

INDIGENOUS PEOPLES, AFRO-DESCENDENT COMMUNITIES, AND NATURAL RESOURCES

HUMAN RIGHTS PROTECTION IN THE CONTEXT OF EXTRACTION, EXPLOITATION, AND DEVELOPMENT ACTIVITIES



Info-graphic summary, prepared by DPLF, of the Inter-American Commission on Human Rights report “Indigenous Peoples, Afro-Descendent Communities, and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities” (2016)

1. INTRODUCTION

WHY DID THE IACHR DECIDE TO WRITE THE REPORT?

For years now, the IACHR has been receiving information on the social, cultural, and environmental effects associated with extraction, exploitation, and development projects throughout the continent, which in turn affect human rights.

The nature of the rights at stake and the severity of the effects reported make the impact of these extractive activities a “priority issue in the region” and gave rise to the report.



OBJECTIVES OF THE REPORT

Identify and raise awareness of patterns of human rights violations committed in the context of extractive activities.

Identify the challenges with regard to State regulations and institutions that make it possible for such violations to occur.

Provide recommendations to guide State actions to prevent human rights violations in the context of extractive activities.

WHAT ACTIVITIES, PLANS, OR PROJECTS DOES THE REPORT ENCOMPASS?

The IACHR's use of the phrase “extraction, exploitation, and development plans or projects” refers to **any activity that may affect land, territory, or natural resources, particularly proposals related to the exploration or exploitation of such natural resources**. This includes mining, hydrocarbon, power, infrastructure, and monoculture projects, among others.

IS THE IMPLEMENTATION OF THESE ACTIVITIES PROHIBITED?

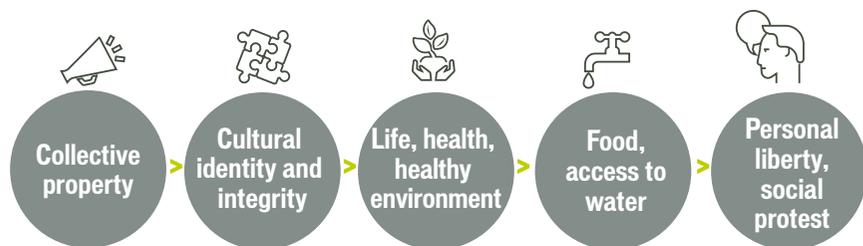
In its report, the IACHR recognizes that such ventures can improve States' capacity to promote economic development to benefit the population. But at the same time, it **warns that they must be implemented in conjunction with adequate impact prevention and mitigation**. Moreover, the IACHR underscores that States must ensure that such activities are not carried out at the expense of the human rights of persons, communities, or peoples located in the area affected by the concessions.



2. IMPACTS

MAIN HUMAN RIGHTS AFFECTED

The impacts of extraction, exploitation, or development activities present patterns that allow us to identify the following most commonly affected rights:



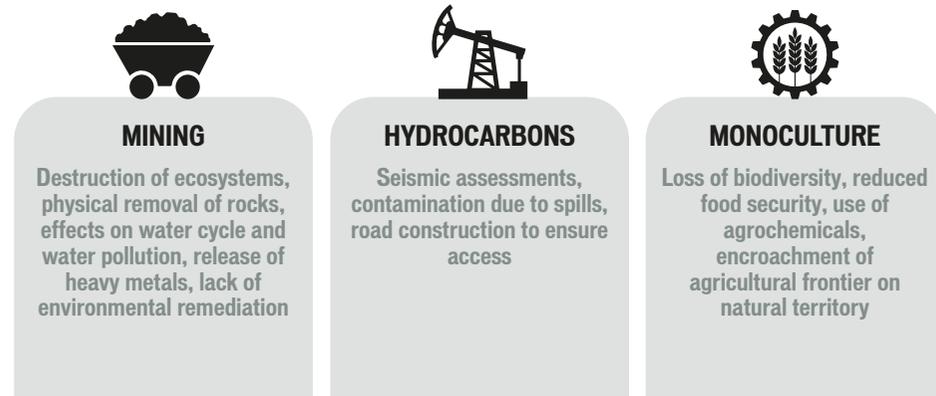
WHAT IS THE NATURE OF THESE HUMAN RIGHTS IMPACTS?

The impacts are **multiple** and touch upon a **variety of areas of life**, including environmental, territorial, spiritual, health-related, as well as the very lives of peoples and communities.

The sources of these effects are diverse, as sometimes **several projects or activities** are carried out in the lands or territories of the same community or population.

The inherent impacts of the activities are often compounded by **additional violations** such as persecution, criminalization, and acts of violence, which may **stem from the processes of defending rights**.

Impacts can be differentiated by type of activity. For example:



KEY CONCEPTS

- ▶ **Ecosystem** - Set of living things and natural environment surrounding a given place.
- ▶ **Biodiversity** - Variety of plants, animals, and microorganisms that live in a certain area, ecosystem, or region.
- ▶ **Food security** - Physical and economic access to sufficient, safe food that meets dietary needs and food preferences in order to lead an active and healthy life. This includes access, availability, and use of food, as well as the stable supply thereof.
- ▶ **Seismic assessments** - Frequently used technique that consists of the transmission of seismic waves to determine the presence of minerals underground.
- ▶ **Environmental remediation** - Strategies for reestablishing the environmental conditions that existed prior to the extractive activity.

WHAT ARE THE CENTRAL CHALLENGES FOR STATE ACTION WITH REGARD TO THESE IMPACTS?

- ▶ The negative impacts on human rights are accentuated insofar as there are no mechanisms to prevent them.
- ▶ There is weak supervision and scarce oversight of corporate actions, which facilitates rights violations.
- ▶ Barriers of access to justice arise when human rights violations occur in these contexts, usually amounting to impunity.

DIFFERENTIATED IMPACTS

Frequently, extraction, exploitation, and development projects are granted in territories historically occupied by indigenous peoples and Afro-descendent communities, causing a disproportionate impact on these populations.

Such projects produce differentiated impacts on indigenous authorities and leaders, human rights defenders, women, children, the elderly, and disabled persons. In its report, the IACHR notes numerous cases of murder, aggression, threats, harassment, and criminalization, mainly against indigenous authorities and social leaders.

3. GENERAL OBLIGATIONS OF HOST STATES AND COMPANIES' STATES OF ORIGIN

One characteristic of globalization is the transnational nature of many companies that carry out extraction and development activities. In these scenarios, we are faced with the distinct roles played by the state of origin of companies (home states) on one hand, and the host state for these activities on the other.

Based on the general obligations to prevent violations and respect and guarantee human rights, the IACHR refers for the first time to the duties incumbent upon both host and home states of extractive companies.



WHAT ARE HOST STATES' OBLIGATIONS IN THE CONTEXT OF EXTRACTION, EXPLOITATION, AND DEVELOPMENT PROJECTS?



Design and implement an appropriate normative framework



Prevent human rights violations



Supervise and oversee activities



Guarantee mechanisms of participation and access to information



Prevent illegal activities and all forms of violence



Ensure access to justice



WHAT ARE THE HOME STATES' OBLIGATIONS?

- ▶ Adopt the appropriate mechanisms of supervision and regulation of companies based or registered in their jurisdiction with operations abroad.
- ▶ Abstain from providing government support to companies involved in human rights violations.
- ▶ Abstain from unduly influencing the adoption of regulations or policies in host countries that favor investments by companies registered, domiciled or with headquarters in the home state's jurisdiction, to the detriment of human rights obligations.
- ▶ Put into practice effective mechanisms of access to justice for those affected by the activities of said companies.

4. SPECIFIC OBLIGATIONS REGARDING INDIGENOUS PEOPLES AND AFRO-DESCENDENTS

WHY DO STATES HAVE SPECIFIC DUTIES REGARDING INDIGENOUS PEOPLES AND AFRO-DESCENDENTS?

Because these are societies that pre-exist colonization or the establishment of current state borders, that preserve certain modes of life and have been subjected to conditions of marginalization and discrimination. Accordingly, the international community has recognized that said peoples differ from other communities and, therefore, have particular rights whose fundamental premise is self-determination. Another cornerstone of these rights is the protection of their ethnic and social diversity.

CAN THE COLLECTIVE PROPERTY OF INDIGENOUS AND AFRO-DESCENDENT PEOPLES BE RESTRICTED?

While the property rights of indigenous and Afro-descendent peoples are not absolute, to restrict them or limit their exercise, States must meet certain guarantees.

One prior condition is that no restriction of this right may involve the denial of their survival as a people. Survival means the capacity to “preserve, protect, and guarantee the special relationship” they have with their territory.

The guarantees that must be met are:

1 Free, prior, and informed consultation

2 Prior socio-environmental impact studies

3 Reasonable benefit sharing

1 Free, prior, and informed consultation

A HUMAN RIGHT THAT DEMANDS THAT INDIGENOUS AND AFRO-DESCENDENT PEOPLES BE CONSULTED BEFORE THE ADOPTION OF ADMINISTRATIVE OR LEGISLATIVE MEASURES THAT COULD DIRECTLY IMPACT THEIR RIGHTS. THIS CONSULTATION IS AN EXCLUSIVE DUTY OF STATES AND MAY NOT BE DELEGATED TO THIRD PARTIES.

ELEMENTS OF RIGHT TO PRIOR CONSULTATION

Legislative or administration measures

May directly impact rights

Indigenous or Afro-descendent peoples

GUARANTEES OF THE RIGHT TO FREE, PRIOR, AND INFORMED CONSULTATION

FREE: Absence of any type of coercion by the State or third parties.

PRIOR: Must be undertaken in the first stages of the development or investment plan. Prior notification provides time for communities to discuss internally and develop an adequate response to the State.

INFORMED: The parties consulted must have knowledge of the possible risks involved in the proposed development or investment plan, including environmental and health risks. This requires that the State accept and provide information, which entails constant communication among the parties.

CULTURALLY APPROPRIATE: The State must take into account the peoples' or its community's traditional methods of decision-making, as well as their own forms of representation.

GOOD FAITH: Must be conceived as a true instrument of participation that responds to the ultimate objective of establishing dialogue among the parties, based on principles of trust and mutual respect.

AIMED AT OBTAINING CONSENT: The consultation should not be approached as a mere formality, but rather should be carried out with a view toward achieving consensus among all parties.

4. SPECIFIC OBLIGATIONS REGARDING INDIGENOUS PEOPLES AND AFRO-DESCENDENTS

2 Prior socio-environmental impact studies

ASSESSMENTS OF THE POTENTIAL EFFECTS OF A CERTAIN PLAN OR PROJECT ON THE PHYSICAL SURROUNDINGS

The IACHR emphasizes that studies must cover not only environmental aspects, but also identify the direct or indirect impacts on the ways of life of peoples and communities that depend on their territories and natural resources, as well as the risks of the human rights impacts inherent to extractive and development activities.

The ultimate purpose of socio-environmental impact studies is to preserve, protect and guarantee the special relationship indigenous and Afro-descendent peoples have with their territories, and to ensure their survival as peoples. In light of this, the bodies of the Inter-American system have set guidelines for the development of such studies:

- Must be done **PRIOR** to project or plan approval.
- Must be implemented by **INDEPENDENT, TECHNICALLY CAPABLE** entities, under State supervision.
- Must allow peoples or communities to **PARTICIPATE** in their creation.
- Results must be **SHARED** with the peoples or communities consulted.

3 Reasonable benefit sharing

THE CONCEPT OF SHARED BENEFITS DERIVED FROM PROJECTS IS INHERENT TO THE RIGHT TO COMPENSATION RECOGNIZED IN THE AMERICAN CONVENTION ON HUMAN RIGHTS (ARTICLE 21.2)

ILO Convention 169 also establishes that interested populations must participate in the benefits arising from the exploitation of natural resources located within their territories and must be given equivalent compensation for any damages caused by these activities. (Article 15.2)

One of the objectives of granting benefits is to improve the living conditions of such populations. The establishment of the benefits to be shared must involve community participation in the context of the prior consultation procedures. This should not be confused with **the provision of basic social services** that correspond to the State in any case.

LARGE-SCALE PROJECTS AND CONSENT REQUIREMENT

In its decision in the case of **Saramaka v. Suriname**, the Inter-American Court of Human Rights indicated that, with respect to “large-scale” projects, not only is consultation mandatory, but consent is as well. The IACHR report provides more precise guidelines on the scope of the term “large-scale” with regard to the magnitude of the project (objective data on volume and intensity) and the human and social impact of the activity in concession.

5. RECOMMENDATIONS

TO STATES WHERE PROJECTS ARE CARRIED OUT (HOST STATES)



DESIGN, IMPLEMENT, AND ENFORCE an appropriate normative framework to protect human rights from extractive activities, exploitation, and development projects.

PREVENT, MITIGATE, AND SUSPEND negative impacts on the human rights of affected persons, groups, and communities.

ESTABLISH indicators and monitoring systems that evaluate the impact of extraction, exploitation or development projects on the human rights of affected populations, bearing in mind the specific impacts on the rights of indigenous peoples and Afro-descendent communities.

Adopt reasonable measures to **AVOID** human rights violations, upon learning of a real and immediate risk situation for an individual or group of individuals, associated with extraction, exploitation or development activities.

GIVE PREFERENCE as far as possible to companies that show a favorable record in terms of respect for human rights in public bidding processes, and **PROMOTE** respect for human rights by the companies that carry out commercial transactions.

ADOPT the necessary measures to put in place or strengthen systems of monitoring and control of extraction, exploitation or development, in a manner consistent with human rights obligations.

ENSURE the right of access to information by persons or groups affected with regard to all necessary information for the exercise of the protection of human rights in this context.

TAKE the necessary actions to guarantee that those potentially affected by an extractive or development project have effective participation in the decision-making process.

TAKE decisive actions against impunity for human rights violations committed in the context of business activities of extraction or development, through extensive and independent investigations, imposing sanctions on the perpetrators and intellectual authors, and providing individual and collective reparations to the victims.

TO STATES OF ORIGIN OF THE COMPANIES (HOME STATES)



ADOPT appropriate mechanisms of supervision and regulation of the activities of companies registered, domiciled or with headquarters in the state's jurisdiction that carry out activities abroad.

ABSTAIN from providing government support to companies involved in human rights violations or initiatives aimed at influencing the adoption of norms or policies favorable to their investments, to the detriment of human rights obligations in host countries.

PUT INTO PRACTICE proper and effective mechanisms for access to justice for peoples, communities or persons affected by the activities of companies registered, domiciled or with headquarters in the home country.

SPECIFIC OBLIGATIONS AND GUARANTEES FOR INDIGENOUS AND AFRO-DESCENDENT PEOPLES



ADOPT measures to ensure the right to consultation and, where appropriate, prior, free, and informed consent of indigenous peoples and Afro-descendent communities, in keeping with international human rights standards and with their full participation.

MODIFY measures and policies that hinder the exercise of the right to prior consultation, ensuring the full participation of indigenous peoples and Afro-descendent communities.

CONSULT with peoples and communities in the event of a prospective activity, project, or plan involving natural resources, development, or exploitation of any kind that could have potential impacts on their territory.

With regard to concessions already granted, establish a mechanism to **EVALUATE** the modifications of the terms thereof, for the purpose of preserving the physical and cultural survival of the indigenous peoples and Afro-descendent communities impacted.



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