



Reports

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Religious Freedom for Indigenous Communities in Latin America

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International Institute
for Religious Freedom



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The Situation of Religious Freedom in Latin America in Light of the Universal Declaration of Human Rights

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Executive Summary

Policymakers, practitioners, and scholars have shown increased concern for religious freedom violations against Indigenous communities in Latin America over the past decade. Despite this growing attention, however, the systematic cataloging of the legal frameworks aimed at protecting these groups across the region, the enforcement of these provisions, and information about the number and types of violations remains limited.

Key findings

This report adds to the knowledge base of religious freedom violations against Indigenous communities in Latin America through three key research areas.

First, the report provides information on and a timeline of major recent religious freedom violations against Indigenous peoples, including discrimination in public institutions, prevention of the conducting of rituals, verbal abuse, and violent attacks. Second, the report documents the international mechanisms aimed at the protection of Indigenous peoples' religious freedom, namely rights delineated in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), the American Declaration on the Rights of Indigenous Peoples, and Convention 169 on Indigenous and Tribal Peoples of the International Labor Organization (ILO Convention 169).

The report also documents human rights instruments such as the International Covenant on Civil and Political Rights (ICCPR) and the American Convention on Human Rights (ACHR). The report then identifies which Latin American states have adopted these declarations and provides an assessment of how they are upholding their obligations.

Third, the report documents domestic legal measures related to the protection of Indigenous peoples' right to manifest their religion. This includes a compendium of Latin American constitutional provisions and legal codes and an assessment of how states are upholding these rights.

The first section makes an analytical distinction between threats to the religious freedom of Indigenous communities that are external and those that are internal, affecting that freedom in the collective and individual dimensions, respectively. Notwithstanding the enforcement challenges of the religious freedom of Indigenous peoples by Latin American states, the research found the Inter-American human rights system is robust and assertive to defend collective religious freedom violations in Indigenous communities, while the religious freedom of individuals in those communities receives disproportionately less attention.

The next two parts of the analysis found that most countries in Latin America include the recognition and protection of the religious freedom of Indigenous peoples in domestic legal provisions and that the international obligations entered into by Latin American states regarding the protection of religious freedom of Indigenous communities have been integrated into domestic legislation. The Latin American states that have ratified ILO Convention 169 are Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Ecuador, Mexico, Guatemala, Hon-

duras, Nicaragua, Paraguay, Peru, and Venezuela; the countries that did not ratify ILO Convention 169 are Cuba, the Dominican Republic, El Salvador, Panama, and Uruguay.

Countries that have ratified the ICCPR are Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, Mexico, Guatemala, Honduras, Nicaragua, Paraguay, Peru, Uruguay, and Venezuela.

Cuba did not ratify the ICCPR or the American Convention on Human Rights and did not vote in favor of the adoption of the American Declaration on the Rights of Indigenous Peoples.

All the aforementioned states signed the UNDRIP and voted in favor of the adoption of the American Declaration on Indigenous Peoples; and all of them, excluding Cuba, have ratified the American Convention on Human Rights.

Since the signing of ILO Convention 169 in 1989, constitutions and other legal provisions at the domestic level in the Latin American region have been reformed to recognize Indigenous communities and have incorporated Indigenous rights related to self-determination, special or self- jurisdiction, prior consultation, political participation, and protection of their sacred lands and their cultural identity, among others. These measures now protect around 54.8 million Indigenous people (almost 8.5% of the population of Latin America and the Caribbean). Except for Cuba, the Dominican Republic, and Uruguay, all domestic legal frameworks in Latin America recognize the existence of Indigenous communities in their territories.

The enforcement of these domestic and international commitments, however, remains uneven both within and across specific countries. The largest area for concern remains the protection of land rights. States continue to fall short of their international obligations to defend property rights, protect Indigenous lands and other territories from environmental damage, and ensure the safety of peaceful protests in defense of Indigenous lands and other territories. Inconsistencies in the enforcement of domestic laws stem from a lack of enforcement mechanisms and/or political will. This includes disparities in how states implement domestic legal provisions aimed at defending property rights, the integrity of Indigenous lands and other territories, and informed consultation with Indigenous communities.

Major religious freedom concerns

Regarding the collective dimension of the religious freedom of Indigenous communities, there are five main areas of concern: **lack of recognition of ancestral land ownership, state absence and organized crime, extraction of natural resources by legal and illegal companies, breakdown of the social fabric, and dispossession by appropriation.** Quantification of this dimension is difficult, because, among other reasons, the collectivity is targeted in very real though diffused ways, making it unclear how to count the number of people affected.

Regarding the violations of religious freedom of individuals in Indigenous communities, which is most prevalent in Colombia and Mexico, the following five areas were identified: **conversion, contributions to patronal feasts, construction of places of worship, proselytism and religious education, and renunciation of ancestral practices and expulsion from the communal property.** During the past five years (2018–2022), there were 1,045 incidents of violations in individuals' religious freedom in Colombia, 927 incidents in Mexico, and 19 in Chile. Most of these incidents were perpetrated by ethnic group leaders themselves, but the role of organized crime (in Colombia and Mexico) and of revolutionaries and paramilitary groups (in Colombia mainly) must also be highlighted.

Next steps

To address the issues raised in this report, a stronger commitment to enforcing international commitments and domestic laws intended to advance the protection and promotion of Indigenous people's religious freedom is needed. The following highlights at least four key courses of action to address Indigenous communities' religious freedom in the region.

Create enforcement mechanisms necessary to fully implement domestic legal provisions. These policies and procedures would help to ensure compliance from both state and non-state organizations by promoting transparency and objectivity, safeguarding fairness, and affording accountability. States should develop enforcement mechanisms at all levels of government, but especially the federal level as many of the obstacles to fully implementing domestic laws (e.g., the protection of Indigenous land and other territories) highlighted in this report involve decisions at the national level (e.g., resource extraction). States should further designate sufficient personnel and other resources to the effective implementation of these enforcement mechanisms.

Develop locally owned policies and practices through informed consultation that protect and promote Indigenous people's religious freedom. Latin American states should work to fully honor their commitments for informed consultation with Indigenous communities and/or establish procedures for consultation that align with international standards. These consultations should be collaborative mechanisms for indigenous peoples to effectively influence decision making on issues that affect them, including developing holistic rights-based policies and matters affecting spiritual practices.

Increase awareness of the growing number of internal threats to Indigenous communities' religious freedom. As highlighted in this report, national and international measures have largely been designed to protect Indigenous cultures from threats emanating from outside their communities. Consequently, factors within the community that can jeopardize the exercise of human rights, including religious freedom, have been neglected. Of particular concern to Latin American states should be divisions within communities that arise due to conversions and those members of the community who choose not to adhere to ancestral worldviews and practices.

Investigate non-state actors, including criminal organizations, that forcibly displace indigenous persons from their lands and/or harass, intimidate, or commit physical violence against Indigenous peoples, including those defending land and other territorial rights. The actions of non-state actors against Indigenous persons not only poses a significant threat to their safety and well-being, but it also weakens public trust and exacerbates tensions between communities. States would ideally also take action to curb the activities of these non-state actors. Where such actions are limited due to weak institutional capacity, states need to, at a minimum, demonstrate their commitment to religious freedom (as well as to law and order) by holding non-state organizations accountable.

Introduction

This project consisted of three research areas that are covered in a crosscutting manner in this report:

Information on and a timeline of major recent religious freedom violations against Indigenous peoples, including discrimination in public institutions, prevention of the conducting of rituals, verbal abuse, and violent attacks.

A compendium of Latin American constitutional provisions and legal codes related to the protection of Indigenous peoples' right to manifest their religion and an assessment of how states are upholding these rights, if applicable.

A description of religious freedom related rights delineated in the UN Declaration on the Rights of Indigenous Peoples and any other applicable international or regional legal instruments, a list of Latin American states which adopted the declaration and each instrument, and an assessment of how such states are upholding their obligations.

The first and fourth sections of this report pay explicit attention to the contrast between national and international legal norms and the reality on the ground. To address research area 3, the first section of this report provides information on and timelines of major recent religious freedom violations against Indigenous peoples, including discrimination in public institutions, prevention of the conducting of rituals, verbal abuse, and violent attacks. This section makes an analytical distinction between external threats to the religious freedom of Indigenous communities and those that are internal, affecting the collective and individual dimensions of religious freedom, respectively.

Using a mixed methods data collection approach combining semi-structured interviews, desk research, and the Violent Incidents Database¹ of the Observatory of Religious Freedom in Latin America (OLIRE), five main areas of concern were identified regarding the collective dimension of religious freedom violations against Indigenous communities: lack of recognition of ancestral land

¹ OLIRE's Violent Incidents Database is a data collection tool that covers many aspects of the right to religious freedom and is suited to its observation at the subnational level, including in Indigenous communities.

ownership, state absence and organized crime, extraction of natural resources by legal and illegal companies, breakdown of the social fabric, and dispossession by appropriation.

Incidents that violate the collective dimension are challenging to evaluate through quantitative measures. One reason for this is that such violations often overlap with other types of abuses against Indigenous peoples (e.g., economic, social, political discrimination). Another reason is that most Indigenous worldviews construe any threat to Indigenous territories as a direct or indirect threat to the religious freedom of the people living on these territories because the land is considered sacred. This implies that activities like land grabbing, environmental damage, the presence of foreign missionaries, or any form of external interference by both public and private actors can be (re)interpreted as violations of religious freedom. Quantification remains difficult because in many cases such violations are not reported by Indigenous groups themselves as violations of their religious freedom.

In addition, because the collectivity is targeted in very real though diffused ways, it is unclear how to count the number of people affected.

Regarding the violations of individuals' religious freedom against Indigenous communities, issues were identified in the following five areas: conversion, contributions to patronal feasts, construction of temples, proselytism and religious education, and renunciation of ancestral practices and expulsion from the communal property.

During the past five years (2018–2022), 1,045 incidents of violations of individuals' religious freedom were identified in Colombia, 927 in Mexico, and 19 in Chile. An assumption made is that violations of the religious freedom of individuals are more frequent in these countries because of the far-reaching self-government rights in Colombia (de jure) and in Mexico (de facto) that create a situation in which such violations are left unchecked by national governments and international bodies with impunity. In the case of Chile, the incidents are related to the identitarian movement of the Mapuche community that has increased its activities in recent years.

Most of these incidents are perpetrated by ethnic group leaders themselves, but the role of organized crime (in Colombia and Mexico) and of revolutionaries and paramilitary groups (in Colombia mainly) must also be highlighted. In some cases, government officials are also complicit in the discrimination against individuals who convert from the majority religion in Indigenous communities. Regarding the nature of the incidents, they include all kinds of threats, in particular arrests and detentions, sexual assault, and forced displacement.

The categorization of missionary activity (proselytism) poses an additional challenge. Although if non-coercive it is a legitimate expression of the right to religious freedom, members of Indigenous communities often perceive proselytism as a threat to the preservation of their culture and spirituality and therefore construe it as a threat to their religious freedom. States, and sometimes Indigenous authorities themselves when they have jurisdiction, have justified bans on proselytism in Indigenous communities on this basis. Such bans are intended

to protect the religious freedom of the “minority” Indigenous community in the country but can also violate the religious freedom of the “minority-within-the-minority” (groups within the Indigenous community that adhere to other, non-traditional faiths). The balancing of the individual and collective dimension of these rights is not easily solved. However, recent empirical studies at least suggest that restrictions on proselytization are associated with lower levels of civil and political rights in general and higher levels of religious hostility.² With this in mind, more attention needs to be given to the empirical implications of proselytization in order to better understand the conditions under which constraining or protecting this right affects other human rights.

The second section corresponds to the first part of research area 3 of the project. It includes a description of religious freedom related rights delineated in three important international and Inter-American instruments: the UN Declaration on the Rights of Indigenous Peoples (2007), the American Declaration on the Rights of Indigenous Peoples (2016), and the Indigenous and Tribal Peoples Convention 169 of the International Labor Organization (1989).

Even though the first two of these instruments are non-binding and fairly recent, they show the political commitment of the United Nations (UN) and the Organization of American States (OAS) to the protection of Indigenous rights, including the right to religious freedom. These multilateral bodies have also addressed the religious rights of Indigenous communities in various policy documents, including resolutions of the UN General Assembly, reports by the UN Special Rapporteur on Freedom of Religion or Belief (FoRB) and jurisprudence of the Inter-American System of Human Rights. The latter has focused mainly on two themes: funeral rites and the nexus between cultural identity and land rights.

International Labour Organization (ILO) Convention 169 is binding for states that have ratified it, and so are the religious freedom provisions contained in “general” human rights instruments such as the International Covenant on Civil and Political Rights (ICCPR) and the American Convention on Human Rights (ACHR). There is broad international protection of the religious rights of Indigenous communities, as most Latin American states have adopted these instruments. The exceptions are Cuba, the Dominican Republic, El Salvador, Panama, and Uruguay that did not ratify ILO Convention 169; Cuba also did not ratify the ICCPR and the ACHR; Venezuela renounced the OAS charter in 2017, but its interim president Juan Guaidó annulled this decision. The protection of the religious rights of Indigenous communities is also implicit in the Convention on Biological Diversity and the UN Framework Convention on Climate Change, which most countries in the region have adopted.

The third section of this report offers a compendium of Latin American constitutional provisions and legal codes related to the protection of Indigenous peoples’ right to manifest their religion. Except for Cuba, the Dominican Repub-

² <https://berkeleycenter.georgetown.edu/essays/ranking-rights-does-protecting-the-right-to-proselytize-violate-religious-freedom>.

lic, and Uruguay, all domestic legal frameworks in Latin America recognize the existence of Indigenous communities in their territories. This corresponds to the first part of research area 2 of the project.

Four areas were reviewed that are directly related to the protection of the religious rights of Indigenous communities: worldview and spiritual practices, land, cultural identity, and self- government and autonomy. Based on the holistic nature of the Indigenous worldview, the protection of these four areas is not only a way to recognize the political rights of Indigenous communities in general, but is also essential for the exercise of the right to religious freedom of Indigenous communities: religious expression includes worldview and spiritual practices; land is often viewed as sacred or a religious sanctuary; culture is intricately linked with religion; and self- government is also a vehicle for religious expression.

Largely, the international obligations entered into by Latin American states regarding the protection of religious freedom of Indigenous communities have been implemented in domestic legislation. In many cases, these laws go far beyond the essence of international obligations. This is true even for countries such as Panama or El Salvador that have not ratified ILO Convention 169. Not all legal provisions regarding the protection of the religious rights of Indigenous communities have constitutional status; many relevant rules are included in other legal provisions that refer to specific policy fields such as the environment, agriculture, or education. In addition, evidence is presented of case law at the national and Inter- American levels that has also upheld these provisions. All the international and domestic protections of the religious rights of Indigenous peoples are in addition to the religious freedom clauses in international law and national constitutions that guarantee religious freedom for all citizens, which include Indigenous peoples.

The fourth section of this report looks at how Latin American states are upholding their international and domestic obligations as outlined in the mechanisms described in the second parts of research areas 2 and 3. It draws on information from the previous sections. An important finding is that there is a sharp contrast between how the protection of rights is provided for in international and domestic legislation and how it is implemented. As with other areas of the rule of law in Latin America, the main challenge identified is related to the capacity of states to enforce religious freedom provisions in Indigenous communities.

The Inter-American human rights system is robust and assertive to defend collective religious freedom violations in Indigenous communities, while the individual dimension of religious freedom receives disproportionately less attention. The U.S. Department of State's International Religious Freedom (IRF) report on Mexico recognizes the individual dimension of the right to FoRB (this also applies to religious freedom datasets such as Pew Research Center's Government Restrictions Index that draw on this source).

As more information becomes available, the IRF reports on other countries in Latin America can start to cover this dimension. Based on this report, violations of individuals' religious freedom of FoRB in Colombia and Chile should also be included.

Both the collective and the individual dimensions of religious freedom violations against Indigenous communities represent serious issues that deserve national and international attention. As stated, the predominant focus of the protection of Indigenous minorities concerns external threats. In the case of Indigenous communities, at the national and international levels, the protection system has been designed to focus on the preservation of Indigenous cultures that have been under threat since colonial times. However, other factors within the community have been neglected, which can also jeopardize the exercise of human rights, including religious freedom.

Recent Major Religious Freedom Concerns for Indigenous Peoples

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During the last decades of the 20th century, Indigenous movements emerged as influential, well-organized, political actors throughout Latin America. The demands of these movements went beyond the social inclusion of Indigenous communities in the economic system. They demanded the recognition of group rights and ethnic determination. This unprecedented mobilization of Indigenous groups, often referred to as *indigenismo*, resulted in major political achievements for the Indigenous peoples. As cited previously, a milestone for the Indigenous movement was the adoption, in 1989, of the ILO's Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries, which formally recognized, among other aspects, the right to self-determination of Indigenous peoples. As a result, many countries in Latin America granted Indigenous communities far-reaching self-determination rights or, in other words, "Indigenous autonomy."

Among other things, Indigenous autonomy is often presented as a way to protect the ancestral religious beliefs of Indigenous communities. Notwithstanding the significance of this legal protection, the religious freedom of Indigenous communities in the region continues to be challenged, at both the collective and the individual level.

At the collective level, Indigenous communities remain extremely vulnerable to external threats from both state and non-state actors (the latter includes not only organized crime groups and paramilitaries, but also multinational corporations). To cite just two examples: "In several communities, OHCHR [Office of the High Commissioner for Human Rights] has documented limitations on ancestral cultural, and religious practices, such as the ban by Indigenous authorities on organizing community assemblies and celebrating novenas for the dead[.]"³ and

3 2019 Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia, https://www.ohchr.org/sites/default/files/2022-03/A_HRC_49_19_UnofficialEnglishVersion.pdf.

“as a consequence of [the violence faced by several Indigenous communities in the Sierra Tarahumara (Mexico) due to alleged conflicts between drug trafficking cartels that dispute the control of the territory for the cultivation of illicit crops], members of these communities have been forced to move out of their territories.”⁴

As stated in the subsequent sections of this report, the legal instruments of the UN and the OAS, as well as national constitutional provisions in Latin American countries, offer broad protection to Indigenous communities against external threats. They generally aim at preserving Indigenous cultures that have been under threat since colonial times.

These legal instruments have, however, neglected threats to religious freedom within Indigenous communities; members of Indigenous communities that convert away from their ancestral beliefs, face severe persecution. In some countries in the region, states, local governments, or Indigenous authorities, when they have jurisdiction, restrict missionary activity in Indigenous communities under the pretense that any form of religious proselytism constitutes a threat to the preservation of the Indigenous culture and social cohesion. In addition, Indigenous converts can be pressured to follow syncretic practices, despite their difference in beliefs, for fear of reprisals by community leaders against them or their families. This limits individual community members’ right to the freedom to have, choose, change, or leave a religion or belief; the freedom to manifest a religion or belief; the freedom from coercion and discrimination; and the freedom to practice one’s religious beliefs in the workplace, among other things. Indigenous converts might be forced to participate in religious festivities of the community, regardless of their personal religious beliefs, also affecting 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 cast out by community leaders, impacting the right of parents to give their children religious and moral education in accordance with their own beliefs.

For example, the high scores of Mexico on the Pew Research Center’s Social Hostilities Index⁵ are driven in large part by the frequent mentions of issues that arise around religious minorities in Indigenous communities, as detailed in the U.S. Department of State international religious freedom reports. The challenges to religious freedom inside Indigenous communities is also a matter that has been documented by various scholars⁶ and raised by faith-based organizations.⁷

4 Interamerican Commission on Human Rights, press release of 23 June 2022, <https://www.oas.org/en/IACHR/jsForm/?File=/es/cidh/prensa/comunicados/2022/144.asp>.

5 <https://www.pewresearch.org/religion/wp-content/uploads/sites/7/2022/11/Appendix-B.pdf>

6 See: Kovic, C.M. (2007). Indigenous Conversion to Catholicism: Change of Heart in Chiapas, Mexico. In *Conversion of a Continent: Contemporary Religious Change in Latin America*, edited by Timothy J. Steigenga and Edward L. Cleary, pp. 191–217. New Brunswick, NJ: Rutgers University Press; Scolnicov, Anat. 2010. *The Right to Religious Freedom in International Law: Between Group Rights and Individual Rights*. London: Routledge; Freston, Paul. 2018; “Latin America:(Still) a Site of Persecution and an (Evolving) Global Defender of the Persecuted.” In *Under Caesar’s Sword: How Christians Respond to Persecution*, edited

Undoubtedly, the recognition of the autonomy and self-determination of Indigenous groups has been a major step forward in terms of the protection and guarantee of Indigenous rights. In practice, however, the **low visibility of these groups, at the social and political levels, has facilitated indifference and discrimination**, and it has also made possible human rights violations within the community, including the violation of religious freedom. These infringements have led to little or almost no interference by state or federal authorities in the affairs of Indigenous communities. On some occasions, as followers of the uses and customs of the community, they themselves become perpetrators of abuses against minorities.

The religious element in Indigenous worldviews involves a series of vital factors for the coexistence of the community. 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 deeply rooted 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.”⁸ Hence, the religious dimension within Indigenous communities is immersed in their worldview and influences the legal order of each Indigenous people, as well as the system of customs and traditions that they develop over time.

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. This can lead to considerable pressure on religious minorities in Indigenous areas in several Latin American countries. Whenever an individual decides to convert to another religion or abandon the syncretic practices in an Indigenous community, the convert risks all kinds of threats, reprisals, and exclusion.

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 the need for international scrutiny. 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 for religious minorities in Indigenous communities became more hostile due to the even greater weakness of state responses to these communities.

by Daniel Philpott and Timothy S Shah. New York, NY; Alves, R. V. S. (2020). “Law and Religion in the Encounter of Cultures: The Normative Conflicts Between Freedom of Religion or Belief and the Rights of Indigenous Peoples.” In *Latin American Perspectives on Law and Religion*, edited by Rodrigo Vitorino Souza Alves. New York, NY: Springer International Publishing.

7 CSW, “New report explores intersection between freedom of religion or belief and indigenous rights”, 08 December 2022, <https://www.csw.org.uk/2022/12/08/press/5883/article.htm>.

8 Navarrete Linares, F. (2008). *Pueblos Indígenas del México Contemporáneo*. http://ru.ffyl.unam.mx/bitstream/handle/10391/353/monografia_nacional_pueblos_indigenas_mexico.pdf?sequence=1%26isAllowed=y.

In sum, to obtain a full picture of the religious freedom of Indigenous communities, it is essential to consider threats to both the collective and the individuals' religious freedom of Indigenous communities; that is, the minority (Indigenous communities) and the minority-within-the-minority (religious minorities inside Indigenous communities).

Collective dimension of religious freedom

Data on the violations within the collective dimension of religious freedom was obtained by looking at trends during the past five years, as well as specific violations that occurred within the past year (from January to December 2022).

Based on desk research, religious freedom violations were mapped against and within Indigenous communities in Latin America. It is important to note that the list compiled was not exhaustive but provides a snapshot of the nature of the violations and the various actors involved. Because of the broad scope of religious freedom violations in the collective dimension of Indigenous communities, a comprehensive counting of all the incidents was impossible.

In addition to desk research, semi-open interviews were conducted with human rights defenders, lawyers, Indigenous associations, and victims of religious freedom violations against and within Indigenous communities in Latin America. The interviews were conducted either remotely via Zoom or in-person by local research assistants. Interviewees were selected from the network of OLIRE and its partner organizations and consisted of key stakeholders (human rights advocates, religious leaders, external experts, lawyers, representatives of Indigenous communities, former victims, and others).

Based on the interviews, five main areas of concern were identified. These five areas correspond to behaviors that systematically violate the religious freedom of Indigenous communities. The most widespread practice corresponds to land-grabbing exercised by private companies, with or without the complicity of the state, as well as by criminal organizations carrying out actions that displace Indigenous communities from their territories, in more ways than one. The loss of land affects not only the loss of ancestral property but also their religious freedom as it also impacts the sacredness of their holy sites, their crops or environment, leading to the rupture of the social fabric that causes loss of identity and transmission of their beliefs and customs.

Lack of recognition of ancestral land ownership

The relationship of Indigenous communities with their origins and the connection with the land, territories, and the natural elements that compose it, are part of a spiritual and community experience that responds as a whole. The lack of effective possession through documents and legal titles exposes Indigenous communities to constant violations, such as forced eviction or dispossession of property used for spiritual purposes, as well as the prohibition of entry to sacred places.

A state practice in Guatemala is the creation of a registry⁹ or recognition of ancestral or spiritual authorities before the state, as well as the exclusive administration¹⁰ of pre-Hispanic spaces, without having consulted the Mayan communities who develop their spiritual activities in these spaces. This measure, while seeking to ensure access to or recognition of the religious practice of communities, has generated divisions and altered the social order within communities.

An example of this alteration is the form of election of religious and community authorities. It has been reported that the interference of the state, as a requirement of recognition, has corrupted ancestral rituals with political interests which do not comport with the worldview or tradition of the community; especially considering that the selection of a spiritual or communal leader is not always done through the exercise of the vote, but through rituals or processes of spiritual formation.¹¹

Another state practice has affected some communities in the Amazon area of Colombia and Venezuela.¹² Specifically, nomadic communities have had to settle permanently in territories to receive recognition of rights, such as prior consultation,¹³ as well as the protection of the national army against non-state armed groups. The conditioning of rights by the state affects the religious freedom of these communities by preventing them from living their cycles of mobilization according to their customs.

The unjustified delay¹⁴ in issuing land titles is yet another state practice that limits the free exercise of religious freedom. In cases such as Argentina, Mapuche communities denounce the unjustified delay by the authorities of the issuance of property titles already processed. Further, these communities denounce the questioning of the authenticity of these documents by the jurisdictional authority in trials against private companies.¹⁵

State Absence and Organized Crime

Criminal organizations control areas through which communities must travel to reach cities, often demanding the payment of some fee to allow passage.¹⁶ The impossibility of traveling through their territories freely, to protect the integrity of their relationship with nature as a living temple of their worldview, violates

9 <https://www.resumenlatinoamericano.org/2022/06/02/guatemala-los-aj-qij-contadores-del-tiempo-no-necesitan-una-credencial/>.

10 <https://nimajpu.org/ajqijab-y-autoridades-indigenas-y-ancestrales-rechazan-iniciativa-de-ley-que-pretende-privatizar-lugares-sagrados-y-prehispanicos/>.

11 Interview.

12 Interview.

13 <https://www.debatesindigenas.org/notas/166-pueblos-indigenas-riesgo-extincion-colombia.html>.

14 <https://www.laizquierdadiario.com/Comunidad-Mapuche-Lof-Suyai-Leufu-denuncio-una-amenaza-constante-y-temen-por-un-posible-desalojo>.

15 <https://www.memo.com.ar/hechos/mapuches-en-mendoza-gabriel-jofre/>.

16 <https://www.fundaredes.org/2021/09/03/boletin34-grupos-armados-irregulares-someten-a-pueblos-indigenas-en-la-frontera-venezolana/>.

their religious freedom, in addition to putting them in constant danger when confronting these criminal organizations,¹⁷ as happened with the murders of the “Indigenous Guards,” as they are called in Colombia.

The absence of the state in territories, such as the Amazon, especially in Venezuela and Colombia,¹⁸ favors the presence and control of territories by criminal groups that dispute lands where Indigenous communities develop their daily spiritual lives.¹⁹ Organized crime in these territories takes the form of drug trafficking,²⁰ human trafficking, paramilitary groups,²¹ or guerrillas.²² These groups take advantage of the absence of armed or security forces in large areas of the national territory, building roads and landing strips for traffic,²³ as well as clandestine ports—all in the middle of the ancestral territories of the communities. Moreover, the forced recruitment of Indigenous children and youth by drug trafficking gangs and guerrillas is a broader issue that affects children of converts disproportionately, according to some reports.²⁴ The presence of these criminal groups, such as the Revolutionary Armed Forces of Colombia (FARC) or the post-peace agreement paramilitary groups, has displaced many families, indirectly forcing them to abandon their religious practices.²⁵

Several Indigenous communities in the Mexican states of Chihuahua, Chiapas, and Sonora have been victims of threats from drug traffickers who dispute control of the territories for the illegal seeding and cultivation of illicit crops.²⁶ When the communities refuse to leave their lands, they are consequently forced to cultivate the material for drug production, an act that is against their religious principles.²⁷

During the past year, there have been reports of the murder of Catholic priests who work and seek to protect the communities from these abuses. Given the absence of the state, the different religious authorities become targets of threats

17 <https://www.caaap.org.pe/2021/11/19/ucayali-guardias-indigenas-se-instalan-en-mas-de-11-comunidades-para-protegerse-de-invasiones-por-el-narcotrafico/>.

18 Interview.

19 https://www.analitica.com/actualidad/actualidad-nacional/fundaredes-denuncia-ocupacion-de-territorios-indigenas-por-grupos-armados/?fbclid=IwAR3ubUGBtNmaC1Frn3iqd87TPZeXu25h0w_UkakuYFvDArhHmXhaTnuij0.

20 <https://www.oas.org/es/CIDH/jsForm/?File=/es/cidh/prensa/comunicados/2022/025.asp>.

21 <https://www.ohchr.org/es/press-releases/2022/03/colombia-un-expert-says-killings-nasa-indigenous-human-rights-defenders>.

22 <https://www.infobae.com/america/venezuela/2022/04/26/indigenas-exigen-a-un-general-que-hable-con-la-guerrilla-que-los-ataco-ustedes-saben-que-ellos-estan-ahi/>.

23 <https://www.caaap.org.pe/2021/03/18/narcos-habilitan-46-pistas-de-vuelo-en-pueblos-de-ucayali/>.

24 <https://www.debatesindigenas.org/notas/155-narcotrafico-en-colombia.html>.

25 <https://www.justapaz.org/wp-content/uploads/2022/08/LLAMADO-PROFETICO-16.pdf>.

26 Interview.

27 <https://www.oas.org/es/CIDH/jsForm/?File=/es/cidh/prensa/comunicados/2022/144.asp#:~:text=De%20acuerdo%20con%20informaci%C3%B3n%20p%C3%ABlica,%2C%20municipio%20de%20Urique%2C%20Chihuahua>.

and accusations to discredit them, as in the case of the Catholic priest of the Tzotzil²⁸ ethnic group in Chiapas; some of the interviewees allege this is a strategy that seeks to break the unity of the Indigenous communities.

Extraction of Natural Resources by Legal and Illegal Companies

Complaints have been received from Indigenous communities where consultations were not carried out or, in some cases, were precarious and partial.²⁹ Excessive mining activity causes serious environmental damage,³⁰ which prevents the free exercise of religious freedom, such as access to sacred sites, and can lead to their destruction; it can even prevent the consumption and sacredness of water springs.³¹

Extractive companies,³² depending on the country and the nature of the resources extracted, have carried out such activities under the protection of the law or, in some cases, outside it. Legal mining, authorized by the state, must comply with international standard requirements to operate in territories where Indigenous communities live. In doing so, such companies must especially comply with prior informed consultation while considering the existence of steps enabled for the transfer of communities to their sacred sites, as is the case with pilgrimages to Wirikuta, the sacred site of several Mexican communities.³³ This pilgrimage, which crosses several territories throughout the state of Jalisco, is considered an essential activity for the communities' spiritual growth.

Illegal mining and illegal logging expose Indigenous communities to harassment and violence.³⁴ Confronted by such illegal enterprises, Indigenous communities can experience additional hazards, such as the incursion by illegal miners on Indigenous peoples' lands where they burn the homes of Indigenous communities or sexually abuse women and girls as a form of harassment to force them out of the land from which the intruders plan to extract minerals or cut down trees.³⁵

Furthermore, the use of mercury by extractive companies has contaminated waterways essential to the survival of Indigenous communities and forced them to move to find new sources of water and food.³⁶ Forced displacement has

28 https://www.cope.es/religion/hoy-en-dia/iglesia-universal/noticias/mexico-diocesis-san-cristobal-las-casas-pide-que-cese-persecucion-sus-sacerdotes-20220715_2199136.

29 <https://dialogochino.net/es/actividades-extractivas-es/53258-empresa-minera-es-acusada-de-coaccionar-a-indigenas-para-explotar-potasa-en-la-amazonia/>.

30 <https://es.mongabay.com/2018/01/venezuela-arco-minero-indigenas/>,

<https://provea.org/actualidad/fiebre-extractiva-y-abandono-estatal-amenazan-a-los-pueblos-indigenas-de-venezuela-2/>.

31 <https://prensarural.org/spip/spip.php?article28693>.

32 <https://www.oas.org/es/cidh/informes/pdfs/IndustriasExtractivas2016.pdf>.

33 <http://ojs.uc.cl/index.php/RLDR/article/view/16411/13427>.

34 <https://www.caaap.org.pe/2021/08/12/frontera-peru-brasil-denuncian-conflicto-entre-indigenas-y-empresas-madereras-por-destruccion-de-bosques/>.

35 <https://es.mongabay.com/2022/02/nicaragua-violencia-desplaza-a-comunidades-indigenas-y-las-deja-sin-tierras/>

36 <https://www.ohchr.org/es/stories/2022/08/amazon-rainforest-Indigenous-tribe-fights-survival>.

caused, for example, a community in Nicaragua to go through a serious famine leading to the death of community members.³⁷ As a result of the constant displacement, they were prevented from planting and growing their own food, but they still refused to consume processed food because this would threaten their uses and customs. According to several scholars cited in this report and interviewees, this practice of environmental exploitation indirectly affects the religious freedom of Indigenous communities because the subsequent environmental damage makes it impossible to grow food in agreement with ancestral religious practices.

Other Scenarios that Can Indirectly Affect the Exercise of the Collective Religious Rights of Indigenous Communities

Not all issues considered in this section have a direct relation to religious freedom when considering this right from a Western perspective. However, when considering the holistic nature of most Indigenous worldviews, these issues may be perceived and construed by Indigenous groups as religious freedom violations. The following was confirmed by scholars cited and the interviews conducted.

- Indigenous communities base their principles and values on traditions and a sense of unity commonly transmitted through oral history, stories, and community memory. The breakdown of the social fabric, that is, of unity as a people, can occur in various ways, from the recruitment of children and young people into armed groups to the disrespectful incursion of urban areas into Indigenous territories.
- This irruption in their territories causes a tension in the transmission of custom, worldview, and religious experience from the communities to new generations.³⁸ An example of this social breakdown is what happens with the arrival of hotel complexes in territories where communities develop their daily lives, generally close to the coast.³⁹ Faced with the impossibility of developing agricultural activities and living in community, families are separated by the need to look for work outside their territories, thus distancing themselves from their customs and traditions.
- Another form of social breakdown is that which results from discrimination by state agents, such as the ignorance of the authorities about the spiritual value some communities place on children's names. Often, when presented with native names, the state authorities encourage parents to choose other names for their children. This threatens the very identity of Indigenous peoples considering the strong spiritual meaning that Indigenous names have for certain cultures.⁴⁰

³⁷ <https://es.mongabay.com/2022/02/nicaragua-violencia-desplaza-a-comunidades-indigenas-y-las-deja-sin-tierras/>.

³⁸ Interview.

³⁹ <https://www.oas.org/es/cidh/informes/pdfs/IndustriasExtractivas2016.pdf>.

⁴⁰ Interview.

- Taking possession of cultural property or ancestral knowledge and using it without authorization or distorting the spiritual meaning it has for an Indigenous community also constitutes the violation of Indigenous peoples' right to religious freedom.⁴¹
- Regarding sacred sites, the loss of the spiritual sense of these spaces represents a serious violation of their religious freedom, often generating the loss of the sense of community belonging to their worldview, in the face of exploitation for exclusively commercial purposes.⁴²
- Another example is the appropriation of natural goods and ancestral knowledge of medicinal plants used in the rituals in various communities. The use of psychotropic drugs in Indigenous rituals is part of the ancestral experience of Indigenous communities, such as the use of peyote by the Wixárika⁴³ communities in Mexico or ayahuasca⁴⁴ used by the Amazonian Indigenous communities for non-recreational purposes. The incursion of foreigners who seek to promote participation in such rituals, or to commercialize their alternative use, cashing in on ancestry as a commercial attraction is perceived as a violation of the spiritual content of this practice.
- The presence of pharmaceutical companies that venture into Indigenous territories has also been reported along with the stealing of jungle plant specimens used for spiritual rituals, a practice identified by some authors as biopiracy of traditional medicinal resources.⁴⁵ This form of appropriation not only includes the manipulation of resources, but in some communities, involves defamation strategies targeting shamans or ancestral healers by state health authorities.⁴⁶ These traditional healers are accused of exercising acts of witchcraft, and their work with medicinal properties is discredited, forcing the healers, on many occasions, to move from their communities for fear of reprisals. Furthermore, some of them, because of their social and spiritual role,⁴⁷ have even been victims of murder.⁴⁸
- The disregard for the sacredness of certain foods illustrates another way in which land-grabbing poses a detriment to Indigenous communities. Mono-culture affects the sacredness of natural resources in a variety of ways. For

41 <https://www.culturalsurvival.org/news/apropiacion-cultural-otra-forma-de-extractivismo-en-las-comunidades-indigenas>.

42 <https://www.infobae.com/america/mexico/2022/08/22/tren-maya-y-las-amenazas-para-una-comunidad-en-mexico/#:~:text=El%20tren%20pasar%C3%A1%20frente%20a,acceso%20al%20resto%20del%20mundo>.

43 <http://ojs.uc.cl/index.php/RLDR/article/view/16411/13427>.

44 <https://www.argentinaforestal.com/2020/12/07/apropiacion-cultural-otra-forma-de-extractivismo-en-las-comunidades-indigenas-en-el-mundo/>.

45 https://www.scielo.org.mx/scielo.php?script=sci_arttext&pid=S1870-41152010000200151.

46 Interview.

47 <https://im-defensoras.org/2022/05/alerta-defensoras-guatemala-adela-choc-cuz-autoridad-ancestral-y-defensora-es-criminalizada-agredida-y-expulsada-de-su-comunidad-por-su-labor-como-guia-espiritual-y-defensora-de-la-tierra-y-el/>.

48 <https://www.emol.com/noticias/magazine/2011/10/03/506332/catorce-curanderos-fueron-asesinados-en-peru-desde-2010-acusados-de-brujeria.html>.

example, the Ava Guaraní community in Paraguay,⁴⁹ who denounced the use of pesticides in large monocultures next to their territories, has consequently suffered the shortage of a particular plant used for the ritual of initiation to adult life for the young people of the community, directly affecting the spiritual experience of the community.⁵⁰

- Another example is the imposition of monoculture agricultural policies in Guatemala by the government, which have affected the communities' sacred relationship with maize.⁵¹ This product is part of a series of spiritual ceremonies essential for family and community life, from its sowing, to harvesting, to consumption. Pine and palm monoculture, as well as the market's preference for foreign-sourced maize, have affected the Mayan family economy. It has also affected their food livelihood that connects them to their ancestors.⁵²

Individual dimension of religious freedom

After analyzing the collective dimension of Indigenous communities' religious freedom and identifying the most serious aspects that affect this right, this section addresses the individual dimension and the ways in which some Indigenous community members' right to religious freedom is violated. To identify these violations, it is necessary to first make a distinction between those exercised by internal and external agents of the community.

The external agents include organized crime and private companies that directly affect the religious freedom of individuals in the communities, especially because of the religious role that these people play in the community. There are also behaviors of community leaders that violate the religious freedom of Indigenous converts to other religions or practices that differ from those practiced by a majority of the community. This conduct is linked to the sense of identity and belonging of the communities, a principle that can be interpreted in some scenarios as “the collective over the individual.” This idea could lead to some communities identifying anything that differs from the collective and community identity as a danger to unity and their subsistence as a people.

The “danger of unity,”⁵³ which is observed in some Indigenous communities with a “unitary” conception of what a politically functional community should be, refers to a society where its members are expected to share the same language, traditions, dress, lifestyle, and convictions, as opposed to “pluralism” which valorizes and promotes freedom and diversity of elements. Rigid insistence on unity is often a recipe for violence. When the behavior of a member of a community is considered as deviating from the “collective conscience,” it can cause community leaders to react in various ways.

49 <https://www.ohchr.org/es/press-releases/2021/10/paraguay-failing-prevent-contamination-violates-indigenous-peoples-right>.

50 Interview.

51 https://www.biodiversidadla.org/Documentos/Guatemala_Nuestro_cuerpo_fue_hecho_de_maiz.

52 Interview.

53 Buijs, G.J. (2013). Twee ideeën van politiek. *Radix* 39(4): 268–282.

The various forms of violations of religious freedom of these individuals have characteristics of cohesion, such as corrective measures to bring the individuals and their families back into the collective conscience, or outright acts of physical violence and exclusion from the community.

To collect data for this section, a similar mixed methods approach to the previous section was adopted. In addition to the interviews and desk research, the main resource used was the *Violent Incidents Database* (VID) covering the whole of Latin America, a tool designed to collect, record, and analyze violent incidents related to violations of religious freedom.

The VID allows users to estimate the number of people within Indigenous communities in Latin American states that experience violations of the right to religious freedom, in addition to being a unique source of information regarding the type and/or characteristics of these incidents.

Figure 9 lists the three countries where violations of individuals' religious freedom were identified. Based on information collected, such violations appear more frequent in these countries because of the far-reaching self-government rights in Colombia (*de jure*) and in Mexico (*de facto*) that create a situation in which national authorities and international bodies do not address such violations. In the case of Chile, the incidents are related to the identitarian movement of the Mapuche community that has increased its activities in recent years.

Figure 9 presents annual totals; Figure 10 differentiates the incidents by perpetrator; and Figure 11 presents the type of incident.

Country	2018	2019	2020	2021	2022	Total
Chile	6	0	1	10	2	19
Colombia	88	177	72	299	409	1,045
Mexico	50	160	82	549	86	927

Figure 9. Total Number of Violations of Individuals' Religious Freedom in Latin America (2018–2022). Source: Violent Incidents Database (updated for this report).

Perpetrator	Chile	Colombia	Mexico
Ethnic group leaders	8	357	836
Extended family / average citizens	0	4	7
Government officials	0	6	10
Organized crime	2	66	67
Revolutionaries or paramilitary groups	0	570	5
Unknown	9	39	2

Figure 10. Total Number of Violations of Individuals' Religious Freedom, by Perpetrator (2018–2022). Source: Violent Incidents Database (updated for this report).

Country	Chile	Colombia	Mexico
Killings	0	7	6
(Attempts) to destroy, vandalize, or desecrate places of worship or religious buildings	18	8	4
Closure of places of worship or religious buildings	0	0	1
Arrests/detentions	0	54	107
Sentences	0	19	3
Abductions	0	3	0
Sexual assaults/harassment	0	62	2
Forced marriages	0	2	0
Other forms of attack (physical or mental abuse)	1	211	44
Attacks on houses/property of faith adherents	0	10	90
Attacks on shops, businesses, or institutions of faith adherents	0	18	1
Forced displacement from home	0	651	624
Forced displacement from country	0	0	40

Figure 11. Total Number of Violations of Individuals' Religious Freedom, by Type of Incident (2018–2022) Source: Violent Incidents Database (updated for this report).

Based on the interviews conducted, we identified five main drivers behind the human rights abuses cited in the preceding figures. These drivers, which appear interrelated, apply especially to Colombia and Mexico, where individuals in Indigenous communities who convert away from the majority religion, often engage in behavior that triggers discrimination against them.

Conversion

Among the Indigenous communities studied, two large groups can be recognized: (1) the Indigenous communities that maintain their own Indigenous worldview, autochthonous and unrelated to any religion of Western origin, maintaining a certain level of purity in their traditions and customs; and (2) the communities that have adopted the Catholic religion and through syncretism have integrated it with their customs and ancestral worldview. The common pattern maintained in both contexts is the primacy of the collective over the individual.

The conversion of members of Indigenous communities has caused diverse reactions from community religious leaders, particularly regarding conversion to Evangelical Christianity. According to reports, individuals who convert to a Protestant denomination are punished by community leaders for attending

places of worship⁵⁴ in the surroundings of their ancestral territories. Punishments imposed by community elders can range from fines, imprisonment,⁵⁵ physical punishment,⁵⁶ and forced labor⁵⁷ to forced marriages.⁵⁸

These measures aim to force individuals to recant their new religious convictions and return to the collective conscience of the community.⁵⁹

According to the mainstream Indigenous worldview, one ceases to be Indigenous when one converts to another religion. This has serious implications, because from the Indigenous perspective, conversion disrupts the harmony of nature (Mother Earth), leading to a greater risk of natural catastrophes and other negative effects.⁶⁰

Discrimination by Catholics is a concern raised by several Indigenous Evangelical Christians. This is a difficult claim to evaluate from outside these communities. However, the research revealed no evidence of Catholic authorities overtly condoning or encouraging discrimination against Indigenous peoples. Moreover, the Catholic hierarchy has little presence or influence in Indigenous territories themselves because most Indigenous Christians who self-identify as Catholics practice a syncretic form of Catholic religiosity.⁶¹ The research also found evidence of discrimination by Indigenous community leaders towards adherents of alternative currents within Catholicism, such as the Catholic Charismatic Renewal in Chiapas, which is similar to the treatment claimed by Evangelical Christians.

Contribution to Patronal Feasts

Another scenario reflecting the violation of religious freedom occurs in communities where the Catholic religion is widely practiced and individuals are pressured to contribute to patronal feasts, as this is considered an element of unity that must be imposed on all community members without exception.⁶² The practice of celebrating patron saint festivities or processions represents the value of unity and the communitarian sense of ancestral spiritual rituals. For this

54 <http://violentincidents.plataformac.org/web/incident/3738>.

55 <http://violentincidents.plataformac.org/web/incident/3745>.

56 <http://violentincidents.plataformac.org/web/incident/5214>.

57 <http://violentincidents.plataformac.org/web/incident/4449>.

58 <http://violentincidents.plataformac.org/web/incident/5152>.

59 <http://violentincidents.plataformac.org/web/incident/5103>.

60 Pancho, A. (2007). Participación de las mujeres nasa en los procesos de autonomía territorial y educación propia en el Cauca, Colombia. In L. Donato, E. Escobar, A. Pasmíño & A. Ulloa (eds.) *Mujeres indígenas, territorialidad y biodiversidad en el contexto latinoamericano* (pp. 53–62). Bogotá: Universidad Nacional de Colombia; Drexler J. (2007). Las “siembras de agua”: La concepción y las prácticas de salud territorial de los nasa (páez) de Tierradentro en Colombia. Otra mirada indígena a la reforestación. *Revista Antropológicas* 18(1): 137–170; Escobar Alméciga, W.Y. & Gómez Lobatón, J.C. (2010). Silenced fighters: Identity, language and thought of the Nasa People in bilingual contexts of Colombia. *PROFILE* 12(2): 125–140; Molina Bedoya, V.A. (2010). Dispositivos de ocio y sociabilidad en la comunidad indígena Nasa de Colombia: Resistencia social y cultural. *Polis* 9(26).

61 Interview.

62 Interview.

reason, those converts to other denominations who refuse to participate⁶³ in or pay⁶⁴ the fee for the preparation of these public acts are punished with fines, jail, and constant rejection and harassment by the community.⁶⁵

Construction of Places of Worship

Depending on the country, as is the case in Colombia and Mexico, Indigenous communities have a local and administrative authority with powers that sometimes clash with the constitutional norm itself. This can be seen in prohibitions⁶⁶ on building Christian churches of other denominations in communal territories,⁶⁷ since these arbitrary local measures contradict the right to freedom of worship protected in the constitution of most countries in Latin America.

The destruction and vandalizing⁶⁸ of temples and places of worship of non-majority Christian denominations by Indigenous community leaders generates a serious violation of the religious freedom of this minority,⁶⁹ forcing them to practice their worship clandestinely, which in many places brings with it serious penalties, such as prison or the further destruction⁷⁰ of churches by the members of the community⁷¹ at large.

Proselytism and Religious Education

Various episodes have been reported in which missionaries and pastors from Protestant denominations have been expelled⁷² or prohibited from entering Indigenous communities by community leaders to prevent them from evangelizing and engaging in educational activities within the community.

Some communities severely punish those members who, after converting to a Protestant denomination, adopt a leading role as pastor or trainer of other members of the Indigenous community. There have been reports of imprisonment and physical punishment of pastors or brothers who share the word of God⁷³ or conduct worship services⁷⁴ with other members of the community.⁷⁵

In relation to the religious education of adherents of other denominations, these adherents remain excluded from the formal education of the communities that do not accept any education that is not ancestral or Catholic. There are reports of criminalization of people who started to translate the Bible into their native

63 <http://violentincidents.plataformac.org/web/incident/5686>.

64 <http://violentincidents.plataformac.org/web/incident/5693>.

65 <http://violentincidents.plataformac.org/web/incident/5679>.

66 <http://violentincidents.plataformac.org/web/incident/5715>.

67 <http://violentincidents.plataformac.org/web/incident/5704>.

68 <http://violentincidents.plataformac.org/web/incident/4430>.

69 <http://violentincidents.plataformac.org/web/incident/5694>.

70 <http://violentincidents.plataformac.org/web/incident/4038>.

71 <http://violentincidents.plataformac.org/web/incident/3969>.

72 <http://violentincidents.plataformac.org/web/incident/3705>.

73 <http://violentincidents.plataformac.org/web/incident/3705>.

74 <http://violentincidents.plataformac.org/web/incident/5050>.

75 <http://violentincidents.plataformac.org/web/incident/5050>.

language⁷⁶ and of study groups promoted by other Christian members.⁷⁷ Likewise, community authorities have prohibited young people from leaving their communities on discovering that they would be receiving a different theological education⁷⁸ from the one accepted by the community. Continuous religious proselytizing has caused the violent and permanent expulsion of community members from their territories.⁷⁹

Renunciation of Ancestral Practices and Expulsion from the Communal Property

In the interviews conducted, experts working with Indigenous communities pointed out that a frequent behavior among individual converts to some Protestant denominations is the total or drastic renunciation of ancestral practices or Catholic ceremonies that are imposed in the communities. Many of these renunciations represent an important break with the Indigenous community, provoking in some cases the voluntary departure from the community territory of those individuals or families who decide to embrace a new religion.⁸⁰

Tensions exist in Indigenous communities where converts to non-majority denominations do not wish to leave the community life or their homes. This tension increases with the behavioral changes in the individual and the individual's family,⁸¹ especially when they refuse to participate in Catholic ceremonies or ancestral rites in which the consumption of certain psychotropic plants is considered an essential element for their spiritual life.⁸²

The rejection of converts by some communities has even manifested itself violently, with community leaders exerting pressure by cutting off the supply of basic services,⁸³ such

as electricity, water, and gas, as well as evicting converted families and looting⁸⁴ their property. The expulsion of these families due to their religious conversion exposes them to a situation of serious vulnerability, as they are left homeless, deprived of their personal belongings and, on some occasions, threatened with death if they seek to return to their homes.⁸⁵

76 <http://violentincidents.plataformac.org/web/incident/3685>.

77 <http://violentincidents.plataformac.org/web/incident/5703>.

78 <http://violentincidents.plataformac.org/web/incident/3905>.

79 <http://violentincidents.plataformac.org/web/incident/5046>.

80 Interview.

81 <http://violentincidents.plataformac.org/web/incident/5055>.

82 Interview.

83 <http://violentincidents.plataformac.org/web/incident/4702>.

84 <http://violentincidents.plataformac.org/web/incident/5014>.

85 <http://violentincidents.plataformac.org/web/incident/5055>.

The Protection of the Religious Freedom of Indigenous Communities in International and Inter-American Law

This section describes the legal framework of the right to religious freedom of Indigenous communities. First is a description of the international legal instruments that protect this right. Second, this section assesses the adoption of legal measures assumed by the Latin American region⁸⁶ by virtue of these international obligations. Taken as a whole, these international legal instruments underscore that states have an obligation to respect the rights of members of Indigenous communities to manifest individually or in community with others their own religious beliefs in worship, observance, practice, and teaching. States further have a responsibility to take effective measures to prevent and eliminate discrimination on the grounds of religion, belief, or Indigenous spirituality. And such measures can only be circumscribed if necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

One of the most important resounding legal instruments that aims to protect the rights of Indigenous peoples is the **UN Declaration on the Rights of Indigenous Peoples (UNDRIP)**, adopted in September 2007. This document seeks to protect both the collective and individual rights of Indigenous peoples as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights, and other international human rights laws. With respect to the protection of the right to religious freedom, the declaration guarantees the rights of Indigenous peoples to enjoy and practice their cultures, customs, and religion both in private and public.

Article 12	Article 25
<p>“Indigenous peoples have the right to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.”</p>	<p>“Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.”</p>

Figure 1: UN Declaration on the Rights of Indigenous Peoples (2007)

The **American Declaration on the Rights of Indigenous Peoples**, adopted in June 2016, asserts that Indigenous peoples have collective rights that are indispensable for their existence, one of them being the right to profess and practice their spiritual beliefs.

⁸⁶ For the purposes of this research, the region of Latin America is defined as all Spanish and Portuguese speaking countries in the Western hemisphere (Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay, and Venezuela).

Article XVI. Indigenous spirituality	Article XXX. Right to peace, security, and protection
<ol style="list-style-type: none"> 1. "Indigenous peoples have the right to freely exercise their own spirituality and beliefs and, by virtue of that right, to practice, develop, transmit, and teach their traditions, customs, and ceremonies, and to carry them out in public and in private, whether individually or collectively." 2. "No Indigenous people or individual shall be subjected to pressures or impositions, or any other type of coercive measures that impair or limit their right to freely exercise their Indigenous spirituality and beliefs." 3. Indigenous peoples have the right to preserve, protect, and access their sacred sites, including their burial grounds, to use and control their sacred objects and relics, and to recover their human remains." 4. "States, in conjunction with Indigenous peoples, shall adopt effective measures, to promote respect for Indigenous spirituality and beliefs, and to protect the integrity of the symbols, practices, ceremonies, expressions, and spiritual protocols of Indigenous peoples, in accordance with international law." 	<ol style="list-style-type: none"> 1. "States shall ensure the full enjoyment of civil, political, economic, social, and cultural rights by Indigenous peoples; their right to maintain their cultural and spiritual identity, religious traditions, cosmovision, and values; the protection of their sacred sites and places of worship, and all the human rights contained in this Declaration."

Figure 2: American Declaration on the Rights of Indigenous Peoples (2016)

Although both cited documents stand as soft law (i.e., quasi- legal instruments that are not legally binding), there are also hard law instruments (i.e., legally binding for involved parties) from whose provisions the right to religious freedom of Indigenous communities can be interpreted. The most important one is **Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries of the ILO, adopted in June 1989, which states that in the application of the provisions of the Convention, the spiritual, social, and cultural values and practices of Indigenous peoples must be recognized and protected.**

Article 5	Article 13
<p>In applying the provisions of this Convention: "(a) the social, cultural, religious and spiritual values and practices of these peoples shall be recognised and protected, and due account shall be taken of the nature of the problems which face them both as groups and as individuals; (...)"</p>	<ol style="list-style-type: none"> 1. "In applying the provisions of this Part of the Convention governments shall respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship."

Figure 3: ILO Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries (1989)

The preceding provisions are important tools for the interpretation of other hard law human rights conventions (such as the International Covenant on Civil and Political Rights and the American Convention on Human Rights) which recognize a general right to freedom of religion.

Universal Declaration of Human Rights (UDHR)	Article 18 (right to freedom of thought, conscience, and religion) in connection with Articles 2, 7, 19, 20, 26 (3), 29, and 30.
International Covenant on Civil and Political Rights (ICCPR)	Article 18 (right to freedom of thought, conscience, and religion) in connection with Articles 2, 5, 20, 21, 22, and 27.
American Convention on Human Rights (ACHR)	Article 12 (freedom of religion) in connection with Article 13.

Figure 4: Other Human Rights Bills

Figure 5 identifies the Latin American states that have ratified ILO Convention 169, the ICCPR, and ACHR.⁸⁷ It also highlights those countries that voted in favor of adopting the American Declaration on Indigenous Peoples, and those that signed the UNDRIP and UDHR. **The countries that did not ratify ILO Convention 169 are Cuba, the Dominican Republic, El Salvador, Panama, and Uruguay. Cuba also did not ratify the ICCPR and did not vote in favor of adopting the American Declaration on Indigenous Peoples.**

Country	UNDRIP	ILO Convention 169	UDHR	ICCPR	ACHR	American Declaration on the Rights of Indigenous Peoples
Argentina	2007	2000	1948	1983	1984	2016
Bolivia	2007	1991	1948	1982	1979	2016
Brazil	2007	2002	1948	1992	1992	2016
Chile	2007	2008	1948	1972	1990	2016
Colombia	2007	1991	1948	1969	1973	2016
Costa Rica	2007	1993	1948	1968	1970	2016
Cuba	2007	—	1948	—	—	2016
Dominican Republic	2007	—	1948	1978	1978	2016
Ecuador	2007	1998	1948	1969	1977	2016

⁸⁷ The situation of Venezuela with respect to the Organization of American States (OAS) is not clear. On March 7, 2019, Juan Guaidó, the interim president at the time, notified the Secretary General of the OAS of the decision to annul the letter dated April 28, 2017, sent by Nicolás Maduro, renouncing the Charter of the Organization of American States.

El Salvador	2007	—	1948	1995	1978	2016
Guatemala	2007	1996	1948	1992	1978	2016
Honduras	2007	1995	1948	1997	1977	2016
Mexico	2007	1990	1948	1981	1981	2016
Nicaragua	2007	2010	1948	1980	1979	2016
Panama	2007	—	1948	1977	1978	2016
Paraguay	2007	1993	1948	1992	1989	2016
Peru	2007	1994	1948	1978	1978	2016
Uruguay	2007	—	1948	1970	1985	2016
Venezuela	2007	2002	1948	1978	1977	2016

Figure 5: International Instruments: Ratification/Vote in Favor

The Convention on Biological Diversity, which recognizes the close and long-standing connection of many Indigenous and local communities embodying traditional lifestyles to their biological resources, and the United Nations Framework Convention on Climate Change are two other important international instruments that might also serve as a general framework to understand the importance of maintaining Indigenous religious practices.

The latter does not specifically reference Indigenous communities or their religious rights in the text of the Convention, but one of the guidelines for carrying out UN activities regarding climate change is that the respective obligations concerning the rights of Indigenous peoples and local communities should be respected, promoted, and considered. Additionally Indigenous peoples are considered as an integral part of these efforts through the Local Communities and Indigenous Peoples Platform (LCIPP), a space established to strengthen the knowledge, technologies, practices, and efforts of local communities and Indigenous peoples related to addressing and responding to climate change.

Additionally, it is also important to mention that at the UN level, the General Assembly adopted resolution 36/55, which contains the Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on religion or belief, which proclaims the right of everyone to freedom of thought, conscience, and religion and proscribes discrimination based on religion in the enjoyment of fundamental rights.

In his 1982 study of the problem of discrimination against Indigenous populations, the Special Rapporteur for the Sub-Commission on Prevention of Discrimination and Protection of Minorities, Martinez Cobo,⁸⁸ also puts special emphasis on two rights which can be interpreted from the provisions of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination.

88 https://www.un.org/esa/socdev/unpfii/documents/MCS_xix_en.pdf.

The first one is the right of Indigenous populations not to be compelled to participate in the activities of any religion or belief, and the right not to be discriminated against on the ground of their Indigenous religions or belief.⁸⁹

Furthermore, Cobo placed special importance on the right of Indigenous peoples to profess and practice their own religion rather than be forced to participate in the activities of any other religion or belief, which is an inherent part of the right of each individual. He further points out the importance of the right of Indigenous peoples to be educated according to the guidelines of a religion or belief that they possess, and not be compelled to follow any other; and in the case of children, emphasizes the right of parents to influence their religious and moral education. Cobo stresses the importance of Indigenous rites and ceremonies, insofar as participation in them represents an “intrinsic part of the free exercise of all Indigenous religions.” The various existing rites and ceremonies pursue, *inter alia*, the preservation of the link with their spiritual beings, the preparation for the arrival of certain periodic phenomena, as well as for the birth and death of the members of the community. Such ceremonies can also be performed for curative purposes. According to these beliefs, failure to comply with these rules can have severe consequences at a spiritual level; not only for the individual who violates them, but also for their community, for a many years or until a certain rite or ceremony is performed in a specific way to remedy it.⁹⁰

Recently, Ahmed Shaheed, the then Special Rapporteur on freedom of religion or belief published an interim report concerning the religious rights of Indigenous peoples.⁹¹ It mentions that “spirituality” is the “preferred term of many indigenous peoples in characterizing their religion or belief identity. Reasons include (1) lack of equivalent translation for ‘religion;’ (2) delineation between their ‘religion’ (e.g., Christianity, Islam) and indigenous beliefs; or (3) tainted legacy of ‘religions’ being instrumentalized to inflict gross rights violations against them. Some interlocutors seek to ‘decolonize’ language framing their spirituality, including ‘ritual,’ ‘witchcraft,’ or ‘superstition,’ as such rhetoric has been deployed to depict them as ‘lesser’ and justify harmful practices” (para. 11). Accordingly, the Special Rapporteur stated that he understands “Indigenous spirituality” as the “diverse spiritual beliefs and practices that Indigenous peoples identify as integral to their indigeneity: such as their ‘distinctive spiritual relationship’ with ‘traditionally owned or otherwise occupied and used lands, territories, waters, coastal seas, and other resources’ (‘Indigenous lands’)” (para. 13).

At the regional systems level, the Inter-American System on Human Rights has a copious amount of case law regarding Indigenous peoples’ rights. There have been a few occasions when the Inter-American Court of Human Rights has

⁸⁹ Declaration on the Elimination of All Forms of Intolerance and of Discrimination: Article 1, 2 (2), 3, 4, 7 and 8.

⁹⁰ Reguart Segarra, N. (2020). *Los pueblos indígenas y la protección de sus convicciones religiosas ante conflictos de acaparamientos de tierras y aguas* [Doctoral dissertation]. Universitat Jaume I, pp. 94–99.

⁹¹ <https://www.ohchr.org/en/documents/thematic-reports/a77514-interim-report-special-rapporteur-freedom-religion-or-belief>.

found an infringement of the right to religious freedom in its substantive analysis. From its jurisprudence, it is inferred that one of the rights protected by Article 12 of the ACHR is that of granting burial to the deceased according to the decedent's own religious beliefs. Likewise, the impediment to carrying out these funeral rites constitutes a violation of the integrity of the surviving relatives and of the Indigenous communities. Additionally, the Court also protects Indigenous sacred sites, under a new interpretation of the right to property and not under Article 12 which protects the right to religious freedom. Furthermore, the Court estimates that the spiritual aspects of Indigenous beliefs are also protected by the right to cultural identity, which is implicit in Article 21 of the ACHR.

Some experts have argued that the UN Declaration on the Rights of Indigenous Peoples proposes a new understanding of the right to religious freedom that is more like the one present in the Inter-American Court of Human Rights case law. For instance, Tomaselli and Xanthaki⁹² estimate that the individual and Western conception of religion consecrated in the main human rights treaties is of limited use to Indigenous peoples. To these authors, “the term ‘religion’ does not fully correspond to Indigenous beliefs systems.” Therefore, by emphasizing the collective nature of the right-holders of the right to religious freedom, they argue that the UN Declaration is an important step towards establishing a more adequate framework for the protection of the religious and spiritual traditions of Indigenous peoples.

Årsheim⁹³ points out that in the Declaration, the sole holders of the right to freedom of religion are the “Indigenous peoples”; hence, individuals are excluded from its protection. In his opinion, “the choice of wording is not coincidental, but the result of an effort to make the right more efficient in the struggle to protect Indigenous peoples’ collective rights.”

Nevertheless, the author accepts that “the very notion that religious collectives can be sole rights-holders themselves—in particular without some form of established, recognizable organization, institution, or other legal entity—is foreign and unfamiliar to most modern liberal legal systems, whether common or civil. To make such a legal category workable will require a fundamental rethinking of the boundaries between law, religion and State. In particular, it is challenging to reconcile the collective right envisioned for Indigenous peoples in UNDRIP article 18 with the individual right to freedom of religion or belief for Indigenous and all other individuals—protected under article 18 of the UDHR and ICCPR.”

All the international instruments that protect the collective rights of Indigenous peoples to live and govern their actions according to their uses and customs are also clear that the individual rights to religious freedom of their members should not be limited. Nevertheless, the Human Rights Committee has, on previous occasions, struck a balance between the collective right to self-determination of Indigenous peoples and the individual rights of the members within

92 Tomaselli, A. & Xanthaki, A. (2021). The Struggle of Indigenous Peoples to Maintain Their Spirituality in Latin America: Freedom of and from Religion(s). *Religions* 12(10):3.

93 <https://berkleycenter.georgetown.edu/responses/indigenous-religious-freedom-between-individual-and-communal-human-rights>.

them. In *Lovelace v. Canada*,⁹⁴ Sandra Lovelace, an Indian woman from the Maliseet tribe, was living with her parents on the Tobique reserve until she married a non-Indian man. The couple separated, and Mrs. Lovelace returned to the reserve to live with her parents. She was unable to purchase a home on the reserve because the council gave priority to members of the group. The Canadian Indian Act provided that an Indian woman who marries a non-Indian man loses her Indian status; which also means loss of access to federal Indian education, housing and welfare programs, and the right to own a home or live in the reserve, obtain money on loan from the Bank of the Council for housing purposes; and the loss of the right to traditional hunting and fishing and the cultural benefits of living with family and friends within the reserve.

The Human Rights Committee concluded that: “The right to live on a reserve is not as such guaranteed by article 27 of the Covenant. Moreover, the Indian Act does not interfere directly with the functions which are expressly mentioned in that article. However, in the opinion of the Committee the right of Sandra Lovelace to have access to her native culture and language ‘in community with the other members’ of her group, has in fact been, and continues to be interfered with, because there is no place outside the Tobique Reserve where such a community exists.” The right of a member of a minority shall not be “restricted without both a reasonable and objective justification and be consistent with the other provisions of the Covenant, read as a whole.”

Accordingly, this opinion affirms that the members of Indigenous communities have not only collective but also individual rights, such as the right to marry or the right to freedom of religion. These rights shall not be arbitrarily interfered with, either by the state or by the organ that governs the Indigenous community. The state should always pursue an appropriate balance between these individual rights and the communal rights of Indigenous peoples.

The obligations of states regarding the protection of the right to religious freedom of Indigenous peoples is summarized as the state shall:

- respect the right of Indigenous communities to manifest individually or in community with others their own religious beliefs in worship, observance, practice, and teaching. Freedom to manifest these beliefs may be subject only to those limitations prescribed by law and necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others;
- not compel the members of an Indigenous community to belong to a religious denomination;
- guarantee that the members of an Indigenous community are not compelled by others to belong to a religious denomination;
- not make any distinctions, exclusions, restrictions of preference aimed to nullify or impair the recognition, enjoyment or exercise of human rights and fundamental freedoms based on religion, belief, or Indigenous spirituality; and take effective measures to prevent and eliminate discrimination on the

94 <http://hrlibrary.umn.edu/undocs/session36/6-24.htm>.

grounds of religion, belief, or Indigenous spirituality in the recognition, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, economic, political, social, and cultural life.

Domestic Implementation of the International Obligations Regarding the Protection of the Religious Freedom of Indigenous Communities

Since the signing of ILO Convention 169 in 1989, constitutions and other legal provisions at the domestic level in the Latin American region have been reformed to recognize Indigenous communities and have incorporated Indigenous rights related to self-determination, special or self- jurisdiction, prior consultation, political participation, and protection of these communities' sacred lands and their cultural identity, among others. These measures now protect around 54.8 million Indigenous people (almost 8.5% of the population of Latin America and the Caribbean).⁹⁵ Except for Cuba, the Dominican Republic, and Uruguay, all domestic legal frameworks in Latin America recognize the existence of Indigenous communities in their territories.

A few constitutional provisions describe the conditions to recognize Indigenous peoples. For example, the Bolivian constitution defines an original Indigenous peasant nation and people as any human collectivity that shares cultural identity, language, historical tradition, institutions, territoriality, and worldview. The constitution of Mexico indicates that Indigenous peoples are those that descend from populations that inhabited the current territory of the country at the beginning of colonization and that preserve their own social, economic, cultural, and political institutions, or part of them. The constitution of Paraguay refers to Indigenous peoples as groups of a culture prior to the formation and the organization of the nation of Paraguay. Other legal provisions also indicate certain conditions for a community to be considered as an Indigenous community.

From a review of the legal framework, the criteria to identify Indigenous communities has been grouped into four main categories: recognition of identity (the people must define themselves as Indigenous people), common origin, use of traditionally occupied territory, and shared social, economic, cultural, linguistic, and political institutions. The worldview (*cosmovisión* in Spanish), rituals, and/or religion are textually included as constitutive elements of Indigenous peoples only in Peru, Bolivia, and Brazil. In general, the spiritual or religious dimension is not fully established as a separate characteristic element. Nonetheless, as discussed in the following paragraphs, it is recognized indirectly through multiple legal norms.

95 https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_735627.pdf.

The protection of the worldview and spiritual practices of indigenous communities

In Indigenous communities, religion is experienced in a particular way. The term used in literature to describe the nature of this experience is the “*cosmovisión*” or “worldview,” a concept that covers “the structured vision in which members of a community coherently combine their notions about the environment in which they live, and about the cosmos where they place man’s life.”⁹⁶ This is an integrative concept that structures the existence of a collectivity that identifies as a community and manifests itself through a set of beliefs, customs, and traditions transmitted between generations.⁹⁷

Each Indigenous community has developed a different worldview, which is not static; however, elements with a transversal meaning can be identified among communities of the continent. The sacredness of the territory, the extreme relevance of spirituality through rites and ceremonies, as well as the belief that all the elements of the world have life and spiritual significance stand out among the elements highlighted for the analysis in this report. It should be noted that these elements of Indigenous religiosity are interrelated, forming a whole that can make complex the identification of the dimensions of religious freedom among these communities.

As Reguart points out, Indigenous peoples do not establish any kind of dividing line between religion and spirituality, and the rest of the aspects of life. They are of the view that all these areas are interrelated to such an extent that Indigenous peoples do not have a separate and specific word to refer to religion.⁹⁸ In most Indigenous worldviews, there is no segregation between the private and the collective, nor between the political and the religious, as is characteristic in Western culture.⁹⁹

Considering that the Indigenous worldview permeates almost all the activities of its members, disrupting social, cultural, and political elements, it can be easily confused or mixed with other factors. Hence, their cosmovision is often linked with the cultural identity of these communities or with the territory they traditionally occupy. Nonetheless, it is possible to identify the recognition of the religious beliefs/practices of Indigenous peoples in the most varied norms across the region.

96 Villela Flores, S.L. (2009). *Cosmovisión indígena*. In *Estado del desarrollo económico y social de los pueblos Indígenas people of Guerrero* (p. 465). Mexico City: National Autonomous University of Mexico.

97 Reguart Segarra, N. (2020). *Los pueblos indígenas y la protección de sus convicciones religiosas ante conflictos de acaparamientos de tierras y aguas* [Doctoral dissertation]. Universitat Jaume I.

98 Reguart Segarra, N. (2021). *La Libertad religiosa de los pueblos indígenas*. Valencia: Tirant, p. 75.

99 Pancho, A. (2007). Participación de las mujeres nasa en los procesos de autonomía territorial y educación propia en el Cauca, Colombia. In L. Donato, E. Escobar, A. Pasmíño & A. Ulloa (eds.) *Mujeres indígenas, territorialidad y biodiversidad en el contexto latinoamericano* (pp. 53–62). Bogotá: Universidad Nacional de Colombia.

Only a handful of constitutions in Latin America refer to the religious beliefs or religious practices of Indigenous peoples:

Country	Excerpt from Constitution
Bolivia	The Indigenous native peasant nations and peoples shall enjoy the right to their cultural identity, religious beliefs, spiritualities, practices, and customs, and to their own worldview.
Ecuador	Indigenous peoples have the right to freely maintain, develop, and strengthen their identity, sense of belonging, ancestral traditions, and forms of social organization.
Paraguay	Indigenous peoples have the right to freely apply their systems of political, social, economic, cultural, and religious organization, as well as the voluntary subjection to their customary norms for the regulation of [their] internal coexistence [convivencia], as long as they do not infringe upon the fundamental rights established in the constitution.
Venezuela	Native peoples have the right to maintain and develop their ethnical and cultural entity, worldview, values, spirituality, and holy places and places of cult.

Figure 6: Countries with Constitutions in Latin America that Refer to Religious Beliefs or Practices of Indigenous Peoples

Most countries in Latin America have included both the recognition and protection of the religious beliefs of Indigenous peoples in other legal provisions. This is the case for Bolivia, Brazil, Colombia, Costa Rica, El Salvador, Guatemala, Nicaragua, Panama, and Peru. In addition, some countries have given due consideration to the recognition of the worldview and spiritual practices of Indigenous communities through case law (Chile, Brazil, Bolivia, and Ecuador).

The protection of the land of indigenous communities

Indigenous peoples have a deeply spiritual connection with their territories, especially with the sacred places located therein. As understood by the Inter-American Commission on Human Rights (IACHR), ancestral territories hold profound spiritual value for Indigenous and tribal peoples. Intrinsic elements of their cultural identity are “ancestral cemeteries, places of religious significance and importance, and ceremonial or ritual sites linked to the occupation and use of their physical territories. In that sense, the land, the territory, and its natural resources are not, in general, conceived as merchandise by Indigenous peoples, but rather as a source of life itself. They are not only the basis of the Indigenous communities’ economic subsistence, but of their cultural identity and spiritual well-being. The loss of their ancestral lands and territories may therefore threaten the Indigenous peoples’ very survival as a collective.”¹⁰⁰

100 *Derecho a la libre determinación de los Pueblos Indígenas y Tribales*, Considerando 113 y 131. Available at <http://ojs.uc.cl/index.php/bjur/article/view/49825/39479>.

As Reguart explains, “the central role that the land occupies in Indigenous worldviews is radically different from that which Western cultures have traditionally given it, having understood it exclusively as a material means of production, devoid of religious significance per se. Consequently, the concept of religion has typically been interpreted in a rather restrictive way, excluding everything that does not fit within the predominant conceptions of traditional religions, which usually attribute the characteristic of “sacred space” to churches, mosques, and similar buildings.¹⁰¹

In this context, it is essential to identify to what extent the land, territory, and other natural resources are protected in the legal system of the different countries in the region, since it is an indispensable factor for the full exercise of the religious rights of the Indigenous peoples. For reasons of space, the following focuses on the protection of land and territory.

The constitutions of Argentina, Bolivia, Brazil, Ecuador, Guatemala, Honduras, Mexico, Nicaragua, Panama, and Paraguay explicitly recognize and protect the right of Indigenous communities to their land. In Argentina, for example, the State recognizes the legal status of Indigenous communities, and the community possession and ownership of the lands they traditionally occupy. In Brazil, the removal of Indian groups from their lands is forbidden except for a catastrophe or an epidemic which represents a risk to their population, or in the interest of the sovereignty of the country. Acts with a view to occupation, domain, and possession of the lands referred to in this article, or to the exploitation of the natural riches of the soil, rivers, and lakes existing therein, are null and void, producing no legal effects, except in the case of relevant public interest of the state. In Mexico, the government recognizes the autonomy of Indigenous peoples to conserve and improve the habitat and preserve the integrity of their lands in the terms established in the constitution.

The law must also protect the integrity of the lands of Indigenous groups. Almost all the countries in the region also have specific legislation that protects the land of Indigenous communities. Central concerns are the land itself, but also the guarantee of environmental sustainability, as well as the religious meaning of these lands for Indigenous communities.

The protection of the cultural identity of indigenous communities

General Comment No. 21 of the UN Human Rights Committee has developed the right of everyone to participate in cultural life. This implies the right of persons belonging to minorities to enjoy their own culture, to profess and practice their own religion, and to use their own language in private and in public. According to the UN Human Rights Committee, the term culture includes ways of life, language, written and oral literature, music, and non-verbal communication. It also includes religion and belief systems, and rites and ceremonies, among other things, through which individuals, groups, and communities express their

101 Reguart (2021), op. cit., p. 83.

humanity and the meaning they give to their existence and configure a vision of the world that represents their encounter with the external forces that affect their lives.¹⁰² Additionally, as understood by the IACHR, closely linked to the cultural identity of Indigenous peoples is the right to freely exercise their own religion, spirituality, and beliefs, which is recognized in the American Declaration on the Rights of Indigenous Peoples.

In Latin American legal systems, aspects such as Indigenous origin, cultural traditions, customs, historical sites, arts, and literature are protected under the spectrum of the right of Indigenous culture or cultural identity. This dimension also includes safeguarding intangible aspects like their uses and customs, maintaining religious traditions, guiding the teachings of future generations under their own worldview, maintaining ownership of ancestral knowledge, and safeguarding practices or rites of the community.

In other words, the belief system of Indigenous peoples, understood broadly, can be sometimes included within the scope of the protection of their culture and cultural identity which is considered essential in the protection of Indigenous rights. There are legal regulations pertaining to various fields (education, health, environment, etc.) in the region, which safeguard the worldview of Indigenous peoples, based on the protection of their culture.

Figure 7 highlights some legal provisions from selected countries regarding the protection of the cultural identity of Indigenous communities which include the following:

Country	Legal Provisions
Bolivia	The Plurinational Educational System incorporates the knowledge of the worldviews of the native Indigenous peasant nations and peoples, intercultural and Afro-Bolivian communities.
Brazil	It is mandatory to consider the local reality and the specificities of the culture of Indigenous peoples and the model to be adopted for Indigenous health care.
Chile	The bodies of the State Administration must consult the Indigenous peoples whenever administrative or legislative measures are foreseen that may affect them directly. Legislative measures likely to directly affect Indigenous peoples may be laws and constitutional reforms that impact the exercise of their ancestral traditions and customs, religious, cultural, or spiritual practices, or the relationship with their ancestral lands.

102 https://conf-dts1.unog.ch/1%20spa/tradutek/derechos_hum_base/cescr/00_1_obs_grales_cte%20dchos%20ec%20soc%20cult.html.

Ecuador	Traditions and oral expressions, such as the worldview, languages, beliefs, knowledge, wisdom, traditions, ways of life, forms of expression and oral tradition, uses, customs, rites, festivals, representations, and spiritual expressions among other cultural manifestations, are considered as belonging to the intangible or immaterial national cultural heritage; provided they are compatible with human rights, rights of nature, collective rights, and constitutional provisions.
El Salvador	Ethnic minorities have the right to practice their cultural traditions and customs. This includes the right to maintain and protect tangible and intangible expressions of their culture.
Nicaragua	The cultural, historical, and socioeconomic elements of the Autonomous Regions and their Indigenous and ethnic communities of the Atlantic Coast of Nicaragua must be incorporated in the design and definition of the contents of the ordinary and special educational plans and programs of the regional educational institutions.
Venezuela	The state recognizes and guarantees the right that each Indigenous people and community has to exercise its own culture, freely expressing, practicing, and developing its ways of life and cultural manifestations, strengthening its own identity, promoting the linguistic vitality of its language, preserving its own vision of the world, professing its religions, beliefs, and cults, as well as conserving and protecting its sacred places and places of worship.

Figure 7: Legal Provisions Regarding the Protection of the Cultural Identity of Indigenous Communities

Self-government and autonomy of indigenous communities

Indigenous self-government is a way of exercising the right to self-determination of Indigenous peoples. This right allows them to freely adopt political decisions and internal forms of government about their economic, social, cultural, and spiritual development. In the same way, it allows them to participate actively in the political life of the country in which they are inserted, especially when the state system formulates policies that may affect them.

Self-government also implies the recognition of legal pluralism, that is, of the recognition of their own justice systems based on a specific worldview. This regulatory system, translated into a special form of government, is commonly known as “uses and customs.” Self-government, as a way of exercising self-determination, means that each Indigenous people has its own executive, legislative, and judiciary powers, without this implying total independence or secession from the government of which they are a part.¹⁰³

The Indigenous system seeks a balance between social control and the preservation of peace within the community. In this sense, “applying justice” is not governed by ordinary civil procedures. In general, Indigenous laws are based on compensation for damages and compliance with obligations rather than rec-

103 https://cejamericas.org/wp-content/uploads/2020/09/16autonomiaindigenaordinaria_51.pdf.

ognition of individual rights. Community membership is determined based on compliance with community obligations; and conversely, in case of dissidence or infraction, the benefits of all rights within the group or ethnic group are lost.

The self-government of Indigenous peoples is essential for the assessment of the protection of their right to religious freedom, both collectively and individually. The spiritual beliefs and practices of Indigenous peoples include ceremonies and sacred customs with specific rules, standards, requirements, and people taking part in specific activities, among other mandatory requirements for community members. Failure to comply may give rise to sanctioning procedures.

Although these “Special Indigenous Jurisdictions” are continuously evolving in light of the enforcement of human rights, it is important to determine to what extent the said obligations, procedures, and/or sanctions effectively safeguard the worldview of the group without jeopardizing the individual rights of its inhabitants.

Figure 8 provides examples of some countries at the constitutional level where self-government rights are recognized in various legal systems in the region:

Country	Excerpt from the Constitution on Special Indigenous Jurisdictions
Bolivia	The jurisdictional functions of Indigenous native peasant nations and peoples are recognized through their authorities, applying their own principles, cultural values, norms, and procedures. Any public authority or person shall abide by the decisions of the original Indigenous peasant jurisdiction, as long as this is subject to their statutes, the constitution, and the law.
Brazil	The Indians, their communities, and organizations have standing under the law to sue to defend their rights and interests, the Public Prosecution will intervene in all the procedural acts.
Colombia	The authorities of the Indigenous peoples may exercise jurisdictional functions within their territorial scope, in accordance with their own rules and procedures, provided they are not contrary to the constitution and laws. The law will also establish the forms of coordination of this special jurisdiction with the national judicial system.
Ecuador	The authorities of the Indigenous communities, peoples, and nationalities shall exercise jurisdictional functions, based on their ancestral traditions and their own law, within their territorial scope, with the guarantee of women’s participation and decision-making, as long as they are not contrary to the constitution and human rights recognized in international instruments. The state shall guarantee that the decisions of the Indigenous jurisdiction are respected by public institutions and authorities. Such decisions are subject to judicial review.

Mexico	The constitution recognizes the self-determination and autonomy of Indigenous peoples to decide their internal forms of coexistence and social, economic, political, and cultural organization, and to apply their own regulatory systems in the regulation and solution of their internal conflicts, subject to the general principles of the constitution, respecting individual guarantees, human rights, and relevantly, the dignity and integrity of women.
Nicaragua	The state will organize the regime of autonomy for the Indigenous peoples and ethnic communities of the Caribbean Coast, which must contain, among other regulations: the attributions of its governing bodies, its relationship with the Executive and Legislative Powers and with the municipalities, and the exercise of their rights.
Paraguay	Indigenous peoples have the right to freely apply their systems of political, social, economic, cultural, and religious organization, as well as the voluntary subjection to their customary norms for the regulation of their internal coexistence, as long as they do not infringe upon the fundamental rights established in the constitution. Concerning conflicts of jurisdiction, the Indigenous customary right will be taken into account.
Peru	Authorities of rural and native communities, in conjunction with the peasant patrols, may exercise jurisdictional functions at the territorial level in accordance with common law, provided they do not violate the fundamental rights of the individual. The law provides forms for coordination of such jurisdiction with Justices of the Peace and other bodies of the Judicial Branch.
Venezuela	The legitimate authorities of the native peoples shall have the power to apply, within their territorial competence, levels of administration of justice based on their ancestral traditions and affecting their members only, in accordance with their own rules and proceedings, provided the same are not contrary to this constitution, law, and public order. The way this special competence shall be coordinated with the national judicial system shall be determined by law.

Figure 8: Self-government Rights at the Constitutional Level

Assessment of the Enforcement of International and Domestic Religious Freedom Provisions in Indigenous Communities

This section summarizes Latin American states’ enforcement of legal provisions aimed at the protection of Indigenous peoples’ religious freedom. It begins with an overview of the extent to which states are upholding the international obligations into which they have entered. This is followed by a summary of how states are upholding their constitutional provisions and domestic legal codes related to the protection of Indigenous peoples’ right to manifest their religion.

International legal provisions

As outlined in the second section of this report, Latin American states have committed to a number international and Inter-American instruments that delineate in some way the rights of Indigenous peoples to manifest their religion, though with some variation. All states evaluated in this report, for instance, have adopted the UN Declaration on the Rights of Indigenous Peoples (2007) and the American Declaration on Indigenous Peoples (2016), as well as the Universal Declaration of Human Rights (1948). Cuba, Dominican Republic, El Salvador, Panama, and Uruguay, however, are not signatories to the Indigenous and Tribal Peoples Convention 169 of the International Labor Organization (1989). Cuba stands out for also not ratifying more general human rights legal instruments, including the International Covenant on Civil and Political Rights and the American Convention on Human Rights.

The extent to which Latin American states have upheld these legal instruments to protect the religious freedom and other human rights of Indigenous people also varies. While governments have largely enacted mechanisms to ensure that Indigenous populations are not compelled to participate in the activities of other religions or beliefs, the enforcement of measures to ensure individuals and communities are not discriminated against on the grounds of Indigenous religions or belief remains less consistent. In particular, the protection and regulation of Indigenous communities' land and territorial rights stands out as the most prominent point of tension that drives disparity between declared and enforced international obligations. This disconnect manifests through four primary pathways.

The first pathway concerns obstacles to protecting property rights. International instruments emphasize that states should ensure Indigenous peoples have legal certainty with respect to their lands and other territories (and the natural resources located on those lands), not least because ancestral territories hold spiritual value for Indigenous and tribal peoples. Yet, considerable precarity surrounding property rights persists in most Latin American states.

Latin American states have either failed to protect and/or deliberately undermined Indigenous peoples' occupation, access, or use of Indigenous lands in various ways. For instance, the Special Rapporteur on the rights of Indigenous peoples, along with other UN experts, has drawn attention to, among other issues, serious obstacles to obtaining property titles (e.g., Brazil, El Salvador, Honduras, Nicaragua), forced evictions from or dispossession of land (e.g., the communities of Cascomi, Tundayme, Nankints in Ecuador), illegal resource extraction (e.g., Panama, Peru), and displacement driven by non-state armed groups and criminal organizations' violence (e.g., Colombia, Mexico). In other cases, Indigenous communities have been forced to seek land tenure to protect their territories against these serious challenges, even when claims for such land ownership run contrary to their worldview (e.g., Chile).

A second pathway stems from environmental damage to Indigenous lands. International instruments emphasize Indigenous peoples have the right to maintain and strengthen their spiritual relationship with their traditionally owned or

otherwise occupied and used lands and other territories. However, in practice, many Latin American states have failed to protect Indigenous peoples' territories from various forms of environmental pollution.

Environmental damage to Indigenous lands and other territories is often due to issues related to mining, logging, and other resource extraction methods. While such activities authorized by the state must theoretically comply with required international standards to operate in territories where Indigenous communities live, this is often not the case in practice. For example, various UN experts and Indigenous communities themselves complain that mineral extraction activities occur prior to the informed consultation required by international standards (e.g., Argentina, Bolivia, Colombia, Ecuador, Peru). In many cases, these consultations do not occur or remain ad hoc because regulations governing mining or other forms of resource extraction do not require such discussions. Another prominent concern is that both legal and illegal resource extraction activities cause serious environmental damage to Indigenous territories (e.g., water pollution from mercury used for gold extraction in Brazil).

In some cases, the environmental damage spills over from activities in lands neighboring Indigenous territories (e.g., damage to the Amazon region of Loreto in Peru due to a half century of oil spills in the region).

The third pathway that undermines states' efforts to comply with international obligations involves the response of state and non-state actors to Indigenous individuals and communities protesting the extraction of natural resources from their ancestral territories. Indigenous communities routinely engage in peaceful protests against mining, logging, and other resource extraction activities on their lands as part of their efforts to maintain or strengthen their spiritual relationship with their traditionally owned or otherwise occupied and used lands and other territories, as well as to uphold their responsibilities to future generations in this regard. Yet, these protests are routinely met with harassment and violence from state and non-state actors. State responses include the arbitrary detention and criminalization of protesters (e.g., Guatemala, Honduras, Nicaragua, Panama). Indigenous people peacefully defending their lands also face intimidation, surveillance, and even physical violence from non-state organizations, including criminal groups (e.g., Colombia, Guatemala, Honduras). In the most extreme case in Colombia, several protesters were killed for speaking out on behalf of their communities.

Finally, the fourth pathway relates to the protection of the religious freedom of individuals in Indigenous communities, as described in "Individual Dimension of Religious Freedom," in the first section of this report. This dimension is not absent from international instruments but has repeatedly been violated in Chile, Colombia, and Mexico. Individual religious freedom has never been the subject of any legal action by the Inter-American Human Rights System.

In this context, subsections 2 and 3 of article 8 of ILO Convention 169 are important corollaries to subsection 1, highlighting that the protection of Indigenous customs and customary laws should not be at the expense of human rights that must be guaranteed for all citizens:

In applying national laws and regulations to the peoples concerned, due regard shall be had to their customs or customary laws.

These peoples shall have the right to retain their own customs and institutions, where these are not incompatible with fundamental rights defined by the national legal system and with internationally recognized human rights. Procedures shall be established, whenever necessary, to resolve conflicts which may arise in the application of this principle.

The application of paragraphs 1 and 2 of this Article shall not prevent members of these peoples from exercising the rights granted to all citizens and from assuming the corresponding duties.

Domestic legal provisions

As detailed in the third section of this report, Latin American states have enacted a wide range of domestic legal instruments to recognize Indigenous communities and their religious freedom, including protection of their sacred lands and their cultural identity. These provisions have been necessary because few constitutions initially included provisions referencing the religious beliefs or religious practices of Indigenous people. Except for Cuba, the Dominican Republic, and Uruguay, the domestic legal frameworks in Latin America now recognize the existence of Indigenous communities in their territories.

Like with international obligations, however, inconsistencies persist between the legislation enacted by Latin American states and the enforcement of these provisions for each of the four main areas of protection outlined in this report: worldview and spiritual practices, land, cultural identity, and self-government and autonomy. As with international instruments, the largest area of concern remains the protection of land rights.

Almost all countries in the region have specific legislation that protects the land of Indigenous communities. The constitutions of Argentina, Bolivia, Brazil, Ecuador, Guatemala, Honduras, Mexico, Nicaragua, Panama, and Paraguay even explicitly recognize and protect the right of Indigenous communities to their land. Yet, the formal recognition and protection of Indigenous peoples' rights is often impeded by four main obstacles.

The first obstacle is inherent in the enforcement of property right laws aimed at protecting Indigenous communities' lands and other territories. Clear regulations and procedures for enforcing domestic legal provisions remain either absent or delayed in their development (e.g., Bolivia, Nicaragua, Venezuela). In other cases, institutional weakness means laws on the books are frequently not implemented (e.g., Brazil). Accordingly, the legal frameworks designed to protect Indigenous communities' land and other territorial rights rarely possess the teeth necessary to achieve their goals.

The execution of domestic laws aimed at protecting the integrity of the lands of Indigenous groups is a second, and related, impediment to fully implementing domestic legal codes that seek to recognize Indigenous communities and their religious freedom and other human rights. Laws that aim to protect Indig-

enous communities' lands and other territories from environmental damage, for instance, are often relaxed in favor of authorized mining, logging, or other natural resource extraction activities (e.g., Bolivia, Ecuador). In other cases, mining and logging companies have not been required to address the environmental damage their activities inflicted on Indigenous lands and other territories (e.g., Peru, Brazil).

A third obstacle to the enforcement of domestic laws aimed at protecting the religious freedom and other human rights of Indigenous communities is the lack of informed consultation. Many countries in the region have formal provisions that require informed consultation with Indigenous communities prior to private projects (i.e., natural resource extraction) that might affect the communities' rights. Yet, this appears to rarely occur in practice. The Independent Expert on foreign debt in Bolivia, for example, noted that the legal framework prescribing processes of prior consultation with communities affected by large-scale infrastructure projects was ad hoc at best. Similar concerns have been raised by international experts in Colombia, Ecuador, El Salvador, and Paraguay.

Finally, the fourth obstacle is related to the far-reaching Indigenous self-government rights or Indigenous autonomy, particularly in Colombia and to a lesser extent in Mexico.

Although positive on paper, these self-government provisions lead to the risk of human rights abuses, including violations of individuals' religious freedom. Even though Indigenous autonomy is far-reaching, it is not absolute and must not violate the international and constitutional human rights provisions that apply to all citizens. These limitations are, however, difficult to enforce when they conflict with the collective religious rights of Indigenous communities.

Conclusion

Significant progress has been made in recent years through the reform and addition of legal provisions related to the protection of Indigenous peoples' right to manifest their religion. Yet, the enforcement of these legal codes often falls short in practice.

The international community's growing concern about violations of the religious freedom of Indigenous peoples across the globe has drawn attention to a set of largely overlooked communities and the challenges they still face in adhering to and living out their beliefs openly without fear. This report represents one step towards better understanding these challenges in Latin America. As highlighted, even in a part of the world often lauded for higher levels of religious freedom than other global regions, clear and established legal mechanisms to protect Indigenous communities' religious freedom remain weak. This report also draws attention to major recent religious freedom violations against Indigenous peoples, but more systematic cataloging and examination of these communities' experiences of religious freedom abuses in Latin America is still needed.

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