



Many Latin American countries have begun recognising indigenous and ethnic minority rights as part of a new, broader definition of citizenship by adopting innovative and inclusive legal frameworks and public policies. What are the main features and successes of the Latin American experience?



PROMOTING INDIGENOUS AND ETHNIC MINORITY RIGHTS IN LATIN AMERICA

SUMMARY

During the decade of the 1990s, a strong and vibrant movement of indigenous and ethnic minorities emerged in Latin America, embracing common demands for state recognition as part of a new and more inclusive concept of citizenship. Most of these demands were included in the international and regional human rights agreements which many Latin America countries have ratified. By doing so, states formally recognise indigenous and ethnic minorities as a collective actor with rights that must be protected and guaranteed, in particular by harmonising domestic legal frameworks and building innovative public policies that recognise these groups as a community that shares a common identity and enjoys specific rights. This ELLA Guide analyses how Latin American countries have worked to recognise indigenous and ethnic minority rights, in particular by including collective rights in their constitutions and domestic legal frameworks, building public policies with a pluricultural approach and adopting new forms of recognition when gross human rights violations have been committed. The legal development of these rights at the international level, and the regional court's activism, have also been key to ensuring these rights are ultimately realised. The Guide covers these responses at the country and regional level, as well as highlighting key organisations and publications that may prove to be useful resources for readers in other contexts.

THE CHALLENGE OF RECOGNISING RIGHTS IN MULTICULTURAL SOCIETIES

During the past two decades, Latin America witnessed the emergence of indigenous and ethnic minorities as political actors capable of articulating the demands of groups that have historically been discriminated against, oppressed and ignored.¹ The emergence of these movements is largely a result of the political transformations undertaken by most Latin American countries during transitions to democracy. This process has contributed to increasing the visibility of the conditions

¹ Martí i Puig, S. 2010. [The Emergence of Indigenous Movements in Latin America and Their Impact on the Latin American Political Scene](#). *Latin American Perspectives* 37(6) 74-92.

KEY LESSONS LEARNED

The international and regional development of collective rights has helped to strengthen indigenous and ethnic minorities' demands for recognition as part of a new, more inclusive concept of citizenship.

Building public policies inspired by intercultural principles represents a useful tool for indigenous and ethnic minorities' empowerment, while at the same time that dealing with structural exclusion.

The Latin American experience demonstrates that a regional human rights court can be effective in pushing forward progressive improvements in indigenous and ethnic minority rights.



of poverty, social and economic exclusion, and the human rights abuses that indigenous peoples faced in the region.²

Many indigenous movements intensified their activities during the celebration of the 'Fifth Centennial of the Discovery of the Americas' held in 1992. In opposition, indigenous organisations adopted the slogan '500 years of Indian Resistance' and planned demonstrations in cities across the region.³ Mobilisations could be seen across Latin America, from the [Zapatista movement](#) in Chiapas, a southern state in Mexico, to the mobilisation of Quechuas and Aymaras in Bolivia and the strong presence of indigenous organisations in Chile, Colombia and Ecuador.⁴

One characteristic of these movements is that they articulated collective demands, focusing on states' formal acknowledgement of indigenous self-recognition, with specific rights, their own unique culture and language, and the restitution of their ancestral lands.⁵ Overall, indigenous and ethnic minorities were searching for a more inclusive idea of citizenship based on a collective and ethnic identity that shares a common pre-colonial history, traditions and world view.

The support of social actors was strategic in promoting these demands in both local and international arenas. The social-orientated sector of the church, especially proponents of liberation theology, helped by supporting and financing conferences and meetings in different countries and encouraging indigenous communities to begin to organise. In addition, international and regional networks interested in human rights advocacy "embraced the cause of the self-determination of indigenous and ethnic minorities and had a significant impact on the configuration of their movement."⁶ This global network was crucial in strengthening the external support of the movement and disseminating their demands; this was particularly helpful given indigenous peoples' lack of identification with their own national authorities, and was effective in creating a sense of regional group self-identification that went beyond national boundaries.

Around this time, some international institutions like the [United Nations](#) (UN) and the [International Labour Organization](#) (ILO) had begun to show their concern about

the situation of the world's indigenous peoples. But it was not until 1989 that the ILO passed [Convention No. 169](#), the first treaty to define indigenous and ethnic minority rights and recognise a set of specific individual and collective rights. Most Latin American countries formally ratified ILO Convention 169 over the past twenty years;⁷ ratification was expected to produce immediate effects, entailing legal modifications of countries' domestic frameworks. ILO Convention 169 also spurred the development of other international instruments, including regional agreements like the [Draft American Declaration of the Rights of Indigenous Peoples](#), which is still undergoing a negotiation process between governments and indigenous peoples.

According to the [International Working Group for Indigenous Affairs](#), there are almost 600 indigenous groups in Latin America, each sharing a unique worldview based on their close relationship with their land and territory. How have Latin American countries recognised the rights of the indigenous people and ethnic minorities living within their borders? What have been the key experiences to ensure their inclusion, protection and effective realisation? What successes and challenges have been had? The answers to these questions might prove useful to countries in other regions that face similar challenges in recognising and promoting the rights of their indigenous citizens.

This Guide describes government mechanisms to ensure collective rights by building suitable domestic frameworks and implementing public policies with a pluricultural approach. A significant focus is also given to the key role the Inter-American Court of Human Rights has played. Research for this Guide was conducted through a review of key documents including international and regional human rights agreements, documents on and by the Inter-American System, theoretical articles on legislative harmonisation, and published works from legal and academic journals. Additionally, Latin American experts helped to identify innovative experiences and offered a theoretical framework for understanding them.

² F Bello, A. 2006. Ciudadanía y Derechos Indígenas en América Latina (Citizenship and Indigenous Rights in Latin America). In: ECLAC. [Pueblos Indígenas y Afrodescendientes de América Latina y el Caribe: Información Sociodemográfica para Políticas y Programas](#) (Indigenous and Afro-descendant Peoples from Latin America and the Caribbean: Socio-demographic Information for Policies and Programmes). ECLAC, Santiago de Chile.

³ De la Peña, G. 2006. [A New Mexican Nationalism? Indigenous Rights, Constitutional Reform and the Conflicting Meaning of Multiculturalism](#). *Nations and Nationalism* 12(2) 279-302.

⁴ Martí i Puig. 2010, above n 1.

⁵ Bello. 2006, above n 2.

⁶ Martí i Puig. 2010, above n 1, 4.

⁷ Argentina (2000); Bolivia (2002); Chile (2008); Colombia (1991); Costa Rica (1993); Dominica (2002); Ecuador (1998); Guatemala (1996); Honduras (1995); México (1990); Nicaragua (2010); Paraguay (1993); Perú (1994); and Venezuela (2002).



INTRODUCTION TO INDIGENOUS AND ETHNIC MINORITY GROUPS IN LATIN AMERICA

In the absence of a general or global definition of indigenous peoples, the literature often refers to the definition given by José Martínez Cobo, the Special Rapporteur of the Sub-Commission on Prevention of Discrimination against Indigenous Populations. He 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”.⁸

This definition means that the concept of ‘peoples’ is key for indigenous groups because “it derives from a series of rights of fundamental importance for indigenous peoples, such as their right to self-determination, meaning the preservation of a common history, the same tradition, cultural or ethnic group, language and land connection”.⁹ This concept of a ‘people’ forms the basis of the notion of collective rights, as distinct from the rights pertaining to an individual.

An ethnic minority is commonly 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”.¹⁰ From a human rights perspective, afro-descendants in Latin America and minorities from other regions share similar characteristics in terms of being part of a minority whose rights have been denied by colonialism, racism or discrimination.

In fact, the [International Covenant on Civil and Political Rights](#), the Convention on the Rights of the Child and the well-known UN Declaration on the Rights of People Belonging to National, Ethnic, Religious and Linguistic Minorities protect and guarantee certain rights for ethnic minorities, including: 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

LATIN AMERICA'S INDIGENOUS PEOPLES AND AFRO-DESCENDANTS

According to the Inter-American Development Bank (IDB), the indigenous population in Latin America is estimated to be around 40 to 50 million people, or 8-10% of the region's overall population. There are between 100 and 150 million people of African descent living in the region. In some countries, indigenous people and afro-descendants represent a significant percentage of the population.

Percentage of Indigenous Peoples

Bolivia: 62
Guatemala: 44
Peru: 14.5

Percentage of Afro-descendants

Brazil: 50.7
Trinidad and Tobago: 37.5
Guyana: 30.2

Source: [Map of Indigenous Population and Afro-descendants in Latin America](#). 2011. Published online by the [Inter-American Development Bank](#).

life; and to an education that reflects their ethnic identity.

ILO Convention 169 refers to tribal peoples rather than ethnic minorities. It defines “tribal peoples in independent countries 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; and peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions”.¹¹ To that extent, ILO 169 does not explicitly recognise ethnic minorities’ collective rights, though it does leave open the possibility for recognition of groups who might meet the same criteria as indigenous groups or whose self-identity and collective rights are formally recognised by the state; thus this in practice typically means including indigenous peoples but not ethnic minorities.

Indeed, although ILO 169 and other international treaties do recognise certain rights for ethnic minorities, they do not

⁸ Martínez Cobo, J. 1987. [Study on the Problem of Discrimination Against Indigenous Populations](#). U.N. Doc. E/CN.4/Sub.2/1986/7/Add.4.

⁹ Aguilar, G. et al. 2010. [The Constitutional Recognition of Indigenous Peoples in Latin America](#). *Pace International Review Online Companion* 2(2) 44-96.

¹⁰ Reales, L. 2008. [The Human Rights Protection Regime for Afro-descendants: The Case of Latin America and the Caribbean](#). *Revista de Relaciones Internacionales, Estrategias y Seguridad* 3(1) 5-50.

¹¹ ILO. 2009. [Indigenous & Tribal Peoples' Rights in Practice: A Guide to ILO No. 169](#). ILO, Geneva.





explicitly recognise ethnic minorities as a group sharing collective rights to land and natural resources, to prior consultation, or to recognition of their own government systems, jurisdiction or conflict resolution mechanisms.¹² However, certain ethnic minority groups have successfully pushed for recognition of collective rights similar to those of indigenous groups. In the Latin American case, we focus on peoples of African descent, given their high percentage of the overall population, and strong organisations and rights achievements. Though Latin America's afro-descendants are considered an ethnic minority, an interesting movement has emerged demanding their self-recognition and collective rights, using the argument that their rights – like those of indigenous people – have also been denied by colonialism. As we discuss later, they have also secured important achievements in land rights by arguing that their relationship to their land is similar to that of indigenous groups.

Despite differences in the historical construction of their identity and recognition, in most cases, of their collective rights, what indigenous peoples and ethnic minorities share is a disproportionately high likelihood of difficult living conditions, in contexts of structural and severe poverty and with poor development outcomes compared to the population at large. In terms of education, for example, illiteracy is a serious challenge for indigenous and ethnic minority groups due to the lack of intercultural education programmes.¹³ Discrimination by public officials remains an important obstacle for effectively accessing public services and benefiting from social programmes in different areas, such as reproductive health. In sum, the challenges and discrimination faced by these groups means that they are disproportionately more likely to be less educated, less healthy, have less access to public institutions and be less able to transform their own economic and social conditions.

BACKGROUND ON INDIGENOUS AND ETHNIC MINORITY RIGHTS IN THE REGION

Eight months before the Universal Declaration on Human

Rights was proclaimed, the first regional human rights instruments – the [Charter of the Organization of American States](#) and the [American Declaration of the Rights and Duties of Man](#) – were being adopted. Later on, in 1969, the adoption of the [American Convention on Human Rights](#)¹⁴ (American Convention) consolidated the regional system of human rights based on two important institutions: the [Inter-American Commission on Human Rights](#) (Inter-American Commission) and the [Inter-American Court of Human Rights](#) (Inter-American Court). Collectively, these institutions are known as the [Inter-American System](#).¹⁵ The Inter-American Court, in particular, would evolve to play a key role in human rights in the region, as this Guide describes.

Again, even before international instruments recognised indigenous and ethnic minority rights, both the Inter-American Commission and the Inter-American Court were playing a key role in defining states' obligations to protect and defend indigenous and ethnic minority rights, beginning with their establishment in 1959. For instance, the Inter-American Commission organised on-site visits and produced country reports about the situation of indigenous peoples in Bolivia, Brazil, Chile, Colombia, Ecuador, Guatemala, Mexico and Suriname; and produced special reports, such as one on the situation of the human rights of Miskito people in Nicaragua in 1987.¹⁶ The Inter-American Commission legitimised indigenous peoples' demands and offered a progressive interpretation of Article 2 of the [American Declaration](#), and Article 1 of the [American Convention on Human Rights](#) (ACHR), to resolve those cases by ordering states to protect and guarantee indigenous and ethnic minorities' collective rights.¹⁷

Once these rights were embodied in ILO Convention 169 at the international level, this contributed to enforcing an international legal regime to protect indigenous and ethnic minority rights. For the first time, a legal instrument existed to promote respect for the cultures of these groups as communities sharing identities and a pre-colonial history, a fundamental criterion for determining the groups to which these rights apply. Moreover, ILO Convention 169 ensures

¹² Ibid.

¹³ Tauli-Corpuz, V. 2005. [Indigenous Peoples and the Millennium Development Goals](#). Paper submitted to the 4th Session of the UN Permanent Forum on Indigenous Issues, New York.

¹⁴ Currently [23 countries have signed and ratified the American Convention](#): Argentina, Barbados, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname and Uruguay.

¹⁵ For additional background information about the Inter-American System, see the [ELLA Learning Material: The Role of the IAHRs in the Promotion of the Right to Information](#) and the [ELLA Guide: Human Rights in Latin America](#).

¹⁶ Inter-American Commission on Human Rights. 2000. [The Human Rights Situation of the Indigenous People in the Americas](#). OEA/Ser. L/V/II.108. Doc. 62.

¹⁷ 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.





Figure 1: Summary of Key Latin American Responses to Promote Indigenous and Ethnic Minority Rights

Strategies	Examples of Specific Reforms and Initiatives
Legal Changes	Formal state acknowledgement of indigenous governance systems, jurisdiction and conflict resolution
	Formal acknowledgement of indigenous and ethnic minority rights to land and natural resources
Regional Court Cases	The right to consultation to defend indigenous communities' access to natural resources
	Gender, collective redress and indigenous rights
Rights-based Intercultural Public Policies	Right to culturally appropriate education
	Right to culturally appropriate health care and services

Source: Own elaboration

peoples' right to determine the methods for exercising control over their social, economic and cultural development.¹⁸

Overall, the international boost for protecting collective rights and the regional advances in indigenous and ethnic minority rights inspired many Latin American countries to formally acknowledge "the multicultural condition in states and societies that lead to the legal recognition of indigenous rights in the constitution during the 1990's".¹⁹ In fact, in a number of countries, constitutional modifications, mainly inspired by ILO Convention 169, included collective rights to land, political participation and intercultural education.²⁰ By 2009, Bolivia and Ecuador had also modified their constitutions to define their countries as plurinational and intercultural states.

LATIN AMERICAN APPROACHES TO COLLECTIVE RIGHTS

At a policy and legal level, the advances in indigenous rights seen in the region are strong evidence of states' commitment to recognising indigenous people as part of a new and broader concept of citizenship. These experiences can be classified into three types. The first one has to do with the formal legal

acknowledgement of collective rights. Two key trends can be identified in Latin America: states that have recognised collective rights in their constitutions, and those who have done so by modifying their domestic legal frameworks.

The second type has to do with the role of the regional human rights court. As shown in this Guide, court decisions have helped to commit states to implementing innovative mechanisms to ensure indigenous rights. In this sense, these rulings have helped to complement traditional human rights concepts with new cultural approaches.

Finally, Latin American countries have had successful experiences implementing public policies with an intercultural approach. Countries have used these types of policies in particular as a strategy to better address the needs of indigenous and ethnic minorities in the provision of public services. This Guide focuses on health and education.

The following table summarises these initiatives, all of which are covered in more detail later in the Guide:

LEGAL CHANGES²¹

During the mid-1980s, and as a result of democratic transitions and the massive mobilisation of indigenous and ethnic minorities, there was an important wave of constitutional reforms across Latin America that addressed collective rights and demands.²² Many countries reformed their constitutions to specifically include indigenous and ethnic minority rights: Panama (1972), Nicaragua (1986), Brazil (1988), Colombia (1991), Mexico (1992 and 2001), Guatemala (1985), Paraguay (1992), Peru (1993), Argentina (1994), Bolivia (1994), Ecuador (1994 and 1998) and Venezuela (1999).²³ Chile only modified its domestic legal frameworks (1993), not its constitution.

Two of the most successful and advanced experiences in states' formal acknowledgment of collective rights can be found in the development of the right to self-government and the right to land and natural resources in Latin American countries, which are the focus of the following two sections.

¹⁸ Martí i Puig. 2010, above n 1, 4, 6.

¹⁹ 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.

²⁰ Ibid.

²¹ For more information about the region's legal frameworks, visit the [Indigenous Legislation DataBank](#), published by the Inter-American Development Bank, which contains information on indigenous legislation and other related topics for all countries of Latin America.

²² These included: Brazil in 1988; Colombia in 1991; Paraguay in 1992; Ecuador in 1998 and 2008; Peru in 1993; Venezuela in 1999; Bolivia in 2009. Other countries introduced major reforms to their existing constitutions, such as Argentina in 1994, Mexico in 1992 and 2011, and Costa Rica in 1989. See: Uprimny, R. 2011. *The Recent Transformations of Constitutional law in Latin America: Trends and Challenges*. *Texas Law Review* 89 1587-1609.

²³ See: Aylwin, J. 2006. *Ombudsman y Derechos Indígenas en América Latina: Estudio Comparativo Sobre el Marco Normativo e Institucional* (*Ombudsman and Indigenous Rights in Latin America: Comparative Study of Domestic Frameworks and Institutions*). Inter-American Institute of Human Rights, San José.



Formal Acknowledgement of Indigenous Governance Systems, Jurisdiction and Conflict Resolution

According to existing literature, the right to self-determination is one of the most important demands of indigenous peoples because it represents the founding principle of collective rights which leads to the realisation of other rights and therefore the recognition of a certain degree of autonomy.²⁴ In that context, indigenous decision making processes and traditional customary law systems require the formal acknowledgement of collective rights.²⁵

In Latin America, however, there is a broader discussion taking place among academics about the possible consequences that self-determination may have, both for the political unit of the state and for the traditional vision of human rights as individual rights.²⁶ While some consider that self-determination may represent the possibility “to set a new independent entity apart from the State”,²⁷ others argue that the exercise of the right to self-determination has to be understood as a “collective human right which is fundamental for the enjoyment of all the rights of indigenous and minorities rights and the possibility to control their lives and their own destiny, within the State.”²⁸ They therefore argue that the recognition of the right to self-determination may be helpful to safeguard collective rights, and may complement the traditional human rights approach which is more focused on individuals rather than collective groups.²⁹

Rodolfo Stavenhagen, a Mexican expert on indigenous peoples’ issues and former UN Special Rapporteur, has pointed out that “the States’ transformation during the transition to democracy process in Latin America has inspired indigenous peoples’ participation in State decision-making structures at the local level and given them the chance to make changes to territorial government institutions, creating new opportunities among indigenous communities for access to and the distribution, control and use of resources for development”.³⁰

From a legal point of view, Colombia, Mexico and Nicaragua have addressed the question of indigenous autonomy by

THE LONG PATH TO INDIGENOUS SELF-GOVERNMENT IN MEXICO

From 1988 to 1994, former President Carlos Salinas de Gortari worked to promote a reform to Article 4 of the Mexican Constitution in order to comply with the principles of ILO Convention 169, which the country ratified in 1991.

At the start of 1994, indigenous groups and government representatives were starting to negotiate about the contents of the constitutional reform when the Zapatista Army of National Liberation (known as EZLN) broke out in Chiapas, demanding indigenous autonomy, among other claims. It was not until 1996 when government representatives and the EZLN signed the [Acuerdos de San Andrés](#) (San Andres Peace Agreements), a key agreement which included the basic demands of indigenous rights as part of a new and wider concept of citizenship.

The main objective of the agreement was to include the question of indigenous self-governance in the legislative agenda for discussion and further approval. But during President Zedillo’s government, none of the proposals were sent to Congress. In 2000, the first opposition candidate won a presidential election after seventy years of rule by the same political party, the PRI, with Vicente Fox from the National Action Party, a right-leaning political party, coming to power. As promised during his campaign, Fox sent the *Acuerdos* text to the Congress. Both chambers discussed then approved the reforms.

The constitutional reform adopted many ILO Convention 169 principles and concepts, such as ‘peoples’ and ‘self-identity’. Regarding the right to self-government, the Mexican Constitution now states in Article 2 that indigenous peoples are made up of communities, as a social, economic, and cultural unit, established in a territory and recognising their own authorities and traditions. Political representation of the communities, however, is only allowed before the municipal authorities, not before the federal or state governments. Furthermore, each state legislature - Mexico is composed of states each with their own Congress - should determine how these aspects of autonomy are to be exercised, taking into consideration ethno-linguistic and physical settlement criteria. This means states have specific duties with respect to indigenous communities, including regional development, bilingual and inter-cultural education, diffusion of indigenous cultural heritage, health provision and the obligation to undertake community consultation.

Source: De la Peña, G. 2006. [A New Mexican Nationalism? Indigenous Rights, Constitutional Reform and the Conflicting Meaning of Multiculturalism](#). *Nations and Nationalism* 12(2) 279-302.

²⁴ Ward, T. 2011. [The Right to Free, Prior, and Informed Consent: Indigenous Peoples’ Participation Rights Within International Law](#). *Northwestern Journal of International Human Rights* 10(2) 54-84.; See also: Aguilar, G. et al. 2010. [The Constitutional Recognition of Indigenous Peoples in Latin America](#). *Pace International Review Online Companion* 2(2) 44-96.

²⁵ Graham, L. 2004. [Resolving Indigenous Claims to Self-Determination](#). *ILSA Journal of International & Comparative Law* 10 385.

²⁶ Alfred, T. 2001. [From Sovereignty to Freedom: Towards an Indigenous Political Discourse](#). *Indigenous Affairs* 3(1) 22-34.

²⁷ Ibid.

²⁸ Ibid.

²⁹ Binder, C. 2012. Autonomy as Means to Accommodate Cultural Diversity? The Case of Indigenous Peoples. *ICL Journal* 2 248-258.

³⁰ Human Rights Council. 2007. [Report by the Special Rapporteur Rodolfo Stavenhagen on the Situation of Human Rights and Fundamental Freedoms of Indigenous People](#). U.N. Doc. A/HRC/6/15. Human Rights Council, New York.





including the right to self-government in their constitutions, then implementing innovative mechanisms to ensure effective realisation. Colombia's new 1991 Constitution, for example, establishes "territories for indigenous communities as a way to keep autonomy for the management of their interests including the right to govern through their own authority and administration of resources".³¹ In Mexico, indigenous peoples' right to autonomy is manifested through "the recognition of internal forms of coexistence as well as their social, economic and political organization; applying their own legal system to regulate and solve conflicts, subjected to the Constitutional principles; and preserving their traditional languages, rules and customs".³² Nicaragua established two regions on the country's Atlantic coast in which they recognise indigenous and ethnic minorities' right to self-government through democratically elected regional councils.³³

As can be observed in the Colombian and Nicaraguan cases, the right to self-government was explicitly linked to the right to land as a tool for empowerment and development. The Mexican Constitution, however, recognises the right to self-government without acknowledging the right to land, which many have argued limits the possibility for social, political and economic development, given that lack of access to natural resources or a specific territory creates obstacles to self-subsistence for indigenous people.

Spotlight on Indigenous Jurisdiction and Conflict Resolution

One key aspect of indigenous autonomy is the recognition of indigenous justice systems and conflict resolution mechanisms. Since the early 1990s, Latin American countries have been incorporating specific rights for indigenous communities into their legislation, which then paved 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
- the state's recognition of their internal normative system
- the power that indigenous authorities may have to resolve internal conflicts
- the state's respect for the decisions of indigenous authorities

Though the Latin American experience has been diverse, some common features of countries' responses include: ratifying international instruments related to indigenous rights; acknowledging indigenous justice systems in their constitutions; and undertaking measures to apply the human rights principles above in their secondary laws. This latter strategy has helped to effectively recognise indigenous jurisdiction and given indigenous peoples more accessible options for justice, with the benefits of faster and lower-cost justice services.

Bolivia, Colombia, Ecuador, Guatemala, Mexico, Panama, Peru and Venezuela are some of the most advanced cases in which ordinary justice has effectively coordinated with indigenous justice, enriching the very idea of justice by recognising and implementing indigenous jurisdiction. Nonetheless, there are still some key challenges faced in recognising indigenous justice, in particular the need for special protection for women, minors and members of other religions, as well as establishing dialogue with members of the judiciary to help them understand and apply legal regulations using an intercultural approach.

To learn more about different countries' efforts to recognise indigenous justice and the challenges they have faced, read the [ELLA Brief: Recognition of Indigenous Justice in Latin America](#).

Formal Acknowledgement of Rights to Land and Natural Resources³⁴

A key focus of the Latin American approach has been on land rights and autonomy over the use of natural resources found on that land. This section focuses on these rights for both indigenous groups and ethnic minorities.

Indigenous Right to Land

ILO Convention 169 establishes that "land is crucial for indigenous peoples' development, traditional institutions, and distinct cultural identity".³⁵ States are expected to adopt special measures to protect and enforce the right to land ownership and provide mechanisms to solve any possible conflict.³⁶ When states seek to exploit natural resources from indigenous land, ILO Convention 169 establishes mechanisms

³¹ [Constitution of Colombia](#). 1991. Art. 287.

³² [Constitution of Mexico. 2011](#). Art. 2.A. (Author translation).

³³ [Constitution of Nicaragua](#). 9 January 1987. Chapter VI.

³⁴ To learn more about indigenous land rights in the context of reducing conflict over extractive industries, see the [ELLA Brief: Indigenous People, Conflict and Extractive Industries: Latin American Approaches](#).

³⁵ International Labour Organisation (ILO). 2009. [Indigenous and Tribal People's Right in Practice: A Guide to ILO Convention No. 169](#). ILO, Geneva.

³⁶ ILO. 1991. [ILO Convention No. 169](#). Article 14.1, 14.2, 14.3, 15.1 and 15.2.





for consulting indigenous peoples, to ensure they participate in the benefits of this exploitation and are compensated for any possible damages.³⁷

In Latin America, there are no binding instruments that protect indigenous land rights. Instead, the Inter-American Court's decisions have been key in developing the scope and content of these rights in the light of ILO Convention 169, stressing indigenous peoples' special relationship with land, territory and natural resources.³⁸

Based on the general obligations to "respect" and "ensure" the "free and full exercise" of the rights recognised in the [American Convention on Human Rights](#), the Inter-American Court has ruled that states must adopt special protective measures to guarantee indigenous peoples' rights. In particular, it has ruled that this can only be achieved through adopting reforms to countries' domestic legal frameworks that ensure the real and effective enjoyment of such rights, specifically in relation to their territorial rights.³⁹

In that sense, the most successful cases of realising the right to land and natural resources are Nicaragua (1986), Colombia (1991) and Bolivia (1994).⁴⁰ These countries have modified both their constitutions and their legal frameworks to include the right to land and natural resources as an important means to ensure indigenous peoples' development and the maintenance of their traditional forms of organisation.

Colombia: Acknowledgement of Indigenous Land Rights

Colombia was active in recognising indigenous lands through its agrarian reform laws that helped to define full ownership and a high degree of autonomy by indigenous people over their territory, in particular by strengthening the *resguardos*, a communal figure of land property.⁴¹

In 1991, Colombia enacted a new constitution which included many human rights principles, established a renewed political organisation and recognised the ethnic and cultural diversity of the country. It also established the right of indigenous peoples to manage the political and administrative affairs of their territories by defining their own plans for land use and

environmental management based on their own traditions.⁴² Moreover, the constitution defined *resguardos* as entities of public administration at the local level, to be governed by "their own authorities", following the customary law of each indigenous community.⁴³ This means the territories cannot be sold, rented or governed by public authorities.

In 2001, the government enacted [Law 715](#) to guarantee that the indigenous territories recognised under the constitutional reform receive a specified percentage of available funding each year, to be used for education, health, housing, drinking water and economic initiatives.

Bolivia: Right to Indigenous Ownership

Bolivia's ratification of ILO Convention 169 in 1991 inspired important reforms to the country's constitution and secondary laws. In particular, the new Constitution of 1994 recognised ownership rights of indigenous people to their Communal Lands of Origin (CLO), a new designation created by the government, and rights to the sustainable use of their natural resources.⁴⁴ As a result, indigenous people and ethnic minorities have gained a greater degree of territorial autonomy, one that is formally recognised by the central government. Moreover, the government has declared indigenous land to be inalienable and perpetual, in order to prevent possible future expropriation or sale, and also indivisible, thereby ensuring collective land rights are maintained into the future.

In 1996, the government reformed the [Law of the National Service for Agrarian Reform No. 1715](#), which recognises the collective rights of indigenous people to their territories located in the northern part of the Bolivian Amazon region, designating them to be inalienable, indivisible, irreversible, collective and imprescriptible, composed of communities and groups of communities called *mancomunidades*.⁴⁵ The main achievement of the reform is the recognition of these groups' rights to the use and sustainable harvesting of the renewable natural resources contained in their lands.

³⁷ Ibid.

³⁸ Inter-American Commission on Human Rights. 2009. [Indigenous and Tribal Peoples' Rights Over their Ancestral Lands and Natural Resources](#). Inter-American Commission on Human Rights, Washington, DC.

³⁹ Ibid.

⁴⁰ Gómez, M. 2002. [Pueblos indígenas en América Latina. Entre el Estado y la Nación \(Indigenous Peoples in Latin America: Between the State and the Nation\)](#). *Anuario Social y Político de América Latina y el Caribe* 5 57-69.

⁴¹ Roldán Ortega, R. 2004. [Models for Recognizing Indigenous Land Rights in Latin America](#). World Bank, Washington, DC.

⁴² [Constitution of Colombia](#). 1991. Articles 7 and 246.

⁴³ [Constitution of Colombia](#). 1991. Articles 329 and 330.

⁴⁴ [Constitución de Bolivia](#). 1994. Article 171.

⁴⁵ [Law of the National Service for Agrarian Reform No. 1715](#), Article 3.



*The Case of Awas Tingni v. Nicaragua*⁴⁶

Thanks to its 1987 reforms, the Nicaraguan Constitution recognises “the existence of the rights of indigenous community of Nicaragua’s Atlantic Coast to the use and enjoyment of the waters and forests on their communal lands and the State must take all steps necessary to ensure their own cultural and economic development”.⁴⁷ However, despite the clear constitutional provision, in 1993 the government granted concessions to private companies on a part of the territory of the Awas Tingni, an indigenous group.⁴⁸

In response, the indigenous community filed a case before the Inter-American System to demonstrate the possible threats to their lands and resources that the state’s decision would cause. In its ruling, the Inter-American Court found that Nicaragua violated the right to judicial protection and the right to property (art. 25 and 21 of the IACHR), and ordered the state to adopt legislative and other measures necessary to create an effective mechanism for demarcating and titling Awas Tingni land and property.⁴⁹

As a result of the court’s ruling, the Nicaraguan state committed to a process of land demarcation and titling that it completed in 2009. It then enacted [Law No. 445](#), a specific legal instrument regulating indigenous peoples’ right to property, territory and natural resources.⁵⁰

Ethnic Minorities

In the Latin American region, a strong and vibrant movement for human rights advocacy has helped to make visible afro-descendant demands regarding racism and discrimination. These efforts resulted in the [Regional Conference of the Americas](#) in Santiago, Chile in 2000, which made important advances in defining afro-descendant peoples, and outlining the content of their rights and the measures states must take to protect and realise those rights. But it has been the role of the Inter-American Court in hearing cases relating to territorial claims since

2005, which has helped to define that ethnic minorities – like indigenous peoples – have a special relationship to ancestral land, territory and natural resources, and that the lack of access to these lands threatens their development, traditions and self-preservation.⁵¹

Even if most Latin American countries ratified ILO Convention 169 and pushed through legislative reforms to implement it, many ethnic minorities, like afro-descendant peoples, have not benefited much from these legal developments.⁵² Throughout the region, there are still some expressions of racism, discrimination and exclusion that deny ethnic minorities their right to self-determination and development.

Regarding the right to land and natural resources, Brazil, Colombia, Ecuador, Honduras and Nicaragua have formally recognised land entitlements for afro-descendants.⁵³ Beginning in the late 1980s and early 1990s, the constitutions of Brazil (1988) and then Colombia (1991) became the first to specifically mention the cultural and agrarian land rights of afro-descendant communities.⁵⁴

Brazil: Titling of the Quilombos

At the end of Brazil’s military dictatorship in 1988, the new constitution granted the Quilombolas, one of the most important afro-descendant groups in Brazil, the right to the title on their land. The constitution also mandates the protection and preservation of these federally-certified lands (or *quilombos*) by creating a specific institution devoted to assisting in the titling process.

This institution, called the [Palmares Foundation](#), a public organisation linked to the Ministry of Culture, was created to promote and protect afro-descendent culture in Brazil and secure the land titles for afro-descendant communities. By 2006, the foundation had identified “743 Quilombo communities, 42 of which have been officially recognised and 29 of which have received titles”.⁵⁵ Though an example

⁴⁶Inter-American Court. 2001. [Case of the Mayagna \(Sumo\) AwasTingni Community v. Nicaragua](#). August 31, 2001.

⁴⁷[Constitution of Nicaragua](#). 9 January 1987. Art. 5 and Art. 89.

⁴⁸Anaya, S., Grossman, C. 2001. [The Case of AwasTingni v. Nicaragua: A New Step in the International Law of Indigenous Peoples](#). *Arizona Journal of International and Comparative Law* 19 (1) 1-15.

⁴⁹Inter-American Court. 2001, above n 46.

⁵⁰ILO. 2009, above n 36.

⁵¹Dulitzky, A. 2010. [Cuando los Afrodescendientes Se Transformaron en “Pueblos Tribales”: el Sistema Interamericano de Derechos Humanos y las Comunidades Rurales Negras \(When Afro-Descendants Become “Tribal Peoples”: The Inter-American Human Rights System and Rural Black Communities\)](#). *El Otro Derecho* 41 13-48.

⁵²Reales. 2008, above n 10.

⁵³Inter-American Dialogue. 2004. [Constitutional Provisions and Legal Actions Related to Discrimination and Afro-descendant Populations in Latin America](#). Inter-American Dialogue, Washington, DC.

⁵⁴Bello. 2006, above n 2, 5.

⁵⁵Minority Rights Group International. [World Directory of Minorities and Indigenous Peoples - Brazil: Overview, 2007](#). Minority Rights Group International, online publication.



of a success, this case also demonstrates governments' challenges in recognising ethnic minorities' right to property; the process is lengthy and complex, and public officials often had difficulties deciding whether a given territory should be defined as ancestral land.

Colombia: Land Titling in the Pacific

In 1991, during the political transition that ended up reforming the country's political system, the National Constituent Assembly enacted one of the most advanced constitutions in Latin America. The activism of afro-descendant consciousness-raising movements was critical during the transition of the Colombian system to ensure that their rights were included in this constitution. The constitution recognises special rights of minority groups, such as the collective right to land and natural resources to peoples settled on the Colombian Pacific, rights which must then be developed through secondary laws governing their implementation.⁵⁶

In 1993, Congress enacted [Law 70](#) that guarantees the right to land and natural resources to afro-descendent communities in the areas of Colombia along the coast of the Pacific Ocean, the geographic area considered to be their ancestral territory. It designates these collective titles as inalienable, protected from seizure and exempt from statutes of limitations. Regarding the right to natural resources, the law excludes collective ownership of renewable and non-renewable natural resources.⁵⁷ However, it does recognise all forms of traditional exploitation of these resources, and protects them from any attempt of prohibition from the state.⁵⁸ Overall, the main achievement of Law 70 is the titling of 95% of the territory of the forty-five Afro-Colombian-majority municipalities along the Pacific coast.

COURT RULINGS AT THE REGIONAL LEVEL

The Inter-American Courts' role has been significant in enforcing the content and the scope of collective and other rights for indigenous and ethnic minorities. In many cases, decisions on emblematic cases have helped to open the

discussion about immediate actions countries should take to guarantee the effective exercise of indigenous and ethnic minorities' rights. In other cases, court decisions have helped to modify traditional human rights concepts, complementing them with new cultural approaches. To help illustrate the role the court has played, this section highlights two of the key rights related to indigenous people that the regional court has influenced: consultation rights and the right to redress.

The Right to Consultation: Defending Community Control Over Natural Resources

In Latin America, one of the main demands of indigenous movements is regaining their ancestral lands and territories and taking control over their natural resources, which were often given away without their consent to state and private enterprises for exploitation in the name of development. To do so, Latin American indigenous peoples have turned to the Inter-American Human Rights System and to their national courts, with some notable successes. This strategy has helped to deepen the conceptualisation of the right to consultation⁵⁹ and its role as a mechanism to protect other collective rights of indigenous and tribal peoples. Moreover, the development of domestic and international case law has helped to underline the importance of land recognition to indigenous peoples in the face of competing interests of other private actors over the land.

Many Latin American countries - such as Bolivia, Chile, Colombia, Costa Rica, Guatemala, Mexico and Peru - have included the right to consultation in their constitutions, but without establishing concrete mechanisms to do so, such as through complementary legislation to govern how and when consultation actually takes place. Peru, though, has advanced greatly in this regard, becoming the only country in the region with a specific law requiring prior consultation processes. [Law 29785](#) was approved by the Peruvian Congress in 2011 as a direct response to the violent social conflict that occurred in 2009 between the government and indigenous people over the development of extractive industry activities in the province of Bagua, located in the Peruvian Amazon.

⁵⁶ Constitution of Colombia. Article 55.

⁵⁷ Rapoport Center for Human Rights and Justice, Robert S. Strauss Center, Lilas. 2007. [Unfulfilled Promises and Persistent Obstacles to the Realization of the Rights of Afro-Colombians](#). Report on the Development of Ley 70 of 1993, submitted to the Inter-American Commission on Human Rights. Rapoport Center for Human Rights and Justice, Robert S. Strauss Center, Lilas, Austin.

⁵⁸ Congreso de Colombia, 1993: [Law 70](#). Chapter IV, article 19.

⁵⁹ And of the procedure that should be followed to ensure the fulfilment of the right to consultation. In this sense, the Inter-American Court and the Latin American courts have also specified the criteria that international law has established for consultations to indigenous and tribal peoples. These criteria are: 1) good faith, this is to say, the commitment to reach a common agreement; 2) the provision to populations of all the relevant information on the projects to be developed; 3) the consultation's adaptation to the cultural and social characteristics of the populations consulted; 4) the commitment to reach an agreement, meaning that consultation is not a mere procedure and that the opinion of the population is truly taken into account; and 5) the consultation should be carried out before making any decision that affects indigenous and tribal peoples. Rodríguez, C. *et al.* 2010.



In this context, the role that the Inter-American Court has played in enforcing and expanding the right to consultation has been key. To learn more about Latin American countries' efforts to promote consultation rights, and in particular the role of the regional and national courts, read the [ELLA Brief: Defending Latin America's Indigenous and Tribal Peoples' Rights through Laws and the Courts](#).

Gender, Collective Redress and Indigenous Rights

In democratic transitions, many countries focused on creating legal frameworks that recognise the rights of victims of human rights violations and establish conditions for their non-repetition. In the context of the multicultural make-up of so many of the region's nations, there was a growing awareness that the right to reparations and access to justice needed to respond to different cultural meanings and worldviews.

The case of Inés Fernández vs. the Mexican State, reviewed by the Inter-American Court, represents a great advancement for establishing the scope of indigenous rights and states' obligation to provide redress. In this emblematic case, the Inter-American Court granted collective reparations aligned with the victim's understanding of justice from her own cultural standpoint, and with reparations that not only benefited herself, but also her community. The ruling set an important precedent for implementing the right to reparations for indigenous peoples at the regional level. To learn more about the case and its implications, read the [ELLA Brief: Victims' Rights in Multicultural Contexts: The Case of Ines Fernandez at the Inter-American Court of Human Rights](#).

INTERCULTURAL PUBLIC POLICIES

The idea of intercultural policies has emerged in Latin America as a result of indigenous movements' demands for self-recognition, including of their culture and traditions, and preservation of their language. The 'intercultural' concept, mainly developed by Latin American anthropologists who worked closely with indigenous and afro-descendant people during the 1970's, clearly rejected the acculturation

approach adopted by Latin American countries aiming for "the suppression of indigenous cultures and their assimilation into a monolingual culture where Spanish and Western culture predominated".⁶⁰ Since then, countries in the region have implemented specific intercultural policies, two of which we focus on here: education and health.

Education and Indigenous and Ethnic Minority Rights

One of the key ways cultural assimilation was seen to take place was through instruction in the Spanish language as a tool to accelerate the assimilation process. Yet indigenous students "who had to learn Spanish, a foreign language to them, started to slow down their learning and many of them repeat each grade for 2 or 3 years".⁶¹ In response to the negative impact on education outcomes, many Latin American countries adopted a bilingual education model, at first as a tool for assimilation, but in recent years as a way of strengthening the "ethnic-cultural identities of the indigenous groups by readopting cultural traditions, the revival of native tongues and the banishment of internalized racism".⁶²

With over 650 indigenous groups and more than 550 different languages spoken in 21 countries, Latin America is one of the most linguistically and culturally diverse regions of the world.⁶³ Nowadays, some Latin American countries have begun to see intercultural policies as a strategy to ensure social cohesion and as an opportunity to re-evaluate the relationship between different social groups in efforts to achieve a more equitable society.⁶⁴

By the beginning of the 1990s, inspired by developments in international law and by the work of indigenous movements, the constitutions of Mexico (1992), Paraguay (1992), Peru (1993), Bolivia (1994) and Ecuador (1998) were modified to explicitly recognise the multicultural nature of their countries and enforce the protection of cultural and linguistic rights.⁶⁵ The region is witness to some successful cases of deep transformation in providing education services that aim to protect and promote indigenous and ethnic minority rights, such as those in Bolivia, Ecuador and Mexico discussed below. Perhaps not surprisingly, these countries share common

⁶⁰ Internacional de la Educación. 2009. [Intercultural Multilingual Education in Latin America: Mexico, Guatemala, Colombia, Brazil, Ecuador, Peru, Bolivia and Paraguay, and Norway](#). Education International Latin America Regional Office, San Jose.

⁶¹ Medina-López-Portillo, A., Sinnigen, J. 2009. [Interculturality vs. Intercultural Competencies in Latin America](#). In: Deardorff, D. (ed). *Sage Handbook of Intercultural Competence*. Sage Publications, Inc., Thousand Oaks.

⁶² Ibid.

⁶³ López, L.E. 2009. [Reaching the Unreached: Indigenous Intercultural Bilingual Education in Latin America](#). Background paper prepared for the Education for All Global Monitoring Report 2010. UNESCO, Paris.

⁶⁴ Ferrao, V. M. 2010. [Educación Intercultural en América Latina: Distintas Concepciones y Tensiones Actuales](#) (Intercultural Education in Latin America: Different Conceptions and Current Tensions). *Estudios Pedagógicos* 36(2) 333-342.

⁶⁵ López. 2009, above n 63.





features such as a representative indigenous population and a long tradition of recognising bilingual education.

Bolivia: Bottom-up Demand for Bilingual Education

The education reform pushed through in Bolivia in 1994, in the context of the overall constitutional reform, aimed to implement multilingual education as a national-level project by including all 30 Bolivian indigenous languages, especially the most widely spoken languages of Quechua, Aymara and Guarani.⁶⁶ Indigenous groups' activism in their communities was key to opening up spaces in the political agenda to include intercultural education as a national policy. In Bolivia, the indigenous educational demands go from basic to higher education. The Bolivian government is also in the process of creating three indigenous language medium-sized universities.⁶⁷

Ecuador: Local Actors

Complementary to the democratic transition taking place in Ecuador in the mid-1980s, CSOs and indigenous movements were demanding the use of bilingual education as an important component of their formal recognition as indigenous citizens. In response, the government began a literacy campaign in an indigenous language, Quechua, which attracted the participation of indigenous groups. It also had spill-over effects, generating support for other intercultural projects, like the Simiatug indigenous schools and the Cotopaxi Indigenous Educational System, with support from a [Salesian Mission](#), a Roman Catholic mission that supports people living in poverty and focuses on providing culturally-appropriate education to indigenous people.⁶⁸ These initiatives' main emphasis was on the use of the indigenous mother tongue as a language of instruction, as well as on training teachers who come from the indigenous community itself.

Mexico: Long History of Indigenous Bilingual Education

Mexico, a country with one of the strongest national indigenous policies, represents a successful experience of a long history of indigenous bilingual education, as a result of the joint work

MEXICO AND THE EXPERIENCE OF THE INDIGENOUS PROFESSIONAL ADVICE CENTRE

The Indigenous Professional Advising Centre for Defence and Translation (CEPIADET for its Spanish acronym), came together with Fundar, the authors of this Guide, to develop an observatory for indigenous people's linguistic rights within the justice system. An observatory (*Observatorio* in Spanish) is a mechanism designed and used by civil society to exercise oversight of government performance. Most observatories are created by universities and research centres, or by a coalition of a number of these groups, and many focus on overseeing the activities of the judiciary.⁶⁹

CEPIADET had been working to build citizen participation mechanisms that support the government in recognising and guaranteeing the rights of the diverse cultural groups living in Oaxaca. At the same time, Fundar had been putting into practice different methodologies to strengthen CSOs to make their demands for rights and government accountability more effective.

Both organisations came together to perform a monitoring exercise to understand how offices of the judiciary were performing in terms of guaranteeing the linguistic rights of Oaxaca's indigenous people. Data collection included dozens of requests for government information using formal right to information mechanisms, in order to gather information that could depict the policies implemented to guarantee linguistic rights, indicators of results and approved and executed budgets. Government officials and indigenous translators were also interviewed to assess their perceptions and knowledge of linguistic rights. An analysis of the legal framework helped identify public authorities' specific obligations in relation to linguistic rights.

A reality previously known only through the personal experiences of the indigenous people that dealt with the state's justice offices, became depicted in a solid, systematic and evidence-based [research report](#), which was made public to the media, government officials, academia and the public. This work opened advocacy and communication channels between CEPIADET and federal and local government institutions, helping them to continue conducting monitoring activities and deepening their knowledge and analysis of the status of linguistic rights.

Source: [Centro Profesional Indígena de Asesoría Defensa y Traducción AC](#) (Indigenous Professional Centre of Consultancy)

⁶⁶ Hornberger, N. 2009. [Multilingual Education Policy and Practice. Ten Certainties \(Grounded in Indigenous Experience\)](#). *Working Papers in Educational Linguistics* 24(2) 1-18.

⁶⁷ López. 2009, above n 63, 65.

⁶⁸ Ibid.

⁶⁹ Herrero, A., López, G. 2010. [Access to Information and Transparency in the Judiciary: A Guide to Good Practice From Latin America](#). Governance Working Paper Series. World Bank, Washington, DC.; A number of Latin American observatories also focus on monitoring progress and compliance with women's rights. To learn more, read the [ELLA Brief: Observatory of Maternal Mortality in Mexico](#).



between the government and academics.⁷⁰ The Mexican Ministry of Education has produced numerous books in most indigenous languages spoken in the country, for use in language education and for child and adult literacy programmes. In addition, a specially-created public sector organisation, the National Council for Education (CONAFE for its Spanish acronym) has developed materials for bilingual education and established a training programme so community teachers can provide instruction in the local language.⁷¹

In 2003, Mexico enacted a new [law for the linguistic rights of indigenous peoples](#) and created the [National Commission for Indigenous Peoples' Development](#). At the same time, many CSOs and indigenous organisations were pushing for improved educational quality in both rural and urban areas. One example is the case of the [Indigenous Professional Advice Centre](#) in Oaxaca, and their work protecting the language rights of indigenous people in the justice system and guaranteeing the collective right to justice that reflects their worldviews (see Text Box previous page).

Intercultural Health Policies

The lack of understanding of indigenous and ethnic minorities' world vision and ancestral traditions contributes to non-

inclusive public policies and discrimination in accessing and benefitting from public health services.

The Latin American region is home to interesting advances in promoting the right to health from an intercultural perspective that not only takes into account indigenous peoples' own traditions but also includes their active involvement in designing the policies. Building regional guidelines to include an intercultural approach when designing health policies, such as those of the Pan-American Health Organisation, as well as creating institutions to implement an intercultural approach are just some of the strategies undertaken 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. The case of Ecuador represents a significant effort by the government to achieve collective participation in the implementation of multiculturalism in hospital services. The second case, from Guerrero, a southern province in Mexico, shows how CSO involvement was key to improving health standards for indigenous people. To learn more about these cases and about intercultural health policies in the region, read the [ELLA Brief: Intercultural Health Policies in Latin America](#).

CONCLUSION

The indigenous movements that emerged in the Latin America region collectively articulated demands for states to recognise a broader, more inclusive conception of citizenship. In that context, the indigenous peoples' movement managed to influence the political agenda to include specific demands in domestic frameworks and successfully impact the design of public policies. Most Latin American countries with a high percentage of indigenous populations have recognised the multicultural and collective nature of their societies, and explicitly recognised indigenous and ethnic minorities as important actors within the country. As for their formal recognition, some collective rights, such as the right to land and natural resources, have been protected in domestic frameworks. Many collective mechanisms for social participation have also been adopted to enforce indigenous peoples' rights in the face of private interests.

The role of the regional court and the Inter-American System has been key in enforcing the content and scope of indigenous and ethnic minority rights. Court decisions on emblematic cases have helped to open the discussion about immediate actions that guarantee the effective exercise of indigenous and ethnic minority rights. In some cases, court decisions have also helped to modify traditional concepts like justice and the right to redress, expanding them to include a collective approach.

Finally, another successful lesson from the Latin American experience is the design of public policies inspired by intercultural principles that have helped to empower indigenous populations and better serve their needs. This can be seen through intercultural policies related to education and health, but also in the reformulation of concepts like justice and redress by including indigenous peoples' principles and worldview relating to collective rights and values.

⁷⁰ Ibid.

⁷¹ Ibid.

CONTEXTUAL FACTORS

ENABLING SUCCESSFUL LATIN AMERICAN APPROACHES



The conditions of poverty, social and economic exclusion, and rights abuses that many indigenous peoples and ethnic minorities were facing in Latin America helped to collectively articulate a movement demanding states' formal acknowledgement of self-recognition of a collective and multicultural actor with rights, and a more inclusive idea of citizenship based on a collective and ethnic identity.

The support of key social actors has been strategic to promote indigenous demands in the local and international arena, such as the left-leaning church, as well as international and regional networks interested in human rights advocacy.

But it has been the development of international public law that contributed in many Latin American countries to creating a serious commitment to adopting mechanisms to recognise indigenous and collective rights, modifying

domestic legal frameworks and adopting public policies based on indigenous principles and culture.

The emergence of a generation of indigenous leaders who have been democratically elected in countries with high indigenous populations, such as in Bolivia and Ecuador, has helped advance progress, such as by adopting innovative mechanisms in key areas such as education, health care and political participation.

The role of the regional human rights court has also been key in defining states' obligations towards indigenous peoples and ethnic minorities. Moreover, it has contributed to building new concepts of justice, mainly inspired by indigenous peoples' principles and values. From an intercultural approach, this represents an innovative lesson about how to expand and modify the idea of justice, ultimately feeding back to support regional and national courts to develop a new, broader concept of rights.

LESSONS LEARNED

1 The development of collective rights at the international and regional level has helped to strengthen indigenous and ethnic minority demands for state recognition in their own countries.

2 The Latin American experience demonstrates that a regional human rights court can be an effective actor pushing forward progressive improvements in indigenous rights. In particular, the court has shown to be effective in addressing citizen complaints through specific cases and by pushing for broader concepts related to indigenous rights.

3 In Latin American countries, the right to self-determination - itself the founding principle of collective rights - has been protected through the right to self-government as a way to recognise indigenous and ethnic minorities right to political representation.

4 States have to ensure indigenous and ethnic minorities right to participate as a collective actor in matters that directly affect their own interests, especially in comparison with competing private interests, though as the Latin American experience shows, this is a challenge.

5 Building and implementing public policies based on intercultural principles represents a useful tool for indigenous and ethnic minority empowerment, while at the same time that dealing with structural exclusion.

6 Latin America's innovative experience in collective redress cases has helped to advance indigenous rights in other regions and to build a more inclusive idea of justice among regional and national courts.



KNOWLEDGE PARTNERS

The following list highlights some of the key organisations working on issues related to indigenous peoples and ethnic minorities in Latin America. To find out more about these and other organisations, see the [ELLA Spotlight on Organisations](#).

International and Regional Organisations

[Consejo Indígena de Centroamérica](#) (Central American Indigenous Council) is a Central American indigenous organisation that brings together local organisations from, Belize, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama, to advocate for the right to self-government and autonomy for indigenous peoples. The *Consejo* aims to advance the status of indigenous people by strengthening their capacities through courses and workshops on indigenous culture, collective rights, political participation and sustainable development. Moreover, they promote a Central American indigenous women's network to foster wider participation of women in pushing for indigenous rights.

[International Indigenous Women's Forum](#) is an international initiative created during the Fourth World Conference on Women held in Beijing (1995). It mainly focuses on building indigenous women leaders' capacities to participate on an equal footing in decision making processes in their local contexts. The Forum has developed networks throughout Africa, Asia and Latin America, and works on issues such as increasing women's access and presence in decision making, training and education, identifying factors that contribute to violence, and supporting development projects. Their [database of indigenous women's organisations](#) can be searched by country, offering readers access to key Latin American groups.

[International Work Group for Indigenous Affairs](#) (IWGIA) is an international civil society organisation founded in 1968 by a group of anthropologists concerned with the genocide of indigenous peoples in the Amazon. Their experience inspired the creation of a multidisciplinary network aiming to document the situation of indigenous peoples and advocate for improvements in their rights. The IWGIA holds consultative status with the United Nations Economic and Social Council (ECOSOC) and is an observer to the Arctic Council. Though international in scope, they do significant work in the region through their [programming in Central and South America](#).

National Organisations

[Asociación Interétnica de Desarrollo de la Selva Peruana](#) (Inter-ethnic Association for the Development of the Peruvian Amazon) is a Peruvian organisation representing the indigenous peoples of the Amazon and articulating their demands to preserve and develop their cultural identity, territory and shared values. They implement a variety of programmes aiming to strengthen citizen capacities in areas such as intercultural health and education, and access to land and natural resources.

[Centro Profesional Indígena de Asesoría Defensa y Traducción](#) (Indigenous Professional Centre for Advice, Defense and Translation) is a Mexican CSO made up of young indigenous advocates from Oaxaca, a southern Mexican province, focused on the recognition of the rights of indigenous peoples and communities, respecting their autonomy, self-determination and their customs. They have been actively working to defend and protect indigenous cultural and linguistic rights and to build mechanisms for effective citizen participation.

[Fundação Cultural Palmares](#) (Palmares Cultural Foundation) is a Brazilian public sector institution that works under the Ministry of Culture and aims to promote and preserve Afro-Brazilian culture. The organisation formulates and implements policies that enhance the participation of afro-descendants in the country's development process, and has contributed to important advances in the recognition of ethnic minorities' rights to land and natural resources.

[Observatorio Ciudadano](#) (Citizen Oversight Observatory) is a Chilean organisation that brings together citizens from around the country, from various professions and ethnicities, to work on advocacy efforts and promoting and documenting indigenous rights. In July 2008, they launched an interesting project to monitor the Chilean government's compliance with international standards for human and indigenous rights.

[Tlachinollan](#) is a CSO from the state of Guerrero, in southern Mexico, that works to promote and defend indigenous human rights by working closely with indigenous communities, providing education in human and indigenous rights and supporting victims whose rights have been violated. They have also developed an innovative project called the 'Observatory of the Armed Forces and the Police' (MOCIPOL in Spanish), that documents abuses by security forces and monitors the functioning of the police in the region.

RECOMMENDED READING

This list highlights some of the key publications related to indigenous and ethnic minority rights in Latin America. To find out more about these and other publications, see the [ELLA Spotlight on Publications: Indigenous and Ethnic Minority Rights](#), as well as the [ELLA Spotlight on Publications: Intercultural Health Policies](#).

Aguilar, G. *et al.* 2010. [The Constitutional Recognition of Indigenous Peoples in Latin America](#). *Pace International Review Online Companion* 2(2) 44-96.

De la Peña, G. 2006. [A New Mexican Nationalism? Indigenous Rights, Constitutional Reform and the Conflicting Meaning of Multiculturalism](#). *Nations and Nationalism* 12(2) 279-302.

Graham, L. 2004. [Resolving Indigenous Claims to Self-Determination](#). *ILSA Journal of International & Comparative Law* 10 385.

Hornberger, N. 2009. [Multilingual Education Policy and Practice. Ten Certainties \(Grounded in Indigenous Experience\)](#). *Working Papers in Educational Linguistics* 24(2) 1-18.

Human Rights Council. 2007. [Report by the Special Rapporteur Rodolfo Stavenhagen on the Situation of Human Rights and Fundamental Freedoms of Indigenous People](#). U.N. Doc. A/HRC/6/15.

Inter-American Commission on Human Rights. 2009. [Indigenous and Tribal Peoples' Rights Over their Ancestral Lands and Natural Resources](#). Inter-American Commission on Human Rights, Washington, DC.

International Labour Organisation (ILO). 2009. [Indigenous and Tribal People's Right in Practice: A Guide to ILO Convention No. 169](#). ILO, Geneva.

López, L.E. 2009. [Reaching the Unreached: Indigenous](#)

[Intercultural Bilingual Education in Latin America](#). Background paper prepared for the Education for All Global Monitoring Report 2010. UNESCO, Paris.

Martí Puig, S. 2010. [The Emergence of Indigenous Movements in Latin America and Their Impact on the Latin American Political Scene](#). *Latin American Perspectives* 37(6) 74-92.

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

LEARN MORE FROM THE ELLA BRIEFS

[Defending Latin America's Indigenous and Tribal Peoples' Rights through Laws and the Courts](#)

In light of the boom in development projects in Latin America, indigenous and tribal peoples have been particularly successful in enforcing their consultation rights by bringing emblematic cases before their national and regional human rights courts.

[Intercultural Health Policies in Latin America](#)

Intercultural health policies have been implemented at the regional and state level, making important initial advances in recognising a health model that is pertinent to indigenous peoples' culture and customs.

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

Thanks to progressive courts and the pressure of organised indigenous and social movements, Latin American countries are at the forefront of formally acknowledging indigenous justice systems.

[Victims' Rights in Multicultural Contexts: The Case of Inés Fernández at the Inter-American Court of Human Rights](#)

Through this ground-breaking case, the Inter-American Court of Human Rights set an important precedent: ordering reparations for the entire indigenous community in the case of human rights violations against one member of that community.

CONTACT FUNDAR

To learn more about indigenous and ethnic minority rights experiences in Latin America, contact the author, Cecilia Toledo, an expert in human rights studies and ELLA Project Researcher, at cecilia@fundar.org.mx.



FIND OUT MORE FROM ELLA

To learn more about the Latin America experience in advancing indigenous and ethnic minority rights, read the rest of the [ELLA knowledge](#) materials on this theme. To learn more about other issues, browse other [ELLA Themes](#).

ELLA is supported by:

