**QUESTIONNAIRE FOR THE THEMATIC REPORT CONSULTATION**

**ECONOMIC, SOCIAL, CULTURAL, AND ENVIRONMENTAL RIGHTS (ESCER)
OF INDIGENOUS AND TRIBAL AFRO-DESCENDENT PEOPLES
IN THE NORTHERN TRIANGLE OF CENTRAL AMERICA AND NICARAGUA**

# INTRODUCTION

Through its different mechanisms, the Inter-American Commission on Human Rights (IACHR) has noted that indigenous and tribal Afro-descendent peoples live in a situation of vulnerability on account of the high levels of discrimination and social exclusion they face, which hampers full and effective access to their human rights.[[1]](#footnote-1) The agencies of the Inter-American System have emphasized the special relationship that exists between those peoples and their territories and natural resources, and that bond informs their very existence and, consequently, warrants special measures of protection.

The IACHR notes that one of the main challenges in Nicaragua and the Northern Triangle—the name given to the Central American countries (El Salvador, Guatemala, and Honduras) that share a common border—is reducing rates of inequality and poverty. In 2010, indigenous communities accounted for approximately 41% of Guatemala’s total population, 9% of Nicaragua’s, 7% of that of Honduras, and 0.2% of the population of El Salvador.[[2]](#footnote-2) People of African descent accounted for 1.4% of the Honduran population in 2013, and for 0.1% of the Salvadoran population in 2007.[[3]](#footnote-3) The protection enshrined in international and national legal frameworks notwithstanding, indigenous and tribal Afro-descendent peoples suffer the consequences of social exclusion and face major obstacles to the exercise of their civil, political, economic, cultural, social, and environmental rights.

The IACHR notes the efforts made by states with respect to the rights of indigenous and tribal Afro-descendent peoples and, at the same time, it underscores the need to strengthen and expand those processes. In Honduras and in Guatemala, for example, mechanisms for ensuring good governance and following up on recommendations have been created, which could facilitate the implementation of technical cooperation actions leading to the drafting of laws and policies public with a rights-based approach. In Nicaragua, the recognition of these peoples’ right to equality and nondiscrimination, autonomy, intercultural education, and legal pluralism is enshrined in the Constitution. In late 2018, El Salvador published its National Action Plan for Indigenous Peoples (PLANPIES), which aims to further the legal and political recognition of indigenous peoples’ autonomy.

Nevertheless, the IACHR has identified a number of challenges in access to economic, social, cultural, and environmental rights (ESCER) among indigenous and tribal Afro-descendent peoples. These include obstacles for indigenous and Afro-descendent children and adolescents to gain access to and remain in a culturally appropriate, quality education system, and barriers to access to health services, particularly among pregnant indigenous and Afro-descendent women, and to specific treatments for illnesses and other problems that have a particular impact on these groups. Similarly, policies for access to community property and adequate services are absent or ineffective, and food insecurity has a differentiated impact on these groups, particularly their children and older persons. The IACHR also has identified the impact of extractive industries (specifically, mining, hydroelectricity, oil extraction, forestry, logistics, and agriculture) and of large-scale tourism and/or development projects on indigenous and tribal Afro-descendent communities, which can be seen most markedly in their effects on health, the alteration of community relations, quality of life, involuntary and forced displacements, migration, changes in traditional patterns of behavior, and other areas.

Under the aegis of the Program for Attention and Collaboration with Central America and the Caribbean, which was established in the IACHR’s Strategic Plan for 2017–2021, and within the objectives of the Plan of Action for the Decade of Afro-Descendants in the Americas (2016-2025),[[4]](#footnote-4) this report seeks to gather information on access to ESCER among indigenous and tribal Afro-descendent peoples in order to identify the main challenges for their effective enjoyment in light of inter-American instruments and standards, and to promote actions aimed at overcoming those obstacles. This report also aims to raise the profile of the conditions in which these communities live, re-evaluate their ways of life and worldviews, systematize the applicable inter-American standards, and analyze the difficulties facing these groups in securing full access to their rights. Finally, the report aspires to encourage technical cooperation processes between the IACHR and the states, and to build communication bridges between them and civil society, in order to make progress with the attention paid to the challenges that are still pending as regards the rights of indigenous and Afro-descendent peoples.

This report aims to analyze access to ESCER among indigenous and tribal Afro-descendent peoples: most particularly, the rights to collective property, to a healthy environment, to food and water, to health, and to education. The first step toward that goal is to systematize the current legal provisions governing those rights, the public institutions responsible for overseeing those rules, and the public policies put in place toward that end. Second, informed by the provisions of the applicable inter-American instruments and standards, it aims to produce a description and analysis of access to ESCER among the indigenous and tribal Afro-descendent peoples of El Salvador, Guatemala, Honduras, and Nicaragua. To gather that information, a questionnaire will be distributed to the states and to civil society organizations that work with indigenous and tribal Afro-descendent peoples. Visits will also be conducted to the territories of indigenous and Afro-descendent peoples in the four countries, when meetings and in-depth interviews will be held with representatives of the states and of the indigenous and tribal Afro-descendent peoples and with stakeholders with a proven track record of work with those groups.

# OBJECTIVES

This questionnaire is intended to gather information for the preparation of a subregional thematic report on *Strengthening the Governance and Protection of the Economic, Social, Cultural, and Environmental Rights (ESCER) of Indigenous and Tribal Afro-Descendent Peoples in the Countries of the Northern Triangle of Central America and Nicaragua*. Information is being sought from the states of El Salvador, Guatemala, Honduras, and Nicaragua and from civil society organizations, academic institutions, intergovernmental agencies, and all other persons interested in contributing.

# INSTRUCTIONS

1. The questionnaire may be answered **either in whole or in part,** depending on the information available. Please indicate the sources of the information provided, or return the documents referenced along with the questionnaire.
2. Please clearly identify the **question** **numbers** that are being answered.
3. Research, reports, and other relevant documents may be enclosed **as annexes**.
4. If **annexes** are included, please identify them as such and keep them apart from the response to the questionnaire.
5. Please indicate the following contact information:

Name:

Institution represented:

Country:

E-mail:

Tel:

1. Please return your answers to the questionnaire before **December 20, 2019**, via e-mail, to: **cidhmonitoreo@oas.org**. **Please use “Questionnaire on Northern Triangle and Nicaragua Project – (country name)”** as the subject of the e-mail. Please do not return duplicate questionnaires.
2. If e-mail is not available, questionnaires can also be returned by fax to +1 202 458 3650, or via regular mail to:

*Inter-American Commission on Human Rights (IACHR)*

*Organization of American States (OAS)*

*1889 F Street NW*

*Washington, D.C. 20006*

*United States*

# QUESTIONS

Please provide the information you deem most relevant regarding each of the points identified below, including the sources from which the information was taken.

To facilitate the systematic analysis of the information received, the form comprises four blocks: (1) progress and pending challenges in the exercise of the ESCER of indigenous and tribal Afro-descendent peoples, (2) socio-demographic information and socioeconomic indicators, (3) regulatory and institutional framework with emphasis on the following ESCER: community property and territory, environment, food and water, health, and education, (4) public policies applicable the ESCER of indigenous and tribal Afro-descendent peoples.

**BLOCK 1 – PROGRESS AND CHALLENGES IN THE EXERCISE OF THE ESCER OF INDIGENOUS AND TRIBAL AFRO-DESCENDENT PEOPLES**

1. Please describe the current situation with the following rights of indigenous and tribal Afro-descendent peoples and identify the main progress made and challenges still remaining for their full realization:
2. Territories, natural resources, and collective property
3. Healthy environment (including the effects of climate change)
4. Food and water
5. Health
6. Education

**BLOCK 2** – **SOCIO-DEMOGRAPHIC INFORMATION AND SOCIOECONOMIC INDICATORS**

1. How does the state officially define an indigenous and/or tribal Afro-descendent people? What criteria are used in that definition?
2. What criteria were used to identify those peoples in the country’s most recent census?
3. What are the main socio-demographic characteristics of indigenous and tribal Afro-descendent peoples? In other words: how many are they, and what percentage of the total population do they represent? If additional information is available—distribution by age and sex, for example—please include it.
4. How many groups make up the country’s indigenous and tribal Afro-descendent peoples? For each, please indicate:

A. Name

B. Approximate number of individuals who make up these communities.

C. Where are they located? In other words, in which municipalities, departments, or regions are they found?

D. What is the situation regarding the ownership and title deeds of the territory where this community is located? What is the approximate extension of that territory?

E. Does the territory where they are located have the facilities necessary to guarantee ESCER (for example: schools, health centers, drinking water, electricity, sewerage)?

5. What are the main socioeconomic characteristics of the country’s population in general and of its indigenous and tribal Afro-descendent peoples in particular? Please include all the information you believe relevant, particularly as regards levels of poverty and extreme poverty among the country’s total population and among members of the indigenous and tribal Afro-descendent peoples, together with their distribution by age and sex. Bear in mind both income insufficiency and unsatisfied ESCER. Specifically:

A. Regarding the labor market, please include the quantitative and qualitative information you deem relevant, particularly on unemployment rates and income levels for the country’s total population and for individuals belonging to indigenous and tribal Afro-descendent peoples, together with their distribution by age and sex.

B. Regarding food and water, please include the quantitative and qualitative information you deem relevant on drinking-water access statistics and malnutrition levels for the country’s total population and among the indigenous and/or tribal Afro-descendent peoples, particularly child malnutrition rates and their distribution by age and sex, the percentage of women of childbearing age with anemia, and the prevalence of undernourishment and/or food insecurity among the population.

C. Regarding education, please include the quantitative and qualitative information you deem relevant, for the country’s total population and specifically for indigenous and tribal Afro-descendent peoples, particularly as regards the average years spent in the formal education system, highest education levels attained, illiteracy rates, and school dropout rates for the general population and for indigenous and Afro-descendent peoples in particular.

D. Regarding health, please include the quantitative and qualitative information you deem relevant, for the country’s total population and specifically for indigenous and tribal Afro-descendent peoples, particularly as regards primary health care, protection against the main illnesses that affect them, life expectancy, and maternal and child mortality rates for the general population and for indigenous and Afro-descendent peoples in particular.

E. Regarding the environment, please include the quantitative and qualitative information you deem relevant that identifies environmental harm and impact on indigenous and tribal Afro-descendent peoples, and the number of environmental licenses granted to businesses engaged in extractive industries or development projects (mining, oil, forestry, dams, highways, etc.) on or affecting their territories, the number of cases in which environmental impact studies have been conducted, consultations have been held, and prior consent has been obtained, along with the total area (hectares) awarded to those projects and the percentage of the communities’ territories that they represent.

**BLOCK 3 – REGULATORY AND INSTITUTIONAL FRAMEWORK**

1. What regulations govern the right to free determination, the right of self-identification and recognition, and the right to the protection and promotion of the ancestral worldviews of indigenous and tribal Afro-descendent peoples?
2. Are there any specific rules addressing the right to consultation and free, prior, and informed consent, or any laws that guarantee shares in the fruits of activities affecting their territories and their ESCER? If so, please enclose the relevant information and present an assessment of how those rules function in practice. If any relevant legislative bills are under discussion, please identify them.
3. Does any constitutional or legal provision recognize the specific economic, social, cultural, and environmental rights of indigenous and tribal Afro-descendent peoples? Specifically:

3.1 Right to collective property and territories

A. Are there any specific rules governing the right to collective property of indigenous and tribal Afro-descendent peoples? If any relevant legislative bills are under discussion, please identify them.

3.2 Right to a healthy environment

A. Are there any specific rules governing the right to a healthy environment and/or measures against climate change? Do they include specific considerations for indigenous and tribal Afro-descendent peoples? In particular, as regards extractive industries and/or development projects, indicate whether there is an adequate regulatory framework for environmental impact studies, including licensing processes, or provisions for the mitigation and reparation of environmental threats and damage. If any relevant legislative bills are under discussion, please identify them.

B. What penalties are established for noncompliance with environmental regulations? Please enclose the relevant information and present an assessment of how those rules function in practice.

3.3 Right to food and water

A. Are there any specific rules governing the right to food and water? If any relevant legislative bills are under discussion, please identify them.

B. Is there any special legislation governing subsistence agriculture and artisanal fishing that takes account of the traditional practices of indigenous and tribal Afro-descendent peoples? Please enclose the relevant information and present your organization’s assessment of how those rules function in practice.

C. Is there any special legislation governing access to water and the use of water resources by indigenous and tribal Afro-descendent peoples? Please enclose the relevant information and present your organization’s assessment of how those rules function in practice.

3.4 Right to health

A. Are there any specific rules governing the right to health? Are there any provisions within current health legislation intended to address the specific needs of indigenous and tribal Afro-descendent peoples? If any relevant legislative bills are under discussion, please identify them.

B. Do health services have any rules on intercultural systems or practices including linguistic diversity (such as translators to ensure proper assistance to these people) and the training of indigenous or Afro-descendent health technicians and professionals? If so, please enclose the relevant information and present your organization’s assessment of how those rules function in practice.

C. What are the current rules governing sexual and reproductive rights? Are there any specific rules to mitigate obstetric violence and maternal mortality among indigenous and tribal Afro-descendent women? If so, please enclose the relevant information and present an assessment of how those rules function in practice.

3.5 Right to education

A. Are there any specific rules governing the right to education? Are there any provisions within current education legislation intended to address the specific needs of indigenous and tribal Afro-descendent peoples? If any relevant legislative bills are under discussion, please identify them.

B. Are there any rules that promote intercultural and bilingual education programs and/or that take account of other cultural methods of teaching and learning? If so, please enclose the relevant information and present an assessment of how those rules function in practice.

C. Are there any rules governing the inclusion of the past and present of indigenous and tribal Afro-descendent peoples in the formal education curriculum? If so, please enclose the relevant information and present your organization’s assessment of how those rules function in practice.

D. Are there any rules that contemplate withdrawing books and other publications with colonialist biases that represent indigenous and afro-descendant peoples in a degrading, abusive or discriminatory manner, whether through drawings or texts? If so, indicate when this law was given, mention the evaluation of its implementation and attach the respective information.

3.6 Political rights

A. Please indicate any rules that specifically work for and promote political participation by members of indigenous and tribal Afro-descendent peoples. Do institutional forums exist for channeling the participation of those communities’ organizations? If so, please enclose the relevant information and present an assessment of how those rules function and are applied in practice. If any relevant legislative bills are under discussion, please identify them.

4. Please identify and describe the public institutions, at the national, departmental, and municipal levels, and within the different branches of government (executive, legislative, and judicial), responsible for promoting and protecting the rights of indigenous and Afro-descendent peoples.

A. Do interinstitutional coordination mechanisms exist between those agencies?

B. What are the monitoring and accountability strategies used for those agencies’ initiatives? Are there any forums for participation by both indigenous and tribal Afro-descendent peoples and civil society in those agencies? Please enclose the relevant information and present an assessment of how those rules function in practice.

**BLOCK 4 – PUBLIC POLICIES**

#### 1. What public policies and institutions are involved with promoting and guaranteeing the ESCER of indigenous and tribal Afro-descendent peoples? Do any affirmative action measures exist for those communities? Please include all the information you deem relevant.

1.1 Public policies in general

A. Is there a national policy instrument (plan, program, project, etc.) for the promotion of specific public policies intended to ensure indigenous and tribal Afro-descendent peoples the exercise of their rights? If such an instrument exists, does it have monitoring mechanisms so its results and impacts can be assessed?

B. Are there specific budget allocations for the implementation of those public policies?

C. Regarding income transfer policies and other social protection policies, please detail the characteristics of the programs that exist and describe their reach among indigenous and tribal Afro-descendent peoples.

1.2 Right to collective property of indigenous and tribal Afro-descendent peoples

A. What state measures and enforcement agencies exist for the recognition, demarcation, clean-up, and titling of lands belonging to indigenous and tribal Afro-descendent peoples? Please enclose the relevant information and present an assessment of how this policy functions in practice.

B. In those cases where deeds of ownership for the territories have been issued, are there any programs and/or budget allocations for the management and community development of those lands? Please enclose the relevant information and present your organization’s view of how this policy functions in practice.

1.3 Right to a healthy environment

A. Which public policies for the protection of a healthy environment (including those dealing with climate change) are of relevance to indigenous and tribal Afro-descendent peoples? What agencies are responsible for overseeing the environmental impact of extractive industries and development projects on indigenous and Afro-descendent territories? Please enclose the relevant information and present an assessment of how these policies function in practice.

1.4 Right to food and water

A. What public policies exist to guarantee these population groups the right to food and water? Do policies exist to encourage family farming and subsistence agriculture and to protect the genetic variety of original seeds and the sustainable use of these communities’ water sources?

B. What public policies exist to combat child malnutrition and chronic undernutrition among the country’s population in general and indigenous and tribal Afro-descendent peoples in particular? Please enclose the relevant information and present your organization’s view of how this policy functions in practice.

1.5 Right to health

A. What accessibility policies are in place at health centers for indigenous and tribal Afro-descendent peoples? Please enclose the relevant information and present an assessment of how this policy functions in practice and of the quality of the services provided.

B. Does the health sector have policies for the recognition and/or strengthening of the ancestral knowledge and traditional medicine of indigenous and tribal Afro-descendent peoples? Please enclose the relevant information and present an assessment of how this policy functions in practice.

C. What measures are taken to tackle teenage pregnancy, maternal mortality, and access to contraception? Please enclose the relevant information and present an assessment of how these policies function in practice.

1.6 Right to education

A. What policies govern access to quality education by members of indigenous and tribal Afro-descendent peoples at the primary, secondary, technical, and university levels of education? Please enclose the relevant information and present an assessment of how this policy functions in practice.

B. Do any policies exist for integrating the traditional teaching methods of indigenous and tribal Afro-descendent peoples into the education system? In particular, what are the policies for ensuring plural and culturally appropriate education (guaranteeing, for example, linguistic issues that affect indigenous and tribal Afro-descendent communities, educational materials that respect a diversity of beliefs and worldviews, and study programs that include respect for cultural diversity and for the past and present of those peoples)? Please enclose the relevant information and present an assessment of how this policy functions in practice.

1. The Commission understands tribal Afro-descendent communities as being those that live as such and that, accordingly, have particular characteristics that require special protection. For that purpose, the Commission believes it is essential to use the concept of “tribal people” as used in ILO Convention 169: peoples who are not indigenous or native to the region they inhabit, but who, similarly to indigenous peoples, share certain features which distinguish them from other sectors of the national community. IACHR, [*Indigenous Peoples, Afro-Descendent Communities, and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities*](http://www.oas.org/en/iachr/reports/pdfs/ExtractiveIndustries2016.pdf), 2016. [↑](#footnote-ref-1)
2. ECLAC, [*Indigenous Peoples in Latin America,*](https://www.cepal.org/en/infografias/los-pueblos-indigenas-en-america-latina) September 22, 2014. [↑](#footnote-ref-2)
3. World Bank Group, [*Afro-descendants in Latin America: Toward a Framework of Inclusion*](https://openknowledge.worldbank.org/handle/10986/30201)*,* 2018, p. 55. [↑](#footnote-ref-3)
4. The OAS General Assembly approved this [Plan of Action](https://www.oas.org/en/sare/documents/res-2891-16-en.pdf) on June 14, 2016. [↑](#footnote-ref-4)