

Balancing Freedom of Religion and Sexual Education in the Americas

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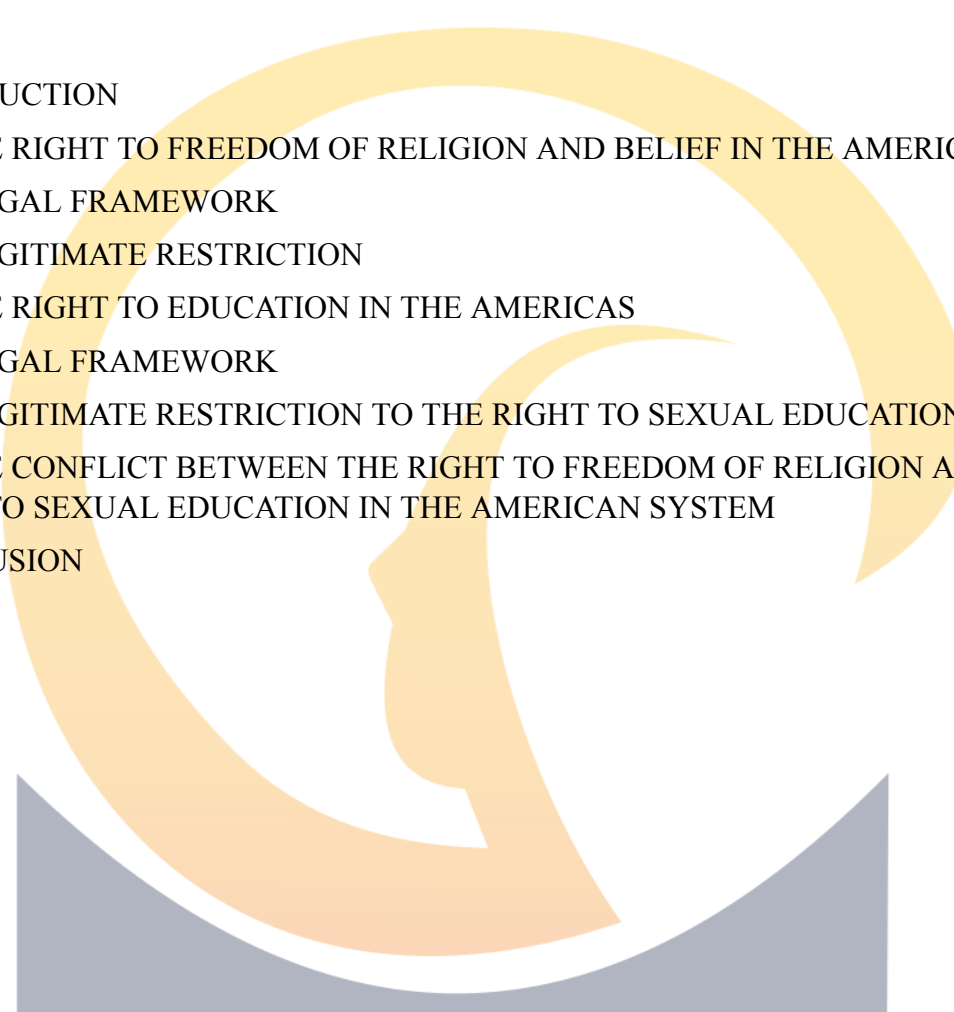
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INTRODUCTION

In the field of study and practice of human rights, the interplay between the right to freedom of religion and belief and the right to sexual education presents a compelling narrative, especially within the dynamic and culturally rich backdrop of the Americas. The Inter-American Court of Human Rights (IAtCHR), a pivotal arbiter in this complex dialogue, endeavours to balance these seemingly divergent rights under International Human Rights Law.

As societies evolve and beliefs diversify, the task of ensuring that educational curricula respect religious particularities while promoting scientifically accurate information about sexuality is challenging. The IAtCHR jurisprudence and the opinions of the Inter-American Commission on Human Rights (IACHR) offer a lens through which to examine these tensions, providing a parameter for countries dealing with these issues within their own legal and cultural matters.

This article will delve into the legal considerations that the IAtCHR and the IACHR take into account as they strive to protect human rights amidst the diverse cultural and religious background of the Americas. This research will shed light on how the two bodies attempt to strike a balance between the right to freedom of religion and belief and the right to sexual education, while upholding the core principles of non-discrimination, access to information, and the best interests of the child.

In a world where the protection of human rights in spite of societal diversity is critical, understanding the approaches of the IAtCHR and the IACHR offers invaluable insights. Not only does this study inform the ongoing debate on how best to deal with the intersection of freedom of religion and belief and the right to sexual education, but it also illuminates broader issues of cultural sensitivity, educational autonomy, and the universal quest for human dignity.

1. THE RIGHT TO FREEDOM OF RELIGION AND BELIEF IN THE AMERICAS

The freedom of religion and belief is a human right enshrined in Inter-American instruments that govern International Human Rights Law: the American Declaration of the Rights and Duties of Man (American Declaration) and the American Convention on Human Rights (American Convention), in Articles III and 12, respectively.¹ According to Article 33 of the American Convention, the IAtCHR and the IACHR are responsible for supervising the compliance of the signatory States to the protection of the right to freedom of religion and belief enshrined in the American Convention.

The IACHR recognises this right as fundamental to the democracies of the Americas, tasked with protecting individuals' convictions and their ways of life, as well as their worldviews.² It is a right that intimately affects all individuals in aspects of their existence,³ especially when considering that religion can play a pivotal role in various facets such as politics, health, sexuality, education, and, with particular relevance to this research, sexual education.

Consequently, it is understood that the right to freedom of religion and belief transcends the individuality of the believer or the group aligned with their faith. It encompasses dimensions far beyond the individual perspective, extending to relational, institutional, and infrastructural realms.⁴ Religious manifestations may occur individually or communally, in private or public spaces, thereby requiring special attention, especially as divergences often exist regarding the public expression of doctrines and other religious peculiarities.

In the Americas, numerous violations of the right to freedom of religion and belief are recorded, which conflict with other human rights protected by Inter-American instruments for the protection of International Human Rights Law, including the right to sexual education. These violations are even more evident in cases where vulnerable groups suffer some form of repression, both in terms of the extent to which they are able to exercise the right to freedom of religion and belief, as well as other rights that clash with the beliefs of a majority religion in a particular country.⁵

Considering the aforementioned issues, this chapter will analyse the conceptual framework and the limits related to a legitimate restriction of the right to freedom of religion and belief, according to the parameters of the IAtCHR and the IACHR.

¹Organization of American States, 'Declaración Americana de los Derechos y Deberes del Hombre' (1948); Organization of American States, 'Convención Americana sobre Derechos Humanos' (1969).

² Inter-American Court of Human Rights, Case 5 La Última Tentación de Cristo (Olmedo Bustos and Others) v. Chile, para. 79 (2001).

³ Inter-American Court of Human Rights, Case 5 'La Última Tentación de Cristo' (Olmedo Bustos and Others) v. Chile, para. 79 (2001).

⁴ Interamerican Human Rights Commission, 'Estudio sobre Libertad de Religión y Creencia - Estándares Interamericanos', para. 5 (2023).

⁵ Interamerican Human Rights Commission, 'Estudio sobre Libertad de Religión y Creencia - Estándares Interamericanos', para. 6 (2023).

1.1 LEGAL FRAMEWORK

The main normative instruments protecting the right to freedom of religion and belief are the American Declaration and the American Convention, in their Articles III and 12, respectively. Although both uphold this right, the American Convention provides more details to establish limitations on the exercise of the right to freedom of religion and belief. It sets out, in Article 12, the individual and collective dimensions of the said right. Below are the texts of both articles, respectively.

Article III of the American Declaration merely prescribes that people have the right to freely profess a religion and to manifest it both in public and privately.⁶ **Article 12 of the American Convention** builds on this protection, establishing three additional aspects: (i) no one shall be subject to restrictions that may harm their freedom of religion or belief; (ii) restrictions to the right to manifest a certain religion or belief must be prescribed by law, pursue legitimate aims and be necessary in a democratic society; and (iii) parents and/or legal guardians have the right to ensure that their children or wards receive religious and moral education according to their own beliefs.⁷ The right to freedom of religion and belief is also recognised by the United Nations in both the preamble and Article 18 of the Universal Declaration of Human Rights and in Article 18 of the International Covenant on Civil and Political Rights (ICCPR).⁸ Other international instruments, such as the Convention on the Prevention and Punishment of the Crime of Genocide and the Rome Statute, also address this right and provide definitions of it.⁹

In addition to the aforementioned instruments, a notable document in safeguarding the right to freedom of belief and religion is the **Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief**, especially in its Article 6. This instrument is comprehensive in providing a non-exhaustive enumeration of freedoms encompassed by this right and elaborates on some of the most common collective expressions of the right to freedom of religion and belief.

Having highlighted the key normative instruments on the subject, it is crucial to identify some pertinent aspects concerning the protection of the aforementioned right that will contribute to the forthcoming analysis (Chapter 4) regarding the challenges of balancing the right to freedom of religion and belief with the right to sexual education.

One of the aspects deserving special attention is Article 27 of the American Convention. This article stipulates that the aforementioned right is among those rights that cannot be suspended. Even in states of emergency, the suspension of rights can never be based on discrimination of religion or belief.¹⁰ However, this does not mean that the right to freedom of religion and belief cannot be limited in certain circumstances, i.e. restricted to a certain extent when conflicting with other rights.

⁶ Organization of American States, 'Declaración Americana de los Derechos y Deberes del Hombre' (1948).

⁷ Organization of American States, 'Convención Americana sobre Derechos Humanos' (1969).

⁸ UN Office of the High Commissioner for Human Rights, 'International Covenant on Civil and Political Rights' (1966).

⁹ UN Office of the High Commissioner for Human Rights, 'Convención para la Prevención y la Sanción del Delito de Genocidio' (1948); United Nations, 'Estatuto de Roma de la Corte Penal Internacional' (1998).

¹⁰ Organization of American States, 'Convención Americana sobre Derechos Humanos' (1969).

It is precisely this aspect of limiting the right to freedom of religion and belief that is of particular interest to this report. This is the focal point where this article delves into the examination of the conflict between the aforementioned right and the right to sexual education. Consequently, the following chapter will address the aspects of limiting the right to freedom of expression and belief.

1.2 LEGITIMATE RESTRICTION TO THE RIGHT TO FREEDOM OF RELIGION AND BELIEF

The right to freedom of religion and belief has two dimensions, internal and external. Whereas the first influences only the individual, the second has the potential to affect the community or another person, as it is externalised. In this context, the internal dimension of freedom of religion and belief is not subject to restriction, according to Articles 12.2 of the American Convention and 18.3 of the ICCPR.

However, the **external dimension of the right to freedom of religion and belief can indeed be subject to certain types of restrictions** if they are considered legitimate. This is due to the IAtCHR's understanding of this right, as not belonging to the list of rights with an absolute prohibition on restriction, such as the right not to be subjected to torture or to suffer cruel, inhuman, or degrading treatment.¹¹ The external dimension of the right to freedom of religion and belief therefore appears to fall within the rule that human rights are not absolute.

In this regard, legitimate restrictions on the right to freedom of religion and belief must adhere to specific requirements demanded by the Inter-American system of human rights protection in order to prevent discretionary restrictions imposed by States. Article 12 of the American Convention, together with the premises set forth in Article 16 of the same Convention, establishes such requirements: the limitation on the right to freedom of religion and belief must (i) be prescribed by law; (ii) aim to achieve legitimate purposes, and (iii) be necessary in a democratic society.¹²

Regarding each of these requirements, certain aspects must be considered. With respect to the first, only laws adopted by democratically elected bodies with constitutional powers shall be deemed applicable for the purpose of applying the restriction. As for the second requirement, it stipulates that the restriction must serve legitimate objectives outlined in the American Convention, such as protecting security, order, health, public morality, or the rights and freedoms of others. Finally, the measures adopted must be suitable and proportionate – the least restrictive means among all appropriate measures should be applied –,¹³ in order to contribute to the achievement of the legitimate objective.¹⁴

¹¹ Inter-American Court of Human Rights, Case of Castañeda Gutman v. Mexico, para. 174 (2008)

¹² United Nations, A/71/269, Provisional Report of the Special Rapporteur on Freedom of Religion or Belief, para.17, (2016); Organization of American States, 'Convención Americana sobre Derechos Humanos' (1969).

¹³ United Nations, A/71/269, Provisional Report of the Special Rapporteur on Freedom of Religion or Belief, para. 17 (2016).

¹⁴ Inter-American Court of Human Rights, Case of Kimel v. Argentina, para 71, (2008); Inter-American Court of Human Rights, Case of Fontevecchia and D'Amico v. Argentina, Judgment of 29 November, para. 53 (2011); Inter-American Court of Human Rights, Case of Castañeda Gutman v. Mexico, para. 186 (2008).

Having explained these three fundamental requirements for limiting the right to freedom of religion and belief, it is critical to refer back to them when this right is later juxtaposed with the right to sexual education. The debates between the exercise of both rights will be discussed in light of these requirements in Chapter 4 of this report.

2. THE RIGHT TO EDUCATION

The right to education as a whole is already complex, as it is not possible to teach everything, and sometimes there is not even the intention or desire to do so. It is therefore necessary to make a pre-selection of what will be taught. This pre-selection can be made by various institutions, such as the government (via the established school curriculum), the school itself, the church, the family, among others. It is when institutions make different choices regarding how and what to teach that conflicts tend to arise, such as the conflict between the right to freedom of religion and belief and the right to education or, more specifically, the right to sexual education.

In this chapter, the peculiarities of the right to education will be analysed, according to the Inter-American system of protection of human rights, so that finally, in Chapter 4, an analysis of the conflict between the right to freedom of religion and belief and the right to sexual education will be made.

2.1 LEGAL FRAMEWORK

Article 12.4 of the American Convention stipulates that parents – or guardians – have the right for their sons and daughters to receive religious and moral education that aligns with their own convictions and principles.¹⁵ This article appears to give greater weight to the institution of the family, as it safeguards the family's choice regarding religious and moral education – morality may, and usually does, include the perspective of sexual education. Other international provisions also follow this same logic of protection.¹⁶

Within the Inter-American system, there are norms concerning different aspects of the right to freedom of religion and belief in relation to the right to education. According to Article 12 of the American Convention, the IAtCHR has interpreted that the right to freedom of conscience and religion includes the right to religious education.¹⁷

However, the right of parents and guardians expressed in Article 12.4 of the American Convention, as well as the right to religious freedom and belief, is not absolute. Limitations can occur and must observe certain parameters adopted by the Inter-American system and the

¹⁵ Inter-American Commission on Human Rights, 'American Convention on Human Rights' (1969).

¹⁶ United Nations, 'International Covenant on Civil and Political Rights' (1966); United Nations, 'Convention on the Rights of the Child' (1989); United Nations, 'Protocolo II adicional a los Convenios de Ginebra de 1949 relativo a la protección de las víctimas de los conflictos armados sin carácter internacional, (1977).

¹⁷ Inter-American Court of Human Rights, Case of Pavez Pavez v. Chile, (2022).

universal system of human rights. In this article, the focus will be on the provisions of the Inter-American system.

The following section will address these aspects involving the limitation of the right expressed in Article 12.4 of the American Convention, in order to clarify the parameters that must be considered for this right of parents and guardians to be legitimately restricted when other rights, particularly the right to education, are at stake.

2.2 LEGITIMATE RESTRICTION TO THE RIGHT TO EDUCATION

When considering the possibility of legitimate restriction of the right of parents and guardians expressed in Article 12.4 of the American Convention, some other rights must be taken into account, especially those relating to the individual who will be educated, as their interests must also be considered.

The first aspect to be debated is the right of children and adolescents to education, as outlined in Article 19 of the American Convention. This right aims to ensure that children and adolescents receive an education that promotes their well-being, enabling them to live a dignified life and contributing to the prevention of unfavorable situations for minors and society as a whole.¹⁸

The well-being of children includes various aspects, such as their economical, social, educational, cultural, scientific and technological development, all taught in the spirit of freedom, morality and human solidarity.¹⁹ All these factors shall be taken into consideration when it comes to the analysis of the legitimacy of a restriction to the right to education based on the right of the parents or legal guardians to ensure that their children or wards receive religious and moral education according to their own beliefs.

In this sense, the right of parents and guardians is not absolute and must respect the provisions of Inter-American instruments that establish education's purpose to shape children and adolescents in a way that respects human rights and public liberties. The right to education is therefore based on principles of freedom, morality, solidarity, justice, and peace.²⁰ An education that does not adhere to these principles would thus violate the child's right to education. It is then incumbent upon States to actively participate in preventing human rights violations concerning the education of children and adolescents.

¹⁸ Inter-American Court of Human Rights, 'Condición Jurídica y Derechos Humanos del Niño. Opinión Consultiva OC 17/02', para 84. (2002).

¹⁹ Inter-American Court of Human Rights, 'Carta de la Organización de los Estados Americanos', Articles 30 and 3.n (1967).

²⁰ Inter-American Court of Human Rights, 'Caso Pavez Pavez vs. Chile', para. 72 (2022).

3. THE CONFLICT BETWEEN THE RIGHT TO FREEDOM OF RELIGION AND THE RIGHT TO SEXUAL EDUCATION IN THE AMERICAN SYSTEM

It is important to respect the responsibilities, rights, and duties of parents, guardians, or the community to provide children with the appropriate direction and guidance for the exercise of their rights, in a manner consistent with their evolving capacities. Conversely, it is equally important to respect the rights of the child, especially those related to freedom of expression, thought, conscience, and religion, information and education, as well as the child's or adolescent's right to freely express their opinions on matters affecting them.

When studying the conflict between the right to freedom of religion and belief, it is important to consider that in certain cases, this right exercised by parents, guardians, or other institutions may, to some extent, threaten other rights of the child or adolescent. Regarding sexual education, there are critical aspects that, if not clarified, can even pose a risk to their own life, such as teaching about sexually transmitted diseases. Although this is a subject that is taboo in certain religions, sharing knowledge on the transmission and precautions to be taken to avoid contracting such diseases can save lives.²¹

In this sense, considering the three aspects which can amount to a legitimate restriction on the right to freedom of religion and belief, the "health risk" factor could be considered a legitimate objective for restricting the right of interference of parents and guardians regarding education (Article 12.4 of the American Convention), according to religious or belief-based arguments.

The IAtCHR has addressed this issue in the case of people with medical conditions potentially leading to diseases such as AIDS. According to the Court, access to education about HIV and AIDS is an essential element in disease prevention programmes that are considered effective. In this regard, the Court believes that the State plays an important role in including relevant information about HIV and AIDS in the curriculum. The Inter-American system understands and reinforces that informative sexual education aimed at protecting young people and children bears no resemblance to promoting or encouraging sexual experiences or explicit approaches to sexual themes.²²

Despite the IAtCHR having this view and spreading this understanding of sexual education as a public health issue, many governments, reflecting the opinion of their citizens, reject sexual education, as they see it as a mechanism for indoctrinating children and adolescents, leading to early sexual development. Countries like Brazil, Chile, Colombia, Ecuador, and Paraguay have reduced programs on reproductive and sexual health education, mainly due to pressures

²¹ International Federation of Medical Students Associations, 'Sexual Taboos for Children and Teenagers in Public Education: Understanding what is not written.', (2020).; SARTORI, T. L. Analysis of brazilian education in the study of sexuality: Marginalization of sexual education at BNCC. *Doxa: Rev. Bras. Psico. e Educ.*, Araraquara, v. 23, (2022).

²²Inter-American Court of Human Rights, 'Caso Gonzales Lluy y otros Vs. Ecuador', para 240 (2015).

from religious groups that often view this education as indoctrination by political left-wing groups who aim to "sexualize children" or "turn them into members of the LGBT group".²³

The Ministry of Education and Sciences of Paraguay itself prohibited the use and dissemination of materials related to "gender theory and/or ideology."²⁴ The IACHR expressed opposition to this decision by the Paraguayan government, believing that it represents a setback for women, people with diverse gender orientations, and children who should receive sexual education free from stereotypes.²⁵

For example, this type of measure contributes to a school environment whereby children are victims of bullying due to issues related to gender identity, particularly as it removes from the school debate any possibility of learning related to respecting diversity and differences. According to the IACHR Rapporteur on women's rights, Margarette Macaulay, sexual education programmes focused on gender and sexual diversity are essential for eradicating negative stereotypes, combatting discrimination, and protecting everyone's rights.²⁶ In that sense, sexual education does not constitute indoctrination in the pejorative sense brought up by the Paraguayan government.

In addition to the importance of avoiding discrimination, sexual education remains an important mechanism for protecting children from sexual abuse committed by strangers or family members.²⁷ In this perspective, it may be necessary to protect the child from their own parents who, initially, for religious or other reasons, may be against the child's sexual education. This is a clear example of a situation in which the right to sexual education could override the parents' right to religion and belief, with the State taking action to safeguard the interests and rights of the child, even against the religious dictates of the parents.

²³ United Nations, A/HRC/43/48, 'Violencia de género y discriminación en nombre de la religión o las creencias Informe del Relator Especial sobre la libertad de religión o de creencias' (Report of the Special Rapporteur on Freedom of Religion or Belief), para 156 (2020).

²⁴ Amnesty International, 'Paraguay: Ministry of Education and Science resolution threatens human rights', (2017).

²⁵ Inter-American Commission on Human Rights, 'CIDH lamenta la prohibición de la enseñanza de género en Paraguay', Comunicado de prensa Nro. 208/17, (2017).

²⁶ Inter-American Commission on Human Rights, 'CIDH lamenta la prohibición de la enseñanza de género en Paraguay', Comunicado de prensa Nro. 208/17, (2017).

²⁷ Iranian Journal of Public Health, 'Significance of Knowledge in Children on Self-Protection of Sexual Abuse: A Systematic Review' (2023). Koblinsky, Sally, and Nory Behana. "Child Sexual Abuse: The Educator's Role in Prevention, Detection, and Intervention." *Young Children* 39, no. 6 (1984): 3–15.

CONCLUSION

The complex interplay between the right to freedom of religion and belief and the right to sexual education underscores the nuanced challenges faced within the Americas. The jurisprudence of the Inter-American Court of Human Rights (IAtCHR) and the opinions of the Inter-American Commission on Human Rights (IACHR) provide crucial insights into navigating these tensions while upholding fundamental human rights principles.

The right to freedom of religion and belief, enshrined in international human rights instruments, is integral to the diverse democracies of the Americas. However, its exercise must be balanced with other rights, particularly the right to sexual education, which is essential for the well-being and autonomy of individuals, especially children and adolescents.

While the right to freedom of religion and belief is fundamental, it is not absolute and may be subject to legitimate restrictions. The parameters established by the Inter-American system emphasise that any restriction must be prescribed by law, serve legitimate purposes, and be necessary in a democratic society.

In the context of sexual education, the imperative to provide accurate and comprehensive information transcends religious particularities. It is a public health issue that requires education free from stereotypes and discrimination. The reluctance of some countries to embrace sexual education, often influenced by religious groups, poses significant challenges to the protection of human rights, particularly the rights of vulnerable groups such as children, women and LGBTQ+ individuals.

The stance of the IACHR against measures that hinder sexual education, such as the prohibition of gender theory in Paraguay, underscores the importance of promoting education that respects diversity and fosters understanding. Sexual education is not about indoctrination but rather about empowering individuals to make informed decisions and safeguarding them from abuse.

Moreover, in cases where parental beliefs conflict with the right to sexual education, there must be a legal consideration regarding the legitimacy of the intervention on the right to education in order to safeguard the interests of the children and, at the same time, respect the right of the parents and legal guardians to ensure the minors receive an education aligned with their beliefs.

Therefore, the dynamic dialogue between the right to freedom of religion and belief and the right to sexual education requires careful navigation, guided by the principles of non-discrimination, access to information, and the best interests of individuals. By upholding these principles, the Americas can progress towards a society that respects diversity, promotes human dignity, and ensures the holistic well-being of all its citizens.

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