Human Rights in Latin America: The Case of Women and People of African Descent

According to recent reports, every year a devastating estimation of 2000 Latin American women are victims of some sort of a violation of their rights as citizens, especially their reproductive rights. Women are generally considered a minority in the region, given the well-established male hegemony through the patriarchal system in Latin America. People of African descent in Latin America, as per the United Nations minority laws, are considered a minority because they form part of a non-dominant group of individuals who share certain religious, linguistic, or other characteristics that are different from those shared by dominant social groups and who may be subjected to discrimination. These two distinct groups of women and Afro-descendants in Latin America suffer forms of discrimination against their rights as citizens. However, a closer look at both situations reveal that the violation of the rights of women and the failure of rule of law to put an end to these violations become more explanatory as a research topic. Consequently they gain more regional as well as international policy attention than the minority rights violation of people of African descent.

This paper aims at making a comparative analysis to show why violation of women’s rights takes precedence in terms of efforts made by governments as well as international bodies to curb these violations in Latin America compared to that of Afro-descendants. This is due, but not limited, to the problem of self-identification of Afro-Latinos given the very varied casta system, the non-recognition of Afro-Latinos as a group with a distinct cultural identity to be considered a minority, and the relative availability of literature and data on women’s rights violation compared to the socio-economic exclusion of people of African-descent. This analysis becomes important because it reflects the higher regional and international policies and attention given to the subject matter of women’s rights violation relative to the socio-economic plight of people of African descent in Latin America. I will, in the course of this paper, show more light on exclusive studies with the research answers to both topics using statistical data. Afterwards, I will compare and contrast both topics to explain why one is more explanatory in terms of research and policy attention than the other. In short, this paper is divided into three sections: Part I focuses on the research and findings on the situation of people of African descent in Latin America, especially Brazil and Colombia; Part II reveals similar research on women’s rights violation in the same region especially Guatemala and El Salvador; Part III then puts everything together through a comparative analysis that explains why issues of women’s rights violation are given more policy attention to ameliorate these violations compared to similar violations of the minority rights of Afro-descendants through social exclusion and discrimination.

Minority Rights of People of African-Descent

The situation of people of African descent in the United States of America is one that has been highly documented and publicized over the years. On the contrary, that of people of African descent in neighboring Latin America, which basically comprises of several forms of discrimination, has been kept “invisible” due to the notion of the non-existence of discrimination especially in terms of race. Afro-Latinos make up nearly 30 percent[1] of the Latin American population. The history of African descents as slaves during the colonial era play a masked role through marginalization, and the regional ideology of mestizaje (mixed race), coupled with the non-static concept of “racial democracy”[2], are deeply intertwined with the plight of people of African descent. Taking into consideration the United Nations Charter on minority rights and the recent introduction of multicultural citizenship reforms in Latin America, this section of the paper analyses the roots of the discrimination against minority rights of Afro-descendants in Latin America, relative to indigenous people.
The Trans-Atlantic slave trade shipped millions of West African slaves to the ‘New World’ to be subjected to labor exploitation and the lowest forms of discrimination by the Spanish and Portuguese colonial masters. Due to the high demand of agricultural cash crops from Europe, slave masters exploited their subjects to match this demand especially in Central and South America and the Caribbean, until the abolition of the slave trade. These freed black people including cimarrones (escaped slaves in search of freedom) began to form their own isolated communities in Latin America; they were referred to as quilombos in Brazil and garifuna in Central America. The concept of a ‘mixed race’ emanated from sexual relations between people of African descent, indigenous people and their European counterparts. People of African descent have historically languished at the bottom of the social ladder in Latin America and continue to do so as reports by the Inter-American Commission on Human Rights[3] indicate that approximately 40 percent of the region’s poorest people are of African descent. This is in part due to the historical inferiority complex of people of African descent that has been passed on from generation to generation in the traditional folklores of Latin America. Such Latin American folklores[4] include but are not limited to these: in Puerto Rico it is thought and openly said that God made the black man so that the animal could rest; in the so-called “racial paradise”, Brazil, people of African descent are stereotyped as thieves. Race, therefore, did not only function to classify human variations, but also to condemn “inferior” groups to exploitation, making race a more social concept than a biological concept. This whole historic idea of ‘racially’ pinning people of African descent down the social ladder in Latin America is echoed in this assessment by Martín Hopenhayn and Alvaro Bello:

En la región, el concepto de raza y sus efectos discriminatorios se vincula históricamente a lo que se ha dado en llamar la “negación del otro.” En términos étnicos y culturales, ella sobrevive y se transfigura a lo largo de la historia republicana y sus procesos de integración social y cultural. La negación del otro como forma de discriminación cultural se transmuta históricamente en forma de exclusión social y política. (8)

In Latin America, the concept of race and its effects are historically tied to what is referred to as “marginalization of the other.” In ethnic and cultural terms, race survives and is transformed throughout the history of the republic and its processes of social and cultural integration. The marginalization of the other as a means of cultural discrimination is historically connected social and political exclusion. (My translation)

On the one hand, due to the concept of mestizaje, there is a growing view among people of Latin America that ‘race is not important: there is little racism and little sense of racial identity for most people who are identified or better still self-identify themselves as of the ‘same’ race. On the other hand, Wade argues that race in Latin America still operates to create significant disadvantage for indigenous and black people as collective categories. Herein lies the subtle denial of racial discrimination in Latin America. Indigenous people have been more successful in the fight against discrimination than Afro-descendants, even with the recent multicultural citizenship reforms in Latin America. This is mainly because they are perceived to have a distinct cultural identity which resonates with the rules of the reforms on the basis of cultural differences, aimed at helping indigenous people with their collective land right demands. There is also another school of thought that indigenous people are a national symbol of contemporary mestizo identity unlike their Afro-descendant counterparts.[5] This paper will however treat Afro-Latinos as a minority group in accordance to the minority declarations of the United Nations, as opposed to an ethnic group or indigenous group.

The United Nations laid down the Universal Declaration of Human Rights to address the fact that all human beings are equal in dignity and rights and also condemns discrimination of any kind such as race and color[6], pertaining to everyone in every corner of the world. Why was it then important to enact and most importantly implement minority rights? The advent of democratization as a result of the ‘Third Wave’ in Latin America during the 1980s led to major democratic reforms including free market economic policies and the ‘rule of majority’. Although there were significant economic growth in the 1990s in most countries of the region – a 14.9 percent in GDP in the region – the level of poverty as well as inequality between the poor and the rich remained the same[7]. It was imperative that the rights of the poor minority in Latin America (of which Afro-descendants make up 40 percent) had to be distinguished in the 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, to protect them from discriminations in education, health, judicial remedy, income distribution, etc.
The 1992 Declaration's article 4(4) encourages nation-states to take necessary measures to curb the very high illiteracy rate among minorities. Education can affect the productivity of many sectors of the economy of any nation-state, be it in human productivity, income distribution or even economic development. Reports[8] indicate that access to education in communities in Latin America that are densely populated by Afro-descendants is the lowest primarily because of the insufficient infrastructure in these areas. As a result, only few Afro-descendants manage to enroll and/or complete a higher education. A case study[9] by Peggy Lovell in Brazil has a positive correlation with this report. In the Northeast of Brazil, where the inhabitants are predominantly Afro-descendants, only 30 percent Afro-descendants had access to education. On the other hand, their white counterparts who predominantly occupied the Southeast or South of Brazil had a staggering 93 percent literacy rate. A similar disadvantageous position is recorded in the Pacific coast of Colombia where Afro-descendants densely populate.

The opportunity cost of education is very high: low human productivity on the part of the illiterates; low income jobs due to less productivity; and income deprivation that widens the inequality gap. Income deprivation (economic means) in turn causes low levels of education among Afro-descendants: a vicious cycle. The issue of racial discrimination also plays a role in the rejection of even qualified students of African descent.

One of the basic needs of society is the provision of quality health services. Afro-descendants lack access to health services of the most basic forms. The state of the physical environment of the communities in which they find themselves exposes them to health hazards. To a large extent, they lack safe water and clean air among others. In addition to the lack of health infrastructures in these communities, there are racial disparities that put Afro-descendants in a disadvantageous position when health services are available. In his research[10] on racial disparities in health in Latin America, Antonio Giuffrida found that in Colombia (18% Afro-descendant population) as well as Brazil (44% Afro-descendant population)[11] the life expectancy at birth was lower for Afro-descendants, however they had a higher AIDS mortality rate. In addition, Afro-descendant women were more prone to “persistent unfavorable” health situations like highest rate of adolescent pregnancy and physical violence and needed to visit more than one health center in order to be admitted for medical treatment. This health disparity gains its racial influence from the fact that their “white” counterparts find themselves in better conditions within the same circumstances.

In the grand scheme of economic growth, racial discrimination is a setback through a series of mechanism. In a hypothetical situation, a qualified person for a job who is denied the job based on ethnic or racial basis is likely to be replaced by a less qualified candidate. This will lead to relative low productivity and subsequently affect the GDP of the country. Also governments, in an effort to curb the consequences that arise as a result of discrimination, employ a lot of resources, that could rather have been employed in other sectors to promote economic growth had discriminatory violence against Afro-descendants been tackled in the first place.

Women’s Rights Violation

Since 2013, ‘Orange Day’ is celebrated on the 25th of every month in an effort to put an end to violence against women around the world in partnership with the United Nations. Within the Latin American region, Guatemala and El Salvador each entered into the 1990s hobbled by authoritarian rule and an unprecedented level of violence especially against women, until peace accords were signed in 1996 and 1992 respectively to usher in civilian rule through democracy and ultimately set the tone for the rule of law. Nevertheless, the rule of law – meant to uphold human rights and to hold all persons accountable to the law in order to establish equality before the law – failed to curb violations of women’s rights. These shortcomings were in part due to the historically patriarchal society of Latin America that created male hegemony and the establishment of what Mo Hume refers to as ‘myths’[12]: accepted norms and values that shape the appreciation of violence. The ‘elusive’ concept of the “separation of powers” as a horizontal accountability deficit[13], coupled with more attention given to the enactment of laws concerning women’s rights violation than to its enforcement, also account for this breakdown of the rule of law machinery. This second section of the paper seeks to analyze the post-dictatorial as well as current women’s rights violation and why the rule of law failed to ameliorate the situation of women’s rights violation in Guatemala and El Salvador. This is relevant in order to understand the historically and socially accepted norms that shape the operation of the rule of law machinery in Latin America.
Dictatorial regimes were prevalent in Latin America in the 70s and 80s with torture and mysterious ‘disappearances’ being the order of the day from military dictators. After the signing of the peace accords in Guatemala and El Salvador, both countries transitioned into electoral regimes that to a large extent complied with the fundamental norms of international human rights. However, it was made evident that human rights, to the respective governments of Guatemala and El Salvador, were merely principles to assume without necessarily having any obligations to fulfill them due to the fact that women continued to suffer abuses including but not limited to rape, forced prostitution, sexual harassment and torture. The United Nations defines violence[14] against women as “any act of violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life” (emphasis added). The rule of law then becomes significant in upholding human rights and protecting women against such violence since these declarations become legal obligations to the United Nations member states of which Guatemala and El Salvador are part. Again, the rule of law seeks to ensure the accountability of all persons to the law.

Historically, Latin America has been perceived as a patriarchal region. The emergence of the concept of ‘caudilloismo’, the quest for the rule of a ‘strongman’, has for a long time made women in Latin America second best to men. This concept of a patriarchal region is well and truly painted in the works of famous Latin American novelists such as Juan Rulfo’s *Pedro Paramo* and Rosario Castellanos’ *Modesta Gomez*. Also the theory of the image of the Virgin Mary holds in that:

First, there is the image of Mary as obedient and passive, resigned and suffering, humbly dedicated to domestic tasks in accordance with the role that is naturally hers in the private sphere. This figure of weakness and submission, of all the “typical feminine” virtues, becomes a symbol of the subordinate position women should occupy in the church and society[15].

Hume[16] also argues that violence, especially against women in El Salvador, has been normalized and transformed into a myth that shapes its appreciation and acceptance due to male hegemony and fear among women. This fear of violence has its roots in the dictatorial era in El Salvador when thousands of people were murdered during what is known as *La Matanza*. The Guatemalan civil war between 1990 and 1996 also serves as a point of reference to the violence that plagued and instilled fear in most people in Guatemala. All these forms of violence end up being integrated into the national culture of both countries with women being on the receiving end because their rights are mostly infringed on. It is also very important to point out the mis (conception) in both El Salvador and Guatemala that violation of women’s rights is usually considered as a “private family” matter, especially if such infringements are inflicted by a spouse or relative. In a nutshell, violence against women amounts to a violation of their rights.
The data above indicates that of every 10,000 women in El Salvador, 4,600 suffer physical violence, which is certainly a violation of their right as a citizen, as result of which, on average, 1 of every 100,000 in El Salvador is murdered by an intimate partner, who is generally the husband. In Guatemala, this number increases substantially to 7,300 women being murdered by their spouses.

It must be noted however that these numbers are supposedly more than the recorded figures because of fear. Also, these women are forced to remain silent in order to ‘keep the peace’ in their families and the welfare of their children, to their own physical detriment.

Another area where women tend to suffer violations of their rights has to do with their reproductive rights. In Latin America, most girls and young women are prone to adolescent pregnancy and motherhood as a result of the region’s social, gender, race and ethnicity inequalities[17], which makes it even more difficult to be able to work and overcome poverty. As a result, a majority of these young women contemplate abortion as an option. However, the regulations that govern the issue of abortion in some parts of Latin America tend to severely punish those who undergo abortion.

Cuba, Uruguay, Mexico, and Puerto Rico have passed legislations that allow abortion. In Guatemala, abortion is also lawful only when the woman’s life is in danger. In stark contrast to the situation in Guatemala, El Salvador among 4 other countries criminalize abortion regardless of the circumstances within which it is done even if the woman’s life is in danger. Goodwin and Whelan highlight the following story that underlines the severity of the situation in El Salvador:

When Carmen Guadalupe Vasquez was rushed to (the) hospital after giving birth to a stillborn baby boy, the doctors first treated her life-threatening bleeding and then called the police, who handcuffed her to the bed. El Salvador, where all abortion is illegal and emergency wards are turned into crime scenes, the confused, weak, and desperately ill 18-year-old maid was placed under investigation for terminating her pregnancy and driven away in a police van.

Figure 2
What role did the rule of law play in all this? Both countries established the Procuradoría para la Defensa de los Derechos Humanos (Office of the Human Rights Ombudsman) to serve as an agent of accountability to human rights violations including that of women, charged with the duty of receiving and investigating human rights violation complaints. In El Salvador, this office was established in conjunction with the signing of the peace accords in 1992, while it was established earlier in Guatemala in the Constitution of 1985 in an effort to restore constitutional government. This was initially a step in the right direction given the transition to democratic regimes in both Guatemala and El Salvador.

There were other significant causal agents outside the scope of the rule of law that worsened women’s rights violation, like the inadequate allocation of funds to support the work of the Human Rights Ombudsman as well as the fear factor in reporting such violations. Nevertheless, the breakdown of the rule of law machinery accounts more to the increase in these violations in both countries. First and foremost, the rule of law ensures that the arms of government (executive, judiciary and legislative body) remain independent of each other. However, the judiciary failed to be independent in its bid to promote justice in judicial cases that had to do with women’s rights violations. For instance, judicial officials who presided women’s rights violation cases dismissed such abusive cases by considering them as ‘private’ matters meant to be settled at home instead of ‘wasting’ State resources to resolve them. This discouraged many victims of these violations from reporting to judicial officials. Also because the judicial system is highly politicized, those who are politically affiliated walk away without punishments even when they inflict any form of violation against the rights of women. The ‘elusive goal’ of the enforcement of the rule of law in both countries is evident in that more emphasis is placed on the enactment of laws to prevent and punish offenders of women’s rights violations than making sure that these laws are implemented. This, in part, led to ineffectiveness of the Office of the Human Rights Ombudsman in both countries and beyond.

Comparative Analysis

Policies have and continue to be established to combat infringements on the rights of women and people of African descent. However, there is a greater push for the eradication of violation of women’s rights than the curbing of the exclusion of Afro-Latinos, notwithstanding the fact that different societies were taken into consideration in both research. A subtle generalization can be drawn given both situations are within the same region; that policies toward the eradication of women’s rights are given more precedence and as such becomes a more explanatory research topic in Latin America. In addition to this, there is scant literature and data available to aid in the explanation of research related to the situation of Afro-Latinos compared to that of women’s rights violation within the region.

In recent years, to an extent, steps have been taken to ameliorate discrimination against Afro-descendants in Latin America. Affirmative action measures which involve the setting of quotas to enable the inclusion of a minority-group member especially in the work force has been helpful. In Colombia[19], for instance, Law 649 of 2001 stipulates the election of the House of Representatives by means of the Special National District for Black Communities to encourage Afro- Colombian students to receive educational credit per the Decree No. 60 of September 2009. Similarly in Brazil[20] these affirmative actions have been more successful relative to that in Colombia. Nationally the Federal Supreme Court, in its effort to reduce racial discrimination, established a 20 percent quota of job openings for Afro-
descendants by service suppliers, in addition to another 20 percent of public service positions to be held by Afro-
descendants in the Ministries of Justice, Culture and Agricultural Development. Nevertheless, the issue in Brazil
also has its shortcomings due to the fact that equality by law is no guarantee of equality of opportunities for Afro-
descendants, and also because there is a huge gap between what is decreed on paper and what is implemented.

On the other hand, more contributions have been made in a bid to put an end to women’s rights violations and to
promote gender equality. These contributions cut across several societies within the region, not just focusing on a
particular one. Initiatives like the Latin American and Caribbean Centre for Rural Women, that seeks to give voice
to marginalized women go a long way to curb discriminations against women. Other initiatives include, but are not
limited to, Honduran Women and Farmers, La Via Campesina, Jatun Sach’a Project in Bolivia, and the
Nicaraguan Women Affairs Office.

To better comprehend why tackling issues on women’s rights in Latin America is prioritized relative to issues on
rights of Afro-descendants, it is important to note that the situation of people of African descent is intrinsically,
regardless of its denial, intertwined to the issue of race in Latin America, a ‘racial paradise’. This makes any
research on this issue less explanatory due to the complexities that come with it. The issue is complex in that the
self-identification of people of African descent is a problem. The casta system in Latin America is wide such that
classifications based on ‘race’ become a challenge. Also, most dark-skinned people do not prefer to be classified
as Afro-Latinos in order to eschew all the discrimination and marginalization that come with such a racial ‘label’.
Another issue that gives rise to a complexity, as underlined by Juliet Hooker, is the non-recognition of the Afro-
Latino community as having a distinct cultural identity that contributes to the regional mestizo identity. As opposed
to indigenous people, Afro-descendants are not considered a minority based on race in Latin America. On the
contrary, there are no such complexities when it comes to the classification of women, neither the violation of their
rights.

Finally, the fact that violation of women’s rights transcend the entire Latin American region makes Section II a
more explanatory topic given that theories and findings generated from the subject matter can be applied to larger
part of the region. These violations are experienced in every part of the region. However, theories and findings
generated from research related to Afro-Latinos cannot be applied to the entire region even though, as stated
earlier in Section I, Afro-Latinos form an estimated 30% of the region’s population. This is due to the
concentration of Afro-Latinos in specific and isolated communities like the Pacific Coast of Colombia.

To tackle this problem, it is highly important to quash the ‘invisibility’ of the discrimination against Afro-
descendants. International human rights and minority rights must be employed not in the context of general
human rights but rather as specific mechanisms aimed at discarding discrimination against Afro-descendants
taking into consideration the specific problems they encounter in their communities. For instance, rights enshrined
to protect Afro-descendants must not be implemented as in the case of Indigenous rights because these are two
distinct groups with different characteristics and problems.

Policies to this effect must ensure that anti-discrimination and other minority rights guarantees are included in
constitutions and other legislations. Furthermore, its implementation must be taken seriously. Specific institutions
can be set up to spearhead the implementation of these rights to educate and protect Afro-descendants especially
the majority who happen to be illiterates. The success of all these to a large extent depend on the availability of
both human and capital resources to aid effective implementation and follow-up procedures that may be required.
The federal governments of Brazil and Colombia must allocate sufficient funds to help combat racial
discrimination with checks and balances put in place to ensure that those who champion this cause are held
accountable for their (in)actions. Capacity-building support from the United Nations and its specified bodies like
the United Nations Commission on Human Rights will empower National Human Rights institutions to help
improve the situation of people of African descent in Latin America.

References

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Footnotes


[5] In Latin America, there is a perceived distinction between ethnic politics and racial politics, where Afro-Latinos pertain to the latter and indigenous people, the former. As such indigenous people win more collective rights. For detailed information about the multicultural citizenship reforms see Hooker, Juliet. “Indigenous Inclusion/Black Exclusion: Race, Ethnicity and Multicultural Citizenship in Latin America.” Journal of Latin American Studies. 37 (2005): 285-310.


Mo, “The Myths of Violence”, 60.


Michael Dodson and Donald Jackson give different circumstances in Guatemala and El Salvador in which the judiciary was political dependent on the Executive body. Dodson and Jackson. “Horizontal Accountability”, 1- 27.

These recent affirmative actions were employed by the Government of Colombia to conform to International laws. For other measures *see* the report by the Organization of American States in IACHR, *The Situation of People of African descent in the Americas*, 76.

Ibid., 77-8.