

Impact case study (REF3)

Institution: Middlesex University		
Unit of Assessment: 18 LAW		
Title of case study: Minorities, Indigenous Peoples and Vulnerable Groups: Defining International Standards, Shaping National Policy and Realizing Local Remedies		
Period when the underpinning research was undertaken: The research underpinning the impact was undertaken between 2004 and 2019.		
Details of staff conducting the underpinning research from the submitting unit:		
Name(s):	Role(s) (e.g. job title):	Period(s) employed by submitting HEI:
Joshua Castellino	Professor of Law & Head of Department (2007-12), Dean of the School of Law (2012-2016 and of the Schools of Law & Business (2016-2018), Executive Director, Minority Rights Group (MRG) & continuing 0.2 Professor of Law, Middlesex (2018-)	2007-present
Elvira Dominguez-Redondo	Associate Professor of International Law	2007-present
Cathal Doyle	Research Fellow (2008-2019), Lecturer in Law (2019-)	2008-present
Period when the claimed impact occurred: Between 2014 and 2019.		
Is this case study continued from a case study submitted in 2014? No		
1. Summary of the impact Research spanning international and comparative law by the research team, with their resulting expertise on discrimination towards groups furthest from sites of power, has influenced domestic and international legislation and policy including the <i>Abidjan Principles on Education</i> and the <i>OECD Guidelines & Multi-stakeholder Certification Guidance for the Extractive Sector</i> . Human-rights based monitoring processes overseeing stakeholder obligations have been re-shaped, including the <i>Sustainable Development Goals</i> , the work of <i>UN Special Rapporteurs</i> , and the <i>Universal Periodic Review</i> . The reasoning and implementation of decisions in regional courts including the <i>Ogiek</i> (African Court) and <i>Kalina & Lokono</i> (Inter-American Court) have also been directly influenced.		
2. Underpinning research The underpinning publications (references 1-6 below) span the research specialisms of the group: human rights, international and public law. Each critically engages these legal sub-disciplines in order to take greater cognisance of indigenous peoples and minorities. In analysing existing norms and legal standards at international, regional and national levels, the research has scrutinised how far their design and interpretations include marginalised groups, while reflecting simultaneously the degree to which such standards are realised by communities at local level. This approach to minority and indigenous peoples' rights is pioneering in methodology and geographic reach; see publications (1) - (5). A comparative constitutional analysis for Asia, Asia-Pacific and the Middle East, regions, where literature in comparative law on minorities is		

virtually non-existent, was developed (1). Together, the publications show how far minority and indigenous groups are marginalised from access to civil, political, economic, social and cultural rights (1), (4) and (5). Findings also provide evidence of the impact of State boundaries on minority rights, and identify gaps in minority and indigenous protection within the international framework that result from limitations in the field's historically grounded concepts as well as from contemporary discrimination. These findings provided the basis for pragmatic **definition of an agenda** in designing legal, institutional and political structures (1) and (6) and for regulating corporate activities (4) and (5) in regions where a broad spectrum of historically excluded minority groups and indigenous peoples exist.

Building on this foundation, publications and projects by the group have addressed the rights and recognition of indigenous people and minorities in Asia-Pacific, Africa and Latin-America (1),(4) and (5). These outputs show how genuinely inclusive, sustainable and democratic societies depend on realisation of full and effective, consent-based, participation of these groups in determining the scope, nature and implementation of their distinctive rights. Analogous conclusions were reached with regard to the 2030 Sustainable Development policy agenda (6). Such conclusions channel an overall 'leave no one behind' approach, described above, into further investigation of important intersectionality involving gender, exclusion and human rights. In this way the continuing research is **driving international agendas** and guidelines related to the extractive sector, sustainable development and State obligations vis-à-vis vulnerable groups ((2), (4), (5) and (6).

A final stream of the research engages directly with practice. It focuses on **implementing the agenda** outlined by monitoring mechanisms, providing access to remedies for vulnerable groups at local, national, regional and international levels (3), (4) and (5). The publications listed link theoretical and applied dimensions which have been developed through group members' practical engagement with grass-roots organisations working with minorities and indigenous peoples in their national, regional and international contexts. Such work is premised on developing research based on practice, and, in the current phase, seeking to influence practice based on research through insight-oriented engagement with emerging regimes.

3. References to the research

1. Series of linked regional analyses published in OUP book series on Minority Rights:
 - 1.a. Joshua Castellino & Elvira Domínguez-Redondo, *Minority Rights in Asia: A Comparative Legal Analysis* (OUP, 2006)
 - 1.b. Joshua Castellino & David Keane, *Minority Rights in the Pacific Region: A Comparative Legal Analysis* (OUP, 2009)
 - 1.c. Joshua Castellino & Kathleen Cavanaugh, *Minority Rights in the Middle East* (OUP, 2013)
2. Elvira Dominguez-Redondo & Edward R. McMahon. "More honey than vinegar: peer review as a middle ground between universalism and national sovereignty." *Can. YB Int'l L.* 51 (2013): 61.
3. Joshua Castellino & Cathal Doyle. "Who are 'Indigenous Peoples'? An examination of concepts concerning group membership in the UNDRID" in Hohmann & Weller

(eds.) UN Declaration on the Rights of Indigenous Peoples: A Commentary (2018): 7-37.

4. Cathal Doyle et al. *Mining, the Aluminium Industry, and Indigenous Peoples: Enhancing Corporate Respect for Indigenous Peoples' Rights*, (AIPP, FPP, IUCN: Chiang Mai, Gloucestershire & Gland, 2015)
5. Cathal Doyle *Business and Human Rights: Indigenous Peoples' Experiences with Access to Remedy. Case studies from Africa, Asia and Latin America* (Chiang Mai, Madrid, Copenhagen: Asia Indigenous Peoples Pact, Almaciga, International Work Group for Indigenous Affairs, 2015)
6. Joshua Castellino & Sarah Bradshaw, 'Sustainable Development and Social Inclusion: Why a Changed Approach Is Central to Combating Vulnerability' 24 *Wash. L. Rev.* (2015): 459

4. Details of the impact

The underpinning research has brought about significant impacts for minorities and indigenous peoples in three distinct spheres.

Setting the Agenda: Recognition of the importance of the right to education for minorities and indigenous peoples, in the Preamble and Principles 31 and 55 of the *Abidjan Principles on the Human Rights Obligations of States to Provide Public Education and to Regulate Private Involvement in Education*, reflects research findings from the team's research which Castellino introduced into the process as one of 18 experts responsible for its drafting. In 2019, the *Human Rights Council* and *African Commission* recognised the contribution of the document, with significant uptake by civil society and state actors (Source 1). In its *Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector*, the OECD incorporated recommendations from Doyle's research: that companies should consider indigenous peoples' expectations regarding free prior and informed consent and remedies (Source 2). The Aluminium Stewardship Initiative also adopted Doyle's findings, encapsulating them in certification [guidance to corporations using aluminium in products](#) (Sources 3 & 6).

Driving the Agenda: The *International Bar Association* (IBAIHRI) and the *International Lesbian, Gay, Bisexual, Trans & Intersex Association* (ILGA) adopted Dominguez-Redondo's proposal that the *Universal Periodic Review* offers a strategic tool to gauge, develop and consolidate increased legal protection for vulnerable groups by establishing customary international law. (Source 7). In 2016, the Central Tibetan Administration also utilised the research in developing a strategic policy guide for engagement with UN Mechanisms (Source 8). The political and legal voices of minorities and indigenous peoples, along with their advocacy agendas, have been further strengthened by the research group's extensive formal and informal collaboration with a range of relevant bodies and organisations. These include UN Special Rapporteurs (on indigenous peoples, minorities, freedom of religion, cultural expression, environment); the Asia-wide indigenous peoples' network (AIPP); communities in Latin America; and the world's leading indigenous rights non-governmental organisations such as MRG, with its 150 partner organisations; the Forest Peoples Programme (FPP); and the International Work Group for Indigenous Affairs (IWGIA) (Source 3).

The world's largest NGO on minority and indigenous rights, MRG, adopted the "leave no one behind" approach advocated by the team's research following the 2018 appointment of

Castellino as Executive Director. Their approach draws on key findings regarding how present remedial mechanisms fall short in catering to specific contexts and realities which involve politically disempowered, culturally distinct and marginalised groups. MRG's ensuing new strategic direction (2021-2024), its approach to capacity-building, and its advocacy for legal change in more than 30 live global projects, are currently shaping practice in favour of minority and indigenous peoples. A range of collaborations have brought the group's research to bear on many specific circumstances, including in collaborations with leading litigating organisations in India, Argentina, Germany and Mexico, and with judiciaries and legislative assemblies in India, Morocco, Bangladesh, Venezuela and Europe (Source 4).

Implementing the Agenda: More effective access to remedies at national, regional and international levels has resulted from the group's research findings on minority and indigenous rights (research references 1, 4 and 5). Requests were received from governmental and indigenous peoples' bodies for input on how to implement landmark judgments of the African and Inter-American regional human rights courts. In 2019, the Kenyan governmental task force implementing the 2017 African Court judgment in [Ogiek v Kenya](#) consulted Castellino on global models of indigenous land demarcation and forest management (Source 5). In 2018, Surinamese indigenous peoples' organisations engaged Doyle and an Australian researcher regarding implementation of the 2015 Inter-American Court *Kalina & Lokono Peoples v Suriname* judgment. Their report, presented to the Ministry of Regional Development and the mining company involved, formed part of the follow-up to the judgment and led to engagement between the indigenous peoples, the mining company, and its community development funding foundation, towards rehabilitation of the communities' lands. (Sources 3 and 9).

Other findings detailed in the research have helped to convince statutory donors and trusts (e.g. SIDA, Ministry of Foreign Affairs Norway, German Development Agency, FCDO, United Kingdom, and Ford Foundation) to fund projects aimed at realising remedies through international mechanisms (Source 10). Such funding decisions have in turn facilitated greater access to effective remedies, capacity building, and the articulation and implementation of court decisions addressed to minorities and indigenous peoples in countries including Pakistan, Iraq, Kenya, Uganda, Mauritania, India, Egypt, North Macedonia, Peru, Brazil, and Colombia.

5. Sources to corroborate the impact

Source 1: Castellino's participation is described at:

<https://www.abidjanprinciples.org/en/support/signatories>. Sources showing official recognition of this work include: United Nations Human Rights Council Resolution 41/16, The right to education: follow-up to Human Rights Council resolution 8/4 (11 July 2019); African Commission on Human and Peoples' Rights Resolution 420 (LXIV); Resolution on the Need to Develop Norms on States' Obligations to Regulate Private Actors Involved in the Provision of Social Services (14 March 2020); European Social Charter European Committee of Social Rights, Conclusions 2019 (March 2020); Statement at European Parliament identifying the Abidjan Principles as the most substantial development in education since the 1990 World Conference on Education; confirmation by intergovernmental bodies, in their recommendations aimed at States and other stake holders, that the principles constitute an international standard in education as corroborated by a specific website that tracks the impact and shows the involvement of the drafters. See <https://www.abidjanprinciples.org/en/support/official-recognition>

Source 2: Reference to Doyle's work can be found in 2.1 *OECD Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector* (2017) (available at <https://www.oecd.org/publications/oecd-due-diligence-guidance-for-meaningful-stakeholder-engagement-in-the-extractive-sector-9789264252462-en.htm>), a core document in the area of business and human rights applicable to major extractive industry companies worldwide. The corroborative statement provided by the Civil Society Representative in the OECD drafting Committee of the Due Diligence Guidance confirms the role of the team members' research and their input in shaping this aspect of the guidance (2.2).

Source 3: This statement from Victoria Tauli-Corpuz, former UN Special Rapporteur on the Rights of Indigenous Peoples, former Chair of the Permanent Forum on Indigenous Issues and Executive Director of Tebtebba Foundation, Philippines confirms how the team members' research and collaboration with a range of actors has amplified the political and legal voices of indigenous peoples.

Source 4: Statement by Colin Gonsalves, Founder Director, Human Rights Law Network, Senior Advocate Supreme Court of India and Right Livelihood Winner (Alternative Nobel Prize) 2017.

Source 5: Statement from Mr. Daniel Kobei, Executive Director Ogiek Peoples' Development Corporation, Nakuru, Kenya.

Source 6: 2017 Guidance: Factsheets 1 (6.2) and 2 (6.3), for ASI members, on "Identifying Indigenous Peoples" and "Indigenous Peoples Free Prior and Informed Consent". An account of work on ASI standard and indicators in the 2015 Expert Workshop "Indigenous Peoples Expert Workshop on the Aluminium Stewardship Initiative (ASI) General Statement," reproduced in Research reference 4, pp 158-162 <https://aluminium-stewardship.org/wp-content/uploads/2017/04/Mining-the-Aluminium-Industry-and-Indigenous-Peoples-Nov2015.pdf> ASI Performance Standard V2 – December 2017 (6.4)

Source 7: International Bar Association (International Human Rights Institute, IBAIHRI), *The role of the Universal Periodic Review in advancing human rights in the administration of justice*, March 2016:33-4 (7.1) and IBAIHRI, ARC & ILGA Report, November 2016, *Sexual orientation, gender identity and expression and sex characteristics at the Universal Periodic Review: 70-1* (7.2)

Source 8: Tibetan Engagement with the United Nations Mechanisms (2016): [a confidential email request regarding a commissioned report undertaken for the Cabinet of the Tibetan Government-in-Exile, , funded by CAT (August 2014-16).

Source 9: Cathal Doyle & Mark Annandale (2018), *Wane Hills Rehabilitation and Management Plan: Follow-up report on the implementation of the Inter-American Court judgment in the case of the Kaliña & Lokono Peoples v Suriname*. The impact of this report is addressed in the corroborating statement (source 3).

Source 10: Statement by Meena Varma, Chair, Governing Council, *Minority Rights Group International*, London, United Kingdom.