



OBSERVATORY OF
RELIGIOUS FREEDOM
IN LATIN AMERICA

Indigenous Peoples and the right to freedom of religion or belief

Submission to the Special Rapporteur on freedom of religion or beliefs for the thematic report to be delivered to the 77th session of the UN General Assembly

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Limits to the full enjoyment of the right of freedom of religion or belief of indigenous peoples

When analyzing the full enjoyment of the human rights of indigenous communities, there are some issues to consider. Usually, the scope of the protection focuses on external threats. In the case of indigenous communities, at a national and international level, the protection system is based on the need to preserve indigenous cultures that have been under threat by colonizing elements, disregarding other factors within the community, which can also jeopardize the exercise of human rights, including religious freedom. We recognize the existence of external violations of the collective rights of the “peoples” to effectively practice their religions by both State and non-State actors. In areas such as holy sites and cemeteries, the religions of Indigenous Peoples remain extremely vulnerable to government activities and attempts have also been made to replace their culture and religious beliefs.

Nonetheless, although the recognition of autonomy and self-determination has been a major step toward the protection and guarantee of indigenous rights, in practice, the low visibility of these groups at the social and political level has facilitated indifference, and discrimination, and has also

made possible human rights violations practices within the community, including religious freedom violations.

Article 4 of the Declaration on the Rights of Indigenous Peoples (hereinafter UNDRIP) states that “Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions”. Article 5 establishes that “Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State”.

In other words, indigenous communities can be considered as self-governed communities or ‘states’ within states. The autonomy of a community implies in political terms that they have the capacity to exercise a limited form of sovereignty within a nation, without becoming fully independent. Within indigenous communities, this normative system translated into a special form of government, is commonly known as "uses and customs". They have their own legal system based on their own traditions, which is often juxtaposed to the prevailing democratic and national legal system in the rest of a given country.

However, the imbalance between the two coexisting legal systems makes the general protection of human rights, and specifically religious freedom, difficult in indigenous self-government structures. In the case of contradictions arising between the systems, generally, the contradiction is usually resolved in favor of the protection of the indigenous community. Therefore, it is very difficult for indigenous people to claim constitutional rights of religious freedom within their communities. Cultural protection should not be a justification to ignoring religious freedom violations of minorities within those indigenous communities (explained below).

Another aspect to consider is that indigenous communities are governed by a special shared worldview and it is according to this worldview - different according to each community- that other important aspects of their life in society must be understood, such as political, economic and cultural aspects, including their relationship with the environment and, of course, with religion or spirituality.

It is undeniable that this religious element involves a series of vital factors for the coexistence of the community as a whole. In this sense, the protection of the right to religious freedom of indigenous peoples is imperative for the continuity of their subsistence. The religious aspect is so meaningful that in most indigenous communities, "the ideological basis of the civic-religious hierarchy is that the community exists on the basis of the social relations that arise from the interaction between the levels of the human and the sacred". Hence, the religious dimension within indigenous communities is immersed in their worldview and influences the legal order of each indigenous people, and the system of customs and traditions that they develop over time.

The Observatory of Religious Freedom in Latin America – OLIRE has observed that since there is an inherent relationship between religion and every aspect of community life, at times, the rejection of the prevailing or majority spirituality/religion means a rejection of the indigenous

government system itself which can lead to considerable pressure on religious minorities in indigenous areas in several Latin American countries. Repeatedly, whenever an individual decides to convert to another religion or abandon the ancestral or syncretic practices in an indigenous community, the convert risks all kinds of threats, reprisals, and exclusion. In this sense, it is not just possible to speak of religious minorities within a minority group like indigenous communities but to speak of discriminated religious minorities.

In this context, given that the relationship between the members of the indigenous community is determined by a sense of belonging and cultural identity that governs every aspect of their lives, the idea of loyalty to the community is sometimes stronger than to blood family. Therefore, any betrayal of the community identity and customs is reprehensible not only by the other members but even by the family itself, who is sometimes responsible for reporting such situations to the indigenous authorities.

This rejection towards those converted to another religion or towards those who abandon the syncretic practices of the community would justify – under the criteria of the indigenous community – antagonistic actions. Keeping in mind the modern legal concept of the multidimensionality of religious freedom, derived directly from Article 18 of the UDHR and later integrated under Article 18 of the ICCPR, this antagonism translates into serious violations of the right to religious freedom.

Indigenous converts can be forced to follow ancestral or syncretic practices, despite not sharing the same beliefs for fear of reprisals against them or their families, limiting their right to freedom to have, choose, change or leave a religion or belief; freedom to manifest a religion or belief; freedom from coercion; freedom from discrimination and the freedom to practice one's religious belief in the workplace. Indigenous converts might be forced to participate in religious festivities of the community even though it is not the convert's religion, affecting also the right to conscientious objection. Parents who do not send their children to community schools, in order to prevent them from learning the indigenous rites of the place, can be fined or outcasts, impacting the right of parents to give their children religious and moral education in accordance with their own beliefs. Sometimes, children of indigenous converts are pressured or forced to marry indigenous elders in order to discourage the abandonment of community beliefs to future generations.

Other fundamental human rights principles protected under international law and linked with the right to religious freedom can also be infringed. We can mention the impossibility to worship or assemble in connection with their religion or belief, or the difficulty in establish and maintain premises for these purposes. Not to mention not being able to acquire and use articles and materials related to the rites or customs of their new religion or belief, nor the possibility of display religious symbols different of the majority religion. In addition, it is risky to write, issue and disseminate relevant publications about the faith of the converted. This aspect of religious freedom is grounded on the rights of freedom of expression, freedom of the press and freedom of publication. Indigenous converts cannot teach a religion or belief in places suitable for that purpose, many times, not even in their house. They need to do so outside the community in order not to be harassed. Also, unlike the majority of members in the community, indigenous converts cannot celebrate their religious festivals openly, nor can they ask for permission to observe days of rest.

Diverse actions against indigenous converts (and their relatives) include exclusion, forced displacement (those displaced are twice victims since they are rejected by their own community and most of the time, they hardly fit in another indigenous community), forced marriages, fines, arbitrary detentions, acts of repudiation, cutting off of basic supplies like water and electricity, prohibition of the use of community services and areas (including cemeteries) among others. In general, indigenous converts are considered outsiders and therefore they cannot exercise or enjoy their rights within the community, like the right to due process and judicial guarantees, the right to life and personal integrity, the right to personal freedom, the right to property, the right to education and even the right to cultural identity.

In practice, these actions have led to little or almost no interference by state or federal authorities in the affairs of these communities. On some occasions, as followers of the uses and customs of the community, they also become perpetrators of abuses against minorities. Given the multiplicity of violations of the rights of religious minorities in indigenous communities, the failure of the state to verify that the application of the uses and customs of the community does not violate fundamental rights, especially of vulnerable minorities, might lead to international responsibility. It is worth mentioning that during the COVID-19 pandemic, although indigenous communities were among the most affected populations due to the worsening of structural inequalities, the context of religious minorities in indigenous communities became more hostile due to the even greater weakness of state responses to these communities.

Available Data

The collection and systematization of information helps various sectors of the population get involved in learning processes, generate new knowledge and, above all, let them being able to propose initiatives or strategies to overcome specific challenges. This exercise is of vital importance to the extent that an informed community, at any level, will always have the tools to demand the protection of their rights.

In the case of violations of the right to religious freedom within indigenous communities, since it is not an aspect normally addressed, there is a serious information gap. The Observatory of Religious Freedom in Latin America – OLIRE has taken on the task of identifying and documenting the incidents around this problem using the Violent Incidents Database-VID. Through research conducted by OLIRE and information provided by collaborators in the region, this tool aims not only to estimate the number of religious minorities that experience violence because of their faith in indigenous communities in Latin America, but also be a source of information regarding the type and/or characteristics of these issue.

So far, it has been possible to collect information on religious minorities at risk in Colombia and Mexico, however, we hope that this document will draw the attention of the special rapporteur, so that research efforts are initiated to influence the development of regional strategies that guarantee the protection of the right to freedom of conscience and religion and related rights, of religious minorities in indigenous communities.

We present a short overview about the scenarios of religious freedom violations within indigenous communities in Colombia and México:

Colombia

- *2021:* In Magdalena, traditional authorities discovered that a young Arhuaco man professed the Christian faith. He was notified for a meeting, but ended up in jail for a few days. In addition, he was forced to perform traditional rites and was punished with physical labor on the roads, with only one meal a day.
- *2021:* Traditional leaders punished a Christian for refusing to renounce her faith. The sister was forced to kneel in coarse sand for several hours.
- *2020:* An indigenous Christian was sentenced to 1 month in jail by the traditional Arhuaco leaders for refusing to renounce their Christian faith and for not complying with the rituals of the community.
- *2019:* In Santa Marta, a Christian Arhuaca indigenous was confined for two months in prison and isolation for not sharing the community ethnic faith. During prison food supplies were minimal, she was forced to eat and sleep in a poor sanitation environment.

México

- *2021:* In Oaxaca, a pastor and 3 other Christians were arrested for conducting worship services in a community whose members belong mostly to the Catholic religion. In order to let him out of jail, members of the community forced them to sign a document agreeing to leave town. The communal authorities used firearms to threaten them.
- *2021:* In Chiapas, local authorities and members of the municipality of Mitzitón, demolished and burned five houses owned by evangelical indigenous people. The houses belonged to pastor Alejandro Jiménez Jiménez and his children who, since January 2021, lived outside the municipality, expelled for professing the evangelical religion, in a shelter house of Alas de Águila in San Cristobal de las Casas. Pastor Alejandro and his family were briefly detained when he returned to visit his sick mother. In reaction to his return, the community burned his property.
- *2020:* In Chiapas, members of the Protestant church refused to participate in Catholic festivities. After a meeting with the village authorities, the two leaders of the church were imprisoned, the next day the Christian families were expelled
- *2019:* in Hidalgo, Authorities and some Catholic residents of the community cut off public services (drinking water and energy) of Gilberto Badillo and Gabriel Lara Antonio's families because they, as evangelicals, refused to participate in the patronal feast. In addition, they were fined 25,000 pesos, under penalty of confinement or expulsion from the community if they did not pay. Relatives of the two families of the evangelicals commented that members of the community had entered their homes causing damage.

Total of Incidents reported from Colombia and Mexico (2019-2021)

Countries	(Attempts) to destroy, vandalize or desecrate places of worship or religious buildings	Arrests/ detentions	Sentences	Forced Marriages	Other forms of attack (physical or mental abuse)	Attacked houses/ property of faith adherents	Forced to leave Home	Forced to leave Country
Colombia	1	46	10	2	2	0	140	0
Mexico	2	69	2	0	18	86	486	40

Source: [Violent Incidents Database](#)