

Belief and belonging

Indigenous identity and
freedom of religion or belief

October 2022

For public use



CSW everyone
free to believe



Contents

| | |
|---|-----------|
| Executive summary | 4 |
| Recommendations | 6 |
| To the United Nations and Member States | 6 |
| To the government of Colombia | 6 |
| To the government of India and to state governments | 6 |
| To the government of Mexico | 6 |
| To the government of Vietnam | 7 |
| International legal framework | 8 |
| International human rights treaties | 8 |
| United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) | 8 |
| Other international instruments and declarations | 9 |
| Regional instruments and declarations | 10 |
| The intersection between FoRB and indigenous rights | 11 |
| Summary | 11 |
| General context | 12 |
| Indigenous identity | 12 |
| Indigenous rights and minority rights | 12 |
| Indigenous rights, FoRB and the climate crisis | 13 |
| The COVID-19 pandemic and indigenous peoples | 14 |
| Colombia | 15 |
| Introduction | 15 |
| Legal overview | 16 |
| Domestic | 16 |
| International | 18 |
| Main findings | 20 |
| Forms of discrimination | 20 |
| A threat to ancestral spirituality and culture | 23 |
| Conclusion | 26 |
| Case study | 27 |
| India | 28 |
| Introduction | 28 |
| Freedom of religion and anti-conversion laws | 28 |
| Physical intimidation | 28 |
| Destruction of the environment | 29 |
| Legal framework | 29 |
| Domestic | 29 |
| International law | 31 |
| Distribution of Adivasis | 32 |
| Discrimination against Adivasis | 32 |
| Displacement of Adivasis from their traditional dwellings | 32 |

| | |
|---|-----------|
| Anti-conversion laws and physical attacks | 34 |
| Media bias | 36 |
| Restrictions on NGOs | 36 |
| Conclusion | 36 |
| Case studies | 38 |
| Mexico | 41 |
| Introduction | 41 |
| Legal framework | 42 |
| Domestic | 42 |
| International | 45 |
| Background | 46 |
| Main findings | 46 |
| Forms of discrimination | 47 |
| Conclusion | 51 |
| Case studies | 52 |
| Vietnam | 56 |
| Introduction | 56 |
| Legal overview: FoRB and minority rights in Vietnam | 56 |
| Domestic | 56 |
| International | 58 |
| Main findings | 59 |
| Freedom of religion or belief | 59 |
| Conclusion | 64 |
| Special note on environmental activism | 65 |
| Case study | 66 |
| Conclusion | 67 |
| Appendix 1 | 68 |
| Colombia | 68 |
| India | 68 |
| Mexico | 68 |
| Vietnam | 69 |
| Appendix 2 | 70 |
| Institutional structures related to the Adivasis | 70 |
| Appendix 3 | 71 |
| Population of Scheduled Tribes in India | 71 |

CSW and Stefanus Alliance International worked in partnership to produce this work. The views expressed within this report are those of the authors and not necessarily those of Stefanus Alliance International.

All images by CSW unless otherwise stated

Executive summary

The rights of indigenous peoples have received considerable attention from the United Nations (UN) bodies, in human rights treaties and through their respective monitoring mechanisms. Within that framework, however, the right of indigenous peoples to freedom of religion or belief (FoRB) has received scant attention. Though recognised by some international treaties and declarations, the intersection between the right to FoRB and the unique vulnerabilities facing indigenous peoples as rights holders is largely unacknowledged. This has led to ambiguity especially in regard to the intersection of the collective right to protect and maintain indigenous cultures with the fundamental rights of the individuals within those cultures. The result has been a growing, predominantly accepted view that collective cultural rights are incompatible with some individual rights, and an either-or approach to the issue, with collective cultural rights taking precedence over the individuals' rights.

Indigenous people around the world have historically experienced the spectrum of human rights violations ranging from discrimination to genocide. They have seen their cultures and traditions come under attack, both directly and indirectly, with devastating consequences. Despite international attention to the general situation of indigenous people, for many this historic experience continues to the present. In some cases, sacred cultures have been co-opted by a non-indigenous majority or dominant group and commodified for tourism or entertainment. Indigenous people in every region of the world continue to experience serious human rights violations, including:

*Issues of violence and brutality, continuing assimilation policies, marginalization, dispossession of land, forced removal or relocation, denial of land rights, impacts of large-scale development, abuses by military forces and armed conflict, and a host of other abuses...*¹

Indigenous people comprise some of the populations which are most vulnerable to the impact of the climate crisis and accompanying challenges including food insecurity, loss of habitable land, and poverty.

In this report, CSW examines the situation of indigenous peoples in four countries: Colombia, India, Mexico and Vietnam; and their specific experiences of FoRB. In 2021 and into 2022, CSW, together with independent researchers, carried out studies in-person and virtually, interviewing indigenous people representing different ethno-linguistic groups, geographic locations and religious

beliefs in each country. Although the countries differ in terms of history, culture, language, dominant religion and systems of governance, in each, indigenous peoples are among the most marginalised populations and have experienced all the types of violations described above both historically and into the present.

In each country, participants shared experiences of violations of FoRB. There were clear differences in regard to who was responsible for these violations.

In Vietnam, FoRB violations affecting indigenous peoples can be directly linked to the policies and actions of the government of Vietnam, with non-state actors sometimes also involved, for example in land confiscation cases.

By contrast, in India, non-state actors are primarily responsible for FoRB violations, although sometimes there is government involvement at the local or state level. The violations in India almost always occur with impunity and no government action is taken to protect the FoRB of its indigenous populations.

In Colombia, FoRB violations experienced by indigenous people are in large part carried out by community leaders and local authorities with the backing of the courts, which have ruled that the strong protections for FoRB in the Colombian constitution do not extend to those living on indigenous lands, where collective cultural rights take precedence instead.

In Mexico, FoRB violations affecting indigenous people are also mostly the responsibility of local authorities and community leaders but violate Mexican law which states that the implementation of collective cultural rights, including the right to traditional forms of governance, must uphold the fundamental individual rights detailed in the constitution. Like their counterparts in India, however, indigenous people in Mexico rarely see any effective response to FoRB violations or action to protect FoRB by the government.

Despite the differences in each country in terms of who primarily commits the FoRB violations experienced by indigenous people, the research shows a common thread, namely, a failure or refusal to recognise that individual indigenous people hold the same universally protected fundamental rights that belong to every human being; and a policy, stated or implied, of placing them in a separate category where some fundamental rights do not extend to them. This effectively puts indigenous people in a second class of citizen within their countries, where, because of their indigenous identity, the violation of some of their rights is permissible.

¹ United Nations Department of Economic and Social Affairs, Division for Social Policy and Development Secretariat of the Permanent Forum on Indigenous Issues, 'State of the World's Indigenous Peoples', 2009 www.un.org/esa/socdev/unpfii/documents/SOWIP/en/SOWIP_web.pdf

The interviews carried out through the research in all the countries also revealed a common and profound desire among those interviewed, across cultures and geographic location, to be recognised as indigenous, as a member of their particular indigenous group, regardless of their decision to follow or practise a particular religion or belief or none. Many expressed dismay that in exercising their right to choose their own religion or belief, even as they maintain linguistic, familial and cultural ties, they risk being stripped of their identity as a member of their indigenous group. They pointed out that non-indigenous people would likely still continue to view them as indigenous based on other characteristics including physical appearance, accent and dress.

As a marginalised population within an already marginalised population this has the potential to put them at increased risk of discrimination, poverty and forced displacement. Whether or not they are officially recognised as indigenous, they are unlikely to be able to ‘pass’ as non-indigenous, even should they want to, and will continued to be treated in their daily life as an indigenous person, albeit an even more vulnerable one, without the support of their communities.

While this report focuses on the intersection of FoRB and indigenous rights, it should be noted that FoRB as a right does not exist in isolation, and violations of FoRB are likely to affect other fundamental rights including freedom of assembly, freedom of association, freedom of expression and freedom of conscience. It should also be noted that when collective rights are elevated over individual rights, FoRB is not the only right likely to be affected. There are also implications for rights such as gender rights and children’s rights, among others.

It is vital that the intersection of indigenous rights and FoRB is recognised and systematically addressed at the international, regional, national and local levels to ensure that the individual rights of all indigenous people receive the same protections afforded to non-indigenous peoples. This must be done in a way that also takes into account the way in which indigenous peoples have historically experienced attacks on their culture and identity with, in many cases, devastating consequences.

These efforts must also be led by indigenous people themselves, with voices from both majority and minority communities within those populations. In the end the issue can be boiled down to a simple question articulated by an indigenous leader, who follows a non-traditional religion, in Colombia (emphasis ours):

*We, the indigenous people, are persons. We, the indigenous people, have the right to think. We have freedom of conscience. What is conscience? **Do we have our own conscience or does someone else think for us?** We, the indigenous people, are victims of the old Roman law and we only have capitis diminutio media.²*

As a marginalised population within an already marginalised population this has the potential to put them at increased risk of discrimination, poverty and forced displacement.

² Under Roman law, a lesser or medium loss of status which occurred when a man lost his rights of citizenship, without losing his liberty. It also took away any family rights.

Recommendations

To the United Nations and Member States

- Call on states to revise all regulations and legislation to ensure they align with international standards, including Article 18 of the International Covenant on Civil and Political Rights (ICCPR), and to guarantee indigenous peoples' rights to freedom of religion or belief (FoRB) in law and in practice.
- Ensure that the right to freedom of religion or belief of indigenous peoples is consistently raised during bilateral exchanges, both in public and in private, as well as in multilateral forums such as the UN Human Rights Council.
- Urge states to increase proactively efforts to address intolerance and discrimination based on religion or belief in indigenous communities, including by providing training for the judiciary and local authorities.
- Urge all relevant UN mechanisms, including the Special Procedures and UN Treaty Bodies, to consider in their reporting the interrelatedness of the rights of indigenous peoples and the right to freedom of religion or belief, acknowledging the unique vulnerabilities faced by indigenous religious minorities.

To the government of Colombia

- Prioritise the translation of Colombian laws into indigenous languages; and provide training to indigenous representatives, including traditional and religious leaders and members of their communities, on human rights, including FoRB, the Colombian constitution and indigenous jurisprudence.
- Illegal armed groups continue to commit acts of violence on indigenous territories. The government of Colombia must ensure the protection of indigenous territories, including by complying with the Peace Agreement of 2 October 2016.
- Encourage and facilitate dialogue led by indigenous traditional and religious leaders and representatives of non-traditional religious believers, to explore and identify common ground and possibilities for peaceful co-existence and mutual respect.
- Facilitate dialogues including between the national government, religious affairs offices and local and territorial governments to discuss policies of religious diversity in Colombian indigenous contexts.

To the government of India and to state governments

- Implement the spirit and letter of the laws made to protect the Adivasis.
- Prevent religious extremist groups from attacking the freedom of the Adivasis to adopt the religion of their choice.
- Enforce the Scheduled Caste/Scheduled Tribes (Prevention of Atrocities) Act 1989 (and its 2015 amendment) against perpetrators of targeted violence against the Adivasis.
- Repeal all anti-conversion bills that are in effect in many states, and ensure all legislation is in line with Article 25 of the Indian constitution.
- Protect Adivasi lands from industrial encroachment and destruction of the natural environment.
- Consider the impact on the lives and livelihood of Adivasis when constructing dams that will submerge Adivasi habitats.
- Make the violations of the right to FoRB of the Adivasis in India widely known, so that there will be significant pressure on the government of India to respond.
- Exert pressure on the Indian government to allow international NGOs to help in the education and progress of the Adivasis.
- Bring resolutions to make the Scheduled Tribes Commission pro-active and effective in resolving the difficulties and displacement faced by the Adivasis.
- Rethink and evaluate industrial development and dam construction that will displace the Adivasis from their indigenous lands.

To the government of Mexico

- Uphold legal guarantees for FoRB for all, and where other laws apply, including in indigenous communities governed by the Law of Uses and Customs, practise these in accordance with Mexico's constitution and its international human rights obligations.
- Provide regular training in mediation and in human rights law, particularly pertaining to FoRB, and sufficient resources to carry out their duties, to government officials at the state and federal levels responsible for religious affairs, and in particular those in regions with significant indigenous populations and where there are frequent FoRB violations.



Angelina Martínez Hernández, Mexico. See p.54.

- Offer regular training in mediation and human rights law, particularly pertaining to FoRB and the Law of Uses and Customs, to authorities at the local level and municipal levels in order to help them better understand their responsibility to protect the human rights of all in their communities.
- Pursue legal action against all individuals and groups who have committed criminal acts linked to FoRB violations, according to the law.
- Establish channels for communication with representatives of indigenous people groups. Communication should be fair and transparent, allowing indigenous people group representatives to air grievances, present allegations of injustice and abuse of power, and input into plans for developments with the potential to impact their rights, livelihood and wellbeing.
- Ensure that any form of registration system for religion or belief activities and groups is optional, not mandatory, and is not used as a tool to control religious activities.

To the government of Vietnam

- Revise all regulations and legislation pertaining to religion, in consultation with religious communities and legal experts, to ensure they align with international standards as set out in Article 18 of the International Covenant on Civil and Political Rights (ICCPR).
- Guarantee indigenous peoples' rights to freedom of religion or belief (FoRB) and ensure this is enshrined in law.
- Recognise the rights and specific needs and vulnerabilities of indigenous peoples, and codify and ensure their cultural, social and economic rights, as well as their civil and political rights, including land rights.
- Immediately release all those detained or imprisoned in connection with their religion or belief, or with the peaceful defence of the rights of others, and investigate cases of wrongful imprisonment.
- Issue a standing invitation to all UN Special Procedures, ensuring they have unhindered access to all areas of the country and that members of civil society can meet with them without reprisals.

International legal framework

The rights of indigenous peoples have received considerable attention in both human rights treaties and monitoring bodies, and in the work of United Nations (UN) bodies. Comparatively, the right of indigenous peoples to freedom of religion or belief (FoRB) has received far less attention. Though recognised by some international treaties and declarations, the intersection between the right to FoRB and the unique vulnerabilities facing indigenous peoples as rights holders is largely unacknowledged. It is vital that this intersection is recognised and systematically addressed at the international, regional, national and local levels.

International human rights treaties

The right to FoRB and the rights of indigenous peoples have developed through international human rights instruments, with guidance from their monitoring bodies and from relevant Special Procedures mandate holders, such as the Special Rapporteur on FoRB and the Special Rapporteur on the rights of indigenous peoples. Beyond the Special Rapporteur, the primary mandate holders for promoting indigenous rights are the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP), which provides the UN Human Rights Council with expertise and advice, and the UN Permanent Forum on Indigenous Issues (UNPFII), a high-level advisory body to the Economic and Social Council. The mandate of the UNPFII is supported and promoted by the Inter-Agency Support Group (IASG) on Indigenous Issues.

The **Universal Declaration of Human Rights (UDHR)** set out for the first time the fundamental and universal rights to which all are entitled. Article 1 recognises that ‘all human beings are born free and equal in dignity and rights,’ which implicitly includes indigenous peoples.³ Article 2 further states that everyone is entitled to all the rights and freedoms set forth in the Declaration, ‘without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.’⁴ The UDHR acknowledges in these two articles that the rights of all peoples, including indigenous peoples, are unequivocal. The rights set forth by the UDHR include the right to freedom of thought, conscience and religion in Article 18, which encompasses the right to change religion or belief and to manifest

one’s religion or belief in teaching, practice, worship and observance.

The **International Covenant on Civil and Political Rights (ICCPR)** reiterates the principle of non-discrimination and builds on the definition of freedom of religion or belief outlined in the UDHR. The ICCPR rejects any form of coercion which would impair the ability of an individual to have or adopt a religion or belief, sets stringent circumstances in which States can limit the manifestation of religion or belief, and includes the rights of parents and legal guardians to educate their children in conformity with their own convictions.⁵ In Article 27 the ICCPR addresses ethnic, religious or linguistic minorities directly – implicitly including indigenous peoples, who can claim minority rights under international law⁶ – stating that ‘persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language’.⁷ Article 30 of the **Convention on the Rights of the Child (CRC)** reaffirms this statement against minority discrimination with specific reference to children who are indigenous.⁸ Notably, the **Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)** makes no mention of indigenous women.⁹

United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)

The rights of indigenous peoples are most fully and comprehensively articulated in the **United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)**. UNDRIP was adopted by the United Nations General Assembly on 13 September 2007. The declaration reaffirms the equal rights of indigenous peoples as recognised in the UDHR and international human rights law, and establishes minimum standards for their survival, dignity and well-being.

Articles 3-5 comprehensively articulate the right of indigenous peoples to self-determination and autonomy. This includes the right to ‘maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State’.¹⁰ Encompassed in this is the right of indigenous peoples both to establish their own

³ United Nations General Assembly, Universal Declaration of Human Rights, 10 December 1948, Article 1 www.un.org/en/about-us/universal-declaration-of-human-rights

⁴ United Nations General Assembly, Universal Declaration of Human Rights, *ibid.*, Article 2

⁵ United Nations General Assembly, International Covenant on Civil and Political Rights, Article 18 www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx

⁶ United Nations Office of the High Commissioner for Human Rights, ‘Minority Rights: International Standards and Guidance for Implementation’, p.3 www.ohchr.org/sites/default/files/Documents/Publications/MinorityRights_en.pdf

⁷ United Nations General Assembly, International Covenant on Civil and Political Rights, *ibid.*, Article 27

⁸ United Nations General Assembly, Convention on the Rights of the Child, Article 30 www.ohchr.org/en/professionalinterest/pages/crc.aspx

⁹ United Nations General Assembly, Convention on the Elimination of All Forms of Discrimination against Women www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women

¹⁰ United Nations General Assembly, United Nations Declaration on the Rights of Indigenous Peoples, Article 5 www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf



Ho tribe, Odisha, India

educational systems and to access all levels and forms of education provided by the State, as outlined in Article 14.

Article 8 places a duty on States to prevent and redress any instances of forced assimilation, propaganda designed to incite racial or ethnic discrimination, actions which have the aim of depriving indigenous peoples of their cultural values or ethnic identities, and dispossession of land and resources. The latter emphasis on indigenous land rights is reaffirmed in Articles 10, 26 and 29 of UNDRIP. Article 26 (1) states that indigenous peoples ‘have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired’,¹¹ with Article 29 (1) outlining the right of indigenous peoples to conserve and protect these lands and territories.

Article 12 affirms the right of indigenous peoples ‘to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies,’ as well as the right to access their religious and cultural sites and use their ceremonial objects.¹² Beyond this, mentions of the right to FoRB are notably scarce across UNDRIP’s 46 articles.

In 2014, as part of the World Conference on Indigenous Peoples, a **system-wide action plan for ensuring a coherent approach to achieving the ends of the United Nations Declaration on the Rights of Indigenous Peoples (SWAP)** was developed. The primary aims of the plan are to raise awareness of indigenous issues and support the implementation of the Declaration. The plan outlines the promotion of ‘partnership and collaboration between the United Nations system, civil society organizations and multilateral bodies’ as a particular means of achieving this, alongside a media and outreach campaign and capacity development for Member State officials and UN staff at all levels.¹³

Other international instruments and declarations

In addition to the UDHR, ICCPR, UNDRIP and the work of UN monitoring bodies and Special Procedures mandate holders, several other international instruments and declarations have articulated the rights of indigenous peoples and the right to FoRB.

¹¹ *ibid.*, Article 26

¹² *ibid.*, Article 12

¹³ United Nations Department of Economic and Social Affairs:

Indigenous Peoples, ‘System-wide action plan for ensuring a coherent approach to achieving the ends of the United Nations Declaration on the Rights of Indigenous Peoples (SWAP)’, 16 February 2016, paragraph 17 www.un.org/development/desa/indigenouspeoples/about-us/system-wide-action-plan.html

A predecessor to UNDRIP, the **Indigenous and Tribal Peoples Convention (C169)** of 1989 is a major binding convention concerning indigenous rights. The International Labour Organization (ILO) is the agency responsible for the Convention's implementation. C169 has been ratified by 24 states to date.¹⁴ Article 3 (1) reiterates the rights of indigenous peoples to enjoy fundamental human rights fully and without discrimination. The Convention later articulates these rights in relation to participation in decision-making, the intersection between national laws and customary laws, land rights, employment, health and education. Article 8 (2) guarantees the right of indigenous peoples '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'. The right to FoRB is not strongly asserted beyond Article 5 of the Convention, which states that 'the social, cultural, religious and spiritual values and practices of these peoples shall be recognised and protected'.¹⁵

The **World Conference on Indigenous Peoples (WCIP)**, held in 2014, affirms in its outcome document the commitment of the United Nations General Assembly to respect, promote and advance the rights of indigenous peoples, with specific emphasis placed on the rights of indigenous children and the empowerment of indigenous women.

The 2009 **Durban Review Conference**, also known as the United Nations World Conference Against Racism (WCAR), urges states to 'bolster measures to eliminate the barriers and to broaden access to opportunities' for greater participation by indigenous peoples in the political, economic, social and cultural spheres of society.¹⁶ It also encourages states to direct special measures, including new investments, towards indigenous peoples, and to take all necessary measures for the implementation of UNDRIP.

Regional instruments and declarations

The rights of indigenous peoples, the right to FoRB, and the principle of non-discrimination are also articulated in regional human rights instruments. The **African Charter on Human and People's Rights (ACHPR)** recognises the principle of non-discrimination in Article 2 and the right to freedom of conscience, profession and practice of religion in Article 8.¹⁷ No explicit mention is made of

indigenous peoples or other minority groups. In 2000, the **Working Group on Indigenous Populations (WGIP)** was established by the African Commission on Human and Peoples' Rights, with the aim of promoting the rights of indigenous peoples in Africa.

Article 12 of the **American Convention on Human Rights (Pact of San Jose Costa Rica)** recognises 'freedom of conscience and religion' and articulates the principle of non-discrimination in Article 1.¹⁸ The rights of indigenous peoples are not explicitly mentioned. The **Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (San Salvador Protocol)** aimed to reaffirm and provide greater protection for 'fundamental economic, social and cultural rights' in America. The protocol recognises the right to education that fosters 'tolerance' and 'friendship' among all racial, ethnic or religious groups (Article 13); the right to health (Article 10) and the right to work in 'just, equitable, and satisfactory conditions' (Article 7).¹⁹ In June 2016, the **American Declaration on the Rights of Indigenous Peoples of the Organization of American States** was adopted, which recognises that 'the rights of indigenous peoples are both essential and of historical significance to the present and future of the Americas'.²⁰ The Declaration reiterates many of the rights outlined by UNDRIP, including the right to self-determination and the right to full enjoyment of fundamental human rights and freedoms. Article 31 places a duty on states to ensure the upholding of the rights of indigenous peoples 'to maintain their cultural and spiritual identity, religious traditions, cosmology, and values'.

The **Arab Charter on Human Rights (Revised)** recognises the principle of non-discrimination, the rights of persons belonging to minorities and the right to FoRB in Articles 3, 25 and 30, respectively. In terms of minority groups, the charter recognises the rights of individuals 'to enjoy their own culture, to use their own language and to practice their own religion'.²¹ However, it opens the way to potential restrictions on these practices by adding that 'the exercise of these rights shall be governed by law.'

In 2012 the **Association of Southeast Asian Nations (ASEAN)** signed a human rights declaration which was adopted unanimously. The Declaration was welcomed by the United Nations High Commissioner for Human Rights; albeit with some reservations, due to the failure to include such internationally recognised rights as freedom of

¹⁴ The Indigenous and Tribal Peoples Convention has been ratified by Mexico (5 September 1990) and Colombia (7 August 1991), but not by Vietnam or India.

¹⁵ International Labour Organization, Indigenous and Tribal Peoples Convention, 27 June 1989 www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.16_Indigenous%20and%20Tribal%20Peoples%20Convention.pdf

¹⁶ United Nations, Outcome Document of the Durban Review Conference, paragraph 70 www.un.org/en/durbanreview2009/pdf/Durban_Review_outcome_document_En.pdf

¹⁷ Organisation of African Unity, African Charter on Human and Peoples' Rights www.justice.gov.za/policy/african%20charter/1981_AFRICAN%20CHARTER%20ON%20HUMAN%20AND%20PEOPLES%20RIGHTS.pdf

¹⁸ Organization of American States, American Convention on Human Rights www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.pdf

¹⁹ Organization of American States, Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights www.portal.oas.org/en/iachr/mandate/Basics/protocol-San-Salvador-economic-social-cultural-rights.pdf

²⁰ Organization of American States, American Declaration on the Rights of Indigenous Peoples of the Organization of American States, 15 June 2016 www.oas.org/en/sare/documents/DecAmIND.pdf

²¹ League of Arab States, Revised Arab Charter on Human Rights, 22 May 2004, Article 30

www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/Revised_Arab_Charter_Human_Rights_2004_Em.pdf

association and assembly, and attempts to utilise cultural relativism with regard to the realisation of rights instead of affirming the universality of human rights. Despite its shortcomings, the Declaration does recognise the principle of non-discrimination and FoRB in Articles 2 and 22 respectively, but not the rights of indigenous peoples explicitly.²²

In December 2021, the successful conclusion of the **Indigenous Peoples Economic and Trade Cooperation Arrangement (IPETCA)** was announced. Developed by New Zealand and other Asia-Pacific Economic Cooperation (APEC) economies, the focus of the IPETCA is to strengthen the economic empowerment of indigenous peoples within the region. IPETCA primarily affirms ‘the importance of respectful economic relationships with Indigenous peoples,’ including recognising the value of traditional knowledge, ensuring the active participation of indigenous peoples in decision-making, and empowering indigenous peoples, in line with UNDRIP, to pursue their economic, social and cultural development.

The intersection between FoRB and indigenous rights

The intersection between the right to FoRB and indigenous rights has hardly been analysed by non-FoRB specialists. The Universal Human Rights Index (UHRI) is a database of all human rights recommendations issued by the three key pillars of the United Nations human rights monitoring system (the Treaty Bodies, the Special Procedures and the Universal Periodic Review).²³ A search for all documents relating to both ‘freedom of thought, conscience and religion’ and ‘indigenous peoples’ produced references from just 27 documents, spanning only seven mechanisms.²⁴ The annual reports of the UN Special Rapporteur on the rights of indigenous peoples sometimes refer in passing to the right to FoRB, including to religion as a potential factor for multiple discrimination; however, the reports have not explored the intersection between the rights in any depth.

The role of national laws in ensuring respect for the right of indigenous peoples and the right to FoRB remains crucial: incorporating international guarantees for these rights within domestic legal structures such as national constitutions is an important prerequisite for their effective realisation. Many challenges remain in this area. According to the Food and Agriculture Organization of the United Nations (FAO), although many countries do recognise indigenous peoples in their constitutions, there are others that deny their existence and status as rights holders.²⁵ Furthermore, many national constitutions fail to reflect the commitment to the right to FoRB. Thus, further efforts are needed to ensure that national legal frameworks are in compliance with international guarantees of indigenous rights and the right to FoRB, and that such international or domestic legal framework is duly implemented.

Summary

This chapter has provided a listing of international instruments relating to the rights of indigenous peoples in the context of FoRB. The UDHR established the principle of non-discrimination and the right of all peoples to FoRB. Under this overarching and important Declaration, the international community adopted several key multilateral treaties, including the ICCPR, which reaffirmed the right of all to FoRB, and recognised the rights of minority groups specifically to profess and practise their own religion. Subsequent to these treaties, the implementation of UNDRIP more fully and comprehensively articulated the rights of indigenous peoples, setting out commitments that State Parties are obligated to fulfil in order to ensure these rights are upheld.

While attention to FoRB and indigenous rights independently in both international and regional instruments and declarations is commendable, the lack of attention to the intersection between FoRB and indigenous rights is concerning and requires further study and recognition.

²² Association of Southeast Asian Nations, ‘ASEAN Human Rights Declaration’, 19 November 2012 <https://asean.org/asean-human-rights-declaration/>

²³ Universal Human Rights Index <https://uhri.ohchr.org/en/>

This database contains over 170,000 observations and recommendations from 12 Treaty Bodies, 44 Special Procedures and all Universal Periodic Reviews.

²⁴ Database search conducted on 28 March 2022.

²⁵ Food and Agriculture Organization of the United Nations (FAO), ‘Indigenous Peoples’ rights around the world’, 4 March 2017 www.fao.org/countryprofiles/news-article/en/c/198728/

General context

Indigenous identity

The challenge of defining and assigning indigenous identity has been acknowledged for some time by national and international bodies and civil society actors. The diversity of indigenous peoples – comprising over 370 million people across 70 countries worldwide, according to the United Nations Permanent Forum on Indigenous Issues (UNPFII) – is a key factor as to why no official definition of ‘indigenous’ has been adopted by any UN-system body.²⁶ The characteristics of individual indigenous communities are complex and multifaceted. Adopting a universal definition of indigenous identity would imply a false homogeneity by necessarily glossing over this diversity.²⁷

Despite these challenges, some consensus towards a definition does exist. UN sources cite several characteristics usually shared, either alone or in combination, by indigenous peoples. These characteristics include:

- ‘self-identification as indigenous peoples at the individual level and accepted by the community as their member,
- ‘historical continuity with pre-colonial and/or pre-settler societies,
- ‘strong link to territories and surrounding natural resources,
- ‘distinct social, economic or political systems,
- ‘distinct language, culture and beliefs,
- ‘form non-dominant groups of society’ and
- ‘resolve to maintain and reproduce their ancestral environments and systems as distinctive peoples and communities’.²⁸

According to a report by the United Nations Permanent Forum on Indigenous Issues (UNPFII), however, ‘the most fruitful approach is to identify, rather than define indigenous peoples.’²⁹ This approach is founded on the principles of self-identification outlined in various human rights documents.

Indigenous rights and minority rights

Article 1 of the United Nations Minority Declaration defines minorities as based on ‘national or ethnic, cultural, religious and linguistic identity’.³⁰ A minority group is a group in a non-dominant position whose members ‘possess ethnic, religious or linguistic characteristics differing from those of the rest of the population’.³¹ Minority groups largely wish to preserve and promote their identity.

A report from the United Nations Office of the High Commissioner for Human Rights (OHCHR) states that there is still ‘no internationally agreed definition as to which groups constitute minorities.’³² Some indigenous people groups reject the term for themselves because it does not reflect their historical presence in a particular region. For example, a group may have been the majority ethnic group in a region before that area was colonised by the now-governing state or group. In this case, an indigenous group may reject the colonial power and all associated terms which imply the group has historically been a minority within a larger population, rather than a separate people or nation. However, indigenous peoples are largely considered a minority group by national and international bodies and can claim minority rights under international law.³³ The primary distinction between minorities and indigenous peoples highlighted by the aforementioned UN report is the strong link to lands and resources that is usually associated with indigenous peoples. This link is not necessarily shared with all minority groups.

Some indigenous people groups reject the term for themselves because it does not reflect their historical presence in a particular region.

²⁶ United Nations Permanent Forum on Indigenous Issues, ‘Who are Indigenous Peoples?’, p.1 www.un.org/esa/socdev/unpfii/documents/5session_factsheet1.pdf

²⁷ Weaver, Hilary N. (2001), ‘Indigenous Identity: What Is It, and Who Really Has It?’, *American Indian Quarterly*, Volume 25, No. 2, p.243

²⁸ United Nations Permanent Forum on Indigenous Issues, *ibid.*

²⁹ *ibid.*

³⁰ United Nations Office of the High Commissioner for Human Rights, Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, paragraph 1 www.ohchr.org/EN/ProfessionalInterest/Pages/Minorities.aspx

³¹ United Nations Office of the High Commissioner for Human Rights, ‘Minority Rights: International Standards and Guidance for Implementation’, *ibid.*, p.2

³² *ibid.*

³³ *ibid.*, p.3

Indigenous rights, FoRB and the climate crisis

The intersection between indigenous rights and the climate crisis has received increasing attention over the past two decades in writings from governmental bodies and non-governmental organisations (NGOs). Both have acknowledged the vulnerability of indigenous communities to the adverse effects of the climate crisis and recognised indigenous peoples as key actors in combatting it. Despite this increasing awareness, much progress still needs to be made towards involving indigenous peoples in relevant national and international decision-making.

Indigenous communities frequently have a unique knowledge of the ecosystems in which they live. This knowledge often stems from long-held land-stewardship traditions. The Declaration of the Alliance of Guardians and Children of Mother Earth, adopted by representatives of indigenous peoples, personalities and non-governmental organisations in October 2017, states ‘indigenous peoples have continually taken care of Mother Earth and humanity... There is no separation between the rights of Indigenous peoples and the rights of Mother Earth.’³⁴ Indigenous peoples from across the world seem to possess a unique understanding of local ecosystems, how to protect them and how to live sustainably within them.

There has been some acknowledgement by national and international bodies that indigenous peoples, with their unique relationship with and knowledge of the environment, could be key players in learning to adapt to and mitigating the effects of the climate crisis. A 2019 report from Minority Rights Group International states that approximately 80% of the world’s remaining biodiversity is stewarded by indigenous peoples.³⁵ The former Special Rapporteur on the rights of indigenous peoples states in her 2017 report that the role of indigenous peoples ‘is vital for sustainable environmental management of natural resources and biodiversity conservation, both of which are essential elements for combating climate change’.³⁶

Despite being some of the least responsible for the causes of the climate crisis, indigenous peoples are among the most vulnerable to its effects.

Despite steps forward, indigenous peoples are often still not sufficiently consulted in relevant decision-making processes at both the national and international level. The Paris Agreement of December 2015, for example, was the first climate crisis treaty to directly acknowledge indigenous rights. However, references to indigenous peoples are only in the preamble and are not legally binding.³⁷ The former Special Rapporteur on the rights of indigenous peoples states that ‘indigenous peoples were disappointed that indigenous peoples’ rights were not more securely included in the Paris Agreement.’³⁸ This is typical of much climate crisis discussion at all levels.

Despite being some of the least responsible for the causes of the climate crisis, indigenous peoples are among the most vulnerable to its effects. Indigenous peoples often live in ecosystems that are particularly at risk from the impacts of the climate crisis and tend to be heavily dependent on lands and resources for their basic needs and livelihoods.³⁹ The burden of the climate crisis is further exacerbated by social inequalities, with indigenous peoples being among the poorest and most marginalised peoples globally.⁴⁰ Beyond a locational or financial vulnerability, indigenous peoples are also more exposed to the effects of the climate crisis as a result of their traditional link to ancestral lands: the climate crisis threatens not only indigenous resources and livelihoods but also cultural and spiritual ties.⁴¹ In some indigenous communities where traditional religious beliefs or the beliefs of the majority are closely tied to their environment, FoRB may be viewed as a threat by traditional leaders because of its potential to rupture those ties. In other indigenous communities, FoRB violations committed by non-indigenous people may be linked to wider challenges including damage to or destruction of the environment.

34 Constituent Assembly of the Alliance of Mother Nature’s Guardians, ‘The Declaration of the Alliance of Guardians and Children of Mother Earth’, October 2017 http://allianceofguardians.org/doc/call2017/AMNG_Global-Call-2017-&-Annex_EN.pdf

35 Minority Rights Group International, ‘Minority and Indigenous Trends 2019: Focus on Climate Justice’, 2019, p.14 <https://minorityrights.org/wp-content/uploads/2019/06/MRG-Key-Trends-Report-2019-FINAL-1.pdf>

36 United Nations Human Rights Council, ‘Report of the Special Rapporteur on the rights of indigenous peoples’, 1 November 2017, p.4 paragraph 7 <https://undocs.org/A/HRC/36/46>

37 Minority Rights Group International, ‘Minority and Indigenous Trends 2019: Focus on Climate Justice’, *ibid.*, p.41

38 United Nations Human Rights Council, ‘Report of the Special Rapporteur on the rights of indigenous peoples’, *ibid.*, p.8 paragraph 38

39 Ramos-Castillo, Ameyali & Castellanos, Edwin J. & Galloway McLean, Kirsty, ‘Indigenous peoples, local communities and climate change mitigation,’ *Climate Change*, Volume 140 No. 1, January 2017, p.2 <https://booksc.org/book/64968131/48d01c>

40 *ibid.*

41 Minority Rights Group International, ‘Minority and Indigenous Trends 2019: Focus on Climate Justice’, *ibid.*, p.42

The **United Nations Environment Programme (UNEP) Faith for Earth Initiative** has recognised people of faith as key actors in combatting the adverse effects of the climate crisis. The goal of the initiative is ‘to encourage, empower and engage with faith-based organizations as partners, at all levels, toward achieving the Sustainable Development Goals and fulfilling the 2030 Agenda’.⁴² The initiative lays out the tripartite goal of (1) empowering faith-based organisations and their leaders to advocate for protecting the environment, (2) greening faith-based organisations’ investment and assets and (3) providing leaders with knowledge and networks to enable them to effectively communicate with decision-makers and the public.⁴³ A duty of environmental care and proper management of the earth’s resources is common to most world religions and beliefs. Just as many bodies and organisations have recognised indigenous peoples as key players in combatting the climate crisis, UNEP recognises that ‘religion and culture can significantly address climate change, biodiversity and ecosystem loss, pollution, deforestation, desertification and unsustainable land and water use’.⁴⁴

The goal of the initiative is ‘to encourage, empower and engage with faith-based organizations as partners, at all levels, toward achieving the Sustainable Development Goals and fulfilling the 2030 Agenda’

The COVID-19 pandemic and indigenous peoples

The impacts of the COVID-19 pandemic have had a disproportionate effect on certain groups including indigenous peoples. The current Special Rapporteur on the rights of indigenous peoples states that, ‘although representing only 6 per cent of the world population, indigenous peoples are among the most harshly affected’.⁴⁵

A 2021 report by Minority Rights Group International outlines the disproportionate impact of COVID-19 on minorities and indigenous peoples in ten key areas:

1. universal health
2. housing and living conditions
3. environment and land
4. livelihoods
5. language and education
6. surveillance and policing
7. hate speech and misinformation
8. conflict
9. migration and displacement
10. identity and well-being.⁴⁶

In each of these, indigenous peoples have largely experienced an impact greater than that of the general population, with the pandemic exacerbating pre-existing disparities. Most notably, indigenous peoples often face multiple barriers to accessing health care. Many indigenous peoples live in remote areas long distances from medical services, experience discrimination from medical professionals, or face obstacles of a financial, linguistic or educational nature.

⁴² United Nations Environment Programme, Faith for Earth Initiative www.unep.org/about-un-environment-programme/faith-earth-initiative/why-faith-and-environment-matters

⁴³ *ibid.*

⁴⁴ United Nations Environment Programme, ‘Environment, Religion and Culture in the Context of the 2030 Agenda for Sustainable Development’, 2016, p.vi <https://www.unep.org/resources/report/environment-religion-and-culture-context-2030-agenda-sustainable-development>

⁴⁵ United Nations Human Rights Council, ‘Report of the Special Rapporteur on the impact of COVID-19 on the rights of indigenous people’, p.5 paragraph 5 <https://undocs.org/en/A/75/185>

⁴⁶ Minority Rights Group International, ‘Minority and Indigenous Trends 2021: Focus on Covid-19’, 2021, p.11-15 <https://minorityrights.org/wp-content/uploads/2021/06/Minority-and-Indigenous-Trends-2021.pdf>



Wiwa, Kogui and Chimila women. Photo: RELIEC

Colombia

Introduction

Colombia is a secular state. The majority of the population adheres to Roman Catholicism, but there are a number of religious minorities, including Protestants. On paper there is a strong separation between Church and state, and FoRB is protected by law. In practice, however, religious minorities have experienced varying degrees of discrimination and persecution throughout Colombia's history up to the present day.

Many citizens participate in religious activities on a regular basis without any hindrance. A significant percentage, however, is subjected to consistent and serious violations of their freedom of religion or belief and freedom of conscience. In the wider population these violations mostly take place within and as part of the context of the internal armed conflict. Although indigenous communities

experience conflict-related FoRB violations too, they have also seen FoRB, as it applies to indigenous peoples, severely curbed by court rulings which give primacy to collective cultural rights over individual rights, specifically when it comes to FoRB.

Under the 1991 Colombian constitution Colombia is described as a multi-ethnic and multicultural nation. According to a 2018 census carried out by the National Administration Department of Statistics (DANE) there are 115 indigenous people groups, making up a total of 4.4% of the Colombian population.⁴⁷ However, sources such as the National Indigenous Organization of Colombia (ONIC) recognise 102 indigenous people groups⁴⁸ and 65 languages.⁴⁹ Indigenous reserves collectively make up one third of the country's territory. While not all indigenous people live on the reserves, the majority do.

⁴⁷ Departamento Administrativo Nacional de Estadísticas, 'Población Indígena de Colombia', 16 September 2019 (Spanish) www.dane.gov.co/files/investigaciones/boletines/grupos-etnicos/presentacion-grupos-etnicos-2019.pdf

⁴⁸ Organización Nacional Indígena de Colombia, 'Pueblos indígenas' (Spanish) www.onic.org.co/noticias/2-sin-categoria/1038-pueblos-indigenas

⁴⁹ Organización Nacional Indígena de Colombia, '65 Lenguas Nativas de las 69 en Colombia son Indígenas', 19 February 2015 (Spanish) www.onic.org.co/noticias/636-65-lenguas-nativas-de-las-69-en-colombia-son-indigenas



Legal overview

Domestic

Constitutional commitments

The constitution of Colombia contains strong protections for FoRB.⁵⁰ Despite these guarantees, Colombian courts have ruled that these rights do not extend to those living on indigenous lands where collective cultural rights take precedence. The constitution also guarantees indigenous people the right to vote, to representation and to self-governance.

Right to non-discrimination

Article 13 of the constitution states:

All individuals are born free and equal before the law, shall receive equal protection and treatment from the authorities, and shall enjoy the same rights, freedoms, and opportunities without any discrimination on account of gender, race, national or family origin, language, religion, political opinion, or philosophy. The State shall promote the conditions so that equality may be real and effective and shall adopt measures in favour of groups that are discriminated against or marginalized.

Right to freedom of religion or belief, assembly and association

Article 19 of the constitution guarantees FoRB:

Freedom of religion is guaranteed. Every individual has the right to freely profess his/her religion and to disseminate it individually or collectively. All religious faiths and churches are equally free before the law.

Freedom of assembly is protected in Article 37 of the constitution and freedom of association is protected in Article 38. Article 20 guarantees the right to freedom of expression.

Rights of indigenous peoples

Article 7 of the constitution affirms that **‘The State recognizes and protects the ethnic and cultural diversity of the Colombian Nation.’**

Indigenous rights to vote and to representation are protected in Article 171 and indigenous rights to self-governance are affirmed in Articles 246, 287, 329 and 330.

Article 246 states that indigenous authorities:

may exercise their jurisdictional functions within their territorial jurisdiction in accordance with their own laws and procedures as long as these are not contrary to the Constitution and the laws of the Republic.

The power of indigenous authorities is therefore not absolute but must be exercised in line with the fundamental rights of Colombia’s constitution and national laws.

Article 330 states that ‘In accordance with the Constitution and the statutes, the indigenous territories shall be governed by the councils formed and regulated according to the uses and customs of their communities’ and that these councils are responsible for exercising a number of functions, including to ‘Oversee the application of the legal regulations concerning the uses of the land and settlement of their territories’ in Article 330 (1) and to ‘Oversee the conservation of natural resources’ in Article 330 (5).

⁵⁰ Constitute, ‘Colombia’s Constitution of 1991 with Amendments through 2015’ www.constituteproject.org/constitution/Colombia_2015.pdf?lang=en



Guaviare River. Photo: RELIEC

National laws, policies and institutions regarding indigenous peoples

The **National Development Plan 2018-2022 (PND)** was adopted in 2018. Section XII, ‘Pact for equal opportunities for ethnic groups’ outlines several issues facing ethnic minority groups, including indigenous peoples.⁵¹

The plan sets out a number of strategies to combat these barriers and inequalities, including in areas of health, governance, justice, child rights, infrastructure, education, land rights, the climate crisis and the protection of traditional knowledge and practices. More specifically, Articles 3 (a) objective 2, 3 (a) objective 7 and 3 (d) objective 1 respectively aim to ‘Improve health access and outcomes for ethnic groups, incorporating an intercultural approach’, ‘Reduce the gap between the ethnic and non-ethnic population in terms of access to water, sanitation and basic services,’ and ‘Strengthen the governance of ethnic communities for the protection and sustainable use of ecosystems and biodiversity’.

Law 1381 of 2010 was adopted by Congress ‘to ensure the recognition, protection and development of linguistic, individual and collective rights of ethnic groups with their own linguistic tradition, as well as the promotion of the use and development of their languages.’⁵²

Article 4 affirms the principle of non-discrimination in relation to language use, that ‘No speaker of a native language may be subjected to discrimination of any kind because of the use, transmission or teaching of his/her language.’

Article 7 guarantees the rights of native language speakers in relation to the justice system, stating that ‘Native language speakers who, for legal reasons of any kind, have to appear before the organs of the National Judicial System, will have the right to act in their own language, and responsible authorities will provide what is necessary to ensure that, in the trials that are carried out, those who request it are assisted free of charge by interpreters and defenders who have knowledge of their language and culture.’

Articles 8, 9 and 20 respectively outline the rights of native language speakers to use their own languages in communication with public administration bodies and health services, and to be taught their native language in an education setting in towns and communities where native languages are spoken.

On 24 July 1997, the Colombian congress adopted **Measures For The Prevention Of Forced Displacement; Care, Protection And Consolidation And Stabilization Of Internally Displaced Persons In The Republic Of Colombia.**⁵³ The measures outlined aim to prevent instances of forced displacement and to ensure the protection of forcibly displaced populations. Article 10 (8) guarantees ‘To ensure special attention to the black and indigenous communities subjected to displacement in correspondence with their uses and customs, and to encourage the return to their territories’.

⁵¹ Departamento Nacional de Planeación, ‘Plan Nacional de Desarrollo 2018-2022’, 2019 (Spanish) <https://colaboracion.dnp.gov.co/CDT/Prensa/PND-Pacto-por-Colombia-pacto-por-la-equidad-2018-2022.pdf>

⁵² Global Regulation, ‘Law 1381 of 2010’, 25 January 2010 www.global-regulation.com/translation/colombia/6405005/act-1381-2010.html

⁵³ Global Regulation, ‘Adopting Measures For The Prevention Of Forced Displacement; Care, Protection And Consolidation And Stabilization Of Internally Displaced Persons In The Republic Of Colombia’, 2 July 1997 www.global-regulation.com/translation/colombia/6404088/adopting-measures-for-the-prevention-of-forced-displacement%253b-care%252c-protection-and-consolidation-and-stabilization-of-internally-displaced-persons-.html

Court rulings

Despite the strong protections for FoRB in the Colombian constitution and in international treaties that Colombia has signed up to, Colombian courts have ruled that these rights do not extend to those living on indigenous lands where collective cultural rights take precedence.

FoRB violations in indigenous communities are largely rooted in a 1998 Constitutional Court ruling that, in a split judgement, upheld the right of traditional authorities to enforce the collective observation of and participation in traditional religious beliefs and practices on indigenous reserves. In some indigenous communities the traditional authorities generally known as *cabildos* have interpreted the 1998 Constitutional Court ruling to mean that they have the authority to define what traditional beliefs are, and to punish those who decline to profess or participate in their version of the traditional beliefs.⁵⁴

In practice, these rulings mean that when it comes to religious freedom, indigenous Colombians do not enjoy the same rights as the rest of the population. This contravenes Colombia's international human rights obligations and leaves religious minorities in indigenous areas without protection for their right to FoRB, or legal recourse at the national level. The same court and lower courts have referred to the 1998 decision in subsequent FoRB cases, reaffirming the right of indigenous *cabildos* to prohibit the practice of 'non-traditional' religions on indigenous reserves.

A church service in Cauca Department. Photo: RELIEC



International

Colombia is party to the following conventions and treaties:

- ICESCR, ratified on 20 October 1969
- ICCPR, ratified on 20 October 1969
- San José Pact, ratified on 28 May 1973
- Convention on the Elimination of All Forms of Discrimination Against Women, ratified on 19 January 1982
- UN Convention on the Rights of the Child, ratified on 28 January 1991
- Indigenous and Tribal Peoples Convention (C169), ratified on 7 August 1991
- San Salvador Protocol, ratified on 22 October 1997

In its third Universal Periodic Review (UPR) cycle in 2018, Colombia accepted 21 recommendations pertaining to the rights of indigenous peoples, including Congo's recommendation to 'redouble efforts to eliminate all forms of discrimination against minorities and indigenous peoples' and The Holy See's recommendation to 'ensure that indigenous and rural communities can express their free and informed consent prior to any measure that may affect their lives and their ancestral land'. No recommendations were made pertaining specifically to the right to FoRB, although there was one recommendation about freedom of conscience which can be closely linked to FoRB.⁵⁵

Several reports from UN bodies, working groups and Special Procedures mandate holders raise concerns about indigenous people's access to justice in Colombia. For example, in its January 2020 report, the Committee on the Elimination of Racial Discrimination (CERD) concludes that current justice systems and special indigenous courts 'are not sufficient to ensure access to justice for [indigenous peoples and communities of African descent], as they are still not available in all their territories'.⁵⁶ Similarly, the concluding observations on the ninth periodic report of Colombia by the Committee on the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) expresses concern about 'the limited institutional capacity of the judiciary, in particular in rural areas, and the high level of impunity, in particular in cases related to femicide, sexual violence and violence against women human rights defenders, which disproportionately affect women from vulnerable groups, such as indigenous women'.⁵⁷

⁵⁴ The ruling in its entirety, along with dissenting opinions, can be found here: República de Colombia, Corte Constitucional, Sentencia SU-510/98 www.corteconstitucional.gov.co/relatoria/1998/su510-98.htm

⁵⁵ 'Establish an independent and impartial application and decision – making procedure for implementing the right to conscientious objection to military service.' Given by Croatia and noted by Colombia.

⁵⁶ United Nations, Committee on the Elimination of Racial Discrimination, 'Concluding observations on the combined seventeenth to nineteenth periodic reports of Colombia', 22 January 2020, CERD/C/COL/CO/17-19, para 30 <https://uhri.ohchr.org/Document/File/30e2deb5-a5b4-43cd-9c3f-edb20996f2be/093DC000-DEEA-44C0-BB42-A1E2E8F8E262>

⁵⁷ United Nations, Convention on the Elimination of All Forms of Discrimination against Women, 'Concluding observations on the ninth periodic report of Colombia', 14 March 2019, CEDAW/C/COL/CO/9, para 13 <https://uhri.ohchr.org/Document/File/97faf0ce-4355-4fce-9f60-dca22337c1e1/CBE734C4-3D45-47AD-9DD3-36A90C194217>



A number of reports also express concern about the rights of indigenous children specifically. In its October 2017 report the Committee on Economic, Social and Cultural Rights (CESCR) raises concerns about ‘the persistent inequality in access to education between rural and urban areas, which mainly affects indigenous and Afro-Colombian children and children who have been internally displaced’.⁵⁸ Similarly, the Committee on the Rights of the Child (CRC) concludes that indigenous children ‘continue to face discrimination and numerous challenges in accessing education, health care, civil registration services and justice’ in Colombia.⁵⁹

A dominant theme across reports from UN bodies and working groups is concern about the impact of armed conflict on indigenous groups. In its January 2020 report, CERD raises concerns about ‘the violence that still persists following the signing of the Peace Agreement and that affects, and constitutes a serious threat to, indigenous peoples and communities of African descent’.⁶⁰ More specifically, CERD expresses its concerns about paramilitary incursions into indigenous territories, targeted killings of indigenous peoples, forced internal displacement, and the recruitment of indigenous children by non-state armed groups.

The right to FoRB in Colombia is notably absent in reports from UN bodies, working groups and Special Procedures mandate holders. A search in the Universal Human Rights Index (UHRI) database for all recommendations/ observations relating to both Colombia and ‘freedom of thought, conscience and belief’ produced just four mentions across only three documents.⁶¹ All four of these recommendations address the topic of conscientious objection to military service.



Photo: RELIEC

⁵⁸ United Nations, Committee on Economic, Social and Cultural Rights, ‘Concluding observations on the sixth periodic report of Colombia’, 19 October 2017, E/C.12/COL/CO/6, para 63 (a) <https://uhri.ohchr.org/Document/File/c8f92b81-11c7-4aed-bbdf-a51cadf9df88/C24E9A34-3E20-44DB-9366-6754DB481DDE>

⁵⁹ United Nations, Committee on the Rights of the Child, ‘Concluding observations on the combined fourth and fifth periodic reports of Colombia’, 6 March 2015, CRC/C/COL/CO/4-5 <https://uhri.ohchr.org/Document/File/de0e57b3-bfb5-487a-8c49-8632111ec84d/5F693D95-FF91-4300-84D3-3588F2BEF1CE>

⁶⁰ United Nations, Committee on the Elimination of Racial Discrimination, *ibid.*, para 12

⁶¹ Universal Human Rights Index, *ibid.* Database search conducted on 10 May 2022.



Guaviare River. Photo: RELIEC

Main findings

Most of the ongoing violations of FoRB taking place in indigenous communities can be directly linked to the 1998 Constitutional Court decision, Ruling SU-510, which gave primacy to the collective cultural right to protect traditions and culture over individual rights, specifically the right to FoRB. This decision was referenced especially by indigenous leaders who held the stance that non-traditional religions should not be allowed on indigenous lands. In his interview, the Kogui *cabildo* stated:

When the Arhuacos made the claim before the Court, they won. To be an evangelical [Christian] one must go outside the [indigenous] reserve. This is what the ruling says; this is what they have said. There is no need for me to say it today... It is determined that Christianity is outside of the reserve.⁶²

Forms of discrimination

Interviewees described a wide range of types of discrimination ranging from rejection by their families, to the denial of certain rights, including the right to work and the right to an education, and exclusion from leadership positions. The Uwa interviewee shared that:

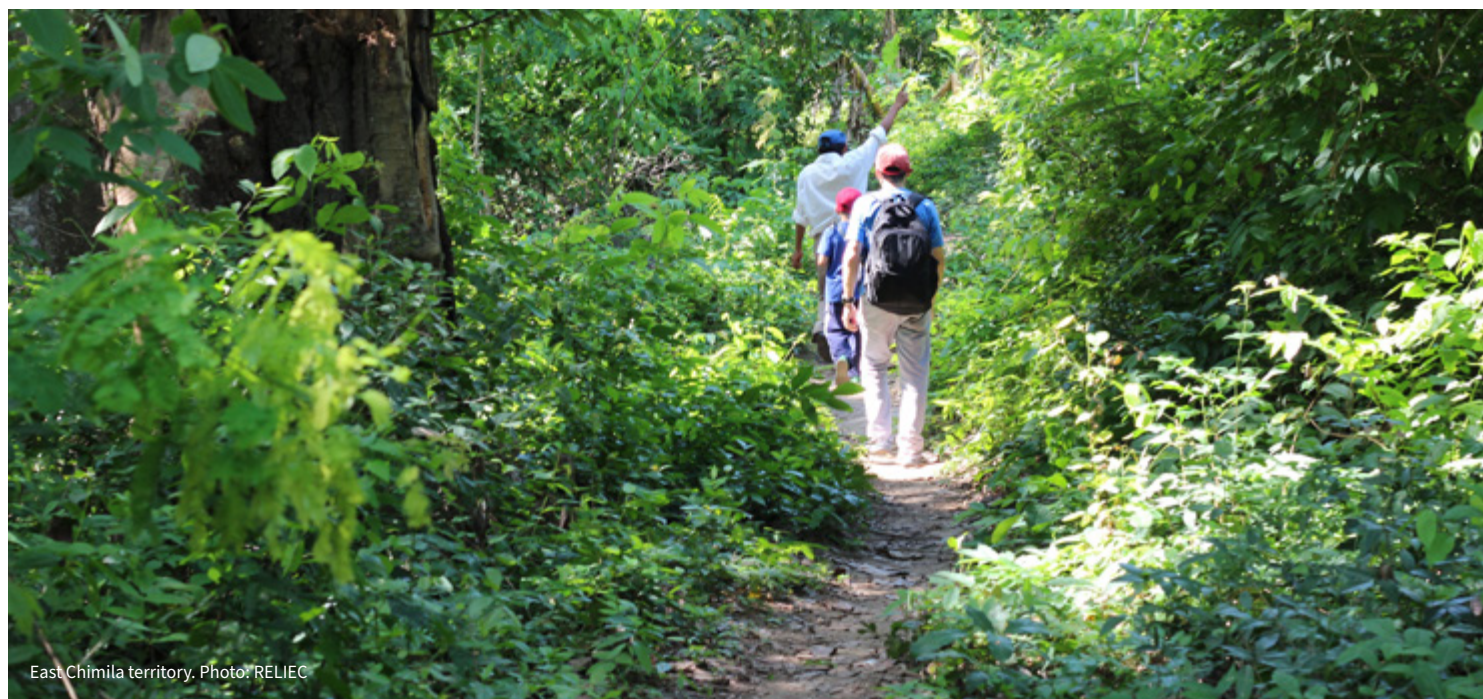
Initially, when [someone] becomes a Christian, he is rejected by his family, but later ... [although] before it was not allowed, they continue to meet secretly in some places but it is not so dangerous [now]...

The Achagua interviewees said that they are excluded from ‘indigenous movement’ meetings and whenever traditional religious leaders, called *mamos*, are present in a meeting. In some cases, the interviewees did not immediately recognise their experiences as examples of discrimination. When asked what type of violations he had experienced because of his faith, the interviewee from the Wayúu indigenous group said that the authorities ‘have not discriminated against me’. However, when he was asked about whether or not he is able to participate in the community, with the right to share an opinion or be listened to, he said, ‘They ignore me.’

Employment and labour

In some cases, members of religious minorities are blocked from employment opportunities. When asked how they have experienced discrimination, an Emberá-Wounaan interviewee from Pizarro Municipality stated that they had experienced discrimination ‘...in employment spaces, indigenous organisation (Regional Waundeko) and local indigenous organisation or in the labour and educational sectors.’ Another Emberá-Wounaan interviewee from San Juan del Litoral Municipality stated that the type of discrimination that has most affected him is being denied opportunities to work because of his religious beliefs. Conversely, however, they said Protestant Christians can be punished through forced community work. In both communities, Christianity is prohibited. Both interviewees said any attempts to seek support from the government, including at the local level, to protect their rights are ignored.

⁶² In Latin America the term ‘Christian’ is often used interchangeably with Protestant or Evangelical, and is understood to refer to people who are not Roman Catholics.



East Chimila territory. Photo: RELIEC

Access to education and further study

Many members of religious minorities are excluded from their right to primary, secondary and higher education. When asked when and how they had experienced discrimination because of their religion or belief, one Arhuaco interviewee responded: ‘When they don’t give me a place to study, the right to have an opinion or to have a job, all the time.’

A 17-year-old Wiwa boy shared that traditional authorities in his community had indicated that they would not allow him to study, because they planned for him to follow traditional practice which includes initiation ceremonies and marriage.

They scolded me in Sarachui [Valledupar], when I said I wanted to go to study; the [traditional] authorities said that they were not going to allow me to, because they wanted to give me over to the traditional practice.

He explained that in his view, forcing young people to ‘submit to ancestral practice’ is way of limiting their access to higher education under the justification that culture and order must be maintained in order to guarantee autonomy. It is also a way to deny that other religious beliefs are present in the territories, he said.

Some interviewees mentioned that they felt discriminated against by non-indigenous academics who openly questioned their indigenous identity because of their non-traditional religious beliefs. The interviewees expressed that both their indigenous identity and their Christian religious beliefs are core and co-existing parts of their identity.

Violence, arbitrary detention and forced displacement

A number of the interviewees had experienced forced displacement. One of the Emberá-Wounaan interviewees said he had been displaced. An Arhuaco interviewee said that he did not consider himself to be forcibly displaced but that he had voluntarily left his community after experiencing threats, harassment, torture and bullying. Another interviewee, an Achagua, said that in his community, Protestant Christians have been subjected to threats, forced displacement, harassment, denial of communal property, arbitrary detention, kidnapping, torture and forced recruitment by illegal armed groups because of their religious beliefs.



Puinave Church. Photo: RELIEC

Interviewees from the Kogui, Wiwa and Arhuaco groups, who all live in the Sierra Nevada, shared similar experiences. Kogui interviewees shared that the first time they experienced forced displacement was from 1999 to 2000, when they were forcibly removed from their church, and the church and their homes were burnt down. In 2009, over 20 Protestant Christian Koguis were arrested by order of the Kogui *cabildo*. They were taken to Duingueka, another region, where they were arbitrarily detained for one month. During this time they were reprimanded daily, intentionally deprived of sleep, had their freedom of movement restricted and were forced to do community work. After one of the captives escaped, the Colombian Ombudsman intervened to negotiate the release of those still held captive. Members of the group now live outside the reserve, though still on Kogui ancestral territory, because the *cabildo* maintains that Protestant Christians cannot live on the indigenous reserve and cannot practise their faith within its borders. One interviewee said,

We have had persecution for 22 years; the cabildo continues to threaten us and vows that [he] will finish with the Christians.

The Wiwa interviewees shared that because their indigenous group is considered to be on the verge of extinction, the authorities view the presence of Christianity as a direct threat. Protestant Christians in these communities have been put on trial or exiled to other territories. Some of the Wiwa interviewees reported that they had experienced violence and arbitrary detention by indigenous authorities even outside of the reserve.⁶³

A Wiwa living in Ráquira, Boyacá said that he had been attacked: ‘When we went to talk about some young people who were in my charge, the discussion changed and I was reprimanded.’ He was tied up and arbitrarily detained. The police eventually released him, since this took place outside indigenous territory. The interviewee added that cases like these are not usually reported because of a desire to resolve conflicts internally and not to expose their leaders to the potentially damaging interference of non-indigenous authorities.



Sierra Nevada de Santa Marta. Photo: RELIEC

⁶³ Various Wiwa families now live in Boyaca, having been invited there by Muiscas to encourage the ‘ancestral practices of the Sierra’. One interviewee explained, ‘The Muiscas lost their traditional practices many years ago, and they use these [Wiwa] people to legitimise their indigenous identity, and they are also not in agreement with [the presence of] Christianity.’

A threat to ancestral spirituality and culture

Most interviewees said that the traditional authorities fear that by converting to non-traditional religious beliefs, indigenous people will lose their identity and spirituality, which is deeply rooted in the community and closely linked to care for the environment. When asked about the reasons given by the traditional authorities when they deny her the right to profess her faith, one interviewee, a Chimila woman, stated: 'They say that one cannot be a Christian because it wipes out culture. Once they told me that it was my fault it didn't rain [for being a Christian].' When asked the same question, the Wayúu interviewee stated: 'They say that if we enter into Christianity we are going to abandon our customs.'

Three of the four indigenous authority leaders who were interviewed believe that the presence of non-traditional religions and practices negatively affects them in three main areas: political governance, environmental-territorial commitment, and the conservation of ancestral knowledge-practices. They view the presence of non-traditional religions in their communities as disruptive to the unity of the community and destructive to the culture. The presence of religions that were part of larger religious groups in Colombia or internationally was a particular concern, because they view those relationships as entry points for outside cultures. The Arhuaco leader said he would be more comfortable if the non-traditional religious groups were independent: 'If the indigenous church were autonomous in its decisions, I think the impact for me would be less.'

The Arhuaco leader pointed to both historical and more contemporary experiences, raising the example of the Roman Catholic Capuchin Mission established in the Sierra Nevada in 1914 and the later entry of Pentecostal Protestant Christians:

...children [were] seized from their parents and taken to the church and convent to convert them into monks... and they forbade them to speak their language. For this reason, the consequences that we see today are that there are Arhuacos who are very traditional and others who have nothing to do with their tradition and culture... in 1982 the Arhuaco leaders expelled the monks from their territory and from that point on total independence was declared, where [our] leaders, [our] mamos were the ones making the decisions⁶⁴ ...then other churches began to enter, like the Pentecostals who came with another set of rules. This began to cause problems; father and sons could not visit one another if one of them was not a Christian. [The Pentecostals] demanded that they totally isolate themselves; later they threatened them about [the use of their] language.

The threat was psychological and spiritual... This extremism is the greatest threat to the Arhuaco people... It is a direct threat.

The Wiwa *cabildo* expressed similar concerns. He questioned how the concept of FoRB would fit with their traditions and culture and explained his view that when different religious actors arrive in their territory, they provoke societal disintegration and cause the Christians to shirk their basic cultural duties, which disrupts the community.

It would have to be known where the collective, as the Wiwa people, stands in relation to religious freedom... The value of self-knowledge and your value needs to be recognised. Not recognising that has been what has led us to this discussion. Because, in terms of religious freedom, how that is integrated with the unity [of the community] is a concern, [for example] when we do the confieso. In that case, what will the competency, responsibility of [the Christians] be? As Wiwas, we live under a system of principles like the poporo, gayama. These principles must be fulfilled. When this is clear, that which is from the outside should not take precedence over these principles.⁶⁵

The Wiwa *cabildo* expressed his stance that in order to be considered to be indigenous one must participate in these rituals. Problems occur when members of the community who convert away from the traditional beliefs to other religious beliefs, or no belief, do not wish to participate in the traditional religious practices. In doing so, they run the risk of no longer being recognised as indigenous and losing all associated rights.

In contrast, the fourth leader, councillor for the Association of Indigenous Cabildos from the North of Cauca (ACIN), José Evencio Campo Silva, explained that after many years of dialogue his ethnic group had found ways to integrate community members of other religions or beliefs in a way that strengthened the larger group. Those who change their religion still have access to all benefits and rights and do not lose their identity as a Nasa.

During colonisation the Catholic Church caused a lot of damage to the indigenous population. We advise our community members not to follow such teachings, but we do not prohibit them from being Catholic. In the indigenous reserve of Miranda Cauca, we recognise that Christians are within the territory; they are our community members and are [included] in our population census. They can access land, health, education, housing, and they are taken into account in projects of common interest without any exclusion. They can have their churches to congregate.

⁶⁴ Mamos is the term for the traditional spiritual leaders in the indigenous groups living in the Sierra Nevada.

⁶⁵ The *confieso* is a collective ritual of spiritual payment in which most Christians resist participating.

The *poporo* are the rites which boys must undergo to be accepted into adulthood. The *gayama* are the initiation rites for women.



A group of Arhuaco and Yukpa. Photo: RELIEC



A Wiwa working. Photo: RELIEC

Some of the leaders expressed their view that indigenous members of non-traditional religious groups should never be allowed to hold positions of authority in the community because of the damage that could be done to the culture. The Kogui *cabildo* shared that he did not believe a member of a religious minority would be prepared to defend and protect their culture, because he believed their loyalty would be to their religion:

I know that if an [indigenous] evangelical leader arrives, they will surely begin to attack the culture...they will begin to destroy the culture. Yes, this is dangerous. Are they defending the culture, or are they defending the religion that they practise? One does not know. They can deceive the traditional authorities... they don't know what the evangelical candidate is representing, because what the evangelical leader is representing is against the culture. They say they defend the culture, but from here we do not know their [true] interests there.

Not all the indigenous leaders agreed on the threat posed by indigenous people who follow non-traditional religions in leadership positions. José Evencio Campo Silva stated:

In our local and regional organisation we have had and still have Christian leaders. They perform their duties well and are respected. I ask the Church to pray for the situation in the country, for the threats to our leaders, so that there are no deaths.

Although the leaders of some communities are in favour of policies that suppress or exclude religious minorities, others have sought dialogue, exploring policies that allow peaceful coexistence within the indigenous territory. Years ago, the religious minorities in the Nasa ethnic group experienced persecution at the hands of the traditional authorities. Dialogue and advocacy is changing this situation, and one member of the Nasa group described how those of traditional and non-traditional beliefs had found common ground in their desire to protect their land and their culture. He went on to share how he had attempted to change the discourse:

Before what would happen is a leader would stand before the congress and would begin to attack and speak badly of the church[es]; this is hostility. But the church also attacked and spoke badly of the leaders from the pulpit. They were feeding the hatred and the resentment. For this reason, when I have the opportunity to stand in the pulpit, I do not speak badly of the leaders, of the wala.⁶⁶

66 Wala is the Nasa word for wise ones.



A United Biblical Churches (Iglesias Bíblicas Unidas) baptism. Photo: RELIEC



Church service. Photo: RELIEC



Misak territory, Cauca department. Photo: RELIEC

Indigenous peoples and the natural environment

One of the primary concerns of indigenous peoples in Colombia is the state of the environment. Traditional leaders feel that community members who do not practise the traditional religions and beliefs, especially Christians, do not have a strong commitment to the environment. One leader stated that he feels that Christianity prioritises the soul, leading its followers to lose interest in the land and instead focus on the afterlife. The Arhuaco leader stated:

I understand that people here have a different faith and that must be respected. But if we have a fundamental principle with the territory, if the [non-traditional] believers are not going to contribute to the defence of the territory, we are wrong. It cannot happen that I am on my own defending and the others are not defending. So, we are not collaborating, although we share the territory.

It is worth noting that most indigenous peoples in Colombia are dependent on agriculture, fishing and hunting. These groups have felt the negative impact of the climate crisis. The primary threats to indigenous communities are drought, flooding, and deforestation including the felling of native palm trees traditionally used for construction and artistry in the community. The continued activities of illegal armed groups have exacerbated the situation through deforestation (especially in areas where plants used as the base for illegal drugs are cultivated or processed), the mass planting of illicit crops, illegal mining and forced displacement. In some areas of the country, violent clashes between illegal armed groups vying for territorial control negatively affect both the communities present and the environment around them.



A Wiwa family. Photo: RELIEC

Conclusion

Indigenous religious minority groups, traditional indigenous authorities and the Colombian government are facing complex challenges in terms of protecting cultures while also ensuring the right of all to FoRB. This includes an examination of the paradigms of indigenous identity in the context of religious diversity, and how to interpret constitutional as well as regional and international commitments alongside guarantees of ethnic autonomy.

Indigenous authorities can point to experiences, both personal and historical, of how abuses of FoRB by religious groups have caused significant damage to their ethnic groups, and their fears about the influence of non-traditional religious groups are understandable. At the same time, however, it is the responsibility of both the indigenous leaders and the Colombian government to ensure that the protection of collective cultural rights does not come at the cost of the individual rights enshrined in the Colombian constitution and in international law.

Dialogue between those who follow traditional religious beliefs, including political leaders, and those who do not should be encouraged and facilitated. The government must also take effective measures to protect indigenous communities from illegal armed groups and from the encroachment of other outside individuals or groups interested in exploiting the rich natural resources found in many of the indigenous reserves. The example of the Nasa shows that mutual respect through dialogue, accommodation and a shared commitment to the protection of their culture and their indigenous identity is possible.

In his interview, the Arhuaco religious leader recognised that change is inevitable:

If you ask me what I think about this from my point of view as a leader, well, the leaders don't want to touch this topic...I would like to expand. Transformation is on the way for all indigenous peoples. Everything evolves, everything changes. We don't know how long it will take, but what we do know is that we will evolve.

Case study

In 2002, the *cabildo* ordered that all Kogui Christians be expelled from the reserve. A number of Christians left at that time and moved together to a new community outside of the reserve but still on ancestral lands. A number of villages defied the *cabildo*, however, and under the authority of their community leaders, including village headmen and traditional priests (*mamas*), protected and allowed the Christians in their villages to stay.

In late October 2009, the Gonawindua-Tayrona organisation, under the leadership of the *cabildo*, called a meeting in Rio Molino (Jakbaldaxa) to discuss the theme of Christianity among the Koguis. Many Kogui leaders from other villages were asked to attend this meeting and did so. It was held not in the usual meeting place located near a colonial town, but rather, seven hours' hike up the mountain in Rio Molino. Those involved believe this was to ensure that outsiders would not know what was happening. Both the *cabildo* of Gonawindua, Cabildo José de los Santos Sauna Limaco, and the former *cabildo*, Arregose, attended this meeting.⁶⁷

The group of Christians believed at the time that the worst case scenario would involve them being expelled from the reserve, as occurred in 2002. However, at the meeting the *cabildo* surprised them by announcing that they were being taken captive and would be held by force until they renounced their Christian faith. Sixteen individuals, including men, women and children as young as six months old, were taken at that time. Over the next two months, the number fluctuated and by late December had reached a total of 28. Six of the 28 were not Christians, but rather the parents of Christians, and were held to put more pressure on the Christians to convert back to traditional beliefs and participate in religious rites. The *cabildo* stated repeatedly that he intended to take all Christian members of the Kogui population captive, including those who are already living outside of the reserve, in order to force them to renounce their faith.

The captives were subjected to harsh conditions including forced labour, and were denied medical treatment. Only after an international delegation of observers visited the site in November was one captive, who had been vomiting blood, released along with his wife and child and allowed to seek medical treatment in a city outside the reserve. A few captives were beaten; others were shouted at, forced to spend the night in uncomfortable positions, and subjected to public humiliation. The leaders threatened to make them stand in the sun with no shade until they renounced their faith. The leaders threatened to hold them there for up to five years until they agreed to participate in traditional rites. Two teenage boys in the group of captives were told they would be forced to begin using *poporo* (a coca-derived narcotic which is part of Kogui traditional rites).

Non-Christians perceived by the *cabildo* to have supported the Christians were also targeted. Because two villages had tolerated Christianity in their midst, the Gonawindua-Tayrona declared that the principal village in the area, Don Diego, along with Rio Molino, would be dissolved and the Koguis there would be obligated to join the village of Chibilongui – a smaller, less important village where there were no Christians.

On 21 December, the *cabildo* announced that the 28 captives would be given a three-week 'rest'. They were allowed to leave the detention site but were made to sign papers committing them to return on 10 January 2010. The group left the reserve and came to an agreement together not to return, and to try to press for government action outside the reserve. There were concerns, however, for the Christians still living on the reserve as well as for the former captives' non-Christian family members, who, they worried, could be punished for the former captives' failure to return.

⁶⁷ Cabildo Sauna Limaco died of COVID-19 on 6 August 2020.

India

Introduction

India is a uniquely multicultural, multilingual, multiracial and multireligious country. Its long history can be traced back to the fifth century B.C. leading up to the Indus valley civilisation.

The 2021 constitution of India expresses its commitment to justice, liberty and equality for all citizens. Article 15 prohibits discrimination on the basis of 'religion, race, caste, sex or place of birth'.⁶⁸

The Adivasis, a term which means 'the original dwellers', are a segment of India's population consisting of numerous and diverse tribes spread across most of the country. The many indigenous groups that fall under the category of Adivasi are animists in their original beliefs, with local versions of religious cosmology and practices that are rooted in their environment, habitat and challenges. Many of the Adivasis are dependent on the forest and other natural resources for their livelihood. Many of them engage in agriculture known as *jhum* cultivation (slash and burn cultivation) that is dependent on forest land.

Concrete numbers in terms of religions and beliefs among the Adivasis do not exist – in large part, according to Adivasi activists, because of the government's resistance to including a category for 'aboriginal religions' in official censuses; and pressure from right wing groups to classify the Adivasis as Hindu 'although with different rituals'.⁶⁹

The constitution of India does not acknowledge nor list 'animism' as a religion or belief of the Adivasi. The narrative propagated by far-right Hindu nationalist groups is that the beliefs of the Adivasis are part of Hinduism, despite fundamental differences in the religion including that, traditionally, Adivasis do not follow Hindu scriptures or Hindu gurus; their traditional faiths do not share the Hindu schools of philosophy; traditionally, Adivasis do not worship Hindu deities or use temples for worship, and they do not believe in the caste system.

As the government of India considers all people of India to be indigenous, the identity of the Adivasis can be more precisely described as those listed as the Scheduled Tribes (STs) of India.⁷⁰ For the purpose of this report, 'Adivasi' refers to those declared to be Scheduled Tribes as per Article 366 (25) and Article 342 of the constitution of India. In some cases, violations of the Adivasis' right to freedom of religion or belief (FoRB) have intersected with the degradation or destruction of the nature and environment

on which they depend. India's refusal to recognise the Adivasis as the indigenous people of India is a barrier to making the country compliant with the generally agreed international conventions for the protection of indigenous peoples.

Freedom of religion and anti-conversion laws

In recent decades, the Adivasis' freedom of religion or belief, including their freedom to choose their religion freely, has been significantly curtailed. Anti-conversion laws are in place in nine states.⁷¹ The stated purpose of these laws is to protect vulnerable communities including the Adivasis from 'fraudulent and forced' conversion by external religious groups. In the case of the Adivasis, these laws are used against them when they convert to Christianity or Islam. However, the application of the law is less visible in situations when Adivasis convert to Hinduism. Provisions in the laws and the method of implementation in practice function to prevent their conversion to any other religion of their choice. In many cases, Adivasis who wish to change their religious beliefs are intimidated and threatened by right-wing political groups, industrialists, police and district administration in concerted actions of legal consequences, as well as social boycotts.

Physical intimidation

In many areas populated by the Adivasi a pattern of repeated threats from various groups has developed. There is a nexus between right-wing political and religious groups such as the Bajrang Dal, Vishwa Hindu Parishad, the local police authorities, and the district and local administration, with alleged tacit support by the judiciary. These groups share a common agenda of cultural nationalism known as Hindutva, an agenda more often presented as patriotism. The far-right groups target Adivasis by registering criminal cases involving false charges against them, resulting in arbitrary arrests, destruction of their homes, and confiscation of property.

It is believed that corrupt practices within the judiciary, police and state administration exacerbate the challenges faced by the Adivasis. The Adivasis also have limited access to justice due to these alleged connections between the relevant forums of redress.

68 Government of India Legislative Department, Constitution of India, 26 November 2021, Article 15 <https://legislative.gov.in/sites/default/files/COI...pdf>

69 NewsClick, 'Separate Religion Code Necessary for Development of Adivasis, Say Leaders Before Census', 27 April 2022 www.newsclick.in/separate-religion-code-necessary-development-adivasis-leader-census

70 Article 366 (25) of the constitution of India outlines the provisions for classifying tribes as Scheduled Tribes. Article 342 outlines the procedure for this classification.

71 Eleven states have passed the bill in total. In Tamil Nadu, the bill was repealed in 2004. In Rajasthan, the bill was passed, but assent was not given by the governor and so it is not in force.

Destruction of the environment

Despite development, industrialisation and scientific and educational advancement in much of India, the Adivasi communities, with the exception of some regions such as north-east India, continue to be less empowered and more vulnerable to being exploited by industrialists and businessmen, who do not share the produce of the land with the Adivasis. The environmental degradation that has occurred as a result of development has deprived some Adivasis of their territory and traditional means of livelihood. Deforestation due to industrial development, dams and mining has destroyed the ecosystem in which the Adivasis generally live. Over several decades, protests and movements linked to environmental concerns have developed in many parts of India with significant Adivasi populations.

Legal framework

Although legal safeguards for the Adivasis are in place, most have not made a significant contribution to the protection and advancement of the Adivasis.

Domestic

The preamble to the constitution of India states ‘We, the people of India, having solemnly resolved to constitute India into a 1 [sovereign socialist secular democratic republic] and to secure to all its citizens: justice, social, economic and political; liberty of thought, expression, belief, faith and worship; equality of status and of opportunity; and to promote among them all fraternity assuring the dignity of the individual and the 2 [unity and integrity of the Nation]’.⁷²

These principles are further expanded in Articles 14, 15 and 25 of the constitution.

Article 14 states: ‘The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.’

Article 25 also protects FoRB. It guarantees ‘freedom of conscience and free profession, practice and propagation of religion. (1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion.’⁷³



After the independence of India in 1947, the rights of the Adivasis were considered and some provisions were made to protect them. In 1999, the then NDA government drafted a national policy on tribal peoples to promote their development. The draft policy was left as a draft and no further action was taken on it.⁷⁴

In addition to these constitutional provisions, a legal framework is also in place regarding the rights of the Adivasis in terms of their land, primarily forest land, and their protection from exploitation of various kinds.⁷⁵ In 2006, India’s parliament passed the Forest Rights Act, which protects the traditional rights of the Adivasis over the forests and natural resources. The stated objectives of this Act are: ‘To undo the historical injustice occurred to the forest dwelling communities; to ensure land tenure, livelihood and food security of the forest dwelling Scheduled Tribes and other traditional forest dwellers; [and] to strengthen the conservation regime of the forests by including the responsibilities and authority on Forest Rights holders for sustainable use, conservation of biodiversity and maintenance of ecological balance.’⁷⁶

Scheduled areas

The fifth and sixth schedules of India’s constitution make provision for some geographic areas in most of the regions with large Adivasi populations. The governors of the states and the president of India are empowered to make notifications which protect the Adivasis’ land rights and culture.⁷⁷ Once notified, the land in the scheduled areas cannot be sold by an Adivasi to a non-Adivasi person. The schedule aims to protect Adivasi land from being taken over by people from outside. While these laws have limited the rampant takeover of Adivasi lands, people from outside still buy land in these areas through proxy and settle there or use the land for farming.

⁷² Government of India Legislative Department, Constitution of India, *ibid.*, Preamble
⁷³ *ibid.*, Article 25

⁷⁴ Scroll.in, ‘Adivasis: India’s original inhabitants have suffered the most at its hands’, 20 January 2016
<https://scroll.in/article/773759/adivasis-indias-original-inhabitants-have-suffered-the-most-at-its-hands>

⁷⁵ Minority Rights Group International, ‘The Adivasis of India’, 1998
<https://minorityrights.org/wp-content/uploads/old-site-downloads/download-415-The-Adivasis-of-India.pdf>

⁷⁶ Government of India Ministry of Tribal Affairs, Scheduled Tribes And Other Traditional Forest Dwellers (Recognition Of Forest Rights) Act, 2006 <https://tribal.nic.in/fra.aspx>

⁷⁷ Bijoy, C.R, Shankar Gopalakrishnan and Shomona Khanna (2010), ‘India and the Rights of Indigenous Peoples: Constitutional, Legislative and Administrative Provisions Concerning Indigenous and Tribal Peoples in India and their Relation to International Law on Indigenous Peoples’, Asia Indigenous Peoples Pact Foundation, p.43
www.researchgate.net/publication/281625880_INDIA_AND_THE_RIGHTS_OF_INDIGENOUS_PEOPLES_Constitutional_Legislative_and_Administrative_Provisions_Concerning_Indigenous_and_Tribal_Peoples_in_India_and_their_Relation_to_International_Law_on_Indigen

Anti-conversion laws

Anti-conversion laws are in effect in nine states in India. All the laws contain special provisions that restrict the freedom of the Adivasis to practise the religion of their choice. The first anti-conversion law to be passed by Odisha (formerly known as Orissa) state was the Orissa Freedom of Religion Act of 1967, which states in Section 3 that ‘no person shall convert or attempt to convert, either directly or otherwise, any person from one religious faith

to another by the use of force or by inducement or by any fraudulent means nor shall any person abet any such conversion.’⁷⁸ Subsequent laws passed by other states have largely retained the broad terms used in the 1967 Act to define conversion activity. Some of the later acts passed by other states detail more severe punishments and have variations in the form of procedure for implementation. A summary of the state laws is in the table below.⁷⁹

Summary of anti-conversion laws in states of India where currently in place⁸⁰

| State | Re-conversion excluded? | Prior permission? | Notice by priest / other person performing conversion? | Notice by convert? | General penalties | Enhanced penalties where convert is woman, minor, SC/ST |
|-------------------|-------------------------|-------------------|--|--------------------|---------------------------------------|--|
| Arunachal Pradesh | Yes | No | Yes | No | 2 yrs / Rs. 10,000 | None |
| Chhattisgarh | No | No | Yes | No | 1 yr / Rs. 5,000 | 2 yrs / Rs. 10,000 |
| Gujarat | No | Yes | No | Yes | 3 yrs / Rs. 50,000 | 4 yrs / Rs. 100,000 |
| Himachal Pradesh | No | No | No | Yes | 2 yrs / Rs. 25,000 | 3 yrs / Rs. 50,000 |
| Madhya Pradesh | No | No | Yes | No | 1 yr / Rs. 5,000 | 2 yrs / Rs. 10,000 |
| Odisha | No | No | Yes | No | 1 yr / Rs. 5,000 | 2 yrs / Rs. 10,000 |
| Jharkhand | No | Yes | No | Yes | 3 yrs / Rs. 50,000 | 4 yrs / Rs. 100,000 |
| Uttarakhand | Yes | No | Yes | Yes | <1 / ≤ 5 yrs / fine but not specified | <2 / ≤ 7 yrs / fine but not specified |
| Karnataka | Yes | Yes | Yes | Yes | 3 to 5 years / Rs. 25,000 | 3 to 5 years which may be extended to 10 years / Rs.50,000 |

⁷⁸ Library of Congress, ‘State Anti-Conversion Laws in India’, October 2018 <https://tile.loc.gov/storage-services/service/l/lglrd/2018298841/2018298841.pdf>

⁷⁹ The state of Tamil Nadu passed a similar law in 2002, but it was repealed in 2004. The state of Rajasthan passed a similar law in 2006, but it never came into effect as the governor and later the president refused to give assent.

⁸⁰ Primarily sourced from Library of Congress, ‘State Anti-Conversion Laws in India’, October 2018 <https://tile.loc.gov/storage-services/service/l/lglrd/2018298841/2018298841.pdf> (adapted and supplemented with latest information)



Houses of Christians from the Gond Tribe attacked and destroyed by Hindutva groups in Bastar District, Chhattisgarh

The crime of ‘forcible conversion’ is punishable with imprisonment of up to one year and/or a fine of up to 5,000 rupees. This punishment is increased to two years’ imprisonment and a 10,000 rupee fine where the crime is committed against a minor, a woman or a person belonging to a Scheduled Tribe.

Odisha’s conversion law defines conversion as ‘renouncing one religion and adopting another.’⁸¹ Its definition of ‘force’ includes ‘a show of force or a threat of injury of any kind, including the threat of divine displeasure or social excommunication.’ Under the Act, ‘inducement’ includes ‘the offer of any gift or gratification, either in cash or in kind, and shall also include the grant of any benefit, either pecuniary or otherwise.’ The definition of ‘fraud’ includes ‘misrepresentation or any other fraudulent contrivance.’

This Act contravenes the guarantees for FoRB outlined in Article 25 of the Indian constitution in a number of ways including:

1. The broad and arbitrary definitions of force, threat and fraud mean that even the act of sharing the meaning of one’s faith with an individual of another religion could be interpreted as fraud or a threat.
2. Provisions in the Act make the gravity and punishment of the offence much more severe in cases where the individual converted is from a Scheduled Tribe. This implies that the Adivasis are not capable of choosing their religion freely and independently, and denies the Adivasis equal freedom with others to change their religion.
3. One provision states that advance notice of the conversion should be given to a district magistrate or authority, and that the anticipated conversion should be published in the local administrative offices, for the public to view. This provision creates an additional burden on the Adivasi who wishes to convert, and also potentially puts them at risk from Hindutva groups.

Most state anti-conversion laws do not penalise conversion to Hinduism from other religions, even in cases of threat of violence, intimidation and ex-communication. Equality before the law is therefore also in question.

International law

India has signed and ratified the International Covenant on Civil and Political Rights (ICCPR), which comprehensively protects the right to FoRB under Article 18.⁸²

The creation of legal, social and political barriers to Adivasis changing their religion or belief violates this commitment.

Increased concern at the United Nations (UN) for indigenous peoples has contributed to the greater attention afforded to the rights of Adivasis in recent years.

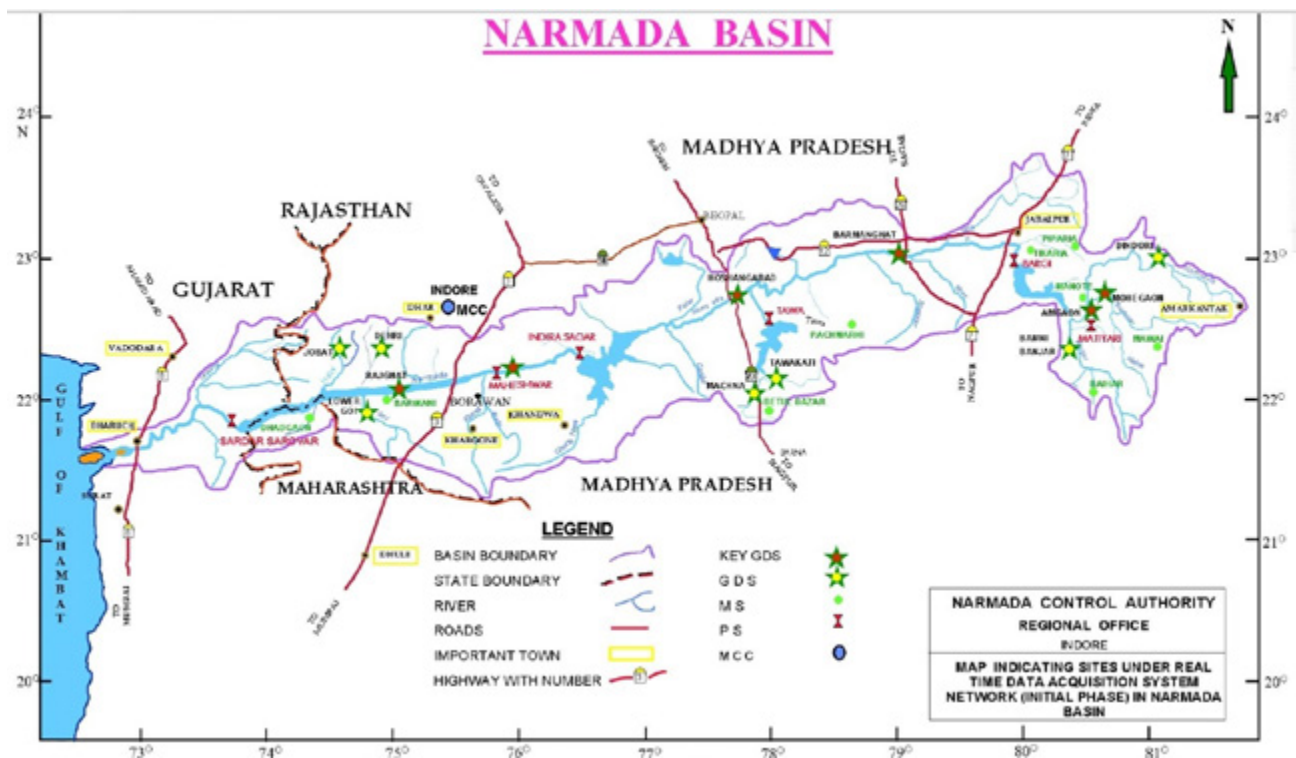
At the UN Working Group on Indigenous Populations (UNWGIP), the Indian government’s position has been that ‘the STs are not indigenous peoples’ and that ‘the entire population of India...[is] indigenous to the country.’⁸³ India’s refusal to recognise the Adivasis as the indigenous people of India is a barrier to making the country compliant with the generally agreed international conventions for the protection of indigenous peoples.

India voted in favour of the United Nations Declaration of the Rights of Indigenous People (UNDRIP) in 2007. However, Articles 8 and 34 are regularly violated in the case of the Adivasis. Adivasis who have their own religious traditions and cultures, or who choose to adopt a religion of their choice, are coerced by law or physical threat to identify themselves as Hindus (or if they have converted to other religions, to return to Hinduism), which is stated as their original religion.

⁸¹ *ibid.*, p.5

⁸² United Nations General Assembly, Universal Declaration of Human Rights, *ibid.*, Article 18

⁸³ Minority Rights Group International, *The Adivasis of India*, *ibid.*



Background

Distribution of Adivasis

- According to the 2011 census, the total number of Adivasis in India is approximately 104.6 million. This is about 8.6% of the total population.
- About 95% of the Adivasi population lives in rural areas.
- The majority of the Adivasis are found in central India, which includes the states of Madhya Pradesh, Maharashtra, Odisha, Jharkhand, Chhattisgarh, Andhra Pradesh, Telangana and West Bengal.

Discrimination against Adivasis

Discrimination against the Adivasis dates back to British colonisation. Until the arrival of the British, the Adivasis lived in their own territories, which were self-governed with almost no outside interference. When the British entered the forested areas of the Adivasis, which were rich in minerals and other natural resources, several violent protests by the Adivasis broke out, with the earliest dating to the revolt by the Kolis tribe in Maharashtra (1784-85) and the Tamar tribe in Jharkhand (1789); there were several others in the following years.⁸⁴ As a result, the government enacted new laws in the late 1800s under which the Adivasi areas were given protection from outside encroachment and jurisdiction.

Displacement of Adivasis from their traditional dwellings

The Adivasis have experienced widespread displacement due to industrial development. The northern Indian states, especially the states of Odisha, Bihar, Jharkhand and Chhattisgarh, are rich in natural resources such as minerals, metals and timber. These natural resources are found in the forested areas where most of the Adivasis live. Adivasis in the states of Gujarat, Madhya Pradesh and Maharashtra have experienced large scale displacement for the construction of dams and projects related to other industries.

The forced displacement of the Adivasis has occurred for three primary reasons:

1. **Timber and forest products** are taken by businessmen from urban areas, often with licences from the government to harvest in a specific area. In many cases, however, timber harvesters encroach into areas beyond their licence, displacing the Adivasis.⁸⁵
2. **Mining** is one of the most contentious causes of mass forced displacement of the Adivasis. The government affirms that natural resources found in any land, irrespective of the land's ownership, are the property of the government.
3. **Dams built on major rivers** have caused serious flooding in dam catchment areas. In several instances, parts of the forest where the Adivasis live have been submerged, and the Adivasis have been forced to relocate to unfamiliar environments. The Narmada project, a series of 30 major, 136 medium and 3,000

⁸⁴ Bijoy, C.R, Shankar Gopalakrishnan and Shomona Khanna, India and the rights of Indigenous Peoples, Asia Indigenous Peoples Pact Foundation, 2010, p.16-18

⁸⁵ In addition to timber, the Adivasis also rely upon natural resources such as honey, lac and tendu leaves (also known as beedi leaves, traditionally used in place of cigarette paper) as traditional sources of income. Recently, some states have handed over the rights of sale of forest products to co-operative societies of the Adivasis, and the government buys the products from these societies directly. This has been implemented widely in the state of Chhattisgarh.

minor dams under construction over the river Narmada, has impacted Adivasis from the states of Gujarat, Madhya Pradesh and Maharashtra. It is expected that the two biggest dams alone – the Sardar Sarovar Dam in Gujarat and the Narmada Sagar project in Madhya Pradesh – will displace 200,000 people from their homes. 182 villages in Madhya Pradesh, 36 in Maharashtra and 19 in Gujarat will be under water. Large areas of forest will be submerged and at least 50% of the people who will be displaced are Adivasis.⁸⁶ Some of the Adivasi tribes that will be displaced are the Bhils and Tadavi.

In a number of these villages, particularly in Dang District in Gujarat, a significant number of Adivasis have converted to Christianity. In 1998, these Christians were attacked brutally by the members of the RSS, VHP and Bajrang Dal, right wing Hindutva groups. Attacks on Adivasi Christians in this area have been ongoing ever since.

Many Adivasi communities are experiencing multiple violations including forced displacement due to environmental exploitation, and denial of the right to choose their religion freely. Several Adivasis who converted to Christianity have been assisted by church-supported agencies in their campaigns for nature preservation.

Forced displacement has caused distress for the Adivasis, who have responded to the deprivation of their land and culture in several ways including:

1. Many of the Adivasis have chosen to embrace other religions such as Christianity or Islam which they feel give them a voice, opportunities for an education and a better life. Several states have reacted to this by passing anti-conversion bills, primarily aimed at curtailing the conversion of the Adivasis and the activities of Christian missionaries. Many Christian missionaries who have attempted to advocate for the Adivasis have been accused of being Maoist supporters and have been jailed under legal provisions that do not easily entitle them to bail.
2. The exploitation of the Adivasis by industries, government and law enforcement agencies has also created ripe conditions for armed uprisings, especially in the form of what is known as 'Maoist movements'. Maoist movements are banned throughout the country but are primarily present and active among the dispossessed Adivasis.

The government has, in many cases, responded to these actions with police violence and by registering cases based on false charges against the Adivasis. This pattern has emerged throughout Adivasi regions, particularly in the northern and central states referred to above. Violent crackdowns on Maoist groups in several regions have impacted the Adivasis, including those who are sympathisers but also many who are uninvolved in the Maoist activities.

⁸⁶ Times of India, 'River linking ups tribals' fury', 18 February 2022 <https://timesofindia.indiatimes.com/city/surat/river-linking-ups-tribals-fury/articleshow/89651371.cms>





Anti-conversion laws and physical attacks

The anti-conversion laws in place in nine states constitute a major violation of the FoRB of the Adivasis. All the states in which these laws are in effect have large Adivasi populations. The laws are used against anybody who propagates any religion except Hinduism, anywhere in these states.⁸⁷ In urban areas, generally only those who attempt to propagate their religion are targeted. Among the Adivasis, however, the law is widely used against individuals who desire to change their religion to Christianity or Islam, but is rarely enforced in cases where the conversion is to Hinduism.

Although there have been numerous daily accounts of arrests on charges of forced conversion over the last couple of years, there have been no reports of action taken against violent mobs or against police officers attempting to prevent the conversion of the Adivasis to non-Hindu religions.

CSW's partners spoke to one Adivasi Christian from Odisha,⁸⁸ who shared that right-wing Hindu groups have come to his village and have tried to teach the community that they are all Hindus. He shared that their descriptions of Hinduism and the gods and goddesses were unfamiliar to the local people. Nevertheless, these Hindu groups constructed temples in their villages and asked them to come there to worship, at least on festival days. He shared that most of the Adivasis do not go to those temples because they do not recognise Hinduism as their religion.

Another Adivasi Christian whom CSW's partners spoke to shared how local Adivasis who want to change their religion are intimidated by the government authorities, who say that, if they convert to Christianity or Islam, they will lose all the constitutional provisions they receive as Scheduled tribes.

⁸⁷ In recent years, the general narrative by Hindutva outfits has been that all Indians are born Hindus, and Hinduism is the ancestral religion of all Indians, and so a conversion to Hinduism is not conversion but a return to home (homecoming or ghar wapsi). Therefore, they contend that anti-conversion laws do not apply.

⁸⁸ The location of this case is withheld for the security of the people involved.



Submerged land in Narmada.

In addition to anti-conversion laws, there are cases of physical attacks on Adivasi Christians by local villagers, who are encouraged and tacitly aided by external Hindutva activists, and by the police or local authorities.

1. On 24 November 2021, a group of 40 Adivasi Christians in the village of Chingavaram in the Sukma District of Chhattisgarh were attacked by other villagers. The Christians fled the village due to fear of further attacks. The police registered the case but did not classify it as an attack based on religion.
2. On 4 February 2022, a church on the private property of an Adivasi Christian in the village of Kistaram, Chhattisgarh was burned down. The Christians reported that the local police inspector had threatened them the previous Sunday, saying that he would register a First Information Report (FIR) against them as Maoist terrorists. The Christians alleged that it was this same inspector who set the church on fire.
3. According to the Evangelical Fellowship of India (EFI),⁸⁹ on 17 June 2021 in Sabuti Village, Narmada District, Gujarat, a church building that was under construction was demolished by the District Collector on the application of the Janjathi Suraksha Manch (Adivasi protection forum).⁹⁰
4. On 22 January 2021, in Khala village, Dhurki block, Garhwa District, Jharkhand, three Korwa tribal families were reportedly fined 25,051 rupees each, caned, and made to do sit-ups after a kangaroo court declared them social outcasts because of their conversion to Christianity. Jaiwardhan Kumar, the subdivisional magistrate (SDM) of Banshidhar Nagar, which has jurisdiction over Khala village, confirmed that he had received information about reports of the backlash against conversions in the area. The Korwas are officially categorised as a Particularly Vulnerable Tribal Group.⁹¹

⁸⁹ Religious Liberty Commission of the Evangelical Fellowship of India, 'Hate and Targeted Violence against Christians in India', Half yearly report, 2021, p.16 <https://efionline.org/2021/07/23/religious-liberty-commission-half-yearly-report-2021/>

⁹⁰ Janjathi Suraksha Manch is a group that is affiliated to Hindutva that claims to exist to protect the Adivasis, but their work is to prevent them from being influenced by Christianity or Islam.

⁹¹ Religious Liberty Commission of the Evangelical Fellowship of India, *ibid.*, p.17

Media bias

Coverage of the widespread attacks on the Adivasis is notably absent from India's mainstream media, especially when the attacks are linked to their conversion to a religion of their choice. Violations of FoRB against the Adivasis are often portrayed through the filter of Hindutva ideology. The Adivasis' choice to change religion is portrayed as an anti-national activity at the hands of Christians and Muslims.

In many cases, the government, in coordination with right-wing groups, police and judiciary, is able to stop the media from revealing the truth of the Adivasis' experience. Even if a media outlet attempts to expose violations of human rights, including FoRB, experienced by the Adivasis, they can be intimidated with investigations and raids, often under the pretence of questionable accusations such as income tax or money laundering. Often this cripples the functioning of media outlets, forcing them to close.

Restrictions on NGOs

In recent years, particularly since Prime Minister Modi's National Democratic Alliance (NDA) government came to power in 2014, there have been systematic efforts to curtail the activities of non-governmental organisations (NGOs), including religious groups, working with the Adivasis.

These NGOs have been pressured to withdraw their activities and have experienced coercion through methods such as blocking foreign financial aid for charitable and humanitarian purposes, and the instigation of legal cases based on false charges of crimes such as financial misappropriation, or supporting violent rebel movements such as the Maoists. In such instances, it appears that First Information Reports (FIR) commonly contain allegations such as 'attempts to destroy peace and harmony' and 'creating hostility between people groups,' terminology used in the Indian Penal Code.

At the same time, many Hindutva organisations, such as Vishwa Hindu Parishad (VHP) and Rashtriya Swayamsevak Sangh (RSS), are allowed to operate freely in tribal areas. Such organisations run schools and other agencies to work among the Adivasis.⁹² They also run extensive propaganda campaigns to 'educate' the Adivasis not to convert to other religions.⁹³

Conclusion

Cases involving violations of FoRB affecting the Adivasis are numerous. This report has given special attention to the central states of Bihar, Odisha, Jharkhand and Chhattisgarh, which have large Adivasi populations, and to the western states of Gujarat and Maharashtra. These are also regions with large forested areas, and the Adivasis living there are dependent on the forest and its natural resources for survival.

These are the regions where the Adivasis' right to FoRB is under the greatest threat. In addition to this, environmental destruction caused by timber harvesting, mining and other industries has resulted in the mass displacement of several Adivasi communities.

Respective state governments are proactive in preventing the Adivasis from changing their religion. Voices that speak out for the Adivasis are often silenced through false cases and police action.

Recently, the international community has started speaking out about FoRB in India. However, there is little attention to the more severe restrictions of freedom of religion enforced on the Adivasi population. The plight of the Adivasis should be brought to the attention of the international community and their freedom to choose their religion or belief should be restored.



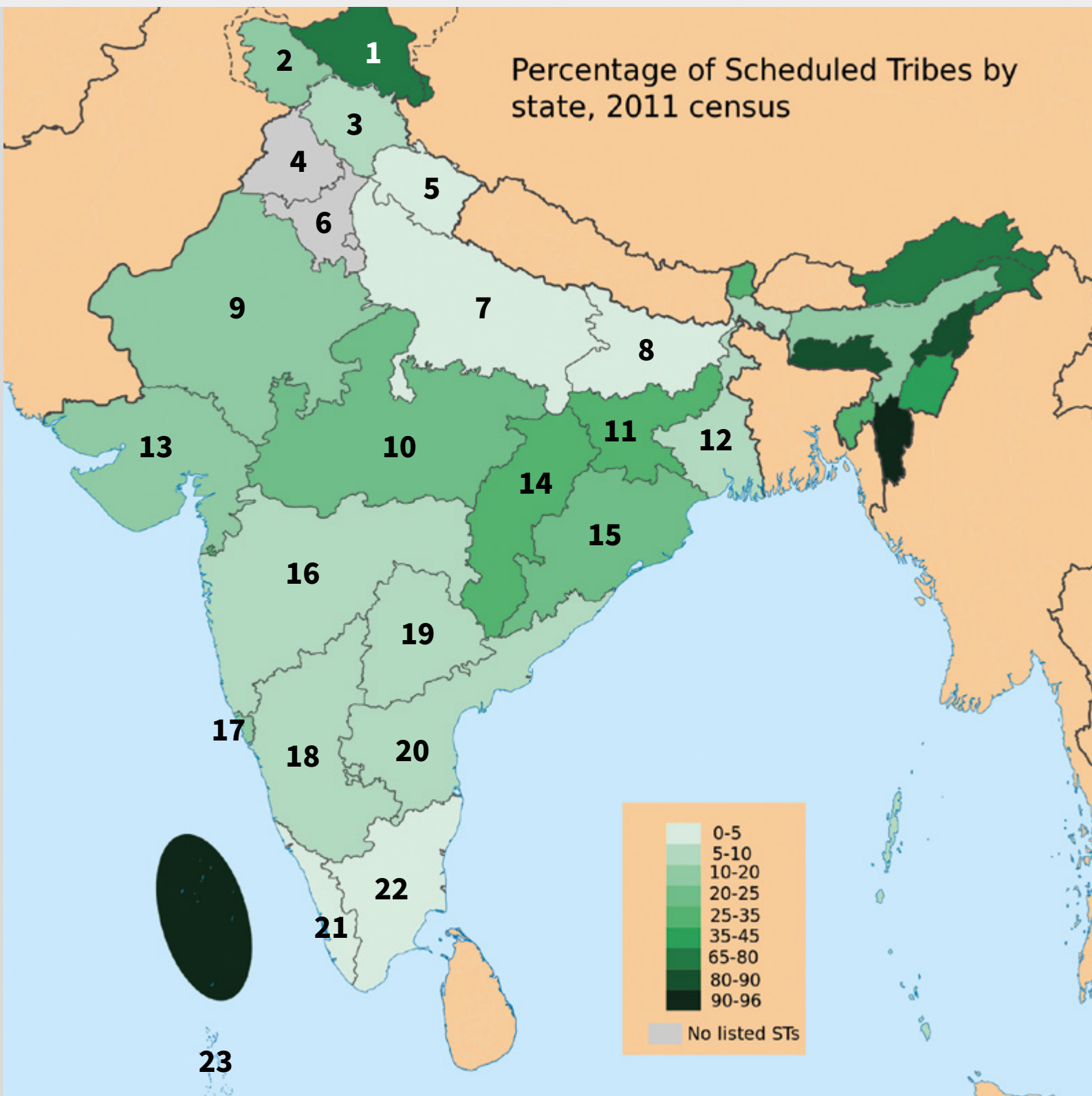
Remains of church building burned down in Kistaram village, Chhattisgarh state.
Photo: Morning Star News

⁹² The Economic Times, 'BJP banks on RSS, VHP efforts in tribal areas to enter Congress bastion in Gujarat', 12 December 2017

<https://economictimes.indiatimes.com/news/politics-and-nation/bjp-banks-on-rss-vhp-efforts-in-tribal-areas-to-enter-congress-bastion/articleshow/62029845.cms>

⁹³ The Print, 'RSS & VHP call religious conversion a form of 'violence', to launch campaign to curb it', 7 October 2020

<https://theprint.in/politics/rss-vhp-call-religious-conversion-a-form-of-violence-to-launch-campaign-to-curb-it/518100/>



List of states corresponding to numbered map

- | | | |
|----------------------|--------------------|--------------------|
| 1. Ladakh | 8. Bihar | 15. Odisha |
| 2. Jammu and Kashmir | 9. Rajasthan | 16. Maharashtra |
| 3. Himachal Pradesh | 10. Madhya Pradesh | 17. Goa |
| 4. Punjab | 11. Jharkhand | 18. Karnataka |
| 5. Uttarakhand | 12. West Bengal | 19. Telangana |
| 6. Haryana | 13. Gujarat | 20. Andhra Pradesh |
| 7. Uttar Pradesh | 14. Chhattisgarh | 21. Kerala |

Case studies

Reports of cases where the freedom of an Adivasi individual to change their religion has been curtailed and prevented by mob violence, police intimidation and failure of the judiciary to protect the victims have been on the rise in many parts of central eastern India and western India. It is estimated that at least one incident occurs each day. These incidents vary in levels of gravity and intensity. The states of Bihar, Odisha, Jharkhand, Gujarat, Maharashtra and Uttar Pradesh have the highest number of reported incidents.

Some patterns of violations can be observed across reported incidents.

- Local Adivasi communities are divided on the matter of conversion to another religion. Hindutva outfits such as the Rashtriya Swayamsevak Sangh and the Bajrang Dal capitalise on the opportunity by coming together with the Adivasis who do not approve of conversion.
- Those Adivasis who convert are attacked by the group that does not convert.
- Any complaints by victims to the police result in the arrest of the victims on the basis of anti-conversion laws, or in police inaction to protect the victims. Often, the accusations levied against victims are of ‘converting others’ or ‘attempting to convert’.
- In some instances, Adivasis who convert to Christianity or Islam are excommunicated from their villages.
- In cases where the incident reaches the judiciary, the court frequently rules against victims. Often, fabricated evidence brought by Hindutva groups is viewed as concrete by the court.
- Mobs belonging to Hindutva outfits from outside the Adivasi area enter the community and attack Christians, accusing them of converting others.

The cases below demonstrate the FoRB violations occurring in some of these areas. These are only a sample of some of the patterns of violence occurring in Adivasi communities.

Case study 1:

Sukhram from Narayanpur District, Chattisgarh State

Sukhram lives in Narayanpur District, Chattisgarh State. His case illustrates how the religious freedom of individuals who choose to change their religion is often violated by people who belong to their own village, with the tacit support and encouragement of right-wing political groups. The people of the Adivasi tribe to which Sukhram belongs disliked his decision to change religion. Sukhram was unable to get any protection from the police or any law enforcement agencies.

Sukhram shared, ‘The government puts a lot of pressure on those who want to choose their religion or faith. We are forced to do what they tell us. Whatever is their religion, we are expected to follow. If anyone goes to church, they will have to face a lot of suffering. The government does not support them, [and] neither [do] the villagers support them. They are brought back to Hinduism by force and very often, they are beaten for converting. When Christianity came to many interior villages in our district, so many things changed for the better. Where there were no schools, schools were established, and according to the needs, whatever facilities were brought in. Hostels were established. Because of these, many children in our areas got good education and got good employment.’

Sukhram also explained how nature-worshipping Adivasis were assimilated into Hinduism by duplicitous means. ‘From the time the BJP government came, they started making temples at every village. The village people does [sic] not know what to do at the temple. They only worshipped nature, river, hills etc. The temples were never built by the interest of the Adivasi people. They never asked for it. But the BJP people came and asked the villagers to vote for them and promised them that they will do many things for them. Once they won the elections, they started building temples in the village. Most of the Adivasis hardly go to the temple. Only when there is an annual festival, do they go to the temple.’



Narayanpur district

Timber trading, mining, and the grabbing of the Adivasis' land, which is supposed to be protected by law, is very common in Adivasi areas. Adivasi land is taken over by industrialists under the guise of mining or timber trades, with the support of the government and the police. The Adivasis are then made to work as labourers for these outsiders, who remain in liaison with the government and Hindutva groups. Frequently, the Adivasis do not have the knowledge to challenge these exploitations. False criminal cases are filed against any NGOs or Christian missionaries who try to help them.

Sukhram shared, 'The industrialists who come to the village have very little connect [sic] with the villagers. Those villagers who have land are compelled to hand over their land to them and they lose their land. When the industrialists come, the Adivasis are employed by them. But they do not even know how to count how many days they have worked. Whatever they are given, they go with happiness.'

Physical abuse and threats against those who want to change their religion are now common. Sukhram explained, 'A few weeks ago, when we went for a prayer meeting to a house, we were stopped on the way and told that Christianity will not be allowed in this village. Then we discussed with them and told them that India is a secular country (which will mean without a state religion), and each person has freedom to follow his or her religion; they answered that, yes, India was a secular country. But it is no more. Most of these people were ignorant about the concept of what is secularism and freedom of religion. We had to tell them that it is in the constitution. Then they attempted to beat us. But we escaped it.'

Case study 2:

Sukhdev from Kumeti Village, Kanker District, Chattisgarh State

Another major form of religious persecution against the Adivasis is the use of the Maoist insurgency against those who want to convert. Reports of such persecution have emerged in most of the states in central eastern India as well as western India. Sukhdev comes from the village of Kumeti in Kanker District, Chattisgarh State. He shared, 'Our village is very much an interior village. Only two years ago only we received electric connection. Our area is a Maoist area. They (Maoists) told us that the government will take away all your land and privileges and tried to put pressure on us. But later, their strength reduced. We are from the Gond tribe and we were told by outsiders that Gonds are Hindus. We never celebrated the festival of Holi but now many celebrate Holi.'

Sukhdev stated that it was his personal choice to change his religion, but that since making this decision, he has faced persecution. He shared, 'When I started going to Church outside my village, people came to know that I started going to church. Then they started beating me. Individually beating me was mainly from the people of the village. In 2017, outsiders who are members of the Bajrang Dal beat up many of the Christians. When the police came to the village, they started advising all the Christians against becoming Christian. Saying Hinduism is your original religion. Why do you want to abandon that and accept another religion. I was thrown out of the village. For the last eight years, I am living outside the village, because I accepted Christianity. I am not allowed to return to my village nor meet my parents and family.'

Cases of physical abuse and violence against those who choose to change their religion are rising.

Case study 3:

Sadhana Karmali from Kadru Village, Ramgarh District, Jharkhand State

Sadhana Karmali is from the village of Kadru in Ramgarh District, Jharkhand State. Sadhana Karmali shared how peaceful Adivasi areas were turned into hate-filled communities with the support and intervention of the BJP government and the Hindutva groups.

At first, the aim was to introduce Hinduism among the Adivasis through duplicitous tactics. Sadhana Karmali explained, 'Our people had their own way of life and faith. Basically we worshipped nature in the past. We never had any idols and temples. Ever since the BJP came to power, outsiders came and started setting up idols and temples in our place. So, there is some change in our way of life and faith.'

For several years, the state of Jharkhand was peaceful. Those who wanted to convert had full freedom to do so and maintained friendly relations with those who did not convert. But Sadhana Karmali shared 'Ever since the BJP came to power, the persecution of Christians started increasing. We were told to pay for the Hindu festivals and if we refused, we were beaten up. Before the BJP came to power, nobody persecuted anyone who wanted to become Christian. Most people were happy about the mission school and sent their children there. The villagers who did not become Christians all were still friendly with the Christians. It is mainly because of outside people ever since BJP came to power. Before 2011, there were no temples in our village.'

Sadhana Karmali also explained how the environmental exploitation, particularly in the jungle areas, has endangered the lives of the Adivasis. 'In the recent years,' he shared, 'at least 50% of our jungles were cut off and ever since, our climate has changed. The rainfall has significantly decreased. This has affected our cultivation and livelihood. Earlier Adivasis used to worship the trees and used to tie sacred threads around the trees. Now all those trees are cut it [sic] by the government agencies or contractors. A lot of revolt has happened against this tree cutting. In 2007, huge protest was taken up by the whole of the Adivasis. But there was no good outcome [that] came from the struggles.'

Cases of physical abuse and violence against those who choose to change their religion are rising. Sadhana Karmali shared a recent incident in which a young pastor was beaten and killed on his way back from a prayer meeting. Sadhana Karmali stated, 'Such incidents happen very often. If anybody becomes a Christian, his house or shelter is burned down. Recently, when one of my friends were [sic] having prayer with a few others for a sick man at his house, the whole house was encircled by a mob of people from RSS and Bajrang Dal. They were all beaten up and finally put in jail charged under the anti-conversion bill. All the police and government is with those who oppose Christians. The RSS people put pressure on the police to arrest the Christians.'

Case study 4:

Thurram Kanna and Kadthi Gurva from Kistaram Village, Sukma District, Chattisgarh State

Thurram Kanna and Kadthi Gurva are from Kistaram Village in Sukma District, Chattisgarh State. The Kistaram villagers are from the Adivasi tribe known as the Koyas. One of the Adivasis built a thatched-roofed church on his own land, to which his family and relatives came to worship. Other villagers in Kistaram were friendly with the family and had no problem with their Christian belief and practice. These tolerant attitudes changed with the involvement of a right-wing police officer. They wrote a letter to the district authorities, with the help of an NGO called the Chattisgarh Christian Forum. The letter comprehensively narrates the story of how this police officer was instrumental in the burning of their church.

This letter was shared with CSW by Mr Arun Pannalal, the president of Chattisgarh Christian Forum. It states,

'Mr. Bhavesh Shinde, who is the in-charge of Kistaram police station came to the above-mentioned prayer house at 11.00 o'clock on 3-02-2022 and asked us to stop the prayer in the said place. He told that he doesn't like the prayers that we make and asked us to immediately stop the prayer and threatened that if we do not do that he will accuse us falsely of being Naxalites and file case against us.'



One of the Adivasis built a thatched-roofed church on his own land, to which his family and relatives came to worship. Other villagers in Kistaram were friendly with the family and had no problem with their Christian belief and practice.

'On 4-02-2022, the inspector has called Deva, age 35 and Kadthi Santhosh, age 26 from the village to the police station and asked them to set the said prayer house on fire. However, the villagers did not allow the prayer house to be burned. At this, the inspector started abusing the villagers with very dirty words and abused them and insulted them calling names of mother / father etc and threatened them that they all will be charged as Naxalites and case will be filed against them.'

'On 5-02-2022, the inspector has called Thurram Kanna and Kadthi Gurva to the police station and told them that your prayer house is burnt. "Do not repeat any of these activities any more, otherwise you will be directly sent to Jail". All the above incidents were seen and heard by the people of the village Kistaram.'

This incident has gained wide publicity and many NGOs and other agencies have questioned the action of the police officer. Allegedly, the same officer who was behind the burning of the church has been made responsible for the investigation into the incident.

Mexico

Introduction

Mexico is a secular (*laico*) state with a Roman Catholic majority, and has a number of religious minorities, including a rapidly growing Protestant community. On paper there is a strong separation between Church and State, and freedom of religion or belief (FoRB) is protected in law. In practice, however, FoRB as a basic right is not generally well understood, particularly in political circles.

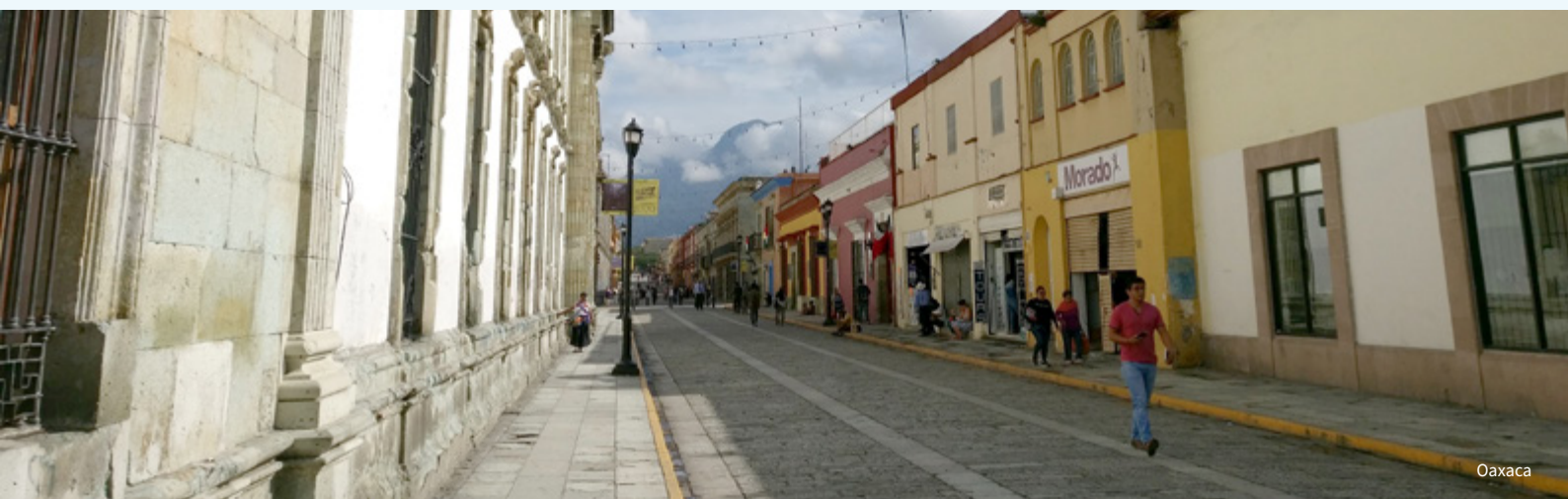
For example, notwithstanding laws prohibiting this, federal and state government officials and public employees sometimes participate in or actively promote Roman Catholic festivals or holidays in their official capacity, particularly those around the Day of the Virgin of Guadalupe, and pressure colleagues and employees to participate. When challenged, they often justify this as a cultural activity, ignoring the religious aspect.

At the same time, strict or confused interpretations of *laico* have often made government officials averse to involving themselves in 'religious affairs', and thereby reluctant to defend FoRB for all proactively.

Despite Mexico's strong legal protections for FoRB, state and federal governments often fail to acknowledge and respond adequately to acts of discrimination and violence on the grounds of religion. Article 2 of the Mexican constitution affirms that Mexico is a 'multicultural' nation 'based originally on its indigenous peoples' who inhabited the country before colonisation. It affirms the indigenous customary law called the Law of Uses and Customs.

According to the International Working Group for Indigenous Affairs (IWGIA), there are almost 17 million indigenous people in Mexico, making up a total of 15.1% of the country's population.⁹⁴ IWGIA suggests 68 languages and 364 counted dialect variations are spoken across the country.⁹⁵ According to a 2020 population and housing census by the National Institute of Statistics and Geography (INEGI), the states of Oaxaca, Chiapas, Yucatán, Guerrero, Hidalgo, Quintana Roo and Campeche have the highest percentage of indigenous language speakers.⁹⁶ According to the National Council for the Evaluation of Social Development Policy (CONEVAL), 69.5% of the indigenous population lives in poverty and 27.9% lives in extreme poverty.⁹⁷

The Law of Uses and Customs, which is in place in parts of the country with a significant indigenous population, guarantees local and regional autonomy to members of indigenous communities, and delegates considerable power to local authorities. This law has been abused to justify human rights violations against religious minorities in indigenous populations where religious practice and governance are often deeply interlinked. In many indigenous communities, which can be remote, there is often no real state presence to monitor the implementation of the Law of Uses and Customs and ensure that it is practised in accordance with human rights guarantees in state and federal law.



Oaxaca

⁹⁴ International Work Group for Indigenous Affairs, 'Indigenous peoples in Mexico' www.iwgia.org/en/mexico.html

⁹⁵ *ibid.*

⁹⁶ Instituto Nacional de Estadística y Geografía (INEGI), 'Indigenous Language Speakers' <https://cuentame.inegi.org.mx/poblacion/lindigena.aspx?tema=P>

⁹⁷ CONEVAL, Medición de pobreza 2018, Población según pertenencia étnica, 2018 www.coneval.org.mx/Evaluacion/PublishingImages/Pobreza_2018/POBLACION_PERTENENCIA_ETINICA.jpg



Woman sitting on a bench, Oaxaca

Many local leaders in communities functioning under the Law of Uses and Customs mandate religious uniformity and compel all community members to participate in the religious activities of the majority, or face punishment. For example, all members of a community might be expected to participate in the observance of the festival of the local patron saint, or in ceremonies related to other important dates in the religious calendar. Participation could include the role of master of ceremonies, which often rotates among adult men in the community, or responsibility for cleaning the church and preparing decorations and flower offerings for religious services. In most cases, a financial contribution is also required.

Opting out of any of these duties is often seen as unacceptable to those of the majority religion, who usually hold leadership roles in the community. A failure of all members of the community to participate in religious activities is often perceived as an indication of a fracture within the community, which in and of itself is something to be avoided, and which some also believe can bring additional negative consequences such as a poor harvest or other adverse consequences for the community.

Local authorities often misapply the Law of Uses and Customs to justify violations of FoRB, arguing that they have the right to protect their culture; the majority religion, usually Roman Catholicism, is included as a key part of that.

Legal framework

Domestic

Constitutional commitments

The constitution of Mexico guarantees FoRB and indigenous rights, as well as other rights that are frequently violated on the grounds of an individual's religion or belief or indigenous identity.⁹⁸

Right to non-discrimination

Article 1 explicitly states that 'Any form of discrimination, based on ethnic or national origin, gender, age, disabilities, social status, medical conditions, religion, opinions, sexual orientation, marital status, or any other form, which violates the human dignity or seeks to annul or diminish the rights and freedoms of the people, is prohibited.'

Right to freedom of religion or belief, association and assembly

Article 24 guarantees FoRB: 'Every person has the right to have freedom of ethical convictions, of conscience and of religion, and to have or to adopt, as the case may be, the one of her preference. Such freedom includes the right to participate, individually or collectively, in both public and private ceremonies, worship or religious acts of the respective cult, as long as they are not a felony or a misdemeanor punished by law.' This Article also affirms that 'all religious acts...that extraordinarily are practiced outside temples must adhere to law' and 'Congress cannot dictate laws that establish or abolish any given religion.'

Freedom of association and assembly is protected in Article 9, and Articles 6 and 7 guarantee the right to freedom of expression.



Chiapas

98 Constitute, 'Mexico's Constitution of 1917 with Amendments through 2015' www.constituteproject.org/constitution/Mexico_2015.pdf?lang=en



Women preparing food in Guerrero

Rights of indigenous peoples

Article 2 comprehensively outlines the rights of indigenous peoples. Article 2 (A) outlines several rights of indigenous peoples, including the right to self-determination, self-governance to ‘decide their internal forms of coexistence, as well [as] their social, economic, political and cultural organization’ (Article 2 A. 1.) and to ‘solve their internal conflicts’ through their own legal systems (Article 2 A. 2.), which must be practised in accordance with constitutional law and respect ‘human rights’. It also includes the right to ‘preserve and enrich’ their languages and culture (Article 2 A. 4.) and ownership of natural resources.

Article 2 (B) states that ‘In order to promote equal opportunities for indigenous people and to eliminate discriminatory practices, the Federation, the Federal District, the States and the local councils shall establish the necessary institutions and policies to guarantee indigenous people’s rights and comprehensive development of indigenous communities. Such institutions and policies shall be designed and operated together with them.’

Article 27 (VII) affirms indigenous land rights, stating that ‘The law shall protect the wholeness of the indigenous groups’ lands’ and ‘The law shall regulate the exercise of indigenous peoples’ rights over their land and of joint-title farmers over their parcels, respecting their will to adopt the best conditions for the use of their productive resources.’ Article 2 thereby affirms the indigenous customary law called the Law of Uses and Customs, which is in effect in parts of the country with a significant indigenous population.

Law on Religious Associations and Public Worship

Article 2 of the Law on Religious Associations and Public Worship, adopted in 1992 and amended in 2015, also stipulates the rights and protections associated with FoRB.⁹⁹ It guarantees individuals the following rights and freedoms as they pertain to religion:

‘To hold or to adopt the religious belief of one’s choosing and to practise, individually or collectively, the acts of worship or rites according to their preference.’

(Article 2(a))

‘Not to profess religious beliefs, to abstain from practising religious rites and acts and not to belong to a religious association.’ (Article 2(b))

‘Not to be a target of discrimination, coercion or hostility because of their religious beliefs, nor to be obligated to publicly state their beliefs.’ (Article 2(l))

‘Not to be obligated to lend personal services nor to contribute money or any other kind of support to an association, church, or any other religious grouping, nor to participate or contribute in the same way to rites, ceremonies, festivals, services or acts of religious worship.’ (Article 2(d))

‘Associate or meet peacefully for religious purposes.’ (Article 2(f))

⁹⁹ Cámara de Diputados del H. Congreso de la Unión, ‘Ley de Asociaciones Religiosas y Culto Público’, 17 December 2015 (Spanish) www.diputados.gob.mx/LeyesBiblio/pdf/24_171215.pdf

Laws, policies and institutions regarding indigenous peoples

The **Law on the National Institute of Indigenous Peoples** was adopted in 2018, to outline the purpose, power and functions of the National Institute of Indigenous Peoples.¹⁰⁰ Articles 4 (3) and (4) respectively state the responsibility of the institute to ‘Promote, respect, protect and guarantee the full recognition and exercise of the rights of indigenous and Afro-Mexican peoples recognized in the Political Constitution of the United Mexican States and the legal instruments of which the country is a party,’ and to ‘Promote, strengthen and contribute to the exercise of the self-determination and autonomy of indigenous and Afro-Mexican peoples and communities.’ The institute also emphasises the protection of indigenous women’s rights in Articles 4 (5) and (6), land rights in Article 4 (15) and traditional indigenous knowledge and cultural heritage in Article 4 (39).

The **National Development Plan 2019-2024 (PND)** was adopted in 2019.¹⁰¹ The plan sets out several aims, including to ‘reject all forms of discrimination based on physical characteristics, social position, education, religion, language, culture, place of origin, political and ideological preference, gender identity, orientation and sexual preference.’ It states that ‘government work will promote equality as a guiding principle: equality effective rights between women and men, between indigenous and mestizo.’¹⁰²

The **National Human Rights Commission (CNDH)** is a watchdog institution that has the authority to review alleged human rights violations and issue recommendations to the federal and state governments. In its 2019 Basic Agenda of Human Rights, the CNDH recommends that information about legal resources and judicial assistance is made available and accessible to all women who are subject to discrimination, particularly women with disabilities, women who live in remote rural areas, and/or who speak indigenous languages.¹⁰³ In this agenda, the CNDH lists ‘women’ and ‘the indigenous population’ as among those at greater risk of human rights abuses, but not religious or belief minorities.¹⁰⁴ In its Institutional Strategy Plan 2020-2024 the CNDH identifies religion as a factor that can increase an individual’s vulnerability to human rights abuses, stating that ‘multiple factors with cultural, social, economic, political, juridical or even religious origin’ can together ‘create conditions of vulnerability in the population

for producing or being the victims of human rights violations’.¹⁰⁵ This is one of only a few mentions of religion across the CNDH documents reviewed by CSW.

The **National Council to Prevent Discrimination (CONAPRED)** refers briefly to the problem of religious intolerance in indigenous communities. Its report on human rights emphasises ‘a marked intolerance by communities in Chiapas, Oaxaca and Hidalgo towards people and families who leave the traditional Catholic religion’.¹⁰⁶ Like the CNDH, CONAPRED frequently acknowledges the unique vulnerabilities facing indigenous communities and women, with scarce reference to how they intersect with discrimination on the grounds of religion.

The **National Institute of Indigenous Peoples (INPI)** created the Programme for the Comprehensive Wellbeing of Indigenous Communities (PROBIPI) in 2021, which aims to ‘contribute to the comprehensive development and common well-being of indigenous and Afro-Mexican peoples, as subjects of public law, promoting the implementation and effective exercise of their rights; the access to the justice; the use and conservation of their lands, territories, natural resources, biodiversity and environment; support for their strategic economic and productive activities; the construction of roads and infrastructure for basic services and the strengthening of their cultural heritage, within a framework of respect for their self-determination, autonomy and forms of organization’.¹⁰⁷ Objective D emphasises a focus on promoting indigenous culture and preserving indigenous identity, which could be problematic for those within these communities who do not wish to conform to all aspects of their cultural heritage, including the traditional religion or belief.



Woman and child, Guerrero

¹⁰⁰ Global Regulation, ‘Law On The National Institute of Indigenous Peoples’, 4 December 2018

www.global-regulation.com/translation/mexico/22532702/law-on-the-national-institute-of-indigenous-peoples.html

¹⁰¹ Diario Oficial, ‘Plan Nacional de Desarrollo 2019-2024’, 12 July 2019 (Spanish) www.gob.mx/cms/uploads/attachment/file/487316/PND_2019-2024.pdf

¹⁰² Mestizo (fem. mestiza) denotes a person of mixed European and indigenous ancestry.

¹⁰³ National Human Rights Commission (CNDH), ‘Agenda Básica de Derechos Humanos 2019’, 1 April 2019, p.51 (Spanish) www.cndh.org.mx/sites/default/files/documentos/2019-06/Basica-de-DDHH-2019.pdf

¹⁰⁴ *ibid.*, p.45

¹⁰⁵ *ibid.*

¹⁰⁶ National Council to Prevent Discrimination (CONAPRED), ‘Ficha Temática Discriminación Por Religión’, p.4 (Spanish) www.conapred.org.mx/userfiles/files/Ficha%20Religiones%20.pdf

¹⁰⁷ National Institute of Indigenous Peoples (INPI), ‘Programa para el Bienestar Integral de los Pueblos Indígenas PROBIPI’, 7 June 2021 (Spanish) www.gob.mx/inpi/acciones-y-programas/programa-para-el-bienestar-integral-de-los-pueblos-indigenas-probipi



Woman in Guerrero

International

Regional and international commitments and UN Commentaries

- San José Pact, ratified on 2 March 1981
- ICESCR, ratified on 23 March 1981
- ICCPR, ratified on 23 March 1981
- Convention on the Elimination of All Forms of Discrimination Against Women, ratified on 23 March 1981
- Indigenous and Tribal Peoples Convention (C169), ratified on 5 September 1990
- Convention on the Rights of the Child, ratified on 21 September 1990
- San Salvador Protocol, ratified on 3 August 1996

In its third Universal Periodic Review (UPR) cycle in 2018, Mexico accepted three recommendations pertaining to the protection of religious leaders and religious minorities, including Pakistan's recommendation to 'ensure freedom of religion for all people, especially indigenous populations, so that they are not forcibly displaced and compelled to convert'.¹⁰⁸

Several reports from UN bodies, working groups and Special Procedures mandate holders raise concerns about

indigenous people's access to justice and legal protections in Mexico. For example, in its September 2019 report, the Committee on the Elimination of Racial Discrimination (CERD) expressed concern that 'corruption and the lack of transparency, as well as the persistence of discriminatory practices in the justice system, significantly hamper indigenous peoples' access to justice'.¹⁰⁹ Similarly, the Special Rapporteur on the independence of judges and lawyers concludes that 'access to justice is an area in which Mexico must do more for the sake of many of its citizens, especially women, the indigenous population, immigrants and people living in poverty'.¹¹⁰

More specifically, several UN reports call for wider translation and communication of Mexican policies in indigenous languages. The Committee on the Rights of Persons with Disabilities (CRPD) recommends that the State party have 'the Federal Act on the Prevention and Elimination of Discrimination translated into all indigenous languages in accessible formats'.¹¹¹ Similarly, the CEDAW Committee calls on the State party to 'ensure that information on legal remedies is available to women who are victims of gender-based violence and all forms of discrimination, including in indigenous languages'.¹¹² CSW echoes this call for laws and policies in Mexico to be available in indigenous languages, with specific reference to legislation on FoRB.

¹⁰⁸ United Nations Human Rights Council, 'Report of the Working Group on the Universal Periodic Review: Mexico', 27 December 2018 www.ohchr.org/en/documents/reports/report-working-group-universal-periodic-review-mexico

¹⁰⁹ United Nations Office of the High Commissioner for Human Rights, Committee on the Elimination of Racial Discrimination, 'Concluding observations on the combined eighteenth to twenty-first periodic reports of Mexico', 19 September 2019, CERD/C/MEX/CO/18-21, para 26 <https://uhri.ohchr.org/Document/File/448a0f13-01c9-46ef-8ed0-8c8cf9a5c64a/TAAB12A8-474D-481B-AFA2-462F2F07E885>

¹¹⁰ United Nations Human Rights Council, 'Report of the Special Rapporteur on the independence of judges and lawyers', 18 April 2011, A/HRC/17/30/Add.3, para 93 <https://uhri.ohchr.org/Document/File/043b5620-8c15-4485-8ede-2cfbda18afd1/7212D323-288F-482F-8D88-2FE9D90A38BD>

The Committee on Civil and Political Rights similarly asserts that 'the mechanisms established in the General Victims Act are not accessible to certain population groups, particularly indigenous peoples.'

United Nations Office of the High Commissioner for Human Rights, International Covenant on Civil and Political Rights, 'Concluding observations on the sixth periodic report of Mexico', 4 December 2019, CCPR/C/MEX/CO/6, para 8 <https://uhri.ohchr.org/Document/File/0afaf0c2-2a80-472c-b806-e5b9ab6853cf/2BF05B80-9AD3-40AA-9897-DE8141B9627F>

¹¹¹ United Nations Office of the High Commissioner for Human Rights, Convention on the Rights of Persons with Disabilities, 'Concluding observations on the initial report of Mexico', 27 October 2014, CRPD/C/MEX/CO/1, para 12 <https://uhri.ohchr.org/Document/File/e939932e-ca3b-4a01-8f66-242747507692/AE8652DA-ABD9-463D-BCBC-5656F98C8D2B>

¹¹² United Nations Office of the High Commissioner for Human Rights, Convention on the Elimination of All Forms of Discrimination against Women, 'Concluding observations on the ninth periodic report of Mexico', 25 July 2018, CEDAW/C/MEX/CO/9, para 14 <https://uhri.ohchr.org/Document/File/775dfc0d-d7cd-4c36-8fae-ac1dda5be33f/07A0B598-F28B-41FB-B154-015F84B1A4C0>



Background

According to the law, the state government is primarily responsible for dealing with religiously-motivated conflicts that occur within the state's boundaries; however, it often fails to take swift or effective action to do so. State government officials have been accused of trying to 'eliminate' or lower statistics of cases of FoRB violations by labelling them as 'political and social' not religious problems. For several reasons, they often defer to the local leadership responsible for committing the violations. Such situations are often allowed to escalate to the point of violence before state officials take steps to address the conflict in question. In addition, charges are rarely, if ever, filed against those responsible for criminal acts including vandalism and acts of violence.

The federal and all state governments have a designated office to deal with religious affairs, and it is the responsibility of these offices, particularly at the state level, to address FoRB violations and actively mediate a solution to religious conflicts. The officials in these offices are often poorly resourced and usually lack expertise and training in human rights, including FoRB. This severely limits their ability to address these situations effectively.

In addition, the position of director of the Office of Religious Affairs is a political appointment, answering to the governor of a given state, rather than an integrated office within the permanent state civil service. This means that the activities of the office are often heavily influenced by political interests, with political leaders reluctant to anger local community leaders who can be counted on to secure them votes. There is rarely political will to address these cases, which involve a marginalised minority within an already marginalised minority. Many religious affairs

officers appear to view their responsibility as primarily to contain cases of FoRB violations, to reduce the number of reported cases, or to make them disappear, rather than to acknowledge publicly the extent of the problem and take action to ensure that FoRB for all is protected.

Main findings

The majority of the violations of FoRB linked to abuse of the Law of Uses and Customs are concentrated in the states of Hidalgo, Oaxaca, Guerrero and Chiapas, where there are significant indigenous populations. Cases have also been reported in Puebla, Michoacán, Jalisco and Nayarit. Authority structures are often localised, giving village and municipal authorities significant power over their populations. Those who experience the religious freedom violations are overwhelmingly indigenous (there are some similar cases which occur in non-indigenous mestizo communities in these states) and belong to a religious minority within their community. In most cases the religious majority applies the Law of Uses and Customs to enforce participation and financial contributions to religious activities.

Members of religious minorities experience discrimination ranging from having their basic services, including water and electricity, cut off; being blocked from accessing government welfare programmes; to violence, arbitrary detention and, in the worst cases, forced displacement. Although the state government is responsible for upholding the law and ensuring human rights, including FoRB, are protected, they rarely intervene. When they do, they often side with the religious majority and put pressure on religious minorities to cooperate with the demands of the religious authorities.

In most cases, the majority religion is Roman Catholic, but there have been cases of communities where another religious group became the majority and then perpetuated the same types of violations in their community. This shows that rather than being an inter-religious problem, the human rights violations experienced by religious minorities are rooted in the fact that the government has failed to protect those rights by upholding the law, and has allowed a culture to be established where the majority believes it is its right to mandate religious participation and financial support.

The government's neglect of this issue can also be connected to its larger and historic neglect of issues affecting indigenous peoples in general, including in its failure to consult with indigenous communities when implementing infrastructure projects which affect indigenous populations, their land and the environment.¹¹³

Forms of discrimination

Access to basic services

One of the most common ways in which religious minorities experience discrimination is through the denial of access to basic services including water, sewerage and electricity. In some cases, existing access is cut off and in others, newly installed services in a community are not extended to households of members of religious minorities. Local authorities usually use the denial of basic services to pressure members of religious minorities to renounce their faith and reconvert back to the religion of the majority, or at least to participate in activities associated with the majority religion; or to pay a fine to the community for their refusal to do so.

The state government rarely intervenes to protect or reinstate access to basic services for religious minorities, and in many cases these situations carry on for years.

Access to water and sewerage services

The denial of access to running water and sewerage services forces those targeted to find water elsewhere, either by buying potable water, which can be prohibitively expensive, or carrying water from local natural sources, for example streams or rivers. This second option can have implications on the health of those who have been targeted, both because of the unsanitary nature of the water source, and because of the strain of having to physically carry water or items, like laundry, back and forth from the water source.

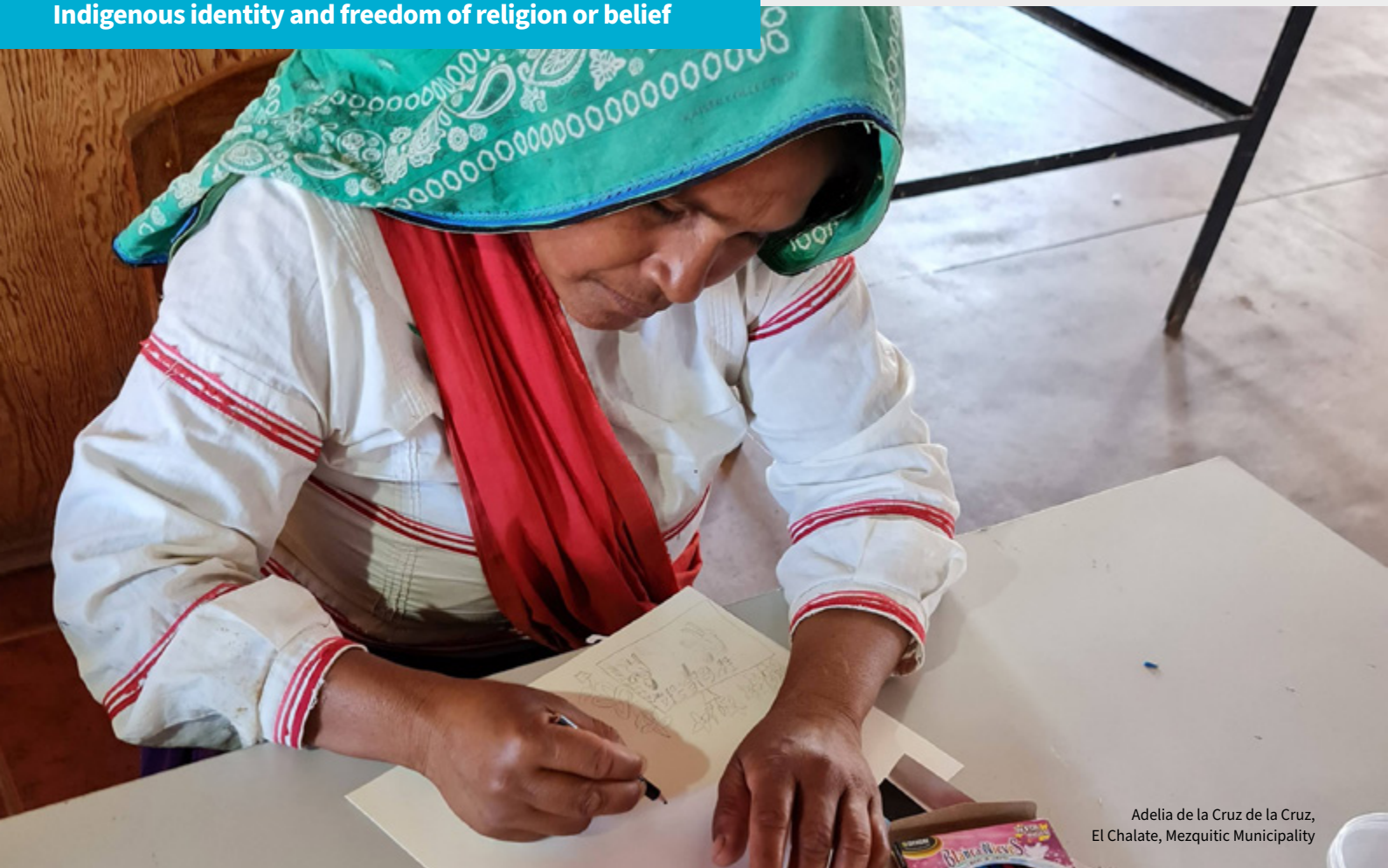
On 26 November 2016 a group of religious minority families in the village of El Encanto, Las Margaritas Municipality, Chiapas, refused to sign an agreement obliging them to participate in religious activities associated with Roman Catholicism, the religion of the majority in El Encanto, and to help with the upkeep of the local Roman Catholic church. The families also refused to pay a fine of MXN 5,000. In response, local authorities had the families' water supply disconnected. In July 2018, when the village drainage network was being built, the local authorities did not allow sewerage facilities to be installed in the families' homes.

After their water supply was cut off in 2016, Concepción Gómez Santiz and other Protestant Christian women from El Encanto were forced to travel by truck twice or three times daily to buy water, a total of 60-90 minutes' travel time. Their families had to cover the cost of fuel for each journey. Since August 2021, these families have been given access to water from a well on their friend's property, who lives 15 minutes away by truck and allows these families to use the well for free.

In another example, in January 2019, the local authorities in La Mesa de Limantitla, Huejutla de Reyes Municipality, Hidalgo, removed access to water and sewerage services for Maria Francisca Martínez Hernández, Angelina Martínez Hernández, Nemesio Cruz Hernández and Eligio Santiago Hernández. Both Maria Francisca Martínez Hernández and Angelina Martínez Hernández underwent significant medical procedures during this time and their recovery took place without access to water services or a functioning bathroom. The local authorities prohibited them from accessing the river shore closest to their homes, forcing them to walk uphill one kilometre to bathe and to obtain drinking water for use at home. They both had to rely on their grandchildren, under ten years of age, to help them carry buckets of water from the river to their homes. On 15 January 2020 the families were forced to sign an illegal agreement in which they renounced their right to hold religious services.

In some extreme cases, religious minority groups who have already been forcibly displaced continue to be targeted. A community of Protestant Christians who were forcibly displaced in 1989 from El Chalate, Mezquitic Municipality, Jalisco, formed a community nearby called Codorniz. In 2006, the local authorities of El Chalate ordered the religious minority families living in Codorniz to detach the hosepipe that connected their locality to El Chalate's water supply, leaving them without access to water in their homes for a period. During this time, the families were forced to fetch water from springs several kilometres away and to walk their animals there to water them. After about a month and dialogue between the communities, the water access was restored.

¹¹³ Christian Science Monitor, 'Mexico's Mayan Train: Will it hurt those it's meant to help?' 24 January 2022 www.csmonitor.com/World/Americas/2022/0124/Mexico-s-Mayan-Train-Will-it-hurt-those-it-s-meant-to-help



Adelia de la Cruz de la Cruz,
El Chalate, Mezquitic Municipality

Access to electricity

The denial of access to electricity can have a wide-ranging impact on the lives of those targeted. Families are forced to prepare hot food over an open fire, a potential health hazard; students are unable to study after sunset; and at night parents must care for small children in darkness. It can also have an economic impact when a family is forced to use a fuel-powered generator and when members of the family do work which relies on electricity.

In the village of El Encanto, the local authorities not only blocked the members of the religious minority's access to water, but in July 2020, they instructed the company responsible for upgrading electricity services in El Encanto not to install electricity in the homes of the religious minority families. Concepción Gómez Santiz shared that she must choose between washing the family's laundry by hand or using a generator to run the family's washing machine. This costs between MXN 150 and 200 per week to run.

The same family also saw their income directly affected by the lack of electricity. Concepción Gómez Santiz and her husband run a small grocery store in which they sold ice lollies, ice, meat, cheese, chicken, ham and sausages, all of which require refrigerators or freezers. When the local authorities cut off their electricity supply, they had just restocked and lost around MXN 3,000 in stock. Without a running refrigerator, they are forced to throw away leftover food that becomes spoiled.

During the COVID-19 pandemic, children in four of the El Encanto families who had their electricity cut off were effectively unable to continue their education, because without electricity they were unable to connect to the internet for online classes. Concepción Gómez Santiz also shared that her 23-year-old daughter, Damaris Pérez Gómez, struggled to attend university classes which went online in September 2020. Her daughter was forced to move in with her aunt in another part of the state for four months in order to participate in classes. She has since returned to El Encanto and has connected to the internet to attend online classes with a battery-charged electricity source that provides power for a maximum of two hours per charge, and costs over MXN 5,000 a month.

Two of the religious minority families eventually came to the decision to make the financial contributions mandated by the local authorities to Roman Catholic festivals, and were forced to pay an illegal fine of MXN 5,000 to have their basic services reinstated.

Verbal and physical harassment

Members of religious minorities in indigenous communities under the Law of Uses and Customs are frequently subjected to verbal and physical attacks. In many cases this has become so common that those targeted accept it as part of their lives and do not report these incidents.

Adelia de la Cruz de la Cruz said that people from the religious majority, including her relatives, in El Chalate, Mezquitic Municipality, Jalisco have been hostile and insulting towards her family since they became Protestant Christians in 2004, repeatedly telling them to leave El Chalate because they do not want Protestant Christians in the community. When her family lived in the centre of El Chalate and gathered with other Protestant Christians there, people from the religious majority would throw stones at the house in which they met for religious worship and Bible studies.

Another woman, Maria Luisa de la Cruz Carrillo, explained that before her family was forced to flee to Codorniz in 1989 due to escalating threats, her neighbours from the religious majority would insult and swear at them, telling them to leave the community and threatening to throw them off their land. Her family continues to face harassment whenever they return to their land in El Chalate to sow crops, such as corn and amaranth, which they use to feed their family and which they also sell. As the couple works on the land, people from the religious majority community in El Chalate taunt them by asking why they bother planting crops if they do not participate in religious majority customs:

'Why plant if you have already abandoned the culture that worships corn? If you no longer want to be part of this lifestyle, why do you want to sow? Get out of here and then see what you'll eat!'

Other forms of discrimination

Members of religious minorities in indigenous communities governed under the Law of Uses and Customs experience a range of other types of discrimination, including the denial of medical treatment, prohibiting religious minority children from attending school, denial of access to government benefit programmes, denial of access to community tools, and forced displacement.

Children in four religious minority families in El Encanto, for example, have been prevented from re-enrolling in the local school, because of their parents' refusal to participate in religious activities associated with the majority. Parents have been forced to enrol their children in school in a neighbouring community 20 minutes away by public transport, or longer on foot. Each journey by public transport costs MXN 36, which is equivalent to the cost of one meal in the area. Members of the religious minority in El Encanto are also not allowed to access medical care in the village and must travel to the municipal seat, Las Margaritas City, to receive healthcare.

The same community regularly holds training sessions on caring for the environment and the topic is discussed every two months at the town's general meetings. As the local authorities have effectively excommunicated the members of the religious minority from the community, however, they are not allowed to attend the meetings or trainings. Ranulfo Pérez López added that the community had a reforestation programme several years ago, but because he is no longer considered part of the community he is unaware of the status of the programme.

In La Mesa de Limantitla, in January 2019 when the local authorities cut off the access of religious minority families to water and electricity, they also blocked the access of Angelina Martínez Hernández and Maria Francisca Martínez Hernández to the community mill, hindering their ability to make food for their families. Women in the community rely on the mill to grind corn weekly and to make tortillas daily, one of their primary sources of food. Without this access, they are forced to purchase food and use a hand mill, which requires a great deal of strength and energy, leaving them exhausted when it comes time to carry out other tasks for which they are responsible.

Religious minority families in El Chalate reported being denied access to government benefit programmes in many cases set up specifically to target indigenous populations. In one instance, two families lived without access to any government benefit programmes for over 30 years, because the local authorities in El Chalate would not allow them to apply because of the families' religious beliefs.

In the most extreme cases, religious minority families are forcibly displaced from their community. Victims of forced displacement are usually dispossessed of their land and homes, which in most cases are destroyed or taken over by those responsible for the expulsion, to ensure that the victims do not return. On 2 August 2002, for example, an assembly meeting was held in Pedernales de Santa Catarina in Jalisco State, during which members of the religious majority demanded the expulsion of Protestant Christians in the community. On 12 August 2002, 13 Protestant Christian families (56 men, women and children) were forced onto a truck and were driven away from Pedernales de Santa Catarina. The displaced families were banned from returning to their homes, lost access to their lands and were prevented from harvesting their crops or recovering their livestock, both of which are integral to their income and food supply.

Government response

Levels of impunity in Mexico are high and this extends to violations of freedom of religion or belief. In many cases the state authorities, whose responsibility it is to address such situations, have a poor understanding of FoRB and are reluctant to intervene in what they view as religious matters, even when criminal acts have taken place. Many maintain that the cases are not related to FoRB, attempting to paint them as social, family or political conflicts.

On 16 December 2019 Simón Vargas Aguilar, Government Secretary of Hidalgo state, denied that there were any cases of religious intolerance in the Huasteca region during an interview with a local media outlet, *Criterio Hidalgo*.¹¹⁴ In the interview Mr Vargas Aguilar referred specifically to the case of the participants from La Mesa de Limantitla, claiming that their situation is a result of a cultural issue and is not related to their religious beliefs.

Because of this, cases involving human rights violations linked to FoRB can go on for years without resolution. In El Encanto, for example, municipal, state and federal authorities have not provided any lasting solutions despite numerous complaints. In 2020, men from these families visited the municipal seat, Las Margaritas, to request support. According to Concepción Gómez Santiz, the response from the municipal agent, Marín Gómez Jastañel, was:

We already know why they're coming with their same problem, and we are not going to listen to them.

In cases where municipal and state authorities and even state human rights commissions do involve themselves in an effort to resolve the problem, they often take the side of the religious majority, reinforcing their supposed right to enforce religious uniformity in their communities. In El Encanto, municipal authorities have offered to pay the illegal fines imposed by the local authorities in order to allow for the reconnection of the basic services of the religious minority families. Chiapas State Human Rights Commission officials recommended that the religious minority families sign the illegal agreement renouncing their religious beliefs, suggesting that dialogue with the local authorities might improve if they are considered community members again and are able to attend the assembly meetings.

According to Misión 21 Gramos, a local organisation that supports religious minorities experiencing FoRB violations, municipal authorities have more recently showed a willingness and have attempted to begin a dialogue with the local authorities in El Encanto, but the El Encanto authorities have refused to attend any meetings. The religious minority families have the option of filing a legal case against the local authorities. They have been unwilling to do so, however, because their hope is for a peaceful solution that does not exacerbate the conflict or cause the local authorities, some of whom are their relatives and former friends, to suffer.

Both of these approaches, by government offices responsible for upholding the law, in effect legitimise the local authorities functioning outside the law, imposing illegal fines and attempting to force members of the religious minority to convert to the majority religion.

¹¹⁴ Criterio Hidalgo, 'Problemas religiosos, por usos y costumbres: Simón Vargas', 16 December 2019 (Spanish) www.criteriohidalgo.com/regiones/problemas-religiosos-usos-costumbres-simon-vargas



Trees in Mexico City

Wixárika woman
embroidering, Jalisco



Conclusion

Violations of FoRB take different forms in Mexico and affect different groups in the population. The overwhelming majority of those who experience serious FoRB violations, however, including the denial of access to basic services such as water and electricity and the other forms of discrimination outlined above, are indigenous people.

Although the federal and state governments are not generally directly responsible for FoRB violations, authorities at the municipal and village level often are. The federal and state governments fail in their duty to ensure that the rights laid out in the Mexican constitution are upheld for all its citizens, including indigenous peoples, and that local officials who violate those rights are held to account when they break the law.

The right to protect one's culture cannot be used as an excuse to abuse the fundamental rights of minorities in one's community. It is the government's obligation to ensure that its law is practised and upheld for all citizens and in every part of Mexico, including its indigenous peoples.

It is unacceptable for the government to negotiate and endorse extra-legal resolutions which apply only to specific indigenous communities, and which often perpetuate FoRB violations and strengthen the position of the religious majority. Those responsible for monitoring and responding to human rights violations, including FoRB violations, at the state and federal level must have adequate training in human rights law, including on FoRB specifically, and be sufficiently resourced to carry out their duties. Any agreements must be in line with Mexican law, must uphold FoRB and must be implemented and monitored. Those responsible for crimes related to FoRB,

including the destruction of religious buildings, acts of violence, exclusion and forced displacement, must be held to account in a court of law.

FoRB violations in which perpetrators and victims are members of indigenous communities cannot be a special category of crime that is exempt from prosecution. The Mexican government must take steps to destroy the culture of impunity in this area, and proactively build a culture of tolerance and inclusion where FoRB for all is respected.



El Encanto, Chiapas



Consepcion Gomez Santiz, El Encanto, Las Margaritas Municipality

Case studies

Case study 1:

El Encanto, Las Margaritas Municipality, Chiapas State

Inhabitants of El Encanto belong to the Tojolab'al ethno-linguistic group. The majority religion is Roman Catholicism.

On 26 November 2016 a group of Protestant Christian families in El Encanto declined to sign an agreement obliging them to participate in religious activities associated with Roman Catholicism and to help with the upkeep of the local Roman Catholic church. The group, who belong to the King of Kings United Pentecostal Church of Mexico, also refused to pay an illegal fine of MXN 5,000. In response, local authorities had the families' water supply disconnected; and two years later, in July 2018, when the village drainage network was being built, the local authorities did not allow sewerage facilities to be installed in the families' homes.

In 2017 the local authorities in El Encanto prevented children of four Protestant families from being re-enrolled in the local school, because their parents refused to participate in religious activities associated with the majority. Parents were forced to enrol their children in a neighbouring community 20 minutes away by public transport or longer by foot: each journey by public transport costs MXN 36, which is equivalent to the cost of one meal in the area.

In July 2020, the local authorities instructed the company responsible for upgrading electricity services in the village not to install electricity in the homes of the Protestant Christian families.

Because of this pressure, two families made the decision to resume making financial contributions to Roman Catholic festivals. Each family also paid the illegal fine in order to have their basic services reinstated.

After their water supply was cut off, Consepción Gómez Santiz and other Protestant Christian women from El Encanto had to travel by truck twice or three times daily to buy water, a total of 60-90 minutes' travel time. Their families had to cover the cost of fuel for each journey. Since August 2021, these families have been given access to a well on the property of a friend, located about 15 minutes away by truck.

Protestant Christians are not permitted to receive medical attention in El Encanto because of their religious beliefs, so they must travel to the municipal seat, Las Margaritas City, to receive healthcare.

In 2020, men from the Protestant families visited the municipal seat to request support from the authorities to resolve the situation. According to Consepción Gómez Santiz, the municipal agent, Marin Gómez Jastañel, stated: 'We already know why [the Protestants] are coming with their same problem, and we are not going to listen to them.' The local authorities in El Encanto have refused to attend dialogues that the municipal authorities have attempted to organise.

The approach of municipal and state authorities, including from the Chiapas Human Rights Commission (CEDH), has been problematic. Municipal authorities have offered to pay the illegal fines imposed by the local authorities. CEDH officials recommended that the families sign the illegal agreement renouncing their religious beliefs, suggesting that this might lead to an improvement in the dialogue with the local authorities because they would be considered to be community members again and would be able to attend community assemblies.

These approaches, by government offices responsible for upholding the law, in effect legitimise the local authorities functioning outside the law, imposing illegal fines and attempting to force members of the religious minority to convert to the majority religion. Although the religious minority families have the option of filing a legal case against the local authorities, they have been reluctant to do so, because they hope for a peaceful resolution that will not exacerbate the conflict or cause the local authorities, some of whom are their relatives and former friends, to suffer.

The primary natural resources upon which the families of El Encanto rely are rainwater, and firewood for cooking tortillas, one of their main sources of food. The families used to collect dry branches for firewood but due to its scarcity they now must purchase it. The cost of firewood has doubled in the last three years; MXN 1,200 of firewood will last 15 to 20 days for a family of five people. The families do not have irrigation systems and are reliant on rainwater to irrigate their crops, primarily corn and beans. The families had good harvests in 2019 and 2021, but from 2016 to 2018, the harvests were poor due to low rainfall.

El Encanto holds yearly community training sessions on caring for the environment, and the topic is also discussed every two months at the village's general assembly. However, as the local authorities no longer communicate with the religious minority families, they remain uninformed about what has been discussed. One of the Protestant men, Ranulfo Pérez López, shared that several years ago the community had a reforestation programme, but because he is no longer considered to be a part of the community he does not know if this is still in place. He is unsure whether the rivers and other sources of drinking water in the community are in a safe condition or contaminated.

The local authorities instructed the company responsible for upgrading electricity services in the village not to install electricity in the homes of the Protestant Christian families.

The state government is aware of this case and has attempted to mediate and resolve the conflict by paying the illegal fines. This is not viewed by the religious minority families, however, as an acceptable solution, as it reinforces the local leaders' claim that the fine is justified; and it will not do anything to ensure that the freedom of religion or belief of all in the community is respected.

In September 2022, however, the public prosecutor's office, in cooperation with the state human rights commission prepared a formal complaint to be signed by a representative of the religious minority community in El Encanto. It is unclear what the next steps or impact will be (at the time of publication of this report) but it is a sign that the state government may be more proactive to address the situation in this community.



Case study 2:

La Mesa de Limantitla, Huejutla de Reyes Municipality, Hidalgo State

Inhabitants of La Mesa de Limantitla belong to the Náhuatl ethno-linguistic group. The majority religion is Roman Catholicism.

In January 2019, the local authorities removed the access of two religious minority families who belong to the First Baptist Church to water, sewerage services, government benefit programmes and the community mill for over a year because of their refusal to sign an agreement renouncing their religious beliefs.

On 15 January 2020 the families were forced to sign an illegal agreement in which they renounced their right to hold religious services, and the families were illegally fined MXN 57,700. The amount of the fine was based on the costs incurred by community leaders in their efforts to block any investigations by the government into crimes or human rights violations associated with the case. State authorities paid part of the illegal fine. Despite this, the families were threatened with forced displacement in several follow-up meetings throughout 2020 and 2021.

On 6 September 2021 the families were forbidden to speak at community assemblies, and threatened with being expelled from the community if they continued to hold religious services and did not pay the rest of the illegal fine.

During this period and after two of the religious minority women, María Francisca Martínez Hernández and Angelina Martínez Hernández, underwent significant medical procedures they were forced to recover from without access to water services or a functioning bathroom. They were forbidden from visiting each other or their parents. Their friends were also prevented from helping the two women, after the village delegate threatened to cut off the basic services of anyone who visited them. They were also prohibited from accessing the river shore nearest to their homes, forcing them to walk uphill one kilometre to bathe and to obtain drinking water for use at home. They both had to rely on their grandchildren, under ten years of age, to help them carry buckets of water from the river to their homes.

State government officials have repeatedly denied that there are any cases of religious intolerance in Hidalgo. In July 2022 Iván Huesca Licona, the state government official responsible for Religious Affairs in Hidalgo, claimed in a media interview that the government had not registered any 'religious conflicts' in the state over the previous six years. Mr Huesca Licona also put the responsibility for any problems on members of religious minorities, who '...do not want to give their [religious] collaborations approved by the community,' going on to state that members of religious minorities should collaborate with and join the religious majority festivals to ensure harmony within the community.¹¹⁵

115 Milenio, 'Hidalgo sin conflictos religiosos en seis años', 27 July 2022 www.milenio.com/politica/organismos/hidalgo-sin-conflictos-religiosos-en-seis-anos



The Protestant families in La Mesa Limantitla stated that they have received no community training in caring for the environment, and they were not aware of any reforestation programmes in their area. The primary natural resources the families of La Mesa de Limantitla rely on are rainwater for crop irrigation and firewood for cooking. The families use ocote – a species of pine tree – to light their fires, and a spring for their drinking water.

In 2022 the community experienced a drought, leading to the loss of large quantities of corn. As a result, the families shared, corn is very expensive to buy and plant: one quart of corn costs MXN 50. They believe that widespread deforestation of trees, considered to be valuable as lumber, contributed to the drought and caused the streams to dry up.

The families also identified pollution as a major challenge in their community, with large amounts of rubbish in the village and the villagers' practice of burning it. Angelina Martínez Hernández stated that their families try to set a positive example in La Mesa Limantitla by being careful to pick up their rubbish rather than burning it, and that they have planted several trees in the community.

Vietnam

Introduction

In 2014 the then United Nations (UN) Special Rapporteur on freedom of religion or belief (FoRB), Professor Heiner Bielefeldt, visited Vietnam from 21 to 31 July, meeting with various government officials as well as representatives of religion or belief communities. However, scheduled visits to An Giang, Gia Lai and Kon Tum provinces were cancelled after the Special Rapporteur received reports that some of the individuals he had planned to meet had been ‘under heavy surveillance, warned, intimidated, harassed or prevented from travelling by the police’.¹¹⁶

On the final day of his visit, Professor Bielefeldt presented a 12-page statement outlining some of his main concerns at a press conference in Hanoi, including the ‘generally dismissive, negative attitude towards the rights of minorities and individuals practising religion outside of the established channels’, and restrictions on the operations of ‘independent religious communities’. The Special Rapporteur’s statement concludes that despite some positive developments at the central level, and an increased space for religious practices in recent years, ‘serious violations of freedom of religion or belief are a reality in Vietnam’.

In the years since his visit, ongoing research by CSW as well as other human rights organisations, activists and diaspora communities, finds that the Special Rapporteur’s conclusions still hold true today. In the interim years, major developments, including the introduction of the country’s first law on religion or belief, have failed to protect the right to FoRB for all people in Vietnam.

There are continued reports of FoRB violations against some communities from every major religion or belief in Vietnam, including Buddhists, Catholics, Cao Daists, Hoa Hao Buddhists and Protestants. Individuals in remote areas who are both ethnic and religious minorities often suffer the most severe abuses. The violations include pressure to recant, forced eviction, denial of access to public services and grants, beatings, torture, arbitrary detention, imprisonment, threats, intimidation, disruption of religious activities, prevention from attending religious activities, confiscation of religious materials, denial of access to education, and damage to properties used for religious activities. In the past decade there have also been cases of sexual violence against and deaths in custody of persons detained in connection with their peaceful religious activities.

Additionally, human rights defenders including lawyers who defend victims of FoRB violations and other human rights abuses often face retaliation from the authorities, in the form of harassment, intimidation and arbitrary detention. This is also true for religious leaders who exercise and defend their right to FoRB. Pastor Nguyen Trung Ton is a Protestant pastor and human rights defender, and in February 2017, Pastor Ton was abducted and beaten by state agents. On 5 April 2018, Pastor Ton was sentenced to 12 years in prison for ‘carrying out activities aimed at overthrowing the government’ under Article 79 of the Vietnamese penal code.¹¹⁷

Legal overview: FoRB and minority rights in Vietnam

Domestic

‘The Socialist Republic of Viet Nam (SRV) is a socialist rule of law State of the people, by the people and for the people... all State powers belong to the people... The State powers are unified and distributed to state bodies, which shall coordinate with and control one another in the exercise of the legislative, executive and judiciary powers.’¹¹⁸

The Vietnamese constitution allows for limitations on human rights and citizens’ rights only when necessary for reasons of national defence, national security, social order and safety, social morality and public health (Constitution, Article 14). However, the broad definition of national security and unity gives the state great latitude in its interpretation and entails restrictions on the International Covenant on Civil and Political Rights (ICCPR) and other international conventions to which Vietnam is a party.

Regulating religious affairs

The amended Vietnamese Constitution, adopted on 28 November 2013, contains a chapter on ‘human rights and citizens’ fundamental rights and duties’ that did not exist in the 1992 Constitution.

Article 24 states that:

1. everyone shall enjoy freedom of belief and of religion, can follow any religion or follow none, and all religions are equal before the law;
2. the State respects and protects freedom of belief and of religion; and

¹¹⁶ United Nations Office of the High Commissioner for Human Rights, ‘Press Statement on the visit to the Socialist Republic of Viet Nam by the Special Rapporteur on freedom of religion or belief’, 31 July 2014 www.ohchr.org/en/statements/2014/07/press-statement-visit-socialist-republic-viet-nam-special-rapporteur-freedom

¹¹⁷ CSW, ‘Vietnam rights defenders have sentences upheld’, 5 June 2018 www.csw.org.uk/2018/06/05/press/4004/article.htm

¹¹⁸ Constitute, ‘The 2013 Constitution of Viet Nam 1992 (rev. 2013)’, Article 2 www.constituteproject.org/constitution/Socialist_Republic_of_Vietnam_2013?lang=en

3. no one has the right to infringe on the freedom of belief and religion or take advantage of belief and religion to violate the law.

However, as the former UN Special Rapporteur on FoRB has pointed out, Article 24 of the 2013 Constitution, notwithstanding its reference to FoRB as cited previously, does not provide for specific protection of the *forum internum* dimension of FoRB.¹¹⁹ The *forum internum* must be respected ‘unconditionally and never be exposed to any restrictions or interferences for whatever reasons, even in situations of a serious crisis or an emergency’.¹²⁰

Furthermore, clauses in the 2013 Constitution give the State extensive scope to regulate, limit, restrict or forbid FoRB. As mentioned above, Article 14, paragraph 2 of the 2013 constitution contains a number of reasons for restricting human rights and citizens’ rights that, presumably, would apply to FoRB. Moreover Article 24, paragraph 3 of the 2013 constitution specifically prohibits anyone ‘to take advantage of belief and religion to violate the law’.

Law on Belief and Religion

On 1 January 2018, Vietnam implemented a new Law on Belief and Religion. The new religious law replaces the Ordinance on Belief and Religion (Ordinance 21), adopted on 18 June 2004. A decree detailing the regulations and enforcement measures of the Ordinance on Belief and Religion, known as Decree 92, was adopted on 8 November 2012.

International experts on FoRB¹²¹ were hopeful about a new comprehensive law offering an opportunity to introduce substantive revisions to Ordinance 21 and Decree 92 and its restrictive language, to bring it into conformity with international human rights law in order to strengthen the protection of the right to FoRB in Vietnam. Unfortunately, the limitations and serious protection gaps, as well as the vague and ambiguous provisions that were present in Ordinance 21 and Decree 92, remain in the Law on Belief and Religion.

Article 3.1 of the law says that ‘the State shall respect and protect the right to freedom of belief and religion of everyone’.¹²² Four years have passed since this law came into effect, yet research by CSW finds that violations against communities from various religions or beliefs in Vietnam continue to be reported. The law has provided

greater clarity and freedom in some areas, such as charity work and social welfare for certain groups already registered with the government. For many other groups, however, the law has not been effective in protecting the right to FoRB or in preventing or reducing FoRB violations. Some even argue that the authorities have been able to use the law ‘to target and silence certain groups or dissidents’.¹²³

The law imposes several restrictive requirements upon religious groups. All religious groups are required to register with the government for recognition as a legal organisation and for authorisation for a range of activities. In practice, this registration process is open to abuse by state officials, with some applications ignored or rejected without explanation, leaving these communities more vulnerable to harassment, arrest, imprisonment, physical violence and other abuses. Serious concerns have been raised over the mandatory nature of this registration process. In its concluding observations on Vietnam’s 2019 third periodic report on the implementation of the ICCPR, the UN Human Rights Committee expressed concern that the Law on Belief and Religion ‘unduly restricts the freedom of religion and belief, [...] through the mandatory registration and recognition process for religious organizations’.¹²⁴

The excessive administrative requirements for registration amount to a high burden for the functioning of religion or belief communities, which are required to apply for specific permits for the construction or renovation of houses of worship; present to the local authorities an annual overview of planned activities; inform the authorities about the ordination of religious clergy and in some cases receive approval from the authorities; and obtain permission from the relevant local authorities to conduct public ceremonies. The government has the legal means to suppress any activities considered to be outside ‘the permitted scope’, whether one is a follower of a state-recognised religion or not.

FoRB and the rights of ethnic groups

The 2013 Constitution stipulates in Articles 5 and 42 that

11. ‘All nationalities are equal, solidary, mutually respect and assist in their developments,’ (Article 5, Clause 2) ‘The State implements a policy of comprehensive development, and provides conditions for the national minorities to promote their internal

119 The unconditional protection of the *forum internum* reflects the principle that forcing human beings to feign a faith that is not authentic or to denounce their deeply held convictions would gravely undermine their self-respect and human rights. See United Nations Human Rights Council, ‘Report of the Special Rapporteur on freedom of religion or belief, Heiner Bielefeldt, Mission to Viet Nam (21 to 31 July 2014)’, 30 January 2015, A/HRC/28/66/Add.2 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/014/16/PDF/G1501416.pdf?OpenElement>

120 See United Nations General Assembly, International Covenant on Civil and Political Rights, Article 18, *ibid.*, para 2

See also United Nations Human Rights Committee, ‘General Comment adopted by the Human Rights Committee under Article 40, paragraph 4, of the International Covenant on Civil and Political Rights’ CCPR/C/21/Rev.1/Add.4, para 3 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G93/186/02/PDF/G9318602.pdf?OpenElement>

121 United Nations Human Rights Council, ‘Report of the Special Rapporteur on freedom of religion or belief, Heiner Bielefeldt, Mission to Viet Nam (21 to 31 July 2014)’, *ibid.*

122 Legal Normative Documents, ‘Law on Belief and Religion’, 18 November 2016 <http://vbpl.vn/TW/Pages/vbpqen-toanvan.aspx?ItemID=11093&Keyword=religion>

123 Unrepresented Nations and Peoples Organization, ‘Denied Recognition: Vietnam’s refusal to recognize the indigenous and religious rights of the Khmer Krom’, September 2021, p.14 <https://unpo.org/downloads/2718.pdf> See below for further discussion of this report.

124 United Nations Human Rights Committee, ‘Concluding observations on the third periodic report of Viet Nam’, 29 August 2019, CCPR/C/VNM/3, para 43 <https://uhri.ohchr.org/Document/File/074779f-d888-4be7-9277-ceb344a24356/8147B2A7-6F78-4EB9-AA75-F2F3203C9AE5>

abilities and to develop together with the nation,' (Article 5, Clause 4) and 'Citizen has the right to determine his or her nationality,' (Article 42) *ensuring that* 'Every nationality has the right to use its own language and system of writing, to preserve its national identity, and to promote its fine customs, habits, traditions and culture.' (Article 5, Clause 3)¹²⁵

Hence, the legal system and institutions guarantee cultural rights for ethnic minorities. Articles stipulating the protection and promotion of rights of people from ethnic minorities are present in 53 legal documents,¹²⁶ including 12 new laws issued since 2012 — such as the Civil Code 2015 (Article 3 and 16), the Criminal Code 2015 and its amendment in 2017 (Article 3), the Criminal Procedure Code 2015 (Article 9), the Civil Procedure Code 2015 (Article 8) and the Law on Administrative Procedures 2015 (Article 17) — and Vietnam is reportedly working towards developing a Law on Ethnicity.

At the same time, for decades international organisations have been highlighting the non-compliance of the Vietnamese government in implementing fully the provisions of international human rights treaties, including Article 5 of the Covenant on the Elimination of All Forms of Racial Discrimination (eg, Article 5(d)(vii)(viii)(ix) vis-à-vis freedom of religion, expression and peaceful assembly), and Articles 18 and 27 of the International Covenant on Civil and Political Rights, on freedom of religion and conscience and minority rights respectively, as outlined above.

In its concluding observations to the Eightieth session held 13 February–9 March 2012, the Committee on the Elimination of Racial Discrimination (CERD) addressed three major concerns to the State of Vietnam related to FoRB and minority rights:¹²⁷

'(a) persistent reports of arrests and arbitrary detention of minority groups for activities that constitute their peaceful practice of religion and freedom of expression, and of their ill-treatment in custody, including cases taken up by several special procedures mandate holders (see, for example, A/HRC/16/52/Add.1, para. 249);

(b) the lack of effective investigation into those allegations;

(c) the lack of effective remedies provided for victims.'

CERD raised these issues before the new constitution and the Law on Belief and Religion came into effect. Yet a decade later, despite a revised constitution and several laws, ordinances and decrees guaranteeing the rights of

ethnic minorities, recent reporting suggests the reality has not changed.

The recommendations made in 2019 by the Human Rights Committee in its concluding observations on the third periodic report of Viet Nam, published on 25 March 2019, raised these points:

*'The State party does not recognize the indigenous peoples in Viet Nam. [...The Committee is] concerned that such communities suffer from discrimination, including with regard to education, employment and other public services. It remains concerned that such communities are not sufficiently consulted in decision-making processes with respect to issues affecting their rights, such as the seizure and allocation of land, including traditional and ancestral lands, for development projects, or offered appropriate remedies. It is also concerned that such development projects have a negative impact on the communities' culture, lifestyle, use of land and resources, and livelihoods, resulting in the exacerbation of socioeconomic inequalities (arts. 2 and 26–27).'*¹²⁸

International

To date, Vietnam has become a party to seven out of nine UN international human rights conventions, including several which have provisions for the protection of FoRB, such as the ICCPR, and on cultural rights, such as the International Covenant on Economic, Social and Cultural Rights (ICESCR).

According to Vietnam's 2016 Law on Treaties, if a domestic legal document (except for the constitution) and an international treaty to which Vietnam is a signatory set different rules for the same issue, the treaty shall prevail.

This is an important legal basis for courts and competent authorities to refer to the Conventions in the settlement of disputes, complaints and denunciations. However, the Supreme People's Procuracy of Vietnam has never received any denunciation, complaint or cases of application of the Conventions before domestic courts, nor have court decisions referred to the Covenant, or any other international conventions, in the application or interpretation of domestic law. Further research is needed to understand the reasons why there has been no case to date.

¹²⁵ 'Nationalities' used here refers to ethnic groups.

¹²⁶ United Nations Office of the High Commissioner for Human Rights, Committee on the Elimination of Racial Discrimination, 'Combined fifteenth to seventeenth reports submitted by Viet Nam under Article 9 of the Convention, due in 2015', para 28 https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/VNM/CERD_C_VNM_15-17_6595_E.docx

¹²⁷ United Nations Office of the High Commissioner for Human Rights, Committee on the Elimination of Racial Discrimination, 'Concluding observations of the Committee on the Elimination of Racial Discrimination: Viet Nam', CERD/C/VNM/CO/10-14, 16 April 2012, para 17 https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fVNM%2fCO%2f10-14&Lang=en

¹²⁸ United Nations Human Rights Committee, 'Concluding observations on the third periodic report of Viet Nam', CCPR/C/VNM/CO/3, 29 August 2019, *ibid.*, comment in para 55 https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fVNM%2fCO%2f3&Lang=en



Boat woman on the Mekong River.
Photo: Unsplash/
Lewis J Goetz

Main findings

Freedom of religion or belief

To the question ‘Are people in your community allowed to choose their own religion or belief?’, the majority answered no. Only four individuals replied yes. Additionally, seven respondents answered no to the question ‘Are people in your community allowed to gather for religious activities, in public and/or in private?’ Finally, to the question ‘Are people in your community allowed to teach about their religion or belief, in public and/or in private?’, all but four respondents answered negatively.

These answers suggest that only three respondents feel that they are able to freely choose their religion, and to gather and teach without restrictions. These three respondents are all of Khmer origin and practise a form of Buddhism. However, their answers to the questions about the issues they encountered because of their religion show that the reality is more complex. While they ‘enjoy’ their constitutional right to freedom of religion, they are also witnessing changes in their communities and the interference of the state through local government authorities.

One individual, for example, shared that Khmer Krom Buddhist religious communities are being politicised by the government, which allows Buddhist monks to become members of the Communist Party of Vietnam. They are

under the supervision of the government during religious ceremonies, ostensibly to prevent them delivering a political message, and all teaching materials are controlled by the authorities. The content of religious books and teaching materials in Khmer language is restricted by the authorities.

Later on in interviews, respondents stated that in the Mekong Delta region Khmer Krom monk leaders now receive salaries from the government, a practice contrary to their traditional practice. Participants shared examples of government intrusion into the way they conduct their religious affairs, including controlling who should be elected as monks and the stamps they have to use in their temples.¹²⁹

When asked why, in their view, such restrictions were in place, two respondents answered that the government is concerned about the content of religious materials and teaching. One of these respondents believes that it is because the government does not want them to know about their history; while the other is convinced that the reason is because the content could be ‘seditious’. ‘That is why it is illegal to use books printed without permission’, and all religious ceremonies need permission before being conducted. Even when the religion is registered, there are limitations on the content that can be taught, according to both Khmer Buddhist and Montagnard Protestant respondents.

¹²⁹ ‘Stamps’ refers to the official stamps that the monastery uses to stamp documents. Since 2019, all the monasteries’ stamps have been replaced with Vietnamese language ones, and cannot use Khmer language.

The government's fear that some ethnic groups are gathering not for religious purposes but to oppose or plot against the State is also confirmed by Montagnard and Hmong Protestant respondents. Thus, the State seems keen to control the content of any materials taught in ethnic languages, and to be present during ceremonies, reinforcing the government's requirement for any religious groups to be registered.

A permit to gather in a large group is also mandatory, to give the authorities advance notice of such events. If an event goes ahead without authorisation, the local authority will come to the event and disrupt it, for example with physical actions or verbal threats, leading to harassment of the followers and the leaders. Followers and leaders are summoned for 'questioning', and face intimidation and harassment, and may even be imprisoned on false charges. In addition, they sometimes face ill-treatment, abuse and beatings while in custody. Respondents who described these threats had experienced them personally or had family members who had experienced these types of violations.

Language

To the question 'Are people in your community allowed to use their own language?', the majority of participants answered 'yes, but in a limited capacity' (eg in a private setting). Two participants replied no, both are forbidden from using their language because their local authorities do not understand it. However, one of these two participants stated that some police officers are learning the language, and the other participant answered yes to the questions 'Are you allowed to use your own language when teaching or practising your religion?' and 'Are you allowed to use religious books in your own language?' These responses demonstrate that the situation is more complex than it may first appear and may also change over time.

Collectively, these answers suggest that many indigenous people can use their own language in private but not in public. According to three participants, they can use their language to conduct services but 'only for registered [religious] groups'. One participant added that this is only the case when using materials that have been approved



Mekong River Delta.
Photo: Unsplash/Anne Lin

by the authorities, otherwise they are confiscated, and the church and pastor banned from preaching.

The responses of several participants suggested that the restrictions on language apply only to unregistered religious communities. Participants shared experiences of non-authorized books in native languages being confiscated, printers harassed, and churches and their followers being monitored, harassed, fined, having their practice restricted or prohibited, and in some cases, followers being arrested.

The participants suggested that the main reason for restrictions on language is the government officials not understanding what is being said or taught during religious services. One of the respondents stated that the government always suspects 'that we use our language to teach other things and that our intention is anti-governmental'. Another respondent stated that police officers are sent to stop them from using their language, for example 'destroying chairs, tables and stage during the Spring festival' when the group attempted to hold a religious meeting in their own language.

One participant shared a more hopeful story relating to language use and restrictions:

In 2012, we had a Christmas celebration with banners in different languages such as Jarai [and] Ede. The authorities did not like it, so they forbade us from using the banners in our languages. [However], thanks to advocacy on freedom of religion or belief, there is some improvement. We can now use our language a bit in some church meetings. For example, some people are allowed to use the Bible in their language including Ede. In some churches, they can use their language. Sometimes they can even use banners in their language. But it is case-by-case, not an overall improvement. It depends on the local government. It is not a consistent policy.

Land rights

Indigenous land rights¹³⁰ are the rights of indigenous peoples to land, as well as to natural resources therein, either individually or collectively. Land- and resource-related rights are of fundamental importance to indigenous peoples for a range of reasons, including the religious significance of the land, self-determination, identity and economic factors. Land is a major economic asset and, in some indigenous communities, forms the basis of the household economy, so the demand for ownership derives in part from the need to ensure their access to vital resources.

In Vietnam the land is, theoretically, collectively owned by the people and 'administered' by the government on their behalf. Therefore, property owners cannot have full and

legal ownership of land because their rights are limited to land use rights permitted within the law.

To the question 'Are people in your community allowed to use your ancestral lands?', three participants answered no, and three participants answered yes. Three individuals replied that one could use ancestral land if they had the title or had registered the title with the authorities. One respondent did not answer this question.

Three participants reported instances of land seizure due to lack of a title. In one example, the local authorities asked a community to plant rubber trees, and years later handed over this land to logging companies to exploit.

In another example, in 2000 farmland in one community was turned into a conservation area. A peaceful protest demanding the return of their farmland led to three protesters being put in jail. More recently, in the same community, the authorities requested land lots around a Buddhist temple in order to build a road. The monastery concerned agreed to this, but the land that was taken was allegedly ten times more than the amount initially agreed on. The monks protested but were unsuccessful because they did not have a deed proving that the land that was taken belonged to the temple.

While conservation, infrastructure or economic purposes could be considered to be legitimate reasons to repurpose land use, the manner in which this has occurred has not protected the rights of the communities affected and has in some cases deprived them of land used for religious purposes or of their farmland and livelihood. Furthermore, one participant stated that his land was taken away in 2016 because of his religious beliefs. The land title of another participant was taken by the bank when her father requested a loan. Even though the loan has been paid in full, the land title was never returned. The family went to the communal office to have a copy issued but the officer refused unless they paid a bribe of USD 200. The participant stated that she now lives in fear that her family's land could be seized at any time.

Across the respondents' testimonies, it was implied that if one cannot prove ownership or right to use the land through an official deed, one has no right to claim the land or compensation for loss of livelihood if land is confiscated. Even with a title, the land can be seized, and inadequate compensation given, because of the communities' lack of knowledge about the law and the lack of possibilities to seek legal redress.

There was some disparity between participants' opinions on the vulnerability of indigenous peoples to land-based exploitation. While one participant believed that lack of education and the language barrier makes indigenous communities more vulnerable to exploitation than the ethnic majority Kinh people, another stated that land confiscation

¹³⁰ The foundational documents for indigenous land rights in international law include the Indigenous and Tribal Peoples Convention, 1989 (ILO 169), the United Nations Declaration on the Rights of Indigenous Peoples, the Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights, the American Convention on Human Rights, and the American Declaration on the Rights of Indigenous Peoples.

is a common phenomenon that happens to all communities and ethnicities in Vietnam, even to Kinh people.¹³¹

The testimony of one participant sheds some lights on the land law in Vietnam and the process for an individual to obtain a permit to use their own ancestral land:

The law applies to everyone, that no one can own the land, only the government, and people have to pay to get a permit to use the land. This policy severely affects the ethnic people because traditionally we farm the lands left to us by our ancestors. But now if the government and some bad businesses want to take our land, they can do so easily. Recently several hundred acres of land were confiscated by the defence department of the government in Kon Tum. The compensation was very very low. So, because the ethnic minorities rely so much on farming, this kind of thing severely affects our survival. We are more vulnerable because of the language barrier and because we don't have enough education to understand the law. We are more vulnerable than the Kinh people, to land confiscation.

Education

To the question 'Are children in your community allowed to go to school?', all participants answered yes. Additionally, six participants answered yes to the question, 'Are children in your community able to go to school without paying fees?' Four participants, all from the Central Highlands region, answered no.

These answers suggest that the majority of respondents feel that children in indigenous communities are able to access education. In Vietnam, Article 59 of the constitution guarantees that 'primary education is compulsory and tuition-free'. However, three participants stated that anyone unable to show a birth certificate or a family registration book is prevented from attending elementary school. Furthermore, even though elementary education is tuition free, additional costs such as textbooks, uniforms and transport fares are barriers for children from families with limited financial means.

Three participants, all Khmer Krom, stated that education is free for them from elementary up to twelfth grade, and recently also university level. The majority of respondents, however, specified economic means as a major barrier to education. Several participants testified that children in their community have not been allowed to receive free education, do not have the means to pay for their uniforms, or cannot afford the fees for secondary level education, forcing them to drop out of school. One participant stated that free education is particularly withheld by the authorities for Protestant Christians. Respondents testified that access to higher education is also limited, with most households unable to afford

university fees. One participant stated that although 'there are scholarships on paper, they don't really exist'.

Another major barrier to accessing education is language. Children from indigenous communities often do not speak Vietnamese fluently, which puts them in a disadvantaged position at school where Vietnamese is the medium for education. While sometimes teachers can speak students' home or first language, and help them understand their lessons, this is not the case everywhere. Requests for bilingual education have not yet been granted. One participant shared that many children leave school at the start of ninth grade (aged 14) because of language difficulties.

One Khmer Krom participant testified that, thanks to advocacy at the UN, the government has built a boarding school so that children living in remote areas can attend school up until university. However, this boarding school has a limited capacity and so cannot welcome all Khmer Krom. Middle schools and high schools are often further away from their homes, without proper transport services. As a result, the percentage of Khmer Krom dropping out of middle and high school is still high.

Even though university education is now free for Khmer Krom, most struggle to find a good job after graduating. This is primarily because they are not well connected within the Communist Party of Vietnam and because they cannot speak English fluently.¹³² Most Khmer Krom graduates end up as manual labourers in factories. As a result, many young people lack motivation to go to university because they do not see how it will improve their futures.

Eight participants reported that those who are able to attend school experience discrimination because of their race, colour or religion. Five participants reported being mocked by other students and teachers because of skin colour and race, and three participants reported discrimination because of language barriers. Some students living in remote areas have an insufficient level of Vietnamese to understand courses and books or to speak the language fluently. One participant stated that classmates mock and imitate these students and teachers openly humiliate them in the classroom.

Respondents also stated that stereotypes about indigenous peoples are spread by teachers, who think indigenous students are 'dirty', 'stupid' and anti-government. Teachers call the indigenous children *moi*, a pejorative Vietnamese term meaning 'savage', or, in the case of Christians, 'French and American followers', or terms relating to political or guerrilla groups seeking ethnic autonomy. Two participants consider this mockery to be religious discrimination. According to one of them, ethnicity is not an issue, but religion is. She believes that because they follow their religion, in this case Christianity,

¹³¹ 'This happens not only to my community but to all indigenous peoples and even Vietnamese people.'

¹³² For example, those with limited household income may not be able to pay for additional private English classes which other students' families pay for to improve their language ability.

they are hated by the community. She recalled that in 2013, some students dropped out of her school because they were harassed by the locals. Teachers and the local authorities persuaded them to come back, telling them that their religion was going to be recognised, but once they had returned to school the teacher said that their religion was wrong and that no one should follow it. Another participant shared that a Protestant from another village has been told he cannot attend school until he abandons his religion.

State benefits

To the question ‘Does the government provide any financial support or benefits to people in your community?’, the majority of participants answered yes. Only three individuals said no. However, two of the participants who answered yes indicated that only civil servants in their communities are entitled to receive such benefits, and another specified that such support is only given to impoverished families who supported the Communists during the war. These answers suggest that, although state benefits are largely available in participants’ communities, access to such benefits is not fair and equal.

The key types of support reported by respondents were housing support, monetary support, food support, free medical insurance or service, child allowance and scholarships. One participant stated that the most impoverished individuals in his community can receive financial support to rebuild their homes or road access to their homes, but, if they follow a religion, to receive such benefits the head of the household must sign a certificate renouncing their religion. Two other respondents confirmed this practice. Two participants shared that, in addition to the requirement to recant one’s faith, it is common for officials to demand bribes in exchange for receiving or being considered for such benefits.

Additionally, the local authorities do not always communicate information about social entitlements to indigenous communities. One individual, for example, stated that because of their ethnicity the local authority will not communicate with his family about state benefits, nor will they issue them ID cards, the lack of which could restrict access to education and employment. Another individual said that he has never seen ‘any Christians get this support and recognition from the government.’

Forced into exile: human rights violations against those who have since left the country

Several of the respondents had personally experienced severe human rights violations in connection with their religion or belief, or their advocacy for the rights of their indigenous group, which led them to leave the country. Respondents who had left the country were asked to explain when and why they left the country, the reasons why they thought they were targeted, and whether the harassment they experienced, from local or state actors, was a result of their work and/or activism.

Four respondents who left due to human rights violations by the state were Christians from the Central Highlands. Although they were involved in different kinds of activities, all four were closely connected with Christian indigenous peoples’ communities, either as church leaders or in supporting or gathering information about impoverished Christian families. All four experienced repeated harassment from the authorities, as did their families: in one case this went as far as extra-judicial killing carried out by the police.

One respondent from the Hmong ethnic group in the mountainous region in the northern part of the country fled the country after being detained, tortured and deprived of food and water while in detention. He believes he was targeted because he belongs to a new community not recognised by the government as a religion. Other Hmong respondents had experienced or knew others who had experienced similar violations. These testimonies suggest some common and codified practices by local-level state actors. Members of the community are invited, repeatedly, to the local police office for questioning where they are threatened, most often verbally, and forced or coerced to confess their ‘crime’ and to sign a pledge to renounce their religion. If they refuse to comply with the authorities’ demands, they may be released but then face discrimination, including the refusal of the local administration to issue ID cards or birth certificates, which makes it impossible for them to access state benefits.

Adherents of non-registered religious groups in particular are stigmatised as ‘bad people’, leading to social isolation. According to one activist’s testimony, any persons showing them sympathy are considered to be accomplices. Therefore, neighbours and family members avoid contact with them, fearing retaliation, while some believe they can receive favour from the government if they actively participate in the state propaganda against members of a religious group.

Other respondents also reported similar violations they or members of their family or community had experienced, including:

- Arbitrary detention extending from several days to one year without conviction or trial.
- Beatings, physical and psychological torture, including electrocution, and deprivation of food and water in detention.
- Solitary confinement in jail.
- Extra-judicial killing by police.
- Confiscation of personal property by police.
- Police harassment and interrogation.
- House arrest and enforced social isolation.
- Interrogation by police.
- Travel bans (banned from travelling outside of Vietnam).
- Defamation of the respondent and their religion on social media and by word of mouth, by authorities or unknown internet users.

- Complete ban on religious activities including all communal gatherings.
- Discrimination.
- Forced relocation in order to break up the community.
- Being forced to pay a ‘fee’ in order to receive identity documents or state support.
- Intrusive monitoring of religious activities by state actors.
- Intrusion by the state into the appointment of religious leaders.
- Restrictions on religious teaching materials including and especially in ethnic language.
- Confiscation or repurposing of land used for religious purposes.

Conclusion

FoRB continues to be restricted by the government of Vietnam. While state restrictions apply to all religion or belief communities in the country, CSW’s research into the intersecting rights of indigenous people groups and the right to FoRB suggests that indigenous peoples and ethnic minorities in Vietnam are particularly vulnerable to specific forms of FoRB violations, and indeed experience some of the most severe violations of their rights and freedoms as compared to those in the dominant ethnic group.

One of the possible reasons for this is that the state is distrustful of large gatherings of non-registered religious communities of indigenous people, because it believes that these communities are actually meeting for non-religious purposes while plotting to overthrow the government. Although the reasons behind this suspicion are outside the scope of the interview questions, previous research suggests that this stems in part from the authorities’ supposition that indigenous people groups are seeking to build their own independent state, as well as the suspicion that religious believers, particularly Christians, have connections to foreign countries.

In part as a result of the government’s fear and mistrust, there are widespread restrictions on these groups’ religious activities. All religious content, books, lectures and speeches have to be pre-approved by the authorities and the censorship committee. Unregistered religious communities are constantly monitored and harassed, and their study materials deemed illegal. Even for registered religious communities, the intrusion of the Party into their religious affairs disturbs their services and ceremonies, which sometimes follow centuries of traditional practice.

Land is a complex and serious issue for most Vietnamese citizens, regardless of their ethnicity or religion. Yet this research shows that indigenous people groups are often particularly at risk of land confiscation, including land used

for religious activities. Furthermore, economic limitations, language barriers and discrimination, by students and teachers alike, stand in the way of Montagnard and Hmong Christians and other indigenous people completing their education. Even for the Khmer Krom, who have seen some improvement in access to education, discrimination and other barriers remain.

Similarly, while the government provides social benefits for the poorest citizens, respondents in this research revealed that often, in order to receive support, families need to either work for the government, have shown sympathy to the Communist Party during the war, or have strong ties with the local authorities. Other communities may not be aware of the existence of such benefits or would not be likely to receive them because of their religion. In order to be considered, they have to recant their faith.

The key findings of this report echo information collected and published by other organisations including those focusing on the rights of indigenous people. A 2021 report by the Unrepresented Nations and Peoples Organization describes several violations against Khmer Krom Buddhists, including threats and intimidation against Khmer Krom Buddhist monks who refuse to be members of the Viet Nam Buddhist Sangha (VBS) association established by the government.¹³³ The 2021 Report on International Religious Freedom from the US State Department’s Office of International Religious Freedom also found that, ‘Unrecognized religious denominations operating in the Central and Northwest Highlands and in certain parts of the Mekong Delta – especially those that had a predominantly ethnic minority following – were more likely to report harassment from government officials.’¹³⁴

Furthermore, CSW’s research reveals the state’s continued harassment and detention of leaders of independent religious groups. The legal framework continues to allow security officials to detain individuals for an indefinite period of time without trial, and keep them under house arrest for years on grounds of ‘national security’. Peaceful political dissidents, human rights defenders or members of unregistered religious groups continue to be handed long prison sentences simply for exercising their fundamental human rights.

As discussed in the legal analysis above, Vietnam’s Law on Religion and Belief has failed to protect the right to FoRB and has even perpetuated and reinforced restrictions and controls with regard to religious freedom. In this respect, Vietnam does not meet the requirements of Article 18 of the ICCPR, nor Article 27 on the right of ethnic minorities to practise their religion.

¹³³ Unrepresented Nations and Peoples Organization, *ibid.*

¹³⁴ United States Department of State, ‘2021 Report on International Religious Freedom: Vietnam’, 2 June 2022 www.state.gov/reports/2021-report-on-international-religious-freedom/vietnam/



Mekong River Delta.
Photo: Unsplash/Tomas Malik

Special note on environmental activism

In their 2019 annual report, Minority Rights Group International (MRG) acknowledged that while ‘the climate crisis leaves no country or community unaffected, its social impacts deepen the inequalities of the world’s most marginalised. Minorities and indigenous peoples are already acutely feeling its consequences before many other communities’.¹³⁵ Socio-economic inequalities mean that indigenous people groups are not only more likely to be affected by the climate crisis and environmental disasters, they are also less likely to be involved in negotiations and planning around climate issues. In Vietnam, indigenous people groups and ethnic minorities face significant barriers to their participation in decision-making and access to justice, some of which are outlined above.

At the same time, UN bodies and other institutions have emphasised the crucial role of human rights defenders working on environmental protection. Michelle Bachelet, former UN High Commissioner for Human Rights, has called on states to ‘respect, protect and fulfil the rights of environmental human rights defenders and the communities they represent’.¹³⁶

In recent years, the Vietnamese authorities have targeted human rights defenders, including environmental activists, with harassment, arrest and imprisonment. As previously documented by CSW, Catholic leaders and activists have been beaten, denounced by officials and imprisoned for organising peaceful protests following the Formosa company steel plant disaster in April 2016, which left many families with no means of livelihood.¹³⁷

More recently, in January 2022, authorities sentenced Dang Dinh Bach, director of the non-profit organisation Law and Policy of Sustainable Development (LPSD), to five years in prison for alleged ‘tax evasion’. According to The Vietnamese, Bach’s conviction is ‘widely seen as Hanoi’s effort to prevent the establishment of a network of NGOs to monitor the implementation of the European Union–Vietnam Free Trade Agreement (EVFTA). These NGOs could play an essential role in advocating for workers’ rights, land rights, and the environment in Vietnam’.¹³⁸ In February 2022 state media confirmed the detention of Nguy Thi Khanh, founder of the Green Innovation and Development Centre, who had campaigned for Vietnam to adopt greener energy strategies.¹³⁹ These actions suggest that the Vietnamese government sees environmental activists and non-profit organisations not as allies in

¹³⁵ Minority Rights Group International, ‘Climate change further reinforces inequalities and disproportionately affects minorities and indigenous peoples, according to MRG’s annual trends report’, 27 June 2019 <https://minorityrights.org/2019/06/27/climate-change-further-reinforces-inequalities-and-disproportionately-affects-minorities-and-indigenous-peoples-according-to-mrgs-annual-trends-report/>

¹³⁶ Office of the High Commissioner for Human Rights, ‘Environmental human rights defenders must be heard and protected’, 9 March 2022 www.ohchr.org/en/stories/2022/03/environmental-human-rights-defenders-must-be-heard-and-protected

¹³⁷ CSW, ‘Submission to the 47th session of the UN Human Rights Council’, 16 June 2021 www.csw.org.uk/2021/06/16/report/5298/article.htm

¹³⁸ The Vietnamese, ‘Dang Dinh Bach: Director Of A Nonprofit Environmental Organization Receives 5 Years In Jail’, 25 January 2022 www.thevietnamese.org/2022/01/dang-dinh-bach-director-of-a-nonprofit-environmental-organization-receives-5-years-in-jail/

¹³⁹ The Guardian, ‘Award-winning Vietnamese environmentalist arrested as rights groups fear ‘clamp down’’, 9 February 2022 www.theguardian.com/global-development/2022/feb/09/award-winning-vietnamese-environmentalist-arrested-as-rights-groups-fear-clamp-down

the struggle against the climate crisis, but as potential threats to their authority. If Vietnam is to effectively address environmental challenges the government must protect the rights of all human rights defenders, including environmental activists, and in particular those from indigenous people groups, who play a crucial role in monitoring and reporting on harmful practices, and the changes affecting indigenous communities' way of life.

Case study

The Duong Van Minh (DVM) group is a religious community which the Vietnamese government has been actively suppressing since 1989. The community is named after its founder, an ethnic Hmong who promoted simplifying and modernising traditional Hmong funeral and other practices. There are several thousand DVM members across four provinces in the northern part of the country. The government considers the group to be an illegal organisation that 'opposes the party and the state'. State actors have destroyed sheds for storing funeral items belonging to the community, and arrested and tortured key members.

On 12 December 2022 police in Tuyen Quang province arrested dozens of people as they attempted to attend the funeral of Duong Van Minh.¹⁴⁰ Hundreds of people in hazmat suits and plainclothes, and police, some armed with shields and batons, disrupted the funeral, claiming they were there to force people to take COVID-19 tests. At least 36 people were beaten and arrested, while seven more were arrested on 13 December when they went to protest the police action. On 15 December police announced over loudspeaker that five more people had to turn themselves in; these people were subsequently arrested and accused of assaulting officials. In total at least 48 people were arrested.

In May 2022, Vietnamese authorities sentenced 15 of those arrested to prison sentences of up to four years.¹⁴¹ They were convicted on charges of 'resisting officers on duty' under Article 330 of the Penal Code and 'violating regulations on safety in crowded areas' under Article 295. According to Voice of America, relatives said that the authorities refused access to lawyers engaged by the victims' families.¹⁴² Many relatives were reportedly not informed of the trial date and were only allowed to listen to proceedings through loudspeakers outside the courtroom.

Hmong people, Vietnam. Photo: Unsplash/Jan Nguyen



The Duong Van Minh (DVM) group is a religious community which the Vietnamese government has been actively suppressing since 1989.

On 15 July 2022, Radio Free Asia reported on an article in the Ministry of Public Security newspaper Cong an Nhan dan which described the mission of 'Project 78'.¹⁴³ According to this article, the goal of Project 78 is to 'fight, prevent, and proceed to eliminate the illegal Duong Van Minh organization', in Bac Kan Province. RFA also reported that Cao Bang Province has included the goal of 'preventing and eliminating' the group in its resolution on socioeconomic development for 2020-2025.

In a tweet published shortly afterwards, on 19 July, Commissioner Fred Davie of the US Commission on International Religious Freedom (USCIRF), said 'It is deeply concerning that Vietnamese authorities continue to persecute ethnic #Hmong practitioners of the Duong Van Minh religion, violating #Vietnam's own law & failing to uphold its international obligations.'¹⁴⁴

The US Department of State has also reported on violations against the DVM community. For example, in its 2021 annual report, the State Department's Office of International Religious Freedom stated that local authorities required DVM followers to sign a commitment to stop following Duong Van Minh, if they wanted to receive assistance the authorities provided to ethnic minority households to construct housing.¹⁴⁵ This is consistent with research by CSW into discrimination against other religious followers from indigenous people groups, as described in this report.

¹⁴⁰ CSW, 'Communities harassed, activists and journalists tried in December crackdown', 6 January 2022 www.csw.org.uk/2022/01/06/press/5528/article.htm

¹⁴¹ CSW, '15 Hmong religious believers sentenced to total 38 years in prison after police raid on funeral', 7 June 2022 www.csw.org.uk/2022/06/07/press/5722/article.htm

¹⁴² VOA Tieng Giet, '15 H'mong followers of the Duong Van Minh religion were sentenced to more than 38 years in prison', 27 May 2022 www.voatiengviet.com/a/muoi-nam-tin-do-hmong-theo-dao-duong-van-minh-bi-phat-hon-38-nam-tu/6592069.html

¹⁴³ Radio Free Asia, 'Vietnamese police try to stamp out religious sect', 15 July 2022

www.rfa.org/english/news/vietnam/vietnamese-police-try-to-stamp-out-religious-sect-07152022012327.html

¹⁴⁴ Twitter, USCIRF @USCIRF, 18 July 2022 <https://twitter.com/USCIRF/status/1549134519961370630>

¹⁴⁵ United States Department of State, '2021 Report on International Religious Freedom: Vietnam', 2 June 2022 www.state.gov/reports/2021-report-on-international-religious-freedom/vietnam/

Conclusion

When it comes to indigenous peoples around the world, there is a growing, predominantly accepted view that collective cultural rights are incompatible with freedom of religion or belief (FoRB), and an either-or approach to the issue, with collective cultural rights taking precedence over the individual's right to FoRB. This has been reflected within indigenous communities where the authorities, non-state actors and many traditional leaders view FoRB as a threat rather than as a fundamental right that can be a positive force within their communities. Many consider FoRB to be a direct danger to their culture and traditions, especially in terms of religious beliefs and practice, and they are closed to the idea of any form of religious pluralism in their communities.

Despite differences from country to country in terms of who primarily commits the FoRB violations experienced by indigenous people, CSW's research shows a common thread, namely: a failure or refusal to recognise that individual indigenous people hold the same universally-protected fundamental rights that belong to every human being; and a policy, stated or implied, of placing them in a separate category where some fundamental rights do not extend to them. This puts indigenous people in a second class of citizen within their countries, where, because of their indigenous identity, the violation of some of their basic rights is permissible.

CSW's research in all the countries also reveals a common and profound desire among those interviewed, across cultures and geographic location, to be recognised as indigenous, as a member of their particular indigenous group, regardless of their personal decision to follow or practise a particular religion or belief or none. As a marginalised population within an already marginalised population they are at increased risk of discrimination, poverty, and forced displacement. Whether or not they are officially recognised as indigenous by their communities or by the authorities, they will likely continue to be treated as such by non-indigenous people.

Although the rights of indigenous peoples have received considerable attention in both human rights treaties and monitoring bodies, and in the work of United Nations (UN) institutions, there has been very little attention given to the right of indigenous peoples to freedom of religion or belief. The intersection between the right to FoRB and the unique vulnerabilities facing indigenous peoples as rights holders is largely unacknowledged. This has led to ambiguity especially regarding the intersection of the collective right to protect and maintain indigenous cultures with the fundamental rights of the individuals within those cultures.

The intersection of indigenous rights and FoRB must be recognised and systematically and urgently addressed at the international, regional, national and local levels to ensure that the individual rights of all indigenous people receive the same protections afforded to non-indigenous peoples. This must be done in a way that also considers the way in which indigenous peoples have historically experienced attacks on their culture and identity with, in many cases, devastating consequences. These efforts must also be led by indigenous people themselves, with voices from both majority and minority communities within those populations.

Appendix 1

Methods of research

Colombia

For this report, researchers who are themselves indigenous people belonging to the Nasa and Wiwa people groups, interviewed 16 religious minority individuals from 16 different ethnic groups. They also interviewed traditional leaders from the Kogui, Arhuaco and Wiwa indigenous groups as well as a representative from the Association of Indigenous Cabildos from the North of Cauca (ACIN).

Some interviewees live on the indigenous lands belonging to their group but were interviewed outside the territory. Others no longer live within the government-recognised confines of their ethnic group's land, and so are not under the control of traditional leaders, but still live on the larger ancestral territory. One no longer lives within their ethnic group's official reserve or on ancestral territory. Most of the interviewees who no longer live on their ethnic groups' reserves have moved or been displaced because of their experiences of religious discrimination and persecution.

It is worth noting that some members of religious minorities declined to be interviewed. Some Wiwa said they would not participate because they believe that such research and documentation has not yet helped to protect the right of Protestant Christians to profess their faith in their territories and thus far, no one has been able to help with concrete proposals for a solution.

The different ethnic groups and locations represented by the interviewees, religious leaders and ACIN are:

1. **Achagua:** Puerto López, Meta Department
2. **Emberá-Wounaan:** Chocó Department
3. **Chimila:** Santa Marta, Magdalena Department
4. **Kogui:** Sierra Nevada de Santa Marta, Magdalena Department
5. **U'wa:** Santander Department
6. **Yukpa:** Serranía Perijá, Cesar Department.
7. **Arhuaco:** Sierra Nevada de Santa Marta, Magdalena and Cesar Departments
8. **Wiwa:** Sierra Nevada de Santa Marta, Cesar and Cundinamarca Departments
9. **Guahibo:** Llanos orientales, Vichada, Meta and Guaviare Departments
10. **Emberá Dobidá:** Baudo, Chocó Department
11. **Misak:** Silvia, Cauca Department
12. **Nasa:** Cauca Department
13. **Tukano:** Vaupes Department
14. **Wayúu:** Guajira Department
15. **Puinave:** Rio Inhírida, Guainía Department

India

CSW's research partners from the states of Jharkhand, Bihar, Odisha, Gujarat, Maharashtra, Andhra Pradesh, Karnataka, Tamil Nadu, Kerala and the Union territory of Lakshadweep Islands, interviewed Adivasis and personnel working among the Adivasis in these states. CSW's partners conducted both interviews based on a questionnaire and unstructured interviews, and stories of the Adivasis were recorded. In addition, follow up interviews were conducted by telephone to obtain further information and clarifications. CSW's partners also carried out research on demographic and legal aspects through literary searches and participation in topical national seminars.

Mexico

For the purpose of this report, the researcher, a non-indigenous Mexican woman, used information obtained in 2021, in which she interviewed 25 indigenous religious minority individuals from five different states, Chiapas, Oaxaca, Guerrero, Hidalgo and Jalisco, and representing eight different ethno-linguistic groups using a questionnaire. The findings are all based on first-hand testimonies. She also interviewed three religious minority individuals from Jalisco, one from Hidalgo and one from Chiapas on the specific issue of the climate crisis in their communities.

Two emblematic cases representing three different states and ethno-linguistic groups were chosen to focus on. These were:

El Encanto, Las Margaritas Municipality, Chiapas State

Ethno-linguistic group: Tojolab'al

Majority religion: Roman Catholicism

La Mesa de Limantitla, Huejutla de Reyes Municipality, Hidalgo State

Ethno-linguistic group: Náhuatl

Majority religion: Roman Catholicism



Interviewing indigenous Mexican women who have experienced violations of their freedom of religion or belief

Vietnam

In 2021-2022 CSW worked with an independent researcher to conduct a study examining to what degree the right to FoRB of indigenous peoples in Vietnam is protected. The study also looked at whether their fundamental rights such as language rights, the right to education, land rights and access to state benefits are guaranteed.

The purpose of the study was to: i) Describe government practices, including conditions leading up to exile; and ii) Describe challenges and consequences for those who are subject to discrimination and other violations. The aim of the analysis was to develop a comprehensive understanding of the challenges posed by current government practices, with the overall goal of developing recommendations to address or mitigate these challenges.

The findings discussed above are based on the results of a questionnaire distributed to members of religion or belief communities in indigenous people groups. Thus, the study is based on first-hand testimonies, with supplementary information from second-hand sources, including reports by non-governmental organisations (NGOs) and other research.

Unfortunately, due to the nature of the study and our responsibility to protect the interviewees and their families from possible repercussions including ill-treatment and other serious human right violations, the sample size was small, with ten participants. Nonetheless, the questionnaires covered a range of rights issues and gathered personal information and perspectives.

The interviewees came from indigenous people groups based in different parts of the country, including the North Mountainous Region, the Central Highlands and the Mekong Delta. Interviewees were drawn from four different religion or belief communities, including Khmer Krom Buddhists, Montagnard Protestants, Hmong Protestants and one Hmong religious community or 'new religious movement'.



Gond tribe

Appendix 2

Institutional structures related to the Adivasis

The statutory body responsible for the Adivasis (Scheduled Tribes) is the National Commission for Scheduled Tribes. This commission was set up in 2004, by bifurcating the National Commission for Scheduled Castes and Scheduled Tribes which was created in 1978. Article 338 (a) outlines the responsibility of the commission for ‘monitoring measures for ST welfare, investigating atrocities and violations of rights against STs and suggesting measures to safeguard ST resource rights [and] livelihoods.’¹⁴⁶

The National Commission for Scheduled Tribes has generally been judged almost completely ineffective. For example, the Standing Committee on Social Justice and Empowerment reported on 18 March 2022 that ‘The National Commission for Scheduled Tribes has been dysfunctional for the last four years and has not delivered a single report to Parliament.’¹⁴⁷

The Ministry of Tribal Affairs of the Government of India was established in 1999. This ministry is responsible for ‘providing more focused attention on the integrated socio-economic development of the most under-privileged sections of the Indian society namely, the STs, in a coordinated and planned manner’.¹⁴⁸ It is also responsible for the implementation of the Forest Rights Act, which gives land rights to the Adivasis.

Many state governments also have similar ministries (government departments), generally known as the Ministry of Tribal Welfare. The work of these ministries is similar to that of the central government’s ministry of tribal welfare.

Central and state governments have set up several commissions to study and make recommendations for the welfare of the Adivasis. In the state of Kerala, the Ministry of Tribal Affairs and various programmes for the welfare of the Adivasis have significantly improved their quality of life. In most other states, however, these commissions have not made any significant improvements to livelihood and freedoms.

¹⁴⁶ *ibid.*, p.36

¹⁴⁷ The Hindu, ‘National Commission for Scheduled Tribes is dysfunctional: House panel’, 18 March 2022 www.thehindu.com/news/national/national-commission-for-scheduled-tribes-is-dysfunctional-house-panel/article65238335.ece

¹⁴⁸ Bijoy, C.R, Shankar Gopalakrishnan and Shomona Khanna, ‘India and the Rights of Indigenous People’, Asia Indigenous People Pact, 2010, p.36

Appendix 3

Population of Scheduled Tribes in India¹⁴⁹

Population and percentage of Scheduled Tribes covered in this study by state

Source: Census of India, 2011

| S. No | India / State | Total population in millions | ST population in millions | % STs in India / State to total population of India / State | % STs in the State to total ST population in India |
|-------|----------------------------|------------------------------|---------------------------|---|--|
| | India | 1210.85 | 104.54 | 8.6 | - |
| 1 | Andhra Pradesh | 49.38 | 2.63 | 5.3 | 2.5 |
| 2 | Bihar | 104.09 | 1.33 | 1.3 | 1.3 |
| 3 | Chhattisgarh | 25.54 | 7.82 | 30.6 | 7.5 |
| 4 | Gujarat | 60.44 | 8.91 | 14.8 | 8.5 |
| 5 | Jharkhand | 32.98 | 8.64 | 26.2 | 8.3 |
| 6 | Karnataka | 61.09 | 4.24 | 7.0 | 4.1 |
| 7 | Kerala | 33.4 | .48 | 1.5 | 0.5 |
| 8 | Madhya Pradesh | 72.62 | 15.31 | 21.1 | 14.7 |
| 9 | Maharashtra | 112.37 | 10.51 | 9.4 | 10.1 |
| 10 | Orissa (now called Odisha) | 41.97 | 9.59 | 22.8 | 9.2 |
| 11 | Rajasthan | 68.54 | 9.23 | 13.5 | 8.8 |
| 12 | Tamil Nadu | 72.14 | .79 | 1.1 | 0.8 |
| 13 | Telangana | 35.19 | 3.28 | 9.3 | 3.1 |
| 14 | Uttarakhand | 10.08 | .29 | 2.9 | 0.3 |
| 15 | Uttar Pradesh | 199.81 | 1.13 | 0.6 | 1.1 |
| 16 | West Bengal | 91.27 | 5.29 | 5.8 | 5.1 |
| 17 | Lakshadweep | .064 | .061 | 94.8 | 0.1 |

¹⁴⁹ Source: Government of India Ministry of Tribal Affairs <https://tribal.nic.in/ST/Statistics8518.pdf>

The information given here is sourced from the census statistics of India, but has been adapted by the author and the calculations have been changed from 'lakhs' to 'millions'. Only the states coming under the consideration of this study are listed.

CSW everyone
free to believe

CSW is a human rights organisation advocating for freedom of religion or belief, and as Christians we stand with everyone facing injustice because of their religion or belief.

T +44 (0)20 8329 0010
@CSWadvocacy
/CSWUK
csw.org.uk

PO Box 99
New Malden
Surrey, KT3 3YF
United Kingdom

© Copyright CSW 2022. All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, transmitted, in any form or by any means, electronic, photocopying, mechanical, recording and/or otherwise without the prior written permission of CSW.



T +47 23 40 88 00
@trosfrihet
/stefanusalliansen
stefanus.no/english

Pb 6603 Rodeløkka
0502 Oslo
Norway