



Call for input: Indigenous peoples and the right to freedom of religion or belief – UN General Assembly report of the Special Rapporteur on freedom of religion or belief

A submission by CSW (Christian Solidarity Worldwide)

1. CSW is a human rights organisation specialising in the right to freedom of religion or belief (FoRB) for all. This submission is in response to a call from the United Nations (UN) Special Rapporteur on freedom of religion or belief for input into his upcoming report to the UN General Assembly on indigenous peoples and the right to FoRB.
2. CSW welcomes this call for input into the report on indigenous peoples and the right to FoRB from the Special Rapporteur on freedom of religion or belief. While attention to FoRB and indigenous rights independently in international instruments and declarations is commendable¹, analysis of the intersection between FoRB and indigenous rights still requires further study and recognition.
3. The Universal Human Rights Index (UHRI) is a database of all human rights recommendations issued by the three key pillars of the United Nations human rights monitoring system (the Treaty Bodies, the Special Procedures and the Universal Periodic Review).² A search for all documents relating to both ‘freedom of thought, conscience and religion’ and ‘indigenous peoples’ produced references from just 27 documents, spanning only seven mechanisms. The annual reports of the UN Special Rapporteur on the rights of indigenous peoples sometimes refer in passing to the right to FoRB, including to religion as a potential factor for multiple discrimination, however the reports have not explored the intersection between the rights in any depth.
4. The role of national legislation in ensuring respect for the right of indigenous peoples and the right to FoRB remains crucial: incorporating international guarantees for these rights within domestic legal structures such as national constitutions is an important prerequisite for their effective realisation. Many challenges remain in this area. According to the Food and Agriculture

¹ UN Member States are called to uphold international human rights standards without discrimination. The International Covenant on Civil and Political Rights (ICCPR) reiterates the principle of non-discrimination and builds on the definition of FoRB outlined in the UDHR. In Article 27 the ICCPR addresses ethnic, religious or linguistic minorities directly (implicitly including indigenous peoples, who can claim minority rights under international law) stating that ‘persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language’.

The rights of indigenous peoples are most fully and comprehensively articulated in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Article 12 affirms the right of indigenous peoples ‘to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies,’ as well as the right to access their religious and cultural sites and use their ceremonial objects.

² Universal Human Rights Index, <https://uhri.ohchr.org/en/>. This database contains over 170,000 observations and recommendations from 12 Treaty Bodies, 44 Special Procedures and all Universal Periodic Reviews. Database search conducted on March 28, 2022.

Organization of the United Nations (FAO), although many countries do recognise indigenous peoples in their constitutions, others continue to deny their existence and status as rights holders.³ Conversely, we have occasionally received reports of situations where self-governance of indigenous communities has led to violations of the right to FoRB with impunity. For example, violations of FoRB continue to be perpetrated in several indigenous communities, including in Colombia, Mexico and Vietnam. Furthermore, many national constitutions fail to reflect the commitment to the right to FoRB. Further efforts are needed to ensure that national legal frameworks are in compliance with international guarantees of indigenous rights and the right to FoRB, and that such international or domestic legal framework is duly implemented.

Colombia

5. Despite strong protections for FoRB in the Colombian constitution and in international treaties to which Colombia is party, Colombian courts have ruled that the individual right to FoRB does not extend to those living on indigenous lands where collective cultural rights take precedence. FoRB violations in indigenous communities are largely rooted in a 1998 Constitutional Court ruling that, in a split judgement, upheld the right of traditional authorities to enforce the observation of and participation in traditional religious beliefs and practices on indigenous reserves.
6. In some communities the traditional authorities have taken the 1998 Constitutional Court ruling to mean that they have the authority to define what traditional beliefs are, and to punish those who decline to profess or participate in their version of the traditional beliefs. Community members who have converted to other religions or beliefs or none, and away from the religious beliefs and practices promoted by their leaders, may be arbitrarily detained, attacked, excluded from certain benefits and forcibly displaced.
7. In 2022, CSW interviewed 16 religious minority individuals from 16 different ethnic groups, as well as three religious majority leaders and a representative from the Association of Indigenous Cabildos from the North of Cauca (ACIN). The interviewees belonging to the indigenous religious minority church affirmed that they have been excluded or rejected in various situations including in accessing education and the workplace, and in some cases they have been forcibly displaced. Most interviewees who were asked what arguments the authorities have to disqualify their professed faith indicated that the traditional authorities fear that the indigenous people who convert will lose their identity and their spirituality.
8. Many Protestant Christians in indigenous Colombian communities are excluded from their right to primary, secondary and higher education and have experienced barriers to employment. Forced displacement and interreligious conflict are also common. In the case of the Wiwa, one of the peoples on the verge of extinction located mainly in the departments of Cesar, Guajira and Magdalena, Christianity is considered a direct threat. As a result, members of the community who convert are called to trial within the territory or exiled to other territories.

³ Food and Agriculture Organization of the United Nations (FAO), 'Indigenous Peoples' rights around the world', 4 March 2017 <https://www.fao.org/countryprofiles/news-article/en/c/198728/>

9. The non-Christian indigenous authority leaders interviewed by CSW consider that Christianity poses a threat to the conservation of ancestral knowledge-practices. An Arhuaco leader, an indigenous group from the Sierra Nevada de Santa Marta, affirmed that all religious missions are a direct threat to ancestral spirituality. The Kogui governor also articulated the dangers of other religions on the protection of their culture. The governors referred to the 1998 Constitutional Court decision as definitive justification for not permitting FoRB on indigenous reserves.

Mexico

10. Mexico is a secular state with a majority Roman Catholic population, as well as a number of religious minorities, including a rapidly growing Protestant community. Despite Mexico's strong legal protections for FoRB, state and federal governments often fail to acknowledge and respond adequately to acts of discrimination and violence targeting religion or belief groups..
11. The Law of Uses and Customs guarantees local and regional autonomy to members of indigenous communities and delegates considerable power to local authorities. This law has been abused to justify human rights violations against religious minorities in indigenous populations where religious practice and governance are often deeply interlinked. In many indigenous communities, especially in remote areas, there is often no real state presence to monitor the implementation of the Law of Uses and Customs and ensure that it is practised in accordance with human rights guarantees in state and federal law.
12. The majority of violations of FoRB linked to the abuse of the Law of Uses and Customs are concentrated in the states of Chiapas, Guerrero, Hidalgo and Oaxaca, where there are significant indigenous populations. Cases have also been reported in Jalisco, Michoacán, Nayarit and Puebla.
13. Many local leaders in communities functioning under the Law of Uses and Customs mandate religious uniformity and compel all community members to participate in the religious activities of the majority, usually Roman Catholicism, or face punishment. Participation could include the role of master of ceremonies, which often rotates among adult men in the community, or responsibility for cleaning the church and preparing decorations and flower offerings for religious services. In most cases, a financial contribution is also required.
14. One of the most common violations associated with attacks on FoRB in Mexico is the blocking of access to basic services, including water, electricity and sewerage. Denied access to water services seems to disproportionately impact women, who tend to be responsible for domestic tasks that rely on water, such as cooking and cleaning. In one example, after their water supply was cut off on 3 May 2021, Josefina Cruz Ruiz and other Protestant women from Nueva las Tacitas, Ocosingo Municipality, Chiapas State were forced to make daily trips to a stream 20 minutes from their homes to collect water for drinking and everyday tasks. These women also relied on the stream to wash their family's laundry, carrying between 10 and 15kg of clothes on their heads to and from the stream, several times a day, for up to five consecutive months. A lack of clean water can lead to serious health issues such as parasitosis, amoebiasis, malnutrition, diarrhoea and gastrointestinal disorders.
15. In the most extreme cases, members of the religious minority are forcibly displaced from their indigenous community. In 2021 CSW documented the experiences of 25 indigenous women and

two mestizas⁴ women from minority Protestant Christian communities in the Mexican states of Chiapas, Guerrero, Hidalgo, Jalisco and Oaxaca. 30% of participants interviewed by CSW reported that their families had experienced displacement. Their accounts indicate that victims are usually dispossessed of their land and often forced to take refuge in larger urban areas, where they have limited employment opportunities due to various factors including linguistic barriers and limited levels of education.

16. Indigenous religious minority families in Mexico are frequently unable to access justice following experiences of discrimination and/or violence. Local authorities are often the perpetrators of, complicit in or dismissive of these incidents. In one case, despite several complaints, municipal, state and federal authorities have failed to provide any lasting solutions for six Protestant Christian families and a single man from El Encanto, Las Margaritas Municipality, who are living without water, electricity or sewerage services. In 2020 men from these families visited the municipal seat in Las Margaritas to request support in their case. However, the municipal agent, Marin Gómez Jastañel, reportedly said: ‘We already know why they’re coming with their same problem, and we are not going to listen to them.’

Vietnam

17. On 1 January 2018 Vietnam implemented a new Law on Belief and Religion.⁵ For certain groups already registered with the government, the Law has provided greater clarity and freedom in some areas, such as charity work and social welfare events. For many other groups, however, there is evidence to suggest that the law has not been effective in protecting the right to FoRB, and in preventing or reducing FoRB violations. The law imposes several restrictive requirements upon religious groups. All religious groups are required to register with the government for recognition as a legal organisation and for authorisation for a range of activities. In practice, this registration process is open to abuse by state officials, with some applications ignored or rejected without explanation. Unregistered groups – including those whose applications have been unsuccessful or who have chosen not to register for reasons of conscience – are more vulnerable to harassment, arrest, imprisonment, physical violence and other abuses.
18. There are continued reports of FoRB violations against some communities from every major religion or belief in Vietnam, including Buddhists, Catholics, Cao Daists, Hoa Hao Buddhists and Protestants. The violations include pressure to recant, forced eviction, denial of access to public services and grants, beatings, torture, arbitrary detention, imprisonment, threats, intimidation, disruption of religious activities, prevention from attending religious activities, confiscation of religious materials, denial of access to education, and damage to properties used for religious activities.
19. While state restrictions apply to all religion or belief communities in the country, CSW’s research into the intersecting rights of indigenous people groups and the right to FoRB suggests that indigenous peoples and ethnic minorities in Vietnam are particularly vulnerable to specific forms of FoRB violations, and indeed the more severe violations of their rights and freedoms, including cultural rights.

⁴ Mestizo (fem. mestiza, fem. pl. mestizas) denotes a person of mixed European and indigenous ancestry.

⁵ Legal Normative Documents, ‘Law on Belief and Religion’, 18 November 2016

<http://vbpl.vn/TW/Pages/vbpgen-toanvan.aspx?ItemID=11093&Keyword=religion>

20. In 2021-2022 CSW worked with an independent researcher to conduct a study examining to what degree the right to FoRB of indigenous peoples in Vietnam is protected, including whether their right to use their indigenous or community language, right to education and land rights are guaranteed. The scope of the study included research into communities in the North Mountainous Region, the Central Highlands, and the Mekong Delta, including Khmer Krom Buddhists, Montagnard Protestants, and Hmong Protestants.
21. Although there were differences between the groups' specific situations, the research found common experiences across the different communities. Limits on the right to FoRB included restrictions on religious activities and teaching, and on the use of indigenous languages for religious activities. The research also found discrimination on the basis of religion affecting access to state benefits. There is also discrimination in schools against students from indigenous communities; in some cases, religion is also a factor in this discrimination. The most severe violations often occurred when members of indigenous people groups peacefully protested against violations or opposed government restrictions in some way, or when they belonged to unregistered religious groups.
22. According to the findings of this research, human rights violations experienced by religious communities belonging to indigenous people groups include: intrusive monitoring of religious activities by state actors; intrusion by the state into the appointment of religious leaders; restrictions on religious teaching materials including and especially in ethnic languages; confiscation or repurposing of land used for religious purposes; defamation on social media and word of mouth, by authorities or unknown internet users; complete ban on religious activities including all communal gatherings; discrimination; forced relocation in order to break up the community; being forced to pay a "fee" in order to receive identity documents or state support; confiscation of personal property by police; police harassment and interrogation; house arrest and enforced social isolation; interrogation by police; travel bans (banned from travelling overseas); arbitrary detention without conviction or trial; beatings, physical and psychological torture, including electrocution, and deprivation of food and water in detention; solitary confinement in jail; and extra-judicial killing by police.

Recommendations

23. Guarantee constitutional protections for the full right to FoRB in accordance with Article 18 of the ICCPR for all ethnic, religious and belief groups.
24. Urge member states, including Colombia, Mexico and Vietnam, to increase efforts to address intolerance and discrimination based on religion or belief in indigenous communities, including through education campaigns on the right to FoRB in accordance with federal and international law, and by providing training for the judiciary and local authorities to ensure that indigenous peoples do not have their access to justice hampered by prejudice, discrimination or linguistic barriers.
25. Call on member states to ensure safe return for victims of forced displacement and/or compensation, including provision for adequate and safe resettlement when there is no alternative or because the victims are too fearful to return to their homes.

26. Investigate instances of discrimination and violence on account of religion or belief, bringing perpetrators to justice in accordance with the law and supporting those who have been subjected to practices or policies that may unduly affect their right to FoRB.
27. Urge all relevant UN mechanisms to consider in their reporting the interrelatedness of the rights of indigenous peoples and the right to FoRB.
28. Encourage in-country embassies to monitor carefully the situation of human rights including FoRB in indigenous communities, and strongly urge national governments to protect the right to FoRB and indigenous rights in accordance with their obligations under international law.
29. Urge UN actors and state representatives to engage regularly with in-country civil society, including human rights defenders (HRDs) and NGOs, and to support civil society initiatives to promote FoRB in indigenous communities.