RECOGNITION AND DISTRIBUTION:
Equity and justice policies for discriminated groups in Latin America

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Abstract: This paper addresses –for the case of Latin America - the challenges that identity or ascription-defined groups pose to public policy and the justice system, in a context characterized by acute inequalities. The information provided here shows how ethnic minorities, women, and - to some extent, young people –suffer a situation of relatively greater exclusion, vulnerability, poverty and/or social exclusion in Latin America. This illustrates the link between inequality and cultural and ascriptive conditions. Thus, inequality goes hand-in-hand with difference. Indigenous groups pose new precedents, in the sense that they bring forth the juridical and political problems that question the very rationality of social resources distribution, the individual basis of law, and the State-Nation sovereignty. In this framework, differentiated policies in education and health, greater political and public recognition of ascription and or cultural identity-defined groups, the right to self-government and the holding of collective rights in the case of indigenous peoples, the judicial reforms to balance out access to justice and revert age-old forms of discrimination, are the main proposals that are set forth and proposed in this paper.

Keywords: culture, ascription, multiculturalism, social integration, social policy, justice, inequality

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Introduction

An issue that is gaining significant momentum these days is how to reconcile the trend leading to an increasingly global society with the fact of belonging to communities defined by identity and territory. This places the identity and culture issue in the eye of the hurricane, considering the existing tension between global rationality, on the one hand, and belonging to a space where significant links are exercised (Touraine 1997), on the other. In this context of globalization, cultural identities and factors become conflictive elements (Castells 1999); and the more significant identity sources become subjective experiences derived from ascription categories (Garretón 2000). Consequently, a full-fledged debate is taking place today on the capacity to incorporate increasing social and cultural pluralism into the definition of citizenship (Kymlicka and Norman 1997).

In this context, the demands by groups defined by identity, culture and/or ascription are acquiring unprecedented power in national and international politics. Ethnicity, gender, territory and generation are grouping criteria that pose increasing challenges both in the political justice and social justice spheres. In this sense, “social exclusion cannot be perceived solely as a synonym for marginality and lack of material goods, but as a dynamic complexity that alludes to the material, but also to the community’s sense of belonging, the enjoyment of economic growth benefits and access to symbolic and material goods, as well as the respect for diversity (and integration in diversity).” (Bello 2004, p.73).

Cultural, territorial and ascription factors become issues that address active citizenship, understood in a republican sense as the practice and demand for participation and belonging. Therefore, with a greater presence in the political sphere, in mass communication and in the collective imaginary, the greater the conquests in civil, political, social, economic and cultural rights will be. Political citizenship and social well being are two complementary aspects, as are the assertion of difference and the promotion of equality. If, on the one hand, poverty and exclusion are enhanced by these ascription factors, on the other, citizens are increasingly aware of their right to diversity and identity. Furthermore, there is an asymmetry between those who make themselves heard because they are in a position of greater political power and collective negotiation, thus attaining the tutelage and protection of their rights, and those who, being less powerful and influential, are not able to exercise these same rights. Therefore, an order based on social rights should strive to counter-balance power and influence relations among different
social groups, so as to avoid the vicious circle in which the most excluded socially and culturally, are politically the weakest.

The following pages will address –for the case of Latin America- the challenges that identity or ascription-defined groups pose to public policy, in a context that is characterized by acute inequalities in the access to social well being and justice. Given the scenario of identity demands in the political context of Latin American countries, the main challenge lies in combining recognition policies in the political, cultural and juridical areas, with distribution policies in the areas of social policy and access to productive assets. And to gradually shift from the vicious circles that mutually degrade recognition and redistribution conditions, toward virtuous circles leading from greater political recognition to the greater benefit of redistribution policies.

I. Between cultural denial and social exclusion

II.1 Complex inequality

At this point I would like to highlight the link between inequality and cultural and ascriptive conditions. Indigenous peoples, Afro-descendants, women and other minorities (or majorities) defined by culture or ascription, have been the most deprived in terms of social citizenship and public voice. Race, ethnicity, territory and age factors confer socio-cultural specificity to the demand for social citizenship in the groups that claim it. Thus, inequality goes hand-in-hand with difference.

Nothing could be more eloquent to understand the cultural variables involved in social inclusion-exclusion than the case of ethnic minorities, or discrimination based on race and ethnicity. Not because it is the only case, but because it is the one that most clearly portrays the problems being addressed in Latin America in reference to citizenship’s cultural dimension, which touches upon the realms of power distribution, productive resources, as well as social protection and social promotion networks. Firstly, because they have invariably been an extreme incarnation of the link between cultural denial and social exclusion. Hence, indicators concerning indigenous peoples, for example, are a particularly revealing thermostat of the inequality that affects other discriminated or excluded groups, such as Afro-descendants, women, youth or
migrants. Secondly, and as we shall see below, because in terms of cultural demands, they pose the most critical juridical and political issues, inasmuch as they question the very rationality of social distribution, the individual basis of law, and the State-Nation sovereignty.

II.2 Sociocultural discrimination and exclusion

Slavery and the colonial domination of Afro-descendant and indigenous groups help to understand contemporary economic, political and social exclusion processes within a historic perspective. In Latin America and the Caribbean, this historic denial of the other’s culture and identity is perpetuated in various ways, in the exclusion patterns that characterize the dynamics of modernization (Calderón, Hopenhayn and Ottone 1996). Thus, the denial of the other due to race and ethnic factors laid a cultural foundation over which excluding - and hardly democratic - policies were constructed. Our countries have sustained spurious forms of modernization with full, partial and negated citizens.

This cultural denial is carried over from the racial-other to others: women, peasants, migrants. Even today, indigenous peoples and Afro-descendants are the poorest in the region, exhibiting the worst socio-economic indicators, scarce cultural recognition and lack of access to decision-making spheres. Most studies show that indigenous peoples in Latin America live in conditions of extreme poverty (Pasacharopoulos & Patrinos1994; Hall and Patrinos 2004, Hopenhayn and Bello 2000).

In Latin America, the indigenous population represents between 8 and 10% of the region’s total population, while the Afro-descendants account for approximately 30% of the total Latin American population. The main causes for indigenous peoples’ poverty conditions are attributed to the liberal reforms put into effect in the 19th Century that aimed to introduce the notion of the private property of land (Plant 1998). Predominant factors for their poverty condition include progressive loss of lands, breakup of community economies, reduced access to educational and health care services, and labor insertion structure and dynamics. Indigenous peoples and Afro-descendant populations get lower wages for jobs that are comparable to those of the rest of the population, and are more likely to work in the economy’s informal sector.

1 Indeed, inasmuch it has become a commonplace to say that indigenous women in Latin America suffer a “triple” discrimination: for being women, poor and indigenous (gender, class and race), it can also be stated that the case of indigenous and Afro-descendant populations embodies an accumulation of discriminations characterizing – in different levels and effects – the situation of a number of excluded and discriminated groups.
without social protection or unionization. All this results in a much greater incidence of poverty in the ethnic and racial minorities than in the rest of the population, as shown in Graph 1.

Graph 1

Latin America (14 Countries): Incidence of Extreme Poverty in Indigenous and Afro- descendent Individuals as a Multiple of the Incidence in the Rest of the Population

(one dollar per day line)

Source: ECLAC, based on special tabulations of household surveys in the respective countries.

As shown in Graph 1, the incidence of extreme poverty in indigenous and Afro-descendant individuals is much higher than in the rest of the population, ranging from 1.6 times (Colombia) to 7.9 times (Paraguay), excluding the cases of Costa Rica and Haiti, where the ethnic condition does not seem to imply any difference in the levels of indigence. Other characteristic features of these groups, which also increase their possibility of being under the poverty line, are the larger size of their households- although these percentages are lower for Afro-descendants – and also, in most countries, the fact that they live in rural areas, vis-à-vis a growing urbanization process.

Employment quality and salary gaps can also be significant factors in accounting for these inequalities. In Brazil, for example, the percentage of black workers in precarious
employment situations was much higher than in the case of white workers, for every year during the 1992 – 2001 period, for both sexes and all age groups, and always representing 2/3 or more of the employed population. Among black youth between 16 and 24 years of age, the index was always over 70 percentage points and went up to 76% in the case of black women (Borges Martins 2004). In Bolivia, indigenous workers account for 67% of precarious jobs and 28% of semi-skilled jobs. Similarly, only 4% of indigenous workers are employed in jobs that require greater skills (Valenzuela 2004).

Lack of access to education is another factor that determines the situation of inequality and exclusion that affects indigenous peoples and ethnic and national minorities, given their incidence in these groups’ precarious labor insertion. Although the threshold of educational achievement has risen in indigenous and non-indigenous populations, the gap between these two groups persists in most countries, to the benefit of the latter (see Graph 2). This is especially evident in indigenous participation in completing higher education: More non-indigenous individuals complete the different school levels, which also has a strong impact on the educational gap between urban and rural locations.

In Brazil, blacks and mestizos face the greatest difficulties in their access to, progress and permanence in the educational system, in addition to attending poorer-quality schools, which results in greater failing rates and school lagging as compared to whites. In the early 90s, (1992) only 1.8% of the adult black population had completed the 15 years of minimum schooling that correspond to a university diploma in the Brazilian system, as compared to 8.2% in the case of white students. Despite the progress made, in 2001 that percentage barely grew to 2.5%, as compared to 10.2% in the white population. At higher levels of education, black adults accounted for 2.5%, against 10.2% of Brazilian white adults (Borges Martins 2004).

Graph 2

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2 With regard to the differences observed in the average remuneration, it must be noted that they originate in the job market and are prompted by occupational segmentation and an important element regarding salary discrimination based on race. In Brazil, between 1992 and 2001, the salary of black workers was below 51% of the white workers’ salary. Disaggregating data by sex, it is evident that black men’s wages never reached even one half of the white men’s salary, and although the gap is slightly less in women, the average remuneration for black women was never over 53% of the white women’s remunerations. The figures show that at all schooling levels, in both sexes and in every year during the 1992-2001 period, remunerations for the black population amounted to 60% - 80% of the income of whites with the same educational level. (Borges Martins 2004).
LATIN AMERICA (9 COUNTRIES)
15-19 YEAR OLDS WHO HAVE NOT COMPLETED PRIMARY EDUCATION, ACCORDING TO ETHNIC OR RACIAL GROUP
NATIONAL TOTAL, AROUND THE YEAR 2002
(In percentages)

<table>
<thead>
<tr>
<th>Country</th>
<th>Originary</th>
<th>Non-originary</th>
</tr>
</thead>
<tbody>
<tr>
<td>Guatemala</td>
<td>53.3</td>
<td>29.7</td>
</tr>
<tr>
<td>Nicaragua</td>
<td>50.0</td>
<td>4.6</td>
</tr>
<tr>
<td>Panama</td>
<td>45.4</td>
<td>11.6</td>
</tr>
<tr>
<td>Bolivia</td>
<td>37.6</td>
<td>18.0</td>
</tr>
<tr>
<td>Paraguay</td>
<td>28.4</td>
<td>18.3</td>
</tr>
<tr>
<td>Brazil</td>
<td>18.3</td>
<td>18.0</td>
</tr>
<tr>
<td>Ecuador</td>
<td>18.0</td>
<td>11.6</td>
</tr>
<tr>
<td>Perú</td>
<td>11.6</td>
<td>4.6</td>
</tr>
<tr>
<td>Chile</td>
<td>4.6</td>
<td>29.7</td>
</tr>
<tr>
<td>Latin America a/</td>
<td>29.7</td>
<td>37.6</td>
</tr>
</tbody>
</table>

a/ Simple average for countries.

Source: UNESCO, Universal conclusion of primary education in Latin America: are we really so near the goal? Regional Report on the development goals for the Millenium in terms of education Santiago, Chile, UNESCO’s Regional Education Office for Latin America and the Caribbean (OREALC), October 2004.

With regard to illiteracy, indigenous populations tend to present higher rates than non-indigenous ones, with particularities by specific ethnic groups and also by age and sex groups. Furthermore, indigenous literacy has increased at a lower rate in rural areas as compared to urban areas. In Brazil, in the early nineties, illiteracy rates for the black population doubled or tripled those of the white population, reaching -in the younger age bracket (15-24 years)- three-fold of the whites’ illiteracy rates. (Borges, Martins 2004). Illiteracy continues to be a basic problem in Guatemala too, where, despite the gradual increase experienced in school attendance, it has been declining at a rate of less than 1% a year since 1989. Around 2002, 64.5% of indigenous men
were literate, but in women the rate was still only 36.8%, and was even lower for rural indigenous women: 31.1% (Adams 2005). This is an example of exclusions that are intensified by various ascriptive and territorial factors, where indigenous women in rural areas concentrate the most dramatic indicators.

In the area of health, there are still pending debts with indigenous peoples and Afro-descendant populations, on the one hand, and women and youth, on the other. In the case of indigenous peoples, their health situation is deficient as compared to the rest of the national population, expressed in greater nutritional vulnerability, lower life expectation and greater child mortality, among others. Indigenous households, in particular those in rural areas, face high illness risks due to their precarious living conditions and the limited availability of health care services, water, and basic sanitation. In 2000, life expectancy at birth in Brazil was equivalent to Mexico or Hungary (71 years), whereas for blacks it was comparable to Guatemala or India (65.7 years). (Borges Martins 2004). In Bolivia, 30% of the indigenous population does not have access to basic medications, while 41% of deliveries are not attended by specialized health care staff, but rather by “midwives” who are the best representatives of the traditional medical system.

With regard to malnutrition, chronic malnutrition affects 50% of children under five years old in rural indigenous homes in Bolivia (Valenzuela 2004). In Guatemala, chronic malnutrition in indigenous individuals is at least three-fold the malnutrition suffered by non-indigenous people. Between 1995 and 2002, figures went from 36.4% (in 1995) to 34%, compared with 11.1% in non-indigenous communities (Adams 2005).

There is ample documentation on sex inequalities in Latin America, which have an impact on: access to the labor market and working conditions, home vulnerability, the full exercise of citizenship and reproduction rights, always to the detriment of women. The region shows a greater number of women in impoverished homes, a phenomenon that is more evident among women in the active age group, from 20 to 59 years of age. From a statistical perspective, the cut-off point used to determine who is poor and who is not poor limits and reduces the visibility of a broad contingent of the female population which, even when they do not live in households considered as poor, are poor and vulnerable to poverty on an individual basis, according to income distribution, roles and risks among members of the household (because they have less access to economic resources and less economic autonomy). As shown in Graph 3, the
difference between per capita income disaggregated by households and individuals, increases women’s discrimination when individuals are considered.
Graph 3

Sex distribution by quintiles (urban areas, simple average for 15 countries):

Graph 1

Sex distribution by quintiles according to **per-capita income** in households

Population aged 15 and over

<table>
<thead>
<tr>
<th>Quintile</th>
<th>Women</th>
<th>Men</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>20.5</td>
<td>19.1</td>
</tr>
<tr>
<td>II</td>
<td>21.2</td>
<td>20.8</td>
</tr>
<tr>
<td>III</td>
<td>20.7</td>
<td>20.8</td>
</tr>
<tr>
<td>IV</td>
<td>19.6</td>
<td>19.4</td>
</tr>
<tr>
<td>V</td>
<td>18.3</td>
<td>18.9</td>
</tr>
<tr>
<td>Total</td>
<td>100.0</td>
<td>100.0</td>
</tr>
</tbody>
</table>

Graph 2

Sex distribution by quintiles according to persons’ **individual income**

Population aged 15 and over

<table>
<thead>
<tr>
<th>Quintile</th>
<th>Men</th>
<th>Women</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>21.7</td>
<td>43.2</td>
</tr>
<tr>
<td>II</td>
<td>19.3</td>
<td>16.0</td>
</tr>
<tr>
<td>III</td>
<td>14.2</td>
<td>12.7</td>
</tr>
<tr>
<td>IV</td>
<td>16.7</td>
<td>10.1</td>
</tr>
<tr>
<td>V</td>
<td>18.0</td>
<td>6.2</td>
</tr>
<tr>
<td>Total</td>
<td>100.0</td>
<td>100.0</td>
</tr>
</tbody>
</table>

Source: ECLAC, Women and Development Unit, based on special tabulations of household surveys in the respective countries.

The combination of gender and race variables reveals the specific condition of indigenous and Afro-descendant women in the labor market and in national societies: this group is situated in the lower social strata with lower incomes and low investment returns in education. Although these inequalities also affect indigenous men – but to a lesser extent – additional factors increase the vulnerability of indigenous women, such as difficulties in terms of reproduction control, and its incidence in fertility and child and maternal mortality rates, disadvantages with regard to medical and nursing care, and environmental degradation.

With regard to reproduction control, it should be noted that a low proportion of indigenous women use birth control methods and the use of modern methods is more frequent in non-indigenous, and even rural population, than in indigenous populations in general. In Guatemala, for instance, in 1987, 5.5% of indigenous women used birth control methods, although 43% had heard of them. In 2002, their use increased to 23.8%, of which 16.6% used...
modern methods. Among non-indigenous populations, the use of contraceptive methods increased from 34% in 1987 to 52.8% in 2002, and 43.2% of these used modern methods (Adams 2005). In Bolivia, the global fertility rate for indigenous populations (per 1,000 live births) fell from 6.8% in 1987 to 6.1% in 2002, but in non-indigenous populations it declined from 5 to 3.7% for the same years.

This is a core issue in family planning, and in some countries it is beginning to arouse interest in indigenous women. One reason that explains indigenous women’s incapacity to resort to these methods is that they have less access to relevant information, particularly due to inhibitory factors such as monolinguism and illiteracy. The latter is not a minor issue, and has various nuances.

The access to pre and post-natal care treatment has enormous influence on these groups’ child mortality rates. Although child mortality rates are still high in indigenous groups, they have dropped at a general level in the region. In Bolivia, mortality rates for children under one year old continue to be the highest in South America and amount to 64 per one thousand live births. Also in Bolivia, mortality rates for children aged 5 and under amount to 83 per one thousand live births (Valenzuela 2004). In Guatemala, in the year 2000, this rate was 49 per 1,000 for indigenous populations and 40 for non-indigenous ones. However, mortality in children aged 5 and under showed a parallel reduction, despite the fact that the figure for indigenous populations was 69 per 1,000, still higher than that of non-indigenous groups, 52 per 1,000 (Adams 2005).

No other group displays the educational gender gap, to the detriment of women, as clearly as the indigenous one. No other group maintains such high early fertility and maternity rates for women. The combination between low education and high fertility reveals a clear inclination toward the reproduction of poverty and vulnerability in women. However, contravening it requires reverting prejudice or biases in the very culture of many indigenous peoples. Therefore, in this regard, cultural mediation of social citizenship operates in a problematic and contradictory way.

In territorial terms, it should be noted that the incidence of poverty and extreme poverty as well as the lag in health and education is much more pronounced in rural than in urban areas. In Latin America, indigence amounts to 37% of the rural population, while indigence rates in urban areas amount to 13% (Graph 4). However, due to a large extent to the region’s growing urbanization, as from 2002 there are more indigents in urban than in rural areas. According to
2004 estimates, 52 of a total of 96 million people living in extreme poverty conditions in Latin America live in urban areas.

**Graph 4**

**LATIN AMERICA**

_EVOLUTION OF INDIGENCE BY GEOGRAPHIC AREA_

1990 - 2005

(in percentages and millions of people)

Source: ECLAC on projections based on household surveys of the respective countries.

a/ Estimation based on 18 countries in the region and Haiti.

b/ 2004 figures correspond to a projection.

The case of youth is also worthy of notice. Even though their poverty rates do not exceed the population’s average rates, they face greater social integration difficulties. With more years of formal schooling than preceding generations, their unemployment rates are two- to three-fold that of former generations. In other words, they have become more integrated to the accredited processes of acquiring knowledge and human capital formation, but are more excluded from
spaces in which said human capital can be exercised, i.e., the world of labor and a source of income for their own well being.

To illustrate this, if in 1990, only 25.8% of young people aged 20-24 in Latin America had completed their secondary education, in 2002 this rate increased to 34.8%. However, at the beginning of this decade, average adult unemployment in the region amounted to 6.7%, while for youth it rose to 15.7% (ECLAC, OIJ, Ibero-American Youth Organization 2004). Moreover, the number of formal years of schooling required to obtain jobs with good perspectives of future social mobility have soared. To cite an example, in 2002, and as an average for the region, the percentage of young people aged 15-29, with 10 to 12 years of schooling (which exceeds by far the Latin American average) working in low productivity jobs, was 38.1% for men and 45.6% for women (ECLAC-OIJ, Ibero-American Youth Organization, 2004). With higher education, and enduring higher unemployment, or badly employed, young people probably live through this paradox with a sensation of injustice, inasmuch as the educational process itself has conveyed the idea that greater achievements translate into better options for future employment.

Underlying these forms of inequality is an accumulation of systemic disadvantages and forms of discrimination embodied in everyday practices. All in all, it is important to look at the progress of most of the countries in the region in the past decade, with regard to ethnicity, gender and youth. These are advances of political institutions, legislation and justice, as well as of social policies that take into account the ascriptive variable to make more and better impact on groups which present vulnerabilities or disadvantages associated to these characteristics. However, the step from de jure to de facto is not evident. Social and power gaps that condemn these groups to greater poverty and exclusion situations or that impose greater social integration barriers on them than on other groups in society, are strongly upheld.

II. The ascriptive and cultural factor: between social rights and proactive multiculturalism

III.1 Cultural citizenship and recognition of the other

The lack of social citizenship in Latin America is strongly related to the lack of cultural recognition. The indicators presented above speak for themselves. Furthermore, the systems of resource and asset allocation instituted by the State are not governed by the same rationale of collective aspirations of groups that are defined by gender, age, culture, ethnicity or race.
From the perspective of indigenous peoples, a core element deals with juridical regulations, since the rights accredited by the State are based on juridical individualism and not on collective rights. This case leads to a growing problem in societies that are becoming increasingly complex in cultural terms, i.e., that a specific group’s referent of collective belonging (the most paradigmatic case is that of ethnic minorities self-defined as peoples), may not correspond at all to the “universal” referent of belonging to a nation. Thus, for example, the right to political organization and participation, in a framework of identity recognition and respect, can be as important for certain groups as other social rights, such as access to a decent job or to quality education.

In this regard, the human rights doctrine and the democratic-liberal principles that assert the universality of rights and equality of all people under the law, encounter impairments in accounting for the situation. Indigenous peoples, for example, are currently proposing non-universal “third generation” rights, of a collective nature (rights of the people and not of persons), contradicting the individual-liberal nature of universally recognized rights. Furthermore, the struggle against inequalities based on ascriptive categories demands the institutional positive discrimination resource to the benefit of disfavored categories or parity in gender, ethnicity and race issues.

The argument for the latter is that citizen equality should be complemented with mechanisms to correct origin-based inequalities (i.e., unequal conditions stemming from accumulated and sustained prior discrimination) to have a real – and not merely formal – effect on the political and social citizenship of discriminated groups, overcoming trajectory inequalities. The combination of both would allow women, ethnic groups and other discriminated/excluded minorities to exert their different status, without perpetuating their history of being unequal.

### III.2 Toward a proactive multiculturalism

The growing visibility and strength of social demands that shift from being age-old demands for access to employment or social protection, to new demands centered on identity or on the more symbolic dimension of distribution, pose challenges regarding the State’s response to the cultural particularities of social citizenship. The growing differentiation of individuals as per their insertion in the new productive or communicational processes and the greater prominence of the *identititary issue* imply that citizens are increasingly addressing the matters of assertion of difference, recognition policies and promotion of cultural, gender, generation and territory diversity.
Ethnic minorities and gender groups, youth and migrant groups demand to be recognized in their singularity and consequently in their specific rights, or the specific implementation of universal rights. Affirmative action and positive discrimination, compensation for historic damage, right to self-government, and differentiated policies in education are some examples. Citizenship is being re-thought, this time not in terms of equality, but in terms of differences. Or, among equal and different individuals.

Citizenship, defined as the “holding of rights” pursues its expansion, to seek greater participation based on gender difference and multiculturalism. The demand for citizenship is geared to equality based on difference. And this triggers the action of groups of women, migrants, youth and ethnic minorities in the struggle for greater recognition of their rights, deliberative power, empowerment, social conquests and institutional changes.

In this framework, I understand proactive multiculturalism as a political force that is capable of moving forward in the direction of greater equality of opportunities as well as toward a larger space for the assertion of differences. Proactive multiculturalism needs to reconcile non-discrimination in the cultural field with social distribution vis-à-vis inequalities. The challenge lies in compatibilizing people’s self-determination with the differentiation of culture and values, the participation and public voice of cultural and gender actors in public deliberation, as well as economic and social policies to implement second generation rights, reducing the gap in terms of income, asset, ascription, human security and access to knowledge.

IV. Recognition and distribution: two facets of social citizenship from a socio cultural perspective.

IV.1 A recognition issue with redistribution implications.

In the recognition-redistribution dialectic, an issue that has become increasingly relevant is data collection and dissemination. Census data on indigenous, Afro-descendant and migrant populations must be updated, and household surveys must be implemented to collect information on their socioeconomic conditions and perception of discrimination. This data must, in turn, enable the creation of indicators that will permit States, non-governmental organizations and different political covenant levels to propose policies that conform to the situation of groups that perceive themselves as socially and culturally discriminated.
An initial problem lies in the categories being used. For census purposes, in the case of indigenous and Afro-descendant populations, there is no consensus regarding the use of a self-ascription criterion or pre-established definitions. Examples of this are the censuses that define ethnic belonging based solely on spoken language, when it is clear that age-old cultural submission or acculturation generates self-recognition issues with regard to language in ethnic minorities.
Census criteria to identify indigenous populations in 14 countries in Latin America and the Caribbean

<table>
<thead>
<tr>
<th>Self-identification</th>
<th>Belonging</th>
<th>Use of indigenous language</th>
<th>Self-identification and language</th>
</tr>
</thead>
<tbody>
<tr>
<td>Brazil 2000</td>
<td>Chile 2002</td>
<td>Mexico 2000</td>
<td>Belize 2000</td>
</tr>
<tr>
<td>Panama 2000</td>
<td></td>
<td></td>
<td>Argentina 2001 (at home)</td>
</tr>
<tr>
<td>Costa Rica 2001</td>
<td></td>
<td></td>
<td>Bolivia 2001</td>
</tr>
<tr>
<td>Jamaica 2001</td>
<td></td>
<td></td>
<td>Ecuador 2001</td>
</tr>
<tr>
<td>Honduras 2001</td>
<td></td>
<td></td>
<td>Guatemala 2002</td>
</tr>
<tr>
<td>Venezuela 2001</td>
<td></td>
<td></td>
<td>Paraguay 2002</td>
</tr>
</tbody>
</table>

Source: Population Division, ECLAC.

As regards gender, Graph 3 shows the evident difference in terms of regressive income distribution for women, when household income is broken down into individual incomes within the household. This is an infrequent exercise, although it is decisive to detect income-related sex inequalities. In the case of youth, there is an evident lack of youth surveys in Latin America that inform society on the specific problems that the young are undergoing.³

This information involves an undeniable political component, since for the affected parties it means disclosing their situation and a form of recognition vis-à-vis the others. Furthermore, without reliable data, without periodic indicators and measurements, it is impossible to make political decisions to tackle the discrimination problem and target resources to groups that endure multiple exclusions based on ascriptive factors. Therefore, in terms of information, recognition and redistribution are two sides of the same coin: becoming statistically visible is, at a stage of an information society in which social policy increasingly needs a “social cartography”, part of the process of constructing social citizenship.⁴

³ Up to 2003, only Mexico, Colombia and Chile had undertaken youth surveys with the coverage required to be considered in the preparation of public youth policies.
⁴ Likewise, the United Nations has proposed a Racial Equality Index which, like the Human Development Index, would provide visibility and comparability for national situations with regard to social citizenship lags for ethnicity and race-defined minorities.
IV.2 Distribution fields with socio-cultural implications

Education

Given the virtuous circles between higher education, socio-occupational mobility and better income, education is considered to be the primary mechanism to reduce future inequalities and overcome intergenerational poverty reproduction. Access to quality education and furthering the search for educational achievement and effective learning promotes opportunities to achieve a better living standard, greater labor options, and greater effective freedom to undertake life projects. In this sense, education is not just a social and cultural right, it is also an asset that promotes the realization of other rights. By the same token, the education gap perpetuates the income gap, in terms of a decent job, access to well being and participation in the public sphere.

The educational models implemented up to now have resulted in two forms of discrimination. On the one hand, in the sphere of achievements and progress, indigenous peoples and Afro-descendants are clearly disadvantaged as compared to the rest of the population. And with respect to the assertion or denial of their own culture, education has held, among its historic functions, that of culturally homogenizing the population according to the prevailing State-Nation model, which until recently conceived cultural unification as functional to territorial sovereignty.

Today, governments are aware that access to quality education with a multicultural vocation is one of the privileged levers to promote social citizenship in the indigenous and Afro-descendant populations, and in women. The major challenges in this field refer to the promotion of bilingualism and literacy as two core tools to attain a greater prospect of equality among indigenous and non-indigenous populations. The implementation of linguistic policies in the region, addressed to indigenous training in modernity codes, without relinquishing their ethnic identity, language and culture, is a first step to overcome the education models applied up to now. New approaches (interculturality, multiculturalism, bilingualism and respect for cultural diversity) are increasingly implemented in countries such as Bolivia, Mexico, Paraguay, Peru and Guatemala, among others.

It is a bicultural-multicultural type of education that intends to convey values aimed to respect cultural differences within a society and in the world in general (García Castañón et al.1998). Another important issue that emerges in relation to education is the need for school texts and syllabuses to eradicate prejudice and stereotypes with respect to black people and
incorporate elements that value the indigenous and Afro-descendant cultures. In brief, to open a space for cultural pluralism and tolerance, aimed to respect and preserve existing cultures and reject cultural assimilation processes.

In Chile, the Intercultural Bilingual Education Program does not only contemplate the implementation of an Intercultural Bilingual Educational System. It also finances 24,000 indigenous scholarships for students with good academic performance and poor socioeconomic conditions; implementing programs for curricular innovation, teacher training programs, and preparation of teaching material for Intercultural Bilingual Education in primary schools; and infrastructure improvement in schools with a high concentration of indigenous school population. In addition, and as part of the Origins Program, financed by the IDB, the Digital Literacy Program for Indigenous Communities seeks to train members of indigenous communities in Chile in computer technology. Part of this project contemplates the incorporation of the so-called “Infomóvil”, i.e., a mobile computer room that imparts computer education classes. The idea is to provide indigenous peoples with home-delivered digital training.

In Bolivia, Law 1565, enacted as part of the Educational Reform (1994) has had important implications for bilingual education (De la Torre 1998). This law provides bilingual education to all Bolivian citizens. This initiative originated in a pilot experience carried out in 1990. In Peru, the National Directorate for Intercultural Bilingual Education (DINEBI) was created to guarantee the organization and administration of intercultural bilingual education at all levels and modalities in the country. Based on this organization, the Ministry of Education and Microsoft Peru, have ventured on the joint implementation of a new software technology in the Quechua language called “Language Interface Pack Kit” (LIP) which will be available for over 3 million Quechua speakers.

But indigenous cultures are not the only ones that need to address the cultural variable in education. School education needs to grow closer to youth culture, especially since the latter is much more liable to the audiovisual industry than to school programs. The huge gap that stands between youth culture and school routines reinforces, instead of processing, conflicts between youth and the main socialization institutions accredited by society. Lastly, in the case of women, it is necessary to complement equality in achievement (which in Latin America is a fact) with

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5 [On line]: http://www.risalc.org
6 [On line]: http://www.origenes.cl/diarionota77.htm
school socialization patterns fostering greater gender equality in values and everyday practices within schools. In short, schools should open a space for cultural pluralism and tolerance, aimed to respect and preserve existing cultures, and revert silted forms of discrimination and devaluation of groups defined by culture or ascription.

An educational model with a multicultural vocation must create new teaching contents, values and practices. Respect for ethnic and cultural diversity, civic education based on a full and extensive citizenship, curricular relevance vis-à-vis the diverse social and cultural realities of the children who attend school, as well as encouraging communication practices based on respect for others, gender equality, and mutual understanding, are the core elements in the change of this concept.

Health

Providing greater health care coverage involves several challenges. Firstly, reaching a scattered population in rural areas –where the incidence of indigenous population is particularly high- to provide them with health care services and prevention strategies. Secondly, the availability of health care protocols that consider the linguistic and health culture barriers existing between the indigenous population and the health care professionals. Thirdly, validating and incorporating the traditional health systems, building bridges between official medicine and the traditional medicine that patients are acquainted with.

As stated by the PAHO (Pan American Health Organization), respect for cultural diversity and real knowledge about the needs of the various communities are the pillars to achieve health equity in indigenous peoples\(^7\). In the sphere of health, the reality faced by indigenous peoples is a very complex one. In the first place, the indigenous population is quite scattered, located in rural, urban marginal or border areas, thus making access to them quite difficult. On the other hand, the great majority of health care professionals are not prepared to deal with the cultural diversity of indigenous peoples. In the third place, indigenous communities present health problems far beyond the national average\(^8\). As a way of addressing these difficulties, PAHO proposes five points for approaching the health issue:

\(^7\) [On line]: www.paho.org/spanish/ad/ths/os/Indig-home.htm.
\(^8\) An example of this is infant mortality. In the case of Mexico, indigenous children present an infant mortality rate of 59 per 1,000 live births, which is twice the national infant mortality rate. Another example is Honduras, where maternal mortality rates, at a national level, amount to 147 per 100,000 live births. However, in regional
1) A holistic approach to health.
2) The indigenous peoples’ right to self-determination.
3) These peoples’ rights to systematic participation.
4) The respect for and revitalization of indigenous cultures.
5) Reciprocity in relationships.

Progress in this direction has been irregular. Already back in 1978, the WHO asked national governments to study and progressively implement Traditional Medicine as an extension that would complement Official Medicine. The countries that have made the best advances in their systematization are Mexico, Guatemala, and Cuba (Hauser, Montesino, Quintanilla 1997).

It is necessary to acknowledge and promote traditional medicine and pharmacopoeia, accepting the use of medicines whose accreditation lies in their effectiveness. The latter not only benefits health conditions, but it also facilitates the re-integration of communities into their own culture. For purposes of the latter, the States must safeguard, through specific policies and legislation, the promotion and protection of the natural pharmacopoeia heritage held by the communities, both for reasons of environmental sustainability and biodiversity, as well as to preserve ancestral wisdom and knowledge in health care and respect the intellectual property rights of indigenous groups\(^9\).

Lastly, women - especially rural and indigenous women- must be assured the holding of their reproduction rights. Information, culture and access factors account for the lags in this area, which require not only extending information coverage but also ensuring that it is internalized by those who it is targeted to, and eradicating sexist prejudice which cause women to feel inhibited to make an effective use of modern birth control methods.

departments where indigenous population prevails –Colón, Copán, Intibucá, Lempira, and La Paz, it fluctuates between 190 and 255 per 100,000 live births. Likewise, in Guatemala, chronic malnutrition reaches 67.8% among indigenous peoples and 36.7% among those who are non-indigenous. In the United States, the indigenous population tends to present higher rates with respect to alcoholism, obesity and diabetes [On line]: www.paho.org/spanish/ad/ad/ths/os/Indig-home.htm

\(^9\) There are many ongoing researches in the Amazonic forest, studying traditional medical practices and the use of pharmaceuticals to verify their validity in the Western world. But the idea is not to just legitimize and disseminate this heritage of knowledge. It is also essential to ensure that its copyright remains where it belongs: in the ethnias and areas where it has been developed throughout centuries. At present, conflicts on the patents for this knowledge are also a central political conflict in which the citizenship rights of originary peoples is at stake.
With respect to youth, it is a known fact that they have a very low probability of becoming seriously ill or dying due to endogenous causes. Currently, the mortality rate of Latin American young people aged 15-24, calculated as 134 per 100 thousand, is in average just over half that of the group aged 25-44. On the other hand, however, there is a juvenile morbidity-mortality profile resulting from the higher prevalence of accidents, physical assaults, and sexually transmitted diseases, unwanted and premature births, among others. Of every 100 young men dying in Latin America, 77 die as a result of external causes (accidents, homicides, and suicides), and 38 out of every 100 young women also die as result of one of this group of causes (ECLAC- OIJ, Ibero-American Youth Organization, 2004). Very healthy inside and very exposed on the outside, young people do not find in the health service or in preventive health care, the answer to their specific risks. They live the contrast between good health and badly covered health risks. Between accidents, assaults, unwanted pregnancies, and sexually transmitted diseases, their health risk problems are linked to socially negative stigmas that cause them to be less than welcome by the health system. Often, the vague boundary between what may be considered either a health issue or a misbehavior issue, or between illness and social disgrace, situates young people too far away from the appropriate services to look after their health emergencies.

The case of young women and adolescent pregnancy is dramatic, particularly if one takes into account that, in spite of the sharp fall in the region’s average fertility, adolescent fertility remains high, having even increased in some countries. The lack of prevention and care makes unwanted pregnancies in young women lead to stigmatization and school desertion, as well as to extremely precarious economic and family trajectories throughout their lives. In addition, there is the fact that adolescent fertility occurs much more frequently among women with lower educational levels, which reinforces the dialectic of exclusion (see Table 1). Therefore, it is absolutely essential that health policies include a double approach in this respect: on the one hand, to accept and acknowledge the problems involved in this situation, providing the necessary support to prevent adolescent pregnancy from remaining linked to school desertion; on the other hand, to provide clear and exhaustive information in schools on pregnancy prevention, stressing the responsibility pertaining to men in this matter.
Table 1

SELECTED COUNTRIES: EVOLUTION OF THE PERCENTAGE OF MOTHERS OR FIRST PREGNANCIES AMONG WOMEN AGED 15-19, BY EDUCATIONAL LEVEL, SELECTED DATES

<table>
<thead>
<tr>
<th>COUNTRIES AND DATES OF THE SURVEYS</th>
<th>NO SCHOOLING</th>
<th>PRIMARY</th>
<th>SECONDARY OR MORE</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Mothers</td>
<td>Mothers</td>
<td>Mothers</td>
</tr>
<tr>
<td></td>
<td>First pregnancy</td>
<td>First pregnancy</td>
<td>Mothers or currently pregnant</td>
</tr>
<tr>
<td></td>
<td>Mothers</td>
<td>Mothers</td>
<td>Mothers</td>
</tr>
<tr>
<td></td>
<td>First pregnancy</td>
<td>First pregnancy</td>
<td>Mothers or currently pregnant</td>
</tr>
<tr>
<td>Bolivia 1998</td>
<td>40.1</td>
<td>23.9</td>
<td>7.4</td>
</tr>
<tr>
<td></td>
<td>11.4</td>
<td>5</td>
<td>1.4</td>
</tr>
<tr>
<td></td>
<td>51.5</td>
<td>28.9</td>
<td>8.8</td>
</tr>
<tr>
<td>Brazil 1996</td>
<td>50.7</td>
<td>23.6</td>
<td>10.7</td>
</tr>
<tr>
<td></td>
<td>3.7</td>
<td>4.7</td>
<td>3.4</td>
</tr>
<tr>
<td></td>
<td>54.4</td>
<td>28.3</td>
<td>14.1</td>
</tr>
<tr>
<td>Colombia 1986</td>
<td>19.3</td>
<td>16.9</td>
<td>5.7</td>
</tr>
<tr>
<td></td>
<td>6.8</td>
<td>5.4</td>
<td>1.3</td>
</tr>
<tr>
<td></td>
<td>26.2</td>
<td>22.3</td>
<td>6.9</td>
</tr>
<tr>
<td>Guatemala 1998/99</td>
<td>31.9</td>
<td>20.6</td>
<td>7.3</td>
</tr>
<tr>
<td></td>
<td>8.6</td>
<td>5</td>
<td>1.8</td>
</tr>
<tr>
<td></td>
<td>40.5</td>
<td>25.6</td>
<td>9.2</td>
</tr>
<tr>
<td>Haiti 2000</td>
<td>41.4</td>
<td>13.9</td>
<td>7.1</td>
</tr>
<tr>
<td></td>
<td>3.2</td>
<td>4.9</td>
<td>3.6</td>
</tr>
<tr>
<td></td>
<td>44.6</td>
<td>18.8</td>
<td>10.7</td>
</tr>
<tr>
<td>Peru 2000</td>
<td>36.9</td>
<td>22.9</td>
<td>7.2</td>
</tr>
<tr>
<td></td>
<td>0</td>
<td>3.6</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>36.9</td>
<td>26.4</td>
<td>9.2</td>
</tr>
<tr>
<td>Dominican Republic 2002</td>
<td>58.4</td>
<td>28.2</td>
<td>14.2</td>
</tr>
<tr>
<td></td>
<td>5.8</td>
<td>5.8</td>
<td>4.2</td>
</tr>
<tr>
<td></td>
<td>64.3</td>
<td>34</td>
<td>18.3</td>
</tr>
</tbody>
</table>

Source: www.measuredhs.com

Work and social protection

Regarding employment and work, where women, youth, indigenous people, migrants and Afro-descendants face a clearly disadvantageous position— and frequently, discrimination—the States must guarantee a less discriminatory treatment, must watch that equal tasks receive equal remuneration, and ensure that everybody obtains the social security rights and benefits they are entitled to, as well as health benefits and compensation for work-related accidents or illness. In order to promote greater equality in access to work and in working conditions, it will be necessary, wherever possible, to contemplate affirmative action measures or positive discrimination.  

10 The ILO Convention Nº 169 states, in relation to this area, that “Governments must adopt, within the framework of their national legislation and in cooperation with the peoples concerned, special measures to guarantee workers belonging to those peoples an effective protection in matters of contracting/hiring and employment conditions,
Historically, integrated social sectors—with work as the axis of integration and exercise of rights—incorporated various social protection mechanisms against the risks that jeopardize work, such as diseases, old age, lack of knowledge, and unemployment. As shown by empirical evidence in this category, basically only men have been taken into consideration as subjects of law, as men were traditionally and culturally designated the responsibility of being providers. And, among them, those who hold a formal, dependent and wage-earning job, preferably organized under a union. Therefore, if during the 20th century, social citizenship functioned on the basis of formal and unionized work, some were left without the possibility of effectively exercising these rights, to wit: women, and an abundant contingent of non-organized and/or informal workers. Currently, the rural population, indigenous peoples, Afro-descendants, the young, migrants, and women, have the greater incidence in informal, temporary, unprotected and non-unionized jobs.

Beyond the classic concept associated to social security at work, the region is currently facing the need to reformulate its approach to security and protection. In this framework, the concept of security encompasses new spheres and social categories, expanding to include age and ascriptive categories such as gender and ethnic minorities. As the transformations taking place in the working world exacerbate precariousness in groups that have invariably been discriminated in the workplace; as changes in the family structure and in the age pyramid reformulate the relation between active and passive populations, and also between providers and dependents, and as economic volatility increases the population’s vulnerability in the face of external shocks, social protection is becoming increasingly insufficient and the need to reformulate it is still greater. In this sense, labor and social protection policies must aim at providing greater coverage to historically excluded groups.

IV.3 Territory, autonomy and justice: an emblematic case

11 Even if, well into the twentieth century, women were still left out of the protection systems associated to work, their own demands and struggles resulted in being recognized as workers, with their own specific features (maternity leaves -pre and post natal- leaves due to their offspring’s illnesses, are among the most significant successes achieved), but with severe limitations as to social security coverage in periods of unemployment, in their integration to labor training, in matters related to child care and supervision, and in their participation in the social insurance system.
In the indigenous discourse, land and territory seem to be deeply linked to historical destiny. It is an unalienable relation, because simultaneously with the disappearance of their land, their culture and language would also disappear, as well as their vast knowledge about its resources (Bello 2004). Territorial and autonomy rights formulate, in this case, an emblematic relation between social citizenship and culture. Two reasons account for this. Firstly, because the ownership of land and territories demanded by the indigenous peoples is based on common or unwritten law and in the claim against usurpation, which is fresh in the historical memory of these peoples, but which are not recorded in the ownership registers currently in force and that rule the modern Nation-State. Secondly, because for indigenous peoples, ownership of land and territories does not represent solely a residential and productive asset, but is a key factor that confirms their identity, the continuity of their mores, and is their collective belonging referent. It is not only a matter of quality of life, but also one of identity.12

Many indigenous peoples have traditionally owned their land corporatively, or with complex systems for allocating responsibility, and using many possible combinations of ownership. Considering this identity feature, public policy should promote titles based on shared usage and mores, such as the provisions established by communities in Mexico for purposes of protecting their communal territories. Jurisdictional mechanisms (Territorial Courts) should also be created to help avoid more subtle ways of discrimination related to indigenous territorial issues.

The above is a key factor in terms of the cultural dimension of social citizenship. It questions the liberal system of rights by claiming common law rights (by customary use and not by law), collective but not universal (instead of individual rights but with a universal scope), and based on self-regulation. On the other hand, the claim for the land is often, in the case of indigenous peoples, indivisible from the demand for self-determination and autonomy because it comes from groups who define themselves as peoples, and who attribute themselves their own systems of deliberation, legislation and justice anchored in territorial definitions. In the face of this, the National State is wary of the eventual creation of sub-national states in detriment of sovereignty, which is to say, to the essence itself of the Nation-State.

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12 The same occurs with the quilombo “remanescents” in Brazil, who demand their right to the land, as well as with Afro-descendants who have been displaced by violent conflicts in Colombia.
With the causal link between territory ownership and their own administrative and judicial system set forth by the indigenous peoples, the whole modern construction of citizenship is being questioned. Social citizenship and political citizenship would not be embedded in the liberal model of rights, or in the model of the Welfare State, but rather in individual and collective rights, where demandability and justice is taken off the hands of the State. (Bello 2004).

In this issue, conciliation is not easy. Some countries have made progress in this by way of “an autonomy that will not conflict with the general body of rules of the Nation State” (that is to say, not just any judicial system or self-government system). On the other hand, ILO Convention Nº 169, subscribed by some governments in the region and resisted by others, prescribes that the tendency should be towards the establishment of measures and action programs enabling the indigenous peoples to administrate and manage their own territories and natural resources. There also are some Afro-descendant populations who are redefining their exclusion in terms of culture, and vindicating similar forms of self-determination.

None of the special legislations in Latin American countries grant indigenous authorities full autonomy in matters of administration and justice, as the clause “as long as it does not violate the Constitution or Human Rights International Treaties” turns out to be the minimum common denominator for granting any autonomy. The model adopted by the more progressive States in this matter is that of “neo-communitarian liberalism” proposed by W. Kymlicka (1996), according to which “external protection” is a “must” when there are internal common law rules that violate the individuals’ fundamental human rights. The argument has considerable weight from the perspective of a universal human rights ethics: a State cannot allow a self-regulated community -by virtue of its common-law rights- to consider as normal in its daily life that which, at the constitutional level of that State, has been established as a crime or a violation of the law. A classic dilemma usually set forth in this respect is that of women’s right to equality, which is not always supported by self-regulated communities based on use and custom and where physical punishment to women may not even be sanctioned.

In this sense, it should be noted that the regulating and judicial systems based on custom may be incompatible with universally recognized economic, social and civil rights. In many indigenous regions in Latin America, custom systematically denies women the right to own land, assets, or have opportunities. Thus, some of the common or unwritten laws have also been
considered to be archaic and rigid, too localized and complex, thus making the more generalized reform initiatives more difficult to implement. They may even not be legitimate at a local level, such as those imbued by colonial legislation, and have derived in abusive chieftainships (cacicazgos) or clientelistic mechanisms that utilize local chiefs to maintain control. Therefore, albeit custom may be recognized, it must not become an obstacle for other fundamental human rights to come fully into force.

Thus, the most important issue is to build a consensus in terms of procedural ethics - beyond the realm of cultural differences- that will ensure that differences and (re)solutions are effectively respected and complied with, whether they may have been negotiated or adjudicated. The values and beliefs at stake or in conflict are, per force, immeasurable, but they are not untranslatable, and it is in the ‘translation’ of rights where the efforts to improve access to justice, especially the territorial one, must be focused in the case of indigenous peoples.

IV.4 Environment and cultural heritage

Indiscriminate felling of native forests, oil extraction, or the construction of dams and reservoirs, has devastating consequences on indigenous groups and their surroundings. This is one of the reasons that, at an international level, the demand for territorial rights is the most visible aspect of the “indigenous emergency”, an issue that has also been assisted by the concern of international and multilateral organizations, such as the OAS, the World Bank, and the IDB, as well as by a set of instruments that may make the indigenous peoples demands operational, such as the ILO Convention Nº 169 or the Agenda 21 of the Earth Summit.

At continental level, much progress has been made with respect to the recognition of indigenous peoples’ ancestral rights in matters such as territorial, environmental, possession, administration and use of resources. In countries like Brazil and Bolivia, this recognition has been incorporated into the Constitutions of the respective countries, which, in ratifying the ILO Convention Nº 169, have appropriated a set of rules and regulations referring to these topics. It is evident, then, that there is a set of distinctly expressed rules and regulations that capture in its entire scope and meaning the current need to recognize territorial rights and the autonomy of indigenous peoples to use said territories at will.

However, to date many of these declarations are more *de jure* than *de facto*, without having had any real effect for the indigenous peoples, who endure the degradation of their habitat
both due to land overuse caused by the scarcity of land and large development projects. Therefore, a basic measure to open political negotiation spaces for indigenous peoples regarding these problems, is their constitutional recognition in the positive law of modern states.

Therefore, the management and safeguard of natural resources and biodiversity of indigenous lands is also a central issue. The increasing demand for new agricultural land, the patenting of phytopharmaceuticals by transnational consortia, the mining, aquifer and oil concessions, and lumbering, have created a scenario that threatens the survival of indigenous peoples. In the framework of Agenda 21 of the Rio Summit, the states must establish regulatory frameworks, as well as participation processes to work together with the communities in the implementation of joint action and management plans for their land, natural resources and biodiversity preservation.

It is necessary to establish precisely delimited regulatory frameworks for an informed participation of the indigenous communities in projects that affect them directly. Currently, there are several specific actions -such as the demarcation of indigenous territories, restitution, protection, plans for sustainable management of natural resources (forest, water, and phytopharmaceuticals), land extensions, or the development of plans for territorial management through the “indigenous development areas”, which are taking place in Mexico, Guatemala, Colombia, Ecuador, Guyana and Chile, among other countries.

On the other hand, in view of the fact that rural and peasant women in general, and indigenous women in particular, are highly skilled in the use of certain natural resources, there is an awareness that certain processes of degradation and contamination of the natural environment have a special impact on them, as they must experience the loss of resources required for their subsistence, with their subsequent displacement towards other geographical areas, in precarious and poverty conditions (Bello, 1998). These women’s knowledge, derived from their specialization, is essential to preserve biodiversity. By the same token, these women’s role in the sustainable management of natural resources has been considered as a central factor in the maintenance or ending of the so-called vicious circle of poverty in the rural sector.

Therefore, it is fundamental to incorporate the concerns and perspectives related to gender, in all policies and programs intended to favor sustainable development in indigenous territories. This implies, on the one hand, a heightened awareness of gender on the part of the institutions concerned and, on the other hand, the implementation of redistributive policies aimed
at channeling resources to women in order for them to undertake greater responsibilities in the projects and programs. The idea is to assimilate the knowledge and traditional practices of rural women to the sustainable use of resources when environmental management programs are developed. It is also essential to achieve the active participation of women in decision making processes related to the environment, at all levels: as administrators, project makers and planners, and as executors and evaluators of environment-related projects (Bello and Rangel, 2000).\textsuperscript{13}

IV.5 \textit{De jure} and \textit{de facto}: the emblematic case of indigenous peoples

The main juridical problem in sanctioning any kind of discrimination, whether because of ethnicity, migrant status or gender, and promoting greater space for the assertion of difference and social inclusion of these ascriptive groups, is that of the demandability of rights.

This is where the gap between the rule and reality becomes, for ethnic minorities, particularly dramatic. \textit{De jure}, indigenous peoples constitute a relatively privileged minority from a legal perspective and probably there is no other ‘vulnerable population’ to whom rights have been recognized with the scope and understanding reflected in the plethora of constitutional rules and special public policies benefitting the indigenous peoples in Latin America. \textit{De facto}, however, indigenous populations are the most unprotected, from a territorial perspective, mainly because they do not have access to the institutional means to pursue the enforcement of the rules.

This situation calls for more than just the implementation by the public sector of mechanisms aimed at mediation or finding alternative solutions to conflicts. There must also be a strengthening of the adjudication means in civil matters affecting the indigenous and Afro-descendant populations (Nader 2002), in order for them to have easier and faster access to judicial mechanisms and, by association, the fulfillment of their fundamental rights.

In the case of indigenous peoples, the main problems related to territorial justice refer to the chronic deferments they experience in the access to, and attainment of title deeds, of land, water and every other resource found in the subsoil and soil. In this respect, Daes (1999) describes the most common territorial problems: lack of recognition by states of the right that indigenous peoples have over lands and territories; lack of demarcation; the lack of application of recognition and protection laws; problems associated to claims for devolution; expropriations;

\textsuperscript{13} Extract from ‘Indigenous women and the environment: Point K of the Beijing Action Platform’
forced displacements and relocations; and lack of integral protection of environmental and territorial resources.

One of the feasible reforms of the judicial system, similar to those being implemented in penal reform matters or the creation of Family Courts in Chile, is associated to the creation of Territorial Courts to coordinate the handling of environmental queries and conflicts, demands from indigenous peoples, or problems associated to the access to and distribution of resources, or with the tangible or intangible cultural heritage. This would considerably reduce the interstitial spaces for discrimination and racism, which generally take place in the semi-darkness of various public offices. Another access mechanism for which there is a precedent is the specialized advocates (for children, as is the case in Bolivia, or for indigenous peoples, as in Guatemala).

Judicial reforms are necessary to facilitate the demandability of rights, that is to say, so that all sanctions and benefits contained in the law are complied with. At present, there are obstacles in the form of costs and intermediation that hamper this demandability. Many Latin American countries do not allow self-representation, which effectively restricts the poorest sectors’ access to justice. Legal assistance would increase access to justice, as would also the existence of mediation community centers, or Justice of the Peace offices, or mobile courts. The mobile courts introduced in remote areas of Brazil in 1999 have been replicated in Chile and Mexico. In Guatemala, 24 mediation centers have been created, using mediators who are fluent in the Spanish and Maya languages. In some cases, the social movements themselves provide whatever is required so that people may claim their rights in a formal situation, as in the case of landless peasants in Mexico and Brazil.

Although in Guatemala indigenous peoples’ advocate organizations report to the Public Defenders Office, their particular composition and their access to indigenous language speaking attorneys, grant them a special sensitivity vis-à-vis the rights of indigenous peoples, and they also perform their work under the explicit mandate of the ILO Convention Nº 169, creating jurisprudence that may serve as a precedent in future. It is also interesting to note that the indigenous advocate project includes many areas, such as promoting the use of the language, assessments and the work of experts, as well as acting as a multiplier of rights through various workshops, radio programs, round tables, etc.

Another notable aspect of the indigenous advocates is their involvement in training activities. Based on the research carried out on the application of indigenous peoples’ law and of
constitutional law, paradigmatic cases have been constructed that are used to sensitize the operators. Also, in collaboration with the Supreme Court of Justice and the Judicial Studies School, training workshops have been carried out both for judicial officials and for indigenous leaders and authorities. Undoubtedly, indigenous advocacy is an institution to be recommended when the time comes to coordinate both justice systems while respecting indigenous law. At the same time, it favors the use of the language, and takes part of the conflicts away from the judicial system, which in turn helps to clear the justice administration system.

In the Chilean case, the new Code of Criminal Procedure introduces a new persona: the translator, for cases in which the accused cannot express themselves clearly in Spanish; it considers that in cases involving members of the same ethnicity, custom may have the validity of law, acting as a mitigating circumstance in penal matters; with this in mind, experts’ reports (“anthropological”) are prepared for the judge’s consideration at the time of pronouncing judgment. Furthermore, the government has incorporated in the justice system alternative methods of solving conflicts, which allows for mechanisms such as mediation, arbitrage, conciliation and negotiation, which clear up the system and facilitate processing group demands that previously had various access barriers, ranging from language to territorial marginality.

14 The anthropological expert work and the “cultural” mitigating factor constitute instruments that are not problem-free in the sense that an action that is considered to be a felony from the perspective of universal law (for example, wife battering) may be remitted or attenuated during judgment, if it is proven that said felony is not so from the perspective of an ethnia’s common law.
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