

INDIGENOUS RIGHTS IN LATIN AMERICA

Main tools and the challenges of their implementation

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RESUMEN

Este documento se basa en la presentación sobre derechos indígenas de Kelly Ulcuango para el encuentro “Transformación de los sistemas alimentarios: perspectivas de Pueblos y Naciones de las Américas” llevado a cabo en Yunguilla, Ecuador, con la participación de representantes de pueblos y naciones indígenas de las Américas. Se abordan los derechos indígenas en América Latina, logrados a través de procesos históricos de lucha, y sus dimensiones política, territorial-medioambiental, jurídica, económica, sociocultural y participativa. En este marco, se exponen instrumentos internacionales clave, como el Convenio 169 de la OIT y la Declaración de la ONU sobre los derechos de los pueblos indígenas, ambos instrumentos enfatizan el derecho a la consulta y al consentimiento libre, previo e informado para la ejecución de intervenciones que afecten a áreas y comunidades indígenas. No obstante, la implementación de estos derechos enfrenta desafíos significativos en cuanto a barreras administrativas, inacción estatal y falta de mecanismos de control internacionales específicos. Ejemplos de Ecuador ilustran estas dificultades, como se evidencia en la ausencia de políticas destinadas a posibilitar la titulación de territorios ancestrales, pese al carácter constitucional de este derecho. En última instancia, se mantiene que el logro de estos derechos requiere de constante lucha y acción colectiva.

Palabras clave: América Latina, derechos indígenas, Ecuador, pueblos indígenas, naciones indígenas

ABSTRACT

This document is based on Kelly Ulcuango's presentation on indigenous rights for the meeting “Transformation of food systems: perspectives of indigenous peoples and nations of the Americas” held in Yunguilla, Ecuador, with the participation of representatives of indigenous peoples and nations of the Americas. It addresses indigenous rights in Latin America, achieved through historical processes of struggle, and their political, territorial-environmental, legal, economic, sociocultural, and participatory dimensions. In this context, key international instruments are presented, such as ILO Convention 169 and the UN Declaration on the Rights of Indigenous Peoples, both of which emphasize the right to consultation and free, prior, and informed consent for the implementation of interventions that affect indigenous areas and communities. However, the implementation of these rights faces significant challenges in terms of administrative barriers, state inaction, and a lack of specific international control mechanisms. Examples from Ecuador illustrate these difficulties, as evidenced by the absence of policies aimed at enabling the titling of ancestral territories, despite the constitutional nature of this right. Ultimately, it is maintained that the achievement of these rights requires constant struggle and collective action.

Keywords: Latin America, indigenous rights, Ecuador, indigenous peoples, indigenous nations.

INTRODUCTION

At the end of May 2024, the meeting "Transforming Food Systems: Perspectives of Peoples and Nations of the Americas", organized by the International Development Research Centre (IDRC) and Rimisp - Latin American Center for Rural Development, took place in Yunguilla, Ecuador. This meeting was attended by representatives of ten indigenous peoples and nations, from Canada to the Peruvian Amazon, to discuss and share knowledge and experiences on the transformation of indigenous food systems in the continent.

At this meeting, Kelly Ulcuango gave a presentation on the legislative context of indigenous rights in Latin America as representative of the Cayambe people of Ecuador and director and professor of the Agroecology and Food Sovereignty program at the Intercultural University of Indigenous Nationalities and Peoples Amawtay Wasi.

In her presentation, Kelly Ulcuango points out that, although there is an international framework and binding instruments on indigenous peoples' rights, their implementation has been inconsistent in the countries of the region. Such is the case in Ecuador, where legal and administrative barriers, as well as state inaction and lack of enforcement mechanisms hinder the effective guarantee and protection of these rights.

The objective of this document is to present the legislative context of indigenous peoples' rights in Latin America. To this end, it addresses the main international instruments that protect them, as well as the challenges in their implementation. Some concrete cases are exemplified in order to highlight the importance of the collective and persistent defence of these rights for the preservation of indigenous cultures and territories in the region.

The text is adapted from Kelly Ulcuango's presentation and is narrated in the first person. In this way, it is possible to appreciate the emphasis and the way in which she pedagogically explains the legislative context of indigenous rights and their exercise as a permanent struggle of the indigenous peoples of the region.

INDIGENOUS RIGHTS IN LATIN AMERICA

1. Legislative Context of Indigenous Rights in Latin America

Thirty-four years after the first indigenous uprising in 1990 in Ecuador, I would like to begin by emphasizing that, in all the countries where indigenous peoples are present, all the rights that we now have in our territories have been achieved through millenary struggles. No right has been given as a gift. It is true that they have been valued, but only from collective struggles. Therefore, it is important that we all embrace the fire that has been lit during this meeting, because it is the sacred fire of the memory of our grandfathers and grandmothers.

Behind that fire there are many stories, such as the strength of our indigenous food systems that

exists in every people and nation.

1.1. Main Areas and Mechanisms of Indigenous Rights

When talking about indigenous rights it is important to ask ourselves a first question, what are the collective rights of indigenous peoples? We all have our own ways of living, which we express when we are in our homes, communities, neighbourhoods and cities. Customs that appear, for example, in food, parties, work and the way we organize ourselves. These ways of living are part of our identity. But we do not all live in the same way, our countries are diverse because there is a wide range of cultures and ways of life.

Faced with this great cultural diversity, we must ask ourselves what would happen if we stopped practicing our customs and ways of life? In time they would surely disappear. The same would happen to indigenous peoples, which would jeopardize their very existence. Thus, in order to guarantee and protect our ways of life, there are collective rights of indigenous or original peoples. These rights can be classified into at least five dimensions (Figure 1).

Figure 1. Dimensions that Integrate Indigenous Rights



First, the political dimension, which requires the protection of self-government rights, forms of governance, autonomies, their own decision-making systems and, in addition, the existence of political organizations specific to each people, outside the traditional political parties.

The territorial-environmental dimension is related to the rights to collective land ownership, the preservation of our ecosystems, the protection of our natural resources, the delimitation and titling of our territories, the safeguarding of a healthy environment and the mitigation of the effects of climate change.

Thirdly, within the legal dimension, there is respect for our own autonomous law, that is, the

justice systems of each people. In Ecuador we call it indigenous justice. This refers to internal conflict resolution mechanisms, traditional judicial authorities, collective legal personality, in short, access to their own justice.

Then, we have the economic and socio-cultural dimension, which is related to the right to the preservation of our tangible and intangible cultural heritage, to the preservation of our identity and the protection of our knowledge and traditions. This dimension includes our collective intellectual property rights, our bilingual and intercultural education, as well as intercultural health. Also, traditional livelihood systems and means of subsistence, our own models of entrepreneurship, *randi randi* (as we call reciprocity in my village) and technology and the satisfaction of basic material and human needs.

Finally, we also have the participatory dimension, which we can associate with the right to consultation and the right to free, prior and informed consent, which has undoubtedly been the most important and discussed right that has been studied. Consultation has become one of the most transcendental elements in the particular relationship between governments and indigenous organizations. Consultation signals a path of dialogue, promotes constructive agreement and consensus in the face of the dominant imposition of governments and States.

1.2. Convention 169 of the International Labour Organization on Indigenous and Tribal Peoples

The international law of indigenous peoples falls within the framework of international human rights law. One of the instruments of international law on indigenous rights is Convention 169 of the International Labour Organization (ILO) on Indigenous and Tribal Peoples, which was adopted in 1989 by the ILO General Conference in Geneva. This Convention is currently the international treaty of reference on indigenous peoples. It includes collective rights of great importance for everything related to the protection of territories and the fight against climate change.

It should be noted that there were no indigenous people at this conference, since the agreement was only for employers and workers. However, among the workers, who did have a voice at the conference, were the trade unionists, who channelled the voice of the indigenous peoples. During the conference, but outside the conference hall, a group of indigenous people from Ecuador and other countries were present and were consulted by the trade unionists about what should be included in the agreement.

Convention 169 uses the term territory in conjunction with land. The term territory reflects a global conception of the relationship that unites us indigenous peoples with our natural environment, based on cosmovisions and also framed in the spiritual relationship we have with Mother Nature or Pachamama. This means that territories for indigenous peoples are something that goes far beyond a simple space with resources to explore.

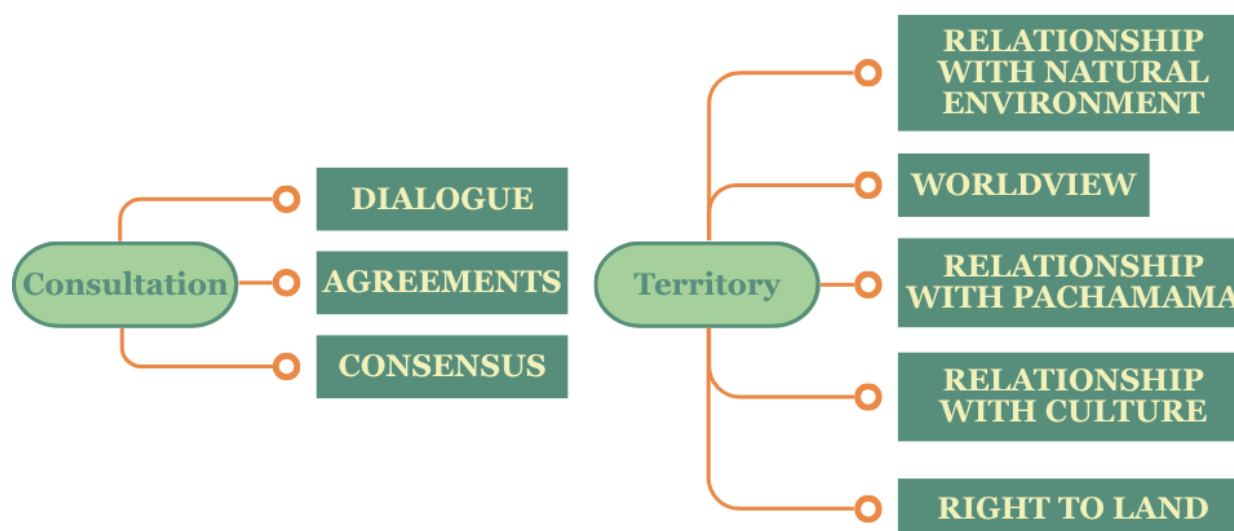
As such, to speak of territories instead of lands means to overcome the capitalist conception of enjoyment, of extractivism, of usufruct, of economic exploitation, since territory is related to our

different elements, which are water, forests, marine resources, fishing resources, natural resources, even subsoil resources, and also to the culture of indigenous peoples. The culture of an indigenous people cannot be understood without the attachment to its territory, so its protection is a condition for the protection of our collective identity.

In addition, Convention 169 also recognizes the rights of ownership and possession of the lands that we indigenous peoples have historically occupied, although we have not occupied them permanently, and on which lands traditional and subsistence activities have been carried out. The convention also establishes that the rights of the peoples concerned to natural resources must be protected, ensuring the right to participate in the use, administration and conservation of such resources. Thus, if possession of these resources is vested in the State, the indigenous peoples who inhabit those lands must first be consulted on the use and treatment of the resources in question.

In this way, Convention 169 articulates elements of two key dimensions of indigenous rights, which relate to consultation and territory (Figure 2).

Figure 2. Key Elements of Dimensions Integrating Indigenous Rights



1.3. United Nations Declaration on the Rights of Indigenous Peoples

Another important instrument is the United Nations Declaration on the Rights of Indigenous Peoples, which was adopted by the General Assembly in 2007. This instrument includes the principles of equality and non-discrimination, while incorporating new provisions related to collective rights, such as, for example, recognition of the importance of indigenous cultures and their diversity.

The Declaration also advances the conviction that control by indigenous peoples over events affecting them and over their lands, territories and resources will enable them to strengthen their institutions, cultures and traditions and promote their development in accordance with their aspirations and needs. It also emphasizes the demilitarization of indigenous lands and territories,

which is not happening. This right is also being violated, at least here in Ecuador and Latin America, in the Amazon and in territories where there are mineral resources.

The Declaration also recognizes the right of peoples to self-determination, enabling them to freely determine their political status and freely pursue their economic, social and cultural development. It is worth mentioning that the United Nations declaration recognizes the right of indigenous peoples to determine our own identity or membership in accordance with our customs and traditions, and to determine the structures and choose the composition of our institutions in accordance with our own procedures. It recognizes the right of indigenous peoples to promote, develop and maintain our institutional structures, including our legal systems, which is also in line with what is mentioned in Convention 169.

The UN declaration also talks about the right to consultation and the right to free, prior and informed consent, also mentioned in Convention 169.

The right to free, prior and informed consent has arisen after the development of the right to consultation, in order to guarantee that projects executed by private companies or by States in ancestral territories have, prior to their execution, the consent of the indigenous peoples, the original inhabitants of those territories. It arose to ensure that the indigenous peoples are always taken into account and consulted, having the ultimate capacity to decide on the matter. However, this is not happening in Ecuador and many Latin American countries.

There can be no self-determination and free development if, for the sake of economic or commercial interests, decisions regarding when, where and how to exploit natural resources in indigenous territories continue to be made without the consent of the people most directly affected. People who on many occasions have been evicted from their traditional territories have lost the right of access to the land, which, as we have seen, has special cultural and symbolic significance, or have been victims of the implementation of development projects alien to their collective will.

2. Updating International Legislation and Challenges in the Implementation of Indigenous Rights

Faced with this scenario of rights won at (the) international level, how do we protect the rights of indigenous peoples? To date, no mechanisms have been created to monitor compliance with the obligations of States that are specifically designed to protect the rights of indigenous peoples. That is to say, there is no international court for indigenous peoples or any similar instance. Of course, there is legislation and instruments, such as Convention 169, the United Nations declaration and others, but there is no one in charge of this oversight, who can verify that the commitments signed by the States are actually being complied with.

Convention 169 is the only binding international instrument that does not incorporate any specific control mechanism for the obligations that the States have assumed by ratifying it, although it does have general mechanisms, but this is the case for all conventions. Nor does the United

Nations declaration provide for autonomous protection mechanisms or the establishment of monitoring bodies.

Within the framework of the special procedures foreseen in the mechanisms for monitoring the norms of the Convention, some complaints have been received against States such as Colombia, Denmark, Peru, Mexico, and also Ecuador, because the State has not complied with the provisions of Convention 169.

Here in Ecuador, the titling of ancestral territories is a constitutional right of the indigenous communities, peoples and nationalities. However, in practice this right has been denied by the Ecuadorian State. Its implementation faces legal and administrative obstacles, which is why we have demanded from the governments in power that indigenous ancestral territories be recognized and titled as a fundamental step to protect rights and guarantee the conservation of the environment. The lack of titling of ancestral lands has generated social and environmental conflicts, endangering biodiversity conservation.

In Ecuador there is no public policy that provides any mechanism for indigenous peoples and nationalities to obtain titles to our ancestral territories, which are usually found within the famous national systems of protected areas and national forest patrimony. Ancestral territories are collective living spaces, where indigenous communities, peoples and nationalities exercise our authority, manifest our identity and preserve our culture according to our cosmovision.

I give these examples to explain the limits of our rights at local level. Therefore, and using Ecuador as an example, I would like to point out that in order to apply the 21 collective rights² (see Figure 3), we must first consolidate ourselves as collective subjects of rights that fight for those 21 rights. The main collective rights are the right to Territory, understood as physical and spiritual territoriality; the different forms of government in the peoples; cultural identity in accordance with our connection with Mother Earth; historical memory that must not disappear; the right to our own education; the right to indigenous justice and the right to food sovereignty. Achieving them is a collective task, we cannot pursue them individually. This is our struggle, and the one we share with the indigenous peoples of the region.

² The 21 collective rights of Ecuador's indigenous peoples are a set of rights that protect their identity, territory, environment, and natural resources, among other aspects. These rights are recognized in the Constitution of Ecuador and seek to guarantee their autonomy and self-determination.

Figure 3. 21 Indigenous Rights in Ecuador

- 1** **Right to Prior and Informed Consultation**
This right guarantees the participation of indigenous peoples in decisions that may affect them
- 2** **Right to Land and Territory**
This right ensures ownership, use, and access to their ancestral territories
- 3** **Right to Self-Determination**
Indigenous peoples have the right to decide on their own affairs, including political, economic, and cultural organization
- 4** **Right to Cultural Identity**
This right protects their languages, traditions, customs, and forms of social organization
- 5** **Right to Development**
Indigenous peoples have the right to sustainable development that respects their culture and environment
- 6** **Right to Intercultural Bilingual Education**
This right guarantees education in their own language and culture
- 7** **Right to Health**
This right includes access to traditional and modern health care, according to their needs
- 8** **Right to Food**
This right guarantees access to healthy and nutritious food
- 9** **Right to Decent Housing**
This right ensures access to adequate housing
- 10** **Right to Water**
This right guarantees access to drinking water and sufficient quantities for their needs
- 11** **Right to Political Participation**
This right guarantees the participation of indigenous peoples in the political life of the country

12

Right to Justice

This right includes access to indigenous justice and state justice

13

Right to Information

This right guarantees access to information relevant to their affairs

14

Right to Communication

This right guarantees access to the media and the dissemination of their messages

15

Right to Physical and Psychological Integrity

This right protects indigenous peoples from violence and abuse

16

Right to Freedom of Conscience, Religion, and Culture

This right guarantees freedom of expression and thought

17

Right to Protection of Nature

This right protects the environment and natural resources of their territory

18

Right to Ancestral Knowledge

This right protects their traditional knowledge, wisdom, and practices

19

Right to Collective Intellectual Property

This right protects their traditional knowledge, wisdom, and practices

20

Right to Equality

This right guarantees equal rights and opportunities with the rest of the population

21

Right to Protection of Cultural Diversity

This right protects the diversity of cultures and languages in the country



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