

Understanding Right of Self-determination

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Q - *What is the right to self-determination?*

A - Right to self-determination is the right of peoples to

- freely determine their political status; and
- freely pursue their economic, social and cultural development

Q - *How do people understand self-determination?*

A - There are diverse interpretations of self-determination, among which are:

- Decolonization interpretation – This is associated primarily with the process of decolonization that occupied territories have the right to independence.
- Freedom from foreign domination interpretation – Sovereign states should be free from occupation by foreign troops and free from interference by foreign governments in their domestic affairs.
- Nationalist interpretation – The right of peoples who are holder of the right to self-determination to their own state, or effective control of their territory within a recognized state.
- Minority right interpretation – Minority peoples have the right to political, economic and cultural autonomy.
- Democratic governance interpretation - Peoples have the right to determine their own destiny within existing states through democratic practices. Proponents of this interpretation

associate the principle of self-determination with popular sovereignty and representative governance.

Q - *What are the aspects of the right to self-determination?*

A - The right to self-determination has political, economic, social and cultural aspects. For this right to be fully effective, the implementation of the right to self-determination should be geared towards the realization of the political, economic, social and cultural sovereignty of peoples who are holders of the right.

Q - *Who are holders of the right to self-determination?*

A - According to the Report of the International Conference of Experts organized by the UNESCO Division of Human Rights, Democracy and Peace and the UNESCO Centre of Catalonia held in Barcelona on November 21-27, 1998, the holder of right of self-determination are people described as group of individual human beings having some or all of the following common features:

- common historical tradition
- racial or ethnic identity
- cultural homogeneity
- linguistic unity
- religious or ideological affinity
- territorial connection
- common economic life

Additionally, the UNESCO experts stated that “the group as a whole must have the will to be identified as a people or the consciousness of being a people.” The people, according to the experts, must be of a certain number, which need not be large but must be more than “a mere association of individuals within a state”. The existence of “institutions or other means of expressing its common characteristics and will for identity” is also important.

Q – *How does the principle of self-determination evolved?*

A – The emergence of the principle of self-determination can be traced back to the nineteenth century. It gained prominence after World War I when President Woodrow Wilson of the United States included it in his Fourteen-Point peace plan. President Wilson called for "a free, open-minded, and absolutely impartial adjustment of all colonial claims, based upon a strict observance of the principle that in determining all such questions of sovereignty the interests of the populations concerned must have equal weight with the equitable claims of the government whose title is to be determined." The principle further evolved in the United Nations system.

Q - *Is the right of peoples to self-determination enshrined in United Nations instruments?*

A - Yes, the right of peoples to self-determination is enshrined in many United Nations instruments, among which are:

Article 55 of the United Nations charter provides that the UN shall create “conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples . . .”

Article 1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), and Article 1 of the International Covenant on Civil and Political Rights (ICCPR) provides, “All peoples have the right of self-determination, including the right to determine their political status and freely pursue their economic, social and cultural development.”

General Assembly resolution 1514 (XV) of 14 December 1960 states that, “All 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.”

Q – *What is the obligation of the state party to these UN instruments?*

A – The state party to the above-mentioned United Nations instruments has the obligation to protect, promote and advance the right of peoples to self-determination. The violation of the State of the right of peoples to self-determination, or failure to protect, promote or advance the right is a ground for international responsibility.

In international law the right to self-determination is considered a norm of *jus cogens*, that have to be strictly obeyed at all times. The International Court of Justice and the Inter-American Commission on Human Rights of the Organization of American States rulings substantiate the view that the principle of self-determination has the legal status of *erga omnes*. As such, the obligations of a State are owed to the international community as a whole; and the rest of the international community is “under a mandatory duty to respect it in all circumstances in their relations with each other”.

Q – *Is the Republic of the Philippines signatory to these UN instruments?*

A – Yes, the Philippines is signatory to the United Nations Charter, the International Covenant on Economic, Social and Cultural Rights, and International Covenant on Civil and Political Rights, and it has ratified them.

As state party to these United Nations instruments, the Republic of the Philippines has the obligation to protect, promote and advance the right of peoples to self-determination.

Q – *How does political status of peoples determine?*

A – Traditionally, the international community resort to referendum or plebiscite to determine the wishes of people in disputed areas. Recently, there are concerns on this practice because the outcomes of some UN conducted referendums turns into all out, winner-take-all contest.

This concern came about because choice in a referendum is limited to yes or no to one proposition. If the range of choice is wider to include all possible political arrangements - like independence, autonomy, free association, consociationalism and other power sharing arrangements - this may not turn out into a winner-take-all contest. Referendum to determine political status of peoples remains the viable, peaceful and democratic alternative to violence.

Q – *Do the Bangsamoro people have the right to self-determination?*

A – Yes, the Bangsamoro people have the right to self-determination. They qualify as people who hold the right to self-determination having common historical tradition, religious affinity and share many cultural practices. They occupy contiguous territory (in maritime societies the sea connects) with rich natural resources.

Before the arrival of the Spanish colonialists the Bangsamoro were already in the process of state formation, while Luzon and the Visayas were still in the *barangay* stage of political development. They had their own government with trade and diplomatic relations with other countries. The Bangsamoro had developed well-organized administrative and political systems; and strong maritime and infantry forces that defended the Bangsamoro territories from Western colonial intrusion, thus preserving the continuity of their independence.

During the American occupation the Bangsamoro homeland was administered separately from the

Philippines. When the U.S. planned to grant independence to the Philippines, Bangsamoro leaders petitioned the U.S. Government that the Bangsamoro territories should not be included in the would-be Philippine Republic. Even when their territories were made part of the Philippine Republic in 1946, the Bangsamoro people continue to assert their right to independence

The Government of the Republic of the Philippines (GRP) recognizes the Bangsamoro right to self-determination. The Tripoli Agreement of Peace of 2001 between the GRP and the MILF (Moro Islamic Liberation Front) provides, “The observance of international humanitarian law and respect for internationally recognized human rights instruments and the protection of evacuees and displaced persons in the conduct of their relations reinforce the Bangsamoro people’s fundamental right to determine their own future and political status.”

Secretary Silvestre C. Afable, Jr., Chairman of the GPNP for Talks with the MILF, in his letter dated November 9, 2006 to Mohagher Iqbal, Chairman of the MILF Peace Negotiating Panel, said that the GRP would like to explore with the MILF in the next round of talks, “the grant of self-determination and self-rule to the Bangsamoro people based on an Organic Charter to be drafted by representatives of the Bangsamoro people.”

Q – *What is the fundamental nature of the Bangsamoro struggle for self-determination?*

A – The essence of the Bangsamoro struggle for self-determination is the realization of their

collective right to freely determine their political status vis-à-vis the Republic of the Philippines. The Bangsamoro people, whose territory was incorporated to the Philippine Republic without their plebiscitary consent, aspire to be free to determine their political status in a referendum where they can freely choose to have an independent state, or to be freely associated with the Philippines, or to retain the autonomous relationship with the central government, or to have consociational relationship with the Philippines.

Q - *What is the importance of implementation of right of self-determination in prevention and resolution of conflicts?*

A - Several conflicts today take place within and across states. Many of these intra-state conflicts are due to denial of state authorities of the assertion of peoples of their right to self-determination, whether explicitly stated as such or not.

Since the principle and the right of self-determination are established in international law, the implementation of this right can contribute considerably to prevention and resolution of conflicts. The exercise of peoples who are holders of the right to collectively determine their political status is fundamental in the application of this right.