute, which it had hosted since 2008. The Institute required six months' notice for termination. McMaster gave that notice and the Institute closed in March 2013.

Sonia's complaint had a snowball effect. After the decision of McMaster University, the Canadian Association of University Teachers urged Canadian universities and colleges to end ties with Confucius Institutes;¹² the American Association of University Professors issued a statement that "universities cease their involvement in Confucius Institutes" unless certain conditions were met;¹³ and the University of Sherbrooke, the University of Chicago,¹⁴

¹² December 2013

<http://www.caut.ca/news/2013/12/17/universities-and-colleges-urged-to-end-ties-with-confucius-institutes>

¹³ June 2014, American Association of University Professors "On Partnerships with Foreign Governments: The Case of Confucius Institutes"

<http://www.aaup.org/report/confucius-institutes>

Pennsylvania State University or Penn State¹⁵ and the Toronto District School Board¹⁶ all decided to terminate their Confucius Institute programs.

The emerging issue I would identify here is China specific. China uses its global power to project abroad Communist Party religious intolerance. The recommendation I would make is that, in dealing with China, we should stand up against that intolerance and refuse any complicity in it.

4) Sunni fundamentalism of Al Shabab in Somalia

In my private practice as a refugee lawyer, I see a significant number of Somalia claimants. Many of these claimants assert a fear of persecution from Al Shabab, an Islamist fundamentalist terrorist organization and an Al Qaeda affiliate.

Al Shabab kills innocents because they violate what Al Shabab considers to be the Islamic

¹⁴ Elizabeth Redden "Chicago to Close Confucius Institute" Inside Higher Ed, September 26, 2014,

<https://www.insidehighered.com/news/2014/09/26/chicago-severs-ties-chinese-government-funded-confucius-institute>

¹⁵ Karen Howlett and Caroline Alphonso "TDSB votes to officially cut ties with Confucius Institute" The Globe and Mail, Oct. 29 2014,

<http://www.theglobeandmail.com/news/toronto/toronto-school-board-votes-to-sever-ties-to-confucius-institute/article21376636/>

¹⁶ Karen Howlett and Caroline Alphonso "Toronto school committee votes to end Confucius Institute programs" The Globe and Mail, Oct. 01 2014,

<http://www.theglobeandmail.com/news/world/tdsb-votes-to-stop-confucius-institute/article20888419/>

orthodoxy. Some Somali couples, because of hostility from the major clans to inter-marriage with the minority clans, live common law. Al Shabab, acting out of perverted sense of fundamentalist Muslim morality, targets and kills those couples, especially the women.

Al Shabab forcibly kidnaps and recruits children too young to fight, so that they can be indoctrinated into Al Shabab beliefs. The boys are raised to become terrorists. The girls are raised to become wives of terrorists. Many family members of these kidnapped children are killed trying to protect their children from the kidnappings.

Al Shabab attacks those who have views of Islam different from their own, in particular, followers of Sufism, a mystical strain of Islam prevalent in Somalia. Sufism includes practices which Al Qaeda considers idolatrous. One example is the worship of clerics' tombs, which Sufism practices and Al Qaeda rejects. Al Shabaab views Sufis as apostate. Al Shabaab targets Sufi holy sites as well as its religious leaders.

For instance, in 2008 and 2009, Al Qaeda desecrated Sufi tombs in southern communities including the port city of Kismayo, raided mosques during Sufi rituals and killed Sufi clerics. In 2009 and 2010, al Shabaab engaged in a campaign of desecration of Sufi shrines - the graves of Somali Sufi saints. In May and August of 2010, al Shabaab arrested Sufi clerics in Mogadishu and prevented them from conducting classes or attending mosques. In 2011, Al Shabab arrested a Sufi sheikh and his students as they planned to celebrate the birth of the prophet Mohammed, a practice Al Shabaab considers un-Islamic. In 2011, Al Shabaab killed Sufi clerics who did not subscribe to its brand of Islam, maimed and killed those who failed to adhere to its edicts, and destroyed or desecrated Sufi graves and mosques.¹⁷

¹⁷ Somalia: Situation of practitioners of Sufism in Mogadishu; incidents of violence involving al Shabaab [Al-Shabaab] and practitioners of Sufism; security situation and availability of state protection in Mogadishu (2013-November 2014) [SOM104995.E], 24 November 2014

Al Shabab is engaged in active armed combat for control of Somalia. Somalia initially became a failed state because of inter-clan fighting. It has remained a failed state because the efforts to counter Al Shabab haven been only partially successful.

There are a number of features worth noting here about the Al Shabab phenomenon. One is that Islam is far from an undifferentiated religion. There is a terrorist strain within Islam, which causes great havoc. But it is a small minority of the whole Islamic world.

Second, Islamic fundamentalism is a power seeking device. Al Shabab uses its own version of Islam to recruit, repress and control. It seeks to become the Government of Somalia and to use state powers to impose its own intolerant brand of Islam.

Third, the first victims of Islamic fundamentalist terrorists are other Muslims. Al Qaeda occasionally attacks Westerners both in Somalia and Kenya. Al Qaeda launches attacks in Kenya because Kenya has troops in Somalia helping the Government of Somalia forces battle Al Qaeda.

For instance Al Shabab attacked the Westgate shopping mall in Nairobi, Kenya in September 2013, killed 39 and wounded more than 150. Two Canadians were killed. One was Annemarie Desloges, who worked at Canada's High Commission in Kenya as a liaison officer with the Canada Border Services Agency.¹⁸

http://www.ecoi.net/local_link/299654/422239_en.html

¹⁸ "Two Canadians among dead in terror attack on Kenyan mall by al-Qaeda-linked group" Jason Straziuso, The Associated Press, September 21, 2013
<http://news.nationalpost.com/news/kenya-terrorist-attack-started-after-gunmen-told-muslims-leave-upscale-mall-witness>

This sort of attack is well publicized. Yet, the attacks by Al Qaeda within Somalia proper receive nowhere the near same media attention.

An emerging issue here is the harm that Islamic fundamentalists do to other Muslims. The recommendation is that more attention be paid to this harm, enough attention so that we begin to appreciate that the primary victims of Islamic fundamentalism are Muslims.

5) Shiite fundamentalism of the mullahs in Iran

Though the main faith streams in the Muslim world are Sunni and Shiite, Shiite and Sunni fundamentalists have more in common with each other than with others who share their Shiite or Sunni faith but are not fundamentalists. The most dramatic divide in the Muslim world is not one between Sunnis and Shiites but rather between fundamentalists and moderates.

My own experience with the Shiite fundamentalism of the mullahs of Iran comes from trying to help a group of refugees from the regime of the mullahs of Iran who have been located in Iraq, the PMOI or People's Mujahadeen of Iran. The People's Mujahadeen of Iran have been threatened with expulsion to Iran where they face torture and death. I became involved, at the request of the National Council of Resistance of Iran, to prevent their forcible removal to Iran either directly or constructively through harassment and mistreatment. The National Council of Resistance of Iran or NCRI is a political umbrella group headquartered in France opposed to the regime of the mullahs of Iran. One component of this group is the People's Mujahadeen of Iran (PMOI) or the Mujahadeen e Khalq (MEK).

The PMOI were part of the original revolutionary opposition which deposed the regime of the Shah in 1979. A Bolshevik type takeover of the revolutionary forces by the mullahs under

Ayatollah Khomeini led to repression of the PMOI. The organization members fled Iran in 1981 and set up headquarters in Paris, the former haven of the Ayatollah. The French expelled them in 1986; they relocated to Iraq, where Saddam Hussein, in the midst of war with Iran, was happy to offer them refuge.

The Iraqi Al Maliki government which took over after the American invasion had a strong pro-Irani coloration, making Iraq a decidedly less friendly environment for the PMOI. The US led forces in Iraq declared the group to be protected persons under the Geneva Conventions on the Law of War, and, for their own safety, collected them together in one place, Camp Ashraf, under American protection. At the time, they numbered 3,400. After the Americans forces withdrew from Iraq, the Camp Ashraf residents were left to the tender mercies of the Iraqi forces and their Iranian friends. They became subject to sustained harassment, deprivation of necessities and murderous armed attacks.

The army set up loudspeakers around Camp Ashraf, in the hundreds, on poles, blaring in Farsi threats of imminent death 24/7. The Iraqi government then in 2012 arbitrarily and forcibly relocated the residents from Camp Ashraf, where they had a developed infrastructure, to Camp Liberty a former US military base near the Baghdad airport. The Camp has become, in effect, a poorly maintained prison.

The PMOI cooperated in this relocation on the understanding that it would be a prelude to refugee resettlement, which finally in 2016 is occurring, mostly to Albania. The residents at Liberty have faced appalling conditions. Delivery of food, drinking water and medical supplies as well as removal of sewage, have been periodically obstructed. In both Camp Ashraf and Camp Liberty, access of residents to legal help as well as visiting family members and foreign Parliamentarians has been restricted.

In July 2009, Iraqi forces attacked Camp Ashraf, killing eleven residents and abducting 36.

The 36 were released after 72 days, near death. An April 2011 attack left 36 dead and more than 350 injured. In September 2013, Iraqi forces attacked Camp Ashraf, killing fifty two residents. Seven were taken hostage.

Camp Liberty has been targeted with missiles on several different occasions, the most recent in July 2016. In the various raids and rocket attacks, Iraqi forces have killed over 116 and wounded almost 2,000. The Iraqi regime, after each attack, imposed obstacles to the proper treatment of the wounded. At least twenty of the wounded have lost their lives because of lack of timely access to medical care.

The PMOI were at one time armed and attempted the overthrow of the Iranian regime. The PMOI renounced the use of force in 2001 and voluntarily gave up their arms to the invading Americans in 2003. The group had been listed as a terrorist organization by the United States, Canada, and the European Union amongst others. The United States, Europe and Canada have since all taken the PMOI/MEK off their list of terrorist organisations.

In Canada, the delisting occurred after I and Toronto lawyer Clayton Ruby together sent a letter in October 2012 asking the Government of Canada to delist the organization. In December 2012, it was delisted, not because we asked, but because the history of litigation in the US and Europe undermined any justification there might earlier have been for the continued listing.

The name "mujahadeen" gives the impression that the group is Islamic fundamentalist. However, it is not and, to the mullahs of Iran, the group is not religious enough. In the exaggerated rhetoric of the mullahs, the PMOI are enemies of God. Being an enemy of God is an offence in the Iranian criminal code, punishable with death. The regime has murdered adherents of the PMOI in the thousands because of their beliefs.

Though the Camp Ashraf/Liberty residents are a small group, they are emblematic of a large problem, the Iranian persecution of its targets abroad. Another example of this Iranian behaviour was the suicide car bomb terrorist attack of the Jewish community centre, called the Israeli-Argentine Mutual Association (AMIA), in Buenos Aires in July 1994, killing 85 and wounding over 200. The Argentinean intelligence service investigated this attack and concluded, in a detailed report, that the attack was planned and organized by the Government of Iran.

The decision to mount the AMIA attack was taken in August 1993 by Iran's National Security Council. Participating in the decision were Ayatollah Khamenei as well as the then president Hashemi Rafsanjani. Iran used Hezbollah to perpetrate the attack.¹⁹

Argentina has requested the extradition of five suspects from Iran for their part in the bombing and issued Interpol red notices for them. One of the five was Ahmed Vahidi. After the 2009 elections in Iran, then President Mahmoud Ahmadinejad named Vahidi as his Minister of Defence.

The specific features of religious intolerance which the regime of the mullahs in Iran features are first that it has seized control of the state. This is not a terrorist organization operating at the margins. Its intolerance impacts on everyone in Iran as well as many outside.

Second, religious intolerance, as for Al Shabab, has become a device for achieving and maintaining power. Adherence to religious doctrine has been for the mullahs of Iran not an end itself, a way to lead one's life. It is rather a means to an end, power over other people.

¹⁹ Anti-Defamation League "Investigation finds Iranian, Hezbollah and Syrian involvement in 1994 bombing of Argentine Jewish Community Centre" October 2003, at www.adl.org

Third, its intolerance represses internationally. As noted, so does China. However, the Iranian international repression of its chosen targets is more violent and encompasses more targets.

Fourth, the regime demonizes its opponents on religious grounds. Demonization of opponents is a common feature of religious intolerance. The Chinese Communists, for instance, call practitioners of Falun Gong an evil cult, vampires and a whole slew of other slanders.

The PMOI and the NCRI, unlike practitioners of Falun Gong, are a political movement. Religious intolerance is, for the Government of Iran, its justification for keeping its political opponents out of power.

Freedom of religious expression becomes political when a regime is based on religious intolerance. The Government of Iran could not introduce religious tolerance into Iran without ceasing to be who it is now.

In that manner it is different from China. China was able to function as Communist while the practice of Falun Gong flourished, between 1992 and 1999. It is possible to imagine under the Communists a return to the freedom for the practice of Falun Gong which was in place during those years.

It is impossible to imagine a comparable shift for Iran and Islam. The end to religious intolerance in Iran would mean the end of the regime of the mullahs of Iran, since religious intolerance is the very core of their rationale for existence.

An emerging issue here, like for China, is country specific. Iran also reaches beyond its borders to go after its chosen targets. We must do what we can to push back against this

targeting.

6) Polygamy and the Fundamentalist Church of Jesus Christ of Latter Day Saints

In 2005, I authored for Beyond Borders a report on preventing sexual abuse in a polygamous community²⁰. In 2010 and 2011, I intervened for Beyond Borders in a constitutional reference in British Columbia on the subject. The reference asked the British Columbia Supreme Court whether the prohibition against polygamy in the Criminal Code was constitutional. For Beyond Borders, I and others argued that it was because, with polygamy in place, sexual exploitation of children becomes more likely, more difficult both to combat and prevent. That ended up being the conclusion of the judge, Chief Justice Bauman²¹.

Chief Justice Baumann found that the prohibition against bigamy breaches the religious liberty of fundamentalist Mormons, some Muslims and Wiccans. He nonetheless held that the prohibition against bigamy was constitutional. One reason he gave was the adverse impact it had on children, both boys and girls.

He wrote that in polygamous communities early marriage for girls is common, leading to early pregnancies and childbirth, which have negative health implications for girls, and also significantly limit their development. The sex ratio imbalance inherent in polygamy means that young men are forced out of polygamous communities, to sustain the ability of senior men to accumulate more wives. Boys receive limited education and as young men must navigate their way outside their communities with few life skills and social support.

²⁰ <http://www.beyondborders.org/wp/wp-content/uploads/2009/06/polygam6.pdf>

²¹ Reference re: Section 293 of the Criminal Code of Canada, 2011 BCSC 1588

Since that reference decision, there have been four prosecutions of polygamy against members of the religious community Bountiful in British Columbia - against Winston Blackmore, James Omer, Brandon Blackmore and Emily Crossfield all charged in August 2014. These prosecutions are ongoing.

What this experience teaches us about expression of religious freedom is that religious tolerance can not be considered in isolation. The ultimate test for human rights is the whole the human rights package, the worth and dignity of the whole human being. Each human right captures one aspect of that package. But it is the whole that matters, not just the component parts. One does not respect human rights as a whole by tolerating a grave violation in order to prevent a lesser violation.

The Convention on the Rights of the Child provides that

"In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."²²

The emerging issue I would identify here is the conflict between assertions of the right to freedom of religion and other human rights. The recommendation I would make is that whenever the conflicting right is the best interests of children, those best interests must come first.

7) Buddhism and the civil war in Sri Lanka

I have been involved, in refugee law practice, in helping Sri Lankan Tamil refugees get protection since the start of the civil war in July 1983. Since the civil war ended in May 2009, I have been attempting to deal with fallout - working for protection, local integration and

²² Article 3(1)

resettlement of these refugees stranded throughout the globe who cannot in safety return to Sri Lanka.

Because I have followed the civil war in Sri Lanka for so long and from so many individual refugee perspectives, I have become familiar with its nuts and bolts. Superficially, the conflict is ethnic, between Sinhalese and Tamils. But the conflict has been driven in large measure by religious intolerance.

Buddhism teaches tolerance and pacifism. Yet, Sinhalese Buddhism has been anything but. It has ended up propagandizing the exact opposite. In a study put out in 2007 by the Washington DC based East West Center,²³ Neil Devotta writes:

"laymen and monks alike have manipulated Buddhism for political ends and contributed towards Buddhist nationalism."

The study reports: Sinhalese Buddhist nationalism believes that Sri Lanka has been preserved for Sinhalese Buddhists and minorities live there only because of Buddhists' sufferance. This sentiment is sufficiently embedded so that Sinhalese Buddhist nationalism has undermined Sinhalese Tamil relations and attempts at power devolution. The ideology is sacrosanct and non-negotiable. Anyone who questions it is considered an enemy of the state. Anyone who hopes for Tamil autonomy within a united Sri Lanka is bound to be disappointed.

Something similar is happening with Buddhism in Burma/Myanmar which is corrupted to attack its Muslim population, the Rohingyas. Buddhist extremist monks have been the leaders of this persecution.

²³ "Sinhalese Buddhist Nationalist Ideology: Implications for Politics and Conflict Resolution in Sri Lanka" <http://tamilnation.co/books/Eelam/devotta.pdf>

What is going on in Sri Lanka and Burma/Myanmar brings forward another aspect of religious expression. Religion in these countries is a mask for prejudices which intrinsically have little or nothing to do with the religion the advocates claim to represent. Indeed, when we see the violence advocated and led in these countries by Buddhist monks we are seeing something which looks to outsiders not just different from Buddhism; we see are seeing something which, as outsiders, we had thought would have been antithetical to Buddhism. Religion is not the cornerstone of this nationalistic advocacy. Rather, the beliefs and teachings of a religion are twisted to condone the prejudice.

Intolerance and hatred are aspects of the human condition. One cannot fault religions for these human defects. As we saw with China, intolerance and incitement to hatred can infect even atheism. As we saw with Israel, intolerance and incitement to hatred can infect even human rights standards and mechanisms.

The emerging issue I would mention is this. Because human rights standards and mechanisms are as prone to infection from the diseases of hatred and intolerance as religious standards and institutions, we can not rely on human rights alone to defend ourselves against the corruption of religion. But human rights standards and mechanisms do give us another way of combatting these diseases. The recommendation I would make is this. If the defects of religion, or atheism for that matter, cannot be remedied from within, then maybe, with the help of human rights, they can be remedied from without.

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