

Table of Contents

| | |
|--|----|
| Acknowledgments | 5 |
| Table of Contents | 9 |
| List of abbreviations | 15 |
| Introduction | 21 |
| 1 Indigenous Peoples in International Law | 31 |
| 1.1 The (Non-)Definition of Indigenous Peoples | 32 |
| 1.2 The international protection of indigenous rights | 39 |
| 1.3 Indigenous peoples' land dispossession and recent evolutionary jurisprudence | 55 |
| 2 Self-determination and Indigenous Peoples | 61 |
| 2.1 The debated concept of and right to self-determination | 61 |
| 2.1.1 Brief overview of developments surrounding self-determination | 63 |
| 2.1.2 United Nations and Self-Determination | 67 |
| 2.1.3 The right to self-determination in the Covenants and the position of the Human Rights Committee | 73 |
| 2.1.3.1 Article 1.1 and the link with the political rights | 74 |
| 2.1.3.2 Article 1.2 and the right of peoples over natural wealth and resources | 78 |
| 2.1.3.3 Article 1.3 and the full exercise of the right to self-determination | 80 |
| 2.1.4 Legal conceptualizations of self-determination | 81 |
| 2.1.5 Crucial aspects: Post-colonial self-determination; Self-determination as <i>jus cogens</i> ; Singularity; and the People referred in Article 1 | 94 |

Table of contents

| | |
|--|---------|
| 2.1.6 Recent developments in international law: The Responsibility to Protect and Remedial Secession | 101 |
| 2.1.7 Latest quests for self-determination: Scotland, Catalonia, and New Caledonia | 104 |
| 2.1.8 Concluding remarks | 117 |
| 2.2 The right to self-determination of Indigenous Peoples | 119 |
| 2.2.1. Introduction | 119 |
| 2.2.2 The right to self-determination of indigenous peoples in the UN standards | 122 |
| 2.2.2.1 References to the right of self-determination of indigenous peoples in the “Study of the Problem of Discrimination against Indigenous Populations” | 123 |
| 2.2.2.2 The UN Human Rights Committee, the Committee on Economic, Social and Cultural Rights and the right to self-determination of indigenous peoples | 126 |
| 2.2.2.3 Self-determination of indigenous peoples in the Draft Declaration on the Rights of Indigenous Peoples | 135 |
| 2.2.2.4 The shaping of the right to self-determination of indigenous peoples from the Draft Declaration to the UNDRIP’s formula | 144 |
| 2.2.2.5 The UNDRIP regime of self-determination and the right to autonomy of indigenous peoples | 151 |
| 2.2.3 The right to self-determination of indigenous peoples in the two American and African regional human rights systems | 154 |
| 2.2.4 The multifaceted right to self-determination of indigenous peoples | 157 |
| 2.2.5 The implications of the use of the term “people” | 169 |
| 2.2.6 Concluding remarks | 172 |
| 3 One expression of the multi-faceted Right to Self-Determination of Indigenous Peoples: The Composite Right to Political Participation | 175 |
| 3.1 “Political rights” in human rights law | 175 |
| 3.1.1 Introduction | 175 |
| 3.1.2 The “political rights” | 176 |
| 3.1.3 Concluding remarks | 182 |
| 3.2 The right to political participation of (national) minorities | 185 |
| 3.2.1 Legal standards | 185 |

| | |
|--|-----|
| 3.2.1.1 Political rights of minorities in art.27 of the ICCPR | 185 |
| 3.2.1.2 <i>Ad hoc</i> political rights of minorities | 188 |
| 3.2.2 Theoretical debate | 190 |
| 3.2.2.1 Participation within the State | 191 |
| 3.2.2.2 Participation in the form of autonomy/self-government | 195 |
| 3.2.3 Concluding remarks | 202 |
| 3.3 The Composite Right to Political Participation of Indigenous Peoples | 203 |
| 3.3.1 Participation of indigenous peoples in domestic decision-making processes | 206 |
| 3.3.1.1 Introduction | 206 |
| 3.3.1.2 The <i>ad hoc</i> rights of indigenous peoples to participation in domestic decision-making processes | 209 |
| 3.3.1.3 Ways to implement the right participation of indigenous peoples in domestic decision-making processes | 213 |
| 3.3.1.4 The Yatama case before the Inter-American Court of Human Rights and Indigenous peoples' electoral rights | 216 |
| 3.3.2 Consultation and Free, Prior and Informed Consent | 218 |
| 3.3.2.1 The recognition of the rights to Consultation and Free, Prior and Informed Consent | 218 |
| 3.3.2.2 The content and implications of the indigenous peoples' rights to Consultation and Free, Prior and Informed Consent | 226 |
| 3.3.2.2.1 The core elements of the right to consultation | 227 |
| 3.3.2.2.2 Free, Prior and Informed Consent | 232 |
| 3.3.2.2.3 Consultation and FPIC | 233 |
| 3.3.2.3 Jurisprudence vis-à-vis the right to consultation and FPIC of Indigenous peoples | 235 |
| 3.3.3 Indigenous peoples' rights to autonomy/self-government and to preserve their traditional institutions | 241 |
| 3.3.3.1 International provisions recognizing the right to autonomy/self-government of Indigenous peoples and to preserve and/or establish their traditional institutions | 242 |
| 3.3.3.2 The debate on the right to autonomy of indigenous peoples | 243 |
| 3.3.3.3 Forms of indigenous autonomies | 246 |
| 3.3.3.4 Final considerations on indigenous peoples and autonomy | 252 |

Table of contents

| | |
|--|---------|
| 3.3.4 Final considerations on the recognition of the <i>composite right of political participation of indigenous peoples</i> | 254 |
| 3.4 Concluding remarks | 255 |
| 4 The peculiar Latin American context: Regional protection of indigenous rights and Indigenous movements | 261 |
| 4.1 The protection of Indigenous peoples in the Latin American Constitutions | 263 |
| 4.1.1 Introduction | 263 |
| 4.1.2 An excursus on indigenous peoples' recognition in the Latin American constitutions and recent developments | 267 |
| 4.2 The role of the Inter-American human rights bodies in protecting indigenous rights | 277 |
| 4.3 The increasing negotiating power of indigenous movements in Latin America | 284 |
| 4.3 Concluding remarks | 292 |
| 5 The Bolivian case | 295 |
| 5.1 Introduction to the Bolivian context | 296 |
| 5.1.1 Socio-economic data | 296 |
| 5.1.2 Marginalization of indigenous peoples, the 1990 reforms, and the new Constitution | 299 |
| 5.2. The legal framework vis-à-vis indigenous peoples in Bolivia | 311 |
| 5.2.1 International human rights law applicable to indigenous peoples in Bolivia | 311 |
| 5.2.2 Domestic protection of indigenous peoples' rights | 318 |
| 5.3 Indigenous peoples' participation in decision-making processes | 322 |
| 5.3.1 Indigenous peoples' representation at national and local level | 323 |
| 5.3.2 Consultation and FPIC of indigenous peoples in Bolivia | 332 |
| 5.3.2.1 Legislative framework | 332 |
| 5.3.2.2 Decision No.2003/2010-R of the Constitutional Court | 338 |
| 5.3.2.3 Implementation of indigenous peoples' right to consultation and the controversial case of TIPNIS | 339 |

| | |
|---|---------|
| 5.4 Participation through autonomy/self-government arrangements and the preservation of indigenous institutions | 352 |
| 5.4.1. The indigenous autonomy proposed by indigenous peoples in Bolivia | 352 |
| 5.4.2 Looking for a Bolivian history of autonomy | 353 |
| 5.4.3 The complex Bolivian (autonomous) administrative and territorial system | 354 |
| 5.4.4 The AIOCs | 359 |
| 5.4.4.1 Overall introduction to the AIOC and its legal framework | 359 |
| 5.4.4.2 The existing AIOCs: Process of creation and rules | 360 |
| 5.4.4.3 The regulation of new/future AIOCs | 363 |
| 5.4.4.4 Common conversion procedure and other norms | 365 |
| 5.4.4.5 The current status of the AIOCs | 366 |
| 5.4.4.6 Final remarks on the AIOCs | 372 |
| 5.5 Concluding remarks on the Bolivian case | 377 |
| 6 The Chilean case | 385 |
| 6.1 The Chilean context | 386 |
| 6.1.1 Data on indigenous peoples in Chile | 386 |
| 6.1.2 The “other” history of Chile, indigenous peoples’ land dispossession and recent social unrest | 392 |
| 6.1.2.1 Introduction | 393 |
| 6.1.2.2 Indigenous peoples’ historical land dispossession | 397 |
| 6.1.2.3 The developments after the restoration of democracy | 404 |
| 6.1.2.4 The 2011 students’ mobilization, the 2014 elections and the hope for a change of Chilean institutions | 416 |
| 6.2. The legal protection of indigenous peoples in Chile | 422 |
| 6.2.1 International human rights law applicable to indigenous peoples in Chile | 422 |
| 6.2.2 Domestic protection of indigenous peoples’ rights | 436 |
| 6.2.2.1 The lack of constitutional recognition | 436 |
| 6.2.2.2 The Indigenous Law and other norms | 443 |
| 6.3 Indigenous peoples’ participation in decision-making processes | 448 |
| 6.3.1 Indigenous peoples’ representation at national and local level | 449 |

Table of contents

| | |
|---|-----|
| 6.3.1.1 The restrictive Chilean electoral system and the obstacles to indigenous peoples' participation | 450 |
| 6.3.1.2 Initiatives to include indigenous peoples in decision-making processes | 456 |
| 6.3.1.3 The Mapuche Wallmapuwen party | 463 |
| 6.3.2 Consultation and FPIC of indigenous peoples in Chile | 466 |
| 6.3.2.1 Legislative framework | 466 |
| 6.3.2.2 Application of the indigenous peoples' right to consultation in Chile | 471 |
| 6.3.2.3 The recent Amparo proceedings vis-à-vis the right to consultation | 480 |
| 6.4 Participation through autonomy/self-government arrangements and the preservation of indigenous institutions – indigenous autonomy claims in Chile | 488 |
| 6.5 Concluding remarks on the Chilean case | 494 |
| Conclusions | 507 |
| Selected Bibliography | 521 |