

Recommendations
to the European Union and its Member States
to promote
the rights of indigenous people
in their relations with Latin America



EU-LAT
Advocacy Network
Red de Incidencia





In recent years, the European networks CIFCA and Grupo Sur have merged into the EU-LAT Network and have worked to respect and promote the rights of indigenous peoples within the framework of relations between the European Union and Latin America (EU-LA).

This advocacy work with the European authorities stems from the recognition of the importance of indigenous peoples in the development of humanity and the urgent need to respect and promote the intrinsic rights of indigenous peoples, at different levels, also within the framework of the different European policies in Latin America.

In this document the EU LAT Network systematizes the analysis and proposals to the European authorities on the respect and promotion of the rights of indigenous peoples in the framework of the relations between the EU and Latin America. Although the rights of indigenous peoples are multiple and interconnected, only those linked to the thematic axes of the Strategic Plan of the EU-LAT Network will be addressed in this document.



This document has been prepared by the working group 'Right to Food, Land and Territory' of the EU-LAT Network, thanks to the collaboration of the consultant, Jessika Eichler, Expert Opinion on indigenous peoples' rights and the financial support of HIVOS, Oxfam Solidarité and Terre des Hommes France.

The present project was co-financed by :



LE GOUVERNEMENT
DU GRAND-DUCHÉ DE LUXEMBOURG
Ministère des Affaires étrangères
et européennes

The present document has been supported by Agence Française de Développement (AFD). However, the ideas and opinions expressed in this document do not necessarily represent those of the AFD.



General Recommendations

1. Ensure **ratification of ILO Convention 169** by all EU Member States, as it has so far been ratified only in Luxembourg, Denmark, Spain, Norway and the Netherlands, and incorporate the Convention in the legal order of the respective State. It is also necessary to establish good practice protocols that take account of the needs identified by the affected indigenous communities.
2. **Uphold the United Nations Declaration on the Rights of Indigenous Peoples** highlighting the obligations of the countries of origin of extractive companies and banks that could potentially negatively impact the situation of indigenous people.
3. Ensure the respect of indigenous peoples' human rights in all development, **trade and investment policies and practices of the European Union and its Member States in Latin America** and ensure that democratic control is exercised over these practices.
4. Adopt all necessary **measures to guarantee indigenous peoples their right to free, prior and informed consultation in all deliberations, programs, development projects, trade or investment activities of the European Union and/or its Member States that may affect their lands, territories or natural resources**, in accordance with the interpretation of norms of the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights. Consultation must be authentic and in accordance with the principle of good faith.
5. Establish an EU-wide register of all EU actors involved in land agreements and land related investments abroad, as a basis for accountability.

Recommendations

Association Agreements and Free Trade Agreements between the EU and Latin America

6. Ensure legal provisions in trade agreements and free trade agreements that determine the obligations of the parties in fulfilling the rights of indigenous peoples. This applies to the agreement between the EU, Colombia and Peru (with the association of Ecuador)ⁱ, the Interregional Framework Cooperation Agreement MERCOSUR-EU (AMIC)ⁱⁱ, the negotiations on new trade agreements between the EU and MERCOSUR and the EU and Mexicoⁱⁱⁱ, and the Association Agreement between Central America and the EU^{iv}.
7. Make the Democratic Clause operative **in the Association Agreements in force between the European Union and the regions of Latin America, specifying the legal provisions necessary for the rights of indigenous peoples.**
8. **Follow up on the chapters on Sustainable Development**, integrated in certain agreements between the EU and Latin American regions, to specifically promote the rights of indigenous peoples in the implementation of environmental, labour and social standards by the signatory States.
9. In all Association Agreements and Free Trade Agreements between the EU and Latin America, create **an independent complaint mechanism** for individuals and communities that are **victims of human rights abuses and violations** as a result of the implementation of these agreements or by actors under the jurisdiction of the EU and its Member States.
10. **Promote human rights impact assessments**, particularly in relation to indigenous peoples' rights, **before negotiating or supporting investment or commercial treaties or projects**, especially where there is a documented culture of impunity. Impact studies should be based on human rights indicators, including environmental rights, which will make it possible to measure the extent to which the measures adopted may not comply with human rights obligations. Based on the results, necessary measures should be taken to eradicate or minimize the impact on the population and the environment.

Recommendations

Political Dialogue and Cooperation;

11. Through political dialogue and cooperation, **provide support** to indigenous organizations and indigenous representative bodies. **Adopt measures that allow for the opening of dialogues with civil society organizations.**
12. Strengthen through **technical and financial support indigenous peoples' organizations** that are developing, or considering developing, their own consultation and consent policies, procedures or protocols or wish to strengthen their governance capacity to be better positioned to initiate good faith consultations with state and corporate actors.

Recommendations

Defenders of the Rights of Indigenous Peoples.

13. **Guarantee the work and physical integrity of defenders of the rights of indigenous peoples.** Ensure legal assistance to defenders of indigenous peoples, the environment and land rights through existing mechanisms in foreign policy.
14. EU Delegations and Embassies of Member States in third countries should **implement the Guidelines on defenders, with special emphasis on defenders of the rights of indigenous peoples** and adjusting their implementation to the needs of threatened peoples and communities.
15. *Denounce the constant criminalization of defenders of indigenous peoples' rights and land rights in Latin America.* To request the States concerned to ensure (1) the withdrawal of private military and security forces deployed in the territories of indigenous peoples in violation of their rights, (2) the independence of the police forces; and (3) that crimes committed against human rights defenders of indigenous peoples do not go unpunished by ensuring an effective investigation and trial.

Recommendations

Human Rights and Corporate Accountability.

16. Participate constructively in the negotiations on a binding United Nations treaty on transnational corporations that guarantees respect for the human rights of indigenous peoples, especially women and girls. Consider the **extraterritorial obligations** listed in article 2 of the ICESCR entailing the respective obligations under General Comment No. 24 in the context of business activities. This includes the establishment of such obligations at the three levels of respect, protection and effective implementation outside the national territory over which member states can exercise control and thereby contribute to the full and effective enjoyment of economic, social, cultural and environmental rights; including taking the necessary measures - at the legal, political and diplomatic levels - to promote them.

Recommendations

Right to a life free from violence.

17. **Recognize the multiple forms of discrimination** suffered by indigenous women because of their ethnic origin, language and traditional way of life, and eliminate all forms of discrimination against them. Ensure access to ownership, possession and control of land and water in accordance with General Recommendation No. 34 on the rights of rural women.
18. Support the States in their duty to **prevent and eliminate all forms of violence** against rural women and girls and take measures to **investigate, prosecute and punish acts of violence** against women and girls.



From item no. 6:

- i. Through an annex or additional protocol specifying human rights obligations and the particular consideration of the rights of indigenous peoples through (1) non-discrimination based on ethnic or minority affiliation (2) the particular impact on indigenous territories (3) the integrity of rights violated such as physical integrity and survival, health, language and cultural identity (4) the participation of affected communities in decisions affecting them, including prior consultation and free, prior and informed consent (5) safeguard clauses in major projects.
- ii. Deepen certain aspects of the rights of indigenous peoples through an annex or additional protocol to the **MERCOSUR-EU Interregional Framework Cooperation Agreement (AMIC)** that would complement what is stipulated in the preamble and in the objectives, principles and scope of the agreement; in addition to the special consideration of the rights of indigenous peoples mentioned in the five paragraphs mentioned in paragraph i, human rights should be integrated into the parts "political dialogue, trade, economic cooperation, integration, inter-agency cooperation, other areas of cooperation, means of cooperation and institutional framework".
- iii. Establish human rights and indigenous rights clauses from the beginning.
- iv. Establish a rigorous system for monitoring the implementation of Articles 29, 45 and 46: guarantees of indigenous rights included in the human rights clauses (Article 29), the PPII and ethnic (Article 45) and vulnerable (Article 46) groups and in the **association agreement between Central America (Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, Panama) and the EU.**

