

# Indigenous Peoples' Rights

Concept: Indigenous Peoples' Rights  
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Description The rights of Indigenous peoples consist of both collective and individual rights. These rights stem from the fact that historically Indigenous peoples have been self-governing with respect to their own cultures, languages, laws, traditions, and social and political institutions. Since 1982, when the United Nations Working Group on Indigenous Populations was established, Indigenous rights advocates have been calling for international recognition and protection of their existing rights against outside infringement by states and transnational corporations. In addition to the demand to be recognized as proper subjects of international law with their own collective rights, Indigenous representatives also call for the adoption of additional rights to safeguard their cultural and physical survival. One of the mandates of the Working Group is to develop international standards concerning the rights of Indigenous peoples.

Right to self-determination is considered the foundation of Indigenous peoples' rights. This is also one of the most contested issues by nation-states and continues to be debated at the United Nations and other international meetings. The UN Charter on Human Rights recognizes that the right of self-determination belongs to all peoples, and "by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development" (993 U.N.T.S. 3; and 999 U.N.T.S. 171). Despite the concerns and fears of many states, a great majority of Indigenous peoples are not interested in or consider secession or independence a viable option. Instead, the goal of Indigenous peoples is autonomy and control over issues affecting them as well as economic, cultural, and social development of their societies and communities.

Historically, rights of some Indigenous peoples and nations have been recorded in treaties signed between them and representatives of governments or states. These treaties and agreements establish the legal foundation and political relations between Indigenous peoples and states, and they provide the historical recognition of self-determination and collective rights of the Indigenous peoples concerned.

Right to self-determination as articulated in international law is a collective right, pertaining to groups and entities of peoples. Closely related to Indigenous peoples' right to self-determination are land rights that also remain largely unrecognized by encompassing states. As many Indigenous rights advocates have pointed out, without rights to their traditional territories, it is impossible to practice self-determination because Indigenous peoples' identities and material and cultural heritage as well as

livelihoods continue to be intricately linked to their lands.

The third important category of Indigenous peoples' rights is cultural rights. The United Nations Declaration on the Rights of Indigenous Peoples mentions Indigenous peoples' rights to practice and restore their cultural traditions which includes "the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature" (Article 11). Cultural rights also cover Indigenous peoples' spiritual and religious traditions, ceremonies, and sacred sites, as well as histories, languages, oral traditions, philosophies, and systems of knowledge.

The UN Declaration on Indigenous Rights represents a cornerstone in the promotion and protection of the world's Indigenous peoples. As a result of decades of work by Indigenous rights advocates, the UN Working Group on Indigenous Populations began drafting the declaration in 1985 and completed it in 1993. The Declaration consists of forty-six Articles that cover rights related to the ownership and the use of Indigenous territories and natural resources; self-determination and treaties; protection of cultural and social institutions, practices and identities; environmental and biodiversity issues; traditional livelihoods and economic structures such as hunting, fishing, herding, and gathering; cultural and intellectual property rights; language and education; and political participation, particularly in issues related to or that may affect Indigenous peoples and their lives.

International institutions such as the United Nations have increasingly recognized the need to protect the rights of Indigenous peoples and recognize them as an essential part of human rights. In addition to the Declaration, another central international instrument that deals with Indigenous peoples' rights is the International Labor Organization Convention 169 Concerning Indigenous and Tribal Peoples in Independent Countries (1989). The working definition of the term "Indigenous peoples" included in this Convention is among the most widely applied and accepted among Indigenous peoples. Replacing the earlier ILO Convention 107 on Indigenous and Tribal populations (1957), Convention 169 marks a clear departure from previous policies of assimilation and integration of Indigenous peoples into the encompassing states. To date, thirteen countries have ratified the convention: Bolivia, Colombia, Costa Rica, Denmark, Ecuador, Fiji, Guatemala, Honduras, Mexico, Norway, the Netherlands, Paraguay, and Peru.

At the level of states, the recognition of Indigenous peoples' rights varies greatly from country to country. In some countries like Argentina, Brazil, Bolivia, Colombia, Canada, Finland, Guatemala, Mexico, New Zealand, Nicaragua, Norway and the Philippines, Indigenous peoples' rights are recognized, at least to some extent, in the Constitution. There is, however, often a great gap between rhetoric and reality. On the other hand, many

Asian and African countries contend that they do not have Indigenous peoples living within their borders, that they only have minorities and tribes. In Canada, Section 35 of the Constitution Act (1982) recognizes Aboriginal rights and defines them as rights that result from the long-standing use and occupancy of the land by the ancestors of present-day Aboriginal people. These rights include hunting, fishing, and trapping on traditional territory. Depending on specific practices and traditions, Aboriginal rights usually differ from one group to another.

Suggested  
Reading:

**Anaya, S. James.** 1996. *Indigenous peoples in international law*. New York/Oxford: Oxford University Press.

**Lâm, Maïvân Clech.** 2000. *At the edge of the state: Indigenous peoples and self-determination*. Ardsley, NY: Transnational.

**Walkem, Ardith and Halie, Bruce. eds.** 2003. *Box of treasures or empty box? 20 years of Section 35*. Penticton, BC: Theytus Books.