



75th Anniversary of the Universal Declaration of Human Rights: Regional Dialogue of the Americas

"Indigenous Peoples and Access to Justice"

Santiago, October 25 and 26, 2023

Concept Note

Context

According to ECLAC, It is estimated that 58 million people belonging to 800 indigenous peoples live in Latin America, representing about 10% of the total population of the region¹.

The human rights of indigenous peoples have been addressed by human rights protection systems (ILO Convention 169, UNDRIP, among others), and the jurisprudence emanating from the Inter-American System of Human Rights has been gravitating for the development of the content of their rights at the international and national levels. However, despite these developments, indigenous peoples still face challenges in exercising them in practice. In most countries, they face structural, multiple, and intersectional discrimination.

On one hand, the Office of the High Commissioner for Human Rights (OHCHR) has identified in recent decades, the intensification of conflicts around **land** involving indigenous peoples, under pressure from extractive industries and industrial-scale agriculture. The limited legal recognition by States of historically occupied territories is an obstacle to the exercise legal pluralism and the exercise of the right to self-determination. In addition, the phenomenon of **mass evictions** in rural areas that currently affect indigenous peoples.

Furthermore, there is growing **concern about cases** of threats, murders and criminalization of which human rights defenders of Indigenous Peoples who defend their land, territory and the environment are victims. There is evidence that Latin America is the region most affected by killings of defenders, especially those related to the environment.

The Inter-American Commission on Human Rights (IACHR) denounced the murder of 126 defenders in 2022 and reported that a large number of these murders were committed against indigenous, Afro-descendant, environmental and territorial defenders². OHCHR has observed that from 2015 to 2019 1,323 defenders have been killed, with Latin America constantly being the most affected region, and those who defend the environment the most attacked. One in two victims of killings in 2019 had been working on issues related to land, the environment, the impact of business activities, poverty and the rights of indigenous peoples, people of African descent and other minorities³.

In the case of Latin America and the Caribbean, the Escazú Agreement is the first legally binding instrument that contemplates the prevention and investigation of attacks against environmental defenders, and constitutes an essential instrument to face the situation that afflicts them in the

¹ Economic Commission for Latin America and the Caribbean (ECLAC) and others. In: The impact of COVID 19 on Indigenous Peoples in Latin America – Abya Yala. Between invisibility and collective resistance. Project document (LC/TS 2020/171). Santiago, ECLAC; 2020.

²<https://www.oas.org/es/CIDH/jsForm/?File=/es/cidh/prensa/comunicados/2023/026.asp>

³Last warning: human rights defenders, victims of death threats and murders. Report of the Special Rapporteur on the situation of human rights defenders, Mary Lawlor. A/HRC/46/35



exercise of their work. However, a common element in the region is the lack of investigation of these violations, limitations on due process and the prevailing impunity.

On the other hand, the mandate of the United Nations Special Rapporteur on the Rights of Indigenous Peoples⁴, in addition to obstacles to the ordinary justice system, has also noted disparities and challenges faced by indigenous peoples in the administration of justice and the recognition of customary law in national legal systems as a fundamental element for the full enjoyment of human rights by indigenous peoples.

Despite some advances such as the recognition of these systems in some countries of our region, even at the constitutional level, differences and confrontations between operators of both systems remain. Therefore, it is necessary to strengthen the recognition of the coexistence of the diversity of legal systems within the Indigenous jurisdiction, so that it can respond to their rights and needs in terms of justice, self-government and culture, particularly in countries that recognize legal pluralism: "*effective access to justice implies access both to the legal system of the State and to its own justice systems*".⁵

In this context, given the priority that indigenous peoples have for OHCHR in the region, in particular, in relation to justice and reparation for the violation of their human rights, the Office takes the opportunity of the commemoration of the 75th anniversary of the Universal Declaration of Human Rights (UDHR), to carry out an open dialogue between actors, indigenous peoples, human rights defenders, members of courts of justice and constitutional courts, to contribute to the action in the field of access to justice of indigenous peoples and its relationship with coordination between systems; conflict around lands, territories; and, the situation of defenders.

The dialogue will be organized and implemented with the support of the OHCHR Senior Indigenous Fellows Program in the region, who will also, from an intersectional perspective⁶ will address the vision of indigenous youth around issues relevant to their communities.

75 years of the Universal Declaration of Human Rights

10 December 2023 marks the 75th anniversary of the adoption of the UDHR. OHCHR reiterates the message of universality, interdependence and inalienability of human rights printed in the text. This opportunity for a renewed commitment, takes part of the plan of activities carried out at the global level⁷. This will be one of five regional dialogues mandated by the Human Rights Council to be held prior to the High-Level Event on 11-12 December 2023. This dialogue recognizes the role, perseverance and work of indigenous organizations for the implementation of the Declaration and the development of international norms and mechanisms for the protection of human rights.

⁴Ibid. p. 2.

⁵Indigenous peoples' rights and justice (2019). Op. cit. p. 4.

⁶General Recommendation No. 39 on the rights of indigenous women and girls. Committee on the Elimination of Discrimination against Women. CEDAW/C/GC/39. 2022. Available from: [CEDAW/C/GC/39: General Recommendation No. 39 \(2022\) on the rights of indigenous women and girls | OHCHR](https://www.ohchr.org/en/hrbodies/cerddocs/gar39)

⁷UDHR Initiative 75. Available in: [UDHR 75 Initiative | OHCHR](https://www.ohchr.org/en/hrbodies/cerddocs/gar39)



Objectives

General objective

- ✓ Foster the commitment of national, regional and international actors for the action to overcome the main obstacles faced by indigenous peoples in accessing justice.

Specific objectives

- ✓ Deepen and broaden dialogue and knowledge on the main measures adopted by States, good practices, coordination between systems and legal pluralism, and, in addition, on access to justice for Indigenous Peoples of the region in defence of their human rights with a focus on lands, territory and natural resources, as well as its work in defence of individual and collective rights.
- ✓ Analyse the main obstacles and critical knots that must be addressed by the Constitutional Courts, Supreme Courts of Justice and other justice operators in the path of institutional attention to the criminalization and threats against indigenous defenders, conflicts over land and territory and to improve the coordination and integration of the ordinary and indigenous justice systems.
- ✓ Advance in the construction of proposals for strategic actions that OHCHR, indigenous peoples, NHRIs, civil society, and other actors could adopt to contribute to access to justice for indigenous peoples.

Expected Results

The regional dialogue will gather the information, experience and knowledge of the participants and the meeting will be systematized in order to give continuity to the taking of the actions identified and proposed by the actors concerned, as well as provide elements for the OHCHR strategic planning for the period 2024-2027. In addition, the commitments arising from the regional dialogue will be added to the outcomes of the other regional and national dialogues, *pledges* and other activities led by OHCHR and its partners, which will contribute to the High Commissioner for Human Rights Vision Statement and the 2024 Future Summit.

Participants

The event will consist of an open dialogue aimed at actors with experience, work and knowledge in the areas identified, both from the state level, indigenous peoples and civil society organizations.

- ✓ Indigenous leaders and representatives of indigenous peoples;
- ✓ Representatives of the academy; experts; former rapporteurs of the universal and regional human rights protection systems.
- ✓ State representatives: officials of the judiciary, constitutional courts, NHRIs and other actors of the justice administration system;
- ✓ Representatives of UN Agencies
- ✓ Human rights defenders.



Format

The regional dialogue, in the framework of the 75th anniversary of the UDHR, will be held in person in Santiago de Chile and with open segments that will be broadcasted on the virtual platforms of OHCHR. There will be interpretation in English, Spanish and Portuguese.

Methodology

The regional dialogue will take place in two full days with three thematic blocks and a specific block aimed at identifying actions and commitments: 1) Legal pluralism and coordination between indigenous and ordinary systems; 2) Access to justice in relation to land, territory and resources, including evictions; 3) Situation of Indigenous defenders of the land, territory and environment.

The focus of each working group will be oriented to the concrete identification of the specific impact of the norms, regulations and decisions adopted, with examples of emblematic cases, good practices or experiences. Likewise, the approach will be oriented to the identification of lines of action, possible ways of solution and actors concerned to guarantee access to justice for Indigenous Peoples in these issues. Participants will be sent a document supporting the framing of the debate; normative reference and some elements observed in different practices.

Block I:

Integration or coordination of indigenous and ordinary justice systems, with a focus on those countries with pluralistic systems (H/HRC/15/37/Add.7, para. 9) in the region.

Block II:

Access to justice and Indigenous Peoples' rights to lands, territories and natural resources, including forced evictions.

Block III:

Access to justice in case of attacks, murders, criminalization of Indigenous defenders of the environment, lands and territories.

Block IV:

Oriented to the construction of a roadmap that identifies lines of action that provide clear guidelines to shorten the gaps faced by Indigenous Peoples in access to justice and the effective implementation of legal pluralism, focusing on the prioritized issues.