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INDIGENOUS PEOPLES REGIONAL PROFILE: LATIN AMERICA AND THE CARIBBEAN

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INTRODUCTION

In March 2020, the United States Agency for International Development (USAID) approved its first Policy on Promoting the Rights of Indigenous Peoples (PRO-IP). The overarching goal of the Policy is to improve the measurable impact and sustainability of USAID programs by ensuring that USAID staff and implementing partners engage Indigenous Peoples as meaningful partners in development processes, safeguard against harm, and enhance their ability to promote their rights, determine their own priorities, and advance their self-reliance.

The PRO-IP establishes four development objectives for USAID's engagement with Indigenous Peoples:

1. Strengthen engagement with Indigenous Peoples to safeguard against harm and support their development priorities and self-reliance;
2. Increase the integration of Indigenous Peoples' concerns across all sectors of USAID's portfolio of investments and promote cross-sectoral development approaches;
3. Empower Indigenous Peoples and their representative organizations to advocate for, and exercise, their rights and practice self-determined development; and
4. Foster an enabling environment for Indigenous Peoples to advocate for, and exercise, their rights.

The PRO-IP also provides five key operating principles for USAID:

1. Identify Indigenous Peoples;
2. Analyze Indigenous Peoples' Opportunities and Challenges;
3. Engage Indigenous Peoples;
4. Safeguard Indigenous Peoples' Rights and Well-Being; and
5. Establish Partnerships with Indigenous Peoples.

The PRO-IP establishes how USAID will work with Indigenous Peoples; it does not supersede or redirect efforts to work with other populations.

In addition, USAID designed eight sector-specific guidelines to serve as a practical tool for USAID missions and Operating Units to more effectively engage and partner with Indigenous Peoples. The guidelines complement the PRO-IP and are intended to be integrated with other USAID planning and programming tools. The sector-specific guidelines include:

1. [Indigenous Peoples' Agriculture and Food Security Guidance](#);
2. [Indigenous Peoples' Biodiversity Guidance](#);
3. [Indigenous Peoples' Education Guidance](#);
4. [Indigenous Peoples' Energy and Infrastructure Guidance](#);
5. [Indigenous Peoples' Sustainable Landscapes Guidance](#)
6. [Indigenous Peoples' Democracy Rights and Governance Guidance](#);
7. [Indigenous Peoples' Global Health Guidance](#); and
8. [Indigenous Peoples' Livelihoods Guidance](#).

The objective of this region-specific profile is to provide a resource map of current practical understanding of the different levels of laws and legal issues relevant to engaging Indigenous Peoples in the Latin America and Caribbean (LAC) Region. This document is intended to help USAID staff mitigate the risks of adverse social impacts and improve the impact of development programming.

This region-specific profile calls attention to key concepts, standards, and issues relevant to engaging with Indigenous Peoples in the LAC Region with a focus on legal context. The profile is organized

around a discussion on the regional diversity and complexities around the terminology of “Indigenous Peoples.” It covers international, regional, and domestic legal frameworks and governance bodies and institutions. This profile includes short case studies as illustrative examples and also provides considerations for USAID, recommendations, and a conclusion. The profile does not intend to provide statements of country obligations or requirements, or interpretations of the law.

REGIONAL DIVERSITY AND COMPLEXITY OF INDIGENOUS PEOPLES IN LATIN AMERICA AND THE CARIBBEAN REGION

The LAC Region has a large, diverse, and complex population of Indigenous Peoples. It is estimated that there are between 42¹ and 50 million² Indigenous Peoples who represent between 600³ and 800⁴ different Indigenous Peoples in the LAC Region. It is difficult to estimate the exact number of Indigenous Peoples because there is a lack of complete and accessible data across the region. For example, some countries do not maintain national statistical information on Indigenous Peoples, especially for Caribbean countries and Indigenous Peoples that are transnational.⁵

USAID PRO-IP CRITERIA FOR IDENTIFYING INDIGENOUS PEOPLES

Per the PRO-IP, “In the absence of a single definition for ‘Indigenous Peoples’ under international law, international donors, multilateral development banks, the United Nations (UN), and private corporations have collaborated for decades to develop guidelines for the identification of Indigenous Peoples to help ensure the adequate respect of their rights. Accordingly, USAID uses a set of criteria to identify Indigenous Peoples, rather than a fixed definition, developed in consultation with the communities themselves, the Agency’s Senior Advisor for Indigenous Peoples’ Issues, and other experts on Indigenous Peoples’ rights.” The criteria below are used by USAID to identify Indigenous Peoples:

- self-identification as a distinct social and cultural group;
- recognition of this identity by others; historical continuity with pre-colonial and/or pre-settler societies;
- collective attachment to territories and their natural resources;
- customary social, economic, or governance institutions that are distinct;
- distinct language or dialect; and/or
- resolve to maintain and reproduce their ancestral environments and systems as distinctive peoples and communities.

Where any combination of several of these characteristics applies, USAID should presume the presence of Indigenous Peoples. Where information is inconsistent or uncertain, Operating Units must consult with the USAID Senior Advisor for Indigenous Peoples’ Issues for guidance and a determination as to whether further evidence, examination, or analysis is required.

¹ World Bank Group. (2015). *Indigenous Latin America in the twenty-first century: The first decade*. 10. Available at: <http://documents.worldbank.org/curated/en/145891467991974540/pdf/98544-REVISED-WP-PI48348-Box394854B-PUBLIC-Indigenous-Latin-America.pdf>

² United Nations. (2019). *State of the world’s Indigenous Peoples: Indigenous Peoples’ access to health services*. 84. Available at: <https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/03/The-State-of-The-Worlds-Indigenous-Peoples-WEB.pdf>

³ Ibid.

⁴ Cruz-Saco, M.A. (2018), *Indigenous communities and social inclusion in Latin America*, available at: <https://www.un.org/development/desa/family/wp-content/uploads/sites/23/2018/05/2-1.pdf>

⁵ World Bank Group (2015), 96.

Consequently, it is recommended that available statistical information be used as a starting point for estimating populations and supplemented by consultations with neutral and qualified experts.

POPULATIONS VARY BY COUNTRY: ARGENTINA AND BRAZIL VS. BOLIVIA AND GUATEMALA

Depending on the country, the percentage of the population comprised of Indigenous Peoples can vary significantly. For example, in certain countries like Argentina and Brazil, the Indigenous population is estimated to be, respectively, 2.4 and less than 0.5 percent of the general population. However, in countries like Bolivia and Guatemala, the Indigenous population is estimated to be 41 percent each (Congressional Research Service. [2021]. *Indigenous Peoples in Latin America: Statistical information*, 3-4, citing World Bank. [2015]. *Indigenous Latin America in the twenty-first century*).

Although there is no universal or regional definition for “Indigenous Peoples,” organizations like the United Nations (UN) and the Organization of American States (OAS) consider self-identification to be the main criterion.⁶ Individual countries may also use their own criteria for identifying Indigenous Peoples. Although these criteria provide a helpful guide, it is important to recognize that Indigenous Peoples across the LAC Region are diverse and, therefore, it is unlikely that all Indigenous Peoples will fully meet any set of criteria. For example, although many Indigenous Peoples maintain distinct territories, it is also estimated that approximately 49 percent of Indigenous Peoples in the LAC Region have migrated to urban areas. This migration stems from a variety of factors, such as dispossession of land, natural resource degradation, conflict and violence, greater access to services (e.g., education, healthcare), and economic opportunities.⁷ Similarly, it is estimated that only 16 percent of Indigenous Peoples in the LAC Region speak Indigenous languages over Spanish, Portuguese, or French.⁸

Overall, when compared to non-Indigenous Peoples, Indigenous Peoples throughout the LAC Region tend to experience higher rates of social, economic, and political exclusion, including disproportionate impacts related to armed conflict and violence. On average, Indigenous Peoples experience higher rates of poverty, illiteracy, and unemployment; they also have less access to services like health, education, and transport and utilities like electricity, internet, sewage, and water.⁹ Despite these general trends, there are Indigenous sub-groups that experience even higher rates of exclusion. For example, Indigenous women tend to experience higher rates of illiteracy and school dropout, which leads to higher rates of unemployment and lower wages.¹⁰ It is also common for Indigenous customary law to discriminate against women in a range of areas, such as political participation and leadership.¹¹ Indigenous women and girls also experience pervasive domestic and gender-based violence that is interrelated with their identities as Indigenous women,¹² as well as severe cultural limitations on access to resources within

⁶ See generally United Nations, Declaration on the Rights of Indigenous Peoples (UNDRIP), available at: https://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf; and Organization of American States (OAS), American Declaration on the Rights of Indigenous Peoples, available at: <https://www.oas.org/en/sare/documents/DecAmlND.pdf>

⁷ World Bank Group (2015), 30.

⁸ World Bank Group (2015), 19.

⁹ Congressional Research Service. (2020). *Indigenous Peoples in Latin America: Statistical information*, pages 3-15. Available at: <https://fas.org/sgp/crs/row/R46225.pdf>

¹⁰ See generally World Bank Group (2015).

¹¹ Cruz-Saco, M.A. (2018),

¹² OECD. (2017). *Social institutions and gender index, Latin America and the Caribbean, SIGI Regional Report*. Available at: https://www.oecd.org/dev/development-gender/Brochure_SIGI_LAC_web.pdf
See also UN Women. (2013). *Breaking the silence on violence against indigenous girls, adolescents, and young women*. Available at: https://www.unfpa.org/sites/default/files/resource-pdf/VAIWG_FINAL.pdf

their communities with regard to land and traditional subsistence practice, as well as socioeconomic, geographical, and linguistic limits on their access to justice.¹³

Because of the diversity of Indigenous People across the LAC Region, it is important to take an intersectional approach when assessing and understanding specific Indigenous Peoples or groups. This requires taking into consideration a range of factors, including but not limited to gender, religion, education, age, language, sexual orientation, disability, and location.

NAVIGATING INTERNATIONAL, REGIONAL, AND DOMESTIC LEGAL FRAMEWORKS AND GOVERNANCE BODIES AND INSTITUTIONS

RATES OF URBANIZATION VARY ACROSS THE LAC REGION: BRAZIL AND COLOMBIA VS. CHILE AND VENEZUELA

Although criteria used for defining Indigenous People include whether they maintain distinct territories and a connection to natural resources, it is important to recognize that rates of urbanization among Indigenous Peoples vary significantly by country. For example, in countries like Brazil and Colombia, over 60 percent of Indigenous People still live in remote rural areas; however, in countries like Chile and Venezuela, over 60 percent of Indigenous Peoples have migrated to urban areas (World Bank Group. [2015]. *Indigenous Latin America in the twenty-first century*, page 30).

The rights of Indigenous Peoples in the LAC Region are enshrined in and governed by a network of international, regional, and national laws, policies, standards, governance bodies, and institutions.

INTERNATIONAL AND REGIONAL LEGAL FRAMEWORKS

There are a series of international and regional legal frameworks related to the rights of Indigenous Peoples. Some of these legal frameworks are solely dedicated to or contain explicit provisions that address the rights of Indigenous Peoples, while others are interpreted to include the rights of Indigenous Peoples.

INTERNATIONAL LEGAL FRAMEWORKS

A list of international legal frameworks related to the rights of Indigenous Peoples follows. See the Annex for ratification status for each country and for more information on official United States government positions on each framework. Please reference the “Global Declarations and Frameworks Related to Indigenous Peoples” document, which accompanies the regional profiles.¹⁴

- **United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP):**¹⁵ UNDRIP is a non-binding legal framework and is considered the most comprehensive legal instrument on the rights of Indigenous Peoples. It includes minimum standards for maintaining the “survival, dignity, and

¹³ OAS. (2017). *IACHR Publishes Report on the Human Rights of Indigenous Women in the Americas*. Available at: https://www.oas.org/en/iachr/media_center/PReleases/2017/169.asp

¹⁴ USAID. (2021). *Global declarations and frameworks related to Indigenous Peoples*. Available at: <https://www.usaid.gov/indigenous-peoples>

¹⁵ United Nations. (2007). *United Nations declaration on the rights of Indigenous Peoples (UNDRIP)*. Available at: https://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf

well-being” of Indigenous Peoples. It also reframes human rights standards and fundamental freedoms to apply to Indigenous Peoples.¹⁶

- **International Labor Organization Indigenous and Tribal Peoples Convention, 1989 (ILO Convention 169):**¹⁷ ILO Convention 169 is a binding legal instrument that recognizes the fundamental human rights of Indigenous Peoples, including their right to control their own institutions and way of life, including economic development, governance, free, prior, and informed consent, religion, language, etc.¹⁸
- **International Labor Organization Convention 107, 1957 (ILO Convention 107):**¹⁹ ILO Convention 107, which adopted the assimilation philosophy prevalent at the time,²⁰ was replaced by ILO Convention 169. Therefore, countries are no longer able to ratify ILO Convention 107. However, ILO Convention 107 remains in effect for countries that ratified it but have yet to ratify ILO Convention 169.²¹
- **United Nations Convention on the Elimination of All Forms of Racial Discrimination (CERD):**²² CERD is a binding legal instrument that seeks to eliminate racial discrimination and requires parties to guarantee political, economic, social, and cultural rights for all individuals regardless of race, color, or national or ethnic origin.²³
- **United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW):**²⁴ CEDAW is a binding legal instrument that is considered the international bill of human rights for women and seeks to eliminate all forms of discrimination against women. CEDAW defines discrimination against women and requires parties to take certain actions to end discrimination, such as ensuring that legal systems treat women and men equally, establishing institutions to protect women against discrimination, and eliminating discrimination against women by persons, organizations, or enterprises.²⁵
- **United Nations Convention on Biological Diversity (CBD):**²⁶ CBD is a binding legal instrument that seeks to conserve biological diversity, sustain the use of biodiversity, and ensure

¹⁶ United Nations. (n.d.). *United Nations declaration on the rights of Indigenous Peoples*. Available at: <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>

¹⁷ ILO. (1989). *Indigenous and Tribal Peoples Convention (ILO Convention 169)*. Available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169

¹⁸ See generally Henricksen, J. B. (2008). *Research on best practices for the implementation of the principles of ILO Convention 169, Case study 7*. Available at: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_118120.pdf

¹⁹ ILO. (1957). *Indigenous and Tribal Peoples Convention (ILO Convention 107)*. Available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C107

²⁰ Cultural Survival. (2015). *25 years of ILO Convention No. 169*. Available at: <https://www.culturalsurvival.org/publications/cultural-survival-quarterly/25-years-ilo-convention-169>

²¹ ILO. (n.d.). *International labour standards regarding indigenous and tribal peoples*. Available at: https://www.ilo.org/global/topics/indigenous-tribal/WCMS_502755/lang--en/index.htm

²² United Nations. (1969). *International convention on the elimination of all forms of racial discrimination (CERD)*. Available at: <https://www.ohchr.org/en/professionalinterest/pages/cerd.aspx>

²³ Ibid.

²⁴ UN Women. (1979). *Convention on the elimination of all forms of discrimination against women (CEDAW)*. Available at: <https://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>

²⁵ UN Women. (n.d.). *Overview of the convention*. Available at: <https://www.un.org/womenwatch/daw/cedaw/>

²⁶ United Nations. (1992). *Convention on biological diversity*. Available at: <https://www.cbd.int/convention/text/>

equitable sharing of benefits. CBD recognizes that Indigenous Peoples have a dependency on biological resources, and that their knowledge, innovations, practices, and customs, embodying traditional lifestyles, are relevant to respecting, preserving, maintaining, and sustainably using biological diversity.²⁷

Compared to other regions, the LAC Region had an especially wide adoption and implementation rate of international legal frameworks (see Annex). For example, all LAC countries endorsed UNDRIP. Although UNDRIP is a non-binding legal instrument, several countries bolstered their endorsement and ensured its implementation by incorporating UNDRIP into national laws and policies, including constitutional provisions. Regional and national courts also affirmed the rights of Indigenous Peoples enshrined in international legal frameworks (discussed more below).

Unlike UNDRIP, ILO Convention 169 and 107 are binding legal instruments, and only 15²⁸ and 14²⁹ LAC countries ratified them, respectively. Although this represents less than half of all countries in the LAC Region, it is important to recognize that this also represents more than half of all countries globally that ratified these instruments. Consequently, the LAC Region is the most advanced region in terms of adopting both ILO Convention 169 and 107.

All LAC countries are also parties to CERD,³⁰ CEDAW,³¹ and CBD.³²

REGIONAL LEGAL FRAMEWORKS

Regional legal frameworks related to the rights of Indigenous Peoples include the following:

- **American Declaration on the Rights of Indigenous Peoples (ADRIP):**³³ ADRIP is a non-binding legal instrument that was adopted by OAS member states to specifically protect the rights of Indigenous Peoples in the LAC Region. ADRIP recognizes and affirms several rights enshrined in UNDRIP and ILO Convention 169, such as the right to self-determination, land and natural resources, health, and education. It also explicitly recognizes the right to the elimination of discrimination and violence against Indigenous women, acknowledges that “violence against Indigenous Peoples and individuals, particularly women, hinders or nullifies the enjoyment of all human rights and fundamental freedoms,” and mandates that states adopt measures to prevent and eradicate discrimination and violence (Art. VII (2-3)).³⁴ ADRIP represents a historic recognition of Indigenous Peoples’ rights in the LAC Region. Although ADRIP is a non-binding legal instrument, it requests OAS member states promote its implementation by adopting legislation and other

²⁷ Ibid., Preamble, Articles 8, 17-18.

²⁸ ILO. (n.d.). *Ratifications of C169 – Indigenous and Tribal Peoples Convention, 1989 (No. 169)*. Available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::PI1300_INSTRUMENT_ID:312314

²⁹ ILO. (n.d.). *Ratifications of C107 – Indigenous and Tribal Populations Convention, 1957 (No. 107)*. Available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::PI1300_INSTRUMENT_ID:312252:NO

³⁰ United Nations (1969).

³¹ United Nations. (1979). *Convention on the elimination of all forms of discrimination against women*. Available at: <https://www.ohchr.org/en/professionalinterest/pages/cedaw.aspx>

³² United Nations. (1992). *Convention on biological diversity*. Available at: <https://www.cbd.int/convention/text/>

³³ OAS. (2016). *American declaration on the rights of Indigenous Peoples*. Available at: <https://www.oas.org/en/sare/documents/DecAmlIND.pdf>

³⁴ Ibid.

measures that recognize and protect the rights of Indigenous Peoples. Because ADRIP was recently adopted in 2016, it is difficult to measure the extent of its implementation. ADRIP should also be seen as complementary to—and not a replacement of—other legal instruments, including UNDRIP and ILO Convention 169.³⁵

- **American Declaration of the Rights and Duties of Man:**³⁶ The Declaration is a non-binding legal instrument adopted by OAS members states to protect the political, economic, social, and cultural rights of people in the LAC Region, regardless of race, sex, language, creed, or any other factor.³⁷ Unlike the American Declaration on the Rights of Indigenous Peoples, the Declaration does not explicitly reference Indigenous People’s rights, but more broadly the rights of all people. However, the Inter-American Commission on Human Rights (IACHR) and the Inter-American Court of Human Rights (IACrHR) have interpreted specific articles to protect certain rights in accordance with the legal framework applicable to Indigenous Peoples. For example, Article XXIII, which states that every person has the right to own property, has been interpreted in the context of claims by Indigenous Peoples’ asserting rights to their territories, lands, and natural resources, to include both individual and collective rights to property.
- **American Convention on Human Rights:**³⁸ The Convention is a binding legal instrument adopted by OAS to establish a legal framework of human rights for the LAC Region. This includes political, economic, social, and cultural rights regardless of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition. OAS also established two governance bodies to monitor compliance with the Convention: the IACHR and the IACrHR.³⁹

The Convention has been ratified by 25 countries in the LAC Region (see Annex).⁴⁰ Similar to the American Declaration on the Rights and Duties of Man, the American Convention does not include provisions that explicitly relate to Indigenous Peoples’ rights; however, certain rights have been interpreted to apply to Indigenous Peoples. For example, Article 21, which includes the right to property, has been interpreted to include Indigenous Peoples’ territorial rights by the IACHR and IACrHR.⁴¹ Furthermore, the Convention established the Inter-American Human Rights System—comprised of by IACHR and IACrHR—to monitor and enforce the Convention and other international and regional legal instruments.

³⁵ American Society of International Law. (2017). *The American declaration on the rights of Indigenous Peoples*. Available at: <https://www.asil.org/insights/volume/21/issue/7/american-declaration-rights-indigenous-peoples>

³⁶ OAS. (1948). *American declaration on the rights and duties of man*. Available at: https://www.oas.org/dil/access_to_information_human_right_American_Declaration_of_the_Rights_and_Duties_of_Man.pdf

³⁷ Ibid.

³⁸ OAS. (1969). *American convention on human rights*. 1969. Available at: https://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.pdf

³⁹ Ibid.

⁴⁰ OAS. (1969). *American convention on human rights: Signatories and ratifications*. Available at: https://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights_sign.htm

⁴¹ Ibid.

INTERNATIONAL AND REGIONAL GOVERNANCE BODIES AND INSTITUTIONS

INTERNATIONAL GOVERNANCE BODIES AND INSTITUTIONS

There are several international governance bodies and institutions related to monitoring and protecting Indigenous Peoples' rights, although the most notable is the UN Human Rights Council's (UNHCR) **Universal Periodic Review (UPR)**. The UPR is the human rights review process for UN member states. Each member state reports on their actions to improve human rights and comply with human rights enshrined in various UN legal frameworks, including, for example, UNDRIP, ILO Convention 169, ILO Convention 107, CERD, CEDAW, and CBD.⁴² Country reports are available for all UN member states and include information prepared by states, treaty bodies, UN official documents, and other stakeholders (e.g., nongovernmental organizations [NGOs], national human rights institutes, human rights defenders, academic research institutions, regional organizations, and civil society representatives).⁴³

The **UN Working Group on Indigenous Populations** also has a mandate to review developments related to the promotion of Indigenous Peoples' human rights and freedoms. The Working Group is made up of experts and sub-commission members from across the world, including the LAC Region.

REGIONAL GOVERNANCE BODIES AND INSTITUTIONS

As discussed above, the American Convention on Human Rights established the Inter-American Human Rights System—composed of the **Inter-American Commission on Human Rights (IACHR)** and the **Inter-American Court of Human Rights (IACrHR)**—to monitor and enforce the Convention and other international and regional legal instruments.

The IACHR is made up of seven rapporteurships, including the Rapporteur on the Rights of Indigenous Peoples. This rapporteurship speaks on the rights of Indigenous Peoples through various reports (see box for examples of reports on the human rights of Indigenous women in the Americas).⁴⁴ IACHR also receives complaints, conducts country visits, holds thematic hearings on topics of concern, publishes studies and reports, and can request adoption of measures to protect at-

IACHR REPORTS ON THE HUMAN RIGHTS OF INDIGENOUS WOMEN IN THE AMERICAS

“The IACHR’s thematic and country reports have also documented a diversity of violations of the human rights of indigenous women in the Americas” (IACHR, 21). For example, thematic reports include:

- Indigenous Women (2017)
- Legal Standards Related to Gender Equality and Women’s Rights in the Inter-American Human Rights System (2011, Update 2011-2014)
- Women’s Political Participation in the Americas (2011)
- The Work, Education, and Resources of Women: The Road to Equality in Guaranteeing Economic, Social, and Cultural Rights (2011)
- Access to Information on Reproductive Health from a Human Rights Perspective (2011)
- Access to Justice for Women Victims of Sexual Violence in Mesoamerica (2011)

⁴² United Nations Human Rights Council (UNHRC). (2021). *Universal periodic review*. Available at: <https://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx>

⁴³ UNHRC. (2020). *Documentation by country*. Available at: <https://www.ohchr.org/EN/HRBodies/UPR/Pages/Documentation.aspx>

⁴⁴ OAS. (n.d.). Rapporteurship on the *Rights of Indigenous Peoples*. Available at: <http://www.oas.org/en/iachr/indigenous/default.asp>

risk individuals. Individuals, groups, and NGOs can submit complaints.⁴⁵

The IACrthR also hears human rights complaints against OAS member states, which includes violations of Indigenous Peoples' rights. IACrthR's mandate, however, is narrower than IACHR because it can only receive complaints by members states and they first must be processed and referred by IACHR. Twenty countries in the LAC Region accept the IACrthR's jurisdiction. All court judgments and annual reports are available on its website.⁴⁶

The IACHR and IACrthR are known to have a strong commitment to monitoring and enforcing the rights of Indigenous Peoples. For example, between 1996 and 2019, more than 160 hearings were heard that pertained to the rights of Indigenous Peoples.⁴⁷ These hearings addressed a wide range of Indigenous Peoples' rights, including but not limited to the right to property, judicial protection, fair trial, life, and reparations.⁴⁸ The IACrthR heard and decided cases specific to Indigenous land and natural resource rights, like *Mayagna (Sumo) Awas Tingni Community v. Nicaragua* (see box on following page), and on sexual violence against Indigenous women, like the case of the *Massacre of las Dos Erres*.

The **Inter-American Institute of Human Rights** is a helpful resource for understanding the IACHR and IACrthR. The Institute is an independent research and education body that promotes the IACHR and IACrthR through various resources that are available online (e.g., online classes, publications, and workshops).⁴⁹

The **Caribbean Court of Justice (CCJ)** is a sub-regional court that can also hear cases related to the rights of Indigenous Peoples. The CCJ is the highest appeal court in the Caribbean Community (CARICOM) and hears both civil and criminal appeals from CARICOM member states who are parties to the Revised Treaty of Chaguaramas, which established the Court. There are currently 15 member states. The Court also serves as the final court of appeals for Barbados, Belize, and Guyana.⁵⁰ To date, the Court has heard one case pertaining to Indigenous Peoples, specifically their right to property.⁵¹

⁴⁵ IJR Center. (n.d.). *Inter-American commission on human rights*. Available at: https://ijrcenter.org/regional/inter-american-system/#Inter-American_Commission_on_Human_Rights

⁴⁶ Ibid.

⁴⁷ Congressional Research Service (2020), note 10, at 19.

⁴⁸ See, for example, *Mayagna (Sumo) Awas Tingni Community v. Nicaragua* (2001), *Yakye Axa Indigenous Community v. Paraguay* (2005), *Kaliña and Lokono Peoples v. Suriname* (2015).

⁴⁹ IJR Center. (n.d.).

⁵⁰ CARICOM. (n.d.). *Caribbean court of justice*. Available at: <https://caricom.org/institutions/caribbean-court-of-justice-cci/>

⁵¹ See *Maya Leaders Alliance v. Attorney General of Belize* (2013).

CASE STUDY: THE IMPACT OF IACrTHR ON INDIGENOUS PEOPLES' RIGHTS IN NICARAGUA

As previously discussed, the IACrTHR hears complaints against OAS member states that are processed and referred by IACHR. Complaints must allege a violation of human rights, including violations of Indigenous Peoples' rights.

In 2001, IACrTHR made a judgment in the case of *Mayagna (Sumo) Awas Tingni Community v. Nicaragua* (2001), which marked its first ruling on a case involving Indigenous Peoples' land rights. The complaint alleged several violations of the American Convention on Human Rights, including the right to property and judicial protection. The Court was able to rule on this case because Nicaragua ratified the American Convention on Human Rights and accepts the jurisdiction of the Court.

The complaint alleged that the Government of Nicaragua failed to demarcate the communal lands of the Indigenous Awas Tingni Community or otherwise ensure their property rights to ancestral land and natural resources. The complaint further alleged that this led to the government granting a concession to their communal lands without their consent, and when they protested this, they were denied remedy. For these violations, the community sought compensation, an injunction to halt concessions on their communal lands, and for the government to establish a legal framework to demarcate and recognize their property rights.

The IACrTHR ruled that the right to property as enshrined in American Convention on Human Rights includes Indigenous Peoples' right to their property, and therefore, the government is not permitted to grant concessions to Indigenous land. The Court ordered Nicaragua to effectively demarcate and title Indigenous land and to halt certain activities on Indigenous land until this occurs. The Court also granted monetary damages.

In response to IACrTHR's judgment, Nicaragua passed the Communal Land Laws in 2003, which establishes mechanisms and institutions for demarcating and titling land; it also details third party rights and procedures for the exploitation of natural resources that require community consent. This law is considered a great achievement toward recognizing and protecting Indigenous land and natural resources rights in Nicaragua, although its implementation was slow initially because of budget and capacity constraints (Larson, A. [2010]. *Land tenure rights and access to forests in Nicaragua's North Atlantic Autonomous Region: Making the rules of the game*).

The example of the *Mayagna (Sumo) Awas Tingni Community v. Nicaragua* case demonstrates the influence of the inter-American human rights system, specifically the IACrTHR, in interpreting international and regional legal frameworks and shaping the domestic legal frameworks of LAC countries. For example, and as previously mentioned, IACHR and IACrTHR ruled on over 160 cases related to Indigenous Peoples between 1996 and 2019. Although many of these cases litigate issues of Indigenous land and natural resource rights, they also litigate other Indigenous Peoples' rights enshrined in international and regional legal frameworks.

DOMESTIC LEGAL FRAMEWORKS

In addition to the international and regional legal frameworks discussed above, many LAC countries have domestic legal frameworks that govern Indigenous Peoples' rights. These domestic legal frameworks range from constitutional provisions and legislation to case law. The legal content shared in this section should not be used to determine Indigenous Peoples' rights, but instead, to appreciate domestic legal frameworks that can serve as vehicles for determining how to engage Indigenous Peoples. This section is not an affirmation or rejection of any domestic legal framework, but to provide a snapshot of their existence.

A recommended starting point for understanding a country's legal framework is its constitution, including fundamental rights and freedoms applying to all citizens (such as equal protection and non-discrimination guarantees). Numerous LAC countries have constitutional provisions regarding Indigenous Peoples' rights. For example, several LAC countries' constitutions explicitly mention that international treaties (e.g., ILO Convention 169) have either the same rank as the constitution or a slightly lower rank that is higher than national legislation. This means that when analyzing a country's

legal framework, one must consider international treaties to be the letter of the law as well.⁵² Furthermore, several LAC countries' constitutions also include specific provisions pertaining to Indigenous Peoples' rights and most countries in Latin America have constitutional provisions related to non-discrimination and gender equality applicable to all citizens that may have particular applications with respect to Indigenous Peoples.⁵³ Constitutional rights specific to Indigenous Peoples include but are not limited to rights to autonomy, language, culture, institutions, territories, natural resources, voting, political representation, health, and education.⁵⁴ It is important to note that some constitutions will include limitations to these rights. For example, regarding the right to territories and natural resources, the government may reserve the right to explore or use certain resources, such as minerals and water.⁵⁵

In addition to the constitution, a review should also be carried out of relevant national legislation. There is a wide range of laws that may detail Indigenous Peoples' rights. This includes but is not limited to laws related to land; natural resources; free, prior, and informed consent' health' education' language; women's rights; political representation; and voting.⁵⁶ Similar to constitutional provisions, legislation may also implement and domesticate international legal frameworks.⁵⁷ Legislation tends to provide more detail and guidance on Indigenous Peoples' rights than constitutional provisions or international treaties, although any legislation should be interpreted in tandem with relevant constitutional provisions and applicable international treaties.

Relevant case law also exists that provides guidance on Indigenous Peoples' rights. Such case law can provide more detailed guidance regarding the meaning and implementation of international and regional treaties, constitutional provisions, and legislation.⁵⁸ Case law can also be particularly helpful for resolving any potential conflicts between laws. For example, LAC countries may have case law containing guidance on the enforcement of laws that conflict with ratified international treaties.⁵⁹ Relevant case law includes

⁵² World Bank Group (2105), 49.

⁵³ Peace Women. (2010). *Latin America: Women's rights laws – Where's the enforcement?* Available at: <http://peacewomen.org/content/latin-america-womens-rights-laws-wheres-enforcement>

⁵⁴ See generally, for example, Constitution of Bolivia. (2009). Available at: https://www.constituteproject.org/constitution/Bolivia_2009.pdf

⁵⁵ See, for example, Constitution of Brazil. (1998, amd. 2014), Article 231. Available at: https://www.constituteproject.org/constitution/Brazil_2014.pdf

⁵⁶ See, for example, Costa Rica's Law of 1977 (recognizes indigenous reserves and states they are inalienable, not transferable, and exclusive for those indigenous communities that inhabit them); Panama's 41 (requires that indigenous communities obtain benefits for the use of their resources, knowledge, and lands and participate in economic benefits from the use of their natural resources); Peru's Law of the Rights to Prior Consultation to Indigenous or Native Peoples (gives indigenous peoples the right to prior consultation for any project or legal and administrative measure that will impact their land).

⁵⁷ See, for example, Costa Rica's Ley 7316 of 1992 (domesticates ILO 169), available at: https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=es&p_isn=31587&p_country=CRI&p_count=457&p_classification=21&p_classcount=10

⁵⁸ See, for example, Ledec, G.C., Rapp, K., & Aiello, R. (2011). *Greening the wind: Environmental and social considerations for wind power development*. World Bank Group. Available at: <http://documents.worldbank.org/curated/en/239851468089382658/pdf/662330PUB0EPI00e0wind09780821389263.pdf> (discussing that Colombia's constitutional court ruled that ILO 169 applies to Afro-descendent communities).

⁵⁹ Rodríguez Garavito, C. & Baquero Díaz, C.A. (n.d.). *The right to free, prior, and informed consultation in Colombia: Advances and setbacks*. Available at: <https://www.ohchr.org/Documents/Issues/IPeoples/EMRIP/FPIC/GaravitoAndDiaz.pdf> (discussing the fact that several national laws and regulations, as well as licenses for development projects, have been revoked and deemed unconstitutional because they conflict with ILO 169).

court rulings made by domestic courts, as well as regional courts (e.g., IACrtHR, CCJ) with recognized jurisdiction.

CASE STUDY: THE REPUBLIC OF ECUADOR

Indigenous Peoples in the Republic of Ecuador

Ecuador is home to around 1.1 million self-identifying Indigenous inhabitants, making them approximately 7% of the total population. There are 14 Indigenous nationalities in Ecuador; 24.1% of Indigenous communities live in the Amazon, divided into 10 nationalities. Of the Andean Kichwa population (most of whom live in Peru), 7.3% live in the Southern Mountains and 8.3% in the Coastal Region and on the Galapagos Islands. A majority of the Indigenous population (60.3%) live in the six Central-North Mountains provinces. Of these, 87.5% still live in rural areas and 21.5% in urban areas. The Shuar make up a significant portion of the population in the three provinces they occupy in the Amazon-Centre South, ranging from 8% in one province to majority status of the population (79%) in another. Other Shuar populations are spread in small groups across the country. The populations of other Indigenous nationalities in the country are smaller in number, ranging from approximately 300 to 1,500 (IWGIA. [2019] *Indigenous World 2019: Ecuador*, available at <https://www.iwgia.org/en/ecuador/3397-iw2019-ecuador.html>).

Human Rights Situation of Indigenous Peoples in Ecuador

Ecuador's Constitutional provision on free, prior, and informed consent (FPIC) substitutes the term "consultation" for consent. In doing so, the Constitution includes a reference to international human rights agreements (establishing the higher standard requiring consent), leaving Ecuador's legal framework uncertain regarding FPIC. Recent court decisions (the Waorani decision in April 2019 and the decision on the Kichwa peoples' land in September 2019), however, upheld the constitutional right to consultation, which was sufficient to block extractive and hydroelectric projects (respectively) on planned concessions scheduled to be auctioned by the Ecuadorian government. These recent rulings establish a departure from past experiences of inadequate consultation without relief when ancestral lands are exploited, as reported by the communities (*Human Rights Watch. [2020] World Report 2020: Ecuador Events of 2019*).

Initiatives Taken to Advance the Rights of Indigenous Peoples in Ecuador

The Constitution recognizes and guarantees indigenous communes, communities, peoples, and nations "in conformity with the Constitution and human rights agreements, conventions, declarations, and other international instruments." The reference to international law allows for direct application of more stringent provisions enshrined in international instruments and standards, such as the ILO Convention 169 and UNDRIP. The Constitution also explicitly recognizes the following collective rights of Indigenous communes, communities, peoples, and nations in Art. 57:

“§4: To keep ownership, without subject to a statute of limitations, of their community lands, which shall be unalienable, immune from seizure and indivisible. These lands shall be exempt from paying fees or taxes;

§5: To keep ownership of ancestral lands and territories and to obtain free awarding of these lands;

§6: To participate in the use, usufruct, administration and conservation of natural renewable resources located on their lands;

§7: To free, prior, informed consultation, within a reasonable period of time, on the plans and programs for prospecting, producing and marketing nonrenewable resources located on their lands and which could have an environmental or cultural impact on them; to participate in the profits earned from these projects and to receive compensation for social, cultural and environmental damages caused to them. The consultation that must be conducted by the competent authorities shall be mandatory and in due time. If consent of the consulted community is not obtained, steps provided for by the Constitution and the law shall be taken;

§8: To keep and promote their practices of managing biodiversity and their natural environment. The State shall establish and implement programs with the participation of the community to ensure the conservation and sustainable use of biodiversity.”

The Constitution further stipulates that the territories of peoples living in voluntary isolation “are an irreducible and intangible possession and all forms of extractive activities shall be forbidden there.” To ensure protection for the territories of people in isolation, the state shall also “adopt measures to guarantee their lives, enforce respect for self-determination and the will to remain in isolation, and ensure observance of their rights.” Violations of such rights will constitute a crime of ethnocide.

Regarding state decisions or authorizations that could affect the environment, the Constitution stipulates that communities must be fully consulted. Such consultations must include consideration of community opinion, based on criteria provided for by law and international human rights instruments. If the consultation process results in majority opposition, the decision to proceed with the project or not “shall be adopted by a resolution that is duly substantiated by the corresponding higher administrative body in accordance with the law.” In other words, the respective higher-level administrative body can approve projects that affect that environment even if a majority of the community is in opposition.

The Mining Law (2009), Articles 87-91, pertain to social management and community participation in mining activities. To ensure the sustainable development of mining activities, the Mining Law requires the State to conduct social participation and consultation processes in line with the Constitution, specifically Article 398. As part of this process, the Sectorial Ministry has the authority to decide whether or not to implement a mining project, even if a majority of the community opposes the project. The Mining Law also stipulates that the holder of mining rights should pay royalties; 60% of the royalty should then be paid to the national government or decentralized autonomous government for social investment programs. Of this percentage, 50% should be assigned to government agencies “for Indigenous communities and/or territorial areas,” prioritizing communities directly affected by the mining activities.

The Civil Code ensures partners’ rights to inheritance, including for unregistered unions (which are deemed equal to formal marriages). This helps address the issue of legal inheritance rights for women and girls, which is especially important for rural and indigenous women who may be discriminated against under customary and local laws especially if their marriages are not registered with the state (OECD. [2017]. *Social institutions and gender index, Latin America and the Caribbean, SIGI Regional Report*. Available at: https://www.oecd.org/dev/development-gender/Brochure_SIGI_LAC_web.pdf)

DOMESTIC GOVERNANCE BODIES AND INSTITUTIONS

In the LAC Region, there are a range of domestic governance bodies and institutions relevant to Indigenous Peoples. These bodies and institutions exist at the national, regional, and local levels and are governed by the state or Indigenous Peoples themselves.

Indigenous governance systems vary considerably by country and group because they are based on traditional and customary systems and rules that were created to meet the particular needs of each Indigenous group. Although traditional and customary systems and rules are proven to be more effective at recognizing and protecting the rights of Indigenous Peoples than external actors like the state, Indigenous Peoples in the LAC Region may face issues related to self-governance due to a lack of resources, capacity, and support from the state.⁶⁰ For example, countries across the LAC Region vary in terms of whether their national legal frameworks recognize, protect, and regulate Indigenous Peoples’ right to self-governance.⁶¹

⁶⁰ United Nations. (2018). *Respect for traditional self-governance, informed consent in decisions critical to upholding Indigenous Peoples’ rights, mandate holder tells third committee*. 12 October 2018. Available at: <https://www.un.org/press/en/2018/gashc4234.doc.htm>

⁶¹ World Bank Group (2015), 50.

In terms of state governance of Indigenous Peoples' rights, there are various governance bodies and institutions that can exist at the national, regional, and local level, depending on the country. State bodies and institutions can govern a range of issues that affect Indigenous Peoples' rights, from health and education to land demarcation and titling.⁶² Depending on the country, it may also be required that Indigenous Peoples participate in state bodies and institutions that govern Indigenous Peoples' rights.⁶³

CASE STUDY: THE REPUBLIC OF COLOMBIA

Indigenous Peoples in the Republic of Colombia

According to the 2005 census, Colombia has 87 Indigenous Peoples recognized by the National Administrative Department of Statistics (DANE), constituting approximately 4% of the population, living in various ecological zones ([Colombia - World Directory of Minorities & Indigenous Peoples \(minorityrights.org\)](#)). However, the National Indigenous Organization of Colombia (ONIC), which represents 80% of the Indigenous population, recognizes 102 Indigenous Peoples. ONIC denounces the government for decreasing Indigenous Peoples' representation in the official population survey, by failing to release comprehensive figures gathered during the 2018 census, despite agreements to do so and despite publishing portions of results from the census. Notably, Colombia also has the second largest African descendent population in Latin America after Brazil, which includes *palenqueros*, the descendants of maroon communities, and *raizales*, the English-speaking Caribbean communities, in San Andres and Providencia; these minority groups face discrimination similar to Indigenous Peoples (Minority Rights Group International, *World Directory of Minorities and Indigenous Peoples - Colombia*, May 2008, available at: <https://www.refworld.org/docid/4954ce5dc.html>).

Human Rights Situation of Indigenous Peoples in Colombia

The Government of Colombia signed peace agreements with the FARC guerillas in 2016, an attempt to end 50 years of civil war in the country. However, violence against and other rights violations of Indigenous Peoples in Colombia is ongoing; the ONIC states that 68 Indigenous leaders and community members were killed between the signing of the peace agreements in 2016 and July of 2018 and poverty, displacement, and landlessness disproportionately affect Indigenous Peoples ([We stand in solidarity with indigenous peoples of Colombia - IWGIA - International Work Group for Indigenous Affairs](#)). Land rights remain a central point of conflict between Indigenous Peoples and armed paramilitary groups, and land defenders face attacks and death threats ([Colombia's Indigenous Land Defenders | Close Up | Human Rights | Al Jazeera \[2020\]](#)). While the strong constitutional provisions below could be interpreted and implemented to provide protection for Indigenous Peoples' rights, efforts have been inadequate and the government has frequently been accused of being inactive in the face of sustained and systemic violence against Indigenous activists and communities ([Cultural Survival](#), report for the 100th Session of the Convention on the Elimination of Racial Discrimination, November 2019).

⁶² See, for example, Ying, X. (August 2, 2019). "Brazil's Supreme Court Maintains Demarcation of Indigenous Lands with FUNAI." *The Rio Times*. Available at: <https://riotimesonline.com/brazil-news/brazil/politics-brazil/federal-supreme-court-maintains-demarcation-of-indigenous-lands-with-funai/> (discussing how Brazil's Indian Statute (1979) places responsibility for recognizing, identifying and protecting indigenous lands with the Federal Government. The Federal Government has placed responsibility for demarcating and registering indigenous lands with the FUNAI).

⁶³ See, for example, Larson, A. (2010). *Land tenure rights and access to forests in Nicaragua's North Atlantic Autonomous Region: Making the rules of the game*. Available at: http://dlc.dlib.indiana.edu/dlc/bitstream/handle/10535/1562/Larson_118101.pdf?sequence=1 (discussing how per the Communal Land Law, Nicaragua's National Commission for Demarcation and Titling requires one delegate of each ethnic groups in autonomous regions).

Initiatives Taken to Advance the Rights of Indigenous Peoples in Colombia

Colombia's Constitution (1991) recognizes numerous specific rights of Indigenous Peoples:

Art. 7: Recognition and protection of the ethnic and cultural diversity of the Colombian nation; and Art. 8: State obligation to protect cultural assets.

Art. 10: Languages and dialects of ethnic groups are official languages within their territories; where communities have their own linguistic tradition, education shall be bilingual; and Art 68: Instruction shall respect and develop cultural identity.

Art. 63: Communal and reservation lands cannot be taken from ethnic groups or attached.

Art. 72: Ethnic groups have special rights over archeological treasures within their settled areas.

Art. 96: Indigenous persons who share border territories are recognized as Colombian nationals, provided the recognition is mutual.

Art. 176: Indigenous communities shall elect as many as five representatives to Constitutionally created senatorial posts, via a special national election.

Art. 246: Indigenous Peoples' authorities may exercise jurisdictional functions within their territory and in accordance with their own laws and procedures, provided they are not contrary to the Constitution and the laws of Colombia.

In addition, constitutional provisions intended to create equality for women in Colombia also extend to Indigenous women and should be noted as a legal basis for addressing the differential impacts of human rights violations on Indigenous women:

Art. 40: The authorities will guarantee the adequate and effective participation of women in the decision-making ranks of the public administration.

Art. 43: Women and men have equal rights and opportunities. Women cannot be subjected to any type of discrimination. ... The State will support the female head of household in a special way.

Law 21 (1991) also ratified ILO Convention 169, and Colombia ratified the UN Declaration on the Rights of Indigenous Peoples in 2007.

A landmark decision from Colombia's Constitutional Court in 2011 halted three development projects for inadequate consultation with Indigenous Peoples as well as failure to gain their consent. At the time, the decision was widely heralded as a significant step for Indigenous Peoples' rights in Colombia, as it unconditionally declared the right of Indigenous Peoples to free, prior, and informed consent ([Colombian Court Confirms Indigenous Peoples' Right to Free, Prior, and Informed Consent | Cultural Survival](#)). But subsequent decisions by the same court take a more conservative stance, qualifying the right to consent while upholding the right to consultation and establishing a standard of a "least harmful alternative" (Brilman, M. (2018). *Consenting to dispossession: The problematic heritage and complex future of consultation and consent of Indigenous Peoples*. Columbia Human Rights Law Review. Available at: [MarinaBrilmanConsentingto.pdf \(columbia.edu\)](#)).

The Constitutional Court's Auto 004/2009 set up the structural injunction that continues in force today. That ruling identified the key threats to the rights of Indigenous Peoples - the forced recruitment of minors and young adults, sexual and gender-based violence, as well as forced prostitution, armed clashes, the laying of antipersonnel mines, confinement, and targeted assassinations of community leaders, teachers and health workers. In that ruling, the court identified some 30 distinct Indigenous Peoples in Colombia in danger of extinction and required special measure for protection.

CASE STUDY: REPUBLIC OF PERU

Indigenous Peoples in the Republic of Peru

Indigenous Peoples in Peru constituted approximately 25% of the total population as of 2017, totaling nearly six million people (*Instituto Nacional de Estadística e Informática*, 2018). Eighty-three percent of the Indigenous population in Peru are Quechua, who live in the highlands. Major Indigenous Peoples in lowland areas include the Achuar, Aguaruna, Asháninka, Shipibo, Huambisa, and Quechua. The Aymara (approximately 500,000) live near Puno, concentrated in the southern highland region. Approximately 80% of Peru's population self-identifies as either Indigenous or "mestizo" (mixed white or Spanish and Indigenous descent) ([Peru - World Directory of Minorities & Indigenous Peoples \(minorityrights.org\) \(2020\)](#)).

Human Rights Situation of Indigenous Peoples in the Republic of Peru

Indigenous Peoples in Peru face environmental and social justice issues, including widespread pollution of water and land that negatively affects health in indigenous communities. Companies engaged in resource extraction in Peru fail to follow UNDRIP Guidelines, and Indigenous Peoples experience discrimination in the justice system. The displacement, destruction of the environment, and health crises caused by private sector activities often result in protests by the communities, and both private sector actors as well as the Government of Peru seek to dissuade the communities from protesting ([OHCHR | Statement at the end of visit to Peru by the United Nations Working Group on Business and Human Rights \(2017\)](#)). Some of these protests turned violent and resulted in property destruction as communities sought to halt industry operations ([Three Amazon tribesmen in Peru killed during protest against oil firm | Reuters \(2020\)](#)).

Initiatives Taken to Advance the Rights of Indigenous Peoples in Peru

Peru's Constitution provides indirect guidance on Indigenous Peoples' rights in Art. 206, which states: "Rules concerning the rights and freedoms recognized by this Constitution are construed in accordance with the Universal Declaration of Human Rights and the international treaties and agreements regarding those rights that have been ratified by Peru." This means that rights enshrined in international treaties and agreements ratified by Peru (including, for example, ILO Convention 169, CERD, CEDAW, and CBD) are upheld by the Constitution. The Constitution also includes specific provisions relevant to women's rights within Indigenous Peoples' communities, including a mandate "to facilitate representation of women, rural and indigenous communities, and aboriginal peoples in regional...[and] municipal councils" (Art. 191), and to address all forms of discrimination and establish gender equality (Art. 2(2)).

Law of the Right to Prior Consultation to Indigenous or Native Peoples (2011): This law implements ILO Convention 169 by providing principles and procedures for Indigenous Peoples' right to prior consultation. The law requires the state to consult Indigenous or native peoples prior to adopting legislation or administrative measures that directly affect their collective rights, physical existence, cultural identity, quality of life, or development.

Furthermore, the law requires prior consultation for plans, programs, and national and regional development projects that affect such rights. Per Art. 8, stages of the consultative process include: 1) Identification of the legislative or administrative measure that should be the object of consultation; 2) Identification of the Indigenous or native peoples to be consulted; 3) Publication of the legislative or administrative measure; 4)

CONSIDERATIONS FOR USAID

This section provides a few high-level considerations for USAID.

First, initial identification of possible Indigenous Peoples ought to be broad, erring on the side of over-inclusion. Where any combination of applicable USAID criteria applies, USAID missions should presume the presence of Indigenous Peoples. In the process to identify Indigenous Peoples, it may be useful to

draw on knowledge of Foreign Service National employees. Best efforts will need to be made to identify and consult with neutral, well-respected subject matter experts, including social scientists with relevant experience and appropriate government agencies, to better assess (through direct engagement) which populations might be considered as Indigenous Peoples under international, regional, and domestic standards. This may include government entities like Ministries of the Interior, members of the judiciary, or other legal experts. Consult the PRO-IP- and USAID-developed tools, such as the Inclusive Development Analysis, to assist in the identification of diverse people and voices within Indigenous Peoples' communities in the region. In the event of inconsistent or uncertain information, consult the USAID Senior Advisor for Indigenous Peoples' Issues for guidance and for a determination if further evidence or analysis is required. Consult the Missions' Resident Legal Officer (RLO) with legal and diplomatic issues.

Second, when working to understand the legal and governance aspects of identifying and engaging Indigenous Peoples, consult and align efforts to USAID's PRO-IP. When applying relevant global and regional frameworks, where there is disagreement between international and state government views, additional research and analysis may be needed. As necessary, consult with the Mission's RLO on legal and diplomatic issues, and the USAID Senior Advisor for Indigenous Peoples on substantive issues.

Third, in navigating the domestic legal framework, it is important to conduct a desk-based review and to draw on reputable sources that aggregate and summarize legal information. Indigenous Peoples' legal and governance issues are complex, particularly since understanding them is necessary to support gender and socially inclusive development programming. Therefore, work with Foreign Service National employees, alongside relevant subject matter expert(s), to help navigate cross-cutting issues. As stated above, draw on USAID PRO-IP and USAID tools (e.g., Inclusive Development Analysis) to assist in the identification and engagement of diverse people and voices within Indigenous Peoples' communities in the LAC Region.

Fourth, it is important to be aware of (and to research as necessary) the broad array of organizations or associations that may be relevant in the identification or engagement of Indigenous People in USAID programming (both standalone and comprehensive cross-sectoral programming). Again, consult the Mission's RLO to discuss specific legal questions and issues, and USAID's Senior Advisor for Indigenous Peoples, alongside subject matter experts, for substantive issues.

CONCLUSION

In conclusion, USAID missions and Operating Units should follow the PRO-IP when designing inclusive programming, particularly referring to its objectives and operating principles. This document aims to provide additional context that should help Operating Units in implementing the PRO-IP. If there are further questions, then Operating Units should reach out to the Senior Advisor for Indigenous Peoples' Issues.

ANNEX: COUNTRY STATUS FOR INTERNATIONAL AND REGIONAL FRAMEWORKS

International Frameworks: A for accession, **R** for ratification, D for succession. **ILO 107** indicates the country also ratified ILO Convention 107; UNDRIP: **Yes**, Abstain, Absent.

Regional Frameworks: A for Adopted, D for ratified and then subsequently denounced.

Country	International Frameworks				Regional Frameworks		
	UNDRIP	ILO 169	CERD	CEDAW	American Declaration on the Rights of Indigenous Peoples	American Declaration of the Rights and Duties of Man	American Convention on Human Rights
Argentina	Yes	R	R	R	A	A	R
Barbados	Yes		A	R	A	A	R
Bolivia	Yes	R	R	R	A	A	R
Brazil	Yes	R	R	R	A	A	R
Chile	Yes	R	R	R	A	A	R
Colombia	Abstain	R	R	R	A	A	R
Costa Rica	Yes	R	R	R	A	A	R
Cuba	Yes	R - ILO 107	R	R	A	A	
Dominica	Yes	R	A	R	A	A	R
Dominican Republic	Yes	R - ILO 107	A	R	A	A	R
Ecuador	Yes	R	A	R	A	A	R
El Salvador	Yes	R - ILO 107	A	R	A	A	R
Grenada	Absent		R	R	A	A	R
Guatemala	Yes	R	R	R	A	A	R
Haiti	Yes	R - ILO 107	R	R	A	A	R
Honduras	Yes	R	A	R	A	A	R
Jamaica	Yes		R	R	A	A	R
Mexico	Yes	R	R	R	A	A	R
Nicaragua	Yes	R	A	R	A	A	R

Country	International Frameworks				Regional Frameworks		
	UNDRIP	ILO 169	CERD	CEDAW	American Declaration on the Rights of Indigenous Peoples	American Declaration of the Rights and Duties of Man	American Convention on Human Rights
Panama	Yes	R - ILO 107	R	R	A	A	R
Paraguay	Yes	R	R	A	A	A	R
Peru	Yes	R	R	R	A	A	R
Suriname	Yes		D	A	A	A	R
Trinidad and Tobago	Yes		R	R	A	A	D
Uruguay	Yes		R	R	A	A	R
Venezuela	Yes	R	R	R	A	A	R