

# Self-determination

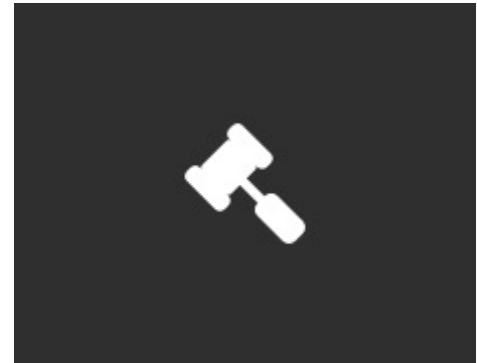
 [minorityrights.org/law-and-legal-cases/self-determination](http://minorityrights.org/law-and-legal-cases/self-determination)

26 August 2015

Legal case | 26 Aug 2015

The right of self-determination for all peoples was first enshrined in the Charter of the United Nations. It has however been the subject of extensive debate and controversy. Both the content of the right as well as who can assert it continue to evolve in international law.

According to the International Covenant on Civil and Political Rights (the ICCPR), '[a]ll 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.'<sup>[i]</sup> The right to self-determination also has its economic content which gives the peoples the right to freely 'dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law.'<sup>[ii]</sup> The phrase 'all peoples' – instead of 'everyone' – attached to the right to self-determination indicates that the right to self-determination is a collective right; that is, only a 'people', not an individual, can exercise the right.



Initially conceived, the right to self-determination belonged to the population, or people, of a fixed territorial entity, specifically peoples oppressed by a colonial power. The Declaration on the Granting of Independence to Colonial Countries and Peoples and the jurisprudence of the International Court of Justice emphasise the connection between the right to self-determination and peoples of colonised territories. In this context, the right to self-determination is "externally" exercised by secession from a colonial power to form a new state. The right of colonial peoples to external self-determination is well established in international law.

More recently, it has been postulated that the right to self-determination can be exercised 'internally' as well.<sup>[iii]</sup> Internal self-determination allows a people broader control over their political, economic, social and cultural development, while stopping short of secession. The development of a new conception of 'peoples' has evolved with the development of the idea of internal self-determination. In this context, the definition of 'peoples' is not only limited to the population of a fixed territorial entity but also encompasses indigenous groups and potentially some minorities. Although there is no fully accepted definition of peoples, references are often made to a definition proposed by UN Special Rapporteur Martínez Cobo in his study on discrimination against indigenous populations:

'Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems.'[iv]

International instruments protecting the right to self-determination:

- Charter of the United Nations, Article 1 (2);
- The African Charter on Human and Peoples' Rights, Article 20 (1);
- International Covenant on Civil and Political Rights, Article 1;
- General Comment No. 12 on self-determination, Human Rights Committee;
- International Covenant on Economic, Social and Cultural Rights, Article 1 (1);
- International Convention on the Elimination of All Forms of Racial Discrimination;
- General Recommendation No. 21 on right to self-determination, Committee on the Elimination of Racial Discrimination;
- Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States;
- UN Declaration on the Granting of Independence to Colonial Countries and Peoples;
- Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities;
- The Helsinki Final Act, Declaration on Principles Guiding Relations between Participating States, Article VIII;
- UN General Assembly resolution 1803 (XVII) of 14 December 1962, "Permanent sovereignty over natural resources".

Relevant jurisprudence:

- Legal consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding with Security Council Resolution 276 (Namibia case) International Court of Justice, 1970;
- Western Sahara case, International Court of Justice, 1975;
- Portugal v Australia (East Timor case), International Court of Justice, 1995;
- Lubicon Lake Band v Canada (Ominayak case), Human Rights Committee, 1990;
- E.P v Colombia, Human Rights Committee, 1990;
- A.B et al v Italy, Human Rights Committee, 1990;
- R. L et al v Canada, Human Rights Committee, 1991;
- Diergaardt et al v Namibia, Human Rights Committee, 2000;
- Äärelä and Näkkäläjärvi v. Finland, Human Rights Committee, 2001;
- Gillot v France, Human Rights Committee, 2002.

References

[1] The International Covenant on Civil and Political Rights, *opened for signature* December 16, 1966, Art. 1 (1), 999 UNTS 171.

[2] *Id.*, Art. 1 (2).

[3] See, for instance, General Recommendation No. 21, Committee on the Elimination of Racial Discrimination, para. 4, 23/08/1996.

[4] Jose R. Martinez Cobo, Study of the Problem of Discrimination Against Indigenous Populations, Sub-Commission on the Prevention of Discrimination and the Protection of Minorities, UN Doc. E/CN.4/Sub.2/1986/7/Add.4 (1986).