



HUMAN RIGHTS AND INDIGENOUS PEOPLES' RIGHTS

This material was made possible through support provided by the Office of Inclusive Development Hub, Bureau for Inclusive Growth, Partnerships, and Innovation, U.S. Agency for International Development, under the terms of Contract No.7200AA20CA00013. The opinions expressed herein are those of the authors and do not necessarily reflect the views of the U.S. Agency for International Development.

1. Human Rights

1.1. Concept

Human rights are a set of prerogatives inherent to all people simply because they are human. These rights are based on the recognition of the inherent dignity and equality of all individuals, regardless of nationality, race, religion, gender or other characteristics. The **Universal Declaration of Human Rights** (1948) defines these rights as universal, inalienable and indivisible, establishing a fundamental framework for their protection and global promotion (Donnelly, 2003). Universality implies that all human beings have these rights without distinction, inalienability that they cannot be taken away and indivisibility that all rights are interdependent.

The Universal Declaration, adopted by the United Nations General Assembly in 1948, is a fundamental document that proclaims that "all human beings are born free and equal in dignity and rights" (United Nations, 1948). This principle of equality and dignity is the basis of all human rights and has served as a reference for the creation of numerous treaties and laws that seek to ensure these rights at the international and national levels.

1.2. Fundamental Elements

1. **Universality:** Human rights are applicable to all people without distinction. This principle ensures that all human beings enjoy the same rights and freedoms, without discrimination (Donnelly, 2003).
2. **Inalienability:** Human rights are inherent and cannot be renounced or eliminated. They are an essential part of human dignity and must be respected under all circumstances (UNESCO, 2011).
3. **Indivisibility:** All rights, whether civil, political, economic, social or cultural, are equally important and interrelated. The protection of one right may depend on the realization of others (Griffin, 2008).
4. **Interdependence:** Human rights are interconnected; the effective realization of one right may require the protection of others. This interdependence underscores the need to address rights in a holistic manner (Sen, 1999).

1.3 Scope of Application

Human rights apply at different levels:

- **Global:** Through international instruments such as the Universal Declaration of Human Rights and human rights treaties, which establish international standards for the protection of human rights (United Nations, 1948).
- **National:** Incorporated in national constitutions and laws, where each country adapts international standards to its legal and social context (Mowbray, 2004).
- **Local:** Implemented through policies and practices that ensure that human rights are respected and promoted in local communities and entities (Mowbray, 2004).

2. Rights of Indigenous Peoples and Nationalities

2.1 Territory

The concept of **territory** in the Indigenous context is broader than physical **land**. It includes:

- **Land**: Refers to the portion of land that may be owned or in use. It is a legal and physical concept that refers to the specific geographic location (Gordon, 2006).
- **Territory**: Addresses not only the land, but also the natural resources, the cultural environment and the spiritual connections that indigenous peoples maintain with their territories. This concept is crucial for cultural identity, social organization and the continuity of their traditional practices (Anaya, 2004). Territory is fundamental to the survival and well-being of indigenous peoples, providing the context for their cultural and economic practices.

2.2. Organization

Indigenous Peoples have unique forms of **organization** that reflect their value systems and social structures:

- **Councils of elders**: Elders play a key role in decision-making and in the preservation of traditions and are respected for their wisdom and experience (Martínez Cobo, 1986).
- **Community assemblies**: Decisions are made collectively, reflecting the democratic and participatory structure of many indigenous communities.
- **Inherited leadership**: many communities maintain leadership structures that are passed down from generation to generation, ensuring cultural continuity and social stability (Lopez, 2018).

2.3. Culture

Indigenous **culture** comprises essential elements that define their identity and way of life:

- **Languages**: They are fundamental to cultural identity and the transmission of knowledge. Many Indigenous languages are endangered, and their preservation is crucial for cultural diversity (López, 2018).
- **Traditions**: They include cultural practices and rituals that keep alive ancestral customs and values.
- **Art**: Artistic expressions such as music, dance and handicrafts reflect the cultural identity and creativity of Indigenous Peoples.
- **Religious practices**: spiritual beliefs and practices are central to the worldview and daily life of Indigenous Peoples (López, 2018).

2.4. Self-determination

The **right to self-determination** allows Indigenous Peoples:

- **Choice of form of government:** Establish their own forms of government and political structures, adapted to their needs and cultural values (IWGIA, 2020).
- **Natural resource management:** Controlling the use and management of natural resources within their territories, ensuring that these are used in a sustainable and beneficial manner for the community (IWGIA, 2020).
- **Participation in decisions:** Actively engaging in decision making that affects their communities, ensuring that their voices are heard and respected (IWGIA, 2020).

2.5. Consultation, Consent and Participation

These rights are crucial for the protection of indigenous peoples:

- **Consultation:** Indigenous Peoples must be consulted in a free, prior and informed manner on any measure or project that affects their territories or ways of life (ILO, 1989).
- **Consent:** Prior and informed consent is necessary for the implementation of projects that may impact indigenous communities. This ensures that their rights and welfare are considered and respected (ILO, 1989).
- **Participation:** Indigenous Peoples have the right to participate in decision-making that directly affects them, ensuring effective and equitable representation in political and administrative processes (ILO, 1989).

3. International Instruments on Indigenous Peoples

3.1. UN

The United Nations Declaration on the Rights of Indigenous Peoples (2007) establishes several fundamental rights:

- **Self-determination:** Allows Indigenous Peoples to freely determine their political status and their economic, social and cultural development (United Nations, 2007).
- **Territories and resources:** Protects rights over lands, territories and resources traditionally occupied by them and establishes the principle of prior consultation (United Nations, 2007).

The **Escazú Agreement** (2018), promoted by ECLAC, strengthens the rights of access to information, public participation and justice in environmental matters, including the participation of indigenous peoples in natural resource management (ECLAC, 2018).

3.2. ILO

ILO Convention No. 169 is the main international instrument for the protection of the rights of Indigenous Peoples, including:

- **Land rights:** Recognizes and protects the rights of ownership and possession of land traditionally occupied or used (ILO, 1989).
- **Participation in decision-making:** Establishes the right to be consulted and to participate in decision-making on matters that affect them, especially in relation to development projects and resource exploitation (ILO, 1989).

3.3. Inter-American Human Rights System

The **Inter-American System** offers protection through:

- **American Convention on Human Rights:** Establishes a framework for the protection of human rights in the Americas, including specific rights for Indigenous Peoples (OAS, 1969).
- **Jurisprudence of the Inter-American Court of Human Rights:** Recognizes ancestral land rights and the principle of prior and informed consent in relevant cases, such as the case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua (Inter-American Court of Human Rights, 2001).

Bibliographic References

Anaya, S. J. (2004). *Indigenous peoples in international law*. Oxford University Press.

ECLAC (2018). *Escazú Agreement*. Retrieved from <https://www.cepal.org/es/acuerdo-escazu> Inter-American Court.

COMPARATIVE TABLE ILO, UN, IAHRs

ASPECT	ILO	UN	SYSTEM INTERAMERICAN
Organization	Organization International Labor (ILO)	United Nations (UN)	Inter-American Human Rights System (IAHRs)
Primary Purpose	Promote decent work, labor rights and social justice at the international level.	Promote international peace and security and foster global development and human rights.	Promoting and Protecting Human Rights in Latin America and the Caribbean.
Main Human Rights Body	ILO Standards Committee	Council of Rights Human Resources UN	Inter-American Commission of Human Rights (IACHR) and Inter-American Court of Human Rights (IACHR)
Articles Land, territory and free, prior and informed consultation	<p>Article 1 of the Convention 169: "Governments shall, in consultation and cooperation with the peoples concerned, take measures to protect and preserve their rights over lands which they traditionally occupy or otherwise use, according to their customs and practices."</p> <p>Article 6 of the Convention 169: "1. Governments shall consult the peoples concerned whenever the adoption of legislative or administrative measures is envisaged, likely to affect them directly. 2. Consultations shall be carried out in good faith, through their representative institutions, for the purpose of reaching agreement or achieving consent on the proposed measures."</p>	<p>Article 28 of the Declaration Universal Declaration of Human Rights: "Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized." This article relates to access to land and territory in the context of broader human rights.</p> <p>Article 32 of the Declaration of the United Nations United on the Peoples' Rights 1. States shall consult and cooperate in good faith with indigenous peoples through their relevant representatives in all decisions affecting them, particularly with respect to the development of resources in their Territories."</p>	<p>Article 21 of the American Convention on Human Rights: "Everyone has the right to property. This right shall be protected by law, and no one shall be deprived of his property except by virtue of a judicial decision." This article protects the right to property, which includes lands and territories.</p> <p>Article 23 of the American Convention on Human Rights: "1. Indigenous peoples have the right to participate in decision-making on matters that affect them, especially with regard to free, prior, and informed consultation on development projects that may impact their lands and territories."</p>

Mechanism of Supervision	Oversight through technical committees, inspections, and the Standards Committee.	Monitoring through States reports, periodic reviews and specialized committees.	Courts and human rights committees that issue recommendations and observations.
Jurisdiction	International, with a focus on labor rights and social justice.	Global	Courts and human rights committees that issue recommendations and observations.
Mechanism of the Solution of Controversies	ILO committees of experts and tribunals that issue rulings and recommendations.	Courts and human rights committees that issue recommendations and observations.	Courts and human rights committees that issue recommendations and observations.

Right to free, prior and **informed** **consultation** and **consent**

