

Report on the right to self-determination of Indigenous and Tribal Peoples

INFOGRAPHIC SUMMARY

Infographic summary prepared by DPLF, the IACHR, PUAM and IWGIA of the Inter-American Commission on Human Rights' Report "Right to self determination of Indigenous and tribal peoples"

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I. INTRODUCTION

Why did the IACHR prepare the report?

The right to self-determination of Indigenous and Tribal peoples has been part of the analysis of other human rights in various reports of the Inter-American Commission. But, so far, it had been addressed piecemeal. For the first time, the report addresses this right comprehensively and in line with current developments in international human rights law (IHRL). One of its objectives is to integrate into the inter-American standards the express recognition of this right in the American and United Nations Declarations on the Rights of Indigenous Peoples.

What are the most relevant IACHR decisions on the right to Indigenous self-determination?

Thematic reports

- 2009 - Indigenous and Tribal Peoples' Rights over Their Ancestral Lands and Natural Resources. Norms and Jurisprudence of the Inter-American Human Rights System (para. 165)
- 2013- Indigenous Peoples in Voluntary Isolation and Initial Contact in the Americas: Recommendations for the full respect of their human rights (paras. 21-22)
- 2017- Indigenous Women and their Human Rights in the Americas (paras. 42, 73)
- 2019- Situation of Human Rights of the Indigenous and Tribal Peoples of the Pan-Amazon Region (paras. 23-24)

Recent cases before the IACHR

- 2019 - Report No. 152/19. Case 12.979. Merits. Tagaeri and Taromenani Indigenous Peoples in Voluntary Isolation Ecuador (paras. 90-95) [in Spanish]
- 2020 - Report No. 211/20. Case 13.570. Admissibility and Merits (publication). Lezmond C. Mitchell. United States (paras. 85-106)

II. THE RIGHT TO SELF-DETERMINATION OF INDIGENOUS AND TRIBAL PEOPLES UNDER INTERNATIONAL LAW

A. What is the origin of self-determination from the perspective of Indigenous and tribal peoples?

For Indigenous and Tribal peoples, self-determination is an inherent, preexisting, and historical right.

Hence, the report is based on the different ways in which these peoples conceptualize and realize self-determination according to their own cultures, traditions, worldviews, and normative systems.

Self-determination is not derived from national laws or international law, but is a natural right.

The inherent or preexisting nature of Indigenous peoples' rights, including the right to self-determination, means that the individual and collective human rights of Indigenous peoples should not be conceived as rights created or granted by States or other entities.

Indigenous and Tribal representatives have made several key points on the definition and realization of self-determination, which were highlighted as follows in the IACHR report:

"Indigenous peoples have been naturally autonomous, free. Our autonomy is thousands of years old" (testimony of the Autonomous Territorial Government of the Wampís Nation, Peru).

"The right to decide on our own forms of development, based on our culture, spirituality, and right to control our natural resources and their use" (testimony of a representative of the Xinka People, Guatemala).

"Afro-descendant peoples must be free to make their own decisions, taking into account their customs and choices [...]" (testimony of the Creole Communal Government of Bluefields, Nicaragua).

"Self-determination is the ability to decide freely and to implement what we have decided" (Proceso de Comunidades Negras, PCN, - Colombia).

B. How has the self-determination of Indigenous and Tribal peoples been understood in international law?

Self-determination of Indigenous and Tribal peoples is part of contemporary IHRL

It was expressly recognized in:

- the United Nations Declaration on the Rights of Indigenous Peoples of 2007 (art. 3).
- the American Declaration on the Rights of Indigenous Peoples adopted by the Organization of American States in 2016 (art. III).

These instruments reflect significant consensus at the global and regional levels and systematize the IHRL standards in force at the time of their adoption.

Various rights key to the exercise of self-determination of Indigenous and tribal peoples had already been recognized in ILO Convention 169 on Indigenous and Tribal Peoples, and in the doctrine and jurisprudence of the Inter-American Commission and the Inter-American Court of Human Rights.

Other decisions on self-determination have been issued by:

- The treaty monitoring bodies of the universal system, particularly in relation to the application to Indigenous peoples of provisions of the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, and the International Convention on the Elimination of All Forms of Racial Discrimination.
- Specific UN mechanisms on the rights of Indigenous peoples, such as the UN Special Rapporteur on the rights of Indigenous peoples, the UN Permanent Forum on Indigenous Issues, and the Expert Mechanism on the Rights of Indigenous Peoples.



The right to self-determination of Indigenous and Tribal peoples should not be considered a threat to the territorial integrity or political unity of States.

The UN and OAS Declarations on the Rights of Indigenous Peoples state that none of their provisions may be construed as encouraging any action aimed at impairing, totally or in part, the territorial integrity or political unity of States.

Testimonies received from Indigenous and Tribal peoples indicate that they do not seek separation from the State, but rather dialogue and cooperation to solve their problems and realize their rights.

"I don't quite understand why the State is so afraid of the word self-determination. We do not want to move away from the State, always toward dialogue, toward respect—always. Always harmony. We, the peoples, are not antagonistic, but we will defend ourselves when they want to take away our land, our territory, our water, and our wealth" (Indigenous representative of the Community Police of Guerrero).

C. What responsibilities do States have regarding Indigenous self-determination?

The general obligations to respect and guarantee rights, to adopt domestic measures, and not to discriminate, contained in the American Declaration of the Rights and Duties of Man and in the American Convention on Human Rights (ACHR), apply to the right to self-determination.

States should apply the principles of consultation and cooperation with Indigenous and Tribal peoples, and of equality and nondiscrimination in fulfilling such obligations in relation to self-determination.

The realization of this right entails different measures that must be aligned with the aspirations of each people.



III. INTER-AMERICAN STANDARDS ON THE RIGHT TO SELF- DETERMINATION

A. Elements of the right to self-determination in the inter-American system (IAHRS)

According to the IACHR, it is vitally important to understand that there is no single way of exercising the right to self-determination

- It is a right that is adapted to the historical relations, political conditions, and cultural transformations of each people.
- International standards should not be understood as predefined or uniform elements.

1

Self-identification and recognition of Indigenous and Tribal peoples



A core element of Indigenous self-determination is the right to self-identification, understood as Indigenous peoples' identifying themselves as such.

- It assumes that they exist independently of official recognition or the will of the State.
- Recognition as an Indigenous or Tribal people by third parties is not a condition for their existence, nor is it a prerequisite for exercising their rights.

They have the right to be recognized as a distinct people, and to act legally under the denomination they determine.

- It is not up to external actors to determine the ethnicity or denomination of the people concerned.
- It is the peoples or communities themselves who define such membership based on their awareness of their identity.

It is contrary to the right to self-identification for a country's laws to impose legal concepts other than that of Indigenous people or nation to allow them to act as collective rights holders.

- Treating peoples solely as “ethnicities” or “ethnic groups” when they self-identify as “peoples” or “nations” disregards their self-determination.
- Nor should they be assimilated into concepts such as “civil association,” whether implicitly or explicitly, since such categories deny their status as peoples and are alien to their worldview.

In the Americas, Indigenous peoples have developed a diversity of autonomous processes that present forms of organization created under the categories of “peoples,” “nations,” or “nationalities.”

- These groups are entitled to the recognition of their legal personality. The absence of legislation in this area is a breach of the obligation to adapt the State apparatus and cannot be an excuse for failing to comply with this duty.
- Nor is it compatible with IHRL to take actions that undermine such recognition, including attempts to challenge it administratively or judicially.
- It is the duty of all authorities, particularly justice authorities, to ensure the effectiveness of the inter-American standards, under the doctrine of “conventionality control.”

As long as mechanisms for these forms of organization are not guaranteed, Indigenous peoples face greater difficulties in exercising their related rights.

- If they are not recognized as a people, or they are recognized under concepts that do not allow for the full affirmation of their rights:
 - The acts of their decision-making bodies may not be valid
 - They may be prevented from seeking recognition of their ancestral territories through collective title
 - Bureaucratic obstacles may be imposed that keep them from managing the resources needed to support community life and their development priorities

2

Cultural identity

Cultural identity is an essential component that defines a human group as a differentiated ethno-cultural collective, with a particular way of being, seeing, and acting in the world.

- It is evolutionary and dynamic: it can change over time, based on historical, social, and political processes.
- Any State measure intended to protect the rights of these peoples must be based on respect for their ways of life.
- The recognition and guarantee of cultural identity are fundamental to IHRL and involve overcoming historical legacies of discrimination, racism, and colonialism.



Cultural identity comprises several closely related elements, such as:

- Ancestral or traditional territory.
- Traditional knowledge and wisdom, as well as the diverse manifestations of a people's own sciences and technologies.
- Own religion, spirituality, or beliefs.
- Own language, which ensures the expression, dissemination, and transmission of culture.

3

Nondiscrimination



Racial discrimination is often the structural cause underlying human rights violations against Indigenous peoples.

- The weakening of Indigenous peoples' autonomy and structures of self-government is closely related to historical processes of extermination, colonialism, and assimilation.
- The right to self-determination has been massively and systematically denied to the Indigenous peoples of the Americas for years.

Indigenous peoples' right to equality and the prohibition of discrimination are widely recognized at the international level.

- The principle of nondiscrimination is a pillar of any democratic system and is foundational to the IAHRs.
- Given the shared history of oppression and exclusion, all of the inter-American and universal instruments that articulate the rights of Indigenous peoples recognize the obligation not to discriminate against Indigenous peoples.

Today, they live in States whose legal and political structures are often based on conditions of exclusion and racism.

- An example of this is when States impose forms of political and administrative territorial organization that deny the existence of other cultures.
- There are still national laws in the region that—totally or partially—perpetuate a viewpoint that ignores their pluricultural, multilingual, or plurinational character.

4

Collective property, lands, territories, and natural resources



For Indigenous and Tribal peoples, the territory they occupy is theirs by ancestral inheritance. The way they use their territory is often different from that of the rest of the society with which they interact in a given State.

The most relevant aspects of this right in relation to the right to self-determination are:

- Guarantees regarding lands and territories: it has been understood in IHRL that self-determination can be achieved through the recognition, titling, delimitation, and demarcation of Indigenous territories.

- **Autonomy or territorial self-government based on their own legal systems:** autonomous territorial governance is one of the most relevant expressions of Indigenous and Tribal self-determination. This entails recognizing the self-government systems responsible for the control, management, and administration of the ancestral or traditional territory. It is also incumbent upon States to recognize and respect the laws and legal systems of these peoples.
- **Fragmentation of Indigenous and Tribal territory:** territorial governance includes determining the type of ownership through which they will exercise their territorial rights. Indigenous territoriality refers to a self-defined spatiality as an attribute of the collective rights holder that makes up the community and the respective Indigenous or tribal people. One of the main problems in the region is that State titling processes seldom reflect a proper understanding of the territory and can result in its fragmentation.
- **Territorial structuring at the local level:** the ways in which States are structured territorially may reflect local forms of territorial organization that ignore Indigenous political and cultural organization. Indigenous peoples perceive this as a way of seriously limiting their right to self-determination and control over their own institutions, political organization, and ways of life.
- **Development models:** a fundamental aspect of territorial governance is the autonomous development model adopted by Indigenous and Tribal peoples, as an expression of their self-determination. This right gives them control over their pace of change, based on their own understanding of economic development, which also encompasses their right to refuse certain measures that are not aligned with their priorities and aspirations.
- **Experiences:** the American hemisphere offers numerous examples of Indigenous and Tribal self-government moving toward greater self-determination. The experiences are diverse, as they depend on how each people exercises self-determination.
- **Fragmentation of the territory by State borders:** in the Americas, there are cross-border peoples and those who recognize themselves as binational. State borders hinder their relational dynamics, cultural and kinship constructions, and the recognition and guarantee of their rights.



5

Political and participatory rights



No single way of exercising the right to autonomy or self-government can be proposed

- The hemisphere's Indigenous and Tribal peoples are as diverse as their particular histories, colonization and assimilation processes, and struggles for their existence as distinct peoples.
- Their forms of relating to the States and societies in which they find themselves, as well as the legal and political contexts, also vary greatly among the countries of the region.
- It is the Indigenous and Tribal peoples who determine how to specifically exercise these rights, while it is up to the State to comply with the obligations that this entails.

Indigenous and Tribal peoples' right to autonomy or self-government is realized through their own political and legal institutions, structured and managed under their own laws.

- These are forms of political and social organization derived from customary systems, linked to a historical continuity and closely tied to their own ethnic and cultural identity.
- They are forms of resistance that each people develops to confront historical processes that threaten their existence.

The IACHR shares the understanding that there are two dimensions to the exercise of this right

- Internal dimension: This entails recognizing and maintaining their own forms of self-government and decision-making institutions. This must be done without outside interference.
- External dimension: This refers to their right to participate in dialogue with other Indigenous or Tribal peoples and with international society. It also involves their participation, through their own authorities and institutions, in State decision-making processes on matters that affect their rights.

6

Consultation and free, prior, and informed consent



The right to self-determination is closely intertwined with the right to consultation and consent.

- The right to self-determination is the fundamental premise of the right to consultation and consent.
- The State's duty to obtain consent through consultation plays a critical role in establishing respectful, relationships between States and Indigenous and Tribal peoples, and in facilitating the self-determined development of these peoples.

There is no uniform way to exercise this right

- Consultation and consent have been redefined by Indigenous and Tribal peoples themselves, based on their self-determination.
- There are numerous examples in the region of Indigenous and Tribal peoples generating their

own consultation processes, through life plans, self-consultation protocols, and their own knowledge systems, among others.

- One of the most commonly used mechanisms is for the peoples themselves to develop self-consultation protocols or autonomous community protocols for consultation and consent.

States must respect and ensure, without discrimination, the consultation and consent exercised by Indigenous and Tribal peoples, based on their self-determination.

- Otherwise, consultation may become a homogenizing mechanism that fails to reflect the cultural diversity of each context.
- The aim should not be to generate standardized processes, whether they are based on legislative measures or not, because they may tend to force all peoples into a single mold.
- Instead, it should be an ongoing intercultural dialogue between the normative systems of each Indigenous and Tribal people, national law, and IHRL.

7

Economic, social, cultural, and environmental rights

Indigenous and Tribal peoples have autonomy to decide on their health, education, and environment, among other matters, based on their own worldview, customs, and traditions. This involves two dimensions:

- **Internal dimension:** this is related to their territorial autonomy. When Indigenous and tribal peoples can access and control their lands and territories without outside interference, they can also develop self-provisioning and self-sustainability practices designed to meet their basic needs and food practices. Through their own institutions, they have the right to administer their own health, education, and housing programs, among others.
- **External dimension:** this is linked to the right to access public services provided in a culturally appropriate manner, which includes intercultural bilingual education programs, intercultural health, and others. It requires the participation of these groups in its design and implementation.

B. Approaches: the IACHR applies several approaches to understanding and implementing the right to self-determination.

- **The remedial nature of self-determination:** the full exercise of self-determination is a core element of the collective redress for the violations of Indigenous and Tribal peoples' rights.
- **Intercultural approach:** consists of recognizing the coexistence of a diversity of cultures in society, which must be based on respect for their different worldviews, human rights, and their rights as peoples.
- **Cross-cutting approach:** assumes that the right to self-determination sets the standard for how the State should guarantee all other human rights of Indigenous and Tribal peoples.
- **Gender perspective:** considers the asymmetrical power structure that assigns differential values, positions, and habits to each sex. Coupled with the intercultural approach, this approach allows for the recognition of the special position of Indigenous and Tribal women, and the adoption of culturally appropriate measures to guarantee the enjoyment of their rights and enable them to live a life free of discrimination and violence.
- **Intergenerational solidarity approach:** understood as social cohesion between generations, expressed in a strong commitment to the values and experiences transmitted through oral memory, as well as in the need to replicate this knowledge and to take care of the territory and nature, their values, assets, and knowledge, for current and future generations.



IV. BEST PRACTICES AND OBSTACLES TO THE EXERCISE OF SELF- DETERMINATION BY INDIGENOUS AND TRIBAL PEOPLES

A. Recognition in legal systems

- The States of the Americas recognize the self-determination of Indigenous and Tribal peoples to varying degrees and in different forms.
- Treaties and agreements between States and Indigenous and Tribal peoples.
- Constitutional recognition of the rights of Indigenous peoples in key aspects, such as recognition of interculturality, pluriculturality, territorial rights, autonomy, self-government, self-determination, and Indigenous systems of justice and jurisdiction.
- This demonstrates the capacity of States to formally recognize the self-determination of Indigenous and tribal peoples and/or the necessary elements for its exercise without undermining the territorial integrity of States.

B. Practices and experiences

- Various initiatives and experiences can be found throughout the Americas in terms of self-government, autonomy, own forms of law, and other expressions or manifestations of self-determination by Indigenous and Tribal peoples. Some examples include:
 - Indigenous representative institutions and Indigenous territories as political-administrative entities
 - Statutes and other regulatory instruments for self-government and territorial management
 - Formation of territorial, municipal, and other political-administrative entities based on Indigenous autonomy
 - Indigenous systems of justice and jurisdiction
 - Indigenous peoples' own environmental protection, safety, and monitoring systems
 - Autonomous consultation protocols and other consultation and consent instruments
 - COVID-19 pandemic responses and strategies

C. Obstacles to the exercise of self-determination in the Americas

- Constraints in national legal and policy frameworks regarding their identification and recognition as distinct peoples, and/or the collective dimensions of their rights.
- Barriers to the exercise of their right to elect representative authorities and interference in their own systems for electing authorities.
- Challenges in the procedures for the recognition of Indigenous autonomy and territorial entities.
- Lack of recognition, protection, and guarantee of rights to lands, territories, and natural resources.
- Limitation or non-recognition of Indigenous and Tribal peoples' own systems of justice and jurisdiction.
- Barriers to the exercise of food sovereignty and the protection of economic, social, cultural, and environmental rights.



V. RECOMMENDATIONS



Adopt the necessary measures for the recognition and operation of representative institutions of Indigenous and Tribal peoples, with prompt, simple, and effective procedures. In addition, provide the financial and other resources needed for their operation.



Foster spaces for dialogue, consensus-building, and intercultural coordination with Indigenous and Tribal peoples in order to coordinate between Indigenous and State justice systems; define development policies, plans, and programs based on Indigenous and Tribal peoples' own priorities; realize their economic, social, cultural and environmental rights (ESCER); and implement measures for climate change mitigation and COVID-19 prevention.



Adopt binational or regional measures for the joint protection of the rights of peoples divided by State borders.



Adopt, in consultation and coordination with Indigenous and Tribal peoples, the necessary measures to enable them to exercise their rights collectively, and to enforce them before State institutions.



Ensure a legal, policy, and institutional framework to guarantee the settlement of claims related to their territorial rights, and to delimit, demarcate, grant title to, and restore their lands and territories.



Implement the recommendations of the IACHR Report on Indigenous Peoples in Voluntary Isolation and Initial Contact in the Americas. Along these lines, strengthen the protection of the lands and territories of these peoples through effective regulatory and institutional frameworks and with an adequate budget, respecting the principles of no contact and precaution.



Respect the autonomous decisions of Indigenous and tribal peoples regarding their territories without interference or pressure of any kind, in particular regarding their development priorities, the use and management of their lands and resources, and measures they deem necessary for the realization of their ESCER.



Implement the right to consultation and free, prior, and informed consent from a right to self-determination approach. Respect the autonomous consultation protocols developed by the peoples and the decisions they adopt in relation to granting or withholding their consent.



Establish mechanisms for the protection of leaders and rights defenders from these peoples in situations of risk.



Mainstream gender, intercultural, and intergenerational solidarity approaches in actions aimed at implementing the recommendations in the report.



In conjunction with Indigenous and tribal peoples, adopt measures to recognize, strengthen, and promote the key role of Indigenous and Tribal women in the exercise of self-determination.



Create spaces for coordination between State justice systems and Indigenous and Tribal justice systems, incorporating a gender and intercultural perspective to enhance the judicial protection of Indigenous and tribal women.

