

Challenges to individual religious freedom in the Indigenous communities of Latin America

The case of the Nasa (Colombia)

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Abstract

Whilst Indigenous autonomy is generally regarded as something positive, the existence of human rights abuses inside Indigenous communities has received relatively little attention in legal scholarship. Human rights abuses include severe violations of religious freedom, particularly of converts away from the traditional religion. Based on original empirical field research conducted in the Nasa Indigenous territories in the southwestern highlands of Colombia (2010-2017), I discuss the challenge of balancing the right to self-determination of Indigenous Peoples and the individual human rights of people living in Indigenous territories, particularly religious minorities. I show this has implications for the analysis of “minority in the minority” situations beyond the context of Latin America.

Keywords

Cultural rights, Indigenous communities, individual religious freedom, Colombia, Latin America, Nasa.

1. Introduction

During the last decades of the twentieth century, Indigenous movements emerged throughout Latin America. The demands of these movements went beyond the social inclusion of Indigenous communities in the economic system. They demanded the recognition of group rights and ethnic determination. This unprecedented mobilization of Indigenous groups, often referred to as *indigenismo*, had major political consequences. An important step for the Indigenous movement

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was the adoption in 1989 of the International Labor Organization's (ILO) "Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries," which formally recognized the right to self-determination of Indigenous Peoples, among other things. As a result, countries such as Colombia and Mexico granted Indigenous communities far-reaching self-determination rights. In 2016, the Organization of American States adopted the American Declaration on the Rights of Indigenous Peoples.

Whilst Indigenous autonomy is generally regarded as something positive, the existence of human rights abuses inside Indigenous communities has received relatively little attention in legal scholarship. (Alves 2020a; Alves 2020b; Petri et al. 2023) Human rights abuses include severe violations of religious freedom, particularly of converts away from the traditional religion. Indeed, when Indigenous Christians refuse to obey the orders of the Indigenous leaders, they suffer human security threats including imprisonment, forced displacement, denial of access to water, healthcare and education, confiscation of homes and farmland, torture, and even death. Whilst Christians in these communities claim they have a right to religious freedom, Christianity is considered by community leaders as a threat to the preservation of the Indigenous culture and of social cohesion.

This paper is based on a case study of an intra-ethnic (minority-within-the-minority) conflict. Specifically, this case study is about the vulnerability of converts from the majority religion in an Indigenous context, which I refer to as 'cultural dissidents' among the Nasa ethnic group living in the *resguardos indígenas* [Indigenous reserves] of the southwestern highlands of Colombia (Cauca and neighboring departments).

To provide some context to my case study, I first introduce the cultural dissidents with the Nasa ethnic group, followed by a description of the legal insecurity and religious tensions in the Nasa *resguardos*. I then present the data collection methods I followed, before presenting the empirical evidence of the human security threats committed against cultural dissidents among the Nasa. I end with some concluding remarks and policy recommendations to address minority-within-the-minority conflicts.

2. The religious agenda of cultural dissidents within the Nasa ethnic group

With around 138,501 members (as of 2007, Departamento Nacional de Planeación de Colombia, DNP [National Planning Department of Colombia]), the Nasa ethnic group, also known as Páez, is the second largest Indigenous group in terms of size of Colombia. The Nasa live in 72 *resguardos* and 34 other types of Indigenous communities, located in the southwestern highlands of Colombia in an area known as Tierradentro.

The belief system of the Nasa is built around a syncretic mix of Catholic and Indigenous traditions and symbols, such as K'apish – thunder (Rappaport 2004; DNP 2007). Although the mainstream religious beliefs of the Nasa include elements of Catholicism, the religion of the Nasa can more accurately be described as “a form of pre-Columbian religiosity with Catholic influences.” When a member of the Nasa converts to Evangelical Christianity, this thus constitutes a very radical change.

Although the presence of Christianity in the Nasa territories has increased over time, it never reached the same proportions as at the national level of Colombia. The Joshua Project, a Christian organization that compiles religious data from various sources, estimates the total Christian population within the Nasa at 65 percent, with the remaining 35 percent adhering to “ethnic religions.” (2016) According to the same source, the Christian population among the Nasa includes an Evangelical segment of 38 percent. It is likely that the majority of this group belongs to the Iglesia Cristiana Evangélica Nasa, ICEN [Christian Evangelical Nasa Church], which is the largest non-Catholic Christian organization in the Nasa territories. Other non-Catholic groups that have a presence in the Nasa territory are Asociación Alianza Cristiana Indígena Páez Colombiana [Christian Indigenous Colombian Páez Alliance], Iglesia Pentecostal Unida de Colombia [United Pentecostal Church of Colombia] and Movimiento Misionero Mundial en Colombia [Worldwide Missionary Movement in Colombia]. Some of these groups eventually merged into ICEN.

Regardless of the exact percentage of Christians among the Nasa, which is objectively difficult to determine, there is an important distinction to be made between the Nasa that take part in the cultural and religious traditions of the community and those who do not. The former may or may not self-identify as Christians but have in common that they follow Indigenous religious traditions, generally mixed with Catholic syncretism. The latter expressly reject these traditions, often after they convert to some branch of Evangelical Christianity. This minority group, which I identify in this article as cultural dissidents, is the focus of this case study. I argue that this group possesses a specific vulnerability to suffer human rights abuses.

I chose to identify this minority as cultural dissidents, because they involve Christians who, often after a conversion experience, decide to reject some tenets of the cultural and religious traditions of their community, but expressly declare they continue to identify as Nasa and as Indigenous. Their dissent focuses almost exclusively on aspects of Nasa culture that they disagree with, but they effectively continue to share the same holistic worldview that characterizes their community and do not reject other elements of their Indigenous heritage.

For most cultural dissidents, the behavioral response ‘exit’ is not an option, as is often the case in tribal contexts as Albert Hirschman explains:

exit is ordinarily unthinkable, though not always wholly impossible, from such primordial human groupings as family, tribe, church, and state. The principal way for the individual member to register his dissatisfaction with the way things are going in these organizations is normally to make his voice heard in some fashion. (1970:76).

In other words, because of their feeling of loyalty to their ethnic group, the only recourse for these cultural dissidents is ‘voice.’

The majority of cultural dissidents join ICEN, a movement that follows the basic tenets of Evangelical Christianity. Its teachings include an explicit rejection of what is referred to as ‘pagan’ religious practices.² The ICEN is a recognized religious association, as records of the Colombian Ministry of the Interior confirm, but these records do not contain statistics of its membership.

Although a large part of the beliefs of ICEN agree with Western expressions of Evangelical Christianity, ICEN members continue to be greatly influenced by the Nasa culture and worldview, in the sense that they do not segregate between the private and the collective, nor between the political and the religious, as is characteristic in Indigenous culture (Pancho 2007). In fact, ICEN members are proud of their Nasa identity and continue to consider themselves as members of the Nasa ethnic group. What they complain about is that the majority of the Nasa infer that their conversion to Evangelical Christianity implies a departure from their Indigenous identity. “We don’t understand why we can’t be Indigenous and Christians at the same time,” said one of their leaders.³

The view that all members of the Indigenous community need to adhere to its worldview and follow its traditions can be qualified, to use Govert Buijs’s categorization, as an expression of a “unitarian” political conception (2013). “The danger of unity” in this case is evident through the violent repression of religious minorities. It is also a case of “assumption of singular affiliation” (Sen 2006) and a manipulation of identity that narrows it to the adherence to the same religion and culture (Schlee 2008). In a way, the cultural dissidents advocate for “pluralism,” i.e. the conception that in a society there should be room for different perspectives, although their logic also has unitarian features, such as their sometimes aggressive approach to missionary activity as I describe in the threat assessment.

² Interviews CO01, CO02 and CO03 (2015).

³ Interview with CO04 (2015).

An alternative proxy for the number of cultural dissidents in the Nasa community is membership of the OPIC, Organización Pluricultural de los Pueblos Indígenas de Colombia, OPIC [Pluricultural Organization of the Indigenous Peoples of Colombia]. According to a public statement of the OPIC issued in 2009, the organization has 24,693 members (OPIC 2009), which would represent around 17.8 percent of the total Nasa population. This number could not be independently confirmed, but it seems reasonable considering newspaper reports that counted “close to 10,000”⁴ and “more than 6,000”⁵ members of the OPIC who participated in a protest march in August 2012.

The cultural dissidents can easily be identified based on their self-identification as Christians, their expressed rejection of certain cultural traditions of the Nasa, and, for a majority of them, their militancy within the OPIC. They do not constitute a distinct ethnic group but are part of the Nasa Indigenous family.

3. Legal insecurity and religious tensions in the Nasa resguardos

3.1. *The political autonomy of the resguardos indígenas*

The Colombian Constitution recognizes “Indigenous territories” as a distinct type of territorial entity, alongside municipalities and departments (art. 286). (The majority of resguardos indígenas have acquired the status of Indigenous territory in order to benefit from the legal prerogatives this implies.) The Colombian Constitution is not very specific about the government system of the Indigenous territorial entities. It simply mentions that the Indigenous authorities “may exercise jurisdictional functions within their territorial scope, in accordance with their own rules and procedures” (art. 246), that they are “governed by councils formed and regulated according to the uses and customs of their communities” (art. 330) and that they can be beneficiaries of public funds granted by the national government (art. 356).

The competencies of the Indigenous governments include the adoption and enforcement of legislative acts, economic policy, budget (including the faculty to raise taxes), management of public resources (including for education) and public order (through a *guardia indígena* [Indigenous guard]). In addition, they have the faculty to implement their own justice system. This *fuero especial indígena* [special Indigenous jurisdiction] includes the possibility to order punishments according to their own *usos y costumbres* [customs and habits].

Most Colombian resguardos, including the Nasa resguardos, are governed by a *cabildo*,⁶ which is a collegiate form of government that is comparable both to a

4 “Indígenas del Cauca, en contravía,” *El Espectador*, 03/08/2012.

5 “Indígenas de la OPIC marchan en Popayán,” *Semana*, 02/08/2012.

council of elders and a municipal council, and is selected by the members of the resguardo. The cabildo combines executive, legislative and judicial power, but some legislative and judicial prerogatives are exercised by the ‘general assembly’ of all the inhabitants of the resguardo. Sometimes, the cabildo is presided over by a ‘governor’ but more often all members of a cabildo are referred to as governors.

The Nasa cabildos that are located within the Department of Cauca are organized within a regional network called the Consejo Regional Indígena del Cauca, CRIC [Regional Indigenous Council of Cauca], which also has members who represent other Indigenous communities. This association, created in 1971, is essentially a lobby organization for the social and cultural rights of the Indigenous communities of the department and serves as an interlocutor to the Colombian government.

Indigenous autonomy is far-reaching, but not absolute. The constitutional limitations on Indigenous autonomy include the respect for the right to life, the prohibition of torture, cruel and inhuman treatment, slavery but also the principles of due process and legality in criminal matters, as well as the prohibition of forced displacement or confiscation of private goods or land – in sum, anything that goes against human rights and the Constitution.

3.2. *Human rights abuses in the resguardos indígenas*

In the Nasa community, there are records of human rights violations that were perpetrated by the Indigenous authorities, not only against cultural dissidents, but against ordinary citizens in general. For example, a person who had an extramarital affair was reportedly flogged as punishment,⁶ a person who had endorsed the ‘wrong’ presidential candidate was tortured,⁷ collaborators with the FARC were whipped, including minors,⁸ and a Christian leader was reportedly poisoned.⁹

The existence of the resguardos indígenas alongside the national government level could be interpreted as a particular case of “regime juxtaposition,” to use the concept developed by Edward Gibson (2005). Indeed, the resguardos and the national government are not only two levels of government that have jurisdiction over the same territory; they also operate under very distinct legal regimes: the former is based on Indigenous customary law, the latter is based on western positive law. According to legal scholar Marcela Zegarra-Ballón (2015), this situation of “legal pluralism,” raises questions concerning “the legitimacy of Indigenous self-government decisions and, in particular, the adequacy of their

6 “Colombian tribe whips cheating lovers,” Reuters, 04/06/2000.

7 *Idem*.

8 “La justicia indígena que unió a los colombianos,” *Semana*, 12/11/2012.

9 “Indigenous Pastor Poisoned. Abuses against Christians Continue in Colombia,” *Visión Agape*, 16/03/2011.

systems of administration of justice and the punishment of misconduct inside their communities.

Although in this case study I focus on the Nasa, freedom of religion is a generalized issue in Indigenous communities in Colombia. A review of relevant jurisprudence of the Colombian Constitutional Court and the Inter-American Court of Human Rights reveals that religious freedom is systematically used as an argument to protect the religious traditions of the dominant religion in Indigenous communities, linking it to other fundamental rights such as the right to culture and the right to property (Arlettaz 2011). In all cases, the fundamental right to cultural identity has taken precedence over the religious freedom of minority groups inside the Indigenous communities (Nieto Martínez 2005; Lopera Mesa 2009).

For example, sentence T-659/2013 confirms the legitimacy of the decision of the authorities of a Nasa resguardo to expel Christian converts from their homes citing three reasons: the Indigenous autonomy, the Indigenous conception of “the transcendence of the Indigenous territory for the members of these ethnic groups” and the sociological fact that Indigenous territories are viewed as collective property.

4. Data collection methods

During a trip to Bogotá in 2010, I was first exposed to the situation of Christian converts in the Nasa community and have monitored and gathered information about this group in the following eight years. Applying a flexible and inductive research design, I collected all available qualitative and quantitative data about human security threats against the vulnerable religious minority that I identified as cultural dissidents.

In addition to desk research, I carried out four field trips to Colombia between 2010 and 2017 in which I interviewed over 40 people. During a trip to Huila and Meta, I visited a settlement of Nasa who were displaced for religious reasons, a safe house for people who had fled various Nasa resguardos, and a boarding school for children from various ‘persecution backgrounds,’ including children who had fled Nasa resguardos.

The interviewees can be categorized in two groups: people that were selected based on their knowledge of the situation of the Nasa resguardos – a sample of government representatives, development workers, church leaders, academics and lawyers – and people belonging to the Nasa ethnic group and who can be identified as cultural dissidents.

The interviews conducted during these trips are the primary sources for the case study. I also relied on internal reports of a number of Colombian charities

including Visión Agape (a Colombian partner organization of Open Doors International, that has implemented projects among Nasa Christians since 2001), the Colombian Evangelical Council [Consejo Evangélico de Colombia, CEDECOL], Corporación Dios es Amor, CDA Colombia [Foundation God is Love] and the Christian Mennonite Association for Justice, Peace and Non-Violent Action [Asociación Cristiana Menonita para Justicia, Paz y Acción Noviolenta, JUSTAPAZ].

I have also used some interviews and trip reports by Lía Salomé Sánchez, who was a researcher for Visión Agape between 2012 and 2014, with her permission (I have marked them with an asterisk in the footnotes), specifically interviews she conducted in resguardos in the Department of Cauca. An important source for the threat assessment was the information provided by the OPIC. I interviewed Ana Silvia Secué and Rogelio Yonda, the two most prominent leaders of the OPIC, at length in 2010 and 2012, and have followed the reports of the OPIC since 2010.

5. Human security threats against cultural dissidents

In this section I argue that cultural dissidents in Nasa resguardos, as defined above, possess a demonstrable vulnerability to suffer human rights abuses. In total, I identified ten distinct threats to which cultural dissidents are vulnerable.

Threat 1: Aggression as a result of conversion

Conversion to Christianity – understood as the conscious decision to abandon traditional Indigenous religious practices, often after joining an Evangelical denomination – is a major cause of human rights abuses in the Nasa resguardos. Indeed, *indígenas* who convert to Christianity and abandon their ancestral beliefs face aggressive opposition. As Lía Salomé Sánchez, a researcher, explains: “In many Indigenous communities, including the Arhuaca, Kogui and Nasa communities, converts to Christianity who subsequently reject their ancestral traditions are isolated, displaced, uprooted, threatened, punished and their fundamental rights are violated.”¹⁰

Numerous examples of hostilities against Christians can be given, including cases of denial of health services, forced displacement and physical mistreatment.¹¹ In one case, a group of 139 Indigenous Christians were required by Indigenous leaders to sign a document renouncing their beliefs. If they refused, they

¹⁰ Interview with Lía Salomé Sánchez (2014).

¹¹ “Julio Cuspian and family displaced by Indigenous local authorities,” Violent Incidents Database (www.violentincidents.com); “127 displaced Indigenous forced to leave the territory where they were,” Violent Incidents Database (www.violentincidents.com); Visión Agape internal report, September 2010; Visión Agape internal report, October 2010; Visión Agape internal report, February 2011; “Indigenous Pastor Poisoned; Abuses against Christians Continue in Colombia,” Visión Agape, 16/03/2011; “Colombia: Here one feels safe...!” Visión Agape, 21/11/2011; Trip report by CO10, Visión Agape staff, 8-11 July 2014.

would face violent consequences, including torture and exclusion of access to agricultural lands, a point I return to in Threat 3. Overwhelmed by these threats, these Indigenous Christians decided to sign the document, but some of them later decided to remove their names from it. In April 2013 they were forced to flee the resguardo and now live in makeshift tents in a village called El Pital made of wood and plastic on a piece of land where the owner of a farm lets them live temporarily. (I visited this refugee camp in January 2015 and spoke with the Indigenous Christians living there.)

Threat 2: Recruitment of youths into criminal organizations

During the armed conflict between the FARC and the Colombian government, the cabildos were in a complicated and delicate position. Several sources report that FARC guerrillas with some frequency entered Indigenous resguardos to provision themselves and to find new recruits, including children. Because of the poverty and high levels of unemployment, many youths were persuaded to join the guerrillas.¹²

At times, some cabildos may have actively collaborated with the FARC, granting them access to the resguardos or participating in drug trafficking activities, in return for benefits,¹³ but the Nasa cabildos have also voiced their opposition to the recruitment of youths (HRW 2013:215). For example, they petitioned both the Colombian Constitutional Court and the Inter-American Commission on Human Rights to request the assistance of the state to protect their community and their leaders against the threat of the internal armed conflict.¹⁴ The Nasa have also sentenced the guerrillas in its own justice system.¹⁵

Threat 3: Exclusion of access to agricultural lands

According to article 329 of the Colombian Constitution, land in the Indigenous territories is collectively owned and subject to decisions of its authorities. Access to agricultural land is granted by the cabildos, who administer community resources. Exclusion of access to agricultural lands is a major human security threat that cultural dissidents face, because it implies they can no longer provide for their livelihood. Because of its severity, I discuss it as a separate threat, although it is normally a consequence of religious identity (conversion), semiactive (church attendance) or active behavior (missionary activity and membership of the OPIC).

¹² Interview with CO06 (2012).

¹³ Interview with Lía Salomé Sánchez (2013).

¹⁴ T-025/2004, Corte Constitucional de Colombia; T-030/2016, Corte Constitucional de Colombia.

¹⁵ “La justicia indígena que unió a los colombianos,” *Semana*, 12/11/2012.

A high-profile case is the one of Jaime Tenorio Eudil who was convicted under false charges including an attempted murder – false, according to my interviewees – in April 2010 and sentenced by the Indigenous council of Mosoco Páez Belalcázar, a resguardo in the Department of Cauca, to 20 years in prison. After a few months in a traditional prison, he was transferred to a jail in Popayán, leaving a large family behind with virtually no income after his land was also confiscated.¹⁶

Threat 4: Violent assaults against church attenders

Although conversion away from traditional religion is an important cause of many of the hostilities experienced by cultural dissidents as argued in Threat 1, regular church attendance is a specific threat that puts Indigenous Christians at risk of violent assaults. I have collected evidence that church services in the Nasa resguardos have been violently disturbed and explicitly targeted. Semi-active religious behavior has also led to severe consequences, including beatings and forced displacement.¹⁷

Anecdotal evidence suggests there is a pattern of systematic attacks on properties that are used to hold church services by community leaders, who visibly oppose church services from being held. This pattern has also been confirmed by many interviews I conducted. In an interview with María Teresa Mesa, who was evicted from her community and now runs a safe house for persecuted Nasa Christians in a nearby town, said that “the only possibility to reach an agreement with the cabildos is for us to stop holding church services.”¹⁸

Threat 5: Reprisals for rejecting traditional Indigenous education

One of the main changes in the behavior of Nasa converts to Christianity is their almost systematic rejection of what they refer to as ‘traditional Indigenous education,’ which they equate to ‘witchcraft’ and consider ‘pagan.’ Most converts express their conviction that traditional Indigenous education is contradictory to and incompatible with the Christian faith. It is here that the description ‘cultural dissidents’ is particularly relevant, as the conversion implies an explicit condemnation of one of the core elements of the cultural identity of the Nasa, which is very dear to Nasa leadership as it is one of the instruments they use to preserve the Nasa cultural identity, as explained above.

¹⁶ “The Gospel keeps me free in jail: Jaime Tenorio,” *Visión Agape*, 06/11/2013; “Jaime Tenorio Sends Thanks From Jail,” *Visión Agape*, 04/02/2014; “Quisiera irme de aquí”: Marleny de Tenorio,” *Visión Agape*, N/D.

¹⁷ Interview with Lía Salomé Sánchez (2015); “Indigenous Believers Continue to be Threatened by the Authorities,” *Visión Agape*, 09/10/2014; Trip report by CO10, *Visión Agape* staff, 8-11 July 2014; “Indigenous authorities continue threatening believers in Huila,” *Violent Incidents Database* (www.violentincidents.com).

¹⁸ Interview with María Teresa Mesa (2014).

Molina-Betancur argues that Indigenous autonomy in the field of education is very advanced, yet still insufficient, particularly with regard to the administration of resources (2012). Cultural dissidents, however, regard the political autonomy of the *resguardos* as a limitation of the freedom of education. Specifically, Nasa converts complain there is no possibility to opt out of the mandatory Indigenous curriculum, in which ‘pagan’ elements are included.¹⁹

Jaime Tenorio Eudil, the community leader mentioned before, started opposing the religious education curriculum and corruption within his Nasa Indigenous group after his conversion, which had severe consequences, according to a press report:

Nasa schools teach children magic rituals and deny state benefits to tribal Christians, offering Indigenous identity only to those who worship traditional gods. Jaime’s [colleagues in the *cabildo*]’s response: accusing him of murder and sentencing him to 20 years in prison without possibility of appeal.²⁰

Threat 6: Reprisals for refusing to participate in traditional Indigenous rituals

Cultural dissidents who reject traditional Indigenous education generally also refuse to take part in traditional Indigenous rituals (including traditional medicine), which they deem incompatible with their newly adopted Christian faith. A female Indigenous leader of a small Christian church, explained:

We are being persecuted for being members of the OPIC, because the *cabildos* force us to take part in rituals and witchcraft; not only do they take away from us what we are entitled to by the state, but they also want us to go to the traditional doctors and do things that are against the Bible.²¹

This concern is shared also by Christian converts who did not join the OPIC, like Pastor Hermes Pete, who has tried to dialogue with the *cabildos*. He also denounced the pressure the Indigenous leaders put on Christians who no longer wish to participate in the traditional rituals.²²

The violence suffered by Jaime Tenorio and his family, described above, is also a direct consequence of his refusal to participate in traditional Indigenous rituals.²³ This report was confirmed to me by Ferney Tenorio, Jaime Tenorio’s son,

¹⁹ Interviews with CO08 and Hermes Pete* (2013).

²⁰ “Indigenous Christians falsely accused for their faith remain hopeful,” *World Watch Monitor*, 02/04/2013.

²¹ Interview with CO22 (2013).

²² Interview with Hermes Pete* (2013).

²³ “Colombia’s Indigenous believers denounce abuses in Open Doors Forum,” *Visión Agape*, 17/12/2012.

whom I interviewed in 2015, as well as by Visión Agape staff who visited him in prison.²⁴ Jaime Tenorio's punishment for refusing to take part in traditional religious activities might seem very extreme – it could also involve other factors that were not revealed to me – but the opposition to cultural dissidents in this realm is a pattern in other interviews as well.

Threat 7: Restriction of initiatives to establish Christian education

In fact, any form of non-traditional education, including Christian education, is opposed by Nasa leaders who require all Indigenous children to be educated in pre-Columbian customs and traditions. Those who engage in such initiatives, whether they belong to the OPIC, ICEN or operate independently, are vulnerable to severe human security threats. There are numerous cases in which the people that create or serve in Christian educational institutions are denied access to water and health services, physically attacked, imprisoned, tortured, displaced and sometimes killed as punishment. School buildings are subject to arson attacks.²⁵

In the Nasa community, confessional education also seems to be a symbolic issue. As was indicated earlier, the separation between the government and church (religious) spheres is not part of the Nasa Indigenous worldview. This means that setting up a confessional school goes beyond the school itself. The school becomes a cultural center, is used to organize church services and the land around the school is used as agricultural land. As such a confessional school very easily becomes a symbol of subversion against the authority of the cabildos.²⁶

Threat 8: Violent assaults against people engaging in missionary activity

The conducted interviews suggest that missionary activity causes Christians to be threatened and assaulted in most Indigenous communities, including in Nasa resguardos.²⁷ Sentence SU-510/98, indicates that some religious rights may, under specific circumstances, be restricted if this is necessary to preserve and protect the traditions of the Indigenous community. This is a reality in most Indigenous communities of Colombia, including in Nasa resguardos. Reports by Visión Agape

²⁴ Interviews with CO10, Ferney Tenorio and CO23 (2015).

²⁵ Interviews with Ana Silvia Secué (2012), CO18, CO09, CO19, CO20 (2013) and with several children who used to go to schools that were destroyed by Indigenous authorities (2015); "Indigenous Pastor Poisoned; Abuses against Christians Continue in Colombia," Visión Agape, 16/03/2011; "Colombia: Indigenous authorities capture Christians in Cauca," World Watch Monitor, 15/04/2013; "The Hope School under Arrest," Visión Agape, 06/09/2016.

²⁶ Interview with José Refugio Arellano Sánchez (2016).

²⁷ Interviews with CO17, Pedro Santiago Posada* (2013), Lía Salomé Sánchez, María Teresa Mesa and Evangelista Quebrada (2014); "Indigenous Pastor the Victim of Witchcraft in Cauca," Visión Agape, 10/07/2014; "A missionary translator of the Bible is threatened," Violent Incidents Database (www.violentincidents.com).

confirm that missionary activity “constitutes a risk” that “frequently occurs in the Arhuaca, Nasa and Kogui communities.”²⁸

According to statements of the cabildos in court cases, they consider missionary activity as an affront to Indigenous traditions, and they therefore see it as legitimate to restrict this activity, and to punish whoever engages in it. The fact that missionary activity – simply presenting the Christian faith – is not the same thing as forcing religious conversion, does not seem to make any difference. A pattern thus emerges: missionary activity is not desired by Indigenous leaders in Nasa resguardos, and can lead to violent reprisals, including physical violence and forced displacement.

Threat 9: Intimidation of members of interest groups

In the Nasa resguardos, the main interest group cultural dissidents are part of is the OPIC. This association was formally founded in 2009 by Ana Silvia Secué and Rogelio Yonda, both Evangelical Christians belonging to the Nasa ethnic group, in opposition to the CRIC, which federates the cabildos of the resguardos of the Nasa and other ethnic groups in the Department of Cauca. The members of the OPIC are mostly Evangelical Christians who reject the authority of the cabildos. The OPIC openly denounces and rejects the policies of the CRIC, particularly the restrictions it places on missionary activity, alternative confessional education and participation in traditional religious celebrations.²⁹ The OPIC describes itself as a “cry of independence [from the CRIC]” representing “thousands of Indigenous people who disagree with the CRIC and refuse to submit to its philosophy and parameters.” (OPIC 2009)

As can be expected, the relationship between the CRIC and the OPIC is hostile.³⁰ The CRIC has sued the OPIC for violating Indigenous autonomy, accusing it of constituting a threat to the Indigenous culture. The mere existence of the OPIC is contested by the CRIC. In the legal complaint the CRIC filed against the OPIC, the former argues that the latter is disrespectful “of the fundamental rights of ethnic, cultural and social diversity, of autonomy and selfgovernment, of education that respects and develops the cultural identity, physical and cultural survival that belongs to a proper or special Indigenous jurisdiction.”³¹

²⁸ Visión Agape internal report, September 2015.

²⁹ Interview with Leonardo Rondón (2010).

³⁰ “Prensa promueve sentimientos de racismo, segregación e intransigencia ciudadana en el Departamento del Cauca,” Plataforma Colombiana de Derechos Humanos, Democracia y Desarrollo, 19/07/2012.

³¹ Demanda de Eduardo Camayo, representante legal del Consejo Regional Indígena del Cauca (CRIC), ante el Tribunal Administrativo del Cauca, Popayán, 30/10/2014.

In fact, in all court cases involving human rights abuses related to freedom of religion, the cabildos consistently refer to their constitutional prerogatives, making the point that anything that happens inside their resguardos occurs within the framework of Indigenous autonomy, and that therefore the decisions of the cabildos are legitimate. This is also the case in the Sentence T-659/2013, where the Colombian Constitutional Court confirms the decision of the cabildos to expel families who had joined the OPIC from their land in virtue of the Indigenous autonomy, but not without observing the following:

It does not escape the attention of the Court that in some cases, the exclusion of some members of Indigenous communities may be unjustified and unconstitutional, as when a member of a resguardo is forced to leave the collective territory for reasons beyond his control, such as physical coercion, displacement or threats. These cases must be considered by the Indigenous authorities and duly analyzed by the corresponding [Indigenous] judges (para 7.4.6).

This statement comes almost at the end of the sentence and has no legal consequences but seems to indicate that the Constitutional Court does have concerns about human rights violations in Indigenous resguardos but cannot do anything about it because it does not entertain jurisdiction over these matters in virtue of the Indigenous autonomy.

Threat 10: Intimidation to prevent political participation

A number of cultural dissidents have participated in politics, standing for local or national offices. Ana Silvia Secué, one of the leaders of the OPIC ran for a senatorial seat in 2014. Pastor Hermes Pete, who is not affiliated to the OPIC, created the Proyecto Social Cristiano [Christian Social Project] to participate in a municipal election in the municipality of Belalcázar, in which Indigenous and mestizo (persons of mixed race) candidates were fielded. These political bids were unsuccessful.

In all cases in which Christians attempted to participate in politics, they were vehemently opposed by the cabildos. Cultural dissidents who have decided to stand for election or to get involved in political parties have been intimidated to desist from these projects. In the best case, the political activity of Hermes Pete “created trouble for us with the cabildo.”³² Ana Silvia Secué’s senatorial campaign, which revolved around her demands for freedom of education, led her to

³² Interview with Hermes Pete* (2013).

be threatened with torture on several occasions by the Indigenous authorities. In addition to this, her participation in politics has brought persecution to other leaders such as Rogelio Yonda, who reported he received a death threat: “The authorities have had a meeting and they agreed to kill you because you are participating in politics. As you have bodyguards, we will send assassins.”³³

6. Concluding remarks

The threats discussed in this paper reveal a clear pattern. When Indigenous Christians refuse to obey the orders of the Indigenous leaders, and display deviant religious behavior, they suffer human security threats including imprisonment, forced displacement, denial of access to water, healthcare and education, confiscation of homes and farmland, torture, and even death.

To summarize, I have made the case that cultural dissidents are indeed vulnerable to suffer human rights abuses, both because of their religious identity (conversion) and because of their behavior (social activism and missionary activity). This being said, it cannot be denied that the attitude of the cultural dissidents is often perceived as a provocation by the cabildos. Provocation is by no means a justification for any human rights abuse, but it should invite a self-reflection by cultural dissidents about their statements and actions.

Claiming the right to religious freedom will not provide the solution as long as it is not recognized that the conflict opposing the cultural dissidents and the cabildos is not only religious or cultural, but also political and material, a distinction that has little relevance anyway in the holistic Indigenous worldview in which politics and religion blend together. In other words, the animosity between the cabildos and the cultural dissidents can be considered as both grievance-based and greed-based. Indeed, many forms of religious behavior of Indigenous Christians are not limited to following Christian traditions or to presenting the Christian faith.

In many cases, it also implies an invitation to leave the CRIC and to join the OPIC and is therefore seen as political subversion. For example, Jaime Tenorio’s imprisonment, allegedly because of made up charges, could be interpreted as a reprisal for preaching the Gospel, but it was also a punishment for his invitation to join the political opposition to the Indigenous leaders and to reject traditional Indigenous education.³⁴ Similarly, a Christian school is not just a teaching facility but also a new Christian society, outside the influence of the cabildos. Refusing to take part in Indigenous rituals is more than just believers exercising their right to freedom

33 Interview with Rogelio Yonda (2015); “Participation in Politics Increases Persecution of Indigenous Believers,” *Visión Agape*, 26/02/2014.

34 Interview with Ferney Tenorio (2012).

of religious expression, or freedom of worship. Both are political statements that signal that cultural dissidents no longer submit to the authority of the cabildos.

7. Policy recommendations to address minority-within-the-minority conflicts

Based on my case study on the cultural dissidents in the southwestern highlands of Colombia, in this section I give a few policy recommendations that can be used to address similar minority-within-the-minority conflicts.

A central finding was that the far-reaching Indigenous self-government rights, although positive on paper, lead to the risk of human rights abuses, including violations of religious freedom. Research by Nazila Ghanea and Alexandra Xanthaki (2005), Will Kymlicka (1996), Anat Scolnicov (2011) and Meital Pinto (2015) suggests that the issues posed by the imbalance between individual and collective rights in Indigenous communities are widespread, affecting not only religious minorities but also other types of minorities such as gender, sexual and political minorities. Yet, minority-within-the-minority or intra-ethnic conflicts receive relatively little attention in legal scholarship and in conflict studies. Further research into how to solve the puzzle of imbalanced rights that is respectful of collective cultural rights and minority rights is therefore highly relevant. Cases that come to mind are other Latin American countries (other Indigenous territories in Colombia, Mexico, Guatemala, Bolivia, Peru and Brazil) (Nieto Martinez 2005; Kovic 2007; Lopera Mesa 2009; Duarte 2009; Scolnicov 2011; Zegarra-Ballón 2015; Freston 2018) and worldwide (Canada, United States, Israel, Australia, South Asian countries, New Zealand). Examples of discussions of minority-within-the-minority cases are Kymlicka (1996) (Canada and United States), Leighton McDonald (1998) (Australia and Canada), Joanna Pfaff-Czarnecka (2010) (South Asia), Yuval Jobani and Nahshon Perez (2014) (Israel) and Pinto (2015) (Israel and Canada). Findings could further be generalized to religious conflicts within diaspora communities.

A priori, there is no necessary conflict between external protections of Indigenous communities and individual rights of group members as Kymlicka (1996; 2001) and McDonald (1998) assert, but such conflicts are to some degree inevitable “in the real world,” as the Nasa resguardos illustrate. In *Multicultural Citizenship: A Liberal Theory of Minority Rights* (1996), Kymlicka advocates for the broadest possible endorsement of “group-differentiated rights” for ethnic minorities but cites two limitations to this endorsement: (a) restrictions of the basic civic and political rights of its members and (b) rights that enable one group to oppress or exploit other groups. In other words, Kymlicka is favorable to maximize tolerance of all facets of minority culture as long as it does not contradict the non-negotiable principle of internal autonomy.

Kymlicka's normative stance seems reasonable, but its application is challenging. Imposing it by coercion is obviously problematic. Recognizing this challenge, he explores some possible solutions. The first is to seek a negotiated agreement on fundamental principles. The government, or in its default, civil society organizations, should facilitate serious mediation efforts between Indigenous leaders and cultural dissidents, although this is evidently easier said than done. In the Nasa resguardos there is evidently a lot of incomprehension between the different parties that could perhaps be amended through conflict resolution. In order for this to happen, however, there needs to be political will on both sides to dialogue, and a broadly shared recognition that the principle of self-determination also has an internal dimension, which cannot be used to commit any human rights abuses (Jones 1999).

The rejection of religious freedom, or of any other human right for that matter, by appealing to traditional culture is nonsensical, as Martha Nussbaum stresses. In *Women and Human Development: The Capabilities Approach* (2000), she confronts the frequently heard charge that the language of justice and human rights is a form of Western and colonial imposition that is incompatible with the norms of traditional cultures. Referring to the matter of discrimination of women, her reflection can also be useful to address minority-within-the-minority conflicts in general. Among other things, Nussbaum argues that using the notion of tradition to resist human rights is not only self-serving but also too simplistic, because it foregoes the fact that cultures are dynamic and are “scenes of debate and contestation,” which include dominant voices but also voices of women (and, by extension, any vulnerable group) “which have not always been heard.” In other words, if one wishes to appeal to tradition, one must also be willing to listen to the non-dominant voices that are also part of tradition (2000:225). In a similar vein, Toft argues that because “the human rights regime has undergone a systematic diffusion across the world” it is not only incorrect to present it as a Western imposition but also is a “denial of agency” of vulnerable communities (2016).

Any negotiated agreement or legal solution to the complex issue of minority rights faces the challenge of its enforcement, above all in contexts where there is no political will or state capacity to apply the rule of law, such as in remote rural areas of Colombia. An international tribunal, for example, can order the rights of religious minorities to be respected, but this will be meaningless if the orders are not enforced, as frequently occurs with such rulings in rural Mexico (Dabène 2008; Petri 2019). I have personally witnessed this in religious conflicts in Indigenous communities in the states of Oaxaca, Chiapas and Jalisco (Mexico). Negotiated agreements were not enforced, in part due to the remoteness of these communities.

The second solution Kymlicka proposes is for the state to offer incentives for liberal reforms inside Indigenous communities. There are antecedents of success-

ful progressive lobbies in other Indigenous communities that could be a source of inspiration. Cleary's research on changes in women's political rights in Indigenous communities in the state of Oaxaca in Mexico revealed that the formalization of Indigenous autonomy, which was previously used to restrict the right of women to vote and to stand for election, created space for liberal activists to expand female political participation (2017). This example is interesting not only because it shows it is possible to advance human rights in Indigenous communities without renouncing Indigenous self-determination, but also because it hints at a path that cultural dissidents could follow, namely to lobby for the formalization (turning into positive law) of the Indigenous self-government institutions which are now largely based on customary and oral legislation. This would reduce the large degree of arbitrariness in which core legal principles such as due process risk being disregarded, a point that is repeatedly stressed by the human rights commissions at the state level in Mexico.³⁵

For this solution to be effective, however, members of Indigenous communities who disagree with their authorities must not feel encouraged to leave, because otherwise the incentive for internal democratization weakens. As Hirschman observes, "the greater the opportunities for exit, the easier it appears to be for organizations to resist, evade, and postpone the introduction of internal democracy even though they function in a democratic environment." (1970:84).

The third solution is to strengthen international mechanisms for protecting human rights. Kymlicka argues that Indigenous groups are generally more willing to submit to the judicial review of international tribunals than to constitutional courts which enforce the constitution of their conquerors. The paradoxical situation in the case of Colombia is that the Constitutional Court has categorically defended the autonomy of the *resguardos indígenas*, at the expense of the individual (religious) rights of its members. The obvious international mechanism cultural dissidents would turn to is the Inter-American Commission on Human Rights (IACHR), but it would remain to be seen how this institution would address the conflict between individual and collective rights, or whether it would confirm the jurisprudence of the Colombian Constitutional Court. Based on a review of jurisprudence, I found that the IACHR has never directly addressed the issue of minority rights (including rights of religious minorities) in Indigenous communities. So far, it has only received cases that were related to the external dimension of self-determination (2015). Also, it is noteworthy that it has a rapporteur on Indigenous rights but not one on religious freedom, as I already mentioned.

Whether through the IACHR or some other institutional arrangement, the present imbalance of the Colombian legal system needs to be addressed. As stated

³⁵ Interview with Eduardo Sosa Márquez (2016).

earlier, the right to self-determination of Indigenous groups needs to be balanced with the protection of the human rights of minorities, including religious minorities, living in the *resguardos indígenas*. To paraphrase Kymlicka, the respect of the cultural rights of Indigenous groups are only acceptable if they protect the freedom of individuals within the group (2001:20-23). This calls for active lobbying at both national and multicultural institutions in order to ensure the full enforcement of art. 8-2 of ILO Convention 169 on Indigenous and Tribal Peoples (1989), namely the principle that the preservation of Indigenous customs and institutions cannot contradict fundamental rights, and that conflict resolution procedures must be established to solve any unbalance between them. Art. 8-2 reads:

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

A related point concerns the exploration of models for the accommodation of differences in polities with deep societal cleavages (Gurr 1993; Kymlicka 1996; Lijphart 2004; Vargas & Petri 2009; Achterhuis & Koning 2017), as is evidently the case in the Nasa community, and the legal precedent of “reasonable accommodation” which “acknowledges that there are plural thoughts on [...] issues and should be accommodated when reasonable” (Du Plessis 2014:105). A possible solution to the religious conflict I described in my case study could be that cultural dissidents accept the political authority of the Indigenous leaders, but that they are given the possibility to opt out of those social activities they cannot take part in because of their religion, like the mandatory religion classes in Indigenous schools.

A solution in the field of education could be to implement a system in which traditional Indigenous education and confessional education are both funded by the Colombian state, inspired by the Dutch educational system since 1917 which came into being as a solution to the *schoolstrijd* [*school struggle*] in The Netherlands (1848-1917). Initially, the conflict revolved around freedom of education, with confessional groups demanding the legal possibility to create private confessional schools, a right that was included in the 1848 Constitution. Considering the high costs for establishing and maintaining confessional schools, anti-revolutionary politicians Guillaume Groen van Prinsterer (2008 [1847]) and Abraham Kuyper (1880, 1898) then advocated for the public financing of confessional education, which was granted after a long struggle, through a series of political reforms referred to as ‘the Pacification’ that were adopted in 1917. This led to a

unique system in which the state funds all schools equally, both secular and confessional, with some degree of autonomy to establish policies regarding curriculum and teacher appointments (Hooker 2009), while the state maintains general educational standards applicable to all (Du Plessis 2014).

The Dutch model in which religious schools are publicly funded remains controversial and continues to be opposed on ideological grounds by various (secular) political parties. Interestingly, most religious freedom datasets view the Dutch educational system as a form of state favoritism of religion, which is ironic, because most religious groups view it as a major advance in terms of religious freedom. Buijs specifically cites the Dutch educational system as an expression of pluralism (2013), with the caveat that it should not lead to “religious segregation” but “provide a platform for encountering other religions and cultures” (Buijs et al. 2013:12-13). At any rate, this model allowed to peacefully accommodate major political differences of religious and non-religious groups. It could be interesting to explore a similar solution for the cultural dissidents in the Nasa community.

Kymlicka accepts that “intervention is justified in the case of gross and systematic violation of human rights, such as slavery or genocide or mass torture and expulsions” (2001:170). Based on the evidence presented above, one could argue some form of intervention could already be justified, but the Colombian Constitutional Court has systematically ruled otherwise or declared not to entertain jurisdiction over cases involving Indigenous peoples.

McDonald (1998) warns against searching for a general theory to solve conflicts between rights. In his view, such conflicts are way too complex for a one-size-fits-all solution. Instead, he recommends a contextualized approach that takes the identification of the interests that underpin the conflicting collective and individual rights as its starting point. Such an approach could for example take into consideration elements that are important to the cabildos such as the money transfers of the Colombian government to the resguardos and the (legitimate) concerns for the preservation of their culture as well as elements that are important to the cultural dissidents such as the possibility to hold church services and to opt-out of the aspects of the Indigenous traditional education they consider as witchcraft. A contextualized approach may provide an alternative solution to accommodate conflicting interests than the current jurisprudence regarding Indigenous resguardos that only offers two options for cultural dissidents; either they accept the political authority and the rulings of the cabildos, or they leave the resguardo.

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