

From Recognition to Shared Rule: Institutionalizing Indigenous Peoples' Rights and UNDRIP Across State and Indigenous Governance

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Abstract

The article argues that implementing UNDRIP requires moving beyond symbolic recognition toward durable systems of shared rule between states and Indigenous governments. It emphasizes legally recognized authority, practical jurisdiction, stable revenue, representation, co-governance mandates, Indigenous law, consent procedures, data governance, and community-controlled service delivery. Effective shared rule also depends on enforceable review, dispute resolution, political and technical intergovernmental dialogue, emergency protocols, asset transfers, workforce development, and institutional accountability that respects Indigenous forms of governance. The article warns that flexible arrangements become discretionary unless backed by minimum rights and enforcement standards. It also stresses that state institutions themselves must change through legal pluralism, coordinated planning, boundary institutions, secondments, public education, and transparent reporting. Ultimately, UNDRIP becomes meaningful when Indigenous governments possess recognized power, resources, data authority, assets, and access to remedies rather than remaining dependent on temporary programs or state-controlled administrative structures.



There is a difference between government, and governmental change. The indigenous peoples are formally acknowledged, culturally protected and consulted, and the state makes nearly all decision(s). The institutional challenge for implementation of the United Nations Declaration on the Rights of Indigenous Peoples is in January 2026. Self-determination, participation, land rights and consent cannot exist through targeted programmes alone, reliant on the current political climate, but must be secured through robust governance systems between state and Indigenous governance.

Shared rule does not mean that all the structures are the same throughout. Indigenous nations vary in terms of their history, their laws, where they are from, how many they are and their relationship to the state. Thus, institutions should simultaneously include the minimum rights side and negotiated arrangements side. The administration of the template may be simplified by making it a national one but it breaks political distinctiveness. Flexible agreements should have standards of enforcement to make flexibility not discretion.

The first image is that of the recognition of the authority who govern. Indigenous institutions should not be seen and used exclusively as civil society groups, service contractors. Authorities can relate to a wide breadth of activities, such as legislation, regulation, adjudication, resource control, education, health, culture and data governance. This to a degree will vary by the context and consensus of the constitution. It minimises conflicts over standing as there is clear recognition.

The notion of jurisdiction must be given a practical connotation. There is an overlapping of authorities in federal, regional and local governments. Shared rule needs processes for coordination and will not find a way in the unrealistic concept of separate spheres. Lead responsibility for the implementation of intergovernmental agreements can be specified as well as consultation, consent, finance and dispute resolution. New issues should be brought to the regular forums to be solved prior to the development of conflict.

The power is money based. An unstable revenue – a governing body without stable revenue – continues to rely on discretionary grants. There are a number of possibilities for fiscal arrangements, such as tax powers, revenue sharing, transfers, resource income, and long-term funding formulas. The lines of accountability should be directed (two ways!) towards members of the community and towards public partners. In what ways can integrity be ensured through external audit, but still avoiding the political control of finances?

Another level of representation in the state institutions. The use of reserved seats, appointment rights, joint committees and second chambers are means of exercising influence on national decisions or decisions at the regional level. Representation must be, in addition to, and not in place of, Indigenous self-governance. But state formulated institutions are not able to do justice to all collective interests when their execution is delegated to a small group of representatives.

There is a need for clear mandates for co-governance bodies. While equal membership powerfully demonstrates equal membership, voting rules and chairing, access to information, staff, and budget dictate influence. Consensus can facilitate coalescence but also stoke a deadlock. It is important to have escalation procedures and mediation. The public report should provide information on decisions being made, without violating confidential information or culturally protected information.

In a system of legal pluralism, Indigenous law is one of those which must be respected. There is a need for tools to recognise the tikanga, custom, precedent and processes of communities. Equip Indigenous law with evidence that is not part of the state doctrine, translation can never do this. Agreed jurisdictional rules and specialist panels and hybrid courts also help facilitate interaction. Education for the legal profession should equip them to practice in an inter-systemic way.

This needs to be put in place through a consent-procedure before projects come up. Permanent protocols can be developed which would include such elements as representative authorities, information standards, timelines, and agreement on funding

for independent advice and elements on consequences of disagreements. Balance is affected by the ad hoc consultation devised by a project proponent. The previous structures enhance the security of communities, governments and investors.

Shared rule has made the governance of data top of mind. Administrative data has an impact on funding, policy, research, and so on automatic decisions. There is a need for indigenous institutions to have authority over the collection, linkage, interpretation and reuse of their community data. Collective interests can be safeguarded with governance agreements and shared infrastructure can be used to provide public services. Cyber Security and privacy should be a constitutional responsibility.

Self-determination can take the form of service delivery under the control of institutions over the design and outcome. When done in isolation, contracts can continue to uphold state priorities with narrow measures and short-term focus. Shared rule involves commissioning power, multi-year funding, workforce development and community defined evaluation. Statewide minimum standards may be used to ensure rights protection, with methods providing for culturally-based models.

A reliable application of Independent Review is essential to guarantee durability. Agreements are subject to monitoring by Ombuds bodies, tribunals, auditors and courts. Indigenous expertise and legitimacy needs to be incorporated into the review institutions. Remedies must be enforced, which involves reconsideration, funding correction, disclosure and enforcement. One thing I often fear is the disparity between recognition and power, and that is what can occur with a declaration; but that doesn't help without action.

The attitude of the public is also important. Parental consent is inaccurate and seems to imply a special privilege or a lack of common citizenship. Both activities and distributed authority should be linked with the past, treaty relations, post-colonial rights and good governance, in an understandable way. Democratic equality does not necessarily imply so that they are treated exactly the same in all institutions. Common rights can be safeguarded through plural systems which respect different peoples.

Shared rule changes the leadership roles and, therefore, transition planning is necessary. Staff, records, asset, contract and regulatory responsibilities must be transferred in an orderly fashion. Capacity needs to be supported with a prioritization determined by Indigenous institutions. A state shouldn't withhold access to capacity of resources needed to develop them, and wait indefinitely for that capacity.

Institutionalising UNDRIP requires stable practice in the constitution, not episodic, less than permanent, recognition. When shared rule is the truth: Indigenous governments have recognized authority, resources, data authority and access to remedy. Representation, legal pluralism and intergovernmental co-ordination also bring about change in the state institutions. The aim is not to become part of administrative systems in the maintained context of static structures. The idea is to establish a sustainable partnership with co-ordinated power between different levels of authority, negotiation on conflict and responsibility towards those who are affected by its choices.

Need political dialogue between intergovernmental institutions; technical dialogue is required. Joint commitments can be made in annual leadership meetings to set priorities and review any disputes. The work of implementing may be done with the aid of the permanent officials between the meetings. With political discussion, difficult questions are not lost in the administrative mail intramail.

There is a need for emergency protocols for shared rule as well. Of course, natural events or health or security issues have the ability to quickly centralize authority. Indigenous decision making and access to information, and the capacity for a local response should be protected by pre-agreed rules. There is need to review and expire the temporary emergency powers.

Having access to assets is usually a key factor in working towards autonomy in practice. Digital infrastructure and archives, buildings, land, and infrastructure provide support to governance. Transfers should include a transfer of fund, maintenance payments, and good title. In the absence of any type of property, the authority is reduced to continuously relying on the state agencies.

Let workforce development be on a jurisdictional basis. Legality, finance, technical and administrative skills are required in indigenous institutions. Growth can be facilitated through scholarships, secondments and training, however priorities should be given by those institutions. Respectful collaboration across legal systems is also a priority for state agencies to have staff who can work in this capacity.

There can be other forms of public accountability than pressuring the government. This includes elections and assemblies, customary processes, audit, and community reporting as tools that indigenous governments may use to achieve this. State partners must be sensitive to those structures, while maintaining standards of the public that have been agreed upon. First, don't need to re-create every State procedure in order to be held accountable.

International review can help to drive improvements at home. There are benchmarks through UN mechanisms and peer exchange research. A combination of external scrutiny with local monitoring and implementation is effective. Acceptance and recognition by the international community should not replace the demonstration of shared authority.

Legal systems can interact with each other in (Boundary) Institutions. Joint secretariats, liaison offices and standing legal panels can help in the translation process while upholding the authority of neither of the two bodies. Equal access to information and a stable funding must be provided in such institutions.

Transfer of mobility between public services can foster understanding among each other. Secondments should be mutual and consider Indigenous employment conditions. Knowledge transfer shouldn't be an "extraction" of limited resources of indigenous people from indigenous institutions.

Shared rule needs to have an impact on both local projects and national planning. Early involvement of indigenous government in climate, health, infrastructure, education, and economics strategies are needed. Post Cabinet prioritisation assures control from the centre.

Prevention has the potential to be supported by dispute data. Recurring conflicts, time they take to resolve and settlements implementation should be recorded in institutions. Confidential Cultural Information doesn't have to be lost in order to address structural issues through public trend reporting.

Legislation can be accompanied by constitutional conventions which can help further the spirit of shared rule. Expectations can be developed through repetition, formal agreement and declarations in public. Conventions are still susceptible to unilateral modification, and for those with big authority and resources there should be protection in the form of statute or treaty.

As part of the public education, shared governance should be illustrated by concrete examples. Definitions of environmental management, service delivery and how to resolve disputes can help to transcend an abstract level of debate. There are signs of achievement to inform discussion of the constitution.