

Discussion Paper

Indigenous Peoples' Autonomy and Self-Governance

Outcomes of regional dialogues

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Introduction

1. The right of peoples to self-determination occupies an important place in international human rights law, which is recognized as a fundamental right in major human rights instruments and even the UN Charter. Self-determination is widely acknowledged as a core concept of the international legal order. However, its interpretation and application have been contentious topics in international law, particularly when it comes to Indigenous Peoples' and their exercise of the right to self-determination.

2. The United Nations Declaration on the Rights of Indigenous Peoples states that Indigenous Peoples have the right to self-determination and that in exercising this right, they have the right to autonomy or self-government. The Declaration does not address specific arrangements necessary to facilitate the organization of autonomies and self-government. Indigenous Peoples' self-government structures exist across the world in various forms, and they are often recognized by governments. Sometimes such recognition is only partial or not adequate. Furthermore, there are also many examples where indigenous representative institutions exist but are not recognized at all. This may be due to a lack of political will, a lack of adequate administrative processes or conflicting interests. In some cases, there are questions about the legitimacy of entities that claim to be indigenous representative institutions. Nevertheless, these rights have been universally recognized by the General Assembly.

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.

3. At its twentieth session, the Permanent Forum committed to facilitating informal online regional dialogues on autonomy and self-governance to support the development of guiding principles for the realization of the rights of Indigenous Peoples to autonomy and self-government. The Permanent Forum also invited the Inter-Agency Support Group on Indigenous People's Issues to participate in the organization of these regional dialogues and in the preparation of a discussion paper on this matter to be presented at the twenty-first session of the Forum. The Forum invited the cooperation of the Group of Friends of Indigenous Peoples to encourage the active participation of Member States in this endeavor.

4. This initiative builds upon the work and concepts explored at an international expert meeting organized by UNDESA in January 2018 on the theme of sustainable development in the territories of Indigenous Peoples in the context of Article 4 of the Declaration on the Rights of Indigenous Peoples¹. The meeting concluded that the 2030 Agenda for Sustainable Development cannot be achieved for Indigenous Peoples without some level of autonomy and self-determination. The meeting was followed by a seminar in Mexico City that considered recognition of Indigenous Peoples and their exercise of autonomy and self-determination.² The seminar in Mexico was informed by a wide range of examples and experiences, some of which were included in a dedicated publication on Indigenous Peoples' rights to autonomy and self-government.³

¹ <https://www.un.org/development/desa/indigenouspeoples/meetings-and-workshops/egm2018.html>

² https://www.iwgia.org/images/documents/Recommendations/Autonomi_report_UK.pdf

³ <https://www.iwgia.org/en/resources/publications/305-books/3316-indigenous-peoples-rights-to-autonomy-and-self-government.html>

5. Following up on the seminar, the Special Rapporteur on the Rights of Indigenous Peoples included an analysis of the rights of Indigenous Peoples to autonomy or self-government in her report to the General Assembly⁴ that also contained several recommendations to States on how to ensure that Indigenous Peoples enjoy these rights. Those recommendations included legislative and policy measures to enshrine the right of Indigenous Peoples to self-determination and the related right to autonomy or self-government in their national legal systems, including in their national constitutions; adoption and implementation of measures to ensure the adequate recognition of the rights of Indigenous Peoples to their lands, territories, and natural resources. Additionally, it was suggested to review and harmonize the existing arrangements in terms of indigenous autonomy and self-government in their internal and external aspects as per the internationally recognized human rights standards on the rights of Indigenous Peoples. Adoption of the measures necessary to provide ways and means for the financing of Indigenous Peoples' autonomous functions, along with the provision of social services and special measures for Indigenous Peoples to enjoy their basic human rights was also recommended. The Special Rapporteur also identified a need for capacity building for both States and Indigenous Peoples, especially for the implementation of these rights.

6. In 2020, Jens Dahl, a member of the Permanent Forum, prepared a study on the experiences and perspectives on Indigenous Peoples' autonomies⁵ that was presented at the 2021 session of the Permanent Forum. In addition to identifying a variety of existing arrangements for autonomies, the study offered a set of recommendations for the Permanent Forum including the following:

- Pay further attention to institutions that have been or can be established to promote dialogue between Indigenous Peoples and Governments in order to advance the implementation of Indigenous Peoples' rights to autonomy and self-government.
- Coordinate activities with the Special Rapporteur and the Expert Mechanism on the Rights of Indigenous Peoples to increase the understanding and support of United Nations agencies and other relevant multilateral institutions of Indigenous Peoples' claims to autonomy and self-government.
- Facilitate an inclusive process aimed at the development of guiding principles for the implementation of Indigenous Peoples' rights to autonomy and self-government.

7. In 2021, Permanent Forum members, Grigory Lukyantsev, Sven-Erik Soosaar and Alexey Tsykarev prepared a study on representative institutions' self-governance of Indigenous Peoples in Eastern Europe, the Russian Federation, Central Asia, and Transcaucasia⁶. The study was also presented at the 2021 session of the Permanent Forum. It is predominantly focused on the Russian Federation, with some references to other countries in the region. The study identifies good practices in Indigenous Peoples' participation in decision-making, representation, self-organization, and self-governance in the region, and it proposes ways in which Indigenous Peoples can strengthen their own institutions and processes of influencing decision-making at the national, regional, and global levels.

8. The regional dialogues developed discussions around the identification of best practices related to Indigenous Peoples' autonomy, priorities of Indigenous communities, the potential scope of the guiding principles and identification of specific principles and guidelines for the implementation of Indigenous Peoples' rights to autonomy and self-government. Participation in the regional dialogues was open to representatives of Indigenous Peoples' organizations, Member States, UN entities, academia, and NGOs, applying the same criteria for participation that is used for the annual sessions of the Permanent Forum on Indigenous Issues. The dialogues were organized in each of the six socio-cultural regions determined to give broad representation to the world's Indigenous Peoples. In order to facilitate an open discussion and frank exchange of perspectives, the Dialogues were neither recorded nor streamed online.

⁴ <https://undocs.org/A/74/149>

⁵ E/C.19/2020/5

⁶ E/C.19/2021/8

9. Regional Dialogues were supported by UN-DESA, who prepared this discussion paper to be presented at the twenty-first session of the Permanent Forum in May 2022.

Eastern Europe, the Russian Federation, Central Asia, and Transcaucasia Regional Dialogue

10. On 13 October 2021, a regional dialogue was organized for Eastern Europe, Russian Federation, Central Asia, and Transcaucasia region. Moderation of the event was undertaken by Grigory Lukyantsev, Member of the UN Permanent Forum on Indigenous Issues. The panelists were Mr. Sergey Timoshkov, Advisor to the Head of the Federal Agency for Ethnic Affairs of the Russian Federation, Mr. Grigory Dyukarev, Head of the Local Association of Indigenous Small-Numbered Peoples of the North of Taimyr (Russian Federation), Ms. Antonina Gorbunova, Executive Director of the Union of Indigenous Peoples SOYUZ (Russian Federation), Dr. Yerden Kazhybek, Director of International Turcology Center, President of Qazaq Language Foundation, Institute of Linguistics named after A.Baitursynuly (Kazakhstan) and Dr. Konstantin Zamyatin, Researcher, University of Helsinki (Russian Federation, Finland).

11. Participants engaged in discussions around the fundamental factors that affect the process of achieving full-fledged autonomy and self-governing mechanisms for Indigenous Peoples. Based on the examples from Eastern Europe, Russian Federation, Central Asia and Transcaucasia, panelists shared insights on the traditional mechanisms of self-governance and self-regulation, good practices and lessons learnt, priorities of Indigenous communities, and principles and guidelines for the implementation of Indigenous Peoples' rights to autonomy and self-government. The following elements were identified by participants in the regional dialogue for consideration in the development of guiding principles on indigenous autonomy and self-governance:

- National legislation should be enhanced to allow Indigenous Peoples' self-governing structures at the local level to perform as official local authorities.
- Legal and administrative capacity of Indigenous communities and self-governing bodies should be built, and awareness raised among Indigenous Peoples about their rights to self-governance.
- Practice of use of the FPIC principle as a key element of respect for the rights of Indigenous Peoples to self-governance should be more fully implemented.
- States should encourage Indigenous Peoples' representatives to fully make use of the existing possibilities and capacities for autonomy and self-governance provided within the respective national legal systems.
- While discussing international standards and guidelines on self-governance at the UN level, specificities of Indigenous sociocultural regions should be taken into account.

Central and South America and the Caribbean Regional Dialogue

12. On 19 October 2021, a regional dialogue was organized for the Central and South America and the Caribbean (CSA) region. The dialogue was co-moderated by Dr. Araceli Burguete, Regional Director of CIESAS-Sureste, Mexico. The discussants were María Eugenia Choque, Centro de Estudios Multidisciplinarios Aymara (Bolivia); Pablo Mis, Maya Leaders Alliance & Belize National Indigenous Council (BENIC); Aucan Huilcaman, Consejo de Todas las Tierras (Chile); and Saul Vicente Vásquez, Director de Asuntos Internacionales del Instituto Nacional de Pueblos Indígenas (Mexico).

13. Participants identified key elements for Indigenous Peoples to achieve and implement autonomy and self-governance. Drawing on experiences from Belize, Bolivia, Chile, Ecuador, Mexico, and Panama participants highlighted major progress made in realizing Indigenous Peoples' autonomy in the region, as well as challenges and obstacles they faced in implementation. The participants of the regional dialogue identified major pillars to be considered in the development of guiding principles for the realization of Indigenous autonomy and self-governance:

- Respecting the right to self-determination of Indigenous Peoples, including self-governance and autonomy as its expression, is imperative.

- Articles 3 and 4 of UNDRIP should be regarded as founding principles for indigenous autonomy and self-governance.
- Effective implementation of obligations by States in guaranteeing the right to self-determination for Indigenous Peoples is crucial for the further enjoyment of their collective and individual human rights.
- The exercise of autonomy and self-government must be guaranteed as per Articles 4 and 34 of UNDRIP, which establish that Indigenous Peoples have the right to possess the means for financing their autonomous functions. States must respect and support their priorities.
- States' recognition of the right of Indigenous Peoples to autonomy and self-government should be followed by the process of incorporating those rights into the national legislation. In doing so it must establish the mechanisms for the adequate participation of Indigenous Peoples in such processes, intercultural understanding is required to make them effective.
- Imposition of State frameworks for the recognition of autonomy and self-government might result in "fragmented autonomies" and hence should be avoided.
- Willingness and capability of States to negotiate and reach understanding and agreement with Indigenous Peoples must be reached through progressive recognition and respect for the principles of Indigenous Peoples based on an intercultural dialogue through the recognition of diversity and the respect for differences.
- Recognition of Indigenous Peoples' rights to self-determination, autonomy, and self-government must be based on their own interpretation and initiatives to exercise them.

Asia Regional Dialogue

14. On 17 December 2021, a regional dialogue for Asia was organized. The dialogue was co-moderated by Mr. Gam A. Shimray Secretary-General, Asia Indigenous Peoples Pact (AIPP). The discussants were Ms. Beverly Longid (Philippines), Prof. Virginius Xaxa (India) and Mr. Banshi R. Chaudhary (Nepal).

15. Based on experiences from the Philippines, India and Nepal, participants exchanged their views regarding the good practices associated with Indigenous Peoples' autonomy in the region, as well as challenges and obstacles they faced in implementation. The following elements identified should be considered in the development of guiding principles for the realization of Indigenous Peoples' autonomy and self-governance:

- The right to self-determination and political pluralism should be guaranteed to avoid conflicts and promote co-existence. Large-scale conflicts and political turmoil in a State with a minority Indigenous population can create constraints in functioning autonomous structures.
- Legislative, executive, and judicial power over a limited range of policy areas, inadequate revenue generation, and financial dependence on the State can hamper an autonomy from fully functioning. National laws, rules, and regulations should be framed in consultation with Indigenous Peoples at the grassroots level with consideration of their traditional institutions of governance. Overall, the notions of "autonomy" and "self-government" require clearer conceptualization and articulation.
- Conflicts between Indigenous Peoples and non-Indigenous at the State level in certain areas reach an acute level. The latter are often opposed to any form of autonomy for Indigenous Peoples and create obstacles to its functioning.
- Occasionally, well-intended legislation passed in parliament is diluted through amendment and modification.
- Indigenous Peoples find their communities divided by State borders, which hinders their greater solidarity.
- Formally recognized indigenous traditional structures at the State level may serve as a basis for autonomy and self-governance. In cases when—a new structure is created, the autonomous

structure should be clearly defined e.g., specific Indigenous group or agglomeration of Indigenous groups living in a contiguous territory. Blending of statutory autonomous institutions with traditional institutions might also present an option.

- Local government units should be studied to see how they reflect Indigenous Peoples' rights and proportional representation in the local structures. However, it should be noted that a stipulation for Indigenous rights in local structures does not necessarily mean that there is genuine respect for Indigenous Peoples' autonomy and rights in practice.
- Recognition of the right to self-identification is a precondition for respecting the right to self-determination as well as the right to ancestral lands, territories, and resources.
- Effective dialogue with the State and private sector should be established. Political vilification of Indigenous Peoples e.g., labeling Indigenous leaders, civil activists and human rights defenders as terrorists, separatists, and enemies of the State, is a barrier to the process of peace talks and reaching mutual understanding.
- Similarly, the non-existence or partial existence of democratic government and State institutions, corruption, lack of accountability and transparency of public authorities towards Indigenous Peoples hampers effective negotiations and recognition of the right to autonomy and self-governance.
- In certain cases, the Constitution needs to be amended to ensure *de-jure* as well as *de-facto* respect for the rights and liberties, equality, and dignity of Indigenous Peoples. The State should be restructured to ensure respect for Indigenous Peoples' ancestral lands and territories.
- In general, the lack of a standardized form of autonomy and self-governance provides space for manipulation. Upper political echelons of the State should be more engaged and responsive on the matter.

North America Regional Dialogue

16. On 4 February 2022, a regional dialogue for North America was organized. The dialogue was moderated by Permanent Forum member, Geoffrey Roth. The discussants included Sherry Antone, Chief of Staff, Assembly of First Nations of Canada, who presented a statement on behalf of National Chief RoseAnne Archibald, Ruth Anna Buffalo 2nd Vice President, Board of the National Native American Boarding School Healing Coalition of the US, Ted Gottfriedson Jr., Language and Culture department manager and Dave Manuel, Band Councillor for Tk'emlups tes Secwépemc of Canada, Dr. Sheryl Lightfoot, Expert Member of the UN Expert Mechanism on the Right of Indigenous Peoples of Canada.

17. Throughout the dialogue, participants discussed tribal autonomy and self-governance in the context of the boarding school crisis, how strengthening self-governance improves the overall condition of Indigenous Peoples; repatriation of the boarding school students' remains; efficient ways of exercising the right to autonomy and self-governance; mitigation of intergenerational trauma, the identification of potential problems faced by tribal governments; guidance and leadership that Indigenous Peoples of North America can potentially provide globally around self-governance and autonomy, and ways the UN and the Member States may provide support to tribal self-governance. The participants of the North America regional dialogue identified the following major elements to be considered in the development of guiding principles for the realization of Indigenous Peoples' autonomy and self-governance:

- The Government of Canada should implement the recommendations of the Truth and Reconciliation Commission and develop an Action plan addressing the ongoing impact of residential schools on survivors and their families. Funding is required for the healing process.
- Application of legislation in the US – a direct colonial heritage must be changed through advocacy. The remains of the First Nation's children should be repatriated to their communities. The Native American Graves Protection and Repatriation Act should be fully implemented. Consular services should be offered in cases of international custody by adopting specific mechanisms at the federal level.

- Allies are needed to target false narratives about the residential school system. It is required to create the national healing foundation, develop a joint action plan, ensure sufficient long-term funding for the ongoing healing process, consider the Indigenous People's needs seriously, and appoint a special interlocutor on residential boarding schools.
- Efforts must be taken to heal as the assimilation and human rights-abusing policies have had a long-term effect. Tribal Nations and tribal citizens should be leading the efforts for healing from boarding school trauma.
- Strong, autonomous Tribal governance structures are critical as steps are taken toward addressing boarding schools' legacies.
- Chiefs and elders should be properly educated to protect the children of their communities, maintain autonomy and exercise self-governance.
- UNDRIP articles 2 and 3, highlight that self-determination of Indigenous Peoples should be equal to that of all other people. Article 4, however, cannot limit Indigenous People's perspective on self-determination, which is a broad concept that includes various forms.
- The first step for Indigenous Peoples to exercise their right to autonomy and self-governance is the recognition by States of the existence of Indigenous Peoples at the national level and to consider them as subjects of international law. It is also crucial to recognize and support their institutions and strengthen dialogue to promote reconciliation.
- Building the capacity of the Indigenous Peoples is of utmost importance, which requires funding.
- The residential schools' experience contributed to the loss of identity, loss of culture and language, and connection with family history. Healing processes require planning and budgeting and implementation of activities.

Arctic Regional Dialogue

18. On 3 February 2022 an Arctic regional dialogue was organized. The dialogue was moderated by Permanent Forum member, Ms. Tove Søvndahl Gant and consisted of three presentations, followed by a questions and answers session. The presenters were Mr. Mininnguaq Kleist, Permanent Secretary at the Ministry of Foreign Affairs of Greenland, Ms. Johanna Suurpää, Director General at the Department for Public Law and Democracy within the Finland Ministry of Justice and Rune Fjellheim, independent consultant. From?

19. Participants identified a number of specific elements that are important for Indigenous Peoples to attain and practice autonomy and self-governance. Participants drew upon the experience of self-government in Greenland, the Saami Parliaments and the ongoing drafting of the Nordic Sami Convention, and other efforts. The following elements identified should be considered in the development of guiding principles for the realization of Indigenous Peoples' autonomy and self-governance:

- Prior to advocating for autonomy and self-governance, Indigenous Peoples themselves must, through their own processes, determine their priorities and goals. This may not always be easily determined, but it is important to reach some level of a common understanding, before engaging with national governments on these matters.
- Any initiative to advance Indigenous Peoples' rights to autonomy and self-governance must be based on the standards of international law. It is also important to take into consideration recommendations by the human rights treaty bodies.
- National law is also essential. This includes formal recognition of Indigenous Peoples' right to autonomy and self-governance, as well as harmonization of any other legislation that may otherwise interfere with these rights.
- The principle of participation in decision making is crucial. This includes elaboration on concepts, such as free, prior, and informed consent, negotiations between Indigenous Peoples and governments or impact assessments on proposed activities.
- Many Indigenous Peoples live across different national borders. There is a need to address and overcome a host of challenges that borders pose to the effective recognition and administration of the right to autonomy and self-governance.

- Access to funding or income is essential for any self-governance initiative. In most countries, the federal/national government collects most taxes and other incomes. Indigenous Peoples' representative institutions must have access to consistent sources of revenue, that are independent of national government priorities.
- Another key element, once autonomy or self-government has been attained, is the development of a skilled indigenous civil service that is qualified to carry out the political priorities of the Indigenous People. Awareness and understanding of Indigenous Peoples and Indigenous governance institutions' priorities and perspectives apply to all civil servants, Indigenous and non-Indigenous, at the national level as well as at the level of Indigenous Peoples' governance institutions. This requires investment in education and a commitment to a culture of capacity building, autonomy, and independence.
- In addition to educational institutions, Indigenous Peoples also need to establish and strengthen their own institutions in various fields, including science, culture, arts, sports, cross-border cooperation as well as their engagement with the international community.

Pacific Regional Dialogue

20. On 14 February 2022, a regional dialogue on the Pacific was organized. The dialogue was moderated by Permanent Forum Member Dr. Hannah McGlade, expert with the UN Human Rights Council's Expert Mechanism on the Rights of Indigenous Peoples Prof. Megan Davis, and Co-director of the Aotearoa New Zealand Centre for Indigenous Peoples and the Law Dr. Claire Charters. The discussants were Sepik Coordinator Emmanuel Penni, Head of State for the Nation of Hawai'i Bumpy Kanahela, Executive Chairman of the National Maori Authority Matthew Tukaki, and Professor of Māori Studies at the University of Auckland, Margaret Mutu.

21. Participants identified key elements for Indigenous Peoples to achieve and implement autonomy and self-governance. Drawing on experiences ranging from the Underlying Act 2000 of Papua New Guinea, the struggle for Hawaiian National Sovereignty, structures within the New Zealand public service, and the Matike Mai Aotearoa report, participants shared their thoughts on good practices relating to Indigenous Peoples' autonomy in the region, as well as challenges and obstacles they faced in implementation. The following elements identified should be considered in the development of guiding principles for the realization of Indigenous Peoples' autonomy and self-governance:

- Indigenous representation in government is important to participation in decision-making, but a similar representation within public service institutions is also needed. Indigenous Peoples have been elected to Parliaments, but this has not resulted in reaching equality in access to basic social services. Civil servants outlast elected officials, so it is critical to ensure that Indigenous Peoples hold positions within the internal workings of public institutions.
- Within the context of public service, it may be beneficial to create a system of collaboration among Indigenous officers across the region, to facilitate communication and shared knowledge. This would also provide an opportunity to mentor emerging Indigenous leaders and enhance their career aspirations.
- It is important to distinguish between participation within the bureaucracy of a State, and the question of Indigenous self-governance. These are distinct expressions of autonomy, and each offers different ways of enhancing Indigenous participation.
- In understanding the instruments of the State, be it governmental, legal, or social, Indigenous Peoples can amend and transform the very instruments that have been used to oppress them.
- The role of business and industry should be considered in the conversation around autonomy and self-governance. They often operate alongside State structures and can wield significant influence.
- The Doctrine of Discovery has been entrenched in national laws, and racism continues to adversely affect the legislative system. Claims processes from Tribunals are often under-resourced, and their reports and recommendations are ignored by governments. This needs to be acknowledged at the international level when praising States for best practices.

- The education of Indigenous Peoples about their own history and indigenous legal systems is crucial in developing strengthened autonomy and moves towards self-determination. Moreover, it is vital that with the passing of each generation, Indigenous knowledge is not lost but rather shared with the next generation.

Conclusion

22. Participants from different regions referred to UNDRIP, particularly highlighting the right to self-determination and related right to autonomy and self-governance stipulated in articles 3 and 4. It was noted that guaranteeing the right to self-determination for Indigenous Peoples is crucial for the further enjoyment of their collective and individual human rights, prevention of conflict, promotion of peaceful co-existence, and ensuring equality of all. Overall, the standards of international law, including treaty bodies and special procedures' recommendations, were suggested to be taken into consideration as the basis of any initiative directed towards advancing Indigenous Peoples' rights to autonomy and self-governance.

23. UNDRIP was also mentioned in the context of the right of Indigenous Peoples to possess means for financing autonomous functions. Access to income and sources of revenue for indigenous institutions was considered essential for any self-governing initiative. Budgeting and finances have also been regarded as important elements of the healing processes related to residential schools' tragedy in North America. Furthermore, resources are required for building the capacity of Indigenous Peoples across many areas. The role of business and industry should be considered in the conversation around autonomy and self-governance, which can potentially have a noteworthy influence on the process.

24. It is important for Indigenous Peoples to establish and strengthen their own institutions in various fields e.g., science, culture, arts, sports, cross-border cooperation as well as in their engagement with the international community. Investment in education is crucial in preparing skillful and qualified civil servants, which will undertake the responsibility of managing autonomy once it is officially attained. Moreover, education of Indigenous Peoples about their own history and indigenous legal systems is imperative in developing resilient autonomy, moving towards self-determination, and transferring unique Indigenous knowledge to the next generation

25. Indigenous representation in the government and their participation in the decision-making process is crucial, which includes elaboration on concepts, such as free, prior, and informed consent, negotiations between Indigenous Peoples and governments or impact assessments on proposed activities. Further, the local government units should be scrutinized against the proper reflection of Indigenous Peoples' rights and their proportional representation in the local structures. In some instances, Indigenous Peoples were elected to Parliaments or even formed political parties and movements, however, it did not always bring the hoped-for results as the whole political and administrative system requires authentic reforms.

26. National law needs to be adjusted to the standards, including formal recognition of Indigenous Peoples' right to autonomy and self-governance, as well as harmonization of any conflicting legislation. National laws, rules, and regulations were suggested to be framed in consultation with Indigenous Peoples at the grassroots level and mandatory consideration of their traditional institutions of governance. In some specific cases, the constitution was recommended to be amended to ensure genuine recognition of Indigenous Peoples' rights and liberties.