

**Report**

**Indigenous Peoples' Rights to Autonomy and Self-Government as a Manifestation of  
The Right To Self-Determination**

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and Self-Government as a Manifestation of The Right To Self-Determination"

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## Introduction

The right to self-determination of peoples occupies a preponderant place in the international law of human rights, which is evidenced by its recognition as a fundamental right in all human rights instruments<sup>1</sup> and even in the Charter of the United Nations (O'Connor, Donnell, 2007: 855). There is a clear consensus that self-determination is a fundamental principle of the international legal order (Anaya, 2005: 136). However, its interpretation and implementation has been one of the most controversial issues in international law, especially when it concerns its exercise by Indigenous Peoples, who have articulated their demands based on the right to self-determination.

Article 3 of the United Nations Declaration on the Rights of Indigenous Peoples, adopted in 2007, enshrines the right to self-determination. This is considered a fundamental right of indigenous peoples, on the basis of which their right to freely determine their political status and to pursue their economic, social and cultural development is established. The Declaration includes various articles related to the right to self-determination. In particular, Article 4 establishes the right of indigenous peoples to autonomy or self-government in matters related to their internal and local affairs, as well as the right to have the means to finance their autonomous functions. Additionally, articles 5, 8, 20 and 34 establish the right to preserve, strengthen and develop their own institutions for decision-making and their own legal, economic, cultural and social systems.

Although autonomy is not specifically defined in the Declaration, a significant number of indigenous peoples have established autonomous systems within the States. Today there are different experiences of autonomy; self-government in Greenland, self-declared Wampi autonomous region in Peru, Saami Parliaments in Norway, Sweden and Finland, self-determination of federally recognized Indian tribes in the US, among others. Some of these are recent and others were established a long time ago, as is the case of regional autonomies in Russia (Soviet Union).

The right to autonomy has had an important normative development in the case of Latin America. There are Political Constitutions that expressly recognize the right of these peoples to self-determination (Mexico, 2001, and Bolivia, 2009). Others recognize special political autonomy rights for Indigenous Peoples and other ethnic groups, such as Nicaragua (1987), Colombia (1991), Ecuador (1998 and 2008), Mexico (2001) and Bolivia (2009).

Numerous legislations have been drafted in the development of this right. These include the Statute on Autonomy of the Atlantic Coast Regions (Law No. 28 of 1987) in Nicaragua; the Framework Law on Autonomies (No. 031) of 2010 in Bolivia; the laws that have strengthened indigenous reservations as autonomous figures in Colombia (Law 715 of 2001, referring to the participation of reserves in public revenues). In the case of Colombia, the jurisprudence of the Constitutional Court also deserves to be highlighted, as it has reaffirmed the autonomous nature of the reservations and their protection from State incursions. This also includes the legislation of Panama, which since the 1950s has established five indigenous districts, with significant levels of autonomy.

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<sup>1</sup> Article 1 of the International Covenants on Civil and Political Rights, and on Economic, Social and Cultural Rights.

For decades, in the discussions and analyzes around autonomy and self-government, indigenous peoples have not had the opportunity to exchange experiences and discuss options, obstacles and challenges. Very often, indigenous peoples are limited to learning from their own national and / or regional environment without taking advantage of the experiences of indigenous peoples from other countries, legal and political traditions and demographic realities. This explains the importance of holding a contemporaneous debate on the exercise of indigenous peoples to self-determination.

To address these issues, the International Seminar "Right to Autonomy and Indigenous Self-Government as a manifestation of the Right to Self-Determination of Indigenous Peoples" was held on March 11, 12 and 13, 2019 at the headquarters of the Secretariat of Foreign Relations of Mexico in Mexico City, Mexico.

The Seminar was organized by the Inter-American Commission on Human Rights, the United Nations Special Rapporteurship for the Rights of Indigenous Peoples, the Permanent Forum of the United Nations for Indigenous Issues, the United Nations Expert Mechanism for the Rights of Indigenous People, and the International Working Group on Indigenous Affairs (IWGIA), in collaboration with the Office of the United Nations High Commissioner for Human Rights. The National Institute of Indigenous Peoples of Mexico participated as a host institution.

The objective of the Seminar was to share and analyze experiences among indigenous peoples and regions on the recognition and exercise of autonomy and self-government as a manifestation of the right to self-determination. Along with the above, it had the following specific objectives:

- To value and promote the generation of networks and the exchange of knowledge among the attendees, especially among the members of the various indigenous peoples and their groups of origin;
- To analyze the political legal context in which the demand and the exercise of the right to autonomy and self-government of indigenous peoples is developed, examining the ways in which contemporary States have responded to them; and
- To identify the main processes, models and achievements in indigenous autonomy and self-government, as well as the critical difficulties and challenges that exist.

Representatives of indigenous peoples from different regions, members of international mechanisms for the protection of the rights of indigenous peoples, experts, non-governmental organizations, as well as academic institutions attended the Seminar.

The seminar was held over three days, divided into thematic tables. The last half-day was devoted to discussing conclusions and drafting recommendations to advance a joint strategy for an effective implementation of the right to self-determination of indigenous peoples.

This document summarizes the main findings, discussions and conclusions that were addressed over the course of the Seminar.

## **Thematic Sessions**

### ***Overview of the international legal framework of the right to autonomy and its application***

A brief overview of the international legal framework that relates to the right to autonomy and self-determination was presented to participants at the outset of the seminar. It was reiterated that the UN Charter, the ICCPR, as well as the ICESCR, founding documents of international human rights law, all affirmed the primacy of the right to self-determination. Indigenous peoples were not there when these were drafted, they were not engaged directly nor did they pressure States specifically to adopt these dispositions, and nonetheless States chose to give themselves these important mandates. A large number of States have also ratified the UNDRIP, recognizing the specific rights of indigenous peoples. Although the Declaration is not customary international law, some of its articles are peremptory norms of international law.

These documents recognize the right of indigenous peoples to self-determination, although they have included an exception: that “nothing in these paragraphs shall be construed as authorizing any action which would dismember territorial unity or integrity of sovereign States.” The speakers underscored that where States do not respect equal rights and the right to self-determination of indigenous peoples, they cannot argue their reciprocal right to be protected from dismemberment of territorial unity or integrity or sovereign States.

The presentations made by the UN Special Rapporteur, and the CIDH Special Rapporteur highlighted the existence of various different models of autonomy, as well as a broad diversity in levels of recognition of indigenous peoples rights and of incorporation in State structure. They found that domestic laws recognizing autonomous models tended to undermine indigenous autonomy and control over their jurisdiction, in addition to being poorly and insufficiently implemented. Of particular concern was the financial dependency of indigenous autonomous models to state funding and resource allocation. The presentations also brought up internal governance issues within indigenous autonomies, which called for mechanisms for accountability of both autonomous authorities and structures. Access to land and resources was also central to an effective autonomy and self-government, according to Special Rapporteur Victoria Taulí-Corpuz, who stated: “the right to self-government finds concrete expression in how indigenous peoples are able to truly decide on their own priorities with regard to the use and management of their lands, territories and resources.”

Finally, both Rapporteurs also insisted on some common challenges faced by these various models of autonomy, which are currently confronted to, and undermined by, opposition by governments, international trade agreements, strong pressures from the private sector and corporations, inordinate amounts of violence against indigenous leaders, interference by evangelical churches, as well as by the traffic of persons and of illicit drugs. They are also affected by hate speech in the media, and by the political interference of some NGOs. Indeed, Antonia Urrejola, the Rapporteur on the Rights of Indigenous Peoples of the Inter-American Commission on Human Rights, informed participants of her preoccupation with what she qualified as the “current context of regression in relation to indigenous people’s

rights”, and highlighted various examples of hard fought rights that were being rolled back, bills introduced to debilitate rights, weakened public policies or preoccupying budget reductions.

### ***Fundamental elements of autonomy and self-government***

The right to autonomy and self-determination of indigenous peoples, their members and communities implies the exercise of other rights, such as the right to self-government, to cultural integrity, to the integrity of their territories, to the protection of their habitat, to establish their priorities in matters of development, as well as the right to prior, free and informed consent, among others. As such, a determination of which are the fundamental elements that allow the exercise of autonomy and these rights can only be understood in relation to the processes of the peoples themselves.

The session presented the regional experience of Greenland (Denmark), the Kuna People (Panama) and Wampi People (Peru), and the debate focused on the pre-eminence of control over lands and natural resources as a condition for the exercise of autonomy and the development of a their own political project. In line with the above, different dimensions of autonomy were identified, such as economic, social, cultural and political, and the role played by autonomous institutions in each of these was analyzed. Regarding the economic dimension, the participants discussed indigenous peoples' capacities to develop their own economic systems that include, among other issues, the establishment of direct economic relations with other peoples and nations, mechanisms of administration and budgetary control, models of natural resource management, business development, as well as transport and supplies self-managed by the indigenous peoples themselves. Regarding the cultural dimension, the importance of practices aimed at maintaining and developing cultural identities was highlighted, through robust projects, for example, intercultural bilingual education.

Panelists highlighted the importance of considering the context of globalization and climate change as paradigms that imply new challenges for indigenous autonomies, such as the definition of security policies and prevention of impacts, protection and sustainable management of natural resources, etc. In this regard, the capacity of indigenous peoples to relate to the global world and their current challenges was discussed, for which it is necessary to control international relations and, at the same time, adopt social policies that strengthen indigenous structures.

### ***Recognition and incorporation of indigenous autonomy in national legal framework***

There is an impressive diversity of existing models of autonomy and self-government, as well as a broad diversity of State structures aimed at the recognition and implementation of indigenous self-governing structures. This panel discussed the various self-government initiatives that have been undertaken in Mexico, Bolivia, Norway, Colombia, and their recognition and incorporation within State structures. It highlighted that despite great advances, indigenous models of autonomy continue to face internal difficulties, a lack of recognition by State institutions, and at times, their outright opposition.

In Mexico, indigenous communities such as those of Cherán, Ayutla de Los Libres, San Andrés Totoltepec Tlalpan, or Capulálpam de Méndez have successfully been fighting, despite considerable State opposition, for their right to elect their own authorities in accordance with their own procedures, to implement their own legal systems, and their right to political participation. In Bolivia, the Guaraní are successfully exercising their self-determination on portions of their territories in a *Native Peasant Indigenous Autonomy* model, as provided for in the domestic legal framework. Difficulties in implementation have arisen as a result of the diversity of non-Guaraní communities under their management and control, and because of the need to find ways to adapt the current governmental structure to the Guaraní system of collective decision-making or captancies. In the case of the Sámi of Norway, the Parliament structure straddles four countries, and although it does not recognize Sámi land ownership, it does give the Sámi the right to cultural and political self-determination on their traditional lands, decision-making authority, as well as the right to consultation. In Colombia, the Emberá Cristianía indigenous Reserve has been exercising administrative, legislative, judicial and political autonomy over portions of its ancestral lands for over 40 years, and runs its own education, sanitation and health systems. However, Emberá communities have faced complex challenges related to corruption, insufficient understanding by their people of the State's administrative system, and town councils cutting off resources being directed at the traditional authorities. Indigenous communities in Colombia are also particularly preoccupied with the lack of implementation of the Ethnic chapter of the Peace Agreements, which should have allowed communities to establish their own justice systems to deal with the consequences of the armed conflict.

The panel also discussed a number of issues such as the difference between territorial autonomy and functional autonomy; recognition of indigenous autonomy in the Constitution; establishing indigenous autonomy with or without national legal recognition.

One theme that this and other panels returned to was the importance of involving all members of the community in the autonomous process and to establish a common platform prior to starting negotiations with the State. Another important theme was that indigenous peoples ought to do things from their own perspectives and with the resources available to them. As expressed by one speaker "legitimacy should be established before legality". There was also a discussion on the role of customary laws, their importance to indigenous autonomy, as well as how they may constitute a challenge to a modern indigenous autonomy.

### *Autonomies in contexts of absence of state recognition of the rights of indigenous peoples*

The panel presented the cases of the Naga peoples in India and Laikipia Maasai in Kenya, with emphasis on the weak institutional framework supporting their rights as indigenous peoples. In the case of the Maasai, the speaker discussed some progress made, such as the approval of the Community Land Act, which allows land registration by Maasai owners and the control of their natural resources. In this regard, some problems were presented,

such as those related to the conservation and management of the fauna, the presence of third parties in their territories and the high costs for Maasai land-owners to register the lands pursuant to the Act. In the case of the Naga in India, the consequences of the armed conflict and the militarization of the territory were analyzed in response to the plebiscite for the independence of the Naga (May 16, 1951). From a historical perspective, the speaker evaluated the implications of its incorporation into the new State of India in 1947, without the recognition of its right to autonomy in the new State Constitution.

In the discussions, the influence of historical processes on the implementation of indigenous autonomies was analyzed. The participants also mentioned the risks to territorial integrity that result from “eminent domain laws” - laws that allow land expropriation for reasons of public utility - which are present in common law countries. They also reflected on the need to initiate processes of reconciliation and historical reconstruction, which allow to strengthen and defend the democratic principles as fundamental bases within the autonomies and their relationship with the rest of society and other States. The need to reflect on the limits of the right to self-determination and, in particular, cultural integrity, when it contravenes the legal framework of human rights was also examined.

### ***Autonomy in context of regression and the protection of indigenous people’s rights***

In this panel, participants spoke of the length and human cost of their fights for their right to autonomy and to govern their lands, territories and natural resources. In the Philippines, they brought up the difficulties encountered when government administration changed and were no longer favourable to indigenous people’s rights, stalling the entire process of recognition and implementation of these rights. In Nicaragua, the excellent legislation and institutional structure supporting indigenous autonomous governments, and the major difficulties they faced in their implementation were underlined. They addressed issues of lack of political will by government representatives to collaborate with indigenous autonomous institutions, the encroachment of national political parties in traditional indigenous elections, the establishment of illegitimate representative bodies other than their own legitimate institutions, and a general lack of good faith participation. Several speakers also highlighted that setting up their own political parties independent of national parties represented a successful solution to the bad faith intervention of political parties in their internal affairs.

They also brought up the failure of many States to comply with the rulings issued by the Inter-American Court of Human Rights and the African Commission on Human and Peoples Rights on cases related to land remediation, or to protect indigenous peoples from violence, displacements and disappearances on their lands and territories. In Russia, despite strong legal framework recognizing the right to self-determination, the new administration has rolled back on rights, on the discourse surrounding the right to self-determination, and has increased control on indigenous authorities.

Many of these experiences highlighted how strong legal frameworks were not a guarantee of their proper respect and implementation, and that the exercise of autonomy was a more effective means to truly achieve self-determination.

### ***State responses and other relevant actors in the demands of autonomy and self-government of indigenous peoples***

The panel discussed the role of the State and other relevant actors in the processes of autonomy and their implementation, highlighting the need to strengthen internal processes and autonomous institutions to face the challenges related to the relationship with the State and third parties. In this way, participants discussed the active or passive role that indigenous peoples should take on.

Different types of actors that could be identified by their motivations or interests were mentioned, as well as their differentiated impacts on indigenous autonomies. These were the following; national or transnational companies, political parties, organized crime, media, dominant groups in situations of mobility, international law organizations, human rights organizations, media outlets, among others.

The case of the indigenous peoples in Nepal was presented. The challenges of the negotiation process were discussed, and how it resulted in the signing of an Agreement between the indigenous peoples and the State of Nepal. Speakers insisted on the importance of the recognition of autonomy for the emancipation of indigenous peoples, and to fight against the discrimination and racism generated by the caste system prevailing in India and Nepal.

The following speaker presented the model of autonomy of Nunavut in Canada, highlighting the experience of implementation of a decentralized system of self-government as a result of a territorial claim agreement, and the difficulties encountered in its execution, such as the lack of Inuit representation in public offices, such as in the managerial positions of the government administration. The final speaker highlighted the case of the Saami in Finland, and presented on the Convention for the recognition of the right to self-determination which was negotiated with the Nordic governments, as well as some problems that arose with the interpretation of certain terms it contained, which were not always aligned with the words and meaning of the UNDRIP.

### ***Making agreements with States: negotiating autonomy***

Negotiating with States is in no way a requirement for indigenous autonomy. At times and for some indigenous communities, the thought of negotiating with a State who has been overtly hostile to indigenous communities may simply not be desirable or feasible. Some indigenous communities have however had some positive outcomes as a result of negotiations. They recognized that States generally struggle with the idea of fully recognizing the rights to lands and natural resources to indigenous peoples, and often drag out these processes. However, in other cases indigenous peoples have dragged out the negotiations as long as the State was unwilling to recognize key demands. As such, speakers were adamant about the importance of setting up the proper context to begin negotiations, from a standpoint of strength. Communities that were successful in their negotiations usually had a strong argument to make, either related to ending a legal or political conflict, or to allow the exploitation of a natural resource on their territories. They



usually had a strong mandate given by their communities, and clear directives as to the desired outcome of these negotiations prior to entering into negotiations. They also acknowledged they can compromise, but should never lose sight of the type and level of autonomy they seek, never settle for less and never reach agreements that undermine the rights of indigenous peoples as recognized by the international legal framework

The Inuit of Greenland highlighted the importance of having active indigenous presence and political representation in high-level committees across the State structure to have their interests brought up on issues that affect indigenous communities. Their active participation in international processes and the knowledge of their rights was also critical in their negotiation processes. The Kuna indigenous peoples in Panama spoke of the importance of setting up a political context that is conducive to creating a strong position for negotiation. They spoke of the importance of exercising their sovereignty, of engaging with different actors, and of negotiating agreements directly with other States or with businesses, with the help of competent and well-trained members of the community. They also insisted on maintaining unity amongst indigenous peoples, and not letting the State divide the communities and use this against them to pit the negotiation process. Indeed, these negotiation and opposition processes with the State have the ability to create union and strength between indigenous peoples.

### ***Implementation of autonomy: key issues, progress and challenges***

The experiences presented throughout the Seminar are a testament to certain advances in the recognition of indigenous peoples as collective subjects of rights as well as in the exercise of different degrees of autonomy in their internal and local affairs. However, important implementation gaps remain. The ability to identify these implementation gaps were found to hinge on the following central elements: cultural integrity, self-government, full ownership of land and natural resources, as well as levels of development and social welfare, and the sovereign power of the peoples to define their political status. The main challenges identified resulted from the insufficient recognition of the right to self-determination in national legal systems and also by the historical processes of each people in their relationship with States, which have resulted in the adoption of different mechanisms for the exercise of the indigenous autonomies.

In the case of the Rapa Nui people, speakers brought up the important gaps in the recognition of law in the Chilean legal system, at the constitutional, legal and regulatory levels. In addition, it was stated that the Rapa Nui people were subject to the statute applicable to indigenous populations of non-self-governing territories, in accordance with the norms of international law that regulate the decolonization process. This is particularly true considering the geographical conditions of Easter island and its particular socio-cultural conditions. Indeed, the Rapa Nui people and the State of Chile signed an "Agreement of Wills", a historical treaty signed between sovereign States, which recognizes the Rapa Nui's ancestral property over the entire territory of the island. The most difficult challenges within the demands of the Rapa Nui are the recognition of the Rapa Nui people as a territory under colonized status, and the recognition of their right to freely define their political status.

### ***Indigenous autonomy in Mexico***

In Mexico, the struggle for self-government and indigenous autonomy has a long tradition of resistance. After a period of *de facto* autonomy, in the 1980s, struggles for autonomy broke out in Mexico within the framework of the 500 Years of Indigenous Resistance, and policies of recognition of indigenous peoples began in the nineties. In 1992, a constitutional reform recognized Mexico as a pluri-cultural country. In this context, reforms took place in the State of Oaxaca (1995, 1998) that recognized customary electoral processes as a regime for the election of municipal authorities. At present 417 municipalities in the state (out of a total of 570) chose their authorities through their community assemblies and without the presence of political parties, through their customary electoral processes. The agrarian authority of Capulálpam de Méndez (Zapotec indigenous community) exposed the experience of this municipality, giving an account of how it has been possible to rebuild its territory affected by mining through the recovery of its own institutions of self-government.

The federal Constitution was reformed in 2001 recognizing the right to self-determination and indigenous autonomy. But this recognition was not followed by a regulatory law. Faced with this situation, the country's indigenous municipalities appealed to the national courts to demand the exercise of their right to political autonomy. The first case in which a favourable ruling was obtained in order to recognize the uses and customs to choose the municipal authorities in the indigenous territories, was the municipality of Cherán, in the State of Michoacán. This experience was followed by the case of Ayutla de los Libres, in which after two years of proceedings, a ruling was issued ordering the Electoral Institute of the State of Guerrero to call elections for municipal authorities without political parties and in accordance with indigenous law. The municipality of Oxchuc, in the State of Chiapas, followed the same trend. These struggles for the recognition of self-government as an exercise of their political autonomy are not limited to municipal entities, but are also claimed at the community level to elect indigenous authorities. This is the case of San Andrés Totoltepec, in the town of Tlalpan, in Mexico City.

The speakers explained how, through municipal elections regulated according to their own customary regulatory systems and the creation of municipal governments and their own councils, indigenous autonomies were advancing in the exercise of self-determination. This is an irreversible trend and it is expected that the territorial and political map of indigenous autonomies in Mexico will continue changing progressively. As one of the speakers pointed out: "The right to autonomy of indigenous peoples is no donation - autonomy isn't ever given - autonomy is obtained through perseverance in the fight to obtain it".

### ***The role of the United Nations and the Inter-American Commission on Human Rights in promoting and protecting indigenous peoples' autonomy***

Self-determination is a prerequisite for the exercise of all other rights. It is inherent and pre-existing to the creation of Nation-States. Indigenous peoples have the right to be different and to be respected as such. It is a preemptory norm in international law, and there should be no derogation from it. In simple terms this means that negotiating autonomy is not about rights but about implementing rights already in existence. Indigenous peoples have

achieved great leaps in the recognition and protection of their human rights in the past 30 years, and they cannot allow for these to be rolled back. They must continue to push both for advances at the domestic and at the international level, and learn how to use the different mechanisms at their disposal at the international level. Indigenous peoples are preoccupied by the recent positions of the International Labour Organization, and should organize to remind the ILO that it cannot undermine the United Nations Declaration on the Rights of Indigenous Peoples.

Representatives of the Inter-American Commission on Human Rights', Rapporteur on the Rights of Indigenous peoples, of the Expert Mechanism on the Rights of Indigenous Peoples, of the United Nations Permanent Forum on Indigenous Issues, and of the United Nations Rapporteur on the Rights of Indigenous peoples urged participants to further interact with international institutions and to directly request them to activate their different mechanisms to provide support in their autonomous processes. The mechanisms reiterated the importance of directly requesting some measures be taken or standard be established, because the international mechanisms are designed to react to request external pressures and not to instigate them. Participants were also invited to explore international mechanisms and frameworks that are not specific to indigenous peoples, to approach Rapporteurs working on different human rights issues, and to call on them to work collaboratively with the mechanisms specific to indigenous peoples. They were invited to interact with the different mandate-holders of international mechanisms and treaty-body mechanisms and to activate different complaint procedures and standard setting procedures.

Specifically, participants were invited to request a thematic hearing on the "Situation of the right to autonomy and self-determination of indigenous peoples in the Americas" before the IACHR. They were also invited to express their preoccupations to the Expert Mechanism, the UN Special Rapporteur and the Permanent Forum, to request their drafting of reports on specific subjects, and their drafting of specific recommendations. Additionally, they were invited to use all the mechanisms at the disposal of the UN Special Rapporteur, including *in loco* visits and urgent measures. In turn, international organizations were asked to improve at accompanying implementation of the rights protected at the international level; as well as to be more transparent, accessible, and more accountable through self-evaluation processes. They were also requested to provide support to indigenous peoples when they try to bring their preoccupations to the political instances of the United Nations.

The following conclusions were presented and discussed during the last session of the Seminar:

**Highlight No.1: The pre-existence of the right to self-determination**

The right to autonomy and self-determination is a fundamental pillar for their survival of indigenous peoples. It is inherent and a prerequisite for the exercise of all other rights. At the international level, the right to self-determination is recognized to indigenous peoples just as it is for all other peoples, and is based in the principle of equality of treatment of all peoples. As a consequence, States have the international obligation to guarantee this right, and its violation amounts to racial and ethnic discrimination.

## **Highlight No.2: The elements of autonomy and determination of the scope of desired autonomy**

The right to self-determination gives rise to different levels of autonomy. These are the result of both the exercise of self-determination by indigenous peoples, and their sovereignty to define the political status to which they aspire. Autonomy is a self-owned process, by which indigenous peoples exercise their political and cultural vision and guarantee its transmission to future generations.

Indigenous peoples must define and agree upon the demands and objectives regarding the scope of their autonomy, prior to engaging into negotiations with the State to re-establish and develop their own governance structures.

## **Highlight No.3: Breaches of implementation by States**

The exercise of self-determination is plagued with great breaches of implementation. The general tendency of States is to resist the implementation of the right to self-determination of indigenous peoples, because they consider it puts at risk their territorial integrity or powers that the State believes to be of its exclusive jurisdiction. Indigenous peoples now face the great challenge of pursuing political and juridical mechanisms to overcome these breaches.

In some case, these can be overcome with more facility through negotiated agreements with States. However, these negotiation processes must take place in conformity with international standards, through adequate, efficient and culturally appropriate proceedings, which must be implemented with good faith and within reasonable delays.

## **Highlight No.4: Current context of regression**

Indigenous peoples are currently facing a context of regression in the implementation of their rights. Many of the developments and advances achieved over many years are now being rolled back. States are currently reversing the recognitions achieved through legislative and administrative measures, as well as public policies. The presence of third party actors increases the social, political and judicial complexity of the exercise of indigenous self-determination. These third party actors vary greatly in nature, and have differentiated impacts on indigenous autonomies. On the one hand, the presence of national or transnational businesses, organized crimes, media, as well as settlers, have been key drivers of the increased criminalization of indigenous leaders defending their rights, violence against them, and the increased amounts of hate speech against leaders and members of indigenous communities defending their rights, and in particular their rights to the land. It has also lead to the increased degradation of their lands, territories and natural resources. On the other hand, religious entities, non-governmental organizations and organized civil society hold positions that conflict with the views and interests of indigenous peoples and do not always subordinate themselves to indigenous autonomies.

## **Highlight No.5: Fundamental elements of self-determination**

The fundamental elements of self-determination and autonomy are defined by indigenous peoples themselves. They imply the effective exercise of power by indigenous peoples, and are manifested, among others, by economic, social, and cultural self-determination, and indigenous self-government in accordance with indigenous customs. Self-determination of indigenous peoples also requires, among other conditions, control over land and natural resources, and the existence of measures of accountability.

#### **Highlight No.6: Internal and external dimensions of autonomy**

Self-government, as an expression of self-determination and autonomy, has both an internal and external dimension. The internal dimension implies the exercise of an indigenous self-government within the territorial boundaries of the States. External autonomy, generally a prerogative of independent States, can also be exercised by indigenous peoples. As such, indigenous peoples also assert their right to exercise autonomy in their external affairs on issues of security, geopolitics, diplomatic representation, as well as economic and cultural matters, and in particular those that relate to collective ownership of their tangible and intangible cultural heritage in global markets.

#### **Highlight No.7: Negotiation processes**

A variety of negotiation processes have been discussed, but one similarity amongst all of these is that they cannot bring about the renunciation of rights recognized to indigenous peoples at the domestic and international levels. For this reason, it is important that these negotiations processes be undertaken only with the consent of indigenous peoples, and in these cases, that they be accompanied by the mechanisms of the international system for the protection of human rights. Where agreements are reached, they should include mechanisms for the monitoring and follow-up at the internal and international levels, and must allow that they be subject to revision in conformity with the principle of progression in human rights. The negotiation of agreements does not limit or condition the sovereign decision of indigenous peoples to use other mechanisms or strategies to obtain self-determination.

#### **Highlight No.8: Difficulties in the implementation of agreements**

There are different institutional models to implement autonomy: some are *de facto* and others are formally agreed-upon by States.

In the cases of formally agreed-upon agreements, ambiguities in the drafting of the agreement have generated difficulties in their implementation, which makes it important to give particular attention to preventing these issues from arising through a precise wording of the agreements. The lack of political will and of good faith in the implementation of these agreements is another great challenge for the realization of autonomy. An appropriate implementation of these agreements also requires the implementation by indigenous communities of mechanisms of financial oversight, internal controls, as well as a commitment to guarantee the better well being of the members of their communities.

The full implementation of autonomy necessarily implies the recognition of a historical debt towards indigenous peoples, of a history marked by the trauma of colonization processes which have affected the cultural and social integrity of the communities, and which require reparation measures.

**Highlight No.9: Shared responsibility**

The promotion, respect and guarantee of human rights is the responsibility of both indigenous peoples and States, and as a result, they must both guarantee the rights of all of their members, and in particular those of women, as well as children and adolescents.

**Highlight No.10: International network**

An international network of indigenous people should be established to work in coordination with international bodies on matters related to autonomy and self-determination.

**Highlight No.11: Intercultural dialogue**

Intercultural dialogue is very important objective in a plurinational society, but it is only viable in a context of respect to the self-determination of all peoples.

**Highlight No.12: Recommendations to the organs of the international system**

To adopt a more active role in the implementation of the international instruments that recognize the right to self-determination of indigenous peoples, in particular, the implementation of the United Nations Declaration on the Rights of Indigenous Peoples, and article 1 of both human rights Covenants at the international level (International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural rights).

In the exercise of their responsibilities, international organizations must use all of the international instruments that compose the *corpus juris* in terms of protection of the rights of indigenous peoples (agreements, recommendations, international instruments, treaties and laws, sentences, customs and national agreements).

Adopt all the necessary measures to avoid regressions in international law in matters of recognition of indigenous peoples right to self-determination and other related rights. Give special attention to the process of revision of ILO Convention 169 by the organization in charge of its implementation, and by member States.

Encourage the coordination between the different mechanisms of the international system of protection of human rights. Promote the coordination of Special Rapporteurships whose mandate impact on the right to self-determination of indigenous peoples.

The UN Permanent Forum on Indigenous Affairs, the UN Special Rapporteurship on the Rights of Indigenous Peoples, and the Expert Mechanism on the Rights of Indigenous

peoples should influence the treaty-bodies and agencies of the United Nations to guarantee the right to self-determination of indigenous peoples.

With regards to the Inter-American Human Rights System, pronounce itself through its mechanism on the scope and content of the right to self-determination and elaborate specific recommendations to the States for their implementation.

To the Inter-American Commission on Human Rights, that it call an *ex officio* thematic hearing on the “Situation of the right to autonomy and self-determination of indigenous peoples in the Americas” for the 173 period of sessions that will take place from September 23 to October 2, 2019, in the headquarters in Washington, DC, U.S.A.