



Practitioners from Africa, Asia and Latin American reflected on ways to respect and protect collective and ethnic minority rights.

COLLECTIVE AND ETHNIC MINORITY RIGHTS

SUMMARY

This document reports the outcome of an online learning programme on Latin American experiences of promoting and protecting human rights, including, in this third module, lessons on collective and ethnic minority rights. Since many of these groups live in countries in the global South, participants agreed that innovative mechanisms used in the Latin American region to strengthen rights and public policies so that they take these groups' worldviews, beliefs and cultural traditions into account, are crucial to ensure the realisation of collective rights.

During this module, participants from Latin America, Africa and Asia discussed and reflected on strategies implemented by Latin American countries to protect collective and ethnic minority rights. Themes covered included formal acknowledgement of indigenous jurisdiction by the state, recognition of participation and consultation rights and the implementation of intercultural public policy.





KEY ISSUES:

Key lessons drawn from the learning exchange between participants from Africa, Asia and Latin America in relation to collective and ethnic minority rights include:

- The adoption of the legally binding ILO Convention 169 has been fundamental for securing official recognition of collective indigenous and ethnic minority rights as a key element of society
- Factors such as the influence of colonialism, migration and international support for indigenous peoples and ethnic minorities all affect whether and to what degree the state integrates collective rights into legal frameworks and public policy
- Reconciling traditional practices with relatively modern legal systems (i.e. collective versus individual rights) poses a significant challenge to integrating indigenous jurisdiction into legal frameworks
- Signatory states of ILO Convention 169 have the legal obligation to guarantee the right to consultation as a key mechanism for protecting collective rights, in particular concerning access to land and natural resources
- Opening up debate in Africa, Asia and Latin America regarding specific elements of culturally acceptable public health services is key to understanding the specific needs and views of indigenous peoples and ethnic minorities

CONTENT

FIRST DISCUSSION THEME: FORMAL ACKNOWLEDGEMENT BY THE STATE OF INDIGENOUS JURISDICTION [Page 5](#)

SECOND DISCUSSION THEME: PARTICIPATION AND CONSULTATION RIGHTS [Page 8](#)

THIRD DISCUSSION THEME: INTERCULTURAL HEALTH POLICIES IN LATIN AMERICA [Page 11](#)



BACKGROUND TO THE MODULE OF COLLECTIVE AND ETHNIC MINORITY RIGHTS

Literature on collective and ethnic minority rights often refers to the concept provided by José Martínez Cobo, Special Rapporteur of the Sub-Commission on Prevention of Discrimination against Indigenous Populations, and to the ILO Convention 169.

Martínez Cobo identifies indigenous peoples as “those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems”.¹ Instead, an ethnic minority is defined as “a group numerically smaller than the rest of the population of the State, whose members, being nationals of the State, possess ethnic, religious, or linguistic characteristics differing from those of the rest of the population”.²

In terms of defining rights, the [ILO Convention 169](#) – the first international treaty regarding indigenous peoples and ethnic minority rights – provides a set of subjective and objective criteria to identify indigenous and tribal peoples. The ILO Convention 169 refers to indigenous peoples as a group belonging to a country, or a geographical region at the time of the conquest and retains some or all of their own social, economic, cultural and political institutions. This concept forms the basis of the notion of collective rights, as distinct from the rights pertaining to an individual, which are associated with demands by indigenous groups for formal recognition of their identity and self-autonomy, such as their own government systems, right to ancestral lands and right to self-development.

The ILO Convention 169 defines tribal peoples in the same sense as Martínez Cobo defines ethnic minorities, namely a group whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations. From a human rights perspective, afro-descendants in Latin America and minorities from other regions like Europe, Africa or Asia share similar characteristics in terms of being part of a minority whose rights have been denied by colonialism, racism or discrimination.³

Certain ethnic minority groups have successfully gained recognition of collective rights similar to those of indigenous groups, as is the case of African descendants living in the Latin American region, largely thanks to their high numbers and strong organisation. However, not all ethnic minority groups have achieved this. The ILO Convention and other treaties such as the [UN Declaration on the Rights of People Belonging to National, Ethnic, Religious and Linguistic Minorities](#) recognise and protect specific rights of ethnic minority groups, which are different to collective rights, and include the rights: to exist, to live free from discrimination, to participate in decisions that affect them or the regions in which they live, to participate effectively in political, economic social and cultural life, and to an education that reflects their ethnic identity. In the following discussions, the concepts ‘collective rights and ‘ethnic minority rights’ should be understood according to this differentiation.

¹ Martínez Cobo, J. 1987. [Study on the Problem of Discrimination Against Indigenous Populations](#). United Nations Economic and Social Council, New York.

² Reales, L. 2008. [The Human Rights Protection Regime for Afro-descendants: The Case of Latin America and the Caribbean](#). In: *Revista de Relaciones Internacionales, Estrategias y Seguridad*3(1) – 25-50.

³ Ibid.



LATIN AMERICAN APPROACHES TO COLLECTIVE RIGHTS

During the 1990s, many Latin American countries formally acknowledged the multicultural nature of their societies and provided legal recognition for indigenous rights in the national constitution.⁴ Furthermore, regional courts have played a key role in defining states' obligations to protect and defend indigenous and ethnic minority rights. Both the [Inter-American Commission on Human Rights](#) and the [Inter-American Court of Human Rights](#) have contributed to identifying the conditions required to facilitate effective access to collective rights by providing a broader and more progressive interpretation of regional human rights frameworks - especially the [American Declaration](#), and the [American Convention on Human Rights](#) - and by ordering the state to protect and guarantee the collective rights of indigenous people and ethnic minorities.⁵

During this third module of the LEA, lessons on collective and minority rights were shared with participants from Africa and Asia interested in reflecting on the possibility of replicating successful experiences in their own countries and regions. The discussions focused on the following three topics:

1. Formal legal acknowledgement of collective rights by Latin American countries, either by incorporating them into national constitutions or by modifying domestic legal frameworks. On this particular issue, the discussion focused on approaches to recognising indigenous jurisdiction in Latin American countries.
2. The role of the regional human rights court rulings in advancing the realization of collective rights.
3. How the development of public policies with an intercultural approach is improving the provision of public services for indigenous people and ethnic minorities.

⁴ Barrera, A., Nolte, D., Schilling-Vacaflor, A. (eds) 2010. [New Constitutionalism in Latin America from a Comparative Perspective: A Step Towards Good Governance?](#) German Institute of Global and Area Studies, Hamburg.

⁵ Hannum, H. 1998. The Protection of Indigenous Rights in the Inter-American System. In: Harris, D., Livingstone, S. (eds). [The Inter-American System of Human Rights](#). Clarendon Press, Oxford.



FIRST DISCUSSION THEME: FORMAL ACKNOWLEDGEMENT BY THE STATE OF INDIGENOUS JURISDICTION

Participants discussed the approaches adopted by Latin American countries to recognising indigenous jurisdiction, with a focus on common strategies including the ratification of international conventions related to indigenous rights, official acknowledgement of indigenous jurisdiction in the national constitution and undertaking measures to apply the human rights principles above their secondary laws. This last strategy has helped to effectively recognise the indigenous jurisdiction and given indigenous peoples and ethnic minorities more accessible options for justice, with the benefits of faster and lower-cost services.

Participants were provided with learning materials in preparation for discussions oriented around the following questions/issues:

1. To what extent is there similar or different recognition of indigenous jurisdiction in your country?
2. Which aspects of indigenous jurisdiction seem the most important for your country and how could similar strategies of formal recognition to the ones developed in Latin America be employed?

Related Sources

[ELLA Brief: Recognition of Indigenous Justice in Latin America](#)

Some Latin American countries have been incorporating specific rights for indigenous communities into their legislation, paving the way for greater legal recognition of indigenous systems of justice. The right to indigenous jurisdiction typically involves the following:

- The collective right of indigenous people to create and apply their own norms and regulations
- State recognition of indigenous norms relating to justice system
- State recognition of indigenous authorities and their right to resolve internal conflicts
- State respect for decisions of indigenous authorities

Bolivia, Colombia, Ecuador, Mexico, Guatemala, Peru, Panama and Venezuela are some of the countries where the national justice system, specifically the Judiciary, has been working with indigenous authorities, enriching the very idea of justice by adopting and implementing indigenous jurisdiction when it does not contravene human rights standards. This is particularly relevant in order to safeguard the human rights of vulnerable groups within indigenous communities, such as women, minors and members of other religions. A common challenge faced by these countries has to do with the capacity of key actors such as local judges and indigenous authorities to reconcile collective rights of indigenous communities and individual rights when presiding over cases.



In Colombia, the process of constitutional reform has involved the incorporation of a series of collective rights, including formal recognition of indigenous jurisdictions in communities with traditional authorities, and the exercise of this authority in defined areas as and when traditional customs and practices do not go against the constitution or the law.

The online discussion highlighted big differences in African and Asian approaches to recognising indigenous jurisdiction, mainly explained by the influence of colonialism and migration which restricted the emergence of a strong indigenous movement, and which, consequently, has resulted in limited demands for collective rights. Other factors that could explain a general lack of awareness about collective and minority rights in Africa and Asia include non-ratification of international treaties, such as ILO Convention 169, by national governments and the difficulty of reconciling local cultures with a legal tradition inspired by European practices and norms.

Participants from Bangladesh, Ghana, Pakistan and Zimbabwe indicated that their governments have not yet ratified ILO Convention 169. In the cases of Bangladesh and Pakistan, participants said the governments there have only ratified Convention 107, which offers limited protection to indigenous and ethnic minority rights. It was generally agreed amongst participants that governments should ratify ILO Convention 169 since it is a more complete instrument for promoting recognition of and respect for ethnic and cultural diversity as well as collective rights.

A participant from Bangladesh stated that there is no official agreement about which communities constitute indigenous peoples in his country, mainly because they represent a minority within society. This comment triggered a debate between two participants from Bangladesh on the definition of indigenous peoples, highlighting ongoing challenges in this regard.

From the discussion, participants also learned that in most African countries traditional methods of conflict resolution are not formally recognised in the constitution or in law, despite awareness within the justice system about the existence of these mechanisms and a general appreciation for the role they play in reducing the amount of cases brought to regular law courts. A participant from Nigeria argued that indigenous mechanisms are inspired by a conciliatory approach rather than judgemental or punitive sentences and that they have shown to be effective in dealing with controversial issues, such as land disputes, because they consider broader contextual issues. A participant from Togo described how traditional jurisdiction methods coexist alongside legal authorities for minor issues, such as marriage. Finally, South Africa is in the process of discussing reforms to provide some kind of recognition to traditional authorities, although there are opposing opinions as to how this should be done. Participants argued that during apartheid, traditional leaders hid behind patriarchal practices to deprive women of economic, political and social power. During the Communal Land Rights Bill hearings in 2003, rural women argued that the power traditional leaders held over land had perpetuated poverty among them. Formal acknowledgment of indigenous jurisdiction is a particularly relevant issue in post-apartheid South Africa that cannot be easily compared with the Latin American case.



Lessons Learned

- The ratification and harmonisation of international treaties such as ILO Convention 169 into domestic frameworks represents an important first step towards state recognition of collective and ethnic minority rights
- The recognition of indigenous jurisdiction should be accompanied by measures to protect individual rights of vulnerable groups within these communities, such as women, minors, and members of other religions
- Reconciling traditional practices with relatively modern legal systems (i.e. collective versus individual rights) poses a significant challenge to integrating the formal acknowledgement of indigenous jurisdiction into legal frameworks



SECOND DISCUSSION THEME: PARTICIPATION AND CONSULTATION RIGHTS

In this discussion, participants explored the role of consultation rights in relation to protecting indigenous lands and natural resources in Latin American countries. Participants were provided with learning materials in preparation for discussions oriented around the following two questions:

1. Has your country already signed ILO Convention 169? If so, do you think the state is implementing public policies that effectively guarantee indigenous rights?
2. What is your opinion about the fact that ILO Convention 169 states that if consent cannot be obtained, a procedure of relocation should take place? Would this work in your country/region?

Related Sources

[ELLA Brief: Defending Latin America's Indigenous and Tribal People's Right Through Laws and Courts](#)

In some Latin American countries, the collective right to land and natural resources has been formally acknowledged by the state, largely as a result of pressure from regional human rights courts. The Inter-American Commission and the Inter-American Court have made important advances in defining the scope and content of collective rights in relation to accessing land and natural resources, as well as the right to consultation. The Inter-American Commission has also produced an assessment of indigenous rights in Latin American countries, based on the general obligations to respect and ensure the free and full exercise of the rights set out in the [American Convention on Human Rights](#). For its part, the Inter-American Court has issued different rulings regarding the obligations of states to adopt protective measures to guarantee indigenous and ethnic minority rights (in Latin America, ethnic minorities are mostly Afro-descendants), in particular in relation to land and natural resources, both crucial elements for indigenous culture and livelihoods. The Court has also affirmed that access to land and natural resources can only be properly protected through the fulfilment of the right to consultation. According to the Court's rulings, the right to consultation encompasses: 1) shared commitment to reach a common agreement, meaning that consultation is not a mere procedure and that the opinions of the local communities are really taken into account; 2) provision of all relevant information (usually on proposed projects) to local communities; 3) adaptation of consultation means and methods to the local cultural and social context, and; 4) consultation should be carried out before any decisions are made affecting indigenous people.

While Colombia, Brazil, Bolivia and Nicaragua have all amended their constitutions and domestic frameworks to recognise the collective land rights of indigenous peoples and afro-descendants, Bolivia, Colombia, Costa Rica, Chile, Peru, Guatemala and Mexico have included the right to consultation in their constitutions, but are yet to establish complementary legislation to determine how and when consultation should take place. Therefore, the practical implementation of the right to consultation still poses a significant challenges in many countries where private and economic interests may interfere with collective and ethnic minority rights to land and natural resources.



The online discussion revealed great interest from participants regarding these issues and many different experiences and opinions were shared. Given that many African and Asian countries have not signed ILO Convention 169, participants recognised the importance of adopting legally binding international frameworks as a first step to recognising and protecting collective and ethnic minority rights and ensuring that these groups are consulted about development processes that affect their access to land and natural resources. ILO Convention 169 is particularly important since it deals specifically with the right of indigenous people and ethnic minorities to free, prior and informed consent and promotes constructive dialogue in which indigenous people have the opportunity to influence decision making processes. One participant stressed the importance of article 16 of the ILO Convention 169 which establishes that whenever consent cannot be obtained a procedure of free and informed relocation should take place.

Participants from Africa and Asia indicated that the non-ratification of international treaties and the absence of collective and consultation rights in national constitutions contribute to abuses in the realisation of these rights. In most cases, states promote expropriation over consultation as a way of taking over lands in the name of national interest. Often the occupants of the land are not invited to participate in any kind of debate and receive very little or no compensation in exchange.

Unlike in Latin America, participants from Nigeria and Ghana stated that their legal frameworks do not include any collective or consultation rights, instead natural resources are deemed property of the nation. A participant of Ghana argued that a special commission on land issues should be established in order to define the national policy with respect to land use. In contrast, a participant from Nigeria suggested that national law should require the government to pay compensation for exploiting natural resources that belong to (or are under the stewardship of) indigenous communities.

A participant from Nepal, a country with 125 ethnic groups, stated that the Supreme Court has recently issued an order to the government to analyse demands by ethnic minorities for a chance to participate in the constitution-making process through freely elected representatives.

Finally, participants reflected on the continual processes of marginalisation and oppression that different actors have inflicted on indigenous peoples and ethnic minorities, which started with colonial conquests, were followed by state repression and are now being perpetrated by transnational corporations. Participants concluded that the failure of states to protect collective rights to land and natural resources according to international standards and the criminalisation of indigenous people and ethnic minorities in their efforts to protect these rights, remain a significant challenge for Africa, Asia and Latin America.



Lessons Learned

- Formal acknowledgement of collective rights to land and natural resources, either through ratification of international treaties or their inclusion in national constitutions and laws, can limit state abuse in the realisation of these rights
- Effective fulfilment of the right to consultation can be achieved through specific actions such as informing communities about the consultation process, making information available in a manner that they can access and understand and making it mandatory for the government to comply with the results of the consultation
- Special provisions such as relocation and fair economic compensation should be included in domestic frameworks to ensure that indigenous people and ethnic minorities receive appropriate reparation for the impacts of development projects and private ventures on their lands and natural resources



THIRD DISCUSSION THEME: INTERCULTURAL HEALTH POLICIES IN LATIN AMERICA

In this discussion, participants explored the concept and practical implications of intercultural health policy in Latin America as well as the potential for such an approach in other regions of the world. Participants were provided with learning materials in preparation for discussions oriented around the following questions:

1. Are there similar intercultural health policies in your country? If so, what was the approach adopted?
2. What have been the mayor obstacles to implementing intercultural health policy in your region and which strategies have been used to overcome them?

Related Sources

[ELLA Brief: Intercultural Health Policies in Latin America](#)

The concept of intercultural policies has emerged in Latin America as a result of demands by indigenous movements for self-recognition, including respect for their culture and traditions and preservation of their language. This concept rejects the acculturation approach adopted by Latin American states which aims to suppress indigenous cultures and force their assimilation into a monolingual culture in which Spanish and Western traditions predominate.

Establishing regional guidelines for including an intercultural approach in the design of health policies, as promoted by the Pan-American Health Organisation, and creating institutions, ministries and committees with an intercultural approach, are just some of the strategies that are being used in the Latin America region. Exemplary cases from Ecuador and Mexico help illustrate how countries in the region are adopting and putting into practice successful intercultural health policies at different levels.

The Government of Ecuador has undertaken a significant effort to ensure collective participation in the integration of a multicultural approach to hospital services with the aim of meeting indigenous peoples' health needs while respecting their customs. As a first step, interviews were conducted with hospital staff and service users to understand how culture and health are related and to promote collective decision making about the intercultural model to be adopted. The main objectives of the intercultural health policy in Ecuador are to reduce neonatal maternal death, increase the coverage of childbirth assistance, increase the number of children born in official health establishments, provide health services to rural women and improve overall quality of health care. Although this policy still faces obstacles in terms of achieving all of its objectives, collaboration and discussion between different stakeholders about the kind of health service indigenous people want and need represents important progress.

The second case study, from Guerrero in southern Mexico, showed participants how the CSO Indigenous Woman's Health House 'Manos Unidas' ('United Hands') in Guerrero, promoted the integration of indigenous views on health into public policies. The main achievements of Manos Unidas are: 1) the development of a network of midwives and promoters that support pregnant indigenous women; 2) improving indigenous



women's access to health services; and 3) demanding non-discriminatory and respectful treatment within government health care services. Challenges such as the general lack of understanding of indigenous values, the absence of appropriate means of communication and economic barriers to accessing health services are still to be overcome in order to fully guarantee the right to intercultural health in Mexico.

This online discussion encouraged participants to explore whether intercultural health policies exist in other regions of the world, especially in Africa, that are similar to those in Latin America. The discussion centred on Latin American experiences, including initiatives led by grassroots and civil society organisations as well as policies implemented by the state. Reflections were shared about traditional healing practices as a potential area to be developed by civil society groups and governments worldwide.

Participants from Africa indicated that intercultural health policies do not exist in their countries, nor are the issues debated publicly. A participant from Ghana shed light on some issues related to the efficacy of herbal medicine and its production in unhygienic conditions. In Ghana, there have been some changes such as practitioners of herbal medicine obtaining degrees from a university in Ghana, testing of drugs at a state institution for plant medicine, and the development of packaging standards for such drugs. These initial attempts to include herbal medicine in the national health care system in small clinics and hospitals may represent the first step towards a national policy of intercultural health.

A participant from Nigeria explained that the absence of policy support for traditional medicine is mainly explained by the lack of government interest in developing an intercultural health policy inspired by ancient medicine. However, some efforts have been made by the authorities to oversee the hygiene standards of traditional medicine production. A South African participant stated that there is an on-going process of incorporating traditional healers into health initiatives to prevent and treat infectious diseases, such as tuberculosis and HIV/AIDS. This is quite relevant in a country where many people use traditional medicine as a complement to Western medicine.

The discussion revealed that unlike in Latin America, African experience of intercultural health appears to be limited to including herbal medicine in the health care services. Ethnic minorities do not seem to be involved in this process and no efforts are being made to adapt health facilities, goods and services so that they respect more traditional customs and beliefs. Finally, the lack of a well-organised civil society supported by CSOs or international organisations may explain the weak development of intercultural health policy in Africa and Asia.

Lessons Learned

- Intercultural health policies represent an innovative approach to fulfilling the right to health since they are inspired by indigenous and/or ethnic minority knowledge and practices and involve the active participation of these communities
- Integrating traditional healers and healing methods into the public health system represents a first step towards the adoption of intercultural health policy
- The role of CSOs and other stakeholders in supporting traditional health initiatives is key to generating greater recognition and respect for alternative practices and getting them into public and political debate



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ELLA is supported by:

