



# INDIGENOUS PEOPLES RIGHTS

## in the United States



### All Indigenous Peoples Have a Right to:

#### Self-determination

The right to control over political, economic, cultural, and social matters<sup>1</sup> as long as that control is exercised in accord with international human rights standards.<sup>2</sup>

#### Participation and Free, Prior, and Informed Consent

The right to participate in all levels of decision-making concerning policies that affect indigenous populations.<sup>3</sup> The right to be fully informed prior to the imposition of federal or state action to their governments, their peoples, or their territories, and to freely give or withhold their consent to such actions.

#### Land

The right to own and control traditional territories<sup>4</sup> and the right to restitution in the case that this land or resources has been improperly taken or damaged.<sup>5</sup>

#### Education

Equal access to all levels and forms of education,<sup>6</sup> and the right for this education to reflect traditions, values, and languages.<sup>7,8</sup>

#### Health

The right to sufficient health for one's self and family, including food, housing, and access to health and other services.<sup>9</sup>

#### Safety and Security

The right to life, liberty, and security of person.<sup>10</sup> The right to live in peace, free from genocide and other violence.<sup>11</sup>

#### Culture

The right to protect, preserve, and control cultural and intellectual heritage,<sup>12,13</sup> including historically or religiously significant objects, areas, or remains.<sup>14</sup>

#### Non-Discrimination

The right to "exercise fully and effectively all human rights and fundamental freedoms without any discrimination and in full equality before the law."<sup>15</sup>

#### Livelihood

The right to work and to a means of survival, including access to land and resources necessary for traditional forms of subsistence living.<sup>16</sup>

### WHO ARE INDIGENOUS PEOPLES?

The UN Permanent Forum on Indigenous Issues suggests these criteria to help determine indigeness:<sup>17</sup> 1) Individual acceptance of the label, 2) Acceptance as part of an indigenous community or social group, 3) Traceable pre-colonization lineage, 4) Social and cultural distinction, 5) Non-dominance as a social group, 6) Strong territorial links, and 7) A desire for cultural reproduction. In the U.S., Native American Indians, Alaska Natives, and Native Hawaiians are Indigenous Peoples. Indigenous individuals born in the U.S. are not recognized as citizens under the 14<sup>th</sup> Amendment to the Constitution, but became citizens of the U.S. under the Indian Citizenship Act of 1924.<sup>18</sup>

### WHAT ARE THE RIGHTS OF INDIGENOUS PEOPLES?

Although the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR) established universal rights for all human beings, continued disregard for the individual and group rights of indigenous peoples led the United Nations to adopt the Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007. The Declaration rejects discrimination against indigenous peoples and supports their rights to social services, cultural control, ownership and control of their lands and resources, and self-determination.<sup>19</sup>

### DOES U.S. LAW RECOGNIZE THE RIGHTS OF INDIGENOUS PEOPLES?

The U.S. Constitution and federal courts recognize the law of nations as part of the federal law. The government has a legal obligation to honor the 600 treaties and other contracts<sup>20</sup> made with Indian tribes, their property rights, and their rights as nations. However, the U.S. government continues to violate treaties and wrongfully take treaty land. While the U.S. was one of only four countries that voted against the UNDRIP,<sup>21</sup> the U.S. reversed its position in 2010 and announced that it endorsed UNDRIP and would pursue its implementation.<sup>22</sup>

### IS THE U.S. FULFILLING THE RIGHTS OF INDIGENOUS PEOPLES?

#### Right to Self-determination

Self-determination is the right of indigenous Peoples to freely determine their political status, and freely pursue their economic, social, and cultural development like all other peoples. Native Americans' right to self-determination was established early in U.S. history, when the government began making treaties with Indian nations,<sup>23</sup> recognizing that Native tribes were sovereign nations.<sup>24</sup> However, the Supreme Court made many rulings and Congress has passed laws failing to properly recognize Indian nations' sovereignty. A 1903 Court ruling gave Congress the power to change or nullify treaties, to limit tribal jurisdiction, and to impose federal and state requirements upon the governments of Indian Tribes without Indian consent.<sup>25</sup> This power continues to be used today.<sup>26,27</sup>

Federal recognition is necessary for tribal self-determination. With it, tribes have a right to the government-to-government relationship that allows them some control in federal decisions about their affairs.<sup>28</sup> Between 1954 and 1962, Congress revoked recognition of 109 Indian nations, leaving them severely disadvantaged and has since restored only a few.<sup>29</sup> There are still many tribes seeking federal recognition.<sup>30, 31</sup>

Native Americans' limited control of their monetary and environmental resources also violates the right to self-determination. In 1996, Native Americans brought suit against the U.S. government for mismanaging billions of dollars of Individual Indian Money accounts for 300,000 Native Americans, and many tribes have similar group claims.<sup>32</sup> Such failings have led some to call for more tribal control of lands held in trust for them by the U.S. government<sup>33</sup> and of the money deriving from this land's lease and resource production.<sup>34</sup> Existing federal statutes which allow such tribal control are not enforced by the Bureau of Indian Affairs.



## The Right to Participation and Free, Prior and Informed Consent

Related the right to self-determination, the U.S. must consult with Native Americans to obtain their free, prior, and informed consent when considering projects or legislation that affects their lands, territories, and resources.<sup>35</sup>

In the U.S. this right is severely restricted by the present U.S. legal regime that often claims the right to unilaterally exercise absolute authority over Native people and their property whether the affected group consents or not. For example, the U.S. government authorized use of Western Shoshone land by a number of industries, including gold mining, energy developers, and nuclear weapons testing and waste disposal, despite clear opposition by, and devastating consequences for the human rights of the Western Shoshone people and the environment.<sup>36</sup> Another example is the ruling of the 9th Circuit in *Save the Peaks vs U.S. Forest Service* to uphold the use of snow made from treated sewage effluent on the sacred San Francisco Peaks. In this instance, wastewater was used for artificial snow on peaks sacred to the Navajo.<sup>37</sup> A court overruled the tribe's concerns.<sup>38</sup> Another example is the U.S. governments' lack of consultation of Native Americans by state and federal authorities regarding the development of the Keystone XL Pipeline Project that extends over 1000 miles from Canada to Nebraska including areas of tribal jurisdiction.<sup>39</sup>

## The Right to Land

Federal policies such as the privatization and sale of treaty lands decreased Native American land holdings from 138 million acres to 48 million acres between 1887 and 1934.<sup>40</sup> The United States currently holds 55 million surface acres in trust for Indian Tribes and individuals.<sup>41</sup> Court rulings have made it more difficult for Native Americans to protect or recover their lands via the judicial system. In 1985, the Supreme Court accepted the federal taking of the Western Shoshone's treaty-guaranteed land, saying that the land had been taken through the gradual encroachment of white settlers and the tribe was properly compensated by a payment to the tribe's trust fund in the U.S. treasury. One Supreme Court decision stated that ruling in favor of Native Americans on land claims would have "disruptive practical consequences" for the non-Indian entities involved.<sup>42</sup> Lower courts have adopted this argument to reject legitimate land claims.<sup>43</sup>

## The Right to Culture

The United States made provisions for respecting Native Americans' right to cultural control in 2004 with an act that requires all museums receiving federal funding to document and return Native American remains and significant objects.<sup>44, 45</sup> Earlier, in 1978, the government passed a law which mandated the protection and preservation of Native Americans' right to practice traditional religions, including access to sacred sites and the use of sacred materials.<sup>46</sup> However, the act is often disregarded as the ability of indigenous peoples to use and access their sacred places is often curtailed by mining, logging, and hydroelectric and other development projects, which are carried out under permits issued by federal or state authorities. In many cases, the very presence of these activities represents a desecration.<sup>47</sup> In addition, indigenous languages face extinction. Only 175 of the over 400 native languages are still spoken, and only 20 are being learned by children.<sup>48</sup> It has been argued that only three Native American languages will survive to the middle of this century.<sup>49</sup>

## The Right to Education

American Indians and Alaska Natives continue to face difficulties achieving equality in education. Of Native Americans 25 and older, 77% have finished their high school education,<sup>50</sup> compared to 85% of the general U.S. population.<sup>51</sup> Studies show that Native students are more successful when their schools, whether tribal or public, and curriculum work with their cultures.<sup>52</sup> Unfortunately, Native education resources are limited: the National Indian Education Association reports that two-thirds of all Bureau of Indian Education schools need to be repaired or replaced.<sup>53</sup>

## U.S. Government Obligations<sup>79</sup>

To ensure the rights of indigenous peoples, the U.S. has the following obligations:

### Self-determination

Cooperate with the established, representative institutions of indigenous peoples to obtain consent before making laws that affect them. Recognize and honor tribal decision-making, respecting their territories and all persons who enter therein, and their cultural, social, and economic decisions for their territories and peoples.

### Land

Legally recognize and protect lands, territories, and resources traditionally belonging to indigenous peoples, while respecting the laws and land tenure systems of the indigenous peoples concerned.

### Participation

Allow full membership in the institutions of the United States, as well as indigenous institutions.

### Education

Take measures to allow for education in each child's culture and language, and allow indigenous peoples control over their own educational systems and standards, as well as access to all levels of education of the U.S.

### Health

Take the necessary steps to achieve the highest standard of health for indigenous peoples.

### Safety and Security

Take measures to ensure that every person, especially indigenous elders, women, and children, are protected from violence.

### Culture

Protect the right of indigenous peoples to transmit and use their own histories, cultures, languages, oral traditions, literatures, and writing systems. Seek to enable access and repatriation of ceremonial objects and sites.

### Non-Discrimination

Combat prejudice, take steps to eliminate discrimination, and promote tolerance. Prevent action to deprive indigenous peoples of their integrity as distinct peoples. Take steps that allow indigenous peoples to tell their own stories and histories in their own way in public education and discourse without discrimination or disparagement.

### Livelihood

Take effective measures, and special measures if necessary, to ensure continued improvement of economic and social conditions of indigenous peoples.

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### The Right to Health

The compounded effect of generations of indigenous peoples, including generations still living, being stripped of their land, social and cultural well-being, and economic livelihood has bred or exacerbated serious physical and mental health issues within native communities resulting in high rates of suicide, alcoholism, and violence.<sup>54</sup> The suicide rate of 15- to 24-year-olds is 3.3 times higher than the national average.<sup>55</sup> Native Americans are “550% more likely to die from alcoholism, 200% more likely to die from diabetes, and 150% more likely to suffer accidental death compared with other groups.”<sup>56</sup> Of these deaths, 13% occur in individuals under 25, a rate three times higher than that of the total U.S. population.<sup>57</sup> Average life expectancy is five years less than the U.S. average.<sup>58</sup> Access to health care is also limited. In 2009, 33% of Native Americans had no health insurance coverage.<sup>59</sup> Furthermore, Indian Health Services, which is responsible for providing health care for American Indians, has only around 50% of the budget it requires.<sup>60</sup> Furthermore, a history of inadequately controlled harmful activities within or near remaining indigenous lands, including nuclear weapons testing and uranium mining in the western United States, has resulted in widespread environmental harm, and has caused serious and continued health problems among Native Americans.<sup>61</sup>



### The Right to Safety and Security

The safety and security of indigenous peoples is compromised by the U.S. government’s failure to recognize full tribal civil and criminal jurisdiction over their territory and all persons who go into that territory. Tribes must share their jurisdiction over felonies that occurred on Indian land with the federal government.<sup>62</sup> Tribal courts may not sentence those convicted to over three years in prison,<sup>63</sup> and federal officials often refuse cases from Indian Country, so it is difficult to achieve security on reservations. Federal prosecutors turn down nearly two-thirds of reservation cases, twice the national average rate.<sup>64</sup> The federal government has also created many holes in jurisdiction. Under federally imposed restrictions, tribal courts can generally only prosecute Native Americans, and warrants of arrest from tribal courts have no jurisdiction outside of a reservation.<sup>65</sup> Other courts exercise jurisdiction over Native Americans, serve their warrants, and conduct other processes within the reservations. It therefore appears that tribal courts are treated as inferior to non-Indian courts. Violence is common on reservations, partly due to these problems. Violent crime is over 2.5 times more common on reservations than in the rest of the U.S., worse than all but the most violent cities.<sup>66</sup> Sexual violence is also a significant threat. Native women are four times as likely to be raped or sexually assaulted as the U.S. average,<sup>67</sup> and over one-third of Native women will experience rape or attempted rape in their lifetimes.<sup>68</sup>

### The Right to Non-Discrimination

Hate crimes target Native Americans every year. In 2010, there were 47 recorded hate crimes against Native Americans,<sup>69</sup> and it has been argued that as few as 10% of these crimes are reported.<sup>70</sup> Native Americans also face higher incarceration rates and discriminatory policies in the prison system. The per capita incarceration rate of Native Americans is higher than that of all other ethnic groups besides African Americans,<sup>71</sup> and in South Dakota, 10% of the population and 23% and 35%, respectively, of male and female inmates are Native American.<sup>72</sup>

### The Right to a Livelihood

The right to a livelihood is vital to physical and cultural survival. Unemployment is a major concern for Native Americans. As of 2010, no ethnic group had a higher unemployment rate than American Indian/Alaska Natives. This rate, 17.9%,<sup>73</sup> is often much higher on reservations. The Rosebud Indian Reservation unemployment rate sometimes reaches 80%.<sup>74</sup> Native Americans, especially on reservations, also have disproportionately high poverty rates, rising to nearly double the national average. As of the latest census, 28.4% of American Indians live in poverty.<sup>75</sup> The improvement in Native American hunting and fishing rights in recent decades has increased access to environmental resources.<sup>76</sup> However, cases over these rights continue for Alaska Natives. A 1980 law prioritized rural, subsistence use of fish and wildlife in Alaska, including traditional use by Alaska Natives.<sup>77</sup> Still, many Alaska Natives have been denied their right to subsistence hunting and fishing.<sup>78</sup>

### INDIGENOUS PEOPLES DO HAVE RIGHTS...

*“Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights, and international human rights law.”*

~ Declaration on the Rights of Indigenous Peoples, 2006

For more information, visit [discoverhumanrights.org/human\\_rights\\_toolkits](http://discoverhumanrights.org/human_rights_toolkits)



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