

<b>Institution:</b> University of Winchester		
<b>Unit of Assessment:</b> C19 Politics and International Studies		
<b>Title of case study:</b> Interpreting freedom of religion as an individual right, and interpreting other human rights as individual rights: International law and implications for states		
<b>Period when the underpinning research was undertaken:</b> 2013-2020		
<b>Details of staff conducting the underpinning research from the submitting unit:</b>		
<b>Name(s):</b> Anat Scolnicov	<b>Role(s) (e.g. job title):</b> Professor	<b>Period(s) employed by submitting HEI:</b> 2013-present
<b>Period when the claimed impact occurred:</b> 2013 - 2020		
<b>Is this case study continued from a case study submitted in 2014?</b> No		
<b>1. Summary of the impact</b> (indicative maximum 100 words) <p>Scolnicov's research argues that freedom of religion and belief [FoRB] should be interpreted and implemented as an individual right above any guarantee of a communal right. It had impact on:</p> <ul style="list-style-type: none"> <li>- International policy-making (within the UN and the OSCE Office for Democratic Institutions and Human Rights).</li> <li>- A Supreme Court decision (in Israel)</li> <li>- Applications to Supreme Courts (in Israel and the United Kingdom).</li> <li>- Legislation (in Ukraine and Ecuador).</li> <li>- Policy-making in NGOs.</li> </ul> <p>The research also analyses the broader question whether human rights belong only to individuals or can also belong to non-individuals (including corporations and communities). The finding that only individuals can have human rights had an impact on:</p> <ul style="list-style-type: none"> <li>- Submission to the Supreme Court of Canada.</li> <li>- Submission to the Inter-American Court of Human Rights.</li> </ul>		
<b>2. Underpinning research</b> (indicative maximum 500 words) <p>Professor Anat Scolnicov is based in the Centre for Religion, Reconciliation and Peace and in the Law department at the University of Winchester. Her research identified the conflict between group and individual conceptions of religious freedom as a major tool for analysis and determination of religious freedom conflicts. The research offered a coherent framework for international law to interpret and guarantee the right to religious freedom by choosing to protect it as an individual right and not a collective right. Any right of a religious group or organisation is only derivative of individual rights, and therefore can never be paramount to them. This has implications for the rights of dissenters within religious groups (3.1), rights of women within and without the religious group, and rights of children in the family and in the religious community (3.2).</p> <p>These insights have had specific implications for the rights of women, including the equal right to pray at holy sites, where women were excluded by leadership of religious communities (of Muslims and Hindus in India, and Jews in Israel) (3.3), and rights to reproductive health, where these were restricted based on prevailing views within religious communities. The research showed that women's freedom of religion and belief can be in conflict with communal claims of religious freedom, often stemming from historic male-domination of religious leadership positions (3.3). A coherent approach to interpreting this right as an individual right means that state law should protect the rights of women over communal claims of religious autonomy, and the right to religious freedom in international law should be interpreted as requiring states to which such international law applies to recognise these rights (3.6).</p>		

The writing on religious freedom is part of Scolnicov's broader work on individual rights in conflict with claims of rights by communities and corporate bodies (3.4). This includes work in which she argues, based on both philosophical principles and public policy, that human rights are for individuals only and not corporate bodies (3.5). This includes, but is not limited to, religious bodies.

### 3. References to the research (indicative maximum of six references)

- 3.1 A. Scolnicov (2016), 'La libertad religiosa, como derecho a la libertad de expresión', *Derecom – Revista Online en Derecho de Comunicación*, 20, 1-28, <https://dialnet.unirioja.es/servlet/articulo?codigo=5632140>.
- 3.2 A. Scolnicov (2017), 'When law, religion and family meet: Religious neutrality, private choices and the liberal state', *Supreme Court Law Review* 79.
- 3.3 A. Scolnicov, 'Public Inaugural lecture: An (old) brave new world: Religion and human rights in international law in the 21st Century' - 17 February 2016, University of Winchester, <https://www.youtube.com/watch?v=kVz3XAeh7L4>
- 3.4 A. Scolnicov (with T. Kahana, Eds.) (2016), *Boundaries of State, Boundaries of Rights: Human Rights, Private Actors, and Positive Obligations*. Cambridge: Cambridge University, doi:10.1017/CBO9781107588943.010
- 3.5 Scolnicov, A. (2016), 'Human rights and derivative rights: The European Convention on Human Rights and the rights of corporations', in T. Kahana & A. Scolnicov (Eds.), *Boundaries of State, Boundaries of Rights: Human Rights, Private Actors, and Positive Obligations*, p. 194-214. Cambridge: Cambridge University Press. doi:10.1017/CBO9781107588943.010 Submitted in REF2. Rated 3\* by an external reviewer
- 3.6 A. Scolnicov (2016), 'On a wing and a prayer: Indirect religious discrimination in the European Court of Human Rights', *Oxford Journal of Law and Religion* 5 (1), 158-161. <https://doi.org/10.1093/ojlr/rwv057> Rated 3\* by external reviewers

#### Funding (as evidence of quality)

Scolnicov chaired a funded research group at the Israel Institute of Advanced Studies in Nov. 2019-Feb. 2020. Scolnicov presented some of the work described above in the group seminars.

### 4. Details of the impact (indicative maximum 750 words)

#### **1) Impact on Supreme Court decisions and submissions to Supreme Courts and international courts**

1) The research (3.2, 3.3), specifically the analysis of women's reproductive choices as an exercise of individual freedom of religion and belief, influenced the arguments in an *amicus curiae* brief submitted to the UK Supreme Court by the UN WGDW as 2nd intervener in *In re Northern Ireland Human Rights Commission* [2018] UKSC 27 regarding the restrictive abortion law in Northern Ireland, prior to its recent reform (5.1).

2) Scolnicov's research (3.2, 3.3) impacted argument in applications for judicial review submitted to the Supreme Court of Israel, on behalf of Women of the Wall, demanding a right to equality in worship and ritual at the Western Wall. The applications used Scolnicov's argument that a claim of a communal right of religious freedom (of the Orthodox Jewish community) cannot be used by the authorities of the Western Wall to infringe the individual religious freedom rights of Jewish women who wished to pray at the Western Wall in an equal manner to men. The Court accepted the women's arguments (5.1).

3) Scolnicov's research was relied on by the Supreme Court of Israel in 2014 (*Sabah v. The Knesset* (5.10), in one of the most important Israeli constitutional law cases of the decade, decided by a rare panel of 9 judges. The case concerned the question whether communal villages have a right to exclude individuals who are not members of the (religious or other) community, and

determined that the community does not trump the rights of the individual, as is the position in her research.

4) The research arguing against corporate human rights (3.5), was relied upon in an *amicus curiae* brief submitted to the Inter-American Court of Human Rights, (5.7): “She [Scolnicov – A.S.] also points out that in certain cases the human rights of the individuals operating a legal person are expressed through a legal person and it is necessary to recognize such derivative rights in order to prevent future violations. She considers these cases as exceptions and therefore they do not give rise to a need to generalize and equalize the rights of natural individuals to those of a legal person” (trans. from Spanish).

This case resulted in an important precedent, in which the Inter-American Court of Human Rights determined that the rights in the American Convention on Human Rights do not apply to corporate bodies, with the exception of indigenous groups and trade unions. The Court decision accepted the position in the amicus brief, which quoted Scolnicov’s work on this point.

Advisory Opinion OC-22/1 of 26 Feb. 2016, requested by Panama,  
[https://www.corteidh.or.cr/docs/opiniones/seriea\\_22\\_esp.pdf](https://www.corteidh.or.cr/docs/opiniones/seriea_22_esp.pdf) (in Spanish).

5) The research arguing against recognition of corporate human rights (3.5) was relied upon in two *amicus curiae* brief submitted to the Supreme Court of Canada on 8.1.20, one by the Canadian Civil Liberties Association (5.5) the other by the British Columbia Civil Liberties Association (5.6), in File no. 38613 *Attorney General of Quebec, et al. v. 9147-0732 Québec inc.*, decided 5.11.20. This case ruled that corporate bodies do not have a right to compensation for pain and suffering under the Canadian Charter of Rights and Freedoms.

The CCLA brief stated: “The CCLA submits that Charter rights are first and foremost the rights of human beings” and that any interpretation should focus “on the embodied human beings these rights are meant to protect”.

Citing Scolnicov’s work (5.5 on p.5), the CCLA said that “the lack of thorough and principled consideration of the significant implications of this important issue in the jurisprudence is not unique to Canada and international scholars observing that other courts, such as the European Court of Human Rights, have also simply assumed, without any principled discussion, that corporate entities may benefit from the protection of human right”.

While the facts of the case do not concern a religious organisation, the decision, which accepted her conceptual position on corporate rights, is relevant also to religious corporations.

## **II) Impact on international governance**

6) Scolnicov’s research (3.2, 3.3) was part of the underpinning conceptual framework used by the UN Working Group on Discrimination Against Women (WGDAW) for the drafting of several policy documents and recommendations (5.1):

a) The Chair of the UN WGDAW states in report A/HRC/26/3 that the UN WGDAW drew on the research in arguing for women’s right to equality in the family, whether in theocratic regimes or plural legal systems (5.1). This accepted the conclusion of the research that religious communities (in a plural legal regime), or the state (in a theocracy), cannot claim religious freedom as a justification to infringe women’s individual rights of equality and religious freedom within the family. This recommendation was highly influential and was adopted by the Human Rights Council (5.1).

b) Similarly, there was a joint policy position of the Special Rapporteurs of the UN Office of the High Commissioner on Human Rights against the Human Rights Council Resolution on Protection of the Family. The policy position opposed the Resolution of the HRC because it did not include a confirmation of women's right to equality in the family (5.1).

c) The research influenced formulation of the position of the UN WGDW on medical staff's limited right to conscientious objection in the performance of legal abortions. The research influenced viewing a woman's choice of abortion as an exercise of individual freedom of belief, against which doctors' rights of religious freedom should be balanced (5.1).

7) Insights from the research (3.1, 3.2, 3.3, 3.6) were presented to a UN Expert Group meeting on Religious Minorities, convened by the UN Independent Expert on Minorities at the Office of the Commissioner on Human Rights in Geneva in 2013, leading to subsequent impact through the report of the Independent Expert on Minority Issues A/68/268 published by the UN GA on 5 August 2013 (5.2).

8) The research (3.1, 3.2, 3.3), including research which Scolnicov presented in an expert meeting on freedom of religion and belief and anti-terrorism measures, convened in London in 2016 by the OSCE Office for Democratic Institutions and Human Rights, had an influence on policy formation by the Organization for Security and Cooperation in Europe Expert Panel on Freedom of Religion and Belief (5.2, 5.3).

### **III) Impact on legislation:**

9) In March 2016, MP Viktor Yelensky introduced in the Ukrainian Parliament registered draft law No.4128, which regulates the procedure of changing the affiliation with particular by religious communities (5.9). In introducing the bill in Parliament, MP Yelensky relied on Scolnicov's work, arguing that recognition of religious freedom means that religious communities cannot coerce dissenting sub-groups of community members to remain members of the community organisation, and the state should recognize their right to leave (3.1, 3.3).

10) The Public Ombudsman of Ecuador published in 2017 a report on religious liberty in the secular state of Ecuador (5.8), analysing a draft Religious Equality and Liberty Bill. The report relied on Scolnicov's research, accepting her conclusion that only individuals can have rights. The Ombudsman found this applicable to Ecuador, relying on her argument that if rights are extended to groups then the group could nullify rights of an individual within them, and preferring the interpretation of freedom of religion as a choice for each individual to make.

### **IV) Influence on NGO policy:**

11) The insights published in (3.2) were presented at a consultation of the Canadian Council of Christian Charities, an umbrella organization of NGOs, in 2015 in Toronto. The CCCC invited several academics from a spectrum of opinions on religious freedom in private organizations to help the CCCC formulate their policy about the freedom of belief and freedom of expression of individuals within religious universities when in conflict with the religious autonomy of these institutions. A senior representative of the CCCC states that "Scolnicov's presentation on religion in the public place assisted the CCCC in conceiving our policy on this issue" (5.4).

12) Part of the research (3.3), showing that reservations to human rights treaties based on religion were predominantly excluding women from human rights protection, was presented in a meeting in 2014 of Universal Rights Group (an international NGO headquartered in Geneva) to diplomats

assigned to the UN in Geneva, from States which entered such reservations, including heads of missions from Ireland, Algeria, Morocco, Jordan, Tunis, and the Holy See, and senior officials from the UN Human Rights Commission). (5.3).

**V) Impact through public outreach:**

13) The research contributed to public discussion through engagement with the public, including in an inaugural public lecture in Winchester (3.3), and additional public seminars at the Winchester Centre for Religion, Reconciliation and Peace, including a seminar on refugees and religious freedom.

**5. Sources to corroborate the impact** (indicative maximum of 10 references)

5.1 Letter from a senior representative of the UN Working Group on Discrimination Against Women

5.2 Letter from a member of the OSCE panel on Freedom of Religion and Belief

5.3 Letter from a member OSCE panel on Freedom of Religion and Belief

5.4 Letter from a senior representative of Canadian Council of Christian Charities

5.5 Canadian Civil Liberties Association submission to the Supreme Court of Canada:

[https://www.scc-csc.ca/WebDocuments-DocumentsWeb/38613/FM050\\_Intervener\\_Canadian-Civil-Liberties-Association.pdf](https://www.scc-csc.ca/WebDocuments-DocumentsWeb/38613/FM050_Intervener_Canadian-Civil-Liberties-Association.pdf)

5.6 British Columbia Civil Liberties Association submission to the Supreme Court of Canada:

[https://www.scc-csc.ca/WebDocuments-DocumentsWeb/38613/FM040\\_Intervener\\_British-Columbia-Civil-Liberties-Association.pdf](https://www.scc-csc.ca/WebDocuments-DocumentsWeb/38613/FM040_Intervener_British-Columbia-Civil-Liberties-Association.pdf)

5.7 Amicus Curiae brief, Submission to the Inter-American Court of Human Rights

[https://www.corteidh.or.cr/sitios/observaciones/panama/15.LAPERSONAJURIDICACOMOSUJETODEDERECHOSHUMANOS\(versionfinal\).pdf](https://www.corteidh.or.cr/sitios/observaciones/panama/15.LAPERSONAJURIDICACOMOSUJETODEDERECHOSHUMANOS(versionfinal).pdf)

5.8 Ecuador Public Ombudsman report on religious liberty in the secular state: Defensoria del Pueblo, 'Informe temático sobre libertad religiosa y Estado laico en el Ecuador', (2017)

<http://repositorio.dpe.gob.ec/bitstream/39000/2125/1/IT-DPE-002-2018.pdf>

5.9 Ukrainian Parliament Bill (translated by Human Rights Without Frontiers):

<https://hrwf.eu/wp-content/uploads/2017/06/On-the-bill-regarding-the-change-of-jurisdictional-affiliation-of-religious-communities-and-its-criticism.pdf>

5.10 Decision of the Supreme Court of Israel (Decided 17.9.2014) HCJ 2311/11 *Sabah v. The Knesset* (in Hebrew).