PARTICIPATORY RIGHTS OF INDIGENOUS PEOPLES REGARDING EDUCATION AND LANGUAGE POLICIES. COMPARATIVE PRACTICES OF COLOMBIA AND NICARAGUA
by Amparo Carrión Domenech

LLM Human Rights Capstone Thesis
SUPERVISOR: Oswaldo Ruiz-Chiriboga
Central European University

© Central European University
June 7, 2020
Abstract:

This research is motivated by the level of language at risk regarding indigenous communities. I analyze the interconnection of participatory and cultural rights. Focused specifically in language and educational policies, my position is that it is required a strong indigenous involvement in their decision-making, being the Free Prior Informed Consent a suitable framework. The used methodology is a comparative approach of the jurisdictions of Colombia and Nicaragua, based on their regulations and documentation available.

International and regional protection of indigenous peoples supports the participatory approach in decision-making related to cultural matters, where FPIC ensures a qualified indigenous participation. Moreover, analyzing the practice of consultations in Colombia and Nicaragua to assess Indigenous peoples’ representativeness, two models are observed: the ‘Board’ model of consultations relies on indigenous organizations, whereas the ‘Regional’ model is based on authorities of the regional level of governance. I conclude that the first model serves better as a representative scheme, because it is more respectful with indigenous self-determination and inclusive with the diverse IPs potentially involved.
Table of content

1. Introduction .................................................................................................................................................. 1

2. Legal framework: foundations for a consultative process according to FPIC in relation to cultural rights .................................................................................................................................................. 5

3. Implementation of the FPIC and how to ensure representativeness: Colombia and Nicaragua. .................................................................................................................................................. 15
   3.1 Recognition ........................................................................................................................................... 15
   3.2 Involved actors .................................................................................................................................. 19

4. Conclusion ................................................................................................................................................... 26

Bibliography .................................................................................................................................................... 29

Annex 1. Practical component: Policy brief .................................................................................................... 37
Note: All translations of the names have been done by the author

Figures:

Figure 1: Members of consultative institutions in Colombia

Figure 2: Members of consultative institutions in Nicaragua

Abbreviations:

AR Autonomous Regions of Nicaragua
C169 Convention-169 International Labor Organization
CERD Committee on the Elimination of all Forms of Racial Discrimination
CESCR Committee on Economic, Social and Cultural Rights
CIT Confederación Indígena Tayrona
CRC Committee on the Rights of the Children
ECOSOC Economic and Social Council
FPIC Free, Prior, Informed Consent
HRC Human Rights Committee
IAComHR Inter American Commission of Human Rights
IACtHR Inter American Court of Human Rights
ILO International Labor Organization
IPs Indigenous Peoples
OAS Organization of American States
ONIC Organización Nacional Indígena de Colombia
OPIAC Organización de los Pueblos Indígenas de la Amazonía Colombiana
PCN Pacific, Centre and North regions
UNESCO United Nations Educational, Scientific and Cultural Organization
UNGA United Nations General Assembly
1. Introduction

Most of the 6,700 languages in the world are spoken by only 3% of the population, out of which 4,000 are Indigenous Peoples (IPs).¹ Despite their variety, native languages suffered ‘linguistic attenuation’.² Languages themselves are valuable to construct our identities,³ but also part of the human cultural heritage.⁴ For IPs, languages play an important role, strongly relevant for the preservation of their values, knowledge-systems and their environment.⁵ Moreover, besides means of communication, they are a repository of orally transmitted culture.⁶ However, prior experiences of colonization, policies of ‘assimilation’⁷ and other internal practices, such as education,⁸ had put IPs culture at stake. Recently Latin American states have pursued intercultural bilingual policies to include indigenous perspectives.⁹ The concern on preserving cultural distinctiveness motivates this research.

The Universal Declaration on the Rights of Indigenous Peoples (UNDRIP) states specific protection against forced assimilation, meaning, a recognition of the distinctive culture as part of the principle of self-determination¹⁰ and a plea to avoid external impositions. In the

⁷ Process where only a set of values are considered legitimate and divergent modes are forced to be integrated. G.J. Ashworth, B. Graham, and J. E. Tunbridge. "Nature and types of plural society.” In Pluralising Pasts: Heritage, Identity and Place in Multicultural Societies (London; Ann Arbor, MI: Pluto Press, 2007)
context of ‘internal self-determination’, participation and autonomy are fairly related. So their indigenous self-organization and independence are complemented with participation in the political life of state, to exercise direct control on affairs of their concern. It is framed in relation to participatory democracy and bottom-up actions.

This research focusses on the participation of IPs in cultural policies. Human rights are considered universal, indivisible, independent and interrelated. Hence, this investigation will explore the interconnection of political and cultural rights regarding indigenous groups. I aim to enhance the protection of IPs’ rights by promoting a strong participatory approach with effective representation.

My research question is: How can the indigenous peoples’ participation rights be strengthened in language and educational policies by the use of the FPIC? I argue that legislation that regulate essential matters for indigenous peoples, policies that affect their culture integrity, should not be relegated to ordinary process. Instead, they must implement a reinforce procedure with FPIC to ensure meaningful consultations. I will use a comparative approach analyzing primary and secondary sources of documentation and legal instrument from the international, regional, and domestic level, using Colombia and Nicaragua as case-studies. These two Latin America with indigenous population (4.4% and 8% correspondingly) have

---

14 Many IPs will coexist in current states, except the indigenous population in voluntary isolation, such as in Colombia recognized and protected by Law-Decree 4633 of 2011. These will not be analyzed in this research.
however different territorial and institutional structure in relation to their IPs. As it will be described in the following chapters, these differences determine their consultations.

This study is not an analysis on the effectiveness of the measures taken on education or on language diversity. Nor a discussion on the state attitude toward IPs. I however focus on the possibility of IPs to have a saying in the decision-making as a first step, so then they can raise their concerns and help shape the relations with the state in accordance with their culture.

The scope of this research is centered in education and language rights, as part of cultural rights. Cultural life includes tangible and intangible elements that have significance for identity of a group, as defined by the UN Committee on Economic, Social and Cultural rights.19 However, this thesis will be narrowed to these two topics. As explained earlier, they were principal vehicles for assimilation. They are complementary: monolingual or plurilingual approaches are educational decisions. Moreover, although the duty of consultation raises with ‘legislative or administrative measures that may affect’ IPs,20 this research will observe only legal provisions as general frameworks for the use of languages and educational systems.

Regarding the FPIC, it is not my concern to discuss theoretical21 or practical22 discussions. Instead I assume it as a relevant safeguard for self-determination, as a ‘duty that entails more than a mere right to be informed and heard but not an absolute right to veto’.23 Although the FPIC has many components, this research is limited. I would focus only on the representative aspect, as a precondition to include the affected groups, assessing the involved actors and the articulation of consultations.

---

19 CESC. General Comment 21 on Right of everyone to take part in cultural life, para.13
20 UNGA, UNDRIP, Article 19
23 Anaya, Puig. Supra n.21, p.453
Much of the literature on FPIC was focused on land rights,24 but concentrate in other less studied applications. I argue that the FPIC approach can shift to be used in broader contexts, in matters that are considered culturally significant and hence, to prevent violation on indigenous cultural rights. Additionally, this research can help states build intercultural dialogue and better fulfil their international duties, considering different ways of consultations. Regardless, I am aware of the difficulties on generalization, given the diversity indigenous population and the need of flexibility of FPIC.

This study will start by an analysis of the FPIC standards: what can the FPIC offer for the protection of language and education rights? The international and regional standards in human rights law supports the strengthening of indigenous participations, due to the recognition of their distinctive culture. Consequently, their cultural self-determination is argued to be more successfully preserved by FPIC. Furthermore, Chapter 3 will compare the jurisdictions of Colombia and Nicaragua to assess their consultation practices on language and educational policies. How were the consultations carried out? Who were involved in the negotiation? Is there a specific institution created? I will examine the different constitutional recognition and arrangements regarding IPs and the involved actors in consultation. I will describe that different approaches are taken: the ‘Board’ model engages with indigenous organizations, whereas the ‘Regional’ model relies in regional institutions. My conclusion is that the first serves more effectively to represent IPs in respect with their self-determination and is highly inclusive.

2. Legal framework: foundations for a consultative process according to FPIC in relation to cultural rights.

This section will go over the international and regional human rights standards applicable to participatory rights, form a cultural perspective, with emphasis on education and languages. As it will be explained hereafter, from the recognition of a distinctive indigenous culture and their right to self-determination derived the obligation to consult, in the effort to preserve the indigenous cultural integrity.

Foremost, I would like to clarify the multitude of references to usages of and meanings associated to ‘consultations’ and ‘participation’, which is relevant for reading and interpreting texts. There are often various ways of speaking about participation in international instruments, jurisprudence and academia. International instruments sometimes allude to free, prior, informed consent; others to consultations, decisions ‘in cooperation’, etc. But how are they different?

There is no common and comprehensive framework for participatory rights regarding IPs.\(^\text{25}\) As argued by Rombouts, different participatory standards emerged in this context, where the right to effective participation has served as an general framework, as an umbrella term.\(^\text{26}\) Still this concept in itself is not clear nor sufficient to meet indigenous peoples’ demands.\(^\text{27}\) Instead, FPIC serves to clarify the ambiguities and vagueness of the latter norm and is used to qualify the requirement of such participation.\(^\text{28}\) Even the UNDRIP used diverse vocabulary, which can be seen as a ‘layered’ systems on participatory provisions.\(^\text{29}\) They are all concepts form the same semantic family, but they differ on the degrees of contribution of IPs in shared


\(\text{26}\) Rombouts, supra n.21, 76

\(\text{27}\) Different understanding on ‘effective participation’ account for either minimal or maximalist approaches. See: Kymlicka W, Multicultural Odysseys: Navigating the New International Politics of Diversity (Oxford University Press, USA, 2007)

\(\text{28}\) Rombouts, supra n.21, 83

\(\text{29}\) In various degrees from lower to greater involvement: ‘in conjunction with’, ‘in consultation and cooperation’, ‘prior effective consultations’ and finally ‘free prior informed consent’. Ibid, 85
decision-making processes, being the right to consent the strongest and more capable of ensuring peoples’ physical and cultural survival. However, an absolute right of veto in FPIC processes is difficult to defend in present framework. Instead, FPIC constructs a dialogue where IPs have an effective voice and influence in the outcome of the decision.

Observing international law, IPs shall be consulted regarding ‘legislative or administrative measures that may affect them’; a principle recognized by the UNDRIP, the International Labor Organization Convention 169 (henceforth ILO C169) and by the Inter-American Court of Human Rights (IACtHR). Both countries in will focus on in this paper have endorsed the UNDRIP and ratified the ILO Conv.169. But not only specific instruments discuss consultations, others also address participatory rights regarding communities of a distinctive culture.

The UNDRIP proclaims the right to self-determination of IPs, where the rest of the rights derive. According to Article 3, the scope of the self-determination includes its cultural facet, namely to ‘freely determine their political statutes and freely pursue their... cultural development’. IPs have the primary role in determining their future. But this recognition also looks at the present, when it acknowledges also the ‘right to maintain and strengthen their

---

31 As discussed about different interpretations of FPIC, by J. Anaya or Rombouts, supra n.21
32 UNGA. UNDRIP, Art. 19
33 ILO Convention 169, Art. 6(1)
34 Case Sarayaku v Ecuador, (2012) IACtHR, para.166
37 UNGA, UNDRIP Arts. 3, 4. Although the concept of ‘self-determination itself offers different interpretations, its theorization, conceptualizing and multiple potential application continue and is evolving. Tomaselli Supra n.25, 396
distinct... cultural institutions’.\textsuperscript{38} Although development could derive some economic connotations, new paradigms emerge under a cultural understanding.\textsuperscript{39}

Beyond this Declaration, other UN decisions supports this line. The General Assembly has acknowledged the role of culture for sustainable development, both as enabler and driver of development,\textsuperscript{40} as well as the UNESCO Declaration on Cultural Diversity, that embraces cultural rights and promotes expression on own languages and education according to their cultural identity.\textsuperscript{41}

Article 5 in conjunction to 18 of the UNDRIP provides the general participatory elements, recognizing its double realm.\textsuperscript{42} The internal specific indigenous institutions, with own procedures, are complemented with the right to fully participate in external dialogue if they decide so. These are non-indigenous processes in relation to state and other actors.\textsuperscript{43}

Therefore, a variety of measures that states take must be developed in cooperation with indigenous peoples. The UNDRIP is prolific, prescribing it in general and stressing it in specific areas. Article 19 describe the general clause of consultation in adopting and implementing legislative or administrative measures, done by FPIC, as well as the implementation of the Declaration itself ‘in cooperation’.\textsuperscript{44} Moreover, the FPIC is mentioned in specific matters.\textsuperscript{45}

\textsuperscript{38} UNDRIP Art. 5
\textsuperscript{39} Such as the Andes region. S.Radciffe, N.Laurie. ‘Culture and development: taking culture seriously in development for Andean indigenous people’ Environment and Planning D: Society and Space 24, (2006)
\textsuperscript{40} UNGA. Culture and sustainable development, 70th session (2015) A/RES/70/214
\textsuperscript{41} UNESCO. Universal Declaration on Cultural Diversity (2001). Art. 5
\textsuperscript{42} Also recognized in academia, see: H. Quane, ‘The UN Declaration on the Rights of Indigenous Peoples: New Directions for Self-Determination and Participatory Rights?’, in Reflections on the un Declaration on the Rights of Indigenous Peoples, ed. S. Allen and A. Xanthaki, (Oxford, Hart Publishing, 2011) However other interpretations are present too, see: Chapter II in Rombouts, supra n.21
\textsuperscript{43} In this external dialogue, different problems might arise: indigenous communities might not be dominant, not equal footing, not influence, poor implementation, biased towards certain indigenous over others... HRC Expert Mechanism on Rights of Indigenous Peoples. Final study on indigenous peoples and the right to participate in decision-making (2011) A/HRC/EMRIP/2011/2 para.10
\textsuperscript{44} UNDRIP. Article 38
\textsuperscript{45} Regarding cultural, intellectual, religious property, Article 11 (2); territory, Article 28(1); storage or disposal of hazardous materials, Article 29(2); land and resources Article 32(2)
However, despite the several explicit references, the FPIC should be considered in a larger framework of self-determination an effective participation, in matters of relevance for their rights, survival, dignity and wellbeing. The duty to consult originates from its relationship with self-determination, as related principles of democracy and popular sovereignty. The duty to consult emerges when states decision ‘affects’ IPs; Anaya suggests that this scope refers to ‘decision (that) may affect indigenous peoples in ways not felt by others in society ... when the interests or conditions of indigenous peoples that are particular to them are implicated in the decision’. Thus, FPIC has the potential to ensure respect of indigenous self-determination, even in its cultural facet.

Building on the distinctive culture of IPs, Article 8 of UNDRIP proclaims the right not to be subjected to forced assimilation or destruction, which also result in the obligation to both prevent and redress actions that aim or cause the loss of such distinctive indigenous identity. This means that, in order to prevent cultural assimilation, states have to provide mechanism to ensure that their actions are culturally appropriate to IPs. As part of the preservation of their culture, a broad range of manifestations related to culture are recognized. The allusion to language is extensive, recognizing the right to use the own indigenous language in private, public spheres and media.

On matters of education, Article 14 of UNDRIP states the self-determination in education. It allows their own educational system as well as right to access to linguistical and cultural pertinent education without any threshold. The implementation of this right is

46 Rombouts, supra n.21, 20
48 HRC Expert Mechanism Supra n.43 para.22
50 Ibid, 19
51 UNDRIP, Article 8(2 a)
52 This includes traditions or customs and their manifestations, religious and ceremonial acts, in addition to cultural heritage, knowledge, expressions…
53 Ibid, Arts. 13 and 16
conceived under the obligation of state to take measures. The duty to consult is formulated with various constructions: ‘in conjunction with indigenous peoples’, ‘in consultation and cooperation’. 54

The other relevant international instrument that addressed specifically IPs is the ILO Conv. 169. Its early adoption in 1989 was focused on economic and social rights, which left aside the controversial concept of ‘self-determination’ in international law. 55 However, it covers a wide range of areas, including culture and education, and also frames obligation of states ensure their distinctive institutions and carry on consultations. The distinctive culture of IPs is recognized though; these own institutions understood as their current practices of IPs economic, cultural and social development. 56 This lead to positive measures to respect, promote their cultures 57 as well as to take culture into account in applying the Convention. 58

The ILO C169 refers to consultations specifically on topics of lands, other cultural and political matters. 59 In general terms, Articles 6 and 7 provides the overall framework for consultation and participation, together with Article 2 and 33, that calls on government to take action ‘with participation’ and ‘cooperation’ of peoples concerned. By these, C169 refers to three interrelated processes: consultation, participation and coordination of government action, 60 respectively. Once again, there is a variety in terminology, although all of them remain under the paradigm of effective participation

This convention addresses the right to education, from the perspective to access of all levels of education, specialized programs and the autonomy of their own educational system. 61

54 Ibid, Arts. 14(3) and 15(2)
56 Ibid, 50
57 C169, Art, 2(1), 4
58 C169, Art. 5
59 C169, Arts. 15(2), 16(2), 17(2), 5(c), 22, 27(2), 28(1), 33. On resources, land relocation, land alienation, policies on life and work conditions, training programs, educational institutions, language when its teaching is unpracticable, administrations of government programs
61 C169, Arts. 26 and 27
It reflects a similar consultation approach, since their education must be ‘developed and implement in co-operation’, even in the creation of indigenous curriculum, therefore IPs effective participation becomes relevant. As part of these programs, the language perspective also relies on bilingual education, including indigenous language alongside national language. It entails positive measures to preserve and promote languages and to provide translations or media communication.

In addition to these instruments, the right to political participation can be found in other international human rights instruments, even without specifically addressing IPs. Yet, some of these provisions allow for an interpretation in conjunction to culture, language and education, that upholds the relevance of the right to consultation.

Beyond the right to self-determination, from the perspective of civil and political rights, the provisions on political participation and minority rights is to be interpreted as to include the right to enjoy particular culture, according to the Human Rights Committee. Complementary, the Committee on Economic, Social and Cultural Rights (ESCR) has put progressively more emphasis on culture. Specifically, concerning the right to take part in cultural life entitles individuals to participate, access and contribute to cultural life. The state actions implementing this must be culturally ‘acceptable’, meaning that ‘consultations should be held … in order to ensure that the measures to protect cultural diversity are acceptable to them’. This cultural value is stressed in education too. International soft law also reinforce

---

62 C169, Art. 31
63 C169, Art. 28 and 29
64 C169, Art. 30(2)
65 Mirroring article in Articles 1 from the International Convenat in Civil, Political rights and Economic, Social and Cultural Rights.
66 UNGA International Covenant on Civil and Political Rights (ICCPR) (1966) Art. 25
67 HRC. General Comment No. 23 on Article 27, CCPR/C/21/Rev.1/Add.5 (1994) para.3.2
68 CESCR, supra n.19 para.15
69 Ibid para.16(c)
70 Ibid para.54 and CESCR. General Comment no. 13: Right to Education (art.13) life E/C.12/1999/10 (1999), para.50
such claims, as the Vienna Declaration\textsuperscript{71} and the recent ‘Los Pinos Declaration’\textsuperscript{72} that pushed the political agenda towards developing indigenous languages.

The UN Committee on Racial Discrimination touches on IPs.\textsuperscript{73} While recognizing their distinct culture, language and way of life as enriching State identity, it calls for their preservation, promotion and effective participation in public life, requiring their informed consent.\textsuperscript{74} Moreover, regarding children’s rights,\textsuperscript{75} it is acknowledged the dual collective and individual aspect of indigenous child’s education,\textsuperscript{76} and that its access and content lead to develop indigenous identity.\textsuperscript{77}

At a regional level, the Inter American System has provided a strong development on indigenous rights. Not only the Court and Commission decisions worked, but the Organization of American States (OAS) in its regional soft law that indicates a general political will. Although the American Convention does not address IPs, it is remarkable the right to participation stated in Article 23; yet the IACtHR jurisprudence progressively interpreted the convention to introduce IPs claims.\textsuperscript{78}

The IAComHR has pushed forward to recognize the coexistence of cultural diversity, in an intercultural approach,\textsuperscript{79} that implies the distribution of power and a level of recognition without exclusion. Furthermore, the IACtHR dealt with indigenous rights, developing the duty

\textsuperscript{71} It relates democracy with participation, at the time that protects and promote cultural differences. It points on democracy being the full participation of peoples (I.8); protection of minorities with own culture: calling on strengthening the IPs rights (I.20, II.20-32) and strengthening institutions of effective participation decision-making (II.67). Vienna Declaration supra n.16


\textsuperscript{73} CERD. General Recommendation no. 23 on Indigenous Peoples (1997)

\textsuperscript{74} Ibid, para.4

\textsuperscript{75} UNGA. Convention on the Rights of the Child (1989) Art. 30

\textsuperscript{76} CRC. General Comment 11, CRC/C/GC/11 (2009)

\textsuperscript{77} CRC. Recommendations, Day of general discussion on the rights of Indigenous Children, 34\textsuperscript{th} session (2003), 258

\textsuperscript{78} A. Fuentes. ‘Judicial Interpretation and Indigenous Peoples’ Rights to Lands, Participation and Consultation. The Inter-American Court of Human Rights’ Approach’ International Journal on Minority and Group Rights 23, no.1 (2016)

\textsuperscript{79} IAComHR. (2019) Situation of Human Rights of the Indigenous and Tribal Peoples of the Pan-Amazon Region OAS/Ser.L/V/II para.43
to consult. Worth to mention are the most remarkable cases. In *Saramaka v Suriname* (2007)\(^{80}\) the Court set the obligation to consult given the cultural distinctiveness of IPs, though flowing from right to property, and demand consent in certain circumstances affecting their land and survival.\(^{81}\) Moreover, in *Sarayaku v Ecuador*, the Court grounded FPIC as general principle of international law and cultural identity as fundamental right of independent nature, informing the obligation on state to consult. However, it is argued that the Court was ‘using civil and political rights to indirectly protect economic, social and cultural rights’,\(^{82}\) the found violations originated on the duty to consult in relation to right to property, instead of a violation of cultural rights too. Similarly, in *YATAMA v. Nicaragua*,\(^{83}\) the Court argued that IPs have the right to participate in equal grounds on political decisions that would affect them, using their own institutions.\(^{84}\)

Politically, the OAS has also achieved a regional understanding on IPs rights, in the American Declaration on the Rights of Indigenous Peoples. It resembles the UNDRIP, although some of its elements are criticized (i.e. not having self-determination as strong guiding principle) and scant participation of IPs.\(^{85}\) It recognizes self-determination within the state, provides a participatory scheme with consultations,\(^{86}\) protects against assimilation and genocide, and embraces indigenous own institutions, as multicultural and multilingual societies.\(^{87}\) However, Colombia, Canada and USA\(^{88}\) presented objections.

\(^{80}\) Note that cases *Saramaka v Suriname* (2007) and *Sarayaku v Ecuador* (2012) were cases of logging, mining and oil exploitation in indigenous lands.

\(^{81}\) Yriart, supra n.30, 477

\(^{82}\) Ibid. 584

\(^{83}\) Case *Yatama v. Nicaragua* (2005). It was an electoral dispute, IACtHR found a violation on only right of political participation.

\(^{84}\) Ibid. para.225


\(^{86}\) OAS GA. *American Declaration on the rights of indigenous people*. GT/DADIN/doc.334/08 rev.12 (2016)

\(^{87}\) Ibid, Arts. 10, 11, Section 3

\(^{88}\) Although approved by consensus, these countries included statements with their own considerations. Colombia interpreted is as no veto power on natural resources, sacred lands being regulated by law and language in media subjected to legal requisites. P. Joffe. ‘Advancing Indigenous Peoples’ Human Rights: New Developments in the Americas’ Colombia Caravana Org (2017)
All these instruments stipulate in various provisions the state commitment to respect and promote indigenous languages and education. This leads to a combination of state negative and positive obligations. In the production of such measures, the state cannot unilaterally define its parameters. Instead, it is the indigenous voice which should be reinforced. In accordance to self-determination, IPs would be determinant to delineate the content of their culture, such as having own educational systems and languages. Then, that would define the grounds where the state needs to take IPs into consideration and hence ensure their effective participation in the formulation of decisions that would affect them.

Finally, considering that there is international recognition of IPs right to ‘effective participation’ in cultural matters, among this panoply of concepts related to participation, what are the benefits of FPIC? Various arguments can be found, besides the FPIC inherent relationship with self-determination, as suggested earlier, hence serving to qualify indigenous position in consultation. Firstly, it works as a balancing mechanism, playing a remedial function on affected rights. It helps articulate indigenous interests along with states interests and duties. Secondly, the FPIC relational approach facilitates achieving mutual benefits in a context of co-existence. Thirdly, because FPIC presents a standards for intercultural dialogue that ensures recognition, consent and continuity. Also, engaging IPs in decisions as full partners searching a mutually agreeable outcome would overcome the consent-as-veto dispute.

In conclusion, there is great recognition internationally to indigenous consultations, consequently states must cooperate ‘in good face’ with indigenous communities ‘in order to obtain free, prior informed consent’. Since this FPIC is essentially embedded in the indigenous

89 Anaya & Puig. supra n.21, 457
91 Accordng to Tully’s theory of intercultural dialogue, in: Rombouts, supra n.21, 108
right to self-determination, it can be used extensively in all the matters that are considered culturally significant for them, as in education and language policies. Firstly, because it derives from the recognition of indigenous distinctive culture and autonomous education system and language. Secondly, because FPIC offers a stablished framework to materialize indigenous’ right on participation at an equal footing than states. And finally, in a practical manner, FPIC is a platform for intercultural dialogue. Thus, it helps states to fulfil its international obligations towards its citizens, to procure cultural pertinence of state decisions related to education and language.
3. Implementation of the FPIC and how to ensure representativeness: Colombia and Nicaragua.

In this section I will discuss the consultations practices in Colombia and Nicaragua. To answer my research question, preventing violation on IPs’ rights requires ensuring their effective participation, and the agency for their consent and participation in FPIC processes presupposes forms of representations. Hence, this section focusses on the representativeness of consultations, namely, the involvement of IPs in legal or administrative decisions related to education and language regulations. How is the participation of IPs articulated? Are there specific institutions? Which actors are implicated? My analysis will offer two models of consultations according to the involved subjects: 1) the ‘Board’ style negotiations with indigenous organizations and 2) the Regional institutions. By assessing the representativeness of the participating IPs, I conclude that the ‘Board’ model is more effective scheme, more respectful with the indigenous self-organization and inclusive.

3.1 Recognition

Recognition is an essential element for dialogue. The initial step of the exam of the legal framework is the Constitutions of the two countries, in which indigenous movements took part. Both jurisdictions, Colombia and Nicaragua, stipulate diversity and multi-ethnicity of their population, equality and anti-discrimination clauses. Cultural affairs are also addressed, as a state obligation to protect culture or as rights to education and access to culture. Both

---

93 Rambouts, supra n.21, 406
98 Colombian Constitution, Arts. 8, 44-45,67-68, 70-72. Nicaraguan Constitution Arts. 58, 116-125, 126-128
states give official status to their native languages and protect the right to education, stressing the relevance of cultural-appropriate education by bilingual systems; Nicaraguan explicitly acknowledges intercultural education in mother tongue. Hence, with several provisions, both constitutions praise cultural diversity and its interconnection with the education and native languages.

However, no mention to the FPIC as such is indicated in either of the constitutions. Instead, they prescribe basic principles between the state and the IPs according to the different authorities involved. In Colombia, the constitutional jurisprudence firstly shaped the right to consultation; later this obligation was institutionalized under the Ministry of Interior. This framework for consultations were adopted already with the participation of indigenous representatives through the Permanent Board of Concertation with Indigenous Peoples and Organizations. Nicaragua lacks a regulatory framework for consultations.

Consequently, IPs in these countries have a recognition status based on the principle of self-determination. But the effective exercise of authority can be hampered by the framework that the constitutions define for IPs, hence to leave it empty of meaning, as just a formal acknowledgment. It then affects the following consultation processes. The essential differences are that Colombia outlines autonomous ‘indigenous territories’, with self-ruling

---

99 Colombian Constitution, Art 10; Nicaraguan Constitution Art. 11
101 Ministry of Interior. Decree 2893 of 2011. The presence of this ministry is common in consultative organs. The Directorate of Indigenous affairs keeps census and registry and the National Authority on Prior Consultation carries certain FPIC
102 Created by Decree 1397 (1996) alongside the National Commission on Indigenous territories. It is formed by representatives of the ministries, IPs organizations, other indigenous agents and advisors (Fig.1)
105 Colombian Constitution Art 9; Nicaraguan Constitution Art 5
governments (‘consejos indígenas’) according to their own customs. Yet, given the multiplicity of distinctive groups, consultations are led by indigenous organizations. Instead, Nicaragua defines a regional level of government with own competences. When alluding to IPs, the constitution mostly addresses the Autonomous Regions (AR) of the Atlantic Coast, with multiethnic population.

Nicaragua IPs articulation creates different standards. Firstly, the AR of Caribbean Coast North and South received great attention and autonomous regulation: acknowledgement of particular rights of self-government organs (‘Consejos Regionales’, Directive board and Regional coordinators), right to language and own competence for education in coordination with national Ministry. Secondly, within the AR, Nicaragua recognizes communal indigenous territories, emanating from the communal property of the land. They are ruled by own traditional institutions of assemblies and authorities, under the AR supervision.

Outside AR, thirdly, some specific IPs in rivers Coco, Bocay, Indio and Maíz are acknowledge. They are subject to a national authority, in some areas as regarding the National Commission for Demarcation authorities. Finally, Chorotega, Nahoa, Xiu-Sutiaba

---


107 Nicaraguan Constitution. Art. 89-91, 180-181


109 M. González. ‘Autonomías territoriales con permiso y sin permiso’ (Territorial Autonomy with and without state permission) Boletín de antropología americana, 38 (2002), 214

110 Statute of Autonomy N.28 (2016) (previous Act n.28 of 1987, amended by Act 926 of 2016). Since then, the region’s names were replaced by Caribbean Coast regions. Arts. 15, 19, 27, 29.

111 Assemblies with 45 members which must have representation of the different ethnic communities according to electoral rules

112 Supra n.110 Arts. 8, 11.

113 National Assembly. Regulation Decree 3584 (2003). Art. 9


115 Ibid Art. 41

116 Members from state organs (regional authorities, public institutes...), representatives elected by Traditional Authorities and the mayors of disputed areas
and Matagalpa peoples in the Pacific, North and Center (PNC) area are recognized only by laws on municipalities.\textsuperscript{117} It acknowledges traditional authorities, whose members have coordinated under a common National Council of IPs in PCN of Nicaragua. This group has struggle for recognition, attaining a law proposal so far, and some attention regarding health.\textsuperscript{118} It was also disputed regarding the disparities of measure of IPs in 2005 Census, despite warnings on the lack of self-recognition methodology.\textsuperscript{119}

Therefore, an initial obstacle for any kind of consultation is the lack of recognition as IPs. It later prevents this population from exercising any right attached to their status and self-determination. Nicaragua puts its AR in the center, which creates IPs invisibilization both by default and excess. It excludes external IPs giving them less attention and competences. But the AR also creates an artificial governmental level, similar to parliamentary system. The AR institutionalized the multi-ethnic demands, making it its main purpose. It strengthened indigenous claims and agenda of their IPs, supported by a strong civil society and organizations within the AR that have taken part in national and regional development of policies.\textsuperscript{120} But they were also compartmentalized in these areas.

Moreover, at the institutions of the regional level, the fact that they share the government with other population, IPs’ autonomous claims can be diluted. Moreover, its varied populations can replicate the IPs struggle when there is a majority culture, as when the Regional Councils are subjected to majority mestizo population and tehri presence in the regional organs could be just a symbolically representation.\textsuperscript{121}

\textsuperscript{117} National Assembly. Reforms to the Act n.40 ‘Law on Municipalities’ (1997)
\textsuperscript{118} OACNUDH, supra n.18, 382, 390
\textsuperscript{119} CERD. Concluding observations on Nicaragua (2008). CERD/C/NIC/CO/14 para.13
\textsuperscript{120} M. Hooker Coe. ‘Consulta sobre la Sociedad Civil de las Regiones Autónomas de la Costa Caribe de Nicaragua’ (Consult about the Civil society of the Autonomous Regions of the Caribbean Coast of Nicaragua) Kepa’s working papers n:o 10 (2006)
\textsuperscript{121} CERD. State report Nicaragua (2008) CERD/C/NIC/14
3.2 Involved actors

Besides the constitution, addressing the normative framework of education and language, as cultural matters affecting IPs, various legal acts were enacted. Hence, IPs’ participation is evaluated based on how those laws define the design of IPs educational or language programs and the involved actors in those decisions. Who are the IPs representatives engaged?

On the one hand, the Colombia education system adopted an intercultural ethno-education approach. The indigenous claims of own culture led to a General Act developed by a Presidential Decree and the actual Decree on the Education system. The ethno-education is led by the principles of linguistic diversity, autonomy, community participation and interculturality. Complementarily a broader act on Native Languages was also adopted.

The Educational System Decree regulates some common areas. Due to its decentralization, these matters are coordinated through assisting committees for the policy creation. The most relevant organ where the IPs involvement is envisioned is the National Commission on Labor and Concertation in Education (Fig.1). This body reunites different members: state representatives from the Ministry of Education, Interior and Justice, indigenous delegates of the Permanent Board of IPs, associations and delegates of educational programs.

Moreover, the commitment to language diversity and the principle of concertation are emphasized in the Act of Native Languages. The adoption of this Act was the result of a process of negotiations, with delegates of the great indigenous organizations in Colombia. Moreover,

---

122 Colombian Congress, General Act of Education 115 (1994), Art 55
123 Decree 804 of 1995
124 Ministry of Education. Decree 1075 of 2015 on Educational Sector
125 Colombian Congress. Act 1381 of 2010 Lenguas Nativas (Native Languages).
126 Created by Decree 2406 (2007)
127 Ibid. Art. 3.
128 Several rights are specified to native speakers (such as non-discrimination, use of their native language in public and private sphere) alongside with learning Spanish. Equally, it includes the right to use toponyms, names and language in relation with the authorities (courts, administration, health system…).
129 Colombian Ministry of Culture. ‘Política de protección a la diversidad etnolingüística’ (Policy on Etnolinguistic diversity protection) Compendio de políticas culturales (2010), 367
during the adoption of such act, Ministry of Culture also carried out 30 ‘concertation assemblies’ where 76 of the 94 censed groups were consulted; it was discussed with national organizations (ONIC, OPIAC, CIT), regional organizations and local cabildos.\textsuperscript{130}

Furthermore, the law provides that the interpretation and application of language regulations are subjected to concertation with the authorities of ethnic groups.\textsuperscript{131} The measures are designed under the Ministry of Culture,\textsuperscript{132} and it creates the National Assistant Council on Native languages (Fig.1).\textsuperscript{133} This organ brings together various representatives:\textsuperscript{134} 3 members of ministries; representatives of the different ethnic groups\textsuperscript{135} elected by their communities; linguistic experts, and other potential participants. Its members must be Colombian and be elected democratically. The ethnic representatives must additionally be a speaker or have knowledge on the native language and documentation to verify their belonging to that ethnic group. Among the IPs, this body is formed by one representative from each of the indigenous national organization members from the Permanent Board, namely ONIC, OPIAC, CIT and Regional Councils of the Atlantic Coast (CORPES).

The concertation principle recognizes that no unilateral decision on this matter should be made by state authorities without the cooperation of indigenous communities. This principle of action can be analyzed under the FPIC criteria. Internally, members of IPs should be able to participate in their collective will-formation according to their governance structure, whereas, externally, people ‘as a whole’ must be represented.\textsuperscript{136}

This negotiation-scheme is currently used in Colombia, by creating Boards or Commissions, for specific areas with representatives of states and IPs authorities. It constitutes

\textsuperscript{130} Ibid p.369
\textsuperscript{131} Language Act, supra n.125 Art 3
\textsuperscript{132} Ibid Arts. 23, 24
\textsuperscript{133} Regulated by Decree 1003 (2012)
\textsuperscript{134} Ibid Art. 3
\textsuperscript{135} IPs, 2 Roma, 2 Raizal and 2 Palenquera people
\textsuperscript{136} Rombouts, supra n.21, 406-407
one model of consultation. It reunites state members and IPs representatives. It is characterized by including national and regional organizations by which IPs have organized themselves. This associations convey IPs’ demands. In Colombia, they originated in the intense indigenous movement that mobilized population during the 70s, channeling the dialogue with the state.\footnote{N.C González Piñeres. ‘The indigenous movement and its paradigms of interpretation’ \textit{Guillermo de Ockham} 2, no.2(2004)} ONIC, OPIAC and CIT are member in all the discussed board, although in some other actors are involved. These soft institutionalization structures represent indigenous claims in consultative organs, even though some also participated in the electoral process. A collective identity serves to agglutinates dozens of small and disperse IPs. Bing present in different organs thy can act intersectionality.

Their representativeness benefits from their organic creation, it can fairly be more legitimate to IPs. Following the self-government recognition, it would be questionable to assess the internal process by which they representative are elected. Yet insofar they are considered highly representatives by the IPs that are to be affected by any decision themselves, they are suitable for consultations. Nevertheless, these structures also face the inherent challenges of representation, whether a common stable message is behind the speakers, the connection between group and representative, the non-exclusion of interests... or practical challenges arise from its conformation.\footnote{M.C. Brilman. “La Mesa Permanente de Concertación con los pueblos y organizaciones indígenas. El diálogo es su propio fin.” (The permanent concertation board with indigenous peoples and organizations. Dialogue is its own end) \textit{Revista de Derecho Público} 31 (2013), 9}
On the other hand, Nicaraguan educational system and languages are constructed mainly around the Autonomous Regions, with competences on education, programs for language reactivation and the bilingual intercultural education were established. Indigenous languages have the official status in the Autonomous regions since 1993. Besides, the scope of the law is restricted to the AR and exceptionally to some other departments outside concerning a close list of languages: miskitu, creole, sumu, garifona y rama. Moreover, these AR run the Autonomous Educational Subsystem according to the National Law on Education. Once again, no mention to the IPs form the PCN region, although their languages are today extinct.

At the regional level, as part of this subsystem, the AR of the Caribbean have created specific programs of *intercultural bilingual education*, whose curriculum is offered in miskitu, mayangna and creole languages in certain areas. Another achievement was the creation of the

---

139 Statute of Autonomy, supra n.110 Art 8
140 National Assembly. Act N.162 of official languages in the Atlantic Coast Communities of Nicaragua -(1993)
141 Department of Jinotega and Nueva Segovia
143 D. Salamanca. ‘Los idiomas mesoamericanos de Nicaragua en el contexto centroamericano’ (Nicaraguan Mesoamerican languages in the Central-American context), WANI 62 (2010)
AR university that develops intercultural and indigenous superior education. These regions enabled the participation of ethnic minorities and have the diverse discourse at its core. As commented earlier, the pressure of the regional organizations of different IPs and ethnics were influential for defining the agenda of AR, organized in Committees with civil society. The process of decentralization was planned by the national Ministry of Education in cooperation with the corresponding organs of the RA as indirectly speakers of the communities. However, the IPs outside these regions, in the Pacific and Center region, given that they do not such have specific status, they are subjected to national regulation.

The overall coordination of education rests on the Ministry of Education. The assembly and board-directive of the National Council of Education are composed by a variety of state actors (Fig.2). No delegate from IPs nor any ethnic community is present as such, only representatives of the regional Commissions.

This is a second model of consultations led by the regional authorities. Although there are relevant national associations, indigenous organizations and different coordinated IPs’ authorities created as part of the indigenous movement, the regional authorities have a central role to voice ethnic communities as representatives. This ‘regional model’ has been used by the national authorities in the Council of Education or the decentralization negotiations.

This model only attains an indirect representation. Given the few members in AR that are part of the delegation for the dialogue with the national system (usually the president or secretaries), these representatives are indeed acting on behalf of the whole population, although this is a weaker connection to the IPs members than consulting with the organizations themselves. Moreover, for the IPs to be potentially included in those AR members they need to participate on the regional structures to get some representation, running for elections under

144 Supra n.120, 8  
145 General Education Act, supra n.142 Art. 58  
indigenous organizations or political parties. Being a part on these representatives does not follow from their self-organization but they are subjected to external constrains.

From a starting point, this indicates lack of recognition of education as part the autonomous self-government of IPs and autonomy. ‘Competences in education’ belong to AR, not recognized as part of IPs’ culture. If that was the case, it would reinforce the idea of consultation with the IPs themselves or any other organizational structure that they construct. Instead, these regulations recognized diversity and interculturality, but these qualifications can be weak to obtain a fully cultural-pertinent education and indigenous involvement in their definition.

However, a different trend is arising. A recent national initiative under the Ministry of Education was the Plan for Indigenous and Afro-descendant peoples in 2017. This was a remarkably highly discussed project with 105 peoples, including 3 consultations workshop with each AR and the PCN region (Fig.2).147 Regarding the AR, IPs were in this case represented by members of their territorial government. The state directly engaged with the civil society and indigenous organizations. However, regarding the PCN consultation, no direct involvement of IPs was ensured initially; only in 2019, updating the plan, new consultations were carried on as workshop and in the three regions, where IPs’ authorities took part, even from PCN.

Although the development of the specific education plans regarding IPs was assigned on the autonomous authorities, this recent approach articulates the negotiations around the involved areas and actors, being more inclusive to the different affected population. It points to a movement towards the use of a ‘Board model’. However, the AR authorities are still part of it, resulting in a more hybrid model. Despite the workshop style could raise concerns to define the degree of meaningful involvement, it is out of the scope of this discussion.

In general, Colombia shows that it has applied a consultative process in the adoption of their regulations and IPs involvement is ensure in implementation these subjects via their organizations. Those legal acts created specific organs of co-formulation of policies. In Nicaragua, although there has been development towards indigenous education and languages, it was framed around the AR. As more institutionalized system, national and regional authorities alone negotiated, disregarding direct involvement of IPs autonomous organizations. Only recently organizations are gaining prominence. This offers a more flexible engagement that can trump the limitations of the regional level. This more hybrid model provides direct participation of IPs but still including the AR authorities. If a state has this regional level in place, this combination serves more effectively for IPs’ representation and it is also more respectful with their autonomy to organized themselves in their most suitable manner.
4. Conclusion

This research has focused on the relationship of participatory and cultural rights for indigenous peoples. Indigenous communities have struggled to obtain recognition at the national and international sphere, now recognized in the principle of self-determination in the UNDRIP. It acknowledges self-government and control on areas that concerns them, in coexistence with the framework of states. Consequently, autonomy and participation of IPs in state decisions that could affect them are two faces of the same coin.

However, indigenous identity and native languages faces extreme risk nowadays, spoken by minority groups and being subjected to assimilationist policies. Language and education are relevant channels for cultural transmission so it is an area where IPs must not be disregarded. My position is that language and educational regulations and policies must be developed interculturally with meaningful IPs involvement by qualified consultative process, being Free Prior Informed Consent a well-suited framework. To do so, it has been carried out a comparative analysis of the jurisdictions of Colombia and Nicaragua. Due to their different institutional arrangements, these case-studies offer different practices on how they carry consultations with their IPs.

Being aware that FPIC requires flexibility to adapt to the different situations and the diverse IPs, the consultations need to adjust to the specific ways IPs self-organized. Thus, it is relevant to recognizing, identifying the IPs groups and include all the affected groups in a way appropriate to their own organization.

As showed in Chapter 2, there is support in international and regional human rights law to adopt a consultative approach with IPs from a cultural perspective. The UNDRIP, the ILO C169 and the American Declaration on the Rights of Indigenous Peoples acknowledge the indigenous distinct culture and provide general rights to consultation in education and language. Yet, IPs rights cannot be read alone but in conjunction with civil, political, economic, social,
and cultural rights positivized in international and regional conventions, in which the value of culture and diversity sustains an intercultural approach.

The variety of references to participation shows the necessity to create a dialogue with IPs. Remarkably, FPIC qualifies their involvement in decisions that can affect them to ensure their effective participation. Firstly, its value rests in its origin, since FPIC derives from the recognition of indigenous distinctive culture, self-determination and autonomous education system and language. Secondly, because FPIC offers a stablised framework to materialize indigenous’ right on participation in an equal footing than states. And practically, because FPIC serves as a platform for intercultural dialogue.

Among the different elements of the FPIC, I have focused on the representativeness of the process, meaning the involvement of IPs in legal or administrative decisions related to education and language regulations, since the agency of IPs’ consent and participation presupposes forms of representations. FPIC requires foremost the recognition of the communities to get them involved at the initial stage of carrying consultation. Different territorial arrangements under the constitutional scheme can influence the practical recognition of IPs. Remarkably, the definition in Nicaraguan constitution of the Autonomous Regions created a different standards. They strengthened the relevance of IPs within these regions and their autonomy claims, although the presence of IPs representatives in this artificial regional level is fairly weak. Simultaneously, it made IPs from outside those territories invisible, acknowledging less autonomy. An initial obstacle for any kind of consultation is the lack of recognition as IPs, which later prevents the population of exercising any right attached to them.

Moreover, my analysis of the case studies of Colombia and Nicaragua shows two models of consultations according to the involved subjects. The first version is the ‘Board’ style negotiations that relies in indigenous organizations, which agglutinates and channels

148 Rombouts, supra n.21, 406
indigenous demands. These broad-reaching groups are central in consultative processes, they are characterized by their organic mobilizing creation, more in line with the indigenous self-organization and are more likely to be representative of all the IPs affected in consultations. The second approach rest on Regional institutions, the national authorities negotiates with the organs of the Autonomous Regions. The regional member only attains an indirect representation of IPs, with few members in place to participate in the processes and not necessarily indigenous belonging. Moreover, IPs are obliged to take part on the regional structures to get some representation. However, these are not clear-cut define strategies of consultation, i.e. Nicaragua recently adopted new educational programs were IPs organizations from all the areas using were directly involved. Hence, I conclude that the ‘Board’ style with organizations is a more effective representative scheme, respectful with indigenous self-determination and inclusive with the diverse IPs involved. Yet, if a state already has a regional level in place, to avoid solely regional representation IPs organization should be included; a hybrid combination of both models would be suitable.

Therefore, the obligation to consult to effectively protect IPs self-determination results from the recognition of a distinct indigenous culture. My position is that the FPIC approach has the potential to be used beyond land rights, whenever indigenous cultures are affected, as the areas discussed in this research, or extensively in all culturally significant matters for IPs. Nevertheless, this research has only focused in their representative aspect, a further analysis on other elements of FPIC will be relevant, such as the level of shared information, the timing, the degree of free input and the actual influence in the final outcome. It will protect indigenous participatory rights and help protect their distinct culture. It is not only about receiving education with some indigenous flavor, but about being present in the discussion when these decisions are being taken, being asked and contribute. It matters being part in the conversation.
Bibliography


CERD. *Concluding observations on Nicaragua*, CERD/C/NIC/CO/14, 2008


CERD. *State report Nicaragua*. CERD/C/NIC/14, 2008

CESCR. *General Comment no. 13: Right to Education (art.13) life*, E/C.12/1999/10, 1999

CESCR. *General Comment no. 21 on Right to take part in cultural life*. E/C.12/GC/21, 2009

Cifuentes Sandoval, G. et al. ‘La consulta previa en la jurisprudencia constitucional de Colombia: Análisis de línea entre 1997-2015’ (The prior consultation in the constitutional

Colombia Ministry of Interior. DANE Accessed 4 April 2020

Colombia. Congress. Act 1381 of Native Languages, 2010


Colombia. Ministry of Culture. ‘Política de protección a la diversidad etnolingüística’ (Policy on Etnolinguistic diversity protection) Compendio de políticas culturales, 2010

Colombia. Ministry of Culture. Decree 1003, 2012

Colombia. Ministry of Education. Decree 1075 on Educational Sector, 2015

Colombia. Ministry of Education. Decree 2406, 2007

Colombia. Ministry of Education. Decree 804, 1995


Colombia. Ministry of Interior. Law-Decree 4633, 2011

Colombia. Political Constitution, 1991


CRC. General Comment 11: Indigenous children and their rights under the Convention CRC/C/GC/11, 50th session, 2009
CRC. *Recommendations of CRC, Day of general discussion on the rights of Indigenous Children, 34th session, 2003*


degawan, M. “Indigenous languages: Knowledge and hope” *The UNESCO Courier*, 2019


González Piñeres, Nidia Catherine. ‘The indigenous movement and its paradigms of interpretation’ *Guillermo de Ockham* 2, no.2 (2004): 139-161


Hooker Coe, Miriam. ‘Consulta sobre la Sociedad Civil de las Regiones Autónomas de la Costa Caribe de Nicaragua’ (Consult about the Civil society of the Autonomous Regions of the Caribbean Coast of Nicaragua). *Kepa’s working papers n:o 10*, 2006


HRC Expert Mechanism on the Rights of Indigenous Peoples. *Follow-up report on indigenous peoples and the right to participate in decision-making, with a focus on extractive industries*, A/HRC/21/55, 2012


HRC. *General Comment No. 23 on Article 27, CCPR/C/21/Rev.1/Add.5*, 1994

Instituto Nacional de Información y Desarrollo. *VII Censo de Población y VI Vivienda, 2005*


International Labor Organization General Conference. *Convention. 169, Indigenous and Tribal Peoples Convention, 1989*


M. González. ‘Autonomías territoriales con permiso y sin permiso’ (Territorial Autonomy with and without state permission) *Boletín de antropología americana* 38 (2002): 211-226


Nicaragua. National Assembly. Act N.162 of official languages in the Atlantic Coast Communities of Nicaragua, 1993


Nicaragua. Political Constitution, 1987

OAS GA. *American Declaration on the rights of indigenous people.* GT/DADIN/doc.334/08 rev.12, 2016


Salamanca, Danilo. ‘Los idiomas mesoamericanos de Nicaragua en el contexto centroamericano’ (Nicaraguan Mesoamerican languages in the Centro-American context) *WANI* 62 (2010):6-18 DOI: https://doi.org/10.5377/wani.v62i0.855


UN Permanent Forum on Indigenous Issues. *Backgrounder Indigenous languages*, 2018


UNGA *International Covenant on Civil and Political Rights*, resolution 2200A (XXI), 1966

UNGA. *Convention on the Rights of the Child*, resolution 44/25, 1989

UNGA. *Culture and sustainable development*, Res. 70/214, 70th session, A/RES/70/214, 2015


Annex 1. Practical component: Policy brief

Constructing inclusive education in partnership with communities:

Promoting participation of indigenous organizations

Summary:

This policy brief provides with insight regarding the development of the recent educational Plan for Indigenous and Afro descendants Peoples. It aims at the development and better quality of the communities and this goal cannot be achieved in disregard of indigenous direct involvement.

Between the different strategies that the Ministry has employed, our evaluation is that the methodology for the participatory workshops must be standardized, because of its greater inclusion of indigenous organization and adequacy to ensure participation and autonomy. Our recommendations are 1) Recognizing education as cultural identity, 2) Integrating consultations in the Ministry practice, 3) Identifying Indigenous peoples, 4) Continuous assessment, shared information and dialogue

Introduction:

In the context of the development of the new Plan for Indigenous and Afro descendants Peoples (PPIA in Spanish), with the support of the World Bank, the aim is encouraging community development and improve the quality of education. The diversity of the Nicaraguan population results in an educational system that respects the principles of intercultural bilingual education for the different communities. It is aimed at all the regions: NCCAR, SCCAR and PCN.

The presence of indigenous languages in Nicaragua is a valuable cultural domain, worth of preserving. For their protection, education is an essential factor. These interconnected areas belong to the indigenous identity. Their voice in the definition of these educational program cannot be silenced. Instead, state must promote their effective participation, according to their international obligations under the ILO Convention 169.

The World Bank itself follows a policy of involvement of indigenous population. Additionally, the United Nations Sustainable Development Goals and Agenda pledges the purpose of “leaving no one behind”. It points to the necessity of being aware of the different layers of the problematic. Hence, considering indigenous voices and the variety among themselves plays an important piece in developing a comprehensive education effectively.

Policy implications

In the construction of the PPIA so far, some consultations have been carried out. In 2017, 3 participatory workshops, with members of indigenous organizations from the Autonomous Regions, regional authorities,
and professionals of education. In its actualization in 2019, other 3 workshops were established, with further indigenous authorities. (Fig.1)

However, the National Council of Education remains without direct representation of indigenous population (Fig.2). It is not enough to plan some participatory events, but to ensure the indigenous voice. Hence, we highlight several challenges:

- Inconsistent approach. Only some inclusive consultations have been carried lately, and it contrast with the National Council. Future inclusion is up to the definition of the plan.
- The presence of indigenous representatives has grown, although authorities form the region PCN were only included in the last workshop.
- Its foundation is the right of indigenous populations to receive education in their mother tongue and according to their culture, administered by the Autonomous Regions. A shift of the interpretation is needed, to see education also as integrating cultural self-determination. Hence, it is not just as a right to receive education, but to be part on their formulation.

Therefore, the second methodology is evaluated as far more inclusive for the participation of the communities alongside regional authorities and experts. Our proposition is the standardization of that model in all stages and areas of the definition of the educational plan.

**Policy Recommendations**

A successful strategy for education must include indigenous voices:

1. Recognizing education as part of the **indigenous cultural identity**.
   - Acknowledging cultural self-determination in this interpretation, by modifying the legal acts regarding indigenous population

2. **Integrate the practice of consultation** as the regular action of the Ministry, in respect of the indigenous right of Free, Prior, Informed Consent.
   - This requires involving indigenous population in the following monitoring stages and implementation of the PPIA.
   - Modify the Ministry regulations and

---

**Figure 1 Members of the participatory workshops**

**Figure 2 Members of the National Council of Education**
specifying future steps foreseeing indigenous inclusion.

- In a long rung, representatives of indigenous organization must be included in the National Council of Education.

3. **Identifying Indigenous Peoples.**

Determining the communities that can be affected and contacting with their indigenous authorities.

- Revising the methodology of the national Census, updating its methodology according to the principle of self-determination and providing disaggregated data.

- Improving the collaboration with the other state institutions that keep track of their indigenous population, as the Ministry of Interior and the Regional Councils

- Identifying representative actors: Public authorities must contact IP and indigenous organizations with the aim of knowing which institution IPs prefer for negotiation.

4. **Continuous assessment** of the decision, **sharing of information** with the involved representatives, including translation if needed, and **dialogue.** Consultations implies mutual communication. Employing FPIC standards for the decisions.

**Resources:**


---

1 Addressees: Ministry of Education in Nicaragua, Autonomous Regions Councils and other indigenous organizations. By: Nicaraguan NGO promoting the consolidation of the autonomy recognized to communities and the engagement with the public sector in a more inclusive way, respectful with indigenous self-determination.

2 NCCAR: North Caribbean Coast Autonomous Region
SSCAR: South Caribbean Coast Autonomous Region
PCN: Pacific, Center and North Region