

Indigenous women and self-determination

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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.

Indigenous Sovereignty and Self-Determination

Indigenous peoples have always asserted that they are sovereign nations with their own forms of government organized according to their own beliefs, needs, and environment.¹ *The Royal Commission on Aboriginal Peoples (RCAP)* explains the different organization of Indigenous nations, noting Indigenous nations had elaborate social structures built around the nuclear and extended family. These are grouped into a band, clan, district or community all of which, in turn, may be part of a larger nation that may itself belong to a confederacy of many nations and to a larger language group. Governance is usually decentralized, with local units coming together or sending representatives to the councils of the nation or confederacy. In the councils of decision making, individuals are generally equal, and deliberations typically continue until consensus is reached. Leaders thus tend to guide, counsel and speak on behalf of the people; they typically do not exercise the authority to make unilateral decisions or to impose their will.²

Indigenous women often played an important role within these governance systems, either through direct leadership roles or advisory.

Through these governance systems, Indigenous peoples made decisions for themselves related to all aspects of their collective lives, including decisions related to their lands, territories and resources like water. These governance systems also provided ways for Indigenous peoples to enter into relationships with other nations. This is self-determination.



Defining Self-Determination

Self-determination, as a human right, is made up of several different aspects including the right to

- decide on their own political future, within their own institutions,
- take part in the political life of the State and
- direct their political, economic, social and cultural development.³

The right to self-determination is a foundational right, from which all other rights flow. The UN Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) explains how “the right to self-determination is manifested in articles 4, 5, 18, 19, 20 and 33 of the Declaration... Without article 3, none of the other rights can be wholly fulfilled.”⁴ Self-determination is a collective right, exercised by the members of the group. Membership within the group is based on self-identification and collective acceptance of group members without discrimination.⁵

The UNDRIP was not the first international human rights instrument to recognize the right to self-determination. It is recognized in the Charter of the United Nations and in common article 1 of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights: “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.” Understanding the scope of self-determination in the UNDRIP also requires an understanding of self-determination more broadly in international law.

Including Women in Self-Determination

Past discussions of self-government, as part of the exercise of self-determination, have not wanted to address (or include) Indigenous women’s concerns. Some organizations expressed concern that Indigenous women’s concerns are at odds or secondary to Indigenous peoples concerns (and collective rights). Indigenous women’s organizations also have been “accused of betraying the self-determination struggles and of cooptation into colonial, Western discourses of individualism.”⁶

Implementation of the right to self-determination requires us to move past thinking regarding Indigenous women’s rights as individual rights, which undermines Indigenous collective rights. Individual and collective rights should not be pitted against each other because “not only is the separation of the individual from the collective unnecessary, it is illogical. Individuals are the collective and the collective is the cumulative history, culture, governance traditions, ceremony and language of the people.”⁷ The inclusion of Indigenous women within self-determination is also to achieving decolonization by



addressing the ways in which colonization differently impacted Indigenous women and Indigenous men.

Women should be included throughout self-determination implementation processes. This means that Indigenous women must be explicitly involved in

- Making decisions regarding social, economic and cultural development including in relation to language, ceremonial and cultural heritage, spirituality and sports rights.
- Making decisions regarding Indigenous peoples' place and participation in the international community
- Maintaining and developing contacts, relations and cooperation with members of their own communities that exist across international borders as well as with other Indigenous peoples across borders.
- Recognizing and revitalizing Indigenous peoples own legal systems and institutions.

Self-Determination, Self-Government, Autonomy and Secession

Self-determination is often connected and sometimes conflated with self-government, autonomy, and secession. The Canadian government policy on the inherent right to **self-government** states "self-government is only recognized with the completion of a negotiated self-government agreement, which puts 'decision-making power into the hands of Indigenous governments who make their own choices about how to deliver programs and services to their communities. This can include making decisions about how to better protect their culture and language, educate their students, manage their own lands and develop new business partnerships that create jobs and other benefits for their citizens.'" Self-government is an aspect of self-determination but self-government alone does not mean self-determination is fulfilled. The government's definition focuses on implementing programs and service delivery and not the fuller right to autonomy.

According to the UN Special Rapporteur on the Rights of Indigenous Peoples, **autonomy** is the power "to organize and direct their lives, according to their own values, institutions and mechanisms, within the framework of the State of which they are part."⁸

Self-determination is not the same thing as **secession**. S James Anaya explains that it is a mistake to see self-determination as meaning a right to secede or to form an independent state.⁹ Self-determination is about the free will to choose your political, economic, social and cultural development, not about a particular arrangement. Anaya does note where violations of the right to freely determine one's future cannot be achieved within an existing state, secession maybe permitted as a remedy to violations of the right to self-determination.



Understanding Article 46(1) and Self-Determination

There remains much confusion and misinformation around a related provision in article 46(1). Article 46(1) states “nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.” Some people think that this provision completely undermines Indigenous peoples’ right to self-determination.

However, that’s not an accurate understanding of this provision. The wording of article 46(1) mirrors a provision in the *Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations*. International bodies have been clear that **territorial integrity** (the recognized land base of a country) and political unity (the governance structure) of a country are only guaranteed if that country fulfills their obligations such as Indigenous peoples’ right to self-determination.

In Canada, if Indigenous peoples’ self-determination cannot be recognized within the existing land mass boundaries and governance structures, then a remedy such as secession may be available. Furthermore, the articulate vision of recognizing Indigenous peoples as sovereign nations would not necessarily impair the territorial integrity or political unity of Canada, unless they were seeking for form their complete own state. Redistributing legal authority over lands and people to different governments within Canada does not impair Canada’s territorial integrity or political unity.

1 René Dussault and George Erasmus, *Report of the Royal Commission on Aboriginal Peoples: Volume 1: Looking Forward, Looking Back*. (Canada Communication Group Publishing, 1996) https://publications.gc.ca/collections/collection_2016/bcp-pco/Z1-1991-1-1-eng.pdf, 41.

2 RCAP, *Looking Forward, Looking Back*, 87.

3 United Nations, Human Rights Council. *Efforts to implement the United Nations Declaration on the Rights of Indigenous Peoples: indigenous peoples and the right to self-determination, Report of the Expert Mechanism on the Rights of Indigenous Peoples*. (United Nations, 2021), para 62.

4 EMRIP, *self-determination study*, para 8.

5 EMRIP, *self-determination study*, para 13.

6 John Borrows, “Aboriginal Treaty Rights and Violence Against Women” *Osgoode Hall Law Journal* 50 (2013), 699.

7 Borrows, “Aboriginal Treaty Rights,” 699.

8 EMRIP, *self-determination study*, para 12.

9 S James Anaya, “The Right of Indigenous Peoples to Self-Determination in the Post-Declaration Era” in Charters and Stavenhagen (eds), *Making the Declaration Work: The United Nations Declaration on the Rights of Indigenous Peoples* (2009), 188.

