

# Elections and Inclusive Decision-making of Indigenous Peoples in Sovereign States

## Authors<sup>1</sup>

Rebecca Aaberg, Sr Inclusion Specialist

Virginia Atkinson, Sr Global Advisor, Inclusion

## Abstract

This paper explores access to political participation and electoral engagement of Indigenous Peoples, including the extent to which election management bodies (EMBs) are making efforts to ensure that Indigenous Peoples can participate in the political process. The International Foundation for Electoral Systems (IFES), an international non-profit organization that provides technical assistance to EMBs, civil society and other electoral actors, has identified that EMBs often lack awareness on inclusion of Indigenous Peoples. IFES' Indigenous Peoples Organization partners have confirmed this challenge. Elections, a key decision-making tool, are organized both by Indigenous nations and sovereign states to select leaders, hold referenda on issues of importance and provide a public platform for dialogue. Participation in these processes is critical to ensure that public policies are responsive to the people they serve. Indeed, access to the political sphere enables access to all other human rights.

International and regional frameworks such as the United National Declaration on the Rights of Indigenous Peoples and International Labor Organization Convention 169 support the political rights of Indigenous Peoples, as well as the use of legal frameworks of Indigenous nations and sovereign states to support political participation. EMBs have an opportunity to contribute to implementing these international standards and state commitments. This paper will give an initial readout on qualitative research currently being conducted in partnership with Indigenous Peoples Organizations and EMBs in several regions globally. It highlights both the challenges experienced by EMBs in ensuring the meaningful inclusion of Indigenous Peoples in elections and opportunities to increase participation including through strategies to ensure equal access to information, voting, and other electoral activities. Taking an intersectional approach, this paper also illuminates experiences of Indigenous women, Indigenous persons with disabilities and young Indigenous people in elections. Finally, the paper includes recommendations for EMBs to confront common challenges and utilize good practices.

---

<sup>1</sup> The authors would like to recognize the contributions of IFES' Indigenous Peoples Organization partners: Endorois Indigenous Women Empowerment Network (EIWEN), Fundación Guillermo Toriello (FGT) and National Indigenous Disabled Women Association of Nepal (NIDWAN). These organizations are currently contributing to a briefing paper on the global barriers to and opportunities for Indigenous Peoples in elections. It is anticipated that this paper will be published in early 2023. For more information, please go to IFES' website: [IFES.org](https://www.ifes.org). The authors would also like to thank peer reviewers Christine Kandie and Kyle Lemargie for their thoughtful feedback as well as Nicole Alcantara for her contributions to organizing the desk research.

## Introduction

By taking part in political life, people can influence decision-making on issues that impact their lives, such as healthcare, education and economic policy. Elections are organized both by Indigenous<sup>2</sup> nations and sovereign states to select leaders, hold referenda on issues of importance and provide a public platform for dialogue. Participation in these processes is critical to ensure that public policies are responsive. Indeed, access to the political sphere enables access to all other human rights. Even the act of taking part in a political debate at home, with friends, or with colleagues, can be a method by which people share their opinions or present solutions to the problems that are impacting them. Elections can spark dialogue among people who live in the same community and people who live in different communities. Engaging in political life also provides an opportunity to be seen as an equal member of society and has the potential to help break down stigmas. Indeed, access to the political sphere, and the opportunities it affords to shape policy, can enable access to all other human rights.

Election management bodies (EMBs) have a responsibility to ensure that all people have the access and opportunity to take part in elections as voters, candidates and election workers. These government bodies are responsible for implementing international legal frameworks, such as the International Convention on Civil and Political Rights (ICCPR), yet they are often unaware of the barriers to accessing rights afforded to persons who identify with marginalized groups, such as Indigenous Peoples. EMBs also rarely have Indigenous staff members. As a result, EMBs often do not take sufficient action to result in the meaningful participation of all people. EMBs are frequently ill-resourced to carry out elections that are inclusive, for example, of people who live in remote areas or of people who speak minority languages. At the same time, in many EMBs, a lack of political will may prohibit actions that would result in

### Key definitions

*Collective rights* – Rights that are afforded to groups of people rather than individuals.

*Free, prior and informed consent (FPIC)* – The principle that Indigenous Peoples, who have the right to self-determination, must be consulted before policy and development decisions are made that impact them or their land. Consent must be given voluntarily, without coercion or manipulation, and is not guaranteed.

*Indigenous Peoples* – Nations or groups who identify as Indigenous, a collective noun.

*Indigenous people* – Individuals who identify as Indigenous, a plural noun.

*Intersectionality* – The interconnected nature of social categorizations, such as race, gender, age, and disability, which create overlapping systems of discrimination and result in unique experiences and barriers for each individual.

---

<sup>2</sup> Indigenous Peoples globally use different language to identify themselves. For example, peoples in Australia are often called Aboriginal peoples, First Nations in Canada and Native peoples in the United States. The word “ancestral” is commonly used to recognize traditional lands of Indigenous Peoples. There is some controversy around the use of the word “tribes,” which is considered to be derogatory by some, so the authors use the word “nations” throughout this paper. For the purposes of this paper, the authors use “Indigenous Peoples,” which is the most widely accepted language globally and follows the United Nations Declaration on the Rights of Indigenous Peoples.

greater participation by marginalized groups. Despite these challenges, some EMBs have taken steps to consult Indigenous Peoples, such as the Australian Election Commission (AEC), which collaborates directly with Indigenous Peoples Organizations (IPOs) to ensure that Indigenous voters are on the electoral roll and have access to information about the process.<sup>3</sup> In Canada, Elections Saskatchewan has been proactive in building strong channels of communication and consultation with First Nations to facilitate the removal of barriers to participation. This collaboration has deepened through in person meetings between provincial election officials and First Nations leaders and through memoranda of understanding (MOUs).<sup>4</sup>

Indigenous Peoples have faced historic discrimination and oppression. They have been simultaneously ignored by sovereign states and repressed from making their voices and their issues heard. Despite these challenges, Indigenous Peoples continue to take part, in decision-making opportunities provided by sovereign states, such as elections. Even so, the United Nations Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) notes that Indigenous Peoples continue to participate at lower numbers than non-Indigenous people.<sup>5</sup> Common barriers to Indigenous Peoples electoral participation, such as lack of access to identification documents, living far from voter registration centers or polling stations, and discrimination, began to receive broader recognition by non-Indigenous persons through lawsuits and awareness campaigns.<sup>6</sup> In states that have produced new approaches to guaranteeing or promoting the rights of Indigenous Peoples to participate in elections, the “playing field” has not been leveled with access of non-Indigenous persons.<sup>7</sup> The COVID-19 pandemic, which disproportionately impacted Indigenous Peoples, demonstrated that such barriers could be exacerbated in times of crisis. Further, few sovereign states practice free, prior and informed consent (FPIC), which “allows [Indigenous Peoples] to give or withhold consent” at any stage of development projects.<sup>8</sup> Elections could be considered one avenue by which to obtain consent, when practiced in combination with additional consultative processes.

This paper will provide overview of international, regional and national standards for political inclusion of Indigenous Peoples and recommendations for EMBs to ensure that their work to organize elections across a sovereign state includes Indigenous Peoples. It will identify the primary mechanisms through which Indigenous Peoples’ right to participate in elections has been codified, namely, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)<sup>9</sup> and the International Labor Organization Indigenous and Tribal Peoples Convention Number 169 (ILO 169). It will also include illustrative examples from regional frameworks in Asia, Africa, and Latin America that support these rights. These regions have been selected

---

<sup>3</sup> Interview with Jeff Pope, Australian Election Commission. 07 November 2022

<sup>4</sup> Interview with Michael Boda, Elections Saskatchewan. 07 November 2022

<sup>5</sup> *Report of the Expert Mechanism on the Rights of Indigenous Peoples*. Report [A/HRC/48/75](#), UN, 2021.

<sup>6</sup> IFES, *Briefing Series: Inclusion and Meaningful Political Participation* (2020).

<sup>7</sup> *Final Report of the Study on Indigenous Peoples and the Right to Participate in decision-making*, Report [A/HRC/18/48](#), UN 2011.

<sup>8</sup> Food and Agriculture Organization of the United Nations, *Indigenous Peoples: Free, Prior and Informed Consent*. <https://www.fao.org/indigenous-peoples/our-pillars/fpic/en/> Accessed November 2022.

<sup>9</sup> It should be noted that there is some controversy around shortening this declaration to UNDRIP. Some Indigenous Peoples prefer the short version to be “Indigenous Peoples declaration” so that it does not erase Indigenous Peoples. For expediency, this paper uses the acronym UNDRIP.

because of the large Indigenous populations in these regions and the research currently being conducted by IPOs on this topic. Although this paper will also identify several key court cases that have impacted electoral participation of Indigenous Peoples, it will not delve deeply into jurisprudence on this topic. Indeed, this research has shown that few court cases have made a difference, practically, in access to rights to participate in elections. Research conducted on this topic in the United States has yielded contrary results,<sup>10</sup> and this research does not capture the experience of Native peoples interacting with the US court system.

It should be noted that many Indigenous Peoples first identify as part of their nation or people and second as a participant in a sovereign state, which, according to EMRIP, can result in low engagement in elections.<sup>11</sup> However, there are many benefits to taking part in the elections of a sovereign state. As an Indigenous rights activist from Belize noted, “there are two things that sovereign states pay attention to: votes and money.”<sup>12</sup> Elections can provide additional benefits to Indigenous Peoples (when barriers to their access are removed). The voting process can signal to persons in positions of power how Indigenous Peoples stand on issues that impact them. At the same time, EMRIP calls on all states to promote participation of Indigenous Peoples “in all levels of decision making,”<sup>13</sup> which includes not just sovereign state elections but municipal to international policy processes. Yet for Indigenous Peoples, political participation is not solely an individual endeavor. EMRIP has reinforced participation of Indigenous Peoples as a collective in addition to an individual right. Indigenous Peoples’ political rights are also an outcome of their access to collective rights as a “people to exercise decision making authority.”<sup>14</sup> Yet, governments that enact additional laws to support Indigenous Peoples often view such rights through the individual context.<sup>15</sup>

In addition to barriers to participation in sovereign state policymaking, Indigenous women, young Indigenous people, and Indigenous persons with disabilities, as well as Indigenous persons who identify with other marginalized groups, experience additional, intersectional barriers to participation in Indigenous forms of decision making. For example, in Cameroon, Indigenous men may attend—and even take control of—women’s gatherings, thereby limiting the impact of Indigenous women’s voices in the decision-making process.<sup>16</sup> Competition has also been documented to arise among Indigenous women because so few spaces are available for their participation, including in formal decision-making processes.<sup>17</sup> In Indonesia, power struggles have taken place between women in inherited positions of power in the community and

---

<sup>10</sup> Jean Reith Schroedel, *Voting in Indian Country: The View from the Trenches*. University of Pennsylvania Press, 2020.

<sup>11</sup> *Efforts to implement the United Nations Declaration on the Rights of Indigenous Peoples*. Report [A/HRC/48/75](#), (UN, 2021).

<sup>12</sup> Perry World House, University of Pennsylvania. “Decolonize the Future: Defending Indigenous Rights and Lands.” October 11, 2022.

<sup>13</sup> *Final Report of the Study on Indigenous Peoples and the Right to Participate in decision-making*. Report [A/HRC/18/42](#), (UN, 2011) 28.

<sup>14</sup> *Ibid.*, 23.

<sup>15</sup> *Efforts to implement the United Nations Declaration on the Rights of Indigenous Peoples*. Report [A/HRC/48/75](#), (UN, 2021).

<sup>16</sup> *Exploring and Tackling Barriers to Indigenous Women’s Participation and Organization* (International Labour Organization, 2021) 48.

<sup>17</sup> *Ibid.*

activists.<sup>18</sup> In many countries, Indigenous women who run for political office are exposed to harassment and even violence. In Bangladesh, for example, Indigenous women do not have financial independence and therefore cannot run independent political campaigns. Family members may not be supportive of their aspirations and become a barrier to the voices of Indigenous women in political life.<sup>19</sup> Additionally, Indigenous women are more likely to lack access to identity cards and information about the electoral system.<sup>20</sup> Disruptions to their daily routine may not be conducive to leaving the house or being able to wait in a line to vote, attend a community meeting, or take part in other public activities.<sup>21</sup>

Indigenous people with disabilities experience intersectional discrimination and barriers based on their disability and Indigeneity. For example, while voter education materials are sometimes distributed in Indigenous written languages, they are rarely developed in Indigenous sign languages. Research has shown that in Canada, for example, rates of disability are higher among the First Nations population compared to non-Indigenous people.<sup>22</sup> According to the Indigenous Persons with Disabilities Global Network (IPDGN), Indigenous women with disabilities remain underrepresented in parliament and are at increased risk of experience violence in the community, particularly in institutions. Because of the increase risk of violence, rates of "post-traumatic stress disorder, anxiety grief and psychosocial disabilities" are particularly high among Indigenous women with disabilities, as well as psychological and physical impacts of forced sterilization programs.<sup>23</sup> Participation of Indigenous women with disabilities is often tokenistic, and IPDGN has called for the "[promotion] and support [of] the participation of Indigenous women and girls with disabilities within civil society organizations, including organizations of persons with disabilities and women rights organizations, as well as in indigenous [*sic*] institutional mechanisms" to increase their political voice.<sup>24</sup> At the same time, Indigenous persons with disabilities are less likely to know about their rights, both as Indigenous Peoples and as persons with disabilities.<sup>25</sup>

Young Indigenous people may be discouraged from contradicting the wisdom of elders in some cultures, which may be considered disrespectful. Groups such as the Global Indigenous Youth Caucus have also formed to counter stereotypes that young Indigenous people do not care about engaging in political life.<sup>26</sup> As one young Newar woman described: "Because of the [family structure], ...in terms of the rights and political participations, [Indigenous youth] are

---

<sup>18</sup> Interview with Isach Zulfikar Karmiadiji, IFES Indonesia. November 2, 2022.

<sup>19</sup> *Exploring and Tackling Barriers to Indigenous Women's Participation and Organization* (International Labour Organization, 2021).

<sup>20</sup> *Ibid.*, There were also 34 non-voting members present.

<sup>21</sup> *Ibid.*

<sup>22</sup> Tara Hahmann, Ph.D., Nadine Badets and Jeffrey Hughes, *Indigenous people with disabilities in Canada: First Nations people living off reserve, Metis and Inuit aged 15 years and older* (Ottawa, 2019).

<sup>23</sup> IPWDGN and IDA, *Submission for the CEDAW Committee on the rights of indigenous women and girls* (2021). [https://www.internationaldisabilityalliance.org/sites/default/files/ipwdgn\\_ida\\_submission\\_for\\_dgd\\_cedaw\\_final.pdf](https://www.internationaldisabilityalliance.org/sites/default/files/ipwdgn_ida_submission_for_dgd_cedaw_final.pdf) Accessed November 2022.

<sup>24</sup> *Ibid.*

<sup>25</sup> NIDWAN, *National Consultation and Learning Workshop on COVID, Issues of Indigenous Youth and Women with Disabilities in Preparation of 2<sup>nd</sup> World Conference on Indigenous Women*, (Lalitpur Metropolitan City, 2020).

<sup>26</sup> "Guiding Principles." *Global Indigenous Youth Caucus*, <https://www.globalindigenouyouthcaucus.org/guiding-principles/>. Accessed November 2022.

told to follow rather than [act] independently.”<sup>27</sup> High rates of unemployment and targeted discrimination such as hate speech also discourage young Indigenous people from taking part in public life. Despite these barriers, young Indigenous people have been active in advocating for political rights, particularly in response to climate change impacts.<sup>28</sup>

Previous research into this topic has illuminated some of the barriers that exist to Indigenous Peoples as they participate in political life, foundational for approaches prior to UNDRIP, yet there has been too little research on the evolution of barriers and approaches since the adoption of the Declaration. The primary report on this topic was released before UNDRIP’s adoption in 2006.<sup>29</sup> As will be further discussed in this paper, UNDRIP is more than a performative document; it outlines a set of guidelines and international standards for inclusion of Indigenous Peoples by sovereign states, as well as goals for self-determination. Further, at the regional level, several new frameworks support these rights. As such, this paper can be considered an important supplement to previous research that may inform a larger body of literature in future.

### International treaties and frameworks

At the international level, treaties and other frameworks, are the foundation for standards by which sovereign states are measured. In the case of rights of Indigenous Peoples, UNDRIP and ILO 169 are instrumental in setting out expectations for Indigenous rights. Although treaties that support the rights of all people to participate are certainly applicable to Indigenous people, it should be noted that this paper will look not only at the individual rights afforded to Indigenous persons, but also at their rights as peoples.

#### *United Nations Declaration on the Rights of Indigenous Peoples*

UNDRIP is the most widely accepted international framework that protects Indigenous Peoples’ rights. However, the Indigenous Peoples declaration is not a treaty, meaning there is little recourse for rights holders when duty-bearers are negligent. However, it is a visible recognition of the value of Indigenous Peoples in society. During UNDRIP’s adoption, 143 sovereign states agreed to the declaration, and 11 abstained and only four were “noes,” an astonishing in demonstrating the broad support for a declaration on this topic.<sup>30</sup>

Articles 18 and 19 of the Indigenous Peoples declaration, promote participation in all decisions:

“Article 18 - Indigenous Peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in

---

<sup>27</sup> “Indigenous Youth Use Political Power for Social Change.” *IFES*, <https://www.ifes.org/news/indigenous-youth-use-political-power-social-change>. Accessed November 2022.

<sup>28</sup> *Ibid.*

<sup>29</sup> IWGIA, *Challenging Politics: Indigenous Peoples' Experiences with Political Parties and Elections*, (Copenhagen, 2001). <https://iwgia.org/en/resources/publications/305-books/2628-challenging-politics-indigenous-peoples-experiences-with-political-parties-and-elections.html> Accessed November 2022.

<sup>30</sup> General Assembly resolution 61/295, *United Nations Declaration on the Rights of Indigenous Peoples*, A/RES/61/295 (2 October 2007) available from [undocs.org/en/A/RES/61/295](https://undocs.org/en/A/RES/61/295).

accordance with their own procedures, as well as to maintain and develop their own Indigenous decision-making institutions.

Article 19 - States shall consult and cooperate in good faith with the Indigenous Peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.”<sup>31</sup>

Key to both of these articles is the idea that Indigenous Peoples, as collective groups, must be consulted and have access to the right to take part in decisions. Elections could be considered one form of decision-making to select representatives under Article 18. Indigenous forms of governance, recognized under Article 19, could include elected Indigenous governments. Additionally, Article 5 recognizes that Indigenous Peoples have the right to determine whether they participate in the sovereign state. Taken together, these articles indicate that Indigenous Peoples have both collective and individual rights to influence the policies, procedures, and other events that impact them.

As noted earlier in this paper, Indigenous people who identify with additional marginalized groups experience additional barriers to their participation. UNDRIP Article 21 calls on parties to ensure the rights of “Indigenous elders, women, youth, children and persons with disabilities.”<sup>32</sup> This article, when read in conjunction with the other articles in the Declaration, make it clear that Indigenous persons who identify with these other groups must have access to their right to participate in political life. Further, the article notes that “special needs” of these groups should be addressed,<sup>33</sup> which indicates that government bodies, including EMBs, must take an intersectional approach to ensuring access to the rights of marginalized Indigenous persons.

Since UNDRIP’s adoption, much of political life has moved online, exposing Indigenous voters to new barriers, magnifying hate speech and misinformation through online platforms. Discriminatory rhetoric has been employed by politicians and has been linked to an increase in violence against minority groups, including Indigenous Peoples<sup>34</sup>.

### *International Labor Organization Indigenous and Tribal Peoples Convention*

The International Labor Organization Indigenous and Tribal Peoples Convention Number 169 (ILO 169) is the only global treaty that ensures the rights of Indigenous Peoples, and it has been ratified by 24 sovereign states. Unlike the UN declaration, ILO 169 obliges all parties to implement the treaty and has repercussions for those who have not implemented it. Article 6, in particular, explicitly protects political rights of Indigenous Peoples to participate in decision-making in elective institutions:

---

<sup>31</sup> *United Nations Declaration on the Rights of Indigenous Peoples*, (United Nations, 2008).

<sup>32</sup> *Ibid.*

<sup>33</sup> *Ibid.*

<sup>34</sup> “Hate Speech on Social Media: Global Comparisons.” *Conectas*, <https://www.conectas.org/en/noticias/hate-speech-is-a-lethal-weapon-against-indigenous-peoples/>. Accessed November 2022. and “Hate Speech on Social Media: Global Comparisons” *Council on Foreign Relations*, <https://www.cfr.org/background/hate-speech-social-media-global-comparisons>. Accessed November 2022.

“In applying the provisions of this Convention, governments shall: (a) consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly; (b) *establish means by which these peoples can freely participate*, to at least the same extent as other sectors of the population, *at all levels of decision-making in elective institutions* and administrative and other bodies responsible for policies and programmes which concern them; (c) establish means for the full development of these peoples’ own institutions and initiatives, and in appropriate cases provide the resources necessary for this purpose.”<sup>35</sup> [emphasis added]

This Article not only recognizes the right to participate in sovereign states but also the right of Indigenous Peoples to select their own representative for sovereign state institutions. Like UNDRIP, ILO 169 Article 6(a) also promotes the inclusion of Indigenous institutions in the development of policies. The promotion of “peoples” as the unit that can freely participate is also a critical distinction; ILO 169 ensures the collective rights of Indigenous Peoples as a group, not just as individuals.

Although elections are a protected form of political participation under ILO 169, few countries report progress toward ensuring that Indigenous Peoples have access to the sovereign states’ electoral processes. The few countries that have included electoral participation as part of their reporting have shown little progress. In fact, Guatemala is the only country to report on the electoral process itself,<sup>36</sup> and Argentina and Nepal are the only countries that have reported on representation in the legislature.<sup>37</sup> These reports show that even though countries have ratified the convention, they are not implementing it fully.

The varying levels of support of Indigenous Peoples’ rights among different regions is evident when it comes to the ratification of the convention. Most countries that have ratified ILO 169, are located in Latin America, several are in Europe, one is in Asia (Nepal), one is in the Pacific and none are on the African continent.

---

<sup>35</sup> International Labour Organization (ILO), *Indigenous and Tribal People Convention*, 1989 (No.169).

<sup>36</sup> International Labour Organization (ILO), *Direct Request (CEACR)- adopted 2020*, 109<sup>th</sup> ILC session (2021), Guatemala (Ratification: 1996), available at [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO:13100:P13100\\_COMMENT\\_ID,P13100\\_COUNTRY\\_ID:4050132,102667:NO](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO:13100:P13100_COMMENT_ID,P13100_COUNTRY_ID:4050132,102667:NO).

<sup>37</sup> International Labour Organization (ILO), *Observation (CEACR)- adopted 2015*, 105<sup>th</sup> ILC session (2016), Argentina (Ratification :2000), available at [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO:13100:P13100\\_COMMENT\\_ID,P13100\\_COUNTRY\\_ID:3253551,102536:NO](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO:13100:P13100_COMMENT_ID,P13100_COUNTRY_ID:3253551,102536:NO).  
and International Labour Organization (ILO), *Direct Request (CEACR)- adopted 2015*, 105<sup>th</sup> ILC session (2016), Nepal (Ratification:2007), available at [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO:13100:P13100\\_COMMENT\\_ID,P13100\\_COUNTRY\\_ID:3244381,103197:NO](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO:13100:P13100_COMMENT_ID,P13100_COUNTRY_ID:3244381,103197:NO).



### *Intersectional International Treaties and Declarations*

The UN Convention on the Elimination of All Forms of Racial Discrimination (CERD) entered into force in 1969 and has been ratified by 182 countries.<sup>38</sup> While CERD does not explicitly recognize the rights of Indigenous Peoples, it notes that racial discrimination may be based on “national or ethnic origin.” Article 5 protects “Political rights, in particular the right to participate in elections-to vote and to stand for election-on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service.”<sup>39</sup> The Committee on the Elimination of Racial Discrimination also notes in its General Recommendation Number 35 that hate speech can be particularly detrimental to the political participation of persons who identify as racial minorities, including Indigenous Peoples.<sup>40</sup>

The UN Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) Article 7 protects the right of women to equal access in political life.<sup>41</sup> While CEDAW does not specifically reference Indigenous women but a Draft General Recommendation on the rights of Indigenous women and girls was issued in February 2022 by the Committee on the Elimination of Discrimination against Women.<sup>42</sup> It was formally adopted in November 2022.<sup>43</sup> The recommendation calls for CEDAW articles 7, 8 and 14 to be implemented by

“[acting] with due diligence to prevent, investigate, and punish all forms of political violence against Indigenous Women politicians, candidates, human rights defenders, and activists, at the national, local, and community levels, and recognize and respect ancestral forms of organization and the election of representatives.”<sup>44</sup>

The recommendations also stress the important role that Indigenous women can and should play as elected leaders and calls for increased access to leadership positions.<sup>45</sup>

---

<sup>38</sup> United Nations. “International Convention on the Elimination of All Forms of Racial Discrimination.” Treaty Series, vol. 660, Mar. 1966, p. 195.

<sup>39</sup> UN General Assembly, International Convention on the Elimination of All Forms of Racial Discrimination, 21 December 1965, United Nations, Treaty Series, vol. 660.

<sup>40</sup> UN Committee on the Elimination of Racial Discrimination (CERD), General recommendation No. 35 : Combating racist hate speech, 26 September 2013, [CERD/C/GC/35](#).

<sup>41</sup>UN General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979, United Nations, Treaty Series, vol. 1249.

<sup>42</sup> *Draft General Recommendations on the rights of indigenous women and girls*. (Committee on the Elimination of Discrimination against Women, 2022)

<sup>43</sup> International Disability Alliance, *CEDAW Committee adopts General recommendation No 39 on the rights of Indigenous Women and Girls: 30 references to disability and to indigenous women and girls with disabilities*, (IDA, 2022).

<sup>44</sup> Convention on the Elimination on the Elimination of All Forms of Discrimination Against Women, October 2022, *General recommendation No.39 (2022) on the Rights of Indigenous women and girls*. CEDAW/C/GC/39.

<sup>45</sup> *Ibid*.

The UN Convention on the Rights of Persons with Disabilities (CRPD), a treaty that has been ratified by over 95 percent of UN Member States,<sup>46</sup> protects the rights of people with disabilities and recognizes the “difficult conditions faced by persons with disabilities who are subject to multiple or aggravated forms of discrimination on the basis of race, colour, national, ethnic, indigenous or social origin, ... or other status.”<sup>47</sup> Article 29 of the treaty calls on states to guarantee equal access to political life for people with disabilities, including Indigenous people with disabilities.

The UN Convention on the Rights of the Child calls on States to protect the rights of Indigenous children and encourages the media to take into account the linguistic needs of children who belong to Indigenous communities.<sup>48</sup>

### Illustrative regional agreements and national laws

In addition to international agreements, regional bodies have supported the political rights of Indigenous Peoples. However, the development and application of regional frameworks relating to Indigenous Peoples’ rights is uneven from region to region. Although Asia is the most populous continent, home to millions of Indigenous Peoples, it also has the fewest protections for those Indigenous Peoples to take part in elections and political life. Indeed, the stark contrast between binding agreements with explicit language in Africa and Latin America with non-binding agreements in Asia demonstrates fluctuations among views of these rights across the world.

#### *Africa*

African Union charters do not explicitly reference Indigenous Peoples but two African Union charters protect the rights all people, including Indigenous Peoples, to participate in elections. The African Charter on Human and Peoples’ Rights explicitly recognizes that all people have the “right to participate freely in the government of [their] country, either directly or through freely, chosen representatives, in accordance with the provisions of the law.”<sup>49</sup> Further, the African Union Charter on Democracy, Elections and Governance Article 3 protects the “effective participation of citizens and democratic and development, processes and governance of public affairs”, Article 8 establishes “anti-discrimination against the rights of...other marginalized and vulnerable social groups” and Article 27 notes the “harnessing the democratic values of the traditional institutions.”<sup>50</sup> Such traditional institutions could include Indigenous forms of governance. There is a perception by non-Indigenous persons that Indigenous Peoples

---

<sup>46</sup> General Assembly resolution 61/106, *Convention on the Rights of Persons with Disabilities*, January 2007. [A/RES/61/106](https://undocs.org/A/RES/61/106). Available at undocs.org/A/RES/61/106 (accessed December 2022).

<sup>47</sup> Sixty-first session of the General Assembly resolution, *United Nations Human Rights Officer of the High Commissioner*. A/RES/61/106, (UN,2006).

<sup>48</sup> <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>

<sup>49</sup> African Union (AU), *African Charter on Human and Peoples’ Rights* (“*Banjul Charter*”), 1981.

<sup>50</sup> African Union, *African Charter on Democracy, Elections and Governance*, 2007.

on the African continent are already being mainstreamed into politics, though IPOs do not agree with this assessment.<sup>51</sup>

In addition to the Charters, policies such as *the Guidelines on Access to Information and Elections in Africa* from the African Union note that every person has the right information about elections and recognize the rights of “vulnerable and marginalized groups”.<sup>52</sup> However, it is unclear whether this policy is being promoted or addressed in countries across the region. The African Commission on Human and Peoples’ Rights has the authority to undertake studies of potential violations of the Charter on Human and Peoples’ Rights.<sup>53</sup> It oversees reporting by state parties on implementation of the Charter and may interpret the Charter.<sup>54</sup> The Charter has rarely been used to protect the political rights of Indigenous Peoples. However, in 2017, the African Court on Human and Peoples’ Rights (ACHPR) noted that a lack of political representation of Ogiek peoples in development processes in Kenya contributed to violation of Article 22 of the Charter (right to development) and Article 23 of UNDRIP (active involvement in development).<sup>55</sup> Thus, while political participation has not yet been recognized as an end in itself by the ACHPR, it played a role in the court’s ruling.

The Republic of Congo was the first sovereign state on the continent of Africa to pass an Indigenous Peoples’ law. The law, passed in 2010, does not explicitly protect political rights.<sup>56</sup> In its reporting on ILO 169, it was also noted that there continues to be a lack of consultation on legislative measures in the Central African Republic. This indicates that, although there is political will to talk about Indigenous Peoples’ rights, there may be a lack of knowledge about how political rights are connected to other rights of Indigenous Peoples, and/or a lack of political will to codify their political rights. In South Africa, any laws related to traditional communities are required to be shared with the National House of Traditional Leaders for their comment before passage. However, comment does not necessarily mean the right to veto a law or the right to change a law.<sup>57</sup>

Even in countries where Indigenous Peoples have permanent seats, they are not necessarily represented in legislative bodies. Across the continent, some Indigenous Peoples have greater access to political power than others. For example, in Burundi, only Batwa people have permanent seats allocated for representation; Indigenous Peoples who identify with other groups in the country do not have guaranteed seats.<sup>58</sup> In Botswana, the San do not have

---

<sup>51</sup> *Efforts to implement the United Nations Declaration on the Rights of Indigenous Peoples*. Report [A/HRC/48/75](#), (UN, 2021).

<sup>52</sup> African Commission on Human and Peoples’ Rights. *Guidelines on Access to Information and Elections in Africa*.

<sup>53</sup> African Union (AU), *African Charter on Human and Peoples’ Rights (“Banjul Charter”)*, Article 58, 1981.

<sup>54</sup> African Commission on Human and Peoples’ Rights. *Mandate of the Commission*. <https://www.achpr.org/mandateofthecommission> Accessed November 2022.

<sup>55</sup> “African Commission on Human and Peoples Rights v. Kenya (006/2012) [2017] AFCHPR 28 (26 May 2017).” *African LII*. <https://africanlii.org/afu/judgment/african-court/2017/28> Accessed November 2022

<sup>56</sup> *Final Report of the Study on Indigenous Peoples and the Right to Participate in decision-making*, Report [A/HRC/18/42](#), (UN, 2011).

<sup>57</sup> *Ibid.*

<sup>58</sup> *Ibid.*

representatives in parliament, because they are not one of the eight recognized tribes.<sup>59</sup> In Cameroon, Bagyeli Chiefs are often excluded from decision-making processes, which are led by Bantu Chiefs.<sup>60</sup> In Rwanda, Batwa peoples are eligible for two seats reserved for marginalized populations that are appointed by the president. However, the seats are appointed, not elected, which means that people do not have direct access to selecting the representatives, and the seats are for marginalized peoples, broadly, not Indigenous Peoples specifically, so there are no guarantees that the people who may be selected for the seats are indeed Indigenous.<sup>61</sup> Indigenous persons with disabilities in Kenya have reported similar barriers.<sup>62</sup> The legal framework establishes reserved seats for all marginalized groups -- women, persons with disabilities, young people and people from marginalized areas – who are categorized as “special interest groups.” Persons from any of those groups can be selected for the reserved seats and are required to represent all other marginalized groups. Organizations of persons with disabilities (OPDs) have advocated for additional reserved seats specifically to address representation of persons with disabilities, including Indigenous persons with disabilities, who, according to OPDs are not adequately represented by either representatives of persons with disabilities or representatives of marginalized groups.<sup>63</sup>

#### *Kenya case study*

In Kenya, the Endorois Indigenous Women Empowerment Network (EIWEN) is conducting research on the political participation of three Indigenous groups: the Endorois, Ogiek, and Sengwer peoples.<sup>64</sup> The Endorois are a pastoralist people, and the Ogiek and Sengwer are hunter-gather, forest-dwelling peoples. Each of these Indigenous Peoples has experienced historical injustice since Kenyan independence, including lack of access to representation and participation.<sup>65</sup> Under the 2010 Kenyan Constitution, citizens, are afforded equal rights, including those who identify as minorities:

“ ‘marginalised community’ means—(a) a community that, because of its relatively small population or for any other reason, has been unable to fully participate in the integrated social and economic life of Kenya as a whole; (b) a traditional community that, out of a need or desire to preserve its unique culture and identity from assimilation, has remained outside the integrated social and economic life of Kenya as a whole; (c) *an indigenous community that has retained and maintained a traditional lifestyle and livelihood based on a hunter or gatherer economy*; or (d) *pastoral persons and communities*, whether they are—(i) nomadic; or (ii) a settled community that, because of its relative geographic

---

<sup>59</sup> *Report of the African Commission’s Working Group of Experts on Indigenous Populations/Communities*, African Commission on Human and Peoples’ Rights (2005).

<sup>60</sup> *Ibid.*

<sup>61</sup> *Ibid.*

<sup>62</sup> EIWEN is conducting research with the support of IFES and the Swedish International Development Agency (Sida). This research is anticipated to be published in 2023.

<sup>63</sup> *Ibid.*

<sup>64</sup> Unpublished EIWEN research

<sup>65</sup> *Ibid.*

isolation, has experienced only marginal participation in the integrated social and economic life of Kenya as a whole”<sup>66</sup> [emphasis added]

Further, the Constitution encourages efforts to increase inclusion and representation:

“56. Minorities and marginalised groups: The State shall put in place affirmative action programmes designed to ensure that minorities and marginalised groups—(a) participate and are represented in governance and other spheres of life. ... 100. ...Parliament shall enact legislation to promote the representation in Parliament of...(d) ethnic and other minorities; and (e) marginalised communities.”<sup>67</sup>

After the Constitution establishes Indigenous Peoples as protected minorities and calls for their participation, Article 177 of the Constitution holds specific seats for young people, persons with disabilities and “two...representing a marginalized group.”<sup>68</sup> To help meet this goal, the electoral code calls for political parties to “prioritize, a person with disability, the youth, and any other candidate, representing a marginalized group.”<sup>69</sup> Despite this legislated support to representation, barriers such as low literacy restrict access of Endorois, Ogiek and Sengwer peoples from becoming aspirants.<sup>70</sup> Indigenous persons with disabilities often cannot access information about voting or candidacy, and many offices and polling stations are inaccessible to Indigenous persons with disabilities and elders.<sup>71</sup> At the same time, Endorois and Sengwer peoples have experienced violence because of decisions made to move polling centers to locations that are farther away from Indigenous communities, leaving them at risk of violence from non-Indigenous people. This in turn has reduced access and participation of Indigenous Peoples. It has, in fact lead to disenfranchisement among these populations.

The Government of Kenya has organized constitutional commissions, offices and agencies with specific mandates to protect the rights of Indigenous Peoples and other marginalized communities.<sup>72</sup> Regional and national judicial rulings have also recognized rights of Indigenous Peoples; however, these rulings have not explicitly addressed political participation. In addition to the legal barriers that continue to exist, cultural norms, and historic practices have hindered the meaningful participation of women and persons with disabilities who identify as Indigenous. Elders in traditional leadership structures hold more power over the political life of Indigenous Peoples than, for example, county assemblies, which results in less interest in participating in sovereign state governance.<sup>73</sup>

---

<sup>66</sup> *The Constitution of Kenya*, Law of Kenya,  
<http://www.kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=Const2010>

<sup>67</sup> *Ibid.*

<sup>68</sup> *Ibid.*

<sup>69</sup> *Elections Act*, National Council for Law Reporting with the Authority of the Attorney-General (2016).

<sup>70</sup> Unpublished EIWEN research

<sup>71</sup> *Ibid.*

<sup>72</sup> *Ibid.*

<sup>73</sup> *Ibid.*

## Asia

Among regions included in the study, Asia's legal framework includes the least explicit or implicit support to Indigenous Peoples' political participation. The Association of Southeast Asian Nations (ASEAN)<sup>74</sup> Human Rights Declaration (AHRD) Article 25 recognizes:

“(1) Every person who is a citizen of his or her country has the right to participate in the government of his or her country, either directly or indirectly through democratically elected representatives, in accordance with national law.

(2) Every citizen has the right to vote in periodic and genuine elections, which should be by universal and equal suffrage and by secret ballot, guaranteeing the free expression of the will of the electors, in accordance with national law.”<sup>75</sup>

These rights must be afforded to “vulnerable or marginalized groups” but not explicitly to Indigenous Peoples.<sup>76</sup> At the same time, AHRD is a non-binding declaration; there is no avenue for ensuring compliance. There were no relevant legal frameworks identified for South Asia. The South Asia Association for Regional Cooperation (SAARC)<sup>77</sup> mentions political participation broadly as a human rights issue only once, in SAARC's 6<sup>th</sup> Summit, but it neglects to recognize Indigenous Peoples or marginalized groups.<sup>78</sup> The Forum of Election Management Bodies of South Asia (FEMBoSA), a group of election organizers that meets on a periodic basis to share good practices in election administration, has covered topics such as inclusion of persons with disabilities, engaging young voters and women's political participation but neither their charter nor their conference resolutions mention Indigenous Peoples or broader groups of marginalized peoples.<sup>79</sup>

Despite the lack of support in legal frameworks at the regional level, there are some positive examples from Asia. Nepal is the only country to have ratified, ILO convention number 169,<sup>80</sup> though there has been broader support for the UN declaration.<sup>81</sup> At the national level, in the Philippines, the Indigenous Peoples Rights Act of 1997 does support the formation of a consultative body. This opportunity brings together representatives from different identity groups, including elders, women, young people, and traditional leaders to coordinate on advice, provided to the national commission on Indigenous Peoples. However, this consultative body

---

<sup>74</sup> ASEAN is a sub-regional intergovernmental body that consists of Brunei, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Vietnam. More information can be found at <https://asean.org/>

<sup>75</sup> Association of Southeast Asian Nations (ASEAN), *ASEAN Human Rights Declaration*, 18 November 2012, available at: <https://asean.org/asean-human-rights-declaration/>. Accessed 10 November 2022.

<sup>76</sup> Association of Southeast Asian Nations (ASEAN), *ASEAN Human Rights Declaration*, 2012.

<sup>77</sup> SAARC is a sub-regional intergovernmental body that consists of Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka. More information can be found at <https://www.saarc-sec.org/>

<sup>78</sup> Ibid.

<sup>79</sup> “Previous Meetings.” *Fembrosa*, <https://fembrosa.org/previous-meetings/>. Accessed November 2022.

<sup>80</sup> International Labour Organization (ILO), *Indigenous and Tribal Peoples Convention, C169*, 1989.

<sup>81</sup> Yes votes included Afghanistan, Bangladesh, Brunei, Darussalam, Cambodia, China, North Korea, India, Indonesia, Japan, Laos, Malaysia, Maldives, Mongolia, Myanmar, Nepal, Pakistan, Philippines, Republic of Korea, Singapore, Sri Lanka, Thailand, Timor-Leste, Vietnam.

does not have the authority to veto projects that take place, only to provide recommendations.<sup>82</sup> This mirrors the issue that was noted above in South Africa. In the Philippines, the Commission on Elections has taken actions such as Resolution 9427 in 2012, which called for additional support to register Indigenous voters.<sup>83</sup>

Some countries reserve seats to promote representation. Nepal has had the greatest success so far in including Indigenous Peoples in political life. Twenty-seven percent (27%) of seats in Nepal's representative body are dedicated to people from "tribal groups."<sup>84</sup> However, those with personal connections to representatives are the most likely to receive support, and, during the COVID-19 pandemic, political parties "supported only their party cadres," which fueled "hatred, anger and rebellion" among peoples.<sup>85</sup> Bangladesh also reserves seats for Indigenous Peoples,<sup>86</sup> however, the political environment is not conducive to their effective participation. Recently, even discussion of Indigenous Peoples has become quite sensitive in some countries; the Government of Bangladesh has banned media coverage that uses the word "Indigenous."<sup>87</sup> Even so, the lack of representation of Indigenous women, and indeed of Indigenous people who identify with other marginalized groups, such as persons with disabilities and young people, is a continuing issue in both countries. In Taiwan, more than half a million Indigenous Peoples are part of 16 groups and are represented by six reserved national seats and 34 spots in party lists. In 2020, Indigenous five seats were won through the party-list system (as well as one independent candidate). However, no candidates were selected outside of the reserved seat system, and some Indigenous voters feel underrepresented: "When the majority or even half the Indigenous population are living in the cities, they should have the right to run in cities and not only for Indigenous seats."<sup>88</sup>

In Indonesia, vote buying practices (which are contrary to credible and inclusive elections) are common, and, according to AMAN conference participants, they both "damage the values that grow in Indigenous Peoples" and "undermine democracy itself"<sup>89</sup>. Traditional systems such as Noken voting, in which a community deliberates and allows the chief to cast all ballots for the same candidate, was removed from use in national Indonesian elections by a Constitutional Court case in 2011, which limited its use to local elections.<sup>90</sup> In 2012, two losing candidates in Papua submitted a complaint when "all 14,394 votes from the people of Mewoluk

---

<sup>82</sup> *Final Report of the Study on Indigenous Peoples and the Right to Participate in Decision-making*, Report A/HRC/18/42, (UN, 2011).

<sup>83</sup> RG Cruz, *Comelec bends rules for indigenous folk*, (Manila: ABS CBN, 2012).

<sup>84</sup> International Labour Organization (ILO), *Direct Request (CEACR)-adopted 2015*, 105<sup>th</sup> ILC session (2016), Nepal (Ratification:2007) available at [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO:13100:P13100\\_COMMENT\\_ID,P13100\\_COUNTRY\\_ID:3244381,103197:NO](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO:13100:P13100_COMMENT_ID,P13100_COUNTRY_ID:3244381,103197:NO).

<sup>85</sup> <https://www.internationaldisabilityalliance.org/sites/default/files/nidwan-ida-report.pdf>

<sup>86</sup> *Exploring and Tackling Barriers to Indigenous Women's Participation and Organization*. (International Labour Organization, 2021).

<sup>87</sup> Al Jazeera English, "Bangladesh government orders media ban on word 'Indigenous.'" *Youtube*, August 9, 2002, [https://www.youtube.com/watch?v=9n1eS\\_-Qq4](https://www.youtube.com/watch?v=9n1eS_-Qq4).

<sup>88</sup> Cassandra Preece, *Taiwan must find ways to enhance Indigenous representation* (The conversation, 2020).

<sup>89</sup> Interview with Isach Zulfikar Karmiadiji, IFES Indonesia. November 2, 2022.

<sup>90</sup> "'Noken System' is a no in Papua." *West Papua Daily*, <https://en.jubi.co.id/noken-system-is-a-no-in-papua/>. Accessed November 2022.

sub-district” were awarded based on consensus. However, this was not conducted through a deliberative process but by awarding all votes to one set of candidates even though individuals had made different selections. Without records at the village level, it was unclear to the court whether witness accounts demonstrated fraud. As a result, protesters gathered, causing security concerns that led to the evacuation of the district election commission.<sup>91</sup> Such systems have been the subject of debate for their approach under a “one person, one vote” system but are nevertheless recognized as Indigenous systems to be respected under UNDRIP and ILO 169. To ensure that they have adequate representation, Indigenous Peoples in Indonesia are advocating for reserved seats that can be filled by Indigenous Peoples themselves. This would allow for Indigenous Peoples to undertake deliberations and select delegates independently of the sovereign state system.<sup>92</sup> Indigenous Peoples in Indonesia have also raised concerns over voter registration system administration, which can make it challenging for persons who do not have a permanent address “because they live in customary territories claimed by the State, [a] nomadic way of life, and [they have] customary values that are not accommodated by the State.”<sup>93</sup>

### *Latin America and the Caribbean*

Several international frameworks are available to support the rights of Indigenous Peoples to participate in political life in Latin America and the Caribbean under the Organization of American States (OAS), the region’s primary intergovernmental body. The OAS Charter, the American Declaration of the Rights and Duties of Man (non-binding), the American Convention on Human Rights, the Inter-American Democratic Charter and the Inter-American Convention against Racism, Discrimination, and Related Forms of Intolerance all contribute to the legal landscape. Since 1989, a draft American Declaration on the Rights of Indigenous Peoples has been supported by a working group within the OAS, though as of this writing it remains a draft.<sup>94</sup>

Article 24 of the American Convention on Human Rights reinforces the right to take part in elections as a human right to be afforded to all people:

“a. to take part in the conduct of public affairs, directly or through freely chosen representatives; b. to vote and to be elected in genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters; and c. to have access, under general conditions of equality, to the public service of his country.”

The Inter-American Democratic Charter explicitly protects the political rights of Indigenous Peoples in Article 9:

“that “[t]he elimination of all forms of discrimination, especially gender, ethnic and race discrimination, as well as diverse forms of intolerance, the promotion and protection of human rights of *Indigenous Peoples* and migrants, and respect for ethnic, cultural and

---

<sup>91</sup> Cillian Nolan, *Votes in the bag? The noken system and conflict in Indonesian Papua* (2012).

<sup>92</sup> Interview with Isach Zulfikar Karmiadiji, IFES Indonesia. November 2, 2022.

<sup>93</sup> Ibid.

<sup>94</sup> “Indigenous Peoples.” *Department of International Law, OAS*, [https://www.oas.org/dil/indigenous\\_peoples\\_preparing\\_draft\\_american\\_declaration.htm](https://www.oas.org/dil/indigenous_peoples_preparing_draft_american_declaration.htm), Accessed November 2022.



religious diversity in the Americas contribute to strengthening democracy and citizen participation.”<sup>95</sup> [emphasis added]

Additionally, the Inter-American Convention against Racism, Discrimination, and Related Forms of Intolerance is the only regional document that protects the collective rights of Indigenous Peoples as well as their individual rights. The Inter-American Commission on Human Rights further supports Indigenous Peoples’ rights through a position dedicated to addressing relevant issues.<sup>96</sup> States that are found to be in violation of the Charter or the Conventions may be investigated.<sup>97</sup> In 2005, the Inter-American Court of Human Rights (IACHR) upheld a petition by the Inter-American Commission on Human Rights recognizing that Nicaragua had violated Article 23 of the American Convention of Human Rights. It determined that the State had not allowed candidates of an Indigenous political party adequate opportunity to participate in the 2000 elections. As a result, the IACHR ordered Nicaragua to update its electoral legal framework “as necessary to promote and facilitate the electoral participation of the Indigenous people and the organizations that represent them.”<sup>98</sup> These legal frameworks have also been applied to much older cases; a Mayan Kaqchikel Indigenous leader was abducted by Guatemalan security forces in 1981, classified as an enforced disappearance by the Committee for Historical Clarification (a truth commission) in 1999, and a petition filed on his behalf before the IACHR in 2005. In 2008, IACHR recognized that Guatemala violated Article 23 of the Convention “as the State intended to prevent Mr. Chitay Nech from participating in politics by subjecting him to forced disappearance.”<sup>99</sup> During the conflict in Guatemala, IACHR added, “Mr. Chitay Nech, a national political leader and mayor of his municipality [was held] to suppress political movements.... After he was elected mayor, he received several threats and could not effectively exercise his public functions as a community leader.”<sup>100</sup> These cases set a precedent to use the American Convention to protect political rights of Indigenous Peoples.

In addition to the support to political rights provided by regional frameworks, some positive practices do exist in Latin America at the national level. In Paraguay and Colombia, laws exist that either protect the political participation of Indigenous Peoples, as in the case of Paraguay,<sup>101</sup> or reserve seats for Indigenous representatives, as in the case of Columbia, where Indigenous people do serve as representatives through the electoral system and in other parts of the government.<sup>102</sup> In Argentina, the Council for Indigenous Participation consists of 134

---

<sup>95</sup> Organization of American States. *Inter-American Democratic Charter*. Organization of American States, 2001.

<sup>96</sup> Inter-American Commission on Human Rights (IACHR), *Rapporteurship on the Rights of Indigenous People* (1990).

<sup>97</sup> Organization of American States (OAS), *American Convention on Human Rights, “Pact of San Jose”* (1969). Organization of American States (OAS), *Charter of the American States*, (1948).

<sup>98</sup> “Yatama v. Nicaragua.” *Loyola Law School*, <https://iachr.lli.edu/cases/yatama-v-nicaragua>. Accessed November 2022.

<sup>99</sup> “Chitay Nech et al. v. Guatemala.” *Loyola Law School*, <https://iachr.lli.edu/cases/chitay-nech-et-al-v-guatemala>. Accessed November 2022.

<sup>100</sup> *Ibid.*

<sup>101</sup> *Efforts to implement the United Nations Declaration on the Rights of Indigenous Peoples*. Report [A/HRC/48/75](https://www.unhcr.org/refugees-and-asylum-seekers/48/75), (UN, 2021).

<sup>102</sup> *Final Report of the Study on Indigenous Peoples and the Right to Participate in decision-making*, Report [A/HRC/18/42](https://www.unhcr.org/refugees-and-asylum-seekers/18/42), (UN, 2011).

representatives from 33 peoples across the sovereign state.<sup>103</sup> This advisory body “does not have ministerial status provided by law” and thus its powers are limited.<sup>104</sup> It is also worth noting that in the last year, Chile has received international recognition for its inclusive constitutional convention and draft constitution, both of which included representation by Indigenous Peoples,<sup>105</sup> though the draft itself was later rejected in a plebiscite.<sup>106</sup>

At the local level, several countries have made progress in including Indigenous Peoples. In Ecuador and in Mexico, Indigenous municipalities have been created and are responsible for local elections, which provides direct opportunities for Indigenous people to select representatives and to participate in the political process.<sup>107</sup> The Guatemalan Association of Indigenous Mayors and Authorities includes elected officials from different municipalities who coordinate on issues that impact Indigenous Peoples. These mayors are elected “according to Indigenous practices.”<sup>108</sup>

Additional actions are being taken in Latin America to consult with Indigenous Peoples on legislation and decisions that impact them, in alignment with UNDRIP and ILO 169. In Bolivia, IPOs are encouraged to participate in the process of concertation, a method of consulting Indigenous Peoples.<sup>109</sup> In Costa Rica, Indigenous Peoples are being consulted on issues that impact them.<sup>110</sup> On the island of Dominica, the Kalinago people are consulted through their reserve counsel, an Indigenous body.<sup>111</sup> However, these consultations are not always themselves inclusive. In Honduras, for example, video consultations excluded those who did not have access

---

<sup>103</sup> International Labour Organization (ILO), *Observation (CEACR)- adopted 2015*, 105<sup>th</sup> ILC session (2016), Argentina (Ratification:2000) available at [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO:13100:P13100\\_COMMENT\\_ID,P13100\\_COUNTRY\\_ID:3253551,102536:NO](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO:13100:P13100_COMMENT_ID,P13100_COUNTRY_ID:3253551,102536:NO). Accessed November 2022.

<sup>104</sup> IWGIA, *Indigenous peoples in Argentina* (2011). <https://www.iwgia.org/en/argentina/275-legal-framework> Accessed November 2022.

<sup>105</sup> International Labour Organization (ILO), *Observation (CEACR)- adopted 2018*, 108<sup>th</sup> ILC session (2019), Chile (Ratification: 2008) available at [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO:13100:P13100\\_COMMENT\\_ID,P13100\\_COUNTRY\\_ID:3962694,102588:NO](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO:13100:P13100_COMMENT_ID,P13100_COUNTRY_ID:3962694,102588:NO). Accessed November 2022.

<sup>106</sup> Romo, Rafael, et al. “Chilean voters overwhelmingly reject proposed leftist constitution.” *CNN*, September 5, 2022, <https://www.cnn.com/2022/09/04/americas/chile-constitution-vote-intl/index.html>. Accessed November 2022.

<sup>107</sup> *Efforts to implement the United Nations Declaration on the Rights of Indigenous Peoples*. Report [A/HRC/48/75](https://www.unhcr.org/refugees/48/75), (UN, 2021).

<sup>108</sup> *Final Report of the Study on Indigenous Peoples and the Right to Participate in decision-making*, Report [A/HRC/18/42](https://www.unhcr.org/refugees/18/42), (UN, 2011).

<sup>109</sup> International Labour Organization (ILO), *Observation (CEARC)-adopted 2019*, 109<sup>th</sup> ILC session (2021), Bolivia (Ratification:1991) available at [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO:13100:P13100\\_COMMENT\\_ID,P13100\\_COUNTRY\\_ID:4023317,102567:NO](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO:13100:P13100_COMMENT_ID,P13100_COUNTRY_ID:4023317,102567:NO).

<sup>110</sup> International Labour Organization (ILO), *Observation (CEACR)-adopted 2015*, 105<sup>th</sup> ILC session. (2016), Costa Rica (Ratification:1993) available [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO:13100:P13100\\_COMMENT\\_ID,P13100\\_COUNTRY\\_ID:3249263,102599:NO](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO:13100:P13100_COMMENT_ID,P13100_COUNTRY_ID:3249263,102599:NO). Accessed November 2022.

<sup>111</sup> International Labour Organization (ILO), *Direct Request (CEACR)- adopted 2021, published 110<sup>th</sup> ILC session (2022)*, *Dominica (Ratification: 2002)*, available at [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO:13100:P13100\\_COMMENT\\_ID,P13100\\_COUNTRY\\_ID:4116051,103311:NO](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO:13100:P13100_COMMENT_ID,P13100_COUNTRY_ID:4116051,103311:NO). Accessed November 2022.

to the Internet.<sup>112</sup> In Ecuador, a court case on decision-making of Indigenous Peoples recognize that this is an ongoing process, not just one time.<sup>113</sup> However, it should be noted that this case is an outlier; no additional court decisions have been made as of this writing to support traditional forms of consultation.

## Recommendations

It is clear in this research that much work remains to ensure Indigenous Peoples have equal access to elections. Election management bodies must take further action to ensure that international and regional agreements are being implemented. In order to increase access to elections for Indigenous Peoples, EMBs can:

- Align electoral policy frameworks to UNDRIP, ILO 169 and regional agreements.
- Take an intersectional approach to aligning policy with the CERD, CRPD, and CEDAW.
- Formalize engagement with IPOs via a MOU and/or formal working group.
- Consult with multiple Indigenous Peoples and their organizations on policy changes, providing sufficient time for discussion as determined by Indigenous Peoples. Consider that traditional forms of collective decision-making may take longer than anticipated by EMBs. Take note that the barriers experienced by nomadic peoples and forest-dwelling peoples are different from pastoralists. Ensure that Indigenous women, young Indigenous people and Indigenous persons with disabilities are included in consultations, following principles of FPIC.
- Provide multiple avenues for consultation, including both video and in person meetings.
- Provide training for EMB staff to increase knowledge and understanding of the individual and collective rights of Indigenous Peoples and appropriate consultation methods.
- Conduct voter education in Indigenous languages, including Indigenous sign languages.
- Conduct anti-hate speech campaigns and anti-misinformation and disinformation campaigns to combat discrimination targeting Indigenous communities.
- Proactively recruit Indigenous Peoples to serve as poll workers and permanent election staff.
- Ensure that polling stations are located in and close to Indigenous territories to provide greater access and reduce the risk of violence from non-Indigenous groups.
- Engage in dialogues with Indigenous Peoples about Indigenous forms of governance and consider how sovereign states can learn from and apply these principles.
- Host forums to bring together IPOs, Indigenous communities and election officials to share good practices and lessons learned at the national, regional and international levels.

---

<sup>112</sup> International Labour Organization (ILO), *Observation (CEACR)- adopted 2021, published 110<sup>th</sup> ILC session (2022), Honduras (Ratification: 1995)*, available at [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO:13100:P13100\\_COMMENT\\_ID,P13100\\_COUNTRY\\_ID:4120356,102675:NO](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO:13100:P13100_COMMENT_ID,P13100_COUNTRY_ID:4120356,102675:NO). Accessed November 2022.

<sup>113</sup> *Efforts to implement the United Nations Declaration on the Rights of Indigenous Peoples*. Report [A/HRC/48/75](#), (UN, 2021).