

# MANUAL OF EVIDENCE FOR THE DEFENSE OF INDIGENOUS DEFENDERS



COORDINADORA DE LAS ORGANIZACIONES  
INDÍGENAS DE LA CUENCA AMAZÓNICA

*Within:*



PROGRAMA DE  
**Defensores y  
Defensoras**  
INDÍGENAS





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## ACRONYMS AND ABBREVIATIONS

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

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**COICA** Coordinator of Indigenous Organizations of the Amazon Basin

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**UN** United Nations

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**PDDD** Program for the Defense of Indigenous Defenders

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**IAHRS** Inter-American Human Rights System

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# PRESENTATION



The Coordinator of Indigenous Organizations of the Amazon Basin (COICA) is the body representing the indigenous peoples of the nine countries of the Amazon River Basin to defend the rights and territories of 511 indigenous peoples, and more than 66 peoples in voluntary isolation and initial contact (PIACI), who live in thousands of communities in the Amazon with a unique cultural diversity, based on a holistic relationship with their territory.

At COICA's IV Amazon Summit in 2017, it was reported that nearly 400 indigenous leaders had been killed in the Amazon basin. Besides this violence, there are weak institutional justice frameworks in Latin America and the Caribbean that are politically influenced or suffer from structural and budgetary problems, which causes legal or administrative processes of indigenous leaders without transparency or unjustified prosecutions.

In this sense, international law protects us and reaffirms that our environmental and collective rights are interlinked and cannot be separated or analyzed without linking the effect they have on each other when one of them is violated. Therefore, our indigenous peoples in permanent resistance and struggle for the protection of the territory, as well as for the defense of their rights, are **INDIGENOUS DEFENDERS OF HUMAN RIGHTS**.

For indigenous organizations, the protection of indigenous defenders, who are in a highly vulnerable situation, is essential and cannot be postponed. For this reason, from COICA, we are promoting the consolidation of the **Program for the Defense of Indigenous Defenders** to develop mechanisms for the immediate and effective attention of Amazonian indigenous defenders under situations of threat, violence, criminalization, and persecution in a scenario of violation of their rights and their territories. We promote this program's implementation from the indigenous point of view, with a gender, preventive, and collective perspective.

The Program for the Defense of Indigenous Defenders makes available this document entitled **"Manual of evidence for the defense of indigenous**

**defenders”** aimed at being an instrument for the protection and legal defense of our bases and peoples in the different investigation stages of police persecution, investigation and legal decision on each case of the threat we live. This will be achieved through the generation of means of evidence that will allow us to have better tools for each COICA's national organization.

With this, more indigenous peoples will be able to access and know important information about a right to equal, transparent, participatory and efficient access to justice that allows us to defend ourselves fully, to strengthen and promote together, in an organized manner, an intercultural environmental justice and the defense of our collective and territorial rights.

For those indigenous defenders who are not with us now. In their honor, let us defend our territory!

**Coordinator of Indigenous Organizations of the Amazon Basin  
(COICA)**



# INTRODUCTION



At present, the political context of the countries that share the Amazon basin is a constant threat to indigenous peoples and nationalities, since Governments prioritize investment over respect for human rights, make socio-environmental standards more flexible and consider the Amazon as an inexhaustible source of natural resources without valuing the conservation of its natural and cultural wealth, not only for the region but for the entire planet. The Amazon territory represents one of the areas with the greatest biological diversity and presence of natural resources, but with the greatest attraction of foreign capital companies with headquarters around the world dedicated to various items, especially extraction and infrastructure.

Socio-environmental conflicts are enervated due to the lack of information, regulation, and environmental management, which prevent the construction of an empathic development model with the indigenous peoples, violating our right to persist in autonomous and healthy territories. The territory is the most important component to exercise the fundamental collective and individual rights of indigenous peoples and nationalities, since their connection with their environment depends on it, which in turn is a necessary condition for maintaining their culture, traditional forms of organization, spirituality, health, recreation, knowledge, integrity and life itself. In this sense, to defend the territory is to protect life.

Given the lack of Government capacity to protect the work carried out by indigenous defenders, as the main protectors of forests, they have been responsible for protecting and enforcing their human rights before different political, social, and/or legal bodies. The great work of indigenous peoples as human rights defenders has been threatened by illegal activities in their territories, persecution by external actors, and the increase in socio-environmental conflict, etc.

The lack of recognition of the collective rights of indigenous peoples and the constant violations caused by investment policies and extractive and infrastructure projects against their territories, has often ended up causing

severe damage to their ways of life, cultures and/or ancestral traditions, even endangering their very existence.

Proof of this were the Latin American Government policies that sought to segregate indigenous peoples because they were not considered part of today's forms of civilization or to remove them from their territorial plots by dividing up their organizational structures and weakening the indigenous struggle. This was increased by the liberal measures that wanted to assimilate these peoples for the potential use of their territories and be considered cheap labor for the mining deposits existing in the region.

In that regard, indigenous peoples found it necessary to claim and fight for recognizing their collective rights and self-determination to decide on forms of development appropriate to their customs and needs. In addition, they are now facing the influence of economic policies by the International Monetary Fund (IMF) and the World Bank (WB) towards the region's Governments to promote extractive projects and infrastructure works located in indigenous territories.

Indigenous peoples have faced many attacks, bullying, and forms of structural violence when denouncing cases of contamination by extractive projects (hydrocarbons, mining, etc.) and violation of their human rights by significant infrastructure works (roads, ports, waterways, etc.). Because of the lack of protection of indigenous peoples' individual and collective rights, the concept of the indigenous defender<sup>1</sup> has emerged, seeking to defend and repair the damage caused on behalf of the indigenous peoples to which they belong. They also complement the Government's work because of ratified international human rights agreements, conventions and/or documents.

During the last decade, indigenous defenders have had to face legal proceedings and other investigative bodies that have sought to harass them and confront them to deprive their liberty. These legal processes have been characterized by the lack of intercultural measures considering their indigenous manifestations and means of resolving social conflicts.

1 In 1998, in an unprecedented effort, the UN General Assembly recognized the efforts of these people through the approval of the Declaration on Human Rights Defenders and established that members of society in general play an invaluable role in the defense and protection of human rights.

Therefore, the main objective of this Manual is to be a tool for legal protection and defense at the different stages of the investigation of the police pursuit, investigation, and legal decision on the case. This will be achieved by generating evidence that allows having better tools for each COICA's national organization.

## Setting boundaries on the field

At various times, the defenders of indigenous rights (**indigenous defenders**) have been victims of attacks and different forms of violence by private individuals who carry out illegal activities in their territories (illegal logging and mining, human trafficking, etc.). However, in recent years, they have been attacked and persecuted by the Governments that carried out investigations and/or legal proceedings as a response to the protests and/or social conflicts that sought to make the problem between extractive activities and the rights of indigenous peoples notorious.



In either situation, indigenous defenders have sought to protect their lives, integrity, and territories through complaints about illegal acts identified in the impact areas. In response to this, indigenous organizations, through indigenous justice, have promoted measures to defend their territories, as well as their leaders, but effective recognition of these non-ordinary justice systems by Governments (local and national authorities) is still pending. Nowadays, the criminalization of an indigenous leader not only reflects the criminalization of protest, but also the criminalization of the exercise of the authority of indigenous justice.

In the Amazonian context, there is an urgent need to develop effective mechanisms for cooperation and coordination between the justice systems (ordinary and indigenous) and the authorities of the ordinary justice systems of Governments. This is a work in progress, but it is also necessary to know basic guidelines for access to ordinary justice. In this regard, we will outline some guidelines:

The complaint process is directed by the Ministerio Público (Public Ministry) or, on occasion, by the Fiscalía General de la Nación (Attorney General's Office), responsible for investigating and prosecuting possible crimes that have occurred. Investigation and punishment activities in criminal matters are part of the justice system that goes from the preparatory investigation - where preliminary proceedings are carried out, with the support of the National Police, to make the **prosecutorial accusation** - to the oral trial - where possible sanctions are decided for those responsible for the commission of one or more crimes and additional measures for the protection of victims.

Following this structure, this manual seeks to develop evidence in the different stages of the criminal process related to the legal defense of indigenous defenders and serve as a tool for collecting and identifying relevant information on each of the case-objects of the judicial processes to develop the evidence. This manual is a strengthening mechanism to manage cases involving the defense of indigenous defenders in line with the mandates of Program for the Defense of Indigenous Defenders (PDDD, for its acronym in Spanish).

## About the Program for the Defense of Indigenous Defenders

Indigenous peoples have a special bond with their territories, based on a multidimensional relationship - where they articulate economic, political, social, spiritual and ancestral relationships and meanings, which is sustained by traditional and historical use and significance, as well as autonomy, where self-determination is projected and, with it, the strengthening of control over the multidimensional conditions and effects of the territory. Under a current context, full of threats to their territories, indigenous peoples resist for the defense of their rights to sustain these links.



International law recognizes and emphasizes that environmental and land rights are interlinked<sup>2</sup>. Therefore, **indigenous defenders are those individuals, associations, communities, peoples, or nationalities who are in permanent resistance and struggle to protect their human rights and territories.**

Within this framework, the PDDD seeks to develop mechanisms for the immediate and effective attention of Amazonian indigenous defenders under threat, violence, criminalization, and persecution, in a scenario of violation of their rights and territories. In addition, in the short and medium-term, it seeks to provide legal advice and generate information to promote communication and political advocacy campaigns at the national and international levels. It also seeks an effective and practical way to improve indigenous defenders' legal defense and their capacities related to the prosecution of crime. Under this objective, this document has been prepared.

It is important to remember that a methodology of questions, answers and examples will be used for the development of this *manual* when necessary and the definitions of each concept will be summarized to only what is indispensable to make learning easier.

2 Michel Forst, the UN Special Rapporteur on the situation of human rights defenders explains, "land and environmental rights are interlinked and are often inseparable. As a result, the two broad categories of defenders advocating for the environment are often characterized as 'land and environmental rights defenders,' 'environmental rights defenders. . .".

# 1. GENERAL CONCEPTS

This chapter will define some concepts related to the facts, the means and the types of evidence to learn about the tools needed for the legal defense of indigenous defenders in criminal investigations promoted by the Government.

## What is the crime?

A crime is an act or omission punishable by law.

## What are the facts?

They are the events or phenomena that occurred at a particular moment. Example: "The constant persecution of an indigenous leader" or "The flooding of the river by heavy rains."

## What are the elements or sources of criminal evidence?

They are the objective data of an event not involved in any legal assessment, which will then be incorporated into the criminal investigation through the evidence. Example: "The person who observes the kidnapping of an indigenous leader."

## What is the criminal evidence?

It is a fact given as true and serves to generate credibility about the existence, or not, of other situations related, or not, to one or several crimes.



## What are the types of criminal evidence?

- ▣ **Direct evidence:** Directly related to the evidence sources serving as first-hand verification of the crime.  
Example: Testimony of the indigenous defender who is a victim of kidnapping.
- ▣ **Circumstantial evidence:** Direct demonstration of the facts is achieved through inference  
Example: Demonstration of the defender leaving his house before being kidnapped.
- ▣ **Anticipated evidence:** The test carried out previously and urgently due to the difficulties surrounding the witness, the victim, the accused, etc., and its subsequent verification.  
Example: Confrontation of the victim's testimony with the alleged aggressor before the oral trial, due to the fact that he has a serious illness.
- ▣ **Prohibited evidence:** The illicit evidence obtained through the violation of fundamental rights.  
Example: Testimony of the indigenous defender obtained by means of coercion or violence on his person.

## What are the means of evidence?

The legal instruments used to incorporate the sources of evidence into the process to be evaluated by the criminal judge.

### Types of means of evidence

- ▣ **Confession:** The statement made by the defendant accepting the charges or the accusation submitted by the prosecutor.

**Note:** The voluntary confession is a modality where the accused accepts the charges voluntarily and obtains benefits, such as reduced sentences.

- ▣ **The testimony:** It is the statement made by people directly related to the crime.

- ▣ **Special testimonies:** In the case of people with disabilities or language problems, the Government must provide them with guarantees so that the testimony will be carried out correctly.

**Note:** In the case of indigenous peoples, especially indigenous defenders, it is important to have all the necessary assistance to make a declaration in accordance with their cultural and/or social characteristics.

### REVICTIMIZATION

Suppose there is a serious emotional impact on the victims or people indirectly related to the crime. In that case, all necessary measures should be taken to avoid further psychological pressure during the testimony.

Example: When the victim has suffered serious psychological consequences from sexual or other crimes, questions that remind the victim of these scenes should be avoided, because they may aggravate the victim's situation.

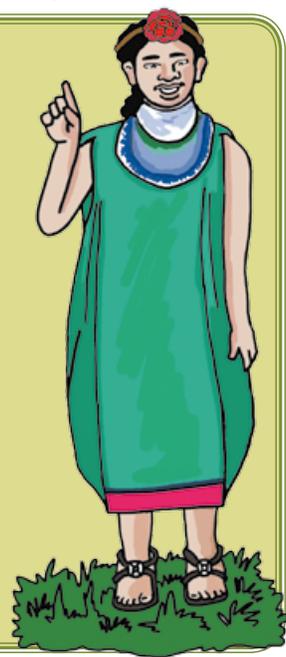
- ▣ **The expert's report:** It is the report made by a professional with technical and scientific knowledge about certain facts. This knowledge must be proven at the request of the legal or fiscal authority (official expert). Example: Criminal proceedings against indigenous defenders must have a linguist or sociologist who can explain the effect on the customs or way of life of the indigenous peoples.
- ▣ **Party-appointed expert:** It is requested by one of the parties (victim, defendant, etc.) to make observations to the official expert.



### THE EXPERT'S REPORT

Document prepared by the expert, including his conclusions. The report must contain:

- ◆ The data identifying the expert (who is it?).
- ◆ Description of the information that has been examined (what was analyzed?).
- ◆ Detailed statement of what has been verified (what was done?).
- ◆ The rationale for the technical examination (how was it done?).
- ◆ The methodology used (what was the method?).
- ◆ Conclusions (what was the outcome?).
- ◆ Date, stamp and signature (when and by whom?).



▣ **The confrontation:** It is the confrontation examination carried out between the statements of the parties involved in the criminal investigation.

Example: A decision is made to confront the victim's testimony with another witness because there are contradictions in one of the statements.

▣ **Documentary evidence:** It is the document where information related to the crime is found.

Example: The document that certifies the ownership of a territory in favor of indigenous peoples.

### Other means of evidence

▣ **The acknowledging:** The re-identification of people related to the commission of the crime by the victim(s) or interested parties.

▣ **Legal inspection:** The diligence requested by the criminal judge or the criminal prosecutor to check the fingerprints and other elements in locations, things or people.

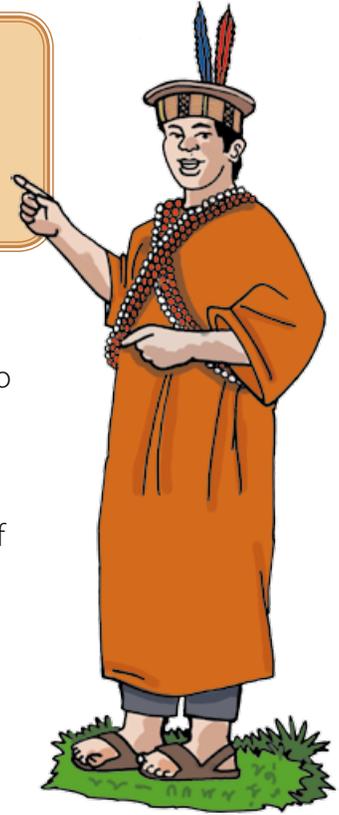
▣ **Reconstruction of the crime:** The inspection and reconstruction diligence to verify whether the crime occurred or not.

**Note:** In the event that the crime occurs in the territory of indigenous peoples, access to those areas must be facilitated and the legal authority must have sufficient technical and personal capacity to carry it out.

## Special tests

They are performed to obtain information related to crimes against life, body or health, such as.

- ▣ **Necropsy:** The examination of the body without opening it to analyze the condition of the organs and systems, in order to know the true causes of death.
- ▣ **Embalming:** The procedure of preserving the body for later examination



## 2. CRIMINAL PROCEEDINGS

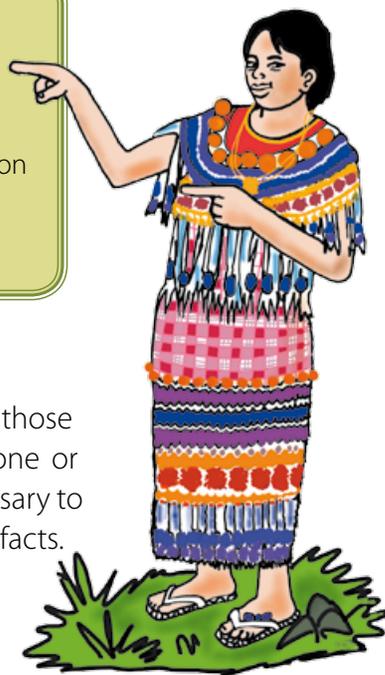
This chapter will define the criminal procedure (preparatory investigation and oral trial) and will mention the means of evidence defined above, as well as the forms of use in favor of indigenous defenders.

### What is the complaint?

A statement of knowledge about certain facts that make up one or more crimes presented to the legal authorities, the Public Ministry or the National Police.

People who report are considered to be **petitioners** and may do so orally or in writing. If they decide to make it in writing, the information must include:

- ◆ Entity in charge of receiving the complaint.
- ◆ Background.
- ◆ Legal framework.
- ◆ Possible measures to protect the investigation and the people involved.
- ◆ Evidence to support the complaint.



### What is the criminal process?

A criminal investigation is a process by which those primarily responsible for the occurrence of one or more crimes are discovered. For this, it is necessary to collect information that will help to clarify the facts.

## Who is involved in the criminal process?

Chart N° 1. Parties of the criminal process

Body	Definition
<b>National Police</b>	<ul style="list-style-type: none"> <li>◇ Auxiliary body responsible for carrying out technical and support work at the request of the investigative and legal bodies.</li> </ul>
<b>Attorney General's Office or Public Ministry</b>	<ul style="list-style-type: none"> <li>◇ It undertakes the criminal action from the prosecution to the sentence that condemns or acquits those likely to be responsible.</li> <li>◇ In charge of directing the crime investigation after knowing the criminal news.</li> <li>◇ It is the holder of the burden of proof. It means, it must achieve the truth of the facts that constitute the crime.</li> </ul>
<b>Criminal judge</b>	<ul style="list-style-type: none"> <li>◇ Body responsible for the administration of justice in criminal matters. In other words, it establishes the sanctions for those responsible for committing one or more crimes.</li> </ul>
<b>Victims</b>	<ul style="list-style-type: none"> <li>◇ The people directly affected by the crime or its consequences.</li> </ul>
<b>Perpetrators</b>	<ul style="list-style-type: none"> <li>◇ They are the main culprits identified after the criminal process. They committed one or more crimes.</li> </ul>

Prepared by the author.

## How does the criminal process work?

The criminal process is divided into preparatory investigation (preliminary proceedings and preparatory investigation) and oral trial.

Chart N° 2. Common criminal procedure

	Stage	Responsible body
<b>Preparatory investigation</b>	Preliminary proceedings	Public Ministry
	Preparatory investigation	Public Ministry
	<b>Oral trial</b>	Judiciary

Prepared by the author.

## 2.1. Preparatory Investigation

### a. Preliminary proceedings

#### What are preliminary proceedings?

This stage has the objective of gathering and elaborating evidence of greater urgency so that the Public Ministry or the National Prosecutor's General Office and the support of the National Police can verify the Commission or not of one or several crimes formalize the investigation.

#### What are the forms of initiating the preparatory investigation?

- ▣ **Complaint of one of the parties:** The traditional complaint made to a competent authority by the person or people affected due to a possible crime.
- ▣ **People's action:** The complaint made by any citizen who has knowledge that a possible crime was committed.
- ▣ **Police complaint:** The complaint made to the National Police, which shall communicate to the Public Ministry or the National Prosecutor's General Office to start with the preliminary investigations.
- ▣ **Official Intervention:** It is when the Public Ministry has direct knowledge through an intervention, operation or the news media.

## What are the functions of the Public Ministry during this stage?

- ☐ To conduct the preliminary proceedings.
- ☐ To carry out urgent actions to verify the facts complained with technical support and staff from the National Police.
- ☐ To identify the people involved in the crime (possible perpetrators and victims).
- ☐ To file the complaint if there is not enough evidence.
- ☐ To reserve the investigation temporarily.
- ☐ **To enter the investigation.**

## What are the functions of the National Police during this stage?

- ☐ To provide technical support and staff in the urgent preliminary proceedings at the request of the Public Ministry.
- ☐ To know the criminal acts through the criminal notice.
- ☐ To make the police report.

## What is the police report?

The document made by the National Police to report a crime to the Public Ministry. It should have the following structure:

- ☐ Backgrounds that motivated the intervention of the National Police.
- ☐ Proceedings carried out.
- ☐ Description of the criminal acts.

## What is the execution of the investigation?

If the Prosecutor of the preliminary investigation has enough elements to inform the occurrence of a possible crime, he could enter into the investigation and move on to the next stage where he will have greater instruments: **preparatory investigation.**



The execution of the preliminary investigation must contain:

- ◆ The identification of the possible perpetrators.
- ◆ The exposition of facts.
- ◆ The qualification of the acts as crimes.
- ◆ The identification of the possible victims.
- ◆ The proceedings the must be carry out immediately.



### What evidence used in this stage is related to the defenders and the indigenous defenders?

In the preliminary proceedings carried out by the Public Ministry or the National Prosecutor's General Office, various types of evidence will be gathered, including:

#### ▣ Special testimony

While the police or the prosecutor collects the information related to the witnesses who observed the occurrence of the crime, it is necessary to consider certain aspects intimately linked to the cultural particularities of the indigenous peoples, such as their mother tongue or native language through which they transfer the information, and the form of expression related to their traditions and/or customs.

In addition, authorities should avoid questioning with double-ended, trick or confusing questions for the witness. This activity is prohibited, especially considering the special vulnerability of indigenous peoples. For example:

- ◆ What is your opinion about the criminal acts in one of the testimonies?
- ◆ Who do you think were responsible for the crime?
- ◆ Do you believe that illicit acts constitute a crime?

These kinds of questions show clear partiality so that the defender, the settler, or the indigenous witness provides more information without clearly knowing the authorities' intention.

### ▣ **Documentary evidence**

To investigate the crimes related to the defenders and the indigenous defenders, the authority often requires public information that can prove the existence of certain acts. In this sense, official documents become important pieces to grant validity to the possible complaint, especially to the indigenous peoples. These documents can be:

- ◇ Communal Title Deed Registry.
- ◇ Migratory Movements Registry.
- ◇ Police and Criminal Record.
- ◇ Public information related to the commission of the crime.
- ◇ Other information.

## **b. The preparatory investigation**

### **What is preparatory investigation?**

This stage aims to gather means of evidence and exculpatory evidence with support of the National Police to be used in the next stage: **the oral trial**.

### **What are the functions of the Public Ministry in this stage?**

- ▣ To conduct the preparatory investigation.
- ▣ When necessary, to carry out the procedures required clarifying the crime, with the support of the National Police and the authorization of the Public Ministry.
- ▣ To preserve the investigation.
- ▣ **The preliminary proceedings already performed can't be repeated.**
- ▣ To accuse before the Judge of the preparatory investigation.
- ▣ To request the dismissal (not an accusation for lack of evidence) before the judge of the preparatory investigation.

## What are the functions of the National Police in this stage?

To serve as technical support and staff during the proceedings carried out at the request of the Public Ministry.

## What are the functions of the Criminal Judge (Judge of the preparatory investigation) in this stage?

- ☐ To verify the legality of the evidence obtained during the preparatory investigation.
- ☐ To order the conclusion of the preliminary investigation through a control of deadlines.
- ☐ **To verify the Information of the Public Ministry.**
- ☐ To evaluate the request of dismissal presented by the Public Ministry or any of the parties.

## What content does the prosecutor's accusation must have?

The prosecutor's accusation must have:

- ☐ The identification of the possible defendants.
- ☐ Clear and precise facts.
- ☐ Evidentiary elements.
- ☐ The participation of the defendants in the crime.
- ☐ Legal qualification of the criminal acts.
- ☐ Amount of the civil redress, seized or confiscated goods.
- ☐ Evidence to be evaluated.

## What evidence used in this stage is related to the defenders and indigenous defenders?

### ☐ **Scene Reconstruction**

Reviewing the criminal acts is part of the strategy of the investigation authority to identify the relevant elements that may be part of the information. In this regard, the National Police's support is necessary to

protect the Prosecutor’s staff or to access the zones where the crimes occurred, especially when most of the crimes against the defenders and indigenous defenders take place in hard-to-reach places or difficult location.

For the reconstruction of the crime, it is necessary the presence of:

- ◆ **The investigation authority:** Public Ministry or National Prosecutor’s General Office.
- ◆ **National Police:** Technical support and staff to access the zone of influence.
- ◆ **People under investigation:** Main actors for the crime scene reconstruction.
- ◆ **Witnesses:** Main actors who observed the occurrence of the crime.
- ◆ **Legal Defense of the victim or victims:** In the scene reconstruction, it is necessary the presence of the victim’s defense attorney to confirm the legitimacy of the investigation actions during this type evidence and to avoid any kind of contamination of the acts.



### ▣ Legal inquiry

As a form of investigation by the authority, measures restricting the liberty and privacy are implemented. These include the legal inquiry that often corresponds to the visit of places where information related to the crime could be found, such as housing or offices.

It should be added that, in order to carry out this measure, it is necessary to have the request of the investigating authority. This must be approved by the criminal judge as it is a measure that limits rights.

### ▣ Necropsy or embalming

In the case of homicide crimes, or the ones related to the death of the victim, different methods are used to preserve (embalming) the body or their parts. Further tests (necropsy) will be performed to help identify the causes of death.

The test must be in charge of specialized officials in the field such as Forensic Medicine and should involve, in some cases, the investigating authority. At the end of the process, a medico-legal report should be made determining the causes of death.

### Expert's report

It is the document made by certain officials with a high level of specialization related to the crime. Particularly, for the crimes committed against the defenders and indigenous defenders, it is required to prepare information reflecting the peculiarities of the indigenous peoples such as the commission of the crime in circumstances where they consider legitimate their demands (social protests with the occurrence of unrest.)

The expert's report must include a series of requirements that, if not met, could result in its invalidity in the criminal proceedings.

## 2.2. Oral trial

### What is an oral trial?

This stage aims to determine the liability of the person or persons under investigation regarding the perpetration of a criminal offense. For this purpose, the criminal judge uses the evidence that has been submitted by the investigation authority and the victim's legal defense during the different stages of the criminal proceeding.

### What are the judge's functions in a criminal proceeding?

-  To lead the oral trial's stage.
-  To lead the judgment hearing.
-  To be an observer and act unbiasedly in search of the facts' veracity.
-  To allow the submission of evidence considered relevant.
-  To deliver the criminal judgement that declares or not the liability of the parties under investigation.

## What is a judgment hearing?

It is the main act led by a judge or a three-judge court, attended by the investigation authority, the defendant, and the defense attorney.

To hold a judgment hearing, it is necessary to follow certain steps in order to present the truth about the criminal acts.

### ◆ Preliminary or opening pleadings

During the initial pleadings, the judge will hear for the first time the facts or records or both that underlie the case. This stage allows the defense and the plaintiff party to present their arguments and legal fundamentals.

### ◆ Information about the defendants' rights

The judge or the three-judge court shall inform about the rights that protect the defendant during the hearing (right to be heard and to communicate with the defense attorney).

### ◆ Early conclusion of the oral trial

At some point, the judge or the three-judge court, before deciding, will ask the defendant if he admits being the author of or participant in the offense, subject matter of the hearing. In this regard, several alternatives can take place, for example:

- a) In case the defendant says yes, the judge or the three-judge court shall declare the proceeding's finding.
- b) Before responding, the defendant may negotiate with the investigation authority on the sentence's amount.
- c) The defendant accepts the charges, but has doubts about the sentence or the civil redress; if so, the hearing will continue on those points.
- d) If there are more defendants, one of them can assume the charges. The others shall continue with the hearing.



### ◆ Evidentiary proceeding stage

During this trial stage, for supporting the claims of each party involved in this criminal proceeding, the introduction to the relevant information shall be made using the following means:

- a) **Examination:** Process to collect information from the witness through a series of open questions.
- b) **Cross examination:** Process to discredit the information declared by the initial witness. This process corresponds to the counterparty.
- c) **Objection:** Procedural instrument that allows challenging the questions asked. Subsequently, it will continue with the proceedings of the other previous evidence. Finally, one of the parties involved in the criminal proceeding will present the closing arguments.

### ◆ Judgment delivery

After the judge or the three-judge court's deliberation, the judgment that will decide the liability of the persons under investigation (guilty or not guilty) shall be immediately delivered.

## What is a criminal judgment?

A criminal judgment is a decision made by a judge –in some cases, by a three-judge court– and determines whether the liability is or is not of the persons under investigation, the amount of the civil liability, and other additional measures that ensure the enforcement of the judgment.

### ◆ Statement or descriptive part

The statement of facts that were part of the investigation and judgment.

### ◆ Conclusion part or preamble

The proven facts' argument and the legal basis concerning the accusations.

### ◆ Operative part or judgment

The judgment's final part and it contains the criminal judge or three-judge court's decision.

## 3. COURT DEFENSE OF THE COICA'S DEFENDERS: EVIDENCE

### 3.1. Collection and identification of data for the indigenous defenders

This chapter is to identify and to collect data related to cases of breaches, in particular, against indigenous defenders, and indigenous peoples, in general. Therefore, it is crucial to develop techniques that enable that work, but before collecting the data, it is imperative to answer the following question.

#### What is a technique?

The tools used to ensure that the result is rigorous and of high quality. The choice of each technique will depend on the type of information to be obtained and the results to be achieved. These include:



## Survey

What is a survey, and what is its purpose?

It allows contact with the people (respondents) through a sheet of questions (survey), to get data in a general way.

How is a survey conducted?

- ◇ **Over the phone:** The survey is done by phone call.
- ◇ **By email:** A questionnaire is sent by email.
- ◇ **In person:** The survey is face-to-face so the respondent can complete it.
- ◇ **Online:** A mass media on the internet is used.

What kinds of questions are asked in the survey?

- ◇ **Closed-ended questions:** The survey has questions with two options giving no freedom to answer them.  
“Do you think the Government defends your rights?  
( ) Yes ( ) No”
- ◇ **Open-ended questions:** The survey has questions that can be freely answered by the respondents.  
“Why do you think the Government doesn’t defend your rights?”

How is a survey prepared?

- ◇ The survey shall not be extensive.
- ◇ The questions shall motivate the respondent.
- ◇ The survey shall be simple.
- ◇ The survey shall look for accurate and specific outcomes.

Who  
participates in  
a survey?

The pollster is the person who asks someone (respondent) to complete a series of questions (survey).

## Interview

What is an  
interview,  
and what is  
its purpose?

A dialogue between a person who asks the questions (interviewer) and a person who answers them (interviewee). The purpose of this is to collect opinions and ideas from the interviewee about certain events in a saved and trustworthy environment.

How is an  
interview  
conducted?

- ◆ **Direct:** The interviewer asks more specific questions to get further information.  
“How old are you?”  
“Why did you stop living in that place?”
- ◆ **Indirect:** The interviewer asks more open-ended questions freely to answer.  
“Let’s talk about your needs.”  
“Tell me about your job.”



### What is the kind of questions asked in an interview?

◆ **Closed-ended questions:** The interview consists of several questions with different options, but with no freedom to answer them.

“Do you think the Government defends your rights?  
( ) Yes ( ) No”

◆ **Open-ended questions:** The interview has questions that can be freely answered by the interviewee.

“Why do you think the Government doesn’t defend your rights?”

◆ **Mixed questions:** Use of closed-ended and open-ended questions.

“Do you think the Government defends your rights?  
( ) Yes ( ) No”

“How old are you?”

“Tell me about your family.”

“Did you tell me you have siblings?”

### How is an interview prepared?

An interview is planned in advance and conducted prior coordination in a friendly environment to obtain an open communication. Additionally, it highlights the answers’ positive aspects to generate a productive exchange and to define likely findings.

### Who participates in an interview?

A dialogue and exchange of opinions’ process. The interviewer asks the interviewee questions to collect opinions and ideas about a particular matter.

## Documentary analysis

What is a  
documentary  
analysis, and  
what is its  
purpose?

Documentary analysis is a set of intellectual operations to get content different from the original document and to facilitate its subsequent access.

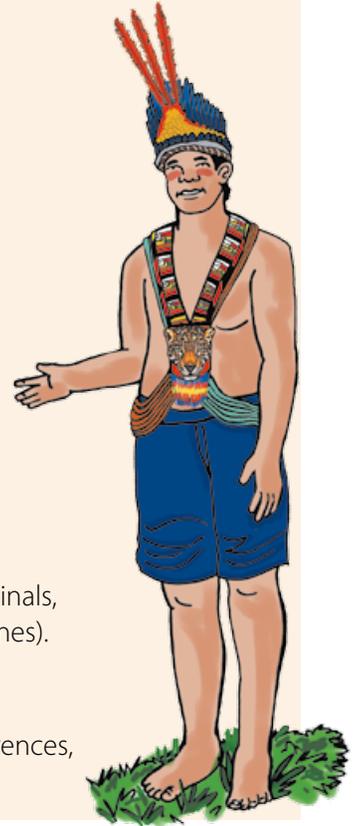
What are  
the types of  
documents?

◆ **According to the physical format:**

Physical document (magazine, leaflets, books, etc.), chemical equipment (films), magnetic equipment (videotapes, floppy disk, cassettes, etc.), optical support (CD ROM, DVD, etc.)

◆ **According to the message:**

- Text documents (books, magazines, etc.).
- Non-text documents (figures, plans, photos, etc.).
- Primary documents (originals, such as books or magazines).
- Secondary documents (mention of the original documents, such as references, catalogs, etc.).



### How is a document analyzed?

- ◊ **Descriptive analysis:** In this (first) stage, it is provided the document's physical description by some criteria (author/s, place, title, language, release date, etc.).
- ◊ **Content analysis:** In this (second) stage, a more detailed analysis of the document's content is performed to get a series of concepts (document's message, internal structure, etc.).
  - **Indexing:** Process to describe a document. It includes simple and clear titles that outline the document's key content.
  - **Briefing:** Process to perform a brief and objective analysis of the document's content to facilitate access. That is, to set aside useless information.

### Who participates in a documentary analysis?

There is a main document that is analyzed by one or more people that wish to get information different from the original document for its accessibility<sup>3</sup>.

The use of any of the techniques described above will make it possible to obtain information related to cases involving the rights of indigenous defenders. In the next chapter, the objective will be to achieve greater order and systematization through criteria or indicators for subsequent access.

## 3.2. Information systematization

Once the information has been recollected and identified through the techniques above, it must be organized and arranged to obtain a reliable and useful database with information related to the cases of Indigenous defenders. First, some questions shall be answered:

3 Searched on <http://eprints.rclis.org/14605/1/tipdoc.pdf>.

## What does systematize information mean?

To sort and classify information or data obtained through categories and relationships to create an organized and accessible database<sup>4</sup>.

## How the information to be systematized is selected?

- ▣ **Case approach:** The information obtained shall be related to cases and/or experiences suffered by individuals or collective groups.

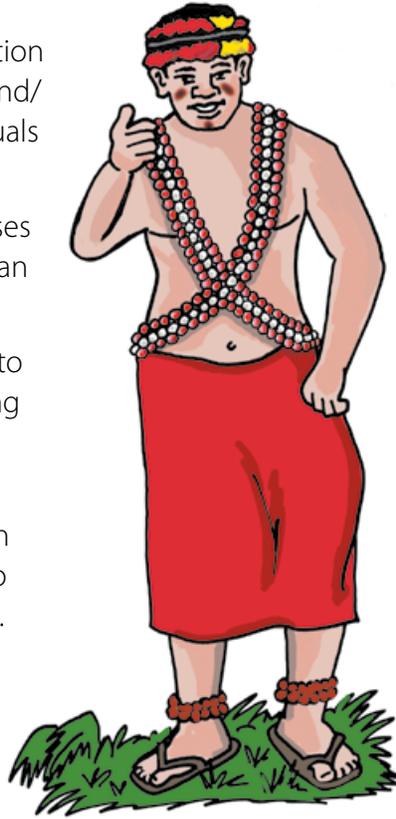
“Hydrocarbon spill pollution cases in a river used as a livelihood by an indigenous community.”

“Threat or attacks of criminalization to Indigenous leaders when demanding the attention of the Government.”

- ▣ **Subject approach:** The information obtained is arranged according to strategic subjects or special interest.

“Indigenous defenders situation in the Amazon Basin in the last 10 years.”

“Access to justice and remediation mechanisms by Indigenous defenders.”



4 Searched on <http://www.fao.org/3/a-ah474s.pdf>.

## How is the information sorted?

After asking the right questions and being clear about what will be systematized, the information will be sorted through graphics to represent better and comprehend the information.

Example: The information obtained can be classified, for instance, according to the number of people affected by a petroleum spill or related subjects to the Indigenous peoples.

The probable result might be the following:

Chart N° 3. Elaboration of information's sources

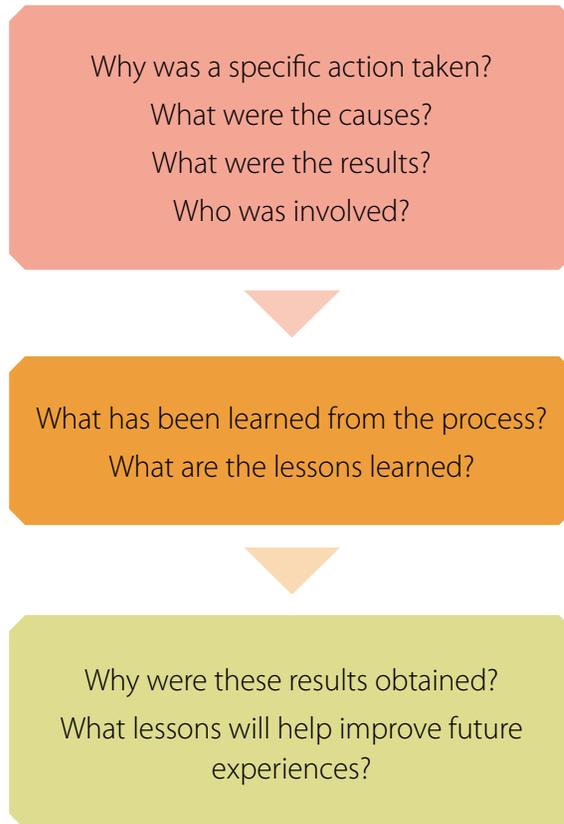
Case (example)	Description
<p><b>Petroleum spill in Loreto-2018 (reported by CORPI-SL)</b></p>	<ul style="list-style-type: none"> <li>◇ Case:                             <ul style="list-style-type: none"> <li>• Fact description. <b>What happened? What were the causes?</b></li> <li>• Number of affected people (by age, gender, indigenous nationality) between men and women (children, adults, and elderly), and population and indigenous organization. <b>Who and how many were affected?</b></li> <li>• Date and place. <b>When and where happened?</b></li> <li>• Identification of the aggressors. <b>Who did it?</b></li> <li>• Impacts. <b>What indigenous rights were affected?</b></li> <li>• Responses. <b>How could this case be solved?</b></li> </ul> </li> <li>◇ Main measures of defense up to date:                             <ul style="list-style-type: none"> <li>• Proceedings. <b>What have the Government, companies and indigenous organization done so far?</b></li> </ul> </li> </ul>

Prepared by the author.

## What is the purpose of systematizing information?

The objective of systematizing information is to learn and generate new knowledge from the arrangement of data and ideas to address the problems identified. The process of systematization allows researchers to ask themselves these questions:

Figure N° 1. Investigation process



Source: FAO. Prepared by the author.

The following chapter will address how the systematized information will serve as evidence for indigenous defenders' defense during the development of the investigations described above.

### 3.3. The COICA's Indigenous Defenders Court Defense Preparation

The information collected, identified and systematized on the cases of indigenous rights defenders will serve to build means of defense that will help in the criminal investigation process.

The assessment of evidence is carried out according to an existing legislation in each country where COICA operates. Therefore, this chapter's objective is to elaborate the defense with the obtained information so far to provide greater protection.

#### How is the Indigenous defenders' legal defense prepared?

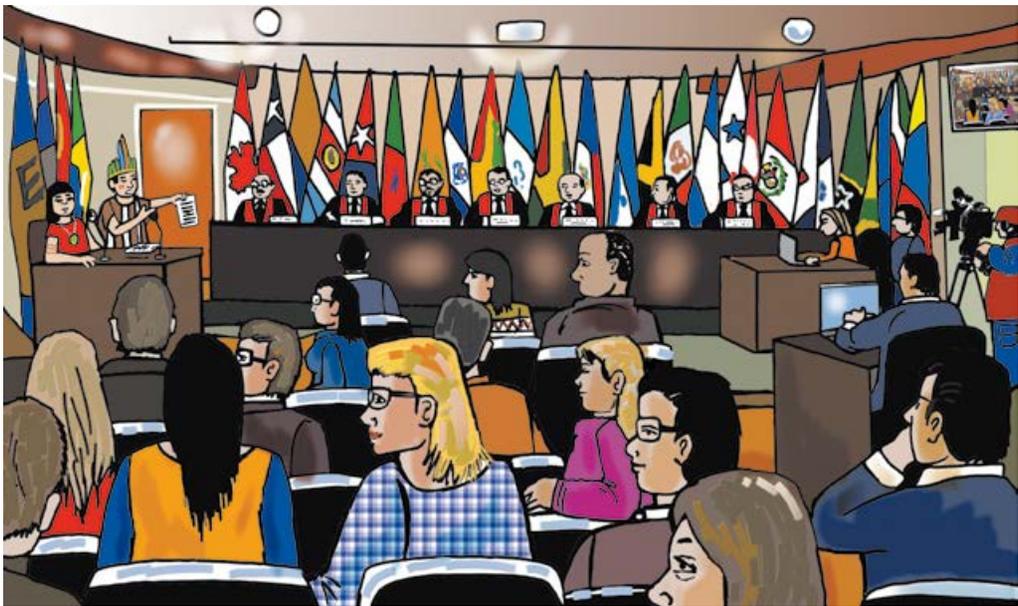
Considering criminal investigations carried out by the Governments, there are diverse stages (preparatory investigation and oral trial) where the evidence can be presented to support the defense in cases against Indigenous defenders. A proposal of a structure might be as follow:

- a. **Data of presumed victims:** Information related to name, age and address to identify presumed victims (who are they?).
- b. **Data of legal representatives:** Information related to name, situation and power of attorney of the presumed victims' legal and/or legal representatives (who are the legal representatives?).
- c. **Data of aggressors:** Information about presumed assailants (respondents), (who are the aggressors?).
- d. **Background:** Information about what happened, told simply and concretely (what happened?).
- e. **Petition:** Victims' or plaintiffs' request to the Court (what do I want to protect?).
- f. **Evidence:** Information recollected from interviews, surveys and/or analysis of documentation to evaluate the criminal investigation phases (what evidence shall be presented to the Court?).

- g. Legal standards:** Specifying international or national standards (according to each country) will support the complaint (what laws protect indigenous rights?).

### 3.4. Preparing for Advocacy

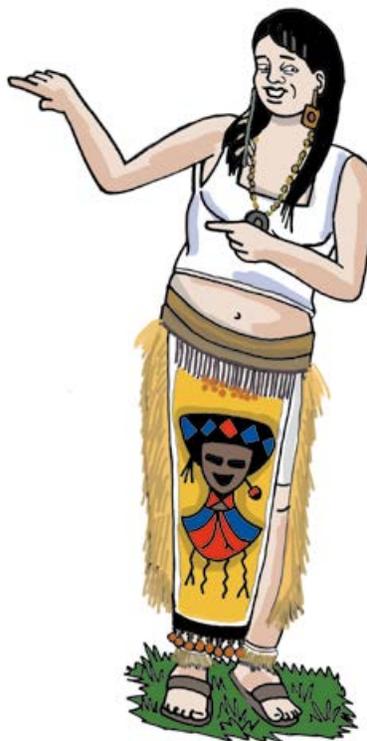
It is important to take the information to different advocacy spaces, such as the spaces of the Universal System or the Inter-American Human Rights System, etc. For this, it is necessary to systematize, in an adequate manner, the cases that COICA and its nine bases follow up. In this sense, it is important to consider:



## Elaboration of regular reports

Statistics will allow monitoring:

- ▣ Main impacts to Indigenous defenders. **What have been the greatest impacts?**
- ▣ Number of affected people, between women and men. **Who and how many people were affected?**
- ▣ Date and place. **When and where happened these impacts?**
- ▣ Identification of assailants. **Who caused these impacts?**
- ▣ Main measures of defense up to date.
- ▣ Proceedings. **What have been done until now to protect the Indigenous defenders?**



## Request for precautionary measures:

- ▣ A precautionary measure can be related to a petition or a case, or it can be requested independently. In order to make a decision, the Commission shall consider:
  1. The **gravity of the situation**, that is, the impact that an action or omission may have on a protected right or on the eventual effect of a pending decision in a case or petition before the bodies of the Inter-American System.
  2. The **urgency of the situation**, as determined by information indicating that the risk or threat is imminent and may materialize, requiring preventive or protective action.

3. **Irreparable damage** is damage to rights that, by their very nature, are not susceptible to reparation, restoration, or adequate compensation.

☐ A precautionary measure may protect a person or a group of persons that are determined or determinable through their geographical location, their membership or link to a group, village, community or organization.

☐ A request for a precautionary measure must contain:

- The information of the people proposed as beneficiaries or information enabling them to be determined.
- A detailed and chronological description of the facts supporting the request and any available information.
- Description of the protective measures requested.

☐ By reviewing a request for a precautionary measure, the Commission will consider the following:

- The context.
- Whether the risk situation has been reported to the competent authorities and, if not, the reasons for it.
- The identity of the beneficiary or the determination of the group that would be the beneficiary.
- The express agreement of the beneficiary, in case it has been requested by a third party. If not, i.e. if the beneficiary cannot agree, the measure is equally justified.



- ▣ Before taking any decision regarding precautionary measures, the Commission shall request relevant information from the Government concerned, unless the immediacy of the potential damage does not admit of delay. In that case, the decision will be reviewed as early as possible.
- ▣ The granting of precautionary measures will be known by resolution. These do not constitute a prejudice to any request or case.
- ▣ The Commission should regularly evaluate the precautionary measures in order to decide whether to maintain, amend or withdraw them. The withdrawal of the precautionary measure may be on its initiative or at the Government's formal request, but the petitioner must be consulted first. A precautionary measure may be withdrawn if there is no satisfactory response to the Commission on the requirements made.
- ▣ The IACHR can adopt pertinent follow-up measures, such as request information from interested parties, implementation schedules, hearings, working meetings, follow-up visits, and review.
- ▣ ***The Commission may request precautionary measures from the Court.*** If precautionary measures are granted in the case, they are maintained until the Court communicates its decision. If the Court rejects them, the Commission will not consider a new request on the same matter, unless there are new facts that justify it.

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**MANUAL OF EVIDENCE FOR THE DEFENSE  
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