



SPOTLIGHT ON PUBLICATIONS: INDIGENOUS AND ETHNIC MINORITY RIGHTS



Indigenous and ethnic minorities are recognised under international law as a collective group with a shared identity and specific rights that governments should protect and guarantee via national frameworks and innovative public policies. The publications presented in this Spotlight cover some of the key issues related to indigenous and ethnic minority rights in Latin America, with a particular focus on: the evolution and character of [indigenous movements](#); [ethnic minority rights](#); [legal reforms](#) for formally recognising collective rights; [intercultural education policies](#); and [access to justice](#).

INDIGENOUS MOVEMENTS IN LATIN AMERICA

► [The Emergence of Indigenous Movements in Latin America and their Impact on the Latin American Political Scene](#)

The indigenous movement in Latin America has been characterised by demands for self-identity and government recognition of collective rights. In this article, the author argues that a combination of factors including the transition to democracy, new political rules, a worldwide network of indigenous protests and regional advocacy networks, and the presence of certain allies like the left-wing church and local anthropologists, serves to explain the emergence of a visible and influential indigenous movement in the Latin American region.

Full citation: Salvador, M. P. 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.

► [Understanding Latin America Indigenous Movements: From Marginalisation to Self-Determination and Autonomy?](#)

This report describes the different roles played by indigenous peoples throughout Latin American history. From representing almost 90% of the total regional population, European colonisation and control policies quickly turned indigenous peoples into a minority group. More recently, however, regional factors such the emergence of a leftist movement seeking to promote changes within the church and political parties, the activism of civil society movements and, later on, transitions to democracy have all been key in inspiring the organisation of indigenous movements. From being marginalised actors, indigenous people in the region have organised into a collective group to gain political ground and the formal acknowledgement of collective rights. Currently, claims for self-determination and autonomy by indigenous groups wanting to exercise a different kind of citizenship are controversial issues being debated within Latin American governments.

Full citation: Salinas de Dosch, A.L. 2012. *Understanding Latin America Indigenous Movements: From Marginalisation to Self-determination and Autonomy?* Paper prepared for the 3rd International Seminar and Workshop on Latin American and Asian Studies held by the Institute for Occidental Studies. University Kebangsaan Malaysia.



ETHNIC MINORITY RIGHTS

▶ [The Human Rights Protection Regime for Afro-Descendants: The Case of Latin America and the Caribbean](#)

The author of this article argues that the historic demand of indigenous peoples for government recognition within a broader concept of citizenship has been successfully addressed, since many Latin American governments have now developed national frameworks that formally recognise collective rights. Yet these achievements do not benefit Afro-descendants who represent a large community in some Latin American countries. By exploring the challenges faced by Afro-descendants, in particular in relation to gaining official recognition as an ethnic minority with particular human rights, the article demonstrates that Afro-descendant organisations have played a key role in the emergence of a specific regime protecting their rights. Moreover, the activism of these organisations before regional human rights courts has resulted in new guidelines on government obligations towards ethnic and minority groups in terms of access to land, self-government and human rights.

Full citation: Leonardo, R. 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.

▶ [The Situation of People of African Descent in the Americas](#)

In Latin America almost 30% of the population is Afro-descendant. Yet this community continues to live in conditions of poverty, suffers discrimination and is often excluded from development projects and social initiatives because its members are still largely invisible to governments and societies. This report represents the first attempt to analyse the situation of African descendants in Latin America, describing their social and economic conditions, their access to human rights and the measures adopted by Latin American governments to support them. The Inter-American Commission on Human Rights calls upon governments to implement measures to combat structural discrimination and racism in order to fulfil their obligations to protect, defend and guarantee Afro-descendant rights, and especially to ensure access to effective judicial mechanisms. The Inter-American Commission also recommends coordinating efforts with civil society organisations (CSOs) in order to empower African descendants and to increase awareness of their rights.

Full citation: Inter-American Commission on Human Rights. 2011. *The Situation of People of African Descent in the Americas*. OEA Ser.L/V/II.Doc.62. Inter-American Commission on Human Rights, Washington, DC.

LEGAL REFORMS

▶ [The Constitutional Recognition of Indigenous Peoples in Latin America](#)

This document compares 15 constitutions - from Argentina, Bolivia, Brazil, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru and Venezuela - to identify how the rights of indigenous people have been formally recognised in different contexts. This analysis offers the reader guidelines on how issues such as cultural diversity, self-determination, political participation, access to land and natural resources, indigenous languages, intercultural public policy and customary indigenous law can be protected through national legal frameworks.

Full citation: Aguilar, G., Lafosse, S., Rojas, H. and Steward, R. 2010. The Constitutional Recognition of Indigenous Peoples in Latin America. *Pace International Review Online Companion* 2(2) 44-96.



▶ [Empty Promises or Impulses for Progress? Constitutional Reform and the Rights of Indigenous Peoples in Latin America](#)

The author of this essay examines whether constitutional reforms in Latin America have in fact consolidated democracy and led to improvements in the political and socio-economic situation of indigenous people. By focusing on three specific cases of constitutional reform in Ecuador, Peru and Venezuela, the author shows that even when strong and visible indigenous organisations have influenced processes of constitutional reform, this has not necessary led to the full realisation of indigenous rights. The country case studies also demonstrate that constitutional reforms were most successful when local actors advocated for their implementation at the local level.

Full citation: Laura, G. 2006. *Empty Promises or Impulses for Progress? Constitutional Reform and the Rights of Indigenous Peoples in Latin America*. Senior Comprehensive Exercise, Carleton College.

▶ [Indigenous and Tribal Peoples' Rights Over Their Ancestral Lands and Natural Resources](#)

This document assesses the rights of indigenous and tribal peoples over their territories, lands and natural resources based on three Rapporteurships on the Rights of Indigenous Peoples carried out by the Inter-American System. Analysing legal interpretations used by the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights, the report discusses the challenges of and progress towards the effective realisation of human rights by indigenous peoples in the region. This publication provides a useful guide to the scope and content of collective rights protected by regional instruments in Latin America.

Full citation: 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.

▶ [Law, Language and the New Latin American Constitutions](#)

During the transition to democracy, many Latin American countries pushed forward reforms that reflect the norms of a new political regime inspired by human rights and the formal acknowledgement of multiculturalism. This article presents an overview of three different pathways taken by Latin American countries to incorporate multiculturalism into their national constitutions and protect language rights. Firstly, in Brazil a new constitution was created which formally recognises the pluricultural character of the country. Second, the author draws our attention to Bolivia where the constitutional protection of language rights has helped to strengthen indigenous peoples' self-identity. Third, by translating the constitution into seven native languages, the Government of Colombia has attempted to make the text accessible to speakers of a native language.

Full citation: Colón-Ríos, J. I. 2011. Law, Language and the New Latin American Constitutions. *Victoria University of Wellington Legal Research Papers* 3(4) 1-20.

▶ [Models for Recognizing Indigenous Land Rights in Latin America](#)

The author of this text argues that the existence of two regimes that acknowledge indigenous peoples' land rights in different ways - a state regime and an indigenous one - limits the effectiveness of both. Based on evidence from 17 countries on various types of indigenous regimes, the author identifies common problems affecting indigenous land rights, such as a lack of consensus on legal and institutional definitions. Case studies from Colombia, Costa Rica, Panama and Peru provide examples of how the two regimes have been successfully incorporated into national constitutions that address controversial issues such as land tenure, territorial recognition, natural resource rights and political autonomy.

Full citation: Roldán Ortega, R. 2004. *Models for Recognizing Indigenous Land Rights in Latin America*. World Bank, Washington, DC.



▶ [New Constitutionalism in Latin America from a Comparative Perspective: A Step Towards Good Governance?](#)

Consisting of a compendium of opinions from international experts, this conference report argues that even if Latin American countries have undertaken constitutional reforms to reflect a new political regime and respect for human rights, only a few have managed to implement specific regulations to protect indigenous rights. The report highlights the cases of Bolivia, Colombia, Ecuador and Venezuela where governments have adopted 'transformative constitutions' that include innovative regulations inspired by other traditions, such as from indigenous culture. This report offers readers the chance to improve their knowledge about current discussions and lessons being generated in Latin America on a range of issues pertinent to indigenous rights such as self-identification, the right to free, prior and informed consent, and indigenous jurisdiction.

Full citation: Barrera, A., Detlef, N., Schilling-Vacaflor, A. 2010. *New Constitutionalism in Latin America from a Comparative Perspective: A Step Towards Good Governance?* Conference Proceedings. German Institute of Global and Area Studies, Hamburg.

▶ [A New Mexican Nationalism? Indigenous Rights, Constitutional Reform and the Conflicting Meaning of Multiculturalism](#)

Within the context of widespread political and economic crisis starting in 1982, the Government of Mexico made constitutional amendments, which, some argue, were also motivated by pressure from indigenous groups. These amendments inspired the emergence of local indigenous groups calling for the implementation of new strategies to formally acknowledge their collective rights and institutions. According to the author of this article, on-going disagreements between political and social actors on the definition and practicalities of 'inclusive citizenship' presented serious challenges to negotiations. Two of the main points of contention relate to multiculturalism - viewed as a threat of social fragmentation by some and as an opportunity for indigenous empowerment and participation by others - and the definition and degree of indigenous political autonomy.

Full citation : 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.

▶ [The Right to Free, Prior, and Informed Consent: Indigenous Peoples' Participation Rights Within International Law](#)

In spite of the internationally recognised right to free, prior and informed consent, which aims to protect indigenous peoples' right to make open and informed decisions about the development of large-scale projects on ancestral lands, the practical implementation of this right is the subject of on-going debate and controversy. By analysing two case studies in Canada and Guatemala, the author shows that governments are failing to provide adequate mechanisms for consultation which should ensure indigenous participation and provide compensation for any possible damages. Instead, the author concludes that the realisation of this right is still dependent on the 'good-will' of governments to consult with indigenous people prior to implementing actions that may affect their traditional use of resources.

Full citation: 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) 55-84.



► [Unfulfilled Promises and Persistent Obstacles to the Realization of the Rights of Afro-Colombians](#)

This paper provides a report on a fact-finding mission to Colombia, the country with the most advanced legislation (Law 70) in Latin America for guaranteeing collective rights to Afro-descendants. The main objective of the paper is to review the level of implementation of this law in different areas like collective rights to land, education, economic development and local governance. Drawing on interviews conducted with local actors, this report presents a well-researched evaluation of good practices in protecting land rights and highlights on-going challenges faced by Afro-Colombian communities.

Full citation: Inter-American Commission on Human Rights. 2007. *Unfulfilled Promises and Persistent Obstacles to the Realization of the Rights of Afro-Colombians*. University of Texas, Houston.

INTERCULTURAL EDUCATION POLICIES¹

► [Intercultural Multilingual Education in Latin America: Mexico, Guatemala, Colombia, Brazil, Ecuador, Peru, Bolivia and Paraguay, and Norway](#)

Intercultural policies emerged in Latin America as a result of demands from indigenous movements for state recognition of their right to preserve their culture, traditions and native languages. This publication shows that in Latin America, intercultural bilingual education reflects a comprehensive model of interculturality aimed at strengthening ethnic-cultural identities, preserving cultural traditions and protecting native languages. The authors include a review of the main advances and successful examples from eight Latin American countries, and provide an overview of the different models of intercultural education that exist in the region, as well as the processes that were implemented to ensure indigenous cultural rights.

Full citation: Education International Latin America Regional Office. 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.

► [Interculturality Versus Intercultural Competencies in Latin America](#)

This chapter forms part of the Sage Handbook of Intercultural Competence, a volume that brings together reflections from experts in different fields on the phenomenon of intercultural public policy. In the Latin American case, the authors argue that the relationship between indigenous and dominant groups could lead to social changes. In particular, they draw the reader's attention to Bolivia and Ecuador, where new governments are attempting to mediate between indigenous social movements and the traditional power-holding groups.

Full citation: Medina-López Portillo, A. and Sinnigen, J. 2009. Interculturality Versus Intercultural Competencies in Latin America. In: Deardoff, D. K. (Ed.) *Sage Handbook of Intercultural Competence*. Sage Publications, Thousand Oaks.

► [Reaching the Unreached: Indigenous Intercultural Bilingual Education in Latin America](#)

Different models of bilingual education are being implemented in Latin America as an attempt to protect collective rights, such as the right to preserve culture and tradition, and to include indigenous communities in education and development programmes. This paper highlights the educational situation of indigenous children and adolescents in Latin America and the development of intercultural bilingual education in six countries (Bolivia, Ecuador, Guatemala, Mexico, Paraguay

¹ The region has been active in promoting an intercultural approach to health as well. To learn more, see the [ELLA Spotlight on Publications: Intercultural Health Policies in Latin America](#) and the [ELLA Brief](#) on the same topic.



and Peru), where more than 80% of the total indigenous population in the region lives. The author also offers a critique of governmental and CSO interventions and their impacts on indigenous education.

Full citation: Enrique López, Luis. 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.

ACCESS TO JUSTICE

▶ [Access to Justice and Indigenous Communities in Latin America](#)

The main objectives of this paper are to assess the impact of constitutional reforms in Latin America on the legal and political status of indigenous communities, and to identify on-going obstacles to the recognition and protection of collective rights, with a focus on two rights in particular. First, the author examines the effectiveness of indigenous rights to land and natural resources as a mechanism for ensuring self-development and the right to ownership. Second, the author evaluates indigenous community access to judicial mechanisms either provided by the state or by indigenous authorities.

Full citation: Faundez, J. 2010. Access to Justice and Indigenous Communities in Latin America. In: Yash, G., Cottrell, J. (Eds.) *Marginalized Communities and Access to Justice*. Routledge, London.

▶ [Indigenous Women's Access to Justice in Latin America](#)

Indigenous women in Latin America continue to face social and cultural barriers to accessing formal justice mechanisms and indigenous justice systems, largely due to on-going discrimination on the basis of ethnicity, class and gender. This paper examines the main barriers to women's access to justice and rights in state and non-state justice systems, with a focus on normative frameworks, legal awareness, access to appropriate justice forums and the achievement of satisfactory remedies. The authors then draw on examples from across the region to highlight how gender-based and plural approaches can foster women's development and protect their rights.

Full citation: Sieder, R., Sierra, M. T. 2010. *Indigenous Women's Access to Justice in Latin America*. Michelsen Institute, Bergen.

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