

Indigenous Peoples' Autonomy and Self-Governance
Regional dialogue on North America
Date: 4 February 2022, 2pm (EST)

The United Nations Declaration on the Rights of Indigenous Peoples states that Indigenous Peoples have the right to self-determination. 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 governments often recognize them. Sometimes such recognition is only partial or not adequate.

The recent discovery of unmarked graves across Canada and the United States poses new challenges for Self-governing Indigenous Peoples. Given the scope and severity of these atrocities, there are multiple priorities for our Indigenous Peoples:

1. To honor and repatriate (if desired) the thousands of children that have been lost
2. Allow for the communities need to process intergenerational trauma and trauma
3. To hold those responsible, accountable for these atrocities.

Given these priorities and others, it is important to understand how the UN system can support Indigenous Peoples rights to self-determination and autonomy in North America. In other words, while maintaining accountability, we would like to hear from you regarding how to ensure we have clear expectations and maintain the principles of self-governance during this time.

There are examples where indigenous representative institutions or tribes exist but are not recognized. This may be due to a lack of political will, adequate administrative processes, or conflicting interests. Nevertheless, these rights have been universally recognized by the United Nations 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.

In 2020, Jens Dahl, a member of the Permanent Forum on indigenous issues (PFII), prepared a study on the experiences and perspectives on indigenous peoples' autonomies presented at the 2021 session of the PFII. The study recommended that the Forum promote dialogue between indigenous peoples and governments to advance indigenous peoples' rights to autonomy and self-government. The study also recommended that the PFII facilitate a process to develop guiding principles for implementing indigenous peoples' rights to autonomy and self-government.

At its twentieth session, the PFII 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 Forum invited the cooperation of the Group of Friends of Indigenous Peoples to encourage the active participation of Member States in this endeavor. The PFII also invited the Inter-Agency Support Group on Indigenous Issues to participate in the organization of these regional dialogues and prepare a discussion paper on this matter to be presented at the twenty-first session of the PFII in 2022.

Indigenous peoples' self-government in Canada

Section 35 of the Canadian Constitution Act of 1982 recognizes that indigenous peoples have an inherent right to self-government. A guide to self-government negotiations between the Government of Canada and indigenous communities was launched in 1995. Negotiated agreements put 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 better protecting their culture and language, educating their students, managing their lands, and developing new business partnerships that create jobs and other benefits for their citizens.

Unless they have negotiated self-government, most First Nations are currently governed by the Indian Act. They elect chiefs and councils to make decisions on their behalf and pass by-laws in a limited number of areas.

First Nations have been living under the Indian Act for over 140 years. The Indian Act establishes a limited form of local administration that does not consider the specific circumstances of individual communities.

In contrast, self-governing First Nations can make their laws and policies and have decision-making power in a broad range of matters. This includes matters internal to their communities and integral to their cultures and traditions. Under self-government, First Nations move out from under the Indian Act and chart their course toward the future.

Because communities have different goals, negotiations do not result in a single model of self-government. Arrangements take many forms based on the different historical, cultural, political and economic circumstances of the indigenous governments, regions and communities involved. There are 25 self-government agreements across Canada involving 43 indigenous peoples.¹

Indigenous peoples' self-government in the USA

In 1975 the US Congress passed the Indian Self-Determination and Education Assistance Act. The Act resulted from 15 years of change, influenced by American Indian activists, the Civil Rights Movement, and community development based on grassroots political participation. In the Act: "The Congress declares its commitment to the maintenance of the Federal

¹ Indigenous self-government in Canada. Available at: <https://rcaanc-cirnac.gc.ca/eng/1100100032275/1529354547314#chp2>

Government's unique and continuing relationship with and responsibility to the Indian people through the establishment of a meaningful Indian self-determination policy which will permit an orderly transition from Federal domination of programs for and services to Indians to effective and meaningful participation by the Indian people in the planning, conduct and administration of these programs and services..." Section 3(b).

The Act authorized the Secretary of Interior, the Secretary of Health, Education and Welfare and some other government agencies to enter into contracts with and make grants directly to federally recognized Indian tribes. The tribes would have authority for administering the funds, which gave them greater control over their welfare.²

Currently, 573 sovereign tribal nations have a formal nation-to-nation relationship with the US government. These tribal governments are legally defined as "federally recognized tribes." Tribal nations ceded millions of acres of land that made the United States what it is today and, in return, received the guarantee of ongoing self-government on their lands.

The treaties and laws create what is known as the federal "trust responsibility," to protect both tribal lands and tribal self-government and provide for federal assistance to ensure the success of tribal communities. Today, tribal governments maintain the power to determine their governance structures, pass laws, and enforce laws through police departments and tribal courts.

Tribal governments provide multiple programs and services, including, but not limited to, social programs, first-responder services, education, workforce development, and energy and land management. They also build and maintain a variety of infrastructure, including roads, bridges, and public buildings.³

Unmarked graves at indigenous residential schools

Hundreds of the estimated thousands of unmarked graves have been located near former residential schools in North America.⁴ These sad and shameful discoveries pose challenges to tribal governments in their exercise of their self-governance.

² <https://www.govtrack.us/congress/bills/93/s1017/summary>

³ National Congress of American Indian. Tribal Governance. Available at: <https://www.ncai.org/policy-issues/tribal-governance>

⁴ <https://www.kamloopsthisweek.com/local-news/tkemlups-says-remains-of-215-children-of-kamloops-indian-residential-school-have-been-discovered-4448499>

Online Regional Dialogue:

The North American regional dialogue will include consideration of the following issues:

- *When thinking about tribal sovereignty and autonomy what comes to mind in relation to the Boarding school crisis? How does strengthening our governance improve our condition?*
- *When addressing boarding school repatriation of the remains of students, how do we maintain our independence and right to autonomy while navigating multiple jurisdictions and power structures (nation, province, state, church, etc.)?*
- *When mitigating intergenerational Trauma how do we ensure respect for our ancestors and our Indigenous peoples today?*
- *Identify potential problems faced by tribal governments when addressing the discoveries of graves containing the remains of students that once attended residential schools.*
- *How can Indigenous people in North America provide guidance and leadership globally around self-governance and autonomy? How can the UN and member nations support tribal Self-governance?*

Organization of the dialogues:

Participation will be open to representatives of Indigenous Peoples' organizations and institutions, Member States, UN entities, academia and NGOs, applying the same criteria for participation used for the annual sessions of the Permanent Forum on Indigenous Issues. The dialogues will all be organized online for the duration of 1 hour and 30 minutes to 2 hours. The dialogue will be closed only to registered participants to facilitate an open dialogue and frank exchange of perspectives. The dialogues will not be recorded or streamed online.

Proposed agenda for the North American regional dialogue:

1. Brief welcome by UN representative (UNDESA)
2. Introduction by UNPFII member, Geoffrey Roth, Member of the Permanent Forum (moderator)
3. Remarks by Sherry Antone, Chief of Staff for the National Chiefs Office on behalf of the Assembly of First Nations National Chief RoseAnne Archibald
4. Remarks by Representative Ruth Anna Buffalo 2nd Vice President, Board of the National Native American Boarding School Healing Coalition
5. Remarks by Ted Gottfriedson Jr., Language and Culture department manager and Dave Manuel, Band Councillor for Tk'emlups tes Secwépemc
6. Remarks by Sheryl Lightfoot, Expert Member of the UN Expert Mechanism on the Right of Indigenous Peoples
7. Discussions

8. Conclusion and concluding words by the moderator