
SESION 2:

INTERNATIONAL INSTRUMENTS, STATE OBLIGATIONS AND THE RIGHT ON INDIGENOUS PEOPLES WITH RESPECT TO CONSULTATION.

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**The right to free, prior and informed consultation and the right to free, prior and informed consent.
Convention No. 169, concerning Indigenous and Tribal Peoples of the International Labor organization.**

State obligations

Art. 2 numeral 1

I. Governments shall assume responsibility for developing, with the participation of the peoples concerned, coordinated and systematic action with a view to protecting the rights of these peoples and ensuring respect for their integrity.

Art. 3 numeral 2

No form of force or coercion shall be used which violates the human rights and fundamental freedoms of the peoples concerned, including the rights contained in this Convention.

Rights of Indigenous Peoples

Art. 3 numeral 1

1. Indigenous and tribal peoples shall enjoy the full enjoyment of human rights and fundamental freedoms without hindrance or discrimination.

**The right to free, prior and informed consultation and the right to free, prior and informed consent.
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State obligations

Art. 6 numerals 1 and 2

1. In applying the provisions of this Convention, Governments
 - a) Consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly;
 - b) To establish means by which the peoples concerned may participate freely, at least to the same extent as other sectors of the population, and at all levels of decision-making in elective institutions and administrative and other bodies responsible for policies and programs which concern them;
2. Consultations under this Convention shall be conducted in good faith and in a manner appropriate to the circumstances, with a view to reaching agreement or consent to the proposed measures.

Rights of Indigenous Peoples

Art. 7 numerals

1. The peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands which they occupy or otherwise use, and to control, as far as possible, their own economic, social and cultural development. Furthermore, these peoples shall participate in the formulation, implementation and evaluation of national and regional development plans and programs likely to affect them directly.
2. The improvement of the living and working conditions and of the level of health and education of the peoples concerned, with their participation and cooperation, shall be a priority in the plans for the overall economic development of the regions in which they live. Special development projects for these regions shall also be designed to promote such improvement.

**The right to free, prior and informed consultation and the right to free, prior and informed consent.
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State obligations

Art. 7 numeral 3

3. Governments shall ensure that, wherever appropriate, studies are carried out, in cooperation with the peoples concerned, to assess the social, spiritual, cultural and environmental impact that planned development activities may have on these peoples.

The results of these studies should be considered as fundamental criteria for the implementation of the aforementioned activities.

4. Governments shall take measures, in cooperation with the peoples concerned, to protect and preserve the environment of the territories they inhabit.

Rights of Indigenous Peoples

Art. 15 numeral 1

1. The rights of the peoples concerned to the natural resources pertaining to their lands shall be specially protected. These rights include the right of these peoples to participate in the utilization, management and conservation of these resources.

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Convention No. 169, concerning Indigenous and Tribal Peoples of the International Labor organization.**

State obligations

Art. 15 numeral 2

2. In cases in which the State retains the ownership of mineral or sub-surface resources or rights to other resources pertaining to lands, governments shall establish or maintain procedures through which they shall consult the peoples concerned to determine whether and to what extent their interests would be prejudiced before undertaking or permitting any programmes for the exploration or exploitation of resources pertaining to their lands. The peoples concerned shall, wherever possible, participate in the benefits accruing from such activities, and shall receive fair compensation for any damage they may suffer as a result of such activities.

Art. 16 numeral 4

4. Where return is not possible, as determined by agreement or, in the absence of such agreements, through appropriate procedures, these peoples shall be provided, in all possible cases, with lands of a quality and legal status at least equal to that of the lands previously occupied by them, and which will enable them to meet their needs and ensure their future development.

Rights of Indigenous Peoples

Art. 16 numerals 1 and 2

1. Subject to the provisions of the following paragraphs of this Article, the peoples concerned shall not be removed from the lands they occupy.
2. When, exceptionally, the transfer and relocation of such peoples is deemed necessary, it shall only be carried out with their freely given and fully informed consent.

Where their consent cannot be obtained, relocation shall only take place following appropriate procedures established by national laws and regulations, including public inquiries where appropriate, in which the peoples concerned have the opportunity to be effectively represented.

5. Relocated and relocated persons should be fully compensated for any loss or damage suffered as a result of their displacement.

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State obligations

Rights of Indigenous Peoples

Art. 30 numeral 1

1. Governments shall take measures appropriate to the traditions and cultures of the peoples concerned to make known to them their rights and obligations, especially with regard to work, economic opportunities, education and health matters, social services and the rights arising from this Convention.

Art. 34

The nature and extent of the measures to be adopted to give effect to this Convention shall be determined flexibly, taking into account the conditions specific to each country

The right to free, prior and informed consultation and the right to free, prior and informed consent.

United Nations Declaration on the Rights of Indigenous Peoples

State obligations

Art. 17 numeral 2

2. States shall, in consultation and cooperation with indigenous peoples, take specific measures to p r o t e c t indigenous children from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child' s education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development, taking into account their special vulnerability and the importance of education for their empowerment.

Art. 19

States shall consult and cooperate in good faith with the indigenous peoples concerned through their representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

Rights of Indigenous Peoples

Art. 1

Indigenous peoples are entitled, as peoples or as individuals, to the full enjoyment of all human rights and fundamental freedoms recognized in the Charter of the United Nations, the Universal Declaration of Human Rights⁴ and international human rights law.

Art. 10

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned, or without prior agreement on just and fair compensation and, where possible, the option of return.

Art. 28 numeral 1.

1. Indigenous peoples have the right to redress, by means that may include restitution or, when this is not possible, just and fair compensation for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.

The right to free, prior and informed consultation and the right to free, prior and informed consent.

United Nations Declaration on the Rights of Indigenous Peoples

State obligations

Art. 30 numeral 2

2. States shall consult effectively with the indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, before using their lands or territories for military activities.

Art. 32 numerals 2 and 3

2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.
3. States shall provide effective mechanisms for fair and equitable redress for any such activities, and appropriate measures shall be taken to mitigate harmful environmental, economic, social, cultural or spiritual consequences.

Rights of Indigenous Peoples

Art. 30 numeral 1

1. Military activities shall not be carried out in the lands or territories of indigenous peoples unless justified by a relevant public interest reason or unless it has been freely agreed with the indigenous peoples concerned, or unless they have so requested.

Art. 32 numeral 1

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.

The right to free, prior and informed consultation and the right to free, prior and informed consent.

United Nations Declaration on the Rights of Indigenous Peoples

State obligations

Art. 36 numeral 1

2. States, in consultation and cooperation with indigenous peoples, shall take effective measures to facilitate the exercise and ensure the implementation of this right.

Art. 38

States, in consultation and cooperation with indigenous peoples, shall take appropriate measures, including legislative measures, to achieve the ends of this Declaration.

Rights of Indigenous Peoples

Art. 36 numeral 1

1. Indigenous peoples, in particular those divided by international borders, have the right to maintain and develop contacts, relations and cooperation, including activities of a spiritual, cultural, political, economic and social nature, with their own members, as well as with other peoples, across borders.

Art. 43

The rights recognized in this Declaration constitute the minimum standards for the survival, dignity and well-being of the world's indigenous peoples.

**The right to free, prior and informed consultation and the right to free, prior and informed consent.
American Declaration on the Rights of Indigenous Peoples**

State obligations

Art. 13 numeral 2

2. States shall provide redress through effective mechanisms, which may include restitution, established in conjunction with indigenous peoples, for cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

Art. 18 numeral 3

3. States shall take measures to prevent and prohibit indigenous peoples and individuals from being subjected to research programs, biological or medical experimentation, as well as sterilization without their free, prior and informed consent.

Likewise, indigenous peoples and individuals have the right, as the case may be, to access their own data, medical records and research documents conducted by public or private persons and institutions.

Rights of Indigenous Peoples

Art. 13 numeral 3

3. Indigenous Peoples have the right to recognition and respect for all their ways of life, worldviews, spirituality, customs, norms and traditions, forms of social, economic and political organization, forms of transmission of knowledge, institutions, practices, beliefs, values, dress and languages, recognizing their interrelationship, as set forth in this Declaration.

Art. 18 numeral 2

2. Indigenous peoples have the right to their own health systems and practices, as well as to the use and protection of plants, animals, minerals of vital interest, and other natural resources of medicinal use in their ancestral lands and territories.

The right to free, prior and informed consultation and the right to free, prior and informed consent.

American Declaration on the Rights of Indigenous Peoples

State obligations

Art. 20 numeral 4

4. States shall adopt, in consultation and cooperation with indigenous peoples, effective measures to facilitate the exercise and ensure the implementation of these rights.

Art. 23 numeral 2

2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

Rights of Indigenous Peoples

Art. 20 numerals 1 and 2

1. Indigenous peoples have the rights of association, assembly, organization, and expression, and to exercise these rights without interference and in accordance with their worldview, inter alia, their values, customs, ancestral traditions, beliefs, spirituality, and other cultural practices.
2. Indigenous peoples have the right to gather in their sacred and ceremonial sites and spaces. To this end, they shall have free access to and use thereof.

Art. 23 numeral 1

1. Indigenous peoples have the right to full and effective participation, through representatives chosen by them in accordance with their own institutions, in decision-making in matters affecting their rights and related to the development and implementation of laws, public policies, programs, plans and actions related to indigenous affairs.

**The right to free, prior and informed consultation and the right to free, prior and informed consent.
American Declaration on the Rights of Indigenous Peoples**

State obligations

Art. 28 numeral 3

3. States, with the full and effective participation of indigenous peoples, shall adopt the necessary measures so that national or international agreements and regimes provide for the recognition and adequate protection of the cultural heritage and the intellectual property associated with such heritage of indigenous peoples.

In the adoption of these measures, consultations shall be carried out in order to obtain the free, prior, and informed consent of the indigenous peoples.

Rights of Indigenous Peoples

Art. 28 numerals 1 and 2

1. Indigenous peoples have the right to full recognition and respect for the ownership, dominion, possession, control, development and protection of their tangible and intangible cultural heritage, and intellectual property, including the collective nature thereof, transmitted through the millennia, from generation to generation.
2. The collective intellectual property of indigenous peoples includes, inter alia, traditional knowledge and cultural expressions, including traditional knowledge associated with genetic resources, ancestral designs and procedures, cultural, artistic, spiritual, technological and scientific manifestations, tangible and intangible cultural heritage, as well as their own knowledge and developments related to biodiversity and the usefulness and qualities of seeds, medicinal plants, flora and fauna.

The right to free, prior and informed consultation and the right to free, prior and informed consent.

American Declaration on the Rights of Indigenous Peoples

State obligations

Rights of Indigenous Peoples

Art. 41

The rights recognized in this Declaration and the United Nations Declaration on the Rights of Indigenous Peoples constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the Americas.

**The right to free, prior and informed consultation and the right to free, prior and informed consent.
American Declaration on the Rights of Indigenous Peoples**

State obligations

Art. 1 paragraph 3...

All authorities, within the scope of their competencies, have the obligation to promote, respect, protect and guarantee human rights in accordance with the following principles universality, interdependence, indivisibility from progressiveness. Consequently, the State must prevent, investigate, punish and redress human rights violations, under the terms established by law.

Art. 133

This Constitution, the laws of the Congress of the Union emanating therefrom and all treaties in accordance therewith, entered into and to be entered into by the President of the Republic, with the approval of the Senate, shall be the Supreme Law of the entire Union. The judges of each federative entity shall abide by said Constitution, laws and treaties, notwithstanding any provisions to the contrary that may exist in the Constitutions or laws of the federative entities.

Rights of Indigenous Peoples

Art. 2 paragraph B section IX

IX. To consult indigenous peoples in the preparation of the National Development Plan and the plans of the federal entities, municipalities and, when appropriate, of the territorial districts of Mexico City and, if applicable, to incorporate the recommendations and proposals they make.

**The right to free, prior and informed consultation and the right to free, prior and informed consent.
American Declaration on the Rights of Indigenous Peoples**

State obligations

Art. 29 numeral 4

4. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

Art. 29 numeral 4

2. States shall promote, with the full and effective participation of indigenous peoples, the adoption of such legislative and other measures as may be necessary to give effect to the rights recognized in this Declaration.

Rights of Indigenous Peoples

Art. 29 numerals 1, 2 and 3

1. Indigenous peoples have the right to maintain and determine their own priorities regarding their political, economic, social and cultural development, in accordance with their own worldview. They also have the right to be guaranteed the enjoyment of their own means of subsistence and development and to engage freely in all their economic activities.
2. This right includes the elaboration of policies, plans, programs and strategies for the exercise of their right to development and implementation according to their political and social organization, norms and procedures, their own worldviews and institutions.
3. Indigenous peoples have the right to participate actively in the elaboration and determination of development programs affecting them and, as far as possible, to administer such programs through their own institutions.

