

Indigenous peoples have rights to land, as stated in international law

For indigenous inhabitants, as with any other people in the world, land is much more than a right of ownership. It is a claim that holds ties to their own existence as a collective subject, supported and legitimized by public international law. The Declaration on the Rights of Indigenous Peoples, recently approved by the United Nations General Assembly, supports this.¹

International law establishes a series of special conditions and parameters when interpreting and applying the rights of the indigenous peoples, since, given their history of exclusion or marginalization, they require a set of additional measures in order to benefit from these human rights without discrimination. Insofar as land is concerned, a greater standard of protection is provided to indigenous peoples, considering their unique and particular bond with their land and resources. This superior standard implies very clear substantial limitations or determining factors as to the exercise of state powers, insofar as the productive use of such indigenous territories is concerned.

Thus, the determining factors, established by ILO Convention 169, the United Nations Convention on the Elimination of All Forms of Racial Discrimination and the United Nations Declaration on the Rights of Indigenous Peoples, become substantial elements of land rights; **by precluding them, the State not only fails to comply with a formality that may be subsequently resolved**, but also commits discrimination affecting the enjoyment of the human rights of these populations. In this specific case, trans-generational property and the health of the Awajún and Wampís peoples are being put at risk, by adopting decisions concerning their property that have not been duly discussed with them, insofar as the environmental and social impact thereof is concerned.

ILO Convention 169 is clear, stating that land includes the total environment occupied or used by the indigenous peoples, either permanently or sporadically. The idea of environment suggests a place featuring suitable conditions for the life of a community, respecting the different ways developed by each people to relate to nature. Several institutions of the international system for the protection of human rights have highlighted the existing relationship between the recognition and respect of indigenous and tribal rights to land and resources with the rights to cultural integrity and life. The United Nations Human Rights Committee, the Inter-American Commission of Human Rights and the Inter-American Court of Human Rights have expressed the importance of recognizing and protecting the special relationship that exists between the indigenous populations and their ancestral land.

Therefore, by associating the right of ownership with the principles and criteria that govern the group of indigenous rights, the Inter-American Court of Human Rights has observed the following:

¹ United Nations General Assembly Resolution, 61/295 (September 13, 2007).

“Indigenous peoples, by virtue of their very existence, have the right to live freely on their own land; the close bond of indigenous peoples with their land should be recognized and understood as an essential element of their cultures, spiritual lives, well-being, and economic survival. For indigenous communities, the relationship to land is not merely a question of ownership and production, but a material and spiritual element they must enjoy fully, among other reasons, to preserve their cultural heritage and pass it on to future generations.”²

² See the *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Decision issued on August 31, 2001, Inter-American Court of Human Rights (Ser. C) No. 79 (2001).