

Self-Determination

Lands, Territories and Resources

Governance & Autonomy

Obligations of States

If ALL PEOPLES have the right to self-determination ...

Who are 'peoples'?

‘POLITIES’

Polities do not necessarily need to be governments. A polity is a group of people with collective identity, who are organised by some form of political institutionalised social relations, and have a capacity to mobilise resources.

A corporation, for instance, is capable of marshalling resources, has a governance structure, legal rights and exclusive jurisdiction over internal decision making.

An ethnic community within a country may be a polity if they have sufficient organisation and cohesive interests that can be furthered by such organisation.

The Montevideo Convention on the Rights and Duties of States (1933)

Article 1

The state as a person of international law should possess the following qualifications:

(a) a permanent population;

(b) a defined territory;

(c) government; and

(d) capacity to enter into relations with the other states.

Article 3 (Declaration)

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 1 (Covenants)

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
2. **All peoples may, for their own ends, freely dispose of their natural wealth and resources** without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.
3. **The States Parties** to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, **shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.**

Article 3

Indigenous peoples have the right to **self-determination**. By virtue of that right they freely determine their **political status** and freely pursue their **economic, social and cultural development**.

Article 4

Indigenous peoples, in exercising their right to self-determination, have the right to **autonomy** or **self-government** in matters relating to their internal and local affairs, as well as ways and **means for financing their autonomous functions**.

Article 5

Indigenous peoples have the right to maintain and strengthen their distinct **political, legal, economic, social and cultural institutions**, while retaining their right to **participate fully, if they so choose, in the political, economic, social and cultural life of the State**.

LANDS, TERRITORIES AND RESOURCES. (Articles 25 -30)

Indigenous peoples have the **right to own, use, develop and control** the lands, territories and resources that they possess ...

Article 26

States shall establish and implement, in conjunction with indigenous peoples concerned, a **fair, independent, impartial, open and transparent process ... to recognize and adjudicate the rights** ... to their lands, territories and resources,...

Article 27

Indigenous peoples have the right to **redress, ... restitution or ... just, fair and equitable compensation** for the lands, territories and resources ... confiscated, taken, occupied, used or damaged without their free, prior and informed consent.

Article 28

GOVERNANCE & AUTONOMY

Indigenous peoples, in exercising their right to self-determination, have the **right to autonomy or self-government** in matters relating to their internal and local affairs, as well as **ways and means for financing their autonomous functions**. Article 4

... establish and control their **educational systems** ... Article 14

... maintain and develop their own **decision-making systems** ... Article 18

... develop their own **political, economic and social systems** Article 20

... determine their own ... priorities and strategies for **development** ... Articles 23 & 32

OBLIGATIONS OF STATES

Indigenous peoples have the **right to access to and prompt decision** through just and fair procedures **for the resolution of conflicts and disputes with States** or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights. Article 40

... Indigenous peoples deprived of their means of subsistence and development are entitled to **just and fair redress**. Article 20

Indigenous peoples have the right to have access to **financial and technical assistance from States and through international cooperation**, for the enjoyment of the rights contained in this Declaration. Article 39

OBLIGATIONS OF STATES

Concerned that indigenous peoples have suffered from historic injustices as a result of, inter alia, their **colonization and dispossession of their lands, territories and resources**, thus preventing them from exercising, in particular, their **right to development** in accordance with their own needs and interests, PP6

Welcoming the fact that **indigenous peoples are organizing themselves** for political, economic, social and cultural enhancement and in order to bring to an end all forms of discrimination and oppression wherever they occur, PP9

Emphasizing that the **United Nations has an important and continuing role** to play in promoting and protecting the rights of indigenous peoples, PP20

Considering that the **rights affirmed in treaties, agreements and other constructive arrangements** between States and indigenous peoples are, in some situations, **matters of international concern, interest, responsibility and character**, PP 14

OBLIGATIONS UPON STATES

further reading

GENERAL ASSEMBLY & HUMAN RIGHTS COUNCIL

UN Declaration on the rights of indigenous peoples

A/RES/61/295

13 September 2007

Outcome Document of the World Conference of Indigenous Peoples

A/RES/69/2

25 September 2014

Rights of Indigenous Peoples

A/RES/78/189

19 September 2023

Human rights and Indigenous Peoples

A/HRC/RES/54/12

11 October 2023

IMPLEMENTING SELF-DETERMINATION

Efforts to implement the United Nations Declaration on the Rights of Indigenous Peoples: indigenous peoples and the right to self-determination

A/HRC/48/75

5 February 2024

Guiding principles for the implementation of Indigenous Peoples' rights to autonomy and self-government

E/C.19/2024/3

5 February 2024

Efforts to implement the United Nations Declaration on the Rights of Indigenous Peoples: establishing effective monitoring mechanisms at the national and regional levels for the implementation of the Declaration*

A/HRC/EMRIP/2023/3

30 May 2023

Indigenous peoples' permanent sovereignty over natural resources

E/CN.4/Sub.2/2004/30 & E/CN.4/Sub.2/2004/30/Add.1

12 July 2004

Declaration on the rights of Indigenous Peoples

A/RES/61/295

BACKGROUND

The Declaration, adopted in 2007, has and will continue to have, a significant impact upon international law regarding Indigenous Peoples of the world.

It is an instrument which evolved from the work of the intended beneficiaries of the human rights standard.

It took almost 100 years of international lobbying by delegates of Indigenous Peoples to be finally established at the UNGA.

Though a declaration is a non-binding instrument, UNDRIP is founded upon principles in the UN Charter and international human rights treaties.

The declaration is backed by many additional instruments calling for cooperation and partnership between states and Indigenous Peoples at domestic levels.

'Sovereignty' is a difficult concept to use as a foundation for autonomy in international law, whereas 'self-determination' is described in a wide and large body of work.

FEATURES OF UNDRIP

The Declaration:

- addresses collective rights in international law, i.e. rights of "peoples";
- creates no new rights, but cites fundamental rights denied to Indigenous Peoples;
- features, inter alia, rights to **self-determination, lands territories and resources, governance and autonomy, and the obligations of states;** and
- is supplemented by the Outcome Document (A/RES/69/2) from the WCIP, which sets out actions by states to implement, promote and protect the rights.

The Declaration may be considered a roadmap for self-determination of Indigenous Peoples.

Self-determination, in Article 3, reflects the wording in Art. 1 of the two covenants. HRC and CESCR (treaty bodies) have expanded comments on self-determination.

Some states seem to be trying to redefine self-determination as a limited right to internal control by states, but there is no such restriction implied in the human right to self-determination of ALL peoples.

It is taking too long for states to embody the human right into domestic laws, and more recent examinations at the United Nations are becoming more focussed on the need to implement the right of self-determination and the Declaration, in total, through legislative and executive actions.

Indigenous Peoples, at the national levels should make greater efforts to organise and take control of the need for change. States, generally speaking, are falling short of real commitment to equality and human rights where Indigenous Peoples are involved.