

Rights of Indigenous Women

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Article 44: All the rights and freedoms recognized herein are equally guaranteed to male and female indigenous individuals.

Traditionally, in many Indigenous communities, Indigenous women and men had different roles, responsibilities and knowledges.¹ Different roles do not mean inequality.² Each were respected for their roles within the community. This has been recognized by international human rights bodies: “indigenous women make unique contributions and play fundamental roles within their families, their communities, their countries, as well as at the international level. Indigenous women are the guarantors of their culture.”³

The colonial process in Canada targeted the respect for and place of Indigenous women within their communities, creating an imbalance between men and women.⁴ Indigenous women continue to face violations of their human rights, not just as women, but also on the basis of sex, sexual orientation, race, language, cultural, religion and class.⁵ Unfortunately, both Indigenous rights movements and women’s rights movements have failed to address the intersectional impacts: “both rights movements often require Indigenous women to make trade-offs (either as women or as Indigenous peoples) rather than make space for the more fully intersectional frameworks that Indigenous women have been lobbying for.”⁶ The implementation of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) must address the multiple ways Indigenous women experience violations of their rights.



UNDRIP references to Women

The UNDRIP has limited references to Indigenous women. Article 44 is the primary provision which ensures gender equality in the realization of Indigenous peoples' rights. Additional references to Indigenous women only occur in provisions where special attention is required, thus leading to criticisms that the UNDRIP takes a deficit approach to Indigenous women. Therefore it is critical that article 44 be interpreted to ensure that each and every article of the UNDRIP is interpreted with a gendered lens.

Article 44 was the least contentious provision of the UNDRIP during the negotiations.⁷ It was one of the first articles to have consensus (and remained so for many years).⁸ There are a few key components to article 44:

- relates every right in the UNDRIP; it is woven into, and must be influential in, the interpretation and application of each and every article in UNDRIP.
- requires the equal realization of rights in the UNDRIP for Indigenous men and women.
- suggests individual level is where complaints under this provision are best implemented.⁹

Equality and Non-discrimination

The right to equality works alongside the right of **non-discrimination**, meaning that Indigenous women are not to be subjected to worse treatment because they are Indigenous women. The right to non-discrimination is explicitly set out in article 2.

The right to equality and non-discrimination protects against **direct discrimination** where one is explicitly treated different, as well as **indirect discrimination** where a practice that appears neutral has a disproportionate impact on Indigenous women, often due to structural biases. Indirect discrimination can also occur when all people or all women are treated the same, which leads to unequal results. Equality prohibits **unintended discrimination**, so there is no need to show an intention to discriminate, the focus of equality analysis is effect of the treatment.

When article 44 speaks of equality, it is referencing substantive equality. Substantive equality focuses on achieving equal outcomes, which may require states to take **positive action** through legislative, administrative, and policy measures. This could include special protection measures such as affirmative action type policies, restructure institutions, perhaps even using public procurement policies to promote gender equality.¹⁰



Bringing a Gendered Lens

Working to bring a gender lens into the implementation of UNDRIP requires:

- Moving away from a “gender neutral” approach as it may not address Indigenous women’s concerns and aspirations.
- Considering how Indigenous women experience particular violations of each right guaranteed in the UNDRIP and develop implementation plans that account for those violations.
- Gathering disaggregated data to provide complete information on the different ways Indigenous women experience violations of their human rights
- Having equal access to land ownership, women’s empowerment and participation in public life,
- Addressing stereotypes against Indigenous women.

Article 44 and gender and sexual diversity: going forward, article 44 should also be interpreted to move beyond the male-female binary to better reflect and include diverse genders and gender identity and different gender expression. Article 44 could also be further expanded in its interpretation to ensure protection of diverse sexualities and sexual orientations.

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- 1 Forest People’s Programme, *A Guide to Indigenous Women’s Rights under the International Convention on the Elimination of All Forms of Discrimination Against Women* (2012), 20. See also Val Napoleon, “Aboriginal Discourse: Gender, Identity and Community,” in *Indigenous Peoples and the Law: Comparative and Critical Perspectives*, ed. Richardson, Imai and McNeil (Hart Publishing, 2009), 241.
 - 2 Leonor Zalabata, “The Arhuacan Woman: Our Life Is Our Art” in *Indigenous Women: The Right to a Voice*, in ed. Diana Vinding (IWGIA, 1998), 23.
 - 3 Inter-American Commission of Human Rights, *Indigenous Women*. (Organization of American States, 2017), 13.
 - 4 Kiera Ladner, “Gendering Decolonization, Decolonizing Gender,” *Australian Indigenous Law Review*, 13 (2009) 62.
 - 5 UN Office of the Special Adviser on Gender Issues and Advancement of Women and the Secretariat of the PFII, *Briefing Note No. 1, Gender and Indigenous Peoples: Overview*, (United Nations, 2010), 1.
 - 6 Laura Parisi and Jeff Corntassel, “In Pursuit of Self-Determination: Indigenous Women’s Challenges to Traditional Diplomatic Spaces,” *Canadian Foreign Policy Journal* 13 (2007), 81.
 - 7 Alexandra Xanthaki, “The UN Declaration on the Rights of Indigenous Peoples and Collective Rights: What’s the Future for Indigenous Women?” in *Reflections on the UN Declaration on the Rights of Indigenous Peoples*, ed. Stephen Allen and Alexandra Xanthaki (Hart Publishing, 2011), 422.
 - 8 John Henriksen, “The UN Declaration on the Rights of Indigenous Peoples: Some Key Issues and Events in the Process” in *Making the Declaration Work: The United Nations Declaration on the Rights of Indigenous Peoples*, ed. Claire Charters and Rodolfo Stavenhagen (Transaction Publisher, 2009), 82.
 - 9 Ruana Kuokkanen, “Self-Determination and Indigenous Women’s Rights at the Intersection of International Human Rights,” *Human Rights Quarterly*, 34 (2012), 237.
 - 10 Daniel Moeckli, S Shah, and S Sivakumaran, *International Human Rights Law*, 4th edition (Oxford University Press, 2022), 623.

