



Right to Self-Determination of Indigenous and Tribal Peoples



OAS

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The IACHR informs that the present report only includes the executive overview and during the following days the report will be available in its full version

EXECUTIVE OVERVIEW

Executive Overview

1. As part of its work to monitor and promote the human rights of indigenous and tribal peoples, the Inter-American Commission on Human Rights (IACHR) has observed that indigenous and tribal peoples throughout the Americas have invoked the right to self-determination in defense of their ancestral lands and territories, natural resources, cultures, ways of life and forms of political organization and representation, and other rights.
2. At the international level, there have been important advances in the recognition of the rights of indigenous peoples in recent decades. This includes, for example, the adoption of the American Declaration on the Rights of Indigenous Peoples of the Organization of American States (OAS) and the United Nations (UN) Declaration on the Rights of Indigenous Peoples, which recognize the right of indigenous peoples to self-determination, consisting of the right to freely determine their political status and freely pursue their economic, social and cultural development. Likewise, in more recent decades, the constitutions and legislations of several American States have given varying degrees of recognition to the rights to autonomy and self-determination. In other States, rights to autonomy, self-government and/or self-determination are contained in treaties or agreements between indigenous peoples and States from colonial times to the present.
3. Despite the recognition of this right at the international level and in some States, indigenous peoples face challenges in being able to exercise it in practice. The IACHR has observed that the human rights problems they face point to the need for greater recognition and strengthening of their right to self-determination. In recent reports and cases, the IACHR has evolved in its understanding of the connection between self-determination and other fundamental rights such as the rights to their lands, territories and natural resources, and in relation to cultural identity, due process and others. However, there is a need to consolidate the understanding of these rights from a specific focus on

the right to self-determination. Therefore, the IACHR has decided to publish this report on the right to self-determination of indigenous and tribal peoples in order to elucidate the international standards in relation to this right and its application to indigenous and tribal peoples.

4. In Chapter 2 of the Report, the IACHR addresses the discussions on the right to self-determination of indigenous and tribal peoples in international law. The chapter describes how representatives of indigenous and tribal peoples conceptualize and realize the right to self-determination. In this regard, they told the IACHR that self-determination is an inherent and pre-existing right based on their own worldviews, histories, and their own laws, and that it does not derive from national or international law, but rather is an original right. In international law on the rights of indigenous peoples, the right to self-determination is based on various international instruments. This includes through express recognition, as in the case of the American and UN Declarations on the rights of indigenous peoples. Important constitutive elements of this right are also reflected in other international treaties, such as ILO Convention 169, as well as in the doctrine and jurisprudence of the Inter-American Human Rights System.
5. The realization of the right to self-determination would give rise to different measures that take into account and harmonize the aspirations of each indigenous and tribal people within a State. They must therefore be contextualized to the particular circumstances, characteristics and aspirations of indigenous and tribal peoples. The right to self-determination must be understood as the basis for dialogue for the construction of a new relationship between these peoples and States that can lead to specific arrangements for indigenous and tribal peoples to determine their economic, social and cultural development and other aspects of self-determination. States have an obligation to bring their domestic law into conformity with Inter-American human rights standards, which implies the revision of laws, procedures and practices in order to strengthen and ensure the effective and practical enjoyment of the human rights of indigenous and tribal peoples, through respect for their right to self-determination.
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7. In Chapter 3, the Commission analyzes the standards and jurisprudence of the Inter-American Human Rights System in relation to the various constituent elements of self-determination. The IACHR emphasizes that there is no single way of exercising the right to self-determination; therefore, the standards to which the IACHR refers should not be understood as predefined elements, much less uniform ones. The

content of this right is given in its exercise and readapts to changes in historical relations, political conditions and cultural transformations. The constituent elements of self-determination discussed include: self-identification and recognition of indigenous and tribal peoples; cultural identity and non-discrimination; collective property, lands, territories and natural resources; political and participatory rights; consultation and free, prior and informed consent; and economic, social, cultural and environmental rights.

8. In the same chapter, the IACHR sets out several particular approaches by which self-determination should be understood and implemented. The reparative approach consists of recognizing that the right to self-determination is a central element of collective redress for historical and systematic violations of the human rights of indigenous and tribal peoples. The existence of specific international instruments on these peoples and the explicit affirmation of the right to self-determination implies recognition of the denial of such right of self-determination, both historical and present, and the need to remedy this denial of right. From a justice perspective, it aims to remedy the consequences of the establishment of historically unequal relations between ethno-cultural groups during colonization.
9. The intercultural approach consists of recognizing the coexistence of a diversity of cultures in society, which must coexist on a basis of respect for their different worldviews, human rights and rights as peoples. This approach may include at least two dimensions: (i) power sharing in decision-making about their own priorities for development and control over their lives, and (ii) the level of recognition of their cultural differences, without this being grounds for exclusion or discrimination.
10. The Commission also emphasizes the cross-cutting approach in the sense that the right to self-determination sets the tone for how the State should guarantee the rest of the human rights of indigenous and tribal peoples. States must therefore adopt cross-cutting measures to guarantee the right to self-determination of indigenous and tribal peoples in their legislation and State apparatus, as the starting point for guaranteeing the other rights recognized in favour of these groups in human rights treaties and instruments and in their domestic law.
11. The IACHR has also taken note that indigenous and tribal women have faced and continue to face multiple forms of discrimination based on gender, ethnicity, and poverty that exacerbate their exposure to human rights violations in different contexts. In light of this, the IACHR has noted that the gender approach, accompanied by an intercultural

approach, allows for the recognition of the special position of indigenous and tribal women, and the adoption of culturally appropriate measures that guarantee the enjoyment of their rights and fundamental freedoms.

12. On the other hand, the IACHR has also highlighted intergenerational solidarity as a necessary approach to addressing the rights of indigenous and tribal peoples, given the special importance these peoples attach to ancestors and future descendants. Such an approach is understood as social cohesion between generations, which manifests itself in a strong commitment to the values and experiences transmitted through oral memory, as well as the need to replicate such knowledge. The IACHR takes note of the information received from representatives of indigenous and tribal peoples who report on the way in which gender and intergenerational approaches have been incorporated, particularly in relation to the processes of election, composition, and work of their leadership and representative organizations.
13. Chapter 4 addresses good practices and obstacles to the exercise of self-determination by indigenous and tribal peoples. The first section presents examples in which self-determination and/or constituent elements of this right, such as autonomy, self-government, territorial rights, their own laws, and their own systems of justice and jurisdiction, have been recognized or implemented through treaties, agreements or other constructive arrangements, national constitutions and legislation, and various initiatives and programs developed by judicial entities in different States of the Americas. The second section highlights various practices and experiences of indigenous and tribal peoples in the exercise of self-determination that could serve as references and provide lessons learned for other peoples. These include: own representative institutions developed by these peoples; statutes and other normative instruments for self-government and territorial management; processes for the creation of territorial, municipal and other political and administrative entities based on indigenous autonomy; justice and jurisdiction systems; own protection and security systems; autonomous consultation protocols and other instruments of consultation and consent; and responses and strategies in the face of the COVID-19 pandemic.
14. The third section of the chapter addresses the challenges and obstacles that indigenous and tribal peoples face in exercising their self-determination. The Commission takes note of challenges presented by limitations in the national legal and policy frameworks of some States that affect the right to identification and recognition as distinct peoples, and/or collective aspects of their rights. One problem repeatedly

denounced by representatives of indigenous and tribal peoples has to do with challenges to the exercise of their right to elect truly representative authorities and interference with their own systems for electing authorities, all of which undermines the exercise of their self-government and self-determination. Similarly, information was provided on the challenges presented by the procedures for the recognition of indigenous autonomies and indigenous territorial entities in countries with advanced legal frameworks in this regard. Another important challenge is the lack of effective implementation of national legislation to guarantee the recognition, protection and guarantee of the rights to lands, territories and natural resources of indigenous and tribal peoples.

15. The Commission was also informed of the challenges posed by the non-recognition of indigenous and tribal peoples' own legal systems in some States, the lack of coordination mechanisms between the justice systems of these peoples and those of the States, as well as the various limits imposed on these systems with respect to material, personal and territorial jurisdiction, and the challenges posed by judicial review of decisions adopted by indigenous or tribal justice authorities. It also addresses the challenges related to food sovereignty and the impacts of climate change on the economic, social, cultural and environmental rights of these peoples, which also affect their ability to exercise self-determination.
16. Finally, the Commission presents a series of conclusions and recommendations addressed to States with the aim of contributing to efforts to recognize and implement the right to self-determination of indigenous and tribal peoples.
17. In the Americas, significant challenges persist in the recognition and full enjoyment of self-determination and related rights. There are significant gaps in compliance with the normative and policy frameworks favorable to the rights of these peoples in various States, as well as with international and inter-American standards on the rights of indigenous and tribal peoples.
18. Among the main problems repeatedly pointed out is the lack of respect for and recognition of indigenous and tribal peoples' representative institutions and their decision-making processes, particularly when there are economic, commercial, political, military or other interests in the lands and territories of these peoples. The main scenarios of confrontation have revolved around natural resource exploitation projects and divergent interpretations between these peoples and State authorities or other actors on the implementation of consultation and

free, prior and informed consent. It is clear that such a situation requires a rethinking of consultation and consent from an approach based on the right to self-determination of indigenous and tribal peoples. Recognition of the self-determination of these peoples must be understood as a reparative measure in the face of historical and contemporary violations of their human rights.

19. Another considerable obstacle is the situation of violence they face as a result of the presence and invasion of their lands by third parties, whether they are involved in logging, mining, cattle ranching or drug trafficking. Situations of armed conflict and their aftermath continue to be sources of serious risk and threat to the physical and cultural survival of these peoples. Likewise, situations of criminalization, stigmatization, violence, threats and death against the leadership of these peoples, and the differentiated impacts of these situations on women represent another serious obstacle to self-determination.
20. Structural inequalities in access to health, education, water and the precariousness of their food security or sovereignty in many cases have been aggravated by the COVID-19 pandemic, which has had a differentiated and disproportionate impact on these peoples, all of which also affects the exercise of self-determination.
21. The Commission formulates a series of recommendations addressed to States with the aim of contributing to efforts to recognize and implement this right. These recommendations include the adoption of measures to guarantee the right of indigenous and tribal peoples to exercise self-determination in a practical and effective manner, within the framework of their own procedures, institutions and worldviews, as well as lines of action to strengthen and guarantee the important rights or constituent elements of self-determination