

## **The IACHR and the right to self-determination**

*From an intercultural perspective, the Inter-American Commission on Human Rights conducted a comprehensive paper on the various experiences of self-determination throughout the Americas. The report was based on the testimonies of leaders, the opinions of experts and questionnaires completed by indigenous and tribal peoples, civil society organizations and States. Collective and individual rights over territories, natural resources, institutions and policies depend on the effective enjoyment of their self-determination.*

**By Leonardo J. Alvarado - February 1<sup>st</sup> 2022**

The Inter-American Commission on Human Rights (IACHR) presented the thematic report [\*The right to self-determination of indigenous and tribal peoples\*](#), which is no less than its first comprehensive approach to the scope and content of this fundamental right for indigenous and tribal peoples. The work is part of the strategic plan of the Rapporteurship on the Rights of Indigenous Peoples of the IACHR with the objective of making visible practices, experiences and challenges faced by these peoples in the recognition and exercise of this collective right.

The report responds to the demands of indigenous and tribal peoples throughout the Americas who have invoked "self-determination" in defense of their ancestral lands and territories, political, cultural and other human rights. Among its conclusions, it highlights that the main problems faced by indigenous peoples lie in the need for greater respect for and effective exercise of their right to self-determination.

### **A report to rethink collective Human Rights**

The relationship between States and indigenous and tribal peoples must be based on respect and recognition of their [\*expressions of autonomy and self-determination\*](#). The unfortunate historical legacy of discrimination, racism and colonialism must be reversed in order to strengthen the

legitimacy of the State and fully inclusive democracies. Likewise, [recognition of the self-determination of indigenous and tribal peoples](#) is of particular importance to provide answers to various global problems such as the climate crisis and the Covid-19 pandemic.

The paper incorporates a cross-cultural perspective on the foundations and origins of the right to self-determination. It also analyzes the way in which self-determination is conceptualized and materialized in their own cultures, traditions, worldviews and normative systems. It also addresses particular considerations on the situation of peoples in isolation and initial contact, cross-border indigenous peoples and legal pluralism.

The report was based on legal research, as well as virtual meetings, meetings with experts and a questionnaire that was answered by States, indigenous leaders, civil society organizations and academic institutions. In this way, testimonies were gathered from all over the Americas, demonstrating the high level of interest and participation of indigenous and afro-descendant tribal peoples.

For indigenous and tribal peoples, self-determination is an inherent and pre-existing right that does not derive from national laws or international law, but rather, is an aboriginal right. Consequently, they aspire to be able to decide on their own forms of self-government and development in their ancestral lands and territories.

The report explains that since before European colonization, the indigenous peoples of the American continent, like other peoples throughout human history, developed their own structures of representation and political, social and community organization as part of their economic, social and political development. Within this framework, colonialism has posed a continuous threat to their physical and cultural survival, undermining their ability to "self-determine themselves as peoples, communities, nations and nationalities".

## **Free determination in international law**

Among the international instruments that protect this right are the [OAS American Declaration on the Rights of Indigenous Peoples](#) and the [United Nations Declaration on the Rights of Indigenous](#)

[Peoples](#). In Article 3, both declarations reflect the high degree of consensus of the international community: "Indigenous peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development". Similarly, important elements for the exercise of self-determination are present in Convention 169 of the International Labor Organization. Finally, inter-American jurisprudence has affirmed this right in relation to others such as collective property and cultural identity.

The Organization of American States (OAS) and the United Nations adopted these declarations with the favorable vote of the majority of the States of the Americas, after lengthy negotiation processes in which indigenous peoples and States participated. In this way, the States incorporated the same principle contained in Article 1 of the [International Covenant on Economic, Social and Cultural Rights](#): "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development".

Over the years, some States have expressed concern that the right to self-determination implies the creation of independent States, which would undermine territorial integrity. In this regard, the report notes that this is not the understanding at the international level, given that the United Nations and OAS declarations reaffirm the principles of territorial integrity and political unity of States.

The exercise of this right by indigenous and tribal peoples gives rise to different measures in different contexts, and therefore, the point of departure should be the aspirations of the peoples seeking recognition and protection of their rights within the framework of the States in which they find themselves. As the report explains, its content is adapted to the historical relations, political conditions and cultural transformations of each country: "The IACHR emphasizes that there is no single way of exercising the right to self-determination, and therefore the standards to which the IACHR refers should not be understood as predefined elements, much less as uniform ones."

It should be noted that the IACHR and the Inter-American Human Rights System have referred to the right to self-determination of indigenous and tribal peoples in relation to other fundamental rights: integrity; self-identification and recognition; cultural identity and non-discrimination;

collective ownership of their lands, territories and natural resources; political and participatory rights; [free, prior and informed consultation](#) and consent; and economic, social, cultural and environmental rights.

The IACHR also states that the right to self-determination must be understood from the perspective of the reparative nature of "the historical and systematic violations of the human rights of indigenous and tribal peoples". From this perspective, its objective is to provide tools to remedy the historical consequences of unequal relations between different ethnic and cultural groups during colonization. In turn, this right must be understood from a cross-cutting, gender, intergenerational solidarity and intercultural approach.

## **Experiences and challenges**

The legal and political frameworks of some States have recognized the right to self-determination and constituent elements such as autonomy, self-government, own representative institutions, legal systems and collective ownership of own lands, territories and natural resources. These experiences of recognition are very clear in countries such as Bolivia, Brazil, Colombia, Ecuador, Mexico, Nicaragua, Panama, Peru and Venezuela. There is also recognition in treaties and agreements between indigenous peoples and the governments of Canada and the United States. However, the implementation of these normative frameworks has presented several limitations.

In recent years, several experiences and initiatives developed by indigenous and tribal peoples in the exercise of their self-determination stand out: normative instruments for self-government and territorial management; life plans; the creation of territorial, municipal and other autonomous political-administrative entities; systems of traditional justice and jurisdiction; the creation of protection and security mechanisms; [autonomous protocols for consultation and consent](#); and responses and strategies in the face of Covid-19.

On the other hand, among the main challenges faced by indigenous peoples are the enforcement of their rights over their lands, territories, and natural resources, [particularly in the context of extractive activities without prior consultation or consent](#). Another challenge has to do with the limitations that arise in the recognition and exercise of their legal systems. Factors such as the

impact of climate change on food sovereignty and economic, social, cultural and environmental rights also affect the exercise of self-determination.

At the same time, they face obstacles such as the lack of respect for decision-making processes and the election of representative authorities due to interference by external actors. Finally, they are greatly affected by situations of violence and criminalization in the context of extractive activities, logging, cattle ranching, drug trafficking or armed conflict.

## **Recommendations for the exercise of self-determination**

The IACHR notes that indigenous and tribal peoples must be able to exercise their right to self-determination in a practical and effective manner within the framework of their own procedures, institutions and worldviews. To this end, spaces for intercultural dialogue and coordination with the States must be promoted on various issues: respect for their own justice and security systems; their participation in decision-making on matters of national interest; the definition of development policies, plans and programs; and measures for the effective enjoyment of the right to health and education; and mechanisms for dealing with climate change and Covid-19.

It is necessary to ensure regulatory, political and institutional frameworks that guarantee their territorial rights. In the case of peoples divided by state borders and peoples in voluntary isolation and initial contact, binational dialogue will be necessary (as is the case with the Ayoreo on the border between Bolivia and Paraguay) or regional dialogue (such as the isolated peoples living in the Amazon). In this sense, the standards of consultation and free, prior and informed consent should be understood as part of self-determination. [The IACHR recognizes the autonomous protocols developed by the indigenous peoples themselves](#) for the implementation of consultation and emphasizes that decisions on the granting or denial of consent must be respected.

The IACHR also recommends effective and accessible mechanisms for justice and reparations for human rights violations: territorial rights; aggressions, threats and assassinations – particularly, to leaders who defend the rights of their peoples. Likewise, States should adopt measures to

recognize, strengthen and promote the role of indigenous and tribal women in the exercise of the right to self-determination.

These recommendations seek to contribute to strengthening and guaranteeing the right to self-determination of indigenous and tribal peoples in the region. This is important given that the individual and collective rights of indigenous and tribal peoples are closely linked to the effective enjoyment of their lands, territories, natural resources, and their own social, cultural and political institutions.

Throughout the Americas, indigenous and tribal peoples continue to defend their rights to their ancestral lands and territories, and to determine their own destinies according to their cultures, worldviews and development priorities. This demonstrates the importance of a new relationship between peoples and States, based on respect and intercultural dialogue, to reverse the legacies of discrimination, racism and colonialism.

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