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## The Long Road to Religious Freedom in Peru

Guillermo García-Montúfar Sarmiento\* and Daniel Alegre Porras\*\*

### I. INTRODUCTION

When the *Brigham Young University Law Review* published the article *Antecedents, Perspectives, and Projections of a Legal Project about Religious Liberty in Peru*,<sup>1</sup> we did not imagine that parliamentary discussions regarding the approval of this bill would be postponed for such a long time.<sup>2</sup> This seemed unthinkable when considering the significance of the purpose of the regulation, which is to achieve the full exercise of religious freedom and other related fundamental freedoms. These proposals acknowledge the multicultural reality of Peru and the growing membership of religious organizations outside the Catholic Church. Many of these organizations currently constitute important factors in social development, particularly because of their commitment to participate

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1. Guillermo García-Montúfar & Elvira Martínez Coco, *Antecedents, Perspectives, and Projections of a Legal Project About Religious Liberty in Peru*, 1999 BYU L. REV. 503. As an appendix, the article in question included an outline of a legislative bill on Religious Freedom, which was prepared as a work document that served as a discussion topic. This discussion took place with some members of the International Academy for the Freedom of Religion and Belief. They came to Peru in June of 1999 to participate in the forum “The Constitution and Religious Freedom in Peru,” which was organized by the above academy in cooperation with the Ministry of Justice.

2. The initiatives and proposals for the approval of a legal bill for Religious Freedom and the subsequent promulgation of the act date back to 1997, when the Ministry of Justice crafted an initial legal bill on the guardianship of religious freedom and the State’s cooperation with religious groups. See García-Montúfar & Martínez Coco, *supra* note 1. This bill was criticized by the Director of Ecclesiastical Affairs, who was of the opinion that many of its points were already being applied by provisions of Law or by recognized practice, and that it might “cause false expectations and suspicions between the interested parties with the consequent political repercussions and possible controversies.” *Id.* at 522.

On the other hand, Congressman Natale Amprimo Pla of the We Are Peru Democratic Party decided to adopt the legal bill prepared by Professors García-Montúfar and Martínez Coco in 1999; he presented it to the Congress of the Republic of Peru’s Commission for Constitution, Regulations, and Constitutional Accusations on October 3, 2001 (Record No. 894–2001) for its approval. For more on this issue, see Guillermo García-Montúfar & Moisés Arata Solís, *Advances in Religious Liberty in Peru*, 2004 BYU L. REV. 385.

in charitable activities that benefit the less fortunate sectors of the population.

It is not the intention of the authors of this Article to ignore the importance that the Catholic Church has had and continues to have as a molding element of our society. Neither is it the authors' intention to diminish the Catholic Church's work for the benefit of the less fortunate, for that would be inaccurate. Simply put, we wish to reflect on the fact that the coexistence of the Catholic Church with other religious organizations—based on different principles and dogmas, yet with the same purposes as the former—demands that legislative efforts be aimed at establishing rules and regulations that would allow for the consolidation of secularism for a State proclaimed as such in the Political Constitution of Peru.<sup>3</sup> This means guaranteeing the right of all persons, whether individually or collectively, to profess a religious belief, and guaranteeing equal treatment of the different religious organizations by applying the principle of equality before the law.

Now, nearly eight years after embarking on the journey toward religious freedom, we warn that the road to promulgation of a new legal act is still beset by challenges. Indeed, on June 9, 2008, the Commission for the Constitution and Regulation of the Congress of the Republic of Peru debated the approval of the Draft Opinion for Proposition 1008/2006-CR, known as the Religious Freedom and Equality Act.<sup>4</sup> This Draft Opinion recommended approving said bill, but with a substitute text.<sup>5</sup> As far as the approval of this opinion is concerned, the commissioners' discussion basically centered on two aspects: The first deals with the definition of the concept of

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3. CONSTITUCIÓN POLÍTICA DEL PERÚ 1993, art. 50 (“Within a realm of independence and autonomy, the State recognizes the Catholic Church as an important element in the historical, cultural, and moral formation of Peru and grants it its cooperation. The State respects other confessions and can establish methods of cooperation with them.”).

4. The aforementioned Legal Bill has been presented by the following members of Congress: Mercedes Cabanillas Bustamante, Jhony Alexander Peralta Cruz, César Alejandro Zumaeta Flores, María Helvezia Balta Salazar, Luis Humberto Falla Lamadrid, and Alfredo Tomás Censano Sierralta of the Peruvian American Revolutionary Popular Alliance party; Mario Fernando Peña Ángulo of the Popular Action Party; and Alda Mierta Lazo Ríos de Hornung and Juan David Perry Cruz of the National Restoration Party. The Legal Bill includes nearly in its entirety, the proposal prepared by Professors García-Montúfar and Martínez Coco. *See* García-Montúfar & Martínez Coco, *supra* note 1.

5. The substitute text refers to Proposition 1008/2006-CR. Henceforth, we will refer to the substitute text for the aforementioned legal bill as “Substitute Text for the Draft Opinion.”

“religious entity,” along with the requirements that a group of persons needs to meet to be considered an entity. The second aspect relates to the rules and regulations for tax exemptions for religious entities, which involves elucidating the first aspect of the discussion. In the end, the Commission did not approve the draft opinion.

On July 8, 2008, Congressman Raúl Castro Stagnaro of the National Unity Party presented the national Congress with Proposition 2560/2007-CR. This bill proposes the promulgation of an act called the Religious Freedom Exercise Act.<sup>6</sup> Thus far, the bill has been sent to the Commission for Constitution and Regulation of the Congress of the Republic for analysis and ruling. In our opinion, although this last legislative proposition was noteworthy, it actually turned out to be unnecessary. During the session on June 9, 2008, the Commission for Constitution and Regulation of the Congress of the Republic already determined the flaws that marred the Substitute Text for Proposition 1008/2006-CR. It would now be necessary to modify the parts of the bill that constituted the very grounds for terminating any further discussion of the matter.

Thus, at present, the Commission for Constitution and Regulation of the Congress of the Republic of Peru has two bills pending analysis and ruling, both of which refer to the same topic—the exercise of religious freedom and the treatment that the State must seek to grant religious entities—which will delay even further the promulgation of this important Act.

Below we touch on the central aspects of Proposition 1008/2006-CR (Proposition 1008), Proposition 2560/2007-CR (Proposition 2560), and the Substitute Text to the Draft Opinion, to contribute some ideas for a future—and hopefully not too distant—religious freedom act for Peru.

## II. PROPOSITION 1008, PROPOSITION 2560, AND THE SUBSTITUTE TEXT FOR THE DRAFT OPINION: PRINCIPAL ASPECTS

### *A. Principle of Secularism*

The Substitute Text for the Draft Opinion, with its “Principle of

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6. This legal bill was drafted by the following members of Congress: Raúl Castro Stagnaro, Martín Pérez Monteverde, José Eucebio Mallqui Beas, Fabiola María Morales Castillo, Javier Bedoya de Vivanco, María Lourdes Alcorta Suero, and Wálter Menchola Vásquez of the National Unity Party.

Secularism” formula, summarizes its First Article, which states that “in a system of neutrality and autonomy, the State maintains harmonious relationships of mutual understanding with the religious groups established in Peru.” Shortly thereafter follows a note that the text aims to develop the last paragraph of Article 50 of the Political Constitution<sup>7</sup> through a legal bill for equal treatment in the relations that the State forms with religious groups distinct from the Catholic Church.<sup>8</sup>

However, the secular nature of a State is not solely determined by the framework of relationships it can establish with the various religious groups that have a presence in its territory. Hence, that aspect cannot, by itself, be raised to the level of being an organizational principle. Indeed, since secularism assumes the disassociation of the State with any religious group, it provides for the freedom of the individual to choose and profess a religious creed or to refrain from so doing. This freedom prevails as a basis and a guarantee for this type of governmental organization. The State must recognize and protect the exercise of this fundamental freedom in its individual and collective manifestations.<sup>9</sup> Furthermore, in terms of this last dimension of the exercise of religious freedom, the State will be responsible for administering the corresponding regulative mechanisms in order for groups of persons who profess, practice, and teach the same dogmas, principles, and religious purposes to gain legal recognition as a legal entity. In their relationship with the State, this will enable them to further their purposes without any limitations beyond those provided by law. Thus, there cannot be a framework of relations between the State and the different religious

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7. CONSTITUCIÓN POLÍTICA DEL PERÚ 1993, art. 50 (“The State respects other confessions and can establish methods of cooperation with them.”).

8. The “Concordat,” an agreement between the Vatican State and the Peruvian State signed on July 19, 1980, and approved by Legal Decree No. 23211, defines the relationship between the two entities.

9. Rodrigo Borja skillfully states:

[T]o the degree that secularism ensures that the State does not profess any religion, it is furthermore a guarantee for each person that no political coercion shall obligate him/her to adopt any religion or renounce the one he/she professes. Thus, this system is not only the most appropriate at the present time; it is also the only one that can guarantee full religious freedom to the benefit of all religions as it establishes between them a rivalry of good conduct that is highly favorable to the development of public morality.

RODRIGO BORJA, PRINCIPIOS DE DERECHO POLÍTICO Y CONSTITUCIONAL [BEGINNINGS OF POLITICAL AND CONSTITUTIONAL LAW] 240 (2d ed. 1992).

groups without prior guarantees to protect the right of all persons to freely choose and profess a religion.

Based on the above, we believe that any reference in the text of a future religious freedom act to the principle of informative secularism for the Peruvian State must consider the two previously mentioned aspects. Specific sections in Proposition 1008, Proposition 2560, and in the Substitute Text for the Draft Opinion regulate these aspects.<sup>10</sup> The proposed issue should not be taken as merely pertaining to the organization of the stipulations of the bills that are under review. One must consider that the inclusion in the text of a future law of a secular concept of the State—as expressed by Section 1 of the Substitute Text for the Draft Opinion—would show that the regulation is aimed at those Religious Organizations or entities that lie outside the Catholic Church, to which, as previously indicated, a particular statute corresponds. This could lead to the erroneous interpretation that the target of individual and collective rights pertaining to religious freedom that the law would recognize is reserved for people who profess and practice a religious confession different from the Catholic faith, even though such rights constitute freedoms any person or association can argue for or exercise regardless of the religion they profess.

Considering the above, we understand that in the text of a future religious freedom act for Peru, the recognition of individual and collective rights that enable the individual to exercise such a freedom should not be preceded by a declaration such as the one included in Section 1 of the Substitute Text for the Draft Opinion. In fact, that declaration should be used for defining the State's relationship with religious groups outside of the Catholic Church.

On the other hand, a word of caution is that, unlike Article 50 of the Political Constitution, which regulates the State's relationship with the Catholic Church within a framework of independence and autonomy, the Substitute Text for the Draft Opinion provides for the system of relations between the State and the Religious

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10. In Proposition 1008, the reference to the State's recognition and protection of the fundamental right to freedom of conscience and religion, its different manifestations, and related liberties is set forth in Section 1. *See* Proposition 1008/2006-CR, § 1. On the other hand, in Proposition 2560, these realms are regulated by Section 1 (State protection and guarantee of the right to religious freedom) and Section 2 (individual and collective exercise of religious freedom in all its forms of expression). *See* Proposition 2560/2007-CR, §§ 1–2.

Organizations to be developed within the framework of neutrality and autonomy.<sup>11</sup>

In the relationship established by virtue of the Concordat between the Catholic Church and the Peruvian State, the nature of “independence” is defined as “political power consisting of the Church not being hierarchically subject to the State.”<sup>12</sup> This “involves the freedom to act for the fulfillment of such independence in accordance with the legal framework established in the Constitution and the laws.”<sup>13</sup> Autonomy, meanwhile, is understood as the political power of “internal self-determination,”<sup>14</sup> which “involves the freedom of decision on administrative, financial, and disciplinary levels for the fulfillment of the purposes of such autonomy in accordance with the legal framework provided by the Constitution and the laws.”<sup>15</sup>

With respect to the Substitute Text for the Draft Opinion, the autonomy that is recognized for the religious organizations in their relationship with the State occupies the same dimension as that which the Catholic Church is recognized to possess, the only limitations being those provided by law, public order, and good customs. However, when it comes to the nature of “neutrality,” we are dealing with a concept that, albeit novel to the regulatory discourse,<sup>16</sup> essentially assumes a secular perspective as it refers to the abstention of the State to favor any religion at all. Hence, this concept is one that concerns the relationship between the State and religious organizations, rather than the rights (autonomy and independence) by virtue of which such religious groups are organized. Thus, in the realm of the relationship between the State and the religious organizations, “neutrality” must manifest itself as

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11. Section 1 of the Substitute Text of the Draft Opinion proposes the following formula: “Within a regime of neutrality and autonomy, the State shall maintain harmonious relations of mutual understanding with the Religious groups established in Peru.” Proposition 1008/2006-CR, Substitute Text of the Draft Opinion, § 1

12. VÍCTOR GARCÍA TOMA, II ANÁLISIS SISTEMÁTICO DE LA CONSTITUCIÓN PERUANA DE 1993 [SYSTEMATIC ANALYSIS OF THE PERUVIAN CONSTITUTION OF 1993] 71 (Universidad de Lima ed., 1998).

13. *Id.*

14. *Id.*

15. *Id.*

16. It is novel in the sense that the Constitutional Text has not been employed to qualify the relationship between the State and the religious groups outside the Catholic Church.

the abstention of the State from qualifying or disqualifying the postulates, dogmas, and principles upon which the various religious groups are based. This does not make such religions exempt from obeying the law, public order, and good customs. Finally, in what concerns the relationship between the State and the various religious groups, we believe that—apart from referring to neutrality as the position of the State with regard to religious groups, and in addition to autonomy as the right of the latter to regulate themselves, the only limitations being those imposed by law, public order, and good customs—a future religious freedom act for Peru must recognize the attribute of independence; that is, the absence of any hierarchical subjection of the religious groups to the State.

On the other hand, Section 5 of Proposition 2560 proposes equality and mutual cooperation as guiding principles in the relationship between the State and the religious organizations.<sup>17</sup> With regard to this proposition, we must keep in mind that, technically speaking, “equity” constitutes a means of interpreting the legal rules, by virtue of which, these are applied to particular cases not included in the proposed rules. The purpose of this is to produce, for these proposed rules, the result that the legislators expect for the general set of rules. Thus, equity is the proper interpretation and application of the legal rules based on the criteria of justice.

In our opinion, by employing the concept of “equity,” the text of Section 5 of Proposition 2560 intends to signify the principle of legal equality that, when reversed, becomes the fundamental right to equality before the law.<sup>18</sup>

In terms of the relationship between the State and religious groups, the right to equality before the law requires that these groups indiscriminately<sup>19</sup> enjoy the rights, obligations, and benefits

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17. Proposition 2560/2007-CR, § 5 (“Duty of Cooperation: The principles of equality and cooperation govern the relations between the Peruvian State and the Religious Entities. The State has the obligation to pursue the common good. Religious Entities collaborate toward this goal. The State promotes and facilitates the participation of Religious Entities in the pursuit of the common good.”).

18. CONSTITUCIÓN POLÍTICA DEL PERÚ 1993, art. 2, ¶ 1 (“Each person is entitled to: . . . 2. Equality before the law with no discrimination whatsoever on grounds of sex, race, religion, opinion, or language.”).

19. As a logical correlate between the right to equality before the law recognized to the benefit of the religious groups, Propositions 1008 and 2560 and the Substitute Text for the Draft Opinion agree on the proposal to regulate the guarantee against discrimination. This



granted them by the Political Constitution and the law. Next on the path of the principle of legal equality for religious organizations is Section 10 of Bill 1008,<sup>20</sup> which in the Substitute Text for the Draft Opinion appears with the same text and, due to a mere technicality, is known as Section 4.

Finally, we consider Proposition 2560 in regard to the inclusion of the principle of “mutual cooperation” between the State and religious creeds, inasmuch as it is the means of a transition for the State from occupying a “passive”<sup>21</sup> position of respect for the fundamental rights (without interfering) to becoming the promoter of “political, social, and economic conditions that will allow for the full and complete exercise of these rights in everyday life.”<sup>22</sup> In other respects, the incorporation of the principle of cooperation in the text of a future religious freedom act for Peru is evidence of the purpose of endowing the various religious organizations with a treatment—in terms of their relations with the State—that is similar to that which the Catholic Church receives as ordered by Article 50 of the Political Constitution.

*B. The Recognition of Individual Prerogatives that Make Up the Content of the Right to Freedom of Conscience and Religion.*

Article 2, Paragraph 3 of the Political Constitution of Peru

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guarantee not only assists people with the individual or collective exercise of their religious beliefs, it also reflects on the individuality of the subject and becomes a guarantee of guardianship for religious groups. In the aforementioned legal bills, the guarantee against discrimination is set forth in the following text: “Any action or omission that, whether directly or indirectly, discriminates against a person on basis of his/her religious beliefs is unlawful.” Proposition 2560/2007-CR, § 4.

20. Proposition 1008/2006-CR, § 10 (“Equality of Religious Entities before the Law: The State recognizes the diversity of the Religious Entities. All of these are equal before the law and, consequently, have the same rights, obligations, and benefits granted by law.”).

21. Faced with the fundamental rights issue—in an amen to the principles of Constitutionalism that demand that each individual is guaranteed “a sphere of personal liberty where governmental power must not intervene”—more often than not, the State adopts a “passive” position. *See* BORJA, *supra* note 9, at 332. Thus, for these rights to be claimed and exercised, their recognition and becoming positive rules suffice, whereby the State leaves behind its role of promoter of the conditions that might otherwise secure the complete exercise of the fundamental rights.

22. VÍCTOR GARCÍA TOMA, *I ANÁLISIS SISTEMÁTICO DE LA CONSTITUCIÓN PERUANA DE 1993* [SYSTEMATIC ANALYSIS OF THE PERUVIAN CONSTITUTION OF 1993] 58 (Universidad de Lima ed., 1998).

recognizes the fundamental right of all people to have freedom of conscience and of religion as individuals or as organizations. It guarantees the exercise of these freedoms by prohibiting persecution based on ideas or beliefs; by not considering opinion a crime; and by the free, public practice of all religions insofar as it does not cause offense to good morals or interfere with public order.

In accordance with the aforementioned Constitutional text, a law that develops the right to freedom of conscience and of religion must seek to define the content of these prerogatives. By “content,” we are referring to the set of acts and desires that a person, whether individually or collectively, can carry out and claim under the protection of the constitutional recognition of these rights. However, the definition of the content of the rights in question—that is, the aforementioned set of acts and desires—must be expressed prominently or, if preferred, indisputably in the text of a future religious freedom act for Peru. Based on the richness of human dignity, the exercise of these freedoms individually and collectively unfolds a vast degree of needed protection that cannot be limited by the text of the Act nor ignored by political powers. Thus, by employing an “open clause,” the definition of the content of the right to freedom of conscience and of religion adequately fulfills the purpose of Article 3 of the Political Constitution<sup>23</sup> in that positive recognition of such rights does not exclude those that make them interrelated or any other similar rights that are based on human dignity. According to the above, a word of caution holds that the content of these rights—as in the case of all subjective rights—features two areas of application for all persons: first, the area of freedom of practice, in which the individual can exercise anything not prohibited by law, public order, or custom and second, the area of opposition where the right consists of a prerogative against any and all external pressure on the individual, predominately by the State.

Under these premises, Proposition 1008 and Proposition 2560, as well as the Substitute Text for the Draft Opinion—though the

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23. CONSTITUCIÓN POLÍTICA DEL PERÚ 1993, art. 3 (“The list of the rights established in this chapter [the reference is to the list of fundamental rights recognized in Chapter I, Fundamental Rights of the Person, Title I of the Constitution, Of Person and Society] does not exclude other rights guaranteed by the Constitution, nor any other rights of similar nature or those based on the dignity of man; or on the principles of the sovereignty of the people, on the democratic State of law; and on the republican way of government.”).

latter merely reiterates what is proposed in Proposition 1008—develops the content of freedom of conscience and religion by listing a series of individual prerogatives that fall within the sphere of freedom of practice. This content concerns the rights to the following: (i) profess, change, or abandon one’s chosen religious belief;<sup>24</sup> (ii) individually or collectively practice the corresponding acts of worship<sup>25</sup> of the chosen religious belief, whether in public or in private; (iii) baptize, marry, or bury in accordance with one’s religious beliefs;<sup>26</sup> (iv) receive assistance from ecclesiastical representatives of one’s own creed at health establishments, barracks, and other buildings belonging to the armed forces or law enforcement, and correctional facilities;<sup>27</sup> (v) associate for the development and collective practice of religious activities and to express oneself in public for religious purposes;<sup>28</sup> (vi) receive, inform,

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24. The profession of a particular religious belief constitutes an individual’s self-determination before the religious phenomenon. This consists of a process that presupposes the confrontation of the individual with the dogmas of the different religious beliefs to which the individual might have access. The individual opts for what he or she considers the vehicle of true revelation, with dogmas being understood as “the set of a priori beliefs that constitute the ideological structure and the system of myths of all religious organizations.” See BORJA, *supra* note 9, at 239. This intellectual and volitive process is a manifestation of the right to the freedom of conscience, based on which the individual provides himself or herself with a religious education.

25. “Worship” may be considered the element that enables the build-up of religious collectivities to the extent that it constitutes the exteriorization of specific religious dogmas that are shared by a group of persons. In this regard, Borja skillfully states the following:

Worship . . . is the external expression of religion that gives rise to collective relationships and human conduct that form part of social life, and which must be regulated by the rule of Law. Unlike a dogma, it is no longer about a socially invisible relationship between the individual and his/her only or plural god; rather, it is about collective acts and public manifestations to which the Law cannot remain impassive and will have to discipline and either allow its realization or disallow it on grounds of morality and public order.

*Id.*

26. Proposition 2560 does not make any explicit reference to these prerogatives.

27. In Proposition 2560, there is a very generic specification that all persons are entitled to receive religious assistance from their own creed. See Proposition 2560/2007-CR, § 6(g). However, it goes into greater detail and precision when considering the right to “[h]ave the ability to perform religious assistance to members at law enforcement and military establishments, hospitals, and Government correctional facilities” as a collective right pertaining to religious freedom. See *id.* § 7(f).

28. These prerogatives constitute expressions of the fundamental rights to association and peaceful meetings when applied to the area of religious freedom and these rights are recognized by Peru’s Constitution. See CONSTITUCIÓN POLÍTICA DEL PERÚ 1993, art. 2, ¶¶ 12–13 (“Every individual has the right . . . to assemble peacefully without arms. Meetings on private premises or those open to the public require no previous notice. Those held in public

and instruct in religious teachings through any public or private means and preach, reveal, and/or spread one's dogmas or doctrines in public without prior censorship;<sup>29</sup> (vii) choose for oneself or for minors or incompetent persons under one's guardianship the religious education that one deems appropriate; (viii) keep the day of rest that one's religion considers sacred, adopting the necessary precautions to avoid harming employment or educational relationships; (ix) enter into oaths of one's own religious convictions or abstain from so doing.

Likewise, with regard to the area of opposition of the law, the following personal prerogatives are recognized as they pertain to the freedom of conscience and religion: (i) not being obligated to manifest one's religious conviction as a condition for access to education or for holding public office, and (ii) not being obligated against one's will to perform the acts of one's freely-chosen religious belief.

We must point out that the set of individual prerogatives pertaining to the freedom of conscience and of religion—which are developed by Propositions 1008 and 2560 along with the Substitute Text for the Draft Opinion with their own peculiarities and with the previously mentioned reservations—stand as an open clause as previously explained in this section. Hence, the law protects all expressions of freedom of religion and of worship, even when not expressly stipulated in a regulatory text and insofar as they do not violate the law, public order, or good customs.

### *C. Conscientious Objection*

Article 2 of the Political Constitution of Peru entitles all people to the fundamental right to freedom of conscience.<sup>30</sup> Conscience is

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squares and thoroughfares require advance notification of authorities, who may prohibit them solely for demonstrated reasons of public health or safety. . . . [Individuals also have the right] to form associations and establish foundations and various forms of legal organization for nonprofit purposes with no previous authorization and in accordance with the law. Such organizations may not be dissolved by an administrative resolution.”).

29. Likewise, these prerogatives further constitute manifestations of the right to the freedom of information as protected in the Peruvian Constitution. *See id.* at art. 2, ¶ 4 (“Every individual has the right . . . to freedom of information, opinion, expression, and the dissemination of thought through the spoken or written word or in images, by any means of social communication, and without previous authorization, censorship, or impediment whatsoever, in accordance with the law.”).

30. *Id.* at art. 2, ¶ 3 (“Every individual has the right . . . to freedom of conscience and

“the capacity to perceive oneself in the attachment to an idea; a concept; or a belief of philosophical, political, religious, or other nature.”<sup>31</sup> Thus, conscience is intimately connected to human identity, which it defines in accordance with the beliefs or conceptions that one adheres to or rejects. Given that conscience is an intrinsic human attribute, freedom of conscience will facilitate expression of this attribute. This implies the following two assumptions: (i) the abstention of the State to impose a particular way of thought upon the individual, thereby ensuring the validity of the right to freedom of opinion and expression<sup>32</sup> and (ii) the ability of an individual to associate with others in a manner that is consistent with his or her own convictions and beliefs.

When understood in this context, the freedom of conscience even arms the individual with the ability to disagree with the fulfillment of a legal requirement when it is contrary to the individual’s own convictions and beliefs, exactly the way Isabel de los Mozos warns.<sup>33</sup> Indeed, the right to conscientious objection consists precisely of the constitutional ability of the individual to place one’s own convictions and beliefs in opposition to the fulfillment of a legal duty. However, we cannot reach the extreme of allowing a generalized exemption for disobedience to the law in the name of the right to conscientious objection; this would cause society to sink into anarchy. To prevent this, as Gabaldón López explains, the exercise of the right to conscientious objection can only depend on “a system of coherent thought that is sufficiently organic and sincere.”<sup>34</sup> In other words, “we are not talking about just any attitude capable of relativizing court orders.”<sup>35</sup>

In the realm of religious freedom—which depends on the

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religion, both in individual and associated forms. There may be no persecution because of ideas or beliefs.”).

31. GARCÍA TOMA, *supra* note 22, at 58, 77.

32. Historically, rejection of freedom of conscience is exemplified by fundamentalist states where individual freedom succumbs to the directives and dogmas of the political party in power.

33. Isabel De Los Mozos Touya, *Conscientious Objection and Civil Disobedience*, 1, available at [http://www.funciva.org/uploads/ficheros\\_documentos/1196964687\\_objeci+|n de conciencia isabel de los mozos.doc](http://www.funciva.org/uploads/ficheros_documentos/1196964687_objeci+|n de conciencia isabel de los mozos.doc) (understanding that the discrepancy with the fulfillment of a legal obligation is the result of the individuality of the subject, of one’s own concept of his or her surroundings, and individual moral conscience).

34. *Id.* at 3.

35. *Id.*

convictions and beliefs about divinity that individuals create for themselves and consider the truth—the right to conscientious objection presupposes the opposition of these religious convictions to the fulfillment of a legal duty. Thus, as an example, a manifestation of the right to conscientious objection is the refusal of a physician to perform a therapeutic abortion because such an action would violate the laws of his religious beliefs as they relate to the observance of the fifth commandment of God’s Law: thou shalt not kill.<sup>36</sup>

Proposition 1008, Proposition 2560, and the Substitute Text of the Draft Opinion include the right to conscientious objection as a freedom that is connected to the right to religious freedom. Hence, though not expressly mentioned, Proposition 1008 requires the State to recognize and protect “the freedom of conscience and of religion as a fundamental right of all persons in all its forms of expression and/or practice. *This . . . include[s] all other [related] freedoms and fundamental rights.*”<sup>37</sup>

As for Proposition 2560, Section 2 provides that the right to religious freedom includes the right to conscientious objection for all people. We consider this declaration imprecise; according to what we have indicated in this section, the right to conscientious objection constitutes a manifestation of the right to freedom of conscience.

Finally, the Substitute Text of the Draft Opinion exercises great care in defining the content of the right to conscientious objection and the aspects to take into account to determine whether the opposition to the fulfillment of a legal duty is really part of one’s moral convictions of the subject.<sup>38</sup>

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36. *Exodus* 20:13 (King James). The Catholic enumeration of the Ten Commandments places “thou shalt not kill” as the fifth commandment, while other Christian denominations place it as the sixth commandment.

37. Proposition 1008/2006-CR, § 1 (emphasis added).

38. See Religious Affairs Act, Substitute Text for the Draft Opinion, § 10, Nature and Definition (“The fundamental rights of freedom of conscience and religious freedom include the right to conscientious objection. . . . Conscientious objection is the timely-declared opposition of a person to the fulfillment of a legal obligation on grounds of his/her moral or religious convictions.”); see also *id.* § 11, regarding the valid exercise of the right to conscientious objection (“In cases of doubt about the abstention from a particular legal duty, the following shall be considered: (a) The degree of constraint of conscience in the examined alleged act. (b) The subject’s own acts and the congruence between his/her conduct and his/her beliefs. (c) The level of the regulative foundation of the legal duty that is subject of objection. (d) The existence of less burdensome measures that reduce the repression of the subject’s personal convictions. (e) The relationship between the degree of realization of the

*D. Religious Entities*

A right—when understood as the power, faculty, or prerogative of an individual—constitutes an intersubjective category to the extent that it is experienced in relation to other individuals, a phenomenon that is a response to the social condition of human beings. Thus, far from being a disassociating element, rights contribute to the cooperation of individuals, enabling them to associate to reach common goals or, in some cases, individual goals that are not in themselves conflicting or counterposed.

In terms of religious freedom, like in other areas of life, the recognition of others as similar to oneself in the profession of the same dogmas and the practice of the same rites and acts of worship as ways to relate to divinity, determines the makeup of religious communities. Such religious communities establish a determined organic structure for themselves. This structure is intended to maintain the unity of the group focused on the achievement of specific goals that range from the practice and preaching of their religious dogmas to the realization of social assistance in the areas of healthcare and education to the benefit of the less fortunate, regardless of the religious preference of the recipients.

However, even if religious communities adopt a certain level of organization, it is difficult for them to maintain cohesion if the State does not grant them legal recognition as an entity that is separate from the members of which it is composed. We believe that this legal recognition covers two aspects of one single reality: the allocation of the religious community's entitlement to its own rights and duties, and the organic structure of the religious community. The legal recognition of the religious communities in these two aspects is what determines their acquisition of the legal entity attribute.<sup>39</sup> It is important to note that being entitled to its own rights and duties, as exercised through its organic structure, enables the religious community to establish legal relations with different entities,

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freedoms of conscience and religion and the degree of detriment to other constitutional rights and/or property and third parties.”).

39. The Civilist Doctrine holds that it is more appropriate to refer to the concept of legal rights and duties in that through their application, an attempt is made to designate all centers of allocation of rights and duties whose sole ontological support is human. In this manner, the reality of law is that there are individual subjects to legal rights and duties (conceived, natural persons) and collective entities (non-profit organizations, committees, funds, societies).

including the State. Moreover, the organic structure enables cohesion of the community as it issues internal rules and statutes that allow it to guide the individual conduct of each one of its members in order to accomplish its intended purposes.

With respect to religious organizations, Propositions 1008 and 2560, as well as the Substitute Text for the Draft Opinion, contain provisions for regulating religious communities as subjects of legal rights and duties that are different from the individuals of which they are composed. These provisions have to do with the conceptualization of the religious communities, the rights to which they are entitled, and their applicable property system. As we indicated in the introduction of this Article with respect to the approval of the Substitute Text of Proposition 1008, these aspects of the Draft Opinion were the greatest objects of criticism during the debate on this matter, which was held by the Commission of Constitution and Regulation in a session on June 9, 2008.

When it comes to defining the concept “religious entity,” both Proposition 1008 (Articles 5 and 6) and the Substitute Text for the Draft Opinion (Articles 12 and 13) seek to distinguish between two realities: the group of people who profess the same religious belief and that of the religious entity as subject to legal rights and duties. With respect to the association of people as a social phenomenon, both propositions contain the following declaration in Sections 5 and 12, respectively: “For the purpose of this act, the term church, confession or religious community is understood as an entity comprised of natural persons who profess a certain religious belief that they practice, teach and transmit.”<sup>40</sup> On the other hand, concerning the judicial phenomenon of legal persons, in Articles 6 and 13 respectively, the two propositions state: “For the purposes of this bill, churches or religious organizations or communities of any credence, as well as their federations and confederations, are considered Religious Entities.”<sup>41</sup>

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40. Proposition 1008/2006-CR, § 5, Definition of Church, Confession or Religious Community. The Substitute Text for the Draft Opinion contains a similar statement. Religious Affairs Act, Substitute Text for the Draft Opinion, § 13, Definition of Religious Entities. Proposition 2560 also contains an identical statement. Proposition 2560/2007-CR § 5, Definition of Religious Entities.

41. Religious Affairs Act, Substitute Text for the Draft Opinion, § 13, Definition of Religious Entities. Proposition 1008 contains a similar statement. Proposition 1008/2006-CR, § 6, Definition of Church, Confession or Religious Community. Proposition 2560 contains an identical statement. Proposition 2560/2007-CR § 5, Definition of Religious



The established differentiation is not in vain; the concept of religious entity assumes that a group of natural persons—who profess, practice, teach, and preach a particular religious belief—adopt an organic structure; a set of rules that regulate their internal functioning, their relationships with other entities, and the entitlement to their own rights and obligations, i.e., the recognition of their status as a legal entity. In contrast, the reference to the concept of church, confession, or community as a group of persons is devoid of legal character. Consequently, in it is vested no more legal entity than that of its own members when considered individually as entitled to their own rights and duties.

Nonetheless, if the concept of “religious entity” is related to the legal concept of “subject of legal rights and duties,” the organic and regulatory structure, in addition to its corresponding framework of rights and obligations, falls under the regulation of common law. This specifically applies to provisions related to formalities that these entities must observe to acquire the attribute of “legal entity,” which formalities are regulated by the general provisions of Articles 76 to 79 and 80 to 98 of the Civil Code. In particular, these last provisions provide for the subject of legal rights and duties known as “non-profit organizations.”<sup>42</sup> The Substitute Text for the Draft Opinion approaches this reasoning,<sup>43</sup> whereas Proposition 1008 is removed from it when it suggests that religious entities have status as legal entities under Public Law.<sup>44</sup>

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Entities. The texts that are summarized here are the ones that at the time were proposed by Professors García-Montúfar and Martínez Coco as an appendix to a previous article. *See* García-Montúfar & Martínez Coco, *supra* note 1.

42. With respect to non-profit organizations that are subjects of legal rights and duties which belong to the “legal person” category, the Civil Code states that the “existence of a legal person of private law begins on the day of entry in the corresponding registry unless otherwise provided by law.” CIVIL CODE art. 77, ¶ 1 (Peru). As for the term non-profit organization, Article 80 of the Civil Code defines it as “the stable organization of natural or legal persons, or both, who pursue a non-profit goal through a common activity.” CIVIL CODE art. 80, ¶ 1 (Peru). Meanwhile, later, the Civil Code states that “the rule must be confirmed by a notarial instrument unless otherwise provided by law. In the case of a religious organization, its internal rules are regulated in accordance with rules and regulations approved by the corresponding ecclesiastical authority.” CIVIL CODE art. 81 (Peru).

43. Religious Affairs Act, Substitute Text for the Draft Opinion, § 15, Religious Entities as legal entities (“Religious entities are legal persons of private law. Their organization, functions, powers and duties, and representation are governed by their own rules and/or regulations.”).

44. Religious Freedom and Equality Act, 1008/2006, § 7 (“Religious entities are legal persons of Private Law. Their organization, functions, powers and duties, and representation

Proposition 2560, on the other hand, provides a clearer definition of religious entities as religious non-profit organizations (according to Article 81 of the Civil Code) that have their own structure, and whose main objective is to profess and practice a common religious belief based on their own dogmas and morals. Nevertheless, the proposal of the aforementioned bill contradicts common law—to which it refers—when it states that to be considered as such, a religious entity must possess a historic tradition and enjoy a conspicuous presence in the country.

Indeed, if the religious entity is constituted as a religious, civic, non-profit organization, in its act of organization it should not be subjected to requirements greater than those established by common law, for which it suffices that the common purpose sought by a stable organization of persons be religious in nature, and that the appropriate ecclesiastical authority exists.<sup>45</sup> Otherwise, the validity of a provision crafted under these terms evidently becomes unconstitutional as it detects a discriminatory precedent (a violation of the right to equality before the law) to the rule that only certain groups of people (those who profess beliefs that are traditional or have a long-established presence in the country) can organize themselves as religious entities. Not to be forgotten is the fact that the ontological foundation of the constitution of a religious entity resides in the joint experience of a group of persons with respect to what they consider true divinity. Thus, conditioning such an experience on the observance of parameters such as tradition or presence would be to deny individuals their own religious freedom.

#### *E. The Rights of Religious Entities*

In the previous section we indicated that religious entities, as legal persons, constitute centers of allocation of rights and duties

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are governed by their own rules and/or regulations.”). With respect to this legal bill, there are some who have criticized it on the grounds that legal persons of public law are created by law and not on the merit of a private act as can be inferred from the aforementioned legal bill. According to the critics, if they are admitted as legal persons of public law, it would reach the absurdity of issuing a law for each religious entity that would attempt to form a non-profit organization. The legal bill, in its eagerness for equality, seeks for religious entities outside the Catholic Church to enjoy the same legal status as the Catholic Church, that is, the status of legal person of public law, which is granted to the Catholic Church pursuant to Article 2 of the Concordat.

45. CIVIL CODE arts. 80–81 (Peru).

that are different from those that might apply to the members who make up such entities. The rights of religious entities constitute prerogatives intended to guarantee the conservation of their autonomy and independence in the face of government interventionism. Many of those rights, however, will in turn reveal themselves to be concrete manifestations of the previously mentioned attributes. An example of this is the right to self-regulation, which guarantees religious entities that the State will not subject them to a way of organization that can be required of them through use of public coercion. This way, the right to self-regulation guarantees the independence of religious entities with respect to government power, which most definitely involves their exemption from observing the law.<sup>46</sup>

On the other hand, the right to self-regulation constitutes a manifestation of the attribute of autonomy that pertains to these entities, allowing them to freely establish the following: an organic structure; the designation of their ecclesiastical authorities; the approval of internal rules and regulations to which the functioning of their internal organs will become subject as well as of the by-laws that will govern the practice of religious worship; and administration of their financial and other resources. With respect to the rights pertaining to the independence and autonomy of religious entities as legal persons, the parliamentary initiatives that we have been discussing recognize the following: (i) the right for religious entities to establish their ecclesiastical organization with their appertaining hierarchies;<sup>47</sup> and (ii) the right to freely elect their members.<sup>48</sup>

Likewise, the recognition of religious entities as legal entities not only grants them entitlement to rights that enable them to maintain

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46. In the constitutional state or state of law, the actions of the state are no longer subject to the unrestricted discretion of the governing authority, but to observance of the law, which constitutes the supreme expression of popular sovereignty. In this sense, the law limits the power of the state “to safeguard an atmosphere of free agency in behalf of individuals,” whereas individuals remain subject to observing the law. *See* BORJA, *supra* note 9, at 310.

47. Proposition 1008/2006-CR, § 15(c) (recognizing the right of religious entities to organize); Substitute Text for the Draft Opinion, § 8(c) (recognizing the right of religious entities to organize); Proposition 2560/2007-CR, § 8 (defining religious entities as non-profit organizations with their own structure).

48. Proposition 1008/2006-CR, § 15(a) (recognizing the right for religious entities “[t]o freely choose their ministers”); Substitute Text for the Draft Opinion, § 8(a) (recognizing the right for religious entities “[t]o freely choose their ministers”); Proposition 2560/2007-CR, § 7(c) (recognizing that “collective rights grant entitlement to . . . [d]esignating and educating members”).

their independence and autonomy before the government political power, but it also grants them powers intended to guarantee the realization of their religious and charitable activities. In what pertains to these aspects, Proposition 1008 and the Substitute Text for the Draft Opinion propose the recognition of the following rights for religious entities: (i) the right to meet freely to perform the acts of their religious worship, which constitutes a manifestation of the fundamental right to meet peacefully within the realm of religious relationships; and (ii) the right to establish places of worship or meeting places for religious purposes. This also involves aspects linked to the freedom to lease and acquire real estate for the establishment of said places. The contracts that religious entities enter into and ownership of acquired property will remain subject to common law provisions.<sup>49</sup> Other proposed powers include the following: (iii) the right to spread their religious dogmas, which constitutes an expression of the right to freedom of expression and spreading of thought through verbal or written words or images through any social means of communication without prior authorization or censorship or any hindrances whatsoever, the only limitations being those provided by law;<sup>50</sup> (iv) the right to establish and maintain educational and cultural systems, missionary training centers, institutes of religion or centers of religious instruction; and (v) the right to establish and maintain charitable institutions, homes, hospitals, printing establishments, and any other service entity related to their doctrine. This fosters the participation of these entities as important actors in the social development of the country by rendering welfare services to the less fortunate. The text also proposes (vi) the right to create, participate, patronize, and foster non-profit organizations and funds for the realization of their purposes. This prerogative is based on the right to freedom of association, which is recognized by the Political Constitution of Peru.<sup>51</sup> The exercise of this prerogative is subject to the applicable common law rules.<sup>52</sup> Finally, the proposed powers also include (vii) the right to request and receive all kinds of voluntary contributions;

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49. Proposition 2560/2007-CR, § 7(b).

50. Proposition 2560/2007-CR § 7(d) (“Transmit and spread its own creed.”).

51. *See* Constitución Política del Perú 1993, art. 2, ¶ 13.

52. *See* Proposition 2560/2007-CR, § 7(a) (“To associate for religious purposes provided that such association does not violate morality and public order.”).

(viii) the right to establish private cemeteries in observance of the applicable legal provisions, especially all health aspects; and (ix) the right for public bodies to grant identity documents to religious ministers and missions and endow them with the necessary access to perform their functions.

Proposition 2560 holds that the recognition of collective rights consists of entities “maintaining relations with their own organizations or with other religious groups, whether domestically or abroad.”<sup>53</sup> And—like Proposition 1008 and the Substitute Text for the Draft Opinion—Proposition 2560 recognizes the right to religious assistance to members in law enforcement and military installations, hospitals, and government correctional facilities.<sup>54</sup>

We ought to point out that just like the recognition of the individual prerogatives that make up the content of the right to freedom of conscience and religion is formulated through the use of an open clause to protect the provisions of Article 3 of the Political Constitution of Peru as they pertain to the rights of religious entities, the regulatory propositions of a future religious freedom act for Peru—which regulates such rights—will also consist of open clauses. Hence, whether or not recognized by other regulating bodies outside the law in question, all prerogatives—which allow these entities to assume the necessary conditions to act upon social life through the practice of their religious dogmas and beliefs and the performance of their welfare activities—will constitute rights for these entities. Thus, religious entities will also have the right to a good reputation; to the inviolability of the home; to the inviolability of their private communications and documents; to petition public authorities in writing; and to peace and quiet, among other things.

*F. The Registry of Non-Catholic Religious Groups and Their Treatment in Legal Bills for Religious Freedom*

Through Executive Decree No. 03-2006-JUS, the Administration of Interfaith Affairs—part of the National Justice Administration within the Ministry of Justice—received the responsibility to implement the Registry of Non-Catholic

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53. Proposition 2560/2007-CR, § 7(e).

54. Proposition 2560/2007-CR, § 7(f); Proposition 1008/2006-CR, § 14(e); Substitute Text for the Draft Opinion, § 6(e).

Confessions<sup>55</sup> for the purpose of fulfilling the provisions of Executive Decree No. 26-2002-JUS. This rule amended various articles of the Rules for the Organization and Functions of the Ministry of Justice.<sup>56</sup>

Later, through Ministerial Ruling No. 377-2003-JUS, the Registry of Non-Catholic Confessions was implemented on a voluntary and administrative basis.<sup>57</sup> Along with this, the requirements and procedure for, and legal effects of, inclusion in the registry were established.

The legal bills that are the focus of this Article assume different positions with regard to the Registry of Non-Catholic Religious Groups. Thus, Proposition 1008 proposes the creation of a new registry of religious entities, the implementation of which will eliminate the Registry of Non-Catholic Religious Groups.<sup>58</sup> As for the religious entities recorded in the Registry of Non-Catholic Religious Groups, the proposal provides for their transfer to the new Registry without the need for a new recording process.<sup>59</sup>

The First Transitory Provision in Proposition 2560, on the other hand, guarantees the permanency of the Registry of Non-Catholic

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55. Decreto Supremo [Executive Decree] No. 03-2006-JUS art. 2 (Feb. 27, 2006). This section provided for the implementation of the Registry of Non-Catholic Confessions and established that legal persons that will be duly entered in Public Registries would be considered non-Catholic confessions for the purpose of the aforementioned Registry.

56. In accordance with Section 80A of Executive Decree No. 26-2002-JUS, the Administration of Interfaith Affairs is responsible for coordinating and promoting relations between the Executive Branch and other, non-Catholic confessions when so determined by the State for the strengthening of religious freedom. As part of the functions of this Administration, it may do the following: a) lead and direct actions intended to promote the relations between the Executive Branch and the relations of the Justice Sector with other non-Catholic confessions as determined by the State to strengthen religious freedom; b) respond to inquiries and coordinate competency issues; c) issue reports and process approvals of foreign donations intended for the confessions; and d) any additional functions as assigned by the National Director. Decreto Supremo [Executive Decree] No. 26-2002-JUS § B.

57. In the Peruvian legal body of laws there is a concrete difference between Legal Registries and Administrative Registries. Thus, it is specified that Legal Registries “are such where entry becomes a true declaration of private, subjective rights.” Hence, they have the virtue that “published information has substantive effects incident in the legal realm, devoid of third parties or guarantees of truthfulness.” The Administrating Registries, on the other hand, “are merely informative, statistical, or fiscal or serve to confirm requirements to grant some kind of authorization . . . they do not assure the truthfulness of the information.” For further information in this regard, see GONZALES BARRÓN, GUNTHER. *TRATADO DE DERECHO REGISTRAL INMOBILIARIO* 74 (2004).

58. Proposition 1008/2006-CR, § 16.

59. *Id.*

Religious Groups, but under the different appellation of “Registry of Religious Entities,” which in Section 9 is labeled National Registry of Religious Entities. Within the framework of the aforementioned legal bill, entry in the registry in question grants religious entities access to the benefits established for civic non-profit organizations. In spite of this, the First Transitory Provision of Proposition 2560 contains a regulation that would be unconstitutional if it took effect. Indeed, inasmuch as it regulates the legal proposal—which states that “Religious Entities recorded in the Registry created by Executive Decree No. 03-2003-JUS and implemented by Ministerial Ruling No. 377-2003-JUS, are required to comply with the entry requirements set forth in the Regulations of this act. In the event of failure to comply, their record shall be deleted”<sup>60</sup>—it assumes a possible retroactive application of the Act and of its regulations. This is contrary to the principle of immediate application of legal rules regulated by Article 103 of the Political Constitution of Peru<sup>61</sup> and by Article III of the Preliminary Title of the Civil Code.<sup>62</sup>

As far as the Substitute Text for the Draft Opinion is concerned, there is no clear indication whether the Registry of Non-Catholic Religious Groups will remain in effect, or whether, in accordance with Proposition 1008, it will be deactivated and replaced by a new registry called “Registry of Religious Entities.”<sup>63</sup> In this regard, we believe that the Substitute Text for the Draft Opinion does propose that the Registry of Non-Catholic Religious Groups remain in effect,

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60. Proposition 2560/2007-CR, Primera Disposiciones Transitorias [First Transitory Provision].

61. CONSTITUCIÓN POLÍTICA DEL PERÚ 1993, art. 103 (“Special laws can be issued when so required by the nature of things, but not on the grounds of differences between persons. *From the time it goes into effect, the law applies to the consequences of the existing legal relationships and situations and has no retroactive force or effect*, except, in both propositions, in criminal matters when it benefits the inmate. The law can only be repealed by another law. It shall also be rendered null and void when declared unconstitutional by any ruling. The Constitution does not protect abuse of rights.”) (emphasis added).

62. CIVIL CODE tit. I, art. III (Peru) (“The law shall apply to the consequences of existing legal relationships and situations. It shall have no retroactive force or effect except when provided by the Political Constitution of Peru.”).

63. Substitute Text for the Draft Opinion, § 23. (“Through the National Justice Administration, the Ministry of Justice registers those confessions that—by virtue of their scope; number of believers; and development of charity activities of economic, social or other nature—have achieved conspicuous presence in Peru. Said registry shall be called “Registry of Religious Entities” and has the principal purpose of recording religious entities that are capable of signing Agreements of Cooperation with the State.”). (The numbering of the section is erroneous; it should be Section 24; the section numbered 24 should be Section 25.).

but under a different name, adding as a new requirement for inclusion that the applying religious entity has achieved a conspicuous presence in Peru. Section 23 clarifies the ambiguity of the provision in reference; it states that the tax benefits referred to in the Substitute Text to the Draft Opinion shall apply to religious entities that are or will be included in the registry created by Executive Decree No. 003-2003-JUS and implemented by Ministerial Ruling No. 377-2003-JUS.

In our opinion, if we eliminate the possibility that religious entities can be legal persons under public law, it makes no sense for a future religious freedom act in Peru to regulate the deactivation of the Registry of Non-Catholic Religious Groups in order to create a new registry that, in practical terms, would have the same functions, powers, and competencies. What we need to aim for, if necessary, is to implement the amendments required by the existing registry in order for registration to constitute the requirement allowing religious entities to access specific tax benefits. As far as the granting of tax benefits is concerned, we do not believe that it is relevant that a religious entity document a historic tradition or a specific level of presence in the country.

Otherwise, the name change for the Registry of Non-Catholic Religious Groups will be necessary if the term “religious entity” is adopted in a future religious freedom act for Peru. This would entail an amendment to the Organizational and Functional Regulations for the Ministry of Justice as well as of Executive Decrees No. 26-2002-JUS, No. 03-2006-JUS, Ministerial Ruling No. 377-2006-JUS, and in all other rules that mention the Registry of Non-Catholic Religious Groups.

#### *G. A Regrettable Omission*

The right to enter into marriage in accordance with the dogmas of the religious faith professed by the marital parties is an individual prerogative that pertains to the exercise of religious freedom. This is recognized by the legal bills discussed in this Article. Nonetheless, we believe that the propositions commit a regrettable omission if they do not recognize the right of religious groups, through their authorities, to perform marriages in the dimension of such unions’ legal acts—i.e., civil marriages—a right that our Common Law



reserves for parish priests and Bishops<sup>64</sup> of the Catholic Church in the cases established by the Civil Code.<sup>65</sup>

Pursuant to Article 260 of the Civil Code, civil marriages can be performed with written authorization from the mayor, either by the parish priest or the local Bishop, insofar as the legal act is performed in hospitals or similar establishments. In such case, the parish priest or the Bishop who performs the marriage with due authorization is required to submit the marriage certificate to the Civil Registry within forty-eight hours after the ceremony.<sup>66</sup> Article 268 of the Civil Code regulates the performance of civil marriages by a parish priest or any other type of priest in the event that one of the spouses is in imminent danger of loss of life. With respect to this proposal, we must point out that there is no need for a written authorization from the mayor or the performance of any other prior legal formalities intended for marriages; rather, marriages can be recorded in the Civil Registry by simply submitting a certified copy of the marriage certificate from the parish. However, unlike Article 260 of the Civil Code, which says nothing about the applicable sanction for failing to record the marriage certificate with the Civil Registry within the established time limit, Article 268 provides that the certificate from the parish must be recorded within a year from the date of the marriage under penalty of annulment, whether or not the spouse who was in danger of loss of life survives.

Otherwise, the prerogative granted the parish priests and presbyteries of the Catholic Church by Articles 260 and 268 of the Peruvian Civil Code cannot be given to ecclesiastical authorities of non-Catholic religious groups. The argument is that the protection in Article 3 of the Political Constitution of Peru<sup>67</sup> makes it acceptable in situations of imminent danger of loss of life that the two parties be able to enter into civil marriage before a minister of their religious group insofar as the provisions of the Civil Code are not an

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64. The term "Bishop" refers to the Bishop of the Diocese. The term "Diocese," in turn, refers to the district or territory where a prelate such as an archbishop, a bishop, etc., has and exercises jurisdiction.

65. CIVIL CODE arts. 260, 268 (Peru).

66. It is important to point out that no sanctions apply to marriages entered into in this manner inasmuch as the marriage certificate is not sent to the Civil Registry Office by the parish priest or Diocese Priest within the time limit required by the regulation. This is not consistent with the sanction of annulment provided by Article 268 of the Civil Code, as we will see below.

67. CONSTITUCIÓN POLÍTICA DEL PERÚ 1993, art. 103.

exceptional rule regarding the right to marry, but rather one that supplements the inherent authority of state power in order to perform the marriage. Indeed, with regard to the civil marriage performed by the parish priests and Bishops of the Catholic Church, it is important to point out that the intervention of these clerics—the purpose of which is to substitute the public official (the mayor and, if applicable, city councilmen), who is legally endowed with the power to perform the legal act of marriage—is limited to merely requiring the parties to declare their willingness to enter into marriage in accordance with civil law without any invocation or outward expression of the rites of the Catholic faith.

However, although the assumptions contained in Articles 260 and 268 of the Civil Code confine the intervention of the Catholic clergy to the aforementioned limits, the question remains why the legislators of 1984 did not also extend this power to the supreme authority of religious organizations outside the Catholic Church. Indeed, ever since the Political Constitution went into effect in 1979, under which power the Civil Code took effect on November 14, 1984, the Peruvian State had been aligned along the principle of secularism. Moreover, the intervention of the lay clergy, like that of the Catholic clergy, would have been limited to merely performing the civil aspect of the act, that is, without any sign of religiousness.<sup>68</sup>

Perhaps the most impartial answer possible to that question lies in the fact that when the Civil Code went into effect, no administrative registry existed for non-Catholic religious groups that would have allowed the identification and recognition of their highest authorities. This was not the case with the Catholic Church; pursuant to Article 7 of the Concordat (which dates to 1980), the Peruvian Government is obligated to grant recognition for all civil purposes to those ecclesiastical leaders appointed by the Holy See to occupy a post of Archbishop, Bishop, or Coadjutor with the right to succession; Prelate; or Apostolic Representative; or to temporarily

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68. In regard to the question, it is important to point out that in 1984, there were established non-Catholic religious groups in Peru. In our opinion, their presence in the country should have been taken into account by the legislators when crafting Articles 260 and 268 of the Civil Code. Those religious groups include the following, to name a few: (i) the Evangelical Methodist Church in Peru dates back to 1877 with the First Methodist Mission, carried out by Bishop William and Archibaldo Archibaldo; (ii) The Church of Jesus Christ of Latter-day Saints, whose presence can be traced back to 1959 with the organization of the Andean Mission under Elder Harold B. Lee; and (iii) the presence of Jehovah's Witnesses, which in Peru dates back to 1945.

administer a diocese upon notification of such appointment by the Apostolic Nunciature to the President of the Republic prior to its publication.

To the degree that the Peruvian State is a secular institution, in that it recognizes the freedom of conscience and religion as fundamental rights of all people, and that it does not profess any religion whatsoever, our opinion is that—through any applicable legal amendments, and through the exceptional assumptions regulated by Articles 260 and 268 of the Civil Code—the government must lean toward allowing any person who is invested with authority from the organization and hierarchies of the religious group of the parties to the marriage to perform the civil marriage. Thus, this would apply to a minister, a bishop, a pastor, or a rabbi. In order to accredit the hierarchy of the ecclesiastical authority before the mayor and the directors of hospitals or similar establishments, we believe that such a condition can be certified by the Administration of Interfaith Affairs under the National Justice Administration of the Ministry of Justice, created by Executive Decree No. 03-2003-JUS, which is in charge of the “Registry of Non-Catholic Religious Groups.”<sup>69</sup>

#### *H. Proposal for Secular Education*

One interesting proposal in Section 16 of the Substitute Text of the Draft Opinion provides for the removal of religious education from public schools.<sup>70</sup> This section states that:

State educational institutes shall respect the right of the students to exonerate themselves from religious courses for reasons of conscience or religious convictions. In the case of minors, such exoneration shall apply whenever so expressed by the parents or the legal guardian(s).

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69. In connection with this legal bill, be aware that pursuant to Article 3, Paragraph (g) of Ministerial Ruling No. 377-20030-JUS—which implements the Registry of Non-Catholic Confessions—in order for a religious group to be entered in this Registry, among other requirements it is necessary to submit religious documentation relative to the structure and function of its organization, as well as the number of members or faithful on a national and an international level, if applicable, including an indication of the religious organization’s representatives duly identified with an indication of the training, relationship, and powers of its ministers of worship.

70. This proposal was highly criticized in the June 9, 2008, session of the Commission for Constitution and Regulations. Propositions 1008 and 2560 do not propose any regulation on this matter.

For this purpose, the State shall implement a substitute system for religious education for those students who do not desire to receive Catholic religious education.<sup>71</sup>

In Peruvian public schools, instruction in the Catholic religion constitutes a mandatory course. This is guaranteed by law in virtue of the Concordat, which in Article 19, Paragraph 2, regulates the issue as follows:

Presentation by the applicable Bishop is required for the civil appointment of professors of Catholic religion in public educational institutions, where religious instruction shall continue to be provided as a regular course topic. Professors of religion may continue in their office while the approval of the Bishop remains in effect.

In this regard, we must presume that the State's interest in teaching the Catholic religion in public schools is a response to the need to instill in the pupils the proper values of Christian morals and ethics as the foundation of an orderly society that respects one's fellow man. There is no doubt about the importance of this aspiration insofar as its importance is in agreement with the State's pursuit of the idea of the common good, which is that the individuals over whom it rules have a concept of that which is good and right, and of unity, among other values.

Nevertheless, the make-up of the State as a secular organization demands that in the areas reserved for public administration—as is the case with education—acts by the State shall unfold without infringement upon or injury to the fundamental rights of the individual. Thus, instruction by the postulates of the Catholic religion as a mandatory subject in public schools—which by definition is open to all individuals regardless of their origin, race, sex, language, religion, opinion, financial situation, or any other factor<sup>72</sup>—constitutes an infringement that on the one hand harms the right to freedom of conscience and religion. This program also violates the secular concept of the State to the degree that the State, in good faith, adopts a position of preference or privilege toward a certain religious group.

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71. Texto Sustitutorio del Proyecto de Dictamen Propuesto [Substitute Text for the Draft Opinion] art. 16.

72. CONSTITUCIÓN POLÍTICA DEL PERÚ 1993, art. 2, ¶ 2.

With regard to the foregoing, Rodrigo Borja aptly wrote:

Secular education does not teach or attack any religion whatsoever. The issue of the veracity or falsehood of the different religious creeds is not even raised. It respects the conscience of all students and their right to profess a religion or to profess none at all. It further allows for full freedom of criticism and scientific research, allowing students to seek for truth without the obstacles imposed by the dogmatic prejudices of any religion that prohibits science to go beyond the missal.<sup>73</sup>

In our opinion, public education—education for and belonging to everyone—should not feature any programs containing the instruction of any religion as part of its educational curriculum, as this must be fully understood as a rejection of the right of individuals to decide on their own religious education. Likewise, public education curriculum should not provide an education devoid of values either. Indeed, with regard to the right of individuals to decide on their own religious education, we believe that in a secular State, religious education for each individual constitutes a function that should be promoted by the religious entities, including the Catholic Church. This means the legal recognition of the right of these religious entities to establish scholastic or non-scholastic educational institutes at all levels.<sup>74</sup>

As for education in values, secular education notably

seeks morals capable of inducing man toward the truth and that which is of good report without the need for exterior imposition, but rather as his own intellectual conclusion based on his observation of the world. Hence, an imminent ethic prevails that allows all individuals to seek, according to their own conscience, “advice to live with dignity, self-respect, justice, and respect for their fellow beings.”<sup>75</sup>

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73. RODRIGO BORJA, PRINCIPIOS DE DERECHO POLÍTICO Y CONSTITUCIONAL [BEGINNINGS OF POLITICAL AND CONSTITUTIONAL LAW] 411 (1964).

74. Article 19 of the Concordat already regulates the right of the Catholic Church to, at full liberty, establish educational institutions of all levels, in accordance with domestic legislation, in the area of private education. A future religious freedom act for Peru must guarantee religious entities outside the Catholic Church the same prerogative in the area of education.

75. BORJA, *supra* note 73, at 411–12 (quoting JOSÉ INGENIEROS, HACIA UNA MORAL

In this sense, public schools in a secular State must maintain courses in civic education that provide the students with values in the areas of justice and the common good, respect for legal rules and the rights of others, patriotism, good social customs, cooperation and solidarity with their fellow beings, work as a dignifying virtue, etc. This does not require the teaching of the dogmas of a particular religious belief but simply the recognition of other religions as a value in itself.

Now, when it comes to the proposal in the Substitute Text for the Draft Opinion and a future religious freedom act for Peru, it is important to ask ourselves if it would be legally appropriate to include a text such as the one that is proposed or another one that proposes the exclusion of the teachings of the Catholic religion as a mandatory subject in public schools. With regard to this question, we must keep in mind that the Concordat constitutes an International Treaty with which both parties are required to comply. Given that it is a bilateral agreement between two States, we must also point out that it cannot be unilaterally amended by any of the parties. Thus, a law that proposes the exclusion of the teaching of Catholic religious courses in public schools would only be possible if the parties to the Treaty agreed on its amendment or, in any case, if the said Treaty provided for any of the party States to denounce it, which is not likely with the Concordat.

The legal proposition to remove Catholic religious courses from public schools must be evaluated from the same point of view; that is, by determining if the proposal does not involve a unilateral amendment to the Concordat. In this regard, Article 19 of the Concordat states that the Catholic religious course must be taught in public schools as a general education subject, or, in other words, as another subject in the curriculum or educational program. This proposition does not terminate the general educational status that Catholic religious courses currently enjoy in public schools; rather, it recognizes them as such. It does not stipulate the exclusion of this subject from the public school curriculum; instead, it rules in favor of the opportunity of students to educate themselves according to their own religious beliefs by removing themselves from a religious course in the official curriculum. That said, the proposition contained in the Substitute Text of the Draft Opinion is not contrary to the

Concordat, and, consequently, it does not constitute a unilateral amendment to the Treaty; on the contrary, it adapts it to the multid denominational reality of Peru in keeping with the respect for the fundamental right to freedom of conscience and religion.

### III. CONCLUSION

Any administrative or legislative function must seek to generate the conditions necessary to guarantee the broadest recognition of the individual and the protection of his/her fundamental rights. Only in such a manner does that which we call human dignity acquire any real value. A future religious freedom act for Peru will help place human dignity as the center and as the highest aspiration of the State. This presupposes the acceptance of the multiplicity of religious beliefs and creeds as a premise for the recognition of equal rights. Only the recognition of others as different beings, yet equal in rights, will allow for the reconciliation of conflicts and the elimination of intolerance of others, thus facilitating understanding as a tool for building a more just society where we can all live in peace and harmony.

We hope for the speedy approval of a religious freedom act for Peru.

## Appendix A

### Text of Proposition 2560

## RELIGIOUS FREEDOM AND EQUALITY ACT

### CHAPTER I

#### GENERAL PROVISIONS

#### Article 1: *Freedom of Conscience and of Religion*

In accordance with the Constitution and the international treaties and agreements entered into and/or ratified by the Republic, the State recognizes and protects the freedom of conscience and of religion as a fundamental right of all persons in all its forms of expression and/or practice. This shall include all other freedoms and

fundamental rights that are related to the freedom of conscience and of religion.

*Article 2: Unlawfulness of Discrimination on Grounds of Religious Beliefs*

Any action or omission that, whether directly or indirectly, discriminates against a person on basis of such person's religious beliefs is unlawful. These beliefs cannot be invoked to render void, restrict, or affect equality before the law that is protected by the Constitution.

*Article 3: Protection of the Exercise of Freedom of Religious Beliefs*

The State guarantees and ensures that persons, whether individually or as non-profit organizations, may freely develop their religious beliefs and activities, whether in public or in private. There shall not be persecution based on religious ideas or beliefs, and the following aspects must be safeguarded:

- a) Not being obligated in any form to manifest one's religious conviction. Official identity documents shall not contain any mention of religious beliefs or the lack of religious beliefs of a person.
- b) Attendance at any State educational institution without being ordered to show to which religious group one belongs.
- c) Receiving religious instruction at State educational institutions in accordance with such person's beliefs in such a manner as provided by law.
- d) Persons cannot be prevented or restricted from the free exercise of their rights nor be limited in access to hold national, regional, or municipal office on grounds of religion.

*Article 4: Limitations to the Exercise of Established Rights*

The exercise of all the rights expressly provided by this Act, which are derived from the freedom of conscience and of religion, shall be limited by the exercise of other fundamental rights, public order, and good customs.

Religious convictions cannot:

- a) Be invoked to abstain from fulfilling civic, political, or other duties required by the Constitution and by law beyond the exceptions provided by law and cases of conscientious objection.
- b) Take priority over the defense of the human being and respect for



human dignity as supreme goals of society and the State.

*Article 5: Definition of Church, Confession, or Religious Community*

For the purpose of this act, the terms church, confession, or religious community are understood as an entity comprised of natural persons who profess a certain religious belief that they practice, teach, and transmit.

*Article 6: Definition of Religious Entities*

For the purposes of this bill, churches or religious organizations or communities of any credence, as well as their federations and confederations, are considered Religious Entities.

Under no circumstances shall for-profit organizations be considered Religious Entities.

*Article 7: Religious Entities as Legal Entities*

Religious Entities are legal persons of Private Law. Their organization, functions, powers and duties, and representation are governed by their own rules and/or regulations.

*Article 8: State Recognition and Protection of Religious Entities*

The State recognizes Religious Entities' full capacity to enjoyment and exercise, as well as all other benefits provided by law.

The State further protects Religious Entities and facilitates their participation in the procuring of the common good.

*Article 9: Relations between the State and the Religious Entities*

The State maintains harmonious relations of mutual understanding with Religious Entities established in Peru.

*Article 10: Equality of Religious Entities before the Law*

The State recognizes the diversity of the Religious Entities. All of these are equal before the law and, therefore, have the same rights, obligations, and benefits granted by law.

*Article 11: Activities Not Protected by the Act*

Activities related to the study of or experimenting with astrophysical, psychic, or parapsychological phenomena; sooth-saying; astrology;

the spreading of ideas or values that are purely philosophical, humanistic, or spiritualistic in nature; and evil or satanic rites or other types of similar activities are not protected by this Act.

*Article 12: Unlawful Religious Publicity*

It is unlawful for third parties to use denominations, signs or other external artifacts commonly identified with being those of a Religious Entity.

*Article 13: Punishment for Hindering the Exercise of Religious Freedom and Equality*

Any person who, through act or omission, hinders the exercise of religious freedom or equality shall be punished by the Ministry of Justice with a fine of up to 03 Applicable Tax Units (UIT). In the event of a public official or officer, the sanction may also include removal from office.

The punishment shall apply without detriment to any restitution due the affected person and shall apply pursuant to the provisions of the Criminal Code for the crime of discrimination.

## CHAPTER II

### RELIGIOUS FREEDOM AND EQUALITY

*Article 14: Scope of the Freedom of Conscience and Religion*

The freedom of conscience and of religion includes, among other things, the exercise of the following faculties:

- a) Professing a chosen religious belief with full liberty and changing or abandoning any religion that one might have at any time;
- b) Practicing individually or as an organization, in private or in public, the acts of worship pertaining to one's religious belief;
- c) Commemoration of its festivities, celebration of its rites, and not being obligated to perform any of these acts against one's own will;
- d) Being baptized, entering into marriage, and receiving burial in accordance with one's religious beliefs;

- e) Receiving assistance from ecclesiastic representatives of one's own confession at health facilities, in barracks and buildings belonging to the armed forces and law enforcement, and at correctional facilities, for which purpose the respective authority shall allow access for ministers and missionaries of the Religious Entities;
- f) Meeting or practicing public expression for religious purposes and associating to develop and practice religious activities as a community;
- g) Receiving, informing, and delivering religious instruction through any medium in public or in private;
- h) Choosing the religious education that one deems appropriate for oneself or for any minors or incompetent persons subject to one's guardianship;
- i) Carrying out preaching, spreading, and/or transmitting of one's religious beliefs by the public expression of one's dogmas or doctrine without prior censorship;
- j) Swearing oaths according to one's own religious convictions or abstaining from so doing;
- k) Participating individually or as an organization in social life through acts that are appropriate to one's religious beliefs;
- l) Keeping the rest day that one's religion considers sacred without having to be obligated to study or go to work.

Article 15: *Rights of Religious Entities*

Religious Entities have, among other things, the following rights:

- a) To freely choose their ministers and facilitate the practice of their worship and the carrying out of meetings related to their religion;
- b) To establish places of worship or meeting places for religious purposes.
- c) To establish their ecclesiastical organization and its appertaining hierarchies;
- d) To freely transmit their religious belief through any kind and means of communication;
- e) To establish and maintain educational and cultural systems, missionary training centers, institutes of religion, or centers for religious instruction where formal or informal scholastic or non-scholastic education of any level and kind may or may not be taught while respecting the current legislation;
- f) To establish and maintain charitable organizations, hospital homes, printers, or any other type of service entity connected to their doctrine;
- g) To create, participate, patronize, and foster associations and funds

for the realization of their goals;

h) To solicit and receive any and all kinds of voluntary contributions;

i) To have private cemeteries insofar as the current, applicable legal requirements are met;

j) To demand of public institutions that they (i) issue identification documents to religious ministers and missions; and (ii) that they provide them with the necessary facilities to carry out their functions.

### CHAPTER III

#### REGISTRY OF RELIGIOUS ENTITIES

##### Article 16: *Administrative Nature of the Registry*

Through the National Justice Administration, the Ministry of Justice registers for administrative purposes exclusively such religious entities as should so petition.

The Registry is voluntary. To gain entry in it, the Religious Entity shall attach to its application such documentation as may affirm its founding or establishment in the country, a statement of its religious purposes and beliefs, denomination and other identifying information, as well as its functioning system.

Religious Entities entered in the Registry of Religious organizations created by Supreme Decree No. 003-2003-JUS and implemented by Ministerial Resolution No. 377-2003-JUS are not required to be entered anew insofar as the transfer of entries in the Registry created by this Act takes place.

##### Article 17: *Registry of Authorities and Agents*

Authorities or representatives of a Religious Entity that has been entered, as well as any such as may replace them in their offices according to such Religious Entities' own internal rules and/or regulations, shall be entered in the Registry referred to in the previous section.

##### Article 18: *Cancellation of Entry*

Cancellation of an entry of a Religious Entity can only take place by petition of its administrative organs or pursuant to a final judicial ruling without detriment to the validity of such Religious Entity's

legal person status.

*Article 19: Entry of Religious Entities with a Similar Name*

Religious Entities with a name that is the same as or has an obvious graphic and phonetic similitude to that of another previously registered Religious Entity cannot gain entry except by the express authorization of the latter.

CHAPTER IV

PROPERTY AND EXCEPTIONS

*Article 20: Property of Religious Entities*

Property of Religious Entities consists of property acquired in accordance with the law, and which is destined to the fulfillment of their purposes. Property of Religious Entities further consists of historical, artistic, and cultural property that such Religious Entities have created, acquired, or legitimately possess in the manner and with the guarantees established by a legal body of laws.

*Article 21: Non-seizable Property*

Real property and movable property that constitute part of the property of Religious Entities are non-seizable.

*Article 22: Donations to Religious Entities*

Donations made by natural or legal persons, whether Peruvian or foreign nationals, to the benefit of Religious Entities constitutes dividends for the latter.

Donators deduct the total amount of donations made from the taxable income to the extent provided by law.

Donations include those obtained through any type of collecting activity.

*Article 23: Exceptions*

Religious Entities are exempt from:

- a) Income tax;
- b) Transfer tax;
- c) Property tax;

d) Vehicle property tax.

*Article 24: Import of Assets*

The import of assets donated to Religious Entities is not subject to any customs tax or duty. Public institutions shall grant preferential treatment to Religious Entities included in the registry for the necessary document processing for import and entry of assets into the country.

*Article 25: Consignment of Property in the Event of Dissolution*

In the event of the dissolution of a Religious Organization, whether by internal agreement or by legal order, its highest authority shall determine to which entity with similar purposes the resulting property shall be consigned.

*Article 26: Income for Religious Ministers*

Income received by religious ministers and missionaries of religious groups for the performance of their functions is not subject to income tax.

## CHAPTER V

### AGREEMENTS

*Article 27: Agreements of Cooperation*

The Peruvian State may sign—on the national, regional, or local level—Agreements of Cooperation on issues of common interest with Religious Entities that are operating in the country and are recorded in the Registry referred to in Chapter V of this act.

Agreements may be entered into on or after the effective date of this act.

### TRANSITORY PROVISION

Sole provision: *Registry*

Insomuch as the Registry referred to in Article 16 of this Act is not implemented, the Registry created by Supreme Decree No. 003-2003-JUS and implemented by Ministerial Ruling No. 377-2003-JUS shall remain in full force and effect and shall be valid for the entering into of such agreements as are referred to by Article 27 of this Act.

#### FINAL PROVISIONS

First: *Regulation of the Act*

The Executive Branch shall regulate this act within a period of time not to exceed ninety days from the effective date of this act.

Second: *Validity of the Act*

This Act shall enter into effect one day following its publication in the El Peruano Official Journal.

## Appendix B

### Text of Proposition 2560/2007-CR

### RELIGIOUS FREEDOM EXERCISE ACT

#### CHAPTER I

#### GENERAL PROVISIONS

Article 1: *Religious Freedom*

All persons have the fundamental right to religious freedom. This right is recognized by and included in the Constitution and the International Treaties signed by the Republic of Peru. The State has the obligation to recognize it and protect it.

Article 2: *The Scope of Religious Freedom*

The right to religious freedom, whether exercised individually or as an organization, includes all its ways of expression. The public exercise of this right is free insofar as it does not offend morality,

interfere with public order, or limit others in exercising their rights.

*Article 3: Promotion of Religious Freedom*

The State promotes the exercise of religious freedom by all persons, by families, and by Religious Entities.

*Article 4: Unlawfulness of Discrimination*

Any action or omission that, whether directly or indirectly, discriminates against a person on grounds of his/her religious beliefs is unlawful.

*Article 5: Duty of Cooperation*

The principles of equality and mutual cooperation govern the relations between the Peruvian State and Religious Entities.

The State has the obligation to pursue the common good. Religious Entities collaborate toward this goal. The State promotes and facilitates the participation of Religious Entities in the pursuit of the common good.

## CHAPTER II

### RIGHTS

*Article 6: Individual Rights*

Individual rights grant entitlement to:

- a) Profess the religious belief of one's own free choice or abstain from professing any belief or religious creed.
- b) Change religious beliefs.
- c) Publicly declare one's relationship with a religious creed or abstain from manifesting any such attachment.
- d) Swear oaths according to one's own religious convictions or abstain from so doing, being entitled instead to issue a promise.
- e) Practice, individually or collectively, in public or in private, the precepts of one's creed and its rites and practices of worship.
- f) Observe and practice one's religious creed without any type of interference.
- g) Practice acts of worship and receive religious assistance from one's own creed.
- h) Not be obligated to practice any act of worship or receive religious



assistance that is contrary to one's personal convictions.

- i) Receive and spread religious teachings and information.
- j) Chose for oneself and for any minors under one's guardianship or for any incompetent dependents, within or outside the academic realm, the religious and moral education that conforms to one's own convictions.
- k) Meet or practice public expression for religious purposes and associate to develop religious activities as a community.
- l) Any other rights expressed by exercising the right to religious freedom.

*Article 7: Collective Rights*

Collective rights grant entitlement to:

- a) Organize for religious purposes provided that such organization does not violate morality and public order.
- b) Establish places of worship or meeting places for religious purposes.
- c) Designate and educate members.
- d) Divulge and preach one's own creed.
- e) Maintain relations with their own organizations or with other religious creeds, whether on national territory or abroad.
- f) Have the ability to perform religious assistance to members at law enforcement and military establishments, hospitals, and Government correctional facilities.
- g) Any other right provided by law.

CHAPTER III

RELIGIOUS ENTITIES

*Article 8: Religious Entities*

For the purposes of this act, a Religious Entity is understood as a group of natural persons that are organized in a religious, civic, non-profit organization as provided by law. Such organization shall feature its own structure; have a historic tradition; or have an established, conspicuous presence in the country. The primary objective of such an organization shall be to profess a single religious belief and put into practice expressions that seek to refer to a group of beliefs in relation to a superior transcendent, supernatural order. The organization shall further possess a dogmatic heritage and its own morals.

Under no circumstances shall organizations be considered Religious Entities when the purposes of such organizations are to generate profit, or when the activities of such organizations are primarily related to the study of or experimenting with astrophysical or parapsychological phenomena, fortune-telling, astrology, the spreading of ideas and values that are purely philosophical, humanistic or spiritualist phenomena, or any other similar type of activity. Entities dedicated to the development of harmful rites or satanic worship are beyond the scope of this act.

*Article 9: Registry*

Through the corresponding National Administration, the Ministry of Justice shall be in charge of the National Registry of Religious Entities, the entry in which is voluntary. Entry in this registry is required to enjoy the benefits established in the subsequent articles of this act.

Religious Entities that opt not to be entered in the registry shall enjoy the rights and benefits established to the benefit of non-profit civic organizations.

*Article 10: Requirements for Entry*

The requirements for entry in the National Registry for Religious Entities are those that are indicated in the rules and regulations of this act.

*Article 11: Duties and Obligations*

Religious Entities that have been entered must present an annual report of their activities in collaboration with the Peruvian State, as well as their financial statements and information about their property development. They must further submit changes to authorities and statutory amendments whenever such occur.

*Article 12: Registry Updates*

Every five years, the competent National Administration of the Ministry of Justice shall evaluate the Religious Entities that are entered and shall verify that they continue to comply with all the legal requirements for entry in the National Registry for Religious Entities.

## CHAPTER IV

## PROPERTY AND EXEMPTIONS

*Article 13: Religious Entity Property*

Property of Religious Entities consists of property acquired in accordance with the law, and which is intended for the fulfillment of its purposes. Property of Religious Entities further consists of historical, artistic, and cultural property that such Religious Entities have created, acquired, or legitimately possess in the manner and with the guarantees established by a legal body of laws, except in the event that such property's origin belongs to a different Religious Entity.

*Article 14: Property and Usage Right*

No State policy may restrict or take away the use of the property of Religious Entities intended for worship, even if such property has been declared National historic and cultural heritage.

*Article 15: Non-seizable Property*

Real property and movable property that constitute part of the property of Religious Entities for the exclusive use in worship, or which have been declared cultural heritage, are non-seizable.

*Article 16: Donations to Religious Entities*

Donations made by natural or legal persons, whether Peruvian nationals or foreign nationals, to the benefit of Religious Entities constitutes dividends for the latter.

Donators deduct the total amount of donations made from the taxable income to the extent provided by law. Religious authorities included in the Registry of Religious Entities shall issue donation receipts that shall constitute sworn statements.

Donations include those obtained through any type of collecting activity.

*Article 17: Exemptions*

By virtue of their activities, Religious Entities are exempt from:

- a) Income Tax;
- b) Transfer Tax;
- c) Property Tax;
- d) Vehicle Property Tax; and,
- e) Other taxes.

*Article 18: Import of Assets*

Imports of assets donated to Religious Entities are not subject to any customs tax or duty. Public institutions shall grant preferential treatment to Religious Entities included in the Registry for document processing necessary for import and entry of assets into the country.

*Article 19: Income for Religious Ministers*

Income received by religious ministers and missionaries of Religious Entities for the performance of their functions is not subject to income tax.

## CHAPTER V

### AGREEMENTS

*Article 20: Agreements of Cooperation*

At the Central Government level, the Peruvian State may sign Agreements of Cooperation on topics of common interest with those Religious Entities that are entered in the Registry referred to by this act, that have a historic tradition in the country, or that have acquired conspicuous presence in the country as determined by the competent National Administration of the Ministry of Justice.

Agreements may be entered into on or after the effective date of this act.

### FINAL PROVISIONS

First: Any person who, through act or omission, hinders the exercise of religious freedom shall be punished by the Ministry of Justice with a fine of up to 03 Applicable Tax Units (UIT). In the event of a public official or officer, the sanction may furthermore include removal from office.

The punishment shall apply without detriment to any restitution due the affected person and shall apply pursuant to the provisions of the Criminal Code for the offense of discrimination.

Second: The status of the Catholic Church in Peru is that which is established in the International Agreement signed by the Republic of Peru and the Holy See on July 19, 1980 as approved by Decree Act No. 23211, as well as by the protocols, diplomatic notes, or other agreements to which their representatives are bound.

In accordance with International Law, this act may apply as a supplement insofar as it favors the Catholic Church, its institutions or its members. In the event of conflict between this act and the International Agreement, the latter shall prevail.

The Catholic Church and its appertaining entities are not required to be entered in the National Registry for Religious Entities.

Third: Educational Institutes of any level that are promoted by a Religious Entity shall be subject to the management, administration, and property of such Religious Entity.

#### TRANSITORY PROVISIONS

First: *The Registry*

The Registry created by Supreme Decree No. 003-2003-JUS and implemented by Ministerial Ruling No. 377-2003-JUS remains in full force and effect as of the date of entry in the Registry of Religious Entities.

Religious Entities recorded in the Registry created by Supreme Decree No. 003-2003-JUS and implemented by Ministerial Ruling No. 377-2003-JUS are required to comply with the entry requirements set forth in the Regulations of this act. In the event of failure to comply with the above, the entry of such Religious Entity shall be rendered null and void.

Second: *Regulation of Act*

The Executive Branch shall establish regulations for this act within a

time period not to exceed 90 days from the effective date of this act.

## Appendix C

### Substitute Text for the Proposed Draft Opinion in Relation to Proposition 1008/2006-CR

#### RELIGIOUS AFFAIRS ACT

##### CHAPTER I

###### GENERAL PROVISIONS

###### Article 1: *Principle of Secularism*

Within a regime of neutrality and autonomy, the State shall maintain harmonious relations of mutual understanding with the Religious groups established in Peru.

##### CHAPTER II

###### EQUALITY AND RELIGIOUS FREEDOM

###### Article 2: *Freedom of Conscience and of Religion*

In accordance with the Constitution and the international treaties and agreements entered into and/or ratified by the Republic, the State recognizes and protects the freedom of conscience and of religion as a fundamental right of all persons in all its forms of expression and/or practice. This shall include all other freedoms and fundamental rights that are related to the freedom of conscience and of religion.

###### Article 3: *Unlawfulness of Discrimination on Grounds of Religious Beliefs*

Any action or omission that, whether directly or indirectly, discriminates against a person on basis of such person's religious beliefs is unlawful.

###### Article 4: *Equality of Religious Entities before the Law*

The State recognizes the diversity of the Religious Entities. All of

these are equal before the law and, consequently, have the same rights, obligations, and benefits granted by law.

*Article 5: Protection of the Exercise of Religious Freedom*

The State guarantees and ensures that persons, whether individually or as an organization, freely develop their religious beliefs and activities, whether in public or in private. There shall not be persecution based on religious ideas or beliefs, and the following aspects must be safeguarded:

- a) No obligation in any kind or form to manifest one's religious conviction. No official document shall make reference to or shall mention the religious beliefs or the lack of religious beliefs of a person.
- b) Attending any State educational institution without being ordered to show which religious group one belongs.
- c) Persons cannot be prevented or restricted from the free exercise of their rights nor be limited in access to hold national, regional, or municipal office on grounds of religion.

*Article 6: The Scope of Individual Exercise of Religious Freedom*

The freedom of conscience and of religion includes, among other things, the exercise of the following rights:

- a) Professing the chosen religious belief with full liberty and change or abandon any religion that one might have at any time;
- b) Practicing individually or as an organization, in private or in public, the acts of worship pertaining to one's religious belief;
- c) Commemoration of its festivities, celebration of its rites, and not being obligated to perform any of these acts against one's own will;
- d) Being baptized, entering into marriage, and receiving burial in accordance with one's religious beliefs;
- e) Receiving assistance from ecclesiastic representatives of one's own confession at health facilities, in barracks and buildings belonging to the armed forces and law enforcement, and at correctional facilities, for which purpose the respective authority shall allow access for ministers and missionaries of the Religious Entities;
- f) Meeting or practicing public expression for religious purposes and associating to develop and practice religious activities as a community;
- g) Receiving, informing, and delivering religious instruction through any medium in public or in private;
- h) Choosing the religious education that one deems appropriate for oneself or for any minors or incompetent persons subject to one's

guardianship;

- i) Carrying out preaching, spreading and/or transmitting of one's religious beliefs by the public expression of one's dogmas or doctrine without prior censorship;
- j) Swearing oaths according to one's own religious convictions or abstaining from so doing;
- k) Participating individually or as an organization in social life through acts that are appropriate to one's religious beliefs;
- l) Keeping the rest day that one's religion considers sacred. In legal relationships of employment or educational nature, this right shall be exercised without any hindrance insofar as prior and timely notification thereof has been furnished.

*Article 7: Limitations to the Exercise of the Freedoms of Conscience and of Religion*

The exercise of all the rights provided by this Act, which are derived from the freedom of conscience and of religion, shall be limited by the exercise of other fundamental rights, public order, and good customs and health.

Religious convictions cannot:

- a) Be invoked to abstain from fulfilling civic, political, or other duties required by the Constitution and by law beyond the exceptions provided by law and cases of conscientious objection.
- b) Take priority over the defense of the human being and respect for human dignity as supreme goals of society and the State.

*Article 8: Collective Aspect of Religious Freedom*

Religious Entities have, among other things, the following rights:

- a) To freely choose their ministers and facilitate the practice of their worship and the carrying out of meetings related to their religion;
- b) To establish places of worship or meeting places for religious purposes;
- c) To establish their ecclesiastical organization and its appertaining hierarchies;
- d) To freely transmit their religious belief through any kind and means of communication;
- e) To establish and maintain educational and cultural systems; missionary training centers; institutes of religion; or centers for religious instruction where formal or informal scholastic or non-scholastic



- education of any level and kind may or may not be taught while respecting the current legislation;
- f) To establish and maintain charitable organizations, hospital homes, printers, or any other type of service entity connected to their doctrine;
  - g) To create, participate, patronize, and foster associations and funds for the realization of their goals;
  - h) To solicit and receive any and all kinds of voluntary contributions;
    - i) To have private cemeteries insofar as the current, applicable legal requirements are met;
  - j) To demand of public institutions that they:
    - (i) Issue identification documents to religious ministers and missions; and,
    - (ii) That they provide them with the necessary facilities to carry out their functions.

*Article 9: Punishment for Hindering the Exercise of Religious Freedom and Equality*

Any person who, through act or omission, impedes the exercise of religious freedom or equality shall be punished by the Ministry of Justice with a fine of up to 03 Applicable Tax Units (UIT). In the event of a public official or officer, the sanction can additionally include removal from office.

The punishment shall apply without detriment to any restitution due the affected person and pursuant to the provisions of the Criminal Code for the crime of discrimination.

CHAPTER III

CONSCIENTIOUS OBJECTION

*Article 10: Nature and Definition*

The fundamental rights of freedom of conscience and religious freedom include the right to conscientious objection.

Conscientious objection is the timely declared opposition of a person to the fulfillment of a legal obligation on grounds of his/her moral or religious convictions.

*Article 11: On the Valid Exercise of the Right to Conscientious*

*Objection*

In cases of doubt about the abstention from a particular legal duty, the following shall be considered:

- a) The degree of constraint of conscience in the examined alleged act.
- b) The subject's own acts and the congruence between his/her conduct and his/her beliefs.
- c) The level of the regulative foundation of the legal duty that is subject of objection.
- d) The existence of less burdensome measures that reduce the repression of the subject's personal convictions.
- e) The relationship between the degree of realization of the freedoms of conscience and religion and the degree of detriment to other constitutional rights and/or property and third parties.

## CHAPTER IV

## LEGAL RULES AND REGULATIONS OF RELIGIOUS ORGANIZATIONS

## SUBCHAPTER I

## DEFINITION OF RELIGIOUS ORGANIZATIONS

*Article 12: Definition of Church, Confession, or Religious Community*

For the purpose of this act, church, confession or religious community is understood as an entity composed of natural persons who profess a certain religious belief that they practice, teach, and transmit.

*Article 13: Definition of Religious Entities*

For the purposes of this bill, churches or religious organizations or communities of any credence, as well as their federations and confederations, are considered Religious Entities.

Under no circumstances shall for-profit organizations be considered Religious Entities.

Article 14: *Activities, Purposes, and Entities not Protected by the Act*  
Activities, purposes, and Entities related to the study of or experimenting with astrophysical, psychic, or parapsychological phenomena; sooth-saying; astrology; the spreading of ideas or values that are purely philosophical, humanistic, or spiritualistic in nature; and evil or satanic rites or other types of similar activities are not protected by this act.

Article 15: *Religious Entities as Legal Entities*  
Religious Entities are legal persons of private law. Their organization, functions, powers and duties, and representation are governed by their own rules and/or regulations.

## SUBCHAPTER II

### EDUCATIONAL SYSTEM

Article 16: *Exoneration of Religious Courses*  
State educational institutes shall respect the right of the students to exonerate themselves from religious courses for reasons of conscience or on grounds of their religious convictions. In the case of minors, such exoneration shall apply whenever so expressed by the parents or legal guardian(s).

For this purpose, the State shall implement a substitute system for religious education for those students who do not desire to receive Catholic religious education.

## SUBCHAPTER III

### PROPERTY AND EXCEPTIONS

Article 17: *Property of Religious Entities*  
Property of Religious Entities consists of property acquired in accordance with the law, and which is destined to the fulfillment of the purposes of such Religious Entities. Property of Religious Entities further consists of historical, artistic, and cultural property that such Religious Entities have created, acquired, or legitimately possess in the manner and with the guarantees established by a legal body of laws.

*Article 18: Donations to Religious Organizations*

Donations made by natural and/or legal persons, be they Peruvian nationals and/or foreign nationals, to the benefit of religious groups constitute dividends for the latter that is exempt from any and all extant or future taxes.

Donators shall deduct the total amount of donations from the taxable income without the requirement of any register.

Donations include resources obtained through any type of collecting activity.

*Article 19: Import of Assets*

The import of assets that have been acquired and/or donated to Religious Organizations whose instrument of constitution includes one or several of the following purposes—education, culture, science, charity, social or hospital assistance—are not subject to any taxes or customs duty.

*Article 20: Consignment of property in the event of dissolution*

In the event of the dissolution of a Religious Organization, whether by internal agreement or by legal order, its highest authority shall determine to which entity with similar purposes the resulting property shall be consigned.

*Article 21: Exemptions*

Insofar as the property of Religious Organizations is destined for the fulfillment of religious purposes, Religious Organizations shall be exempt from:

- a) Income Tax;
- b) Transfer Tax;
- c) Property Tax;
- d) Vehicle Property Tax

*Article 22: Income for Religious Ministers*

Income received by religious ministers and missionaries of Religious Organizations for the performance of their functions is not subject to income tax.

Article 23: *Application of Tax Benefits Regulated by this Act*

The tax benefits set forth by this subchapter shall apply to such religious entities as are entered or as will be entered in the Registry created by Supreme Decree No. 003-2003-JUS and implemented by Ministerial Ruling No. 377-2003-JUS.

CHAPTER V

REGISTRY OF RELIGIOUS ENTITIES

Article 23: *Purpose of the Registry*

Through the National Justice Administration, the Ministry of Justice registers those confessions that by virtue of their scope; number of believers; and development of charity activities of economic, social, or other nature have achieved conspicuous presence in Peru.

Said registry shall be called “Registry of Religious Entities” and has the principal purpose of recording religious entities that are capable of signing Agreements of Cooperation with the State.

CHAPTER VI

AGREEMENTS OF COOPERATION WITH THE STATE

Article 24: *Agreements of Cooperation*

The Peruvian State may sign Agreements of Cooperation with Religious Entities operating in the country or recorded in the Registry referred to in Chapter V of this act. Such agreements may be on the national, regional, or local levels on issues of common interest and in the interest of the common good.

The Agreements are approved by the Ministry of Justice with a favorable report from the Ministry of Economy and Finances.

FINAL PROVISION

First: *Regulation of Act*

The Executive Branch shall regulate this act within a time period not to exceed 90 days from the effective date of this act.

597

*The Long Road to Religious Freedom in Peru*

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Second: *Validity of the Act*

This Act shall enter into effect one day following its publication in the El Peruano Official Journal.

