

RELIGIOUS FREEDOM IN THE ERA OF COVID-19: WHAT'S HAPPENING IN BRAZIL?

LIBERDADE RELIGIOSA NA ERA DO COVID-19: O QUE ESTÁ ACONTECENDO NO BRASIL?

LIBERTAD RELIGIOSA EN LA ERA DE COVID-19: ¿QUÉ ESTÁ PASANDO EN BRASIL?

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ÁREA(S) DO DIREITO: Direitos Humanos; Direito Internacional; Direito religioso.

Abstract

In current days the importance of Religious Freedom has been discussed throughout the world. As the pandemic of COVID-19 reaches all societies, in all of its levels, different spheres of rights are affected. The text analyzes briefly the role of the Human Right of Religious Freedom during the Pandemic of COVID-19 in the country of Brazil.

Keywords: Human rights. Religious freedom. COVID-19. Brazil.

Resumo

Nos dias atuais, a importância da liberdade religiosa tem sido discutida em todo o mundo. À medida que a pandemia do COVID-19 atinge todas as sociedades, em todos os seus níveis, diferentes esferas de direitos são afetadas. O texto analisa brevemente o papel do Direito Humano da Liberdade Religiosa durante a Pandemia do COVID-19 no país do Brasil.

Palavras-chave: Direitos humanos. Liberdade religiosa. COVID-19. Brasil.

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Resumen

En los días actuales, la importancia de la libertad religiosa se ha discutido en todo el mundo. A medida que la pandemia de COVID-19 llega a todas las sociedades, en todos sus niveles, se ven afectadas diferentes esferas de derechos. El texto analiza brevemente el papel del Derecho Humano de la Libertad Religiosa durante la Pandemia de COVID-19 en el país de Brasil.

Palabras clave: *Derechos humanos. Libertad religiosa. COVID-19. Brasil.*

The COVID-19 pandemic represents one of the greatest challenges in both global health and religious practice today, presenting the entire world with a series of humanitarian, financial, social and political challenges, which do not spare faith-based actors and institutions.

Much like the daily routines of people and businesses, religious and cultural rituals have been derailed by the coronavirus pandemic. While it is something to be discussed whether the banning of gatherings for religious purposes hinders the freedom of faith it is important to think of ways to keep people safe and allow other forms of worship.

Faith leaders and communities are critical actors in the current crisis and there is a rapidly growing set of actions and statements. The need to engage religious communities is quite well appreciated by public health officials. There is, however, much room for specific measures to translate that awareness to practice.

Fear, stigma, and discrimination are wide concerns among faith communities, and responses can and should focus on ways to address it whether coming from the government or civil society.

In March, the Berkley Center for Religion, Peace & World Affairs and World Faiths Development Dialogue promoted a Consultation on COVID-19 starting a worldwide taskforce noting that health and religious freedom are both fundamental and that we can have both, in different manners than we are used to. It also acknowledge that is often the religious communities that do the groundwork and are most aware of people's needs.

At 8.5 million square kilometers and with over 211 million people, Brazil is the world's fifth-largest country by area and the sixth most populous, good conditions for a melting pot of different religions.

Brazil has a developing free-market economy that is the ninth largest in the world by nominal Gross Domestic Product (GDP). Brazil has some of the world's most abundant renewable and nonrenewable resources, and is one of the world giants of mining, agriculture, and manufacturing. It also has a strong and rapidly growing service sector.⁴

The country experienced a period of economic and social progress between the years of 2003 and 2014, when more than 29 million people left poverty and inequality declined significantly⁵.

In Brazil religious groups are free to establish places of worship, train clergy, and proselytize without being required to register. Brazil has lower restrictions, in fact, than the United Kingdom and the United States, where restrictions have been rising. Brazil, the Democratic Republic of the Congo, Japan, Philippines and South Africa have been recognized by the Pew Research Center as countries with the least restrictions and hostilities on religion as of 2014.⁶

The authors Alves Pinto, T., & Souza Alves, R. (2020) mentioned:

Brazil represents a compelling case in international human rights law and, more specifically, on issues related to freedom of religion or belief. On the one hand, the country plays a prominent role in international relations, as it is a Founding Member of the United Nations (UN) and remains active in the organisation. Brazil voted in favour of the Universal Declaration of Human Rights (UDHR) in 1948[...] It has also ratified without reservations human rights treaties which provide for the protection of freedom of religion or belief, such as the International Covenant on Civil and Political Rights (ICCPR), and the American Convention on Human Rights (ACHR) [...] On the other hand, the Brazilian government seems to struggle to effectively incorporate international human rights standards from the documents mentioned above. The legislative branch has been slow to translate international treaties into domestic legislation and, in at least one instance, legislators have added more limitations to qualified rights than the ones set in international treaties, an issue which could affect freedom of religion or belief in the country. In addition, the Brazilian judiciary seems to pay little attention to international human rights law when deciding cases related to freedom of religion or belief, including those which have already been implemented in the legal system.⁷

⁴ Britannica. Brazil: The Economy. <https://www.britannica.com/place/Brazil/The-economy>. Accessed in: 17 mar. 2020.

⁵ World Bank. Brazil: Overview. <https://www.worldbank.org/en/country/brazil/overview>. Accessed in: 17 mar. 2020.

⁶ Religious Freedom Institute. Brazil: A lesson in the peaceful navigation of religious change. <https://www.religiousfreedominstitute.org/cornerstone/2016/7/14/brazil-a-lesson-in-the-peaceful-navigation-of-religious-change> Accessed in: 17 mar. 2020.

⁷ Alves Pinto, T., & Souza Alves, R. (2020). Investigations on the Use of Limitations to Freedom of Religion or Belief in Brazil, *Religion & Human Rights*, 15(1-2), 77-95. doi: <https://doi.org/10.1163/18710328-BJA10004> Accessed in: 04 may 2020.

In fact, due to the diversity of its cultures and its heritage, this country boasts an array of religious ideals and affiliations⁸. The country is known for tax exemption to churches and religious communities. In addition, the ministry of foreign affairs grants to important religious leaders special diplomatic passports that can be valid for up to five years.

The country is a party to the International Covenant on Civil and Political Rights⁹. The Federal Constitution of the country provides that freedom of conscience and belief is inviolable and that free exercise of religious beliefs is guaranteed, as a fundamental right. In addition, the Constitution prohibits federal, state, and local governments from either supporting or hindering any specific religion.¹⁰ The insertion as a fundamental right means that, in Brazil, freedom of religion or belief cannot be removed from the Constitution as a result of amendments.¹¹

During the COVID-19 crisis, the country has gotten the attention of international media because Brazil's Coronavirus deniers are in positions of power.

Besides, religious freedom in Brazil has shown to have most of the population's support, as well as a really good level of multiculturalism and inter-faith peaceful movements. Unfortunately, there is also a noticeable growth in religious intolerance brought by specific faiths, especially against the African religions.

Brazil has a wide variety of religions and is undergoing a major shift in its history as far as census estimates go. According to the 2010 census, an estimated 64.6 percent of the population is Roman Catholic and 22 percent is Protestant. Approximately 60 percent of Protestants belong to Pentecostal churches, 18 percent belong to "mainstream" Protestant churches, and 22 percent belong to other Protestant groups.¹²

⁸ Brazil.za. Religion. <https://www.brazil.org.za/religion.html>

⁹ UNITED NATIONS TREATY COLLECTION. **International covenant on civil and political rights**. https://treaties.un.org/pages/viewdetails.aspx?chapter=4&clang=_en&mtdsg_no=iv-4&src=ind. Accessed in: 03 jun. 2019.

¹⁰ United States Department Of State. 2017 Report on Religious Freedom: Brazil. <https://www.state.gov/reports/2017-report-on-international-religious-freedom/brazil/>. Accessed in: 17 mar. 2020.

¹¹ Alves Pinto, T., & Souza Alves, R. (2020). Investigations on the Use of Limitations to Freedom of Religion or Belief in Brazil, *Religion & Human Rights*, 15(1-2), 77-95. doi: <https://doi.org/10.1163/18710328-BJA10004> Accessed in: 04 may 2020.

¹² Brazil's Changing Religious Landscape <https://www.pewforum.org/2013/07/18/brazils-changing-religious-landscape/>. Accessed: 02/05/2020.

The Christian self-identification remains nonetheless a strong denominator for national identity that outshines the popular religions, which are often regarded as part of the personal spirituality of an individual, but not as the foundation for religious self-identification¹³

Other Christian groups constituting less than 1 percent of the population include Jehovah's Witnesses and The Church of Jesus Christ of Latter-day Saints. Atheists, agnostics, those who claim no religion, and those whose religion is unknown make up roughly 8 percent of the population.

Other groups, each constituting less than 1 percent of the population, include Buddhists, Jews, Muslims, Hindus, and African and syncretic religious groups such as Candomble and Umbanda.

There are a small number of adherents of indigenous religious beliefs. According to the 2010 census, there are 817,000 Amerindians in Brazil; however, only 63,082 declared that they belonged to an indigenous religion. Most are nowadays Christian although they often keep part of their own tradition. The term "indigenous religion" overshadows the wide diversity of the beliefs and practices of the Amerindian population in Brazil, which can be divided as belonging to 305 aboriginal nations, with 274 different languages¹⁴.

Assessments of the number of Muslims vary. According to the 2010 census, there are approximately 35,200 Muslims, while the Federation of Muslim Associations of Brazil states the number at approximately 1.5 million. Other observers estimate the number of Muslims to be between 400,000 and 500,000. There are significant numbers of Muslims in Sao Paulo, Rio de Janeiro, Curitiba, and Foz do Iguacu, as well as in smaller cities in the states of Parana and Rio Grande do Sul.¹⁵

¹³ Schmidt, B. (2016, July 07). Contemporary Religions in Brazil. Oxford Handbooks Online. Retrieved 11 Mar. 2020, from <https://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199935420.001.0001/oxfordhb-9780199935420-e-50>.

¹⁴ Schmidt, B. (2016, July 07). Contemporary Religions in Brazil. Oxford Handbooks Online. Retrieved 11 Mar. 2020, from <https://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199935420.001.0001/oxfordhb-9780199935420-e-50>.

¹⁵ .United States Department Of State. Brazil. <https://www.state.gov/wp-content/uploads/2019/01/Brazil-2.pdf>. Accessed in: 17 mar. 2020.

According to the Jewish Confederation of Brazil, there are approximately 125,000 Jews, 65,000 of whom reside in Sao Paulo State and 25,000 in Rio de Janeiro State. Many other cities have smaller Jewish communities.¹⁶

The growing religious pluralism in Brazil has sparked strategies and paths in order to transform and consolidate the relationship of religious groups with the public sphere. Driven by their growing religious and demographic power, large Pentecostal and Neo-Pentecostal churches, for example, began to use mass media to implement policy in recent decades.

It must be recognized that a religious market, as in the case of Brazil, has impacted the escalation of religious disputes that oppose Catholic and Evangelical denominations with influence in the public sphere, especially in the political arena and in the electronic media.

Considering that many religions don't have gatherings as a simple, friendly way to fellowship its members, the social distancing restrictions are causing a profound impact in the social and cultural traditions of many religions in Brazil.

From a standpoint of a timeline of facts related to COVID-19, it is important to understand that Brazil had its first known contact with coronavirus on February 9th, when a group of thirty-four Brazilians living in China were repatriated and quarantined in the country. By February, 20th there were still no confirmed cases, only one suspected in the state of São Paulo.

By the end of February, Brazil still had no confirmed cases but several activities started to operate with caution, flights from specific countries were also monitored as they arrived in the airports of Brazil. Some churches, temples, synagogues and mesquites started having additional measures regarding the virus.

The nation-wide known religious leader Edir Macedo, from the Universal Church, published in his social media channels around March 15th a video asking his followers not to worry about the virus. The video was later deleted from his page.¹⁷

On March 25th, the Brazilian President published a new decree to include religious activities of any kind as essential activities, according to the recommendations and determinations of the Ministry of Health. A new law was also

¹⁶ United States Department Of State. 2018 Report on International Religious Freedom: Brazil. <https://www.state.gov/reports/2018-report-on-international-religious-freedom/brazil/>. Accessed in: 17 mar. 2020.

¹⁷ Istoé. Não se preocupe com o coronavírus diz Edir Macedo em vídeo. <https://istoe.com.br/nao-se-preocupe-com-o-coronavirus-diz-edir-macedo-em-video/>. Accessed: 02/05/2020.

drafted, allowing employers to suspend workers' contracts for 4 months, but due to public pressure, this particular article was deleted from the original decree draft.¹⁸

The decision on adding religious activities to the list of essential activities was commented by several different religious leaders all over the country. In a public statement, the National Conference of Bishops of Brazil (CNBB), representing the Catholic Church in the country, noted: "Considering, therefore, that the guidelines issued by the competent authorities of the Ministry of Health indicate social distance, the churches, if the bishops consider it so, can remain open, however, in the way it has been done: individual prayers, online transmissions etc. There is no way to understand that the legal instruments mentioned above may force the reopening of the churches, much less for the practice of any type of agglomeration."

Nun Coen, official missionary of the Zen Buddhist tradition Soto Shu stated: "Religious services, attendance to followers, is important. It can be done virtually. We must not bring people together and we must not cause people to pass through the streets and come to crowds of the faithful. Pope Francis himself says his Mass alone. The same must be respected here in Brazil for all religious and spiritual traditions: taking care of your followers, of people who may be having difficulties and need spiritual comfort."

The Sheikh Rodrigo Rodrigues, from the Islamic Center of Paraná stated "Religiosity is not something that is only proven inside the temple. It is something that is proven with social responsibility. Religiosity takes precautions and follows the guidelines of specialists and doctors, so we advise all Muslims to remain in their homes and to follow the guidelines. Mosques will continue with activities suspended until this pandemic passes or subsides."

Later, a Federal Judge in Rio de Janeiro, overruled the presidential decree and stated that religious activities were not essential.¹⁹ Each State Governor and City Mayor ruled since this decision as they wished; in some cases, against the Constitution. The city of Porto Alegre and many others, for example, closed several religious buildings.

¹⁸ Câmara dos Deputados. Relatório. <https://www2.camara.leg.br/atividade-legislativa/comissoes/comissoes-permanentes/cdhm/noticias/organismos-internacionais/view>. Accessed: 02/05/2020.

¹⁹ BBC. Justiça determina que cultos religiosos não sejam considerados serviços essenciais. <https://www.bbc.com/portuguese/brasil-52144775>. Accessed: 02/05/2020.

Some unfortunate events took place, such as the interruption of a worship service of the Anglican Church in the city of Poços de Caldas, Minas Gerais. It is worth noting that all religious gatherings are inviolable according to the Brazilian Constitution. The event was being broadcasted online and the building had 5 people inside. Other than interrupting the worship service, the local city officer also threatened to have the police arrest those that were gathered to broadcast the event because they were acting against the common good and public health.

Tavares and Lageado, both cities in the state of Rio Grande do Sul, in Southern Brazil, published a decree in which any kind of religious worship service could not be held regardless of the agglomeration of people.

On March 31st, a webinar promoted by J. Reuben Clark Law Society in Brazil and The Brazilian Institute of Law and Religion where it was noted that the closing of temples, when the Ministry of Health recommendations are followed, is illegal and goes against several Constitutional principles. The exercise of faith cannot be withheld in a pandemic, under the penalty of undermining human dignity and life.

On the evening of March 31st, The Federal Regional Court of the 2nd Region (TRF2) based in Rio de Janeiro (RJ) ruled against the local ruling made in Duque de Caxias (RJ), which had suspended some effects of the President's decree, regarding the essentiality of the religious activities.

In his text, while ruling against the decision made in Duque de Caxias, the judge Roy Reis Friede said that "the moment of world pandemic and public calamity cannot be used to allow the perpetration of affront to the Constitution of the Republic and the consecrated Principle of the Separation of Powers".

The National Association of Evangelical Jurists - ANAJURE asked in a public note for a general understanding that the decision didn't allow meetings to happen again but recommended that the worship may be done through broadcasting and other online methods. They also clarified that the decision of TRF2 made it clear that the Presidential decree to declare religious activities essential is in full validity.

The month of April sees the confluence of three major religious holidays all over the world - Christian Holy Week, Jewish Passover and the start of the Muslim holy month of Ramadan - observed by half of the world's population. In normal times, these holidays provide opportunities for followers to gather in homes and places of

worship for ancient practices: sharing meals, reading scripture, joining in prayer. Yet, the different religious communities were of good help in the country.²⁰

Regardless of the higher need for worship, in a situation of crisis, it is part of the responsibility of religions worldwide to call their communities to stay and pray at home. “In times of unprecedented crisis there is need to listen to our faith leaders, armed with faith and science, and to our medical establishments, and our governments, and common sense – all of which guide us that temporarily staying away from public spaces – including temples, mosques, synagogues, churches, gurudwaras – to avoid the risk of infecting one another, may well be the most effective means of saving lives,” the PaRD members Religions for Peace and ACT alliance say in a joint statement on the current COVID-crisis.²¹

Different news websites announced that Brazil’s churches have landed on the front lines of a disagreement between state governors and President Jair Bolsonaro over the states’ quarantine measures designed to contain the spread of the new coronavirus. Even in States where religious activities are now allowed most sects have chosen not continue their in-person worship services.²²

On the 2nd of April, in Forquilha city, State of Santa Catarina, local police stopped a prayer session held in a home with 5 people. The news and the police report weren't clear as to if people gathered there to pray or if they were simply residents. The case was anonymously denounced to the police which interrupted the prayer session and asked the participants to stop. The Constitution states that the home is inviolable and so is the religious activity: the action goes against both.

In a note, several institutions such as the OAB-PR - the Parana state section of the Brazilian Bar Association - recommended the religious institutions to respect the Ministry of Health’s instructions, but stated that in no way there is a need to interrupt the services that are ongoing through other means of communication.

On April 7th, the Brazilian Minister of Justice and Public Safety, Sergio Moro, gathered virtually with ANAJURE for a live event in which they discussed the actions of the Ministry to take special care of these liberties. The case of Santa Catarina was

²⁰ USIP. Religions Confront the Coronavirus. https://www.usip.org/blog/2020/04/religions-confront-coronavirus?fbclid=IwAR3rVY0A576ImSBjygoXKbX4YAlh_BHHH8qRJSw-JBI96zCcCcNIIEC4FCQ. Accessed in 02/05/2020.

²¹ PaRD. Religion in times of COVID-19. <https://www.partner-religion-development.org/members/religion-in-times-of-covid-19/>. Accessed in 02/05/2020.

²² Christianity Today. Why Brazil churches closed. <https://www.christianitytoday.com/news/2020/april/why-brazil-churches-closed-coronavirus-covid-19-bolsonaro.html>. Accessed in 02/05/2020.

discussed where the religious ceremony held in a private house was interrupted. The Minister also said that the eventual use of excesses may be investigated.

In April 10th, the Interamerican Human Rights Commission - CIDH published a resolution named "PANDEMIA Y DERECHOS HUMANOS EN LAS AMÉRICAS", which refers to Religion in three of its articles:

21. Asegurar que en caso de establecerse un estado de excepción: i) se justifique que existe una excepcionalidad de la situación de emergencia en cuanto a su gravedad, inminencia e intensidad que constituye una amenaza real a la independencia o seguridad del Estado; ii) la suspensión de algunos derechos y garantías sea únicamente por el tiempo estrictamente limitado a las exigencias de la situación; iii) las disposiciones que sean adoptadas resulten proporcionales, en particular, que la suspensión de derechos o garantías constituya el único medio para hacer frente a la situación, que no pueda ser enfrentada mediante el uso de las atribuciones ordinarias de las autoridades estatales, y que las medidas adoptadas no generen una mayor afectación al derecho que sea suspendido en comparación con el beneficio obtenido; y iv) las disposiciones adoptadas no sean incompatibles con las demás obligaciones que impone el derecho internacional, y no entrañen discriminación alguna fundada, en particular, con motivos de raza, color, sexo, idioma, religión u origen social.

22. Asegurar que ninguna medida de excepción sea, en sí misma o por sus efectos, discriminatoria y contraria al derecho internacional. Un estado de excepción no debe ser utilizado para generar propaganda a favor de la guerra o apología del odio nacional, racial o religioso que constituya incitación a la discriminación, hostilidad o violencia.

23. Abstenerse de suspender el derecho al reconocimiento de la personalidad jurídica; el derecho a la vida; el derecho a la integridad personal y la prohibición de tortura, tratos inhumanos, crueles y degradantes; la prohibición de esclavitud y servidumbre; el principio de legalidad y retroactividad; la libertad de conciencia y religión; la protección a la familia; el derecho al nombre; los derechos de la niñez; el derecho a la nacionalidad, y los derechos políticos.

The State of Santa Catarina announced that any activities that gather people, including religious activities and school or college classes are prohibited until May 31st. The State of Sao Paulo Governor, Joao Doria Jr., threatened jail for those violating quarantine.

The prominent constitutionalist Pedro Lenza has manifested his opinion on social media explaining that some states are committing abuses regarding the right of locomotion (to come and go). He said that he is totally in favor of measures of social distancing but that imprisonment because of a municipal or state decree regarding the fundamental right of locomotion is unconstitutional, illegal and absolutely abusive.

ANAJURE also launched an emergencial platform for the reporting of religious liberty and other fundamental civil rights abuses called 'ANAJURE Observatory of Fundamental Civil Liberties'.

Brazil enjoys a relative level of religious freedom, but it is not exactly a safe haven for all religious activities. It is hard to say whether the illegal facts listed here that took place against religious gatherings during the COVID-19 scenario is a reflex of preexisting prejudice or merely a legal misunderstanding. Hopefully lives will be spared protecting both the right to the freedom of religion and strictly following pandemic safeguards.

Only time will tell whether Brazil becomes a major global force for religious freedom. While that is not entirely clear at this point, it is important that organizations get together to continually share the need for religious freedom, to fight intolerance and encourage the population to denounce the cases of intolerance they witness.

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