

Championing Human Rights for Afrodescendants in Latin America



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Dr Jean Muteba Rahier is a distinguished scholar, professor, and human rights advocate. Currently based in the Department of Global & Sociocultural Studies at Florida International University, Dr Rahier's initiatives, scholarly contributions, and ongoing research projects explore the processes of adoption and application of 'ethnoracial law' in the practice of Latin American judicial systems for the defence of Afrodescendants' human rights. He explains here how this exploration broadens academic horizons and seeks to contribute to the knowledge production necessary to oppose and remedy both the small, almost imperceptible, and the scandalously visible acts of ordinary anti-Black racism in the region.

What is 'Ethnoracial Law'?

Ethnoracial law refers to two different kinds of legal instruments: 1) the articles of constitutions and special laws that recognise and protect collective rights over lands (*'teritorios'*) and cultural ways, sometimes also called 'multicultural legal instruments', and 2) the articles of constitutions and special laws that protect ethnoracial and other minorities from discrimination and hate (anti-discrimination or racial equality law).

Assessing the Application of Multicultural and Anti-Discrimination Laws

Dr Jean Muteba Rahier has conducted extensive research projects in Ecuador since the mid-1980s. He has published extensively on Afro-Ecuadorian oral traditions and cultural politics; Afro-Ecuadorian women's participation in national and provincial beauty contests; the overwhelmingly black composition of the national soccer/football team in a country that highly values that sport while also denying Afrodescendants full citizenship; and the racist representations of black people in the Ecuadorian press; among other things. He witnessed firsthand the unfolding of the turn towards multiculturalism in Ecuador following the adoption of the 1998 constitution. The passing of the 2008 constitution confirmed the turn, which has been quite visible in the region with the emergence of what legal scholars have called 'the new Latin American constitutionalism'.

Dr Rahier examined the texts of the constitutional articles and other recently adopted ethnoracial laws that marked the turn in Ecuador. This allowed for a full appreciation of their utopian ambition to make Ecuador a 'plurinational country'. This constituted an official ideological move away from the imaginary of national identity in terms of prototypical *mestizaje* (mixed indigenous and European ancestry non-inclusive of African ancestry) that characterised the period Dr Rahier calls 'monocultural *mestizaje*', which preceded the multicultural turn.

Aware of the necessity to look at laws in action, Dr Rahier joined forces with colleagues working in other national contexts of the region – Dr Carlos Agudelo and Dr Tanya Hernández. Together, they obtained a Latin American Studies Association – Ford Foundation small grant in 2017 to organise a "Meeting to Consolidate the International Working Group-Comparative Assessment of the Utility (or Lack Thereof) of 'Multicultural Legal Instruments' for Afrodescendants in Latin America" at Florida International University. Researchers working on various Latin American multiculturalist national contexts participated and shared their insights on recent, specific, relevant litigations supposed to have applied ethnoracial law.

The meeting led to Dr Rahier's editing the publication of a special issue of the journal *Latin American and Caribbean Ethnic Studies*. It concluded with the creation, by all participants, of the Observatory of Justice for Afrodescendants in Latin America (OJALA), under Dr Rahier's leadership (see ojala.fiu.edu). Dr Rahier, Dr Carlos Agudelo, and Dr Jhon Antón Sánchez also co-edited a second scholarly journal special issue, published by *Abya-Yala: Revista sobre Acesso à Justiça e Direitos nas Américas*.



^ Jacqueline Pabón Espinoza

^ Francia Jenny Moreno Zapata

^ Jhon Antón Sánchez

The Observatory of Justice for Afrodescendants in Latin America (OJALA)

Dr Rahier is the leading founder and driving force behind OJALA, which he, along with the co-founders, understands as an initiative of engaged social science for the promotion and defence of Afrodescendants' human rights in the region. Since its founding in 2018, the Observatory – housed in FIU's Kimberly Green Latin American & Caribbean Center (KG-LACC) – has had at least three major objectives:

1. The creation of a regional repository of legal archives in Spanish and Portuguese (with user guides in Spanish, Portuguese, and English).

OJALA is currently working to establish a Latin American Repository of Legal Archives, regrouping all archives of 'emblematic litigations' from all national contexts of the region. The 'emblematic cases or litigations' are those in which multicultural legal instruments, anti-discrimination law or 'racial equality law', and any other relevant legal instrument have been in use for the promotion and defence of Afrodescendants' human rights. The objective is to have the repository made available digitally to attorneys from the region as they litigate new cases; to researchers and graduate students interested in the systematic practices of Latin America's judicial systems as they engage with Afrodescendants, to activists in search of documentation about litigations of interest in other countries of the region; and to reformist policymakers. Such an easily reachable online repository will contribute to the building of regional jurisprudence about the application of ethnoracial law for the benefit of Afrodescendants in the region's judicial systems.

2. The conduct of research projects about Afrodescendants and the contemporary Latin American judicial systems.

OJALA's ambition is to provide a space that facilitates the design of relevant research projects in specific national contexts or comparative in nature (including multiple countries in their scope). This is research focused on the production of knowledge about ethnoracial law and its usage in attempts to protect the rights of, and provide remedies to, Afrodescendants in Latin America's courts of law. The premise here is that the production, accumulation and circulation of such knowledge cannot be but beneficial to Afrodescendants.

3. The dissemination of existing knowledge about Afrodescendants and the contemporary Latin American judicial systems through the development of workshops, symposia, and the publication of quadrennial Latin American reports on the state of Afrodescendants' treatment by the region's judicial systems.



Evaluating the Application of Ethnoracial Law in Contemporary Ecuador

Dr Rahier is currently the principal investigator on a research project funded by the National Science Foundation. This research covers: 1) the political discussions and formal adoption processes of ethnoracial legal instruments by national and municipal legislative bodies since 1998, the year the first Ecuadorian constitution to proclaim the country as a multiculturalist nation-state was adopted; 2) the relative inclusion of these ethnoracial legal instruments in the curricula of the country's law schools and specialised post-law school workshops attended by the judicial system operators (judges, prosecutors, attorneys, public defenders, and so on); 3) the qualitative and quantitative evaluation of the knowledge these operators have of the ethnoracial legal instruments; 4) interrogation of the application of ethnoracial law in litigations considered 'emblematic' because they involve Afrodescendants' claims for the defence of their rights as they are processed in the country's courts of law since 1998.

Critically, this is the first study to engage in such a systematic and multidimensional examination of the adoption and application of ethnoracial law for the benefit of Afrodescendants in the practice of one representative South American judicial system.

Impact on Human Rights for Afrodescendants in Latin America

OJALA's objectives must be appreciated within the sub-field that Dr Rahier refers to as a 'new anthropology of the Latin American multiculturalist state', in which researchers unsatisfied with understandings of the state as a monolith pay careful attention to the inner workings of state agencies and functionaries (who have first and last names), as they interact with citizens.

The work Dr Rahier and his OJALA colleagues have already accomplished, and the OJALA-NSF research project currently unfolding in Ecuador, has revealed the state as nothing but a series of processes that might not always go in the same direction or labour in concert to reach the same goals. Agencies of a given state can be very different in their practices and in the way they relate – always in specific situations – with citizens. Dr Rahier explains that the litigations the research team active in Ecuador is deconstructing have made blatantly clear that state agencies can adopt positions that can be adamantly opposed to other state agencies' decisions when considering the application of ethnoracial law for the benefit of Afrodescendants.

Dr Rahier asserts that, before making claims about 'the state' and its judicial system, it is important to take the time to carefully examine the micro-physics of citizens-state agents' interactions and the interventions of differently positioned state bureaucrats (e.g., state officers, judges of various instances, prosecutors, and so on) and other socio-political actors active both inside and out of the courtrooms. OJALA's perspective consists in seeing the state, and particularly its judicial system, as 'a mappable constellation of social practices'.

Dr Rahier insists that OJALA's ultimate goal is to engage in the production of critical knowledge to effectively improve Afrodescendants' lives in Latin America. OJALA wants to produce, reveal, accumulate, and circulate useful knowledge about Latin American judicial systems' concrete dealings with Afrodescendants. This will allow for the underscoring of the processes that work against the full realisation of the utopia the adoption of ethnoracial legal instruments points to.

Dr Rahier and his OJALA colleagues have argued that, unfortunately, notwithstanding few affirmative action policies based on some kind of reparation, the Latin American ethnoracial legal instruments that criminalise racial discrimination do not address but individual behaviours identified as racist and discriminatory, without ever engaging directly and significantly with 'race regulation customary law' or structural racism (see the work of Tanya Hernández). This continued virulence of race regulation customary law is certainly one of the most limiting factors working against current Latin American ethnoracial law, and more specifically, against any potential impact racial equality or anti-racial discrimination law might and do have.

The novelty of OJALA's approach is certainly its ambition to pay careful, systematic, and meticulous attention to the workings of the region's judicial systems as they deal with ethnoracial law and attempt to apply it for the benefit of Afrodescendants in the courts of law. This is the first such systematic, scholarly, and political endeavour. Its findings could inform the design and elaboration of new Afrodescendant politico-legal strategies in the region.

MEET THE RESEARCHER



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Dr Jean Muteba Rahier is a distinguished anthropologist specialising in African and African diaspora studies. He is the former Director of the African & African Diaspora Studies Program at Florida International University (FIU). He is the Chief Editor of the peer-reviewed quarterly *Latin American & Caribbean Ethnic Studies* (LACES). Dr Rahier's current work is dedicated to the study of legal dimensions of what has been called the 'Latin American turn towards multiculturalism' that has been unfolding since the late 1980s, with a transformation of the region's legal landscapes through the adoption of new constitutions and special laws (the new Latin American constitutionalism). He has been particularly interested in the study of the application, in the practice of the region's judicial systems, of the 'new' legal instruments that either recognise collective rights for ethno-racial minorities (mostly indigenous peoples and eventually, in some cases, Afrodescendants), or have the intention to protect them from ethnoracially based discrimination and hate. He is particularly dedicated to the building of knowledge about the interactions the region's judicial systems have with Afrodescendants. He is the Founding Director of the Observatory of Justice for Afrodescendants in Latin America (OJALA), housed in the Kimberly Green Latin American & Caribbean Center (KG-LACC) of FIU's Steven J. Green School of International & Public Affairs (G-SIPA).

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FURTHER READING

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