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## Menschenrechte in Lateinamerika

### Thema

Sonia Cardenas: Forking Paths and Social Complexity:  
Rethinking Human Rights Progress in Latin America

Helen Ahrens: Die Zukunft als Herausforderung des Rechts –  
Gedanken zur (Menschen-)Rechtspolitik in Lateinamerika

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Fortschritt oder Rückschritt im Bereich der menschenrechtlichen  
Verantwortung von Unternehmen?

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# Menschenrechte in Lateinamerika

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Helen Ahrens  
Sonia Cardenas  
Sérgio Costa  
Pablo de Greiff  
Veronika Haász  
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## EDITORIAL

Wer die „Menschenrechtsbrille“ aufsetzt und nach Lateinamerika schaut, benötigt Gleitsichtgläser. Was von der Ferne als eine vergleichsweise homogene Region erscheinen mag, entpuppt sich bei näherem Hinsehen als eine Vielzahl recht unterschiedlicher Länder. Umgekehrt kann die länderspezifische Binnenperspektive den Blick auf gesamtlateinamerikanische Entwicklungen, Strukturprobleme und Zusammenhänge verstellen. Vor allem aber benötigen Beobachter die Bereitschaft, Ambivalenzen zu erkennen, sonst wird ihnen mit der Menschenrechtsbrille schnell schummrig vor den Augen.

Schon auf den ersten Blick fällt auf, dass Rechtsnormen und politische Praxis in der Region teils stark auseinanderklaffen. Dennoch sind Menschenrechts- und Verfassungsnormen in Lateinamerika weit mehr als nur Papiertiger. Als Bezugspunkte für das Wirken nationaler und transnationaler Menschenrechtsbewegungen in und zu Lateinamerika sind sie von unschätzbarem Wert und können auch von staatlicher Seite nicht völlig ignoriert werden. Zugleich handelt es sich bei den Menschenrechten nicht einfach um einen Import aus dem globalen Norden.

Wenig bekannt ist, dass aus Lateinamerika wichtige Impulse für die Entwicklung des globalen Menschenrechtsschutzes ausgingen und ausgehen. Lateinamerikanische Eingaben beeinflussten beispielsweise ganz entscheidend die Arbeiten an der Allgemeinen Erklärung der Menschenrechte (AEMR) von 1948 und wirkten nachdrücklich darauf hin, dass neben den bürgerlichen und politischen auch wirtschaftliche, soziale und kulturelle Menschenrechte in die Erklärung aufgenommen wurden. Auch später ratifizierten die allermeisten lateinamerikanischen Staaten wichtige Kernabkommen des UN-Menschenrechtsschutzes: den Zivilpakt und den Sozialpakt, die Konventionen gegen Rassismus und gegen die Diskriminierung der Frau sowie die Kinderrechts- und die Behindertenrechtskonvention. Über ein Dutzend lateinamerikanischer Staaten sind sogar Verrtragsparteien der bislang nur mäßig ratifizierten UN-Wanderarbeiterkonvention von 1990, die 2003 in Kraft trat. Die UN-Konvention gegen das „Verschwindenlassen“ von 2006, seit Dezember 2010 in Kraft, ging maßgeblich auf Initiativen aus Lateinamerika zurück und weist dort bereits etliche Ratifikationen auf. Zudem haben zahlreiche lateinamerikanische Staaten das noch nicht in Kraft getretene neue Zusatzprotokoll des UN-Sozialpaktes von 2008, das einen Beschwerdemechanismus vorsieht, gezeichnet oder sogar, wie im Falle von Ecuador, El Salvador und Argentinien, ratifiziert.

Hinzu kommt, dass der Interamerikanische Menschenrechtsschutz weit entwickelt

Rachel Sieder, María Teresa Sierra<sup>1</sup>

## Indigenous Women's Access to Justice in Latin America

While women all over the world encounter barriers in accessing justice, there are particular challenges for indigenous women, most of whom face triple discrimination on the basis of their ethnicity, gender, and class. Indigenous women in Latin America encounter a variety of alternatives when seeking redress, justice, and guarantees of their human rights. These include different court and non-judicial conflict resolution forums within the formal state system, and a variety of non-state justice mechanisms, including community and sometimes regionally-based indigenous justice systems. In contrast to Africa and Asia, formal recognition of non-state legal systems is a relatively recent phenomenon in contemporary Latin America. This article considers the impact of this process of recognition and reflects on indigenous women's prospects for securing greater access to justice within contexts of legal plurality. It considers the principal barriers to women's access to justice and rights in state and non-state justice systems and also highlights the efforts of indigenous women to secure their rights and to challenge gender discrimination.

We wish to make a number of preliminary remarks: First, debates on the rights of indigenous women cannot be abstracted from the contexts within which those women live, for it is within those contexts that their rights are guaranteed or denied in practice. It is crucially important to analyze dilemmas and problems in the specific contexts within which they occur and not to generalize about "indigenous women" as some kind of generic category. Second, we insist that debates on how to guarantee rights and access to justice for indigenous women must be located within the broader discussion about how to guarantee the collective rights of indigenous peoples, as indigenous women themselves have demanded. Third, in analyzing barriers to indigenous women's access to rights and justice, it is important not to exercise a "colonial gaze". Indigenous women are not only victims whose rights are being denied; they are also actors with agency and voice, who have developed diverse strategies to improve gender

<sup>1</sup> Rachel Sieder and María Teresa Sierra are senior research professors at the Centro de Investigaciones y Estudios Superiores en Antropología Social (CIESAS) in Mexico City. This article is an abridged version of a longer paper which was published as *Indigenous Women's Access to Justice in Latin America*. Bergen: Chr. Michelsen Institute, 2010.

justice within ongoing processes of political, socioeconomic and cultural change. Indigenous women and their organizations have been at the forefront of struggles for rights and justice in legally plural systems. Indigenous men and non-indigenous men and women are also supporting processes of critical reflection on gender relations which are, in turn, becoming more and more common across Latin America. Finally, we maintain that indigenous women's access to justice cannot be improved by institutional innovations alone, or by championing de-contextualized discourses of rights: the struggle to guarantee their rights in practice is inextricably linked to broader struggles against inequality, poverty, racism and discrimination.

### Legal plurality in Latin America

The legacy of colonialism and the persistence of semi-autonomous spheres of indigenous government has meant that legal pluralism – the existence of multiple norms, institutions, practices, and beliefs for regulation and conflict resolution within a single jurisdiction – have long since characterized Latin American societies. Indeed the majority of indigenous people have for centuries made recourse to semi-autonomous spheres of indigenous justice on the one hand, and to state justice institutions on the other. Beginning in the mid-1980s, alternative justice systems began to be formally recognized within national law. This was in part a response by governments to growing demands by indigenous movements for greater autonomy and recognition of their customary forms of governance. Additionally, it reflected efforts by multilateral agencies and international donors to strengthen non-state justice systems as a means to increase access to justice, particularly for the most marginalized sectors of the population.

During the 1980s and 1990s advances were made in the constitutional recognition of legal pluralism and multiculturalism. These developments were unprecedented; by recognizing the right of indigenous citizens to apply their own forms of law they effectively broke with the tradition of legal monism which had prevailed since the nineteenth century. New constitutions defined their respective nations as "multi-ethnic" or "multicultural" and the states as "pluri-cultural". Pluralism and respect for cultural diversity became central tenets of constitutional law in the region, enabling the explicit recognition of special rights regimes for indigenous and Afro-Latin populations (Yrigoyen 2010: 8). This shift in Latin America occurred within a more general, global trend towards rights-based constitutionalism. The International Labor Organization Convention 169 on the Rights of Indigenous and Tribal Peoples in

Independent Countries was ratified by most Latin American states during the 1990s and significantly shaped constitutional provisions concerning indigenous peoples and their justice systems. The ongoing discussions within the UN Working Group on the Declaration on the Rights of Indigenous Peoples also influenced constitutional developments. However, the constitutional reforms of the 1980s and 1990s invariably fell short of full recognition of indigenous peoples' collective rights to their own forms of law. While the new constitutions recognized pluralism and cultural diversity, they also rolled back the social rights provisions of the previous corporatist model which had existed – albeit unevenly – in countries such as Mexico and Peru. In other words, although they partially recognized specific rights for indigenous people, they also cemented a neoliberal economic paradigm. This proved particularly detrimental to the region's indigenous peoples. Reforms to individualize property rights removed the protections provided by the communal or collective land titles awarded through previous agrarian reforms. Also, the opening up of the region's economies to direct foreign investment and promotion of an export-oriented model of development meant that indigenous territories were increasingly subject to exploitation by outside interests prospecting for oil, minerals or natural resources.

It was not until the drafting of new constitutions during the 2000s that the recognition of indigenous norms, authorities and jurisdictions was specified, effectively codifying spheres of autonomy for indigenous justice systems. The current phase of recognition of indigenous justice systems, which Yrigoyen defines as "plurinational constitutionalism", centers on two constituent processes, that of Bolivia (2006-2009) and Ecuador (2008) (Yrigoyen 2011). Both constitutions enunciate a new pact between indigenous peoples and non-indigenous peoples in countries where indigenous people are either a majority or a sizeable minority of the overall population. The emphasis is much less on recognition of indigenous peoples' by the state or dominant, non-indigenous society and is much more – rhetorically at least – on a redrawing of the state itself, emphasizing indigenous peoples' rights to autonomy and self-determination. Both constituent processes were highly influenced by the approval of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2006-2007. The Declaration emphasizes indigenous peoples' international rights to self-determination and sovereignty. The new charters in Ecuador and Bolivia initially recognized parity between indigenous justice systems and other forms of law, although the jurisdiction of indigenous law was subsequently limited to some degree in political negotiations to secure approval of the constitutions. In both countries, but particularly in Ecuador, the constitutions

specifically state that indigenous governance systems must guarantee gender parity and indigenous women's rights to full participation (in line with national legislation prohibiting gender discrimination). These clauses were the result of mobilization by indigenous women who lobbied the constituent assembly to ensure that recognition of indigenous autonomy would also guarantee their rights to gender equity.<sup>2</sup>

## Recognition of collective rights and women's rights

Paradoxically, advances in the national, regional and international recognition of women's rights and indigenous peoples' rights have generated new contradictions which in some cases have limited the official recognition of collective indigenous rights. In some national debates on recognition, for example in Mexico, women's rights and human rights have been specifically invoked by political elites in order to justify limits on indigenous jurisdictions and autonomy (the argument being that recognizing greater autonomy for indigenous jurisdictions would effectively "abandon" indigenous women to discrimination and violence at the hands of indigenous men). This signals the tensions provoked by liberal visions of rights centered on indigenous women that fail to take into account the broader context of the collective rights of the indigenous peoples to which those women belong, as well as their socio-economic situation.

However, it should also be noted that while many indigenous people demand their recognition both as individuals *and* as collectives with rights, this does not necessarily mean that all indigenous people – and particularly all indigenous women – exclusively favor indigenous justice systems. Plaintiffs often demand more effective state justice, or engage in "forum shopping", combining recourse to their communal authorities, to indigenous movements and to state justice institutions, in order to try and secure redress. While indigenous jurisdictions and justice institutions continue to be the main point of reference for resolving conflicts in many communities, in some places women are resorting to state justice institutions when their own indigenous communal authorities fail to meet their demands or even to hear their complaints. Such tactical resort to state justice institutions by indigenous women is by no means new, but what is relatively novel is the way in which they are invoking international human rights and concepts of gender rights and gender parity in order to challenge inequitable power relations within their own communities, as well as within the wider society. For example, women organized within the Zapatista autonomous municipalities in Chiapas,

2 For discussion of indigenous women's organizing around the constitution in Ecuador see Lang/Kucia 2009; Sieder/Sierra 2010.

Mexico, have invoked the Zapatista "Women's Revolutionary Law" in order to favor their demands for greater gender equality. This charter sets out indigenous women's rights to autonomy – for example, to decide who to marry or how many children to have – in the broader context of zapatista demands that the Mexican state recognize their autonomy as indigenous peoples (Hernández Castillo 2004).

Indigenous women's re-signification and re-appropriation of human rights discourses and instruments within their own cultural and social frames of reference challenge simplistic dichotomies which counterpose "culture" and "rights". Culture is not static or homogenous and does not exist outside of the forces of economic, politics and history. It is constantly shaped and reshaped by peoples' actions and struggles over meaning. However, this is not to deny that conflicts exist between the recognition of group rights and the rights of women to non-discrimination and freedom from violence. Women in all societies face patriarchal domination and violence, and indigenous justice systems can and often do discriminate against women and block their access to justice, just as official justice systems do. In the next section we analyze these impediments to access to justice, before turning to examine how indigenous women can access justice within plural legal systems in order to combat violence and discrimination.

### Barriers to indigenous women's access to justice

Indigenous women across Latin America face significant barriers to accessing justice, both within indigenous systems and in the formal state sector. As has often been observed, the vast majority of indigenous women face triple discrimination: because of their gender, their ethnicity and their socioeconomic marginalization. While the reasons for the lack of access to justice or the barriers involved are often highly context-specific, a number of common contributing factors can be identified:

#### POVERTY

Indigenous women are amongst the poorest and most vulnerable sectors of Latin American society. They shoulder a triple burden of reproductive, domestic and productive labor and, in common with most non-indigenous women across the continent, are concentrated in low income, low status and unstable forms of employment. Poverty affects indigenous households disproportionately and indigenous women and children within those households in particular. These patterns of ethnic exclusion and inequality are also reflected in gender differentials. Indigenous women are less educated and less likely to finish school than men, earn less and accumulate less property over

their lifetimes than men, and are more likely to be the sole head of household and responsible for the care of children and elderly relatives.

The poverty affecting indigenous communities and households contributes to the kinds of conflicts that occur, which in themselves reveal the impact of poverty and marginalization on indigenous families, and on women and girls – the most disadvantaged of this disadvantaged sector. Women's poverty and marginalization directly and indirectly affects their prospects for accessing justice services. Illiteracy and a lack of education reduce women's awareness of their rights and their ability to exercise or defend them. In family conflicts such as spousal separation or inheritance disputes, low literacy levels mean that women are often defrauded of their statutory rights to child maintenance or property. Lack of knowledge and understanding, combined with lack of disposable income also mean that women often do not seek help in the official justice system, fearing they may have to pay lawyers' fees or bribes. For indigenous women particularly, seeking help outside their communities may also mean condemnation by relatives and community members who reject outside intervention, particularly in cases of intra-familial disputes. And even if their families do support them, the multiple demands on women's time, including income generation, child-rearing and domestic duties, often mean that it is extremely difficult for them to take advantage of the justice services that do exist.

#### VIOLENCE

Indigenous women face violence of many kinds – in addition to the multiple structural violence that marginalize them, they also suffer direct physical, psychological and sexual violence carried out by a range of state and non-state actors for many different reasons. However, perspectives which emphasize a narrow definition of "gender-based violence" – which tend to dominate the field and characterize most studies<sup>3</sup> – are insufficient. Rather, it is important to understand the intersectionality of violence affecting indigenous women. They are not subject to physical and sexual violence simply because of their gender, but because of their ethnicity, class and history. The International Forum of Indigenous Women, for example, has emphasized the need for a perspective on violence against indigenous women which studies violence "in

3 Aída Hernández Castillo (2004) questions the narrow perspective of what she refers to as "hegemonic feminism": even if dominant feminist interpretations do take cultural and social contexts into account when discussing gender issues, they tend not to recognize the specific needs of indigenous women. A feminist agenda might stress the need to physically remove women from contexts of intrafamilial violence, but for many indigenous women removal from their sociocultural context entails denial of their collective rights to land or territory.

relation to aspects of identity beyond gender, using an approach that accounts for the ways that identities and systems of domination interact to create the conditions of women's lives". The forum also insists that full recognition of indigenous peoples' collective rights is the key to reducing violence against indigenous women (International Indigenous Women's Forum 2006: 12).

### VIOLENCE IN THE FAMILY AND THE COMMUNITY

Physical violence is a common cause for women's appeals to both state courts and community justice forums. Many indigenous women – in common with non-indigenous women – are subject to daily forms of domestic violence. Marital violence is related to male alcoholism, male adultery, jealousy, and also to patterns of patrilocal residence (when the couple live with the man's parents), which is a source of numerous conflicts and aggression. While such phenomena have existed for many years, they can be aggravated by changing economic circumstances – e.g. joblessness or income insecurity – and increased poverty may threaten prevailing models of masculinity and aggravate male alcoholism and violence. Economic migration, which divides families and couples, also contributes towards accusations of infidelity, in turn feeding gender-based violence.

Naturalized gender ideologies and expectations of "appropriate" behavior contribute towards such violence: husbands tend to justify violence on the grounds that women do not fulfill their roles as mothers and wives. Female spouses, in turn, may try to defend themselves from violence carried out by their male partners by appealing to community-sanctioned concepts of "acceptable" behavior. This often results in them playing on their victim status, rather than being able to demand their rights to live free from violence. Family members and community justice authorities invariably encourage women to reconcile with their male partners and forgive them, thereby reinforcing gender inequalities and privileging the maintenance of family life over women's wishes, if the women in question no longer want to live with violent men.<sup>4</sup> This is, in fact, often no different when women resort to state justice with mestizo authorities, who also tend to defend a male point of view. However, it is also important to point out that while agreements mediated by community authorities tend to reinforce traditional gender roles – for example entreating women to respect their husbands and meet their domestic obligations –, they do include written commit-

<sup>4</sup> It should be recognized that while leaving violent male partners may be necessary, for indigenous women abandonment of their community may entail enforced cultural assimilation and – because of their highly disadvantageous position in society – may expose them to new forms of violence and inequality in urban settings (Collier 2009).

ments that male spouses will respect the physical and moral integrity of their female partners. Violent behavior has always been challenged by indigenous women. Today it is increasingly questioned within indigenous communities, in part due to the efforts of organized indigenous women and men to combat patriarchal violence, and in part because of broader intergenerational and socioeconomic changes which have led younger women to question male authority based on violence (Camus 2008; Mejía 2008; Pequeño Bueno 2009).

### VIOLENCE BY STATE ACTORS

Violence by state actors against indigenous women occurs in a number of different contexts. Broadly speaking, three scenarios can be identified:

(1) The violence and discrimination exercised on a daily basis within indigenous people's "everyday encounters" with the state, such as within the judicial system. For example, in her study of rape victims in Bolivian courts, Rosanna Barragán signals the psychological violence and discrimination which indigenous women plaintiffs routinely endure (Barragán et al. 2005).

(2) State violence exercised against indigenous peoples when they demand their collective rights, for example to territory and natural resources, or to challenge certain economic development projects, such as mining or hydro-electric dams. With the increasing profitability of extractive industries, such violence has become increasingly frequent, resulting in the deaths of indigenous people in protests in Guatemala, Peru and Colombia in recent years. This is a direct consequence of the lack of respect by states of indigenous peoples' collective rights to autonomy and free, prior and informed consultation about development projects which affect their territories and way of life, as specified in the UNDRIP.

(3) The increased violence that occurs in zones of contention that have been militarized as a state response to armed conflict or organized crime. Systematic rape of indigenous women by soldiers was a feature of the counterinsurgency wars in Guatemala in the 1980s and Peru in the 1990s. Today in Mexico rape of indigenous women has occurred in the context of the government's militarization of certain regions of the country in response to organized crime (Hernández/Castillo/Elizondo 2010).

### VIOLENCE EXERCISED BY NON-STATE ACTORS

Indigenous men and women are particularly vulnerable to violence by non-state actors such as paramilitary forces and private armies associated with powerful economic interests and organized crime. Paramilitary forces are used to force indigenous peoples

off land, protecting the economic and political elites who seek to control those lands. Physical violence and the violence of prevailing forms of economic development are inextricably linked. States are directly responsible for the lack of protection of indigenous women (and all citizens) against such violence.

### DISCRIMINATION AND RACISM

Structural forms of discrimination against indigenous people, and particularly against indigenous women, are compounded within the official justice system by structural weaknesses and institutional deficiencies, and by the racist perceptions and discriminatory attitudes of many justice system officials. Access to state justice services has marginally improved throughout the last decade as a result of different reforms and innovations, with new institutions – some aimed specifically at indigenous women – extending their reach to rural communities. However, as has been widely documented, indigenous people living in rural areas continue to face barriers of geographical distance, cost, language and discrimination when seeking to access the formal justice system.

Indigenous women's extreme poverty and illiteracy, and their consequent inability to navigate their way through the system and demand their rights, have meant frequent miscarriages of justice. Lack of interpreters and the fact that indigenous women are often monolingual also gravely prejudices due process guarantees in criminal cases. Like the majority of the poor, they lack adequate defense services when criminal charges are brought against them – despite state obligations to provide a criminal defense lawyer to those who cannot afford to hire one, the quality and performance of state defenders is often very poor.

### LACK OF WOMEN'S VOICE AND PARTICIPATION IN DECISION-MAKING FORUM

Women are underrepresented at all levels of political office across Latin America; national, regional, municipal and communal. Whilst the presence of indigenous women in both official and non-state governance systems has improved in recent years, spheres of political decision making still tend to be dominated by men. This lack of political representation is reflected in barriers to access to justice. The mere presence of women in political office does not guarantee more effective enforcement of women's rights or concerted attempts to reduce gender inequalities within society. However, the presence of indigenous women in public life is a powerful factor challenging traditional gender ideologies. The role of indigenous women as leaders of local, regional and national social movements has been a crucial factor in women's gains in political

and judicial spheres. Through their leadership roles, women have pioneered changes in gender relations within their communities and societies in the face of persistent gender and racial discrimination. In some contexts indigenous women leaders emphasize the primordial importance of securing collective rights for their peoples and do not enunciate a gender perspective as such; in other contexts women leaders also emphasize the importance of reflecting on gender relations within their communities. In both cases they are challenging traditionally ascribed gender roles and in so doing, indirectly and directly changing the nature of community justice systems

### INDIGENOUS JUSTICE SYSTEMS: BENEFITS AND CHALLENGES FOR INDIGENOUS WOMEN

Patriarchal ideologies which reinforce gender inequalities are present in both official and non-state justice systems. However, clearly indigenous justice systems offer a number of benefits and challenges for indigenous women in Latin America. The nature of indigenous justice systems varies enormously according to specific historical, environmental, cultural, and political contexts. Nonetheless, research on these systems has long emphasized a series of benefits they offer indigenous peoples, including linguistic and cultural accessibility, speed, cost, physical proximity, and the absence of ethnic discrimination.<sup>5</sup> While women's voice is not guaranteed and gender bias remains (women are notably absent in most communal authority systems), indigenous justice puts more emphasis on dialogue, listening to the plaintiffs and often to a broad range of parties involved in disputes, and tries to reach conciliated solutions. When indigenous women have access to their own justice systems, they do not have to face the discrimination, racism and inefficiency they experience within the state justice system. Prevailing cultural models and interactive patterns within community justice forums are based on common discursive frames of reference, and in general women are aware of the norms, procedures, and authorities within their communities available to them in cases of disputes. Communal justice proceedings authorities invariably place an emphasis on listening to the parties in a conflict and reaching conciliated settlements. In general indigenous justice systems emphasize the reparation of harm or damage through recognition of wrongdoing, but also through financial compensation or reparations in kind. If a case is not resolved satisfactorily this affects not only

5 There is an extensive ethnographic literature on indigenous justice systems in Latin America. See for example: Chávez/García 2004; Chenaut/Sierra 1995; Collier 1973; Fernández 2000; García 2002; Martínez 2004; Nader 1990; Orellana Halkyer 2004; Padilla 2008; Peña Jumba 2004; Sánchez 2010; Sieder 1997; Sierra 2004; Stavenhagen/Iturralde 1989; Terven 2008.

the parties to a dispute, but also their families and often the whole community. For this reason, the community as a whole often acts as a guarantor of the resolution or agreement reached in a settlement. Resolution within the community also ensures the following up of cases and the continued accessibility to authorities for the plaintiffs.<sup>6</sup>

Evidently recourse to indigenous justice systems offers significant benefits in terms of access to justice: procedures take place in the plaintiffs' native language and within their own communities and frames of cultural reference. Yet this does not of course guarantee harmonious inter-communal relations or prevent gender bias and discrimination. Women are effectively being judged by the men of their communities, or on occasion by their own families, in accordance with patriarchal structures and ingrained gender ideologies. This tends to mean that certain violations of indigenous women's rights are not dealt with adequately by communal authorities. For example, in disputes over land and inheritance, indigenous authorities often favor male dependents, even when national legislation mandates non-discrimination. In cases where women appeal to communal authorities to ensure that men contribute towards the maintenance of their children in cases of abandonment, often little is done to ensure they meet their payments. In cases of violence, sexual and non-sexual, available evidence suggests that the vast majority of indigenous women lack adequate access to justice both in state and non-state justice systems (ASIES/OACNUDH 2008; Calla et al. 2005). In many senses a culture of fear, shame and silence prevails in cases of sexual abuse and rape, as it does in non-indigenous contexts the world over. Although it is difficult to generalize, indigenous justice systems generally do not adequately guarantee adequate access to justice for indigenous women and girls when such abuses occur. Spousal violence and abuse is frequent and commonplace, but for a number of reasons women victims of such abuse lack adequate access to justice within indigenous justice systems. First, economic dependence on men means that women are generally reluctant to denounce such violence. Second, the existence of a patriarchal culture where women are supposed to be submissive and obedient to their husbands also mitigates their access to justice. Third, in addition, the social sanction against women who speak ill of their partner is strong – denouncing violence may mean women are signaled within the communities as “bad wives”. These factors all point to a profound lack of access to adequate recourse for women and girls suffering physical and sexual violence. Indigenous women activists and the movements they form increasingly focus on how to ensure that community justice systems guarantee respect and protec-

tion for women and girls. In some places these efforts are supported by changes within the official justice system, which in recent years has seen the introduction of different institutions aimed at improving women's access to justice and ensuring that states meet their international obligations to guarantee gender equality.

## Strategies to increase indigenous women's access to justice in the region

For the majority of indigenous women in Latin America the defense of indigenous peoples' collective rights is the framework within which they conceptualize their rights as women.<sup>7</sup> Indigenous women's demands also occur within the context of the promotion of rights consciousness by many actors – state, international NGOs, and social movements. Gender relations are socially and historically constructed within specific contexts and places. Across Latin America, at both local and regional levels, a culturally sensitive gender perspective and certain critiques of hegemonic liberal feminism are gaining ground (Cumes 2009; Méndez 2009; Sánchez 2005). Although different languages exist to talk about indigenous women's rights – from rights-based discourses to demands based on complementarity and *cosmovisión*<sup>8</sup> – there is a consensus regarding the centrality of identity politics. The FIMI Report (International Indigenous Women's Forum 2006) is especially clear in stressing, for example, the need to understand gender roles and indigenous women's perspectives when dealing with domestic violence and community discrimination towards women. Nevertheless, many of the programs developed by official institutions and NGOs that aim to support women's rights in indigenous regions of Latin America tend to promote a liberal vision of rights without taking cultural values into account.

It is not easy to understand that for indigenous women confronting gender oppression sometimes the best solution is not to leave the abusive husband; this could imply grave consequences for the woman and her family, for example, to be subject to social ostracism or to lose access to land and the family home and ultimately membership of her cultural group. Imprisoning men may in fact increase women's difficulties in maintaining their families. For these reasons women's organizations are looking for other legal remedies to confront domestic violence, drawing on their own cultural models based on conciliation and dialogue, and at the same time incorporating a critical view

<sup>6</sup> These general features are reported in most research on indigenous justice systems in Latin America. However, their specific nature depends on the context.

<sup>7</sup> See the Complementary Report to the Study of Violence against Women “Mairin IWANKA RAYA” prepared by FIMI (2006); Cunnningham (2003).

<sup>8</sup> The term “cosmovisión” refers to indigenous peoples' worldviews.

of some traditions and customs, drawing on the very language of rights (International Indigenous Women's Forum 2006: 32). A critical and culturally sensitive perspective on indigenous women's rights seems to be the only effective way to develop strategies to discuss violence and discrimination within communities and to guarantee women's access to justice, both to indigenous community and state judicial institutions.

Justice reforms to promote gender equality and governmental efforts to improve indigenous women's access to justice in Guatemala, Ecuador, Peru, Mexico, Bolivia and other countries have meant an increased number of forums to which indigenous women can make recourse, such as, for example, ombudsman's offices, the governmental *Defensoría de la Mujer Indígena* (DEMI) in Guatemala; *Comisarias de la Mujer* in Ecuador, *Casas de Refugio* in Peru, *Defensorías de la Mujer* in Bolivia, or Indigenous Women's Health Centers in Mexico (Franco Valdivia/González Luna 2009; Lang/Kucia 2009). However, while these institutions and other multicultural policies directed at indigenous women open alternatives to deal with gender discrimination and oppression, they do not necessarily guarantee indigenous women's access to justice in all spheres, particularly criminal justice.

Social movements and indigenous organizations are also promoting new forms of access to justice offering conciliation services and legal aid or supra-communal justice forums that are not officially recognized by the state. These also provide new alternatives for indigenous women to seek justice within their communities or to navigate between different legal forums. This is the case of the *alcaldías indígenas* (non-governmental indigenous mayoralties) in Guatemala (Sieder/Macleod 2009), the Zapatista honor tribunals in the *Juntas de Buen Gobierno*, in zapatista communities in Chiapas, Mexico (Mora, forthcoming), the Regional Coordination of Indigenous Authorities in Guerrero (Sierra 2009, 2010), and the successful organization in Chimborazo, Ecuador, to secure specific clauses against gender violence within the new pluri-national constitution (Lang/Kucia 2009). These efforts and initiatives to increase women's access to justice underline the fact that gender equity is a legitimate part of the agenda of indigenous movements, something which was not necessarily the case in the past. Indigenous women are not only victims of domestic violence; they have also developed strategies to confront oppressive and intolerable conditions, as is the case with legal remedies and new initiatives to confront gender violence (International Indigenous Women's Forum 2006).

## Conclusions

Indigenous peoples in Latin America suffer systematic lack of access to justice in state legal systems; structural exclusion and discrimination particularly affect indigenous women. In this article we have analyzed the challenges and benefits for indigenous women when they try to access justice in indigenous legal systems. We have stressed the need to consider normative frameworks, legal awareness, access to appropriate justice forums and the achievement of satisfactory remedies. The gradual recognition of legal pluralism, as well as the incorporation of international standards on women's rights within statutory law, is shaping the prospects for improved access to justice for indigenous women across the continent. The recognition of indigenous peoples' collective rights and particularly their rights to autonomy is the framework within which to advance indigenous women's demand for gender equity and more dignified lives. As we have argued here, the struggle to guarantee indigenous women's rights in practice is inextricably linked to broader struggles against inequality, poverty, racism, and discrimination. Indigenous women face multiple forms of oppression and discrimination (on the basis of their ethnicity, class and gender) and confront different obstacles in order to access justice. While the reasons for lack of access to justice or the barriers involved in specific cases depend on the context, we have identified a number of common contributing factors: poverty, discrimination, violence exercised by state and non state actors, and lack of women's participation in public life. We have also stressed that indigenous women are not only victims; they are also actors generating important and innovative social practices to combat gender oppression and access to justice.

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