A Shared Vision: Protecting and Respecting Indigenous Peoples’ Rights

National human rights institutions (NHRIs) and indigenous peoples share the common goal to support state and corporate compliance with the UNGuiding Principles on Business and Human Rights in relation to indigenous peoples’ rights. The state duty to protect and the corporate responsibility to respect indigenous peoples’ rights in the context of business operations are not always effectively implemented. Indigenous peoples, their representatives and representative organisations, have an important role to play in ensuring that their rights are protected from adverse business impacts. NHRIs can also help strengthen business respect for and support of indigenous peoples’ rights.

NHRIs can “stress the need for all stakeholders to ensure indigenous representatives are involved in decision-making.”

– Expert MechanismAdvice No. 2 (2011)

National Human Rights Institutions

NHRIs are independent public bodies with a legal mandate to promote and protect human rights. The minimum international standards on independence and main functions of NHRIs are established in the UN Paris Principles. The UN Human Rights Council, the Expert Mechanism on the Rights of Indigenous Peoples and the 2011 UN Guiding Principles on Business and Human Rights highlight NHRIs’ role on business and human rights.

For more information on NHRIs:
http://nhri.ohchr.org/EN/Pages/default.aspx
Indigenous Peoples’ Representative Institutions

Indigenous representative institutions normally represent indigenous individuals, families and collectives who share ancestry. Indigenous peoples are often some of the most marginalised individuals and communities in society, which has a negative impact on their ability to participate in decision-making on issues that affect them. Legitimate representative institutions can assist in addressing this gap. For example, Indigenous representatives’ participation in the UN Working Group on Indigenous Populations in 1983 set a precedent in voicing indigenous peoples’ concerns directly to the UN. Representative institutions are increasingly establishing partnerships with the UN system and with states at national and local levels. Within the UN system, different procedural rules regulate indigenous peoples’ participation.

Introducing Indigenous Peoples’ Rights

Indigenous Peoples and Human Rights

Indigenous peoples’ rights are human rights. Indigenous issues are often of a collective nature, as they do not only affect individuals, but also whole communities. For this reason, in addition to being rights-holders of individual human rights, indigenous peoples are also endowed with certain rights by virtue of a collective identity. Throughout history, indigenous peoples have been subjected to genocide, forced assimilation, slavery, colonisation and neglect. Their achievement of sustainable human development and preservation of collective identity is often adversely affected by factors such as: racism, discrimination, marginalisation and exclusion from mainstream society and from decision-making, obstacles to self-determination, struggles over natural resources and ancestral lands and territories, conflicts related to culture and identity and threats to the preservation of traditional lifestyles.

“IIndigenous peoples suffered centuries of oppression, and continue to lose their lands, their languages and their resources at an alarming rate”

– UN Secretary-General, Ban Ki-moon, 2011

ILO Convention No. 169

The Convention is a legally binding international instrument which addresses the rights of indigenous and tribal peoples, including their right to "decide their own priorities for the process of development as it affects their lives [...] and to exercise control over their economic, social and cultural development". The Convention provides for the requirement of consultation and participation of indigenous peoples on issues affecting them, a principle which needs to be respected by companies. Although the state is responsible for implementing the Convention, many countries have not fully applied it in law and practice. Companies should act in accordance with the Convention and should not hinder a country’s compliance with its obligations.
UN Declaration on the Rights of Indigenous Peoples (UN Declaration)

The UN Declaration is an instrument that represents global consensus, highlighting that indigenous peoples are entitled to the full enjoyment of all human rights enshrined in international human rights law, as well as articulating a number of rights specific to indigenous peoples. The Declaration emphasises the right to self-determination, according to which indigenous peoples have the right to freely determine their political status, and pursue their social, economic and cultural development. The Declaration also recognises the right of free, prior and informed consent (FPIC) of indigenous peoples regarding some decisions. This right requires states and companies to ensure indigenous peoples are fully and meaningfully engaged in decisions that affect them. It calls for the respect, honour and implementation of treaties, agreements and other constructive arrangements.

UN Mechanisms on Indigenous Peoples’ Rights

UN Permanent Forum on Indigenous Issues (UNPFII)

The UN Economic and Social Council (ECOSOC) established the UNPFII in 2000. The Forum has the role of discussing indigenous issues within the Council’s mandate regarding economic and social development, culture, environment, education, health and human rights. The UNPFII provides expert advice and recommendations to the ECOSOC and agencies, funds and programmes of the UN, and promotes coordination of activities related to indigenous peoples within the UN system. The work of the UNPFII is supported and promoted by the Inter-Agency Support Group on Indigenous Issues.

Who are Indigenous Peoples?

At least 370 million individuals represent more than 5000 distinct indigenous peoples, nations and tribes worldwide. Most live in the global south. The main criterion to identify indigenous peoples is self-identification, which is considered more adequate than a global definition. In fact, the international community has not adopted a formal definition, and the term is still controversial in some countries. Nevertheless, several characteristics of indigenous peoples have been outlined:

- Self-identification as indigenous;
- A shared experience of oppression or colonisation;
- Historical continuity with a given region prior to colonisation or annexation;
- Strong attachment to lands, territories and natural resources;
- Distinct social, economic and political systems;
- Distinct languages, spiritual traditions, culture, beliefs and knowledge;
- Non-dominant sectors of society;
- A shared wish to maintain and develop a distinctive shared identity, spirituality as well social economic, cultural and political institutions.
The UNPFII 2007 Workshop on indigenous peoples and industrial companies “emphasized the need for companies to implement the ten principles of the Global Compact […] as well as for these principles to be analyzed and detailed in terms of their meaning for indigenous peoples.”

“I have noted significant ambiguity about the extent to or manner in which the Guiding Principles [on Business and Human Rights] relate to the standards of human rights that specifically concern indigenous peoples. I have observed a pervasive lack of understanding, much less conviction, that the human rights that states are to protect in the context of business activities, and that companies are to respect, include the specific rights of indigenous peoples.”

– Special Rapporteur, UN Forum on Business and Human Rights, 2012

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UN Special Rapporteur on the rights of indigenous peoples

The Commission on Human Rights (now the Human Rights Council) first appointed the Special Rapporteur in 2001 as part of the system of thematic Special Procedures, the mandate has subsequently been renewed in 2004, in 2007 and in 2010. The Special Rapporteur is an expert on indigenous issues who promotes good practices to implement indigenous peoples’ rights, reports on their human rights situation worldwide, addresses specific cases of alleged violation of their rights, and conducts thematic studies on topics relevant to the promotion of indigenous peoples’ rights. The current Rapporteur has addressed the role of the private sector in a number of reports, including with specific focus on the extractive industries.

Expert Mechanism on the Rights of Indigenous Peoples (Expert Mechanism)

The Human Rights Council established the Expert Mechanism in 2007. The Expert Mechanism consists of a group of five independent experts that provides the Council with thematic advice by means of research and studies on indigenous peoples’ rights, and can also suggest proposals to the Council regarding indigenous peoples’ rights.

United Nations Indigenous Peoples’ Partnership

The UNIPP, launched in 2011, is a UN collaborative framework between the International Labour Organization (ILO), the Office of the High Commissioner for Human Rights (OHCHR), the UN Development Program (UNDP), and the UN Children’s Fund (UNICEF). Its goal is to facilitate the implementation of indigenous peoples’ rights as established in international instruments, particularly the UN Declaration and the ILOC.169. The UNIPP focuses on the development of national capacities to promote dialogue and partnership to fulfill indigenous peoples’ rights.

For more information on UN Mechanisms on Indigenous Peoples’ Rights, please see:
EMRIP: http://www.ohchr.org/EN/Issues/IPeoples/EMRIP/Pages/EMRIPIndex.aspx
Introducing Indigenous Peoples and Business

Key issues

Indigenous communities have often lost their ancestral lands in the name of national development. The increasing operations of companies on indigenous peoples’ traditional lands and territories often have adverse impacts on individuals and communities, particularly large scale industries such as the extractives sectors, agriculture or power. For example, the Special Rapporteur on the Rights of Indigenous Peoples has noted that the extractive industries often develop their projects with little or no involvement of the affected indigenous peoples. Companies’ activities can pose a threat to the livelihoods of indigenous peoples, their cultural practices and their land ownership and use, and they often contribute to increasing social problems of indigenous communities affected by company operations. At the same time, indigenous peoples may be less likely to share in the benefits generated by private sector development, such as employment and skills development opportunities, due to ongoing discrimination and marginalization. The UN Guiding Principles and the Expert Mechanism emphasise that in situations where indigenous peoples may be impacted, companies must consider the specific rights of indigenous peoples in addition to fundamental international human rights.

UN Declaration and ILO Convention 169

- Indigenous peoples shall be consulted “to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources”. (Art. 32 UN Declaration)

- Indigenous peoples shall not be relocated without obtaining their free, prior and informed consent. (Art. 10 UN Declaration, Art. 16 ILO C.169)

The State has the duty to ensure appropriate consultation, therefore it is responsible for holding companies accountable.

UN GUIDING PRINCIPLES

The UN Guiding Principles on Business and Human Rights explain how the UN “Protect, Respect and Remedy” Framework should be implemented. The framework is based on three pillars: the state duty to protect human rights, the corporate responsibility to respect human rights, and access by victims to effective judicial and non-judicial remedy.

FREE, PRIOR AND INFORMED CONSENT (FPIC)

The duty to obtain FPIC establishes criteria for how to involve indigenous peoples in decisions that affect them. Several international instruments, among them the UN Declaration, Treaties and some national jurisdictions, recognise FPIC. FPIC is also recognised in the 2012 Performance Standards of the International Finance Corporation, regarding specific circumstances. There is no globally accepted definition of FPIC, but guidance on constituent elements is rapidly evolving.
Building corporate respect for Indigenous Peoples’ Rights

In 2010 the Special Rapporteur, James Anaya, identified five areas of company due diligence:

1. Determine if there are indigenous peoples in the area, and recognise them.

2. Identify the claims of indigenous peoples to land, territories and natural resources.

3. Ensure that the state has duly consulted with indigenous peoples, as well as undertaking complementary ongoing consultations and engagement with indigenous peoples.

4. Conduct impact studies and compensation measures, with due consideration to the specific rights of indigenous peoples.

5. Share with indigenous peoples the benefits resulting from the company’s operations on their lands.

Human Rights and Business Resources
UN Global Compact:


HRs and Business Dilemmas Forum:
http://human-rights.unglobalcompact.org/dilemmas/indigenous-peoples/

Business and HRs Resource Centre:
http://www.business-humanrights.org/Categories/Issues/Groups/Indigenouspeoples

The corporate responsibility to respect human rights “exists independently of States’ abilities and/or willingness to fulfil their own human rights obligations […] And it exists over and above compliance with national laws and regulations protecting human rights.”

– Guiding Principles on Business and Human Rights
**Legislative frameworks**

NHRIs can encourage states to recognise the existence of indigenous peoples in their constitution and to implement ILO C.169, the UN Declaration, Treaties, agreements and other relevant instruments that protect indigenous peoples’ rights. NHRIs can also promote a more effective implementation of the governments’ obligations to protect indigenous peoples’ rights at the national and local level.

**Direct engagement with business**

NHRIs can work with indigenous peoples and their representative organisations to provide businesses with guidance on operationalising the principle of corporate responsibility to respect in relation to indigenous peoples’ rights, for example, how to effectively comply with FPIC. NHRIs can also encourage businesses to facilitate opportunities for indigenous peoples, such as, skilled employment, joint ventures and partnerships and business development.

**Indigenous peoples’ rights due diligence tools**

Indigenous peoples, and their representative organisations, and NHRIs can work together in developing tools addressing the corporate responsibility to respect with regard to indigenous peoples’ rights. NHRIs can also promote the adaptation of existing due diligence tools to the specific circumstances of indigenous peoples.

**Strengthening indigenous peoples international presence**

NHRIs can work with indigenous peoples and their representative organisations to reinforce the presence of indigenous peoples and business issues in the international agenda. They can also facilitate a stronger dialogue on indigenous peoples and business with UN agencies at the national level as well as with relevant regional institutions, leading to identification of partnering project opportunities.
Recommendations to Governments

CASE STUDIES

NHRIs are already actively involved in working towards the protection of indigenous peoples' rights, including with a human rights and business focus. The following are some illustrative examples.

Mexico:

In September 2012, the National Human Rights Commission of Mexico issued a recommendation urging the government to ensure the protection of the Wixárika peoples’ rights, regarding mining activities in Wirikuta, a sacred indigenous site. There had been allegations of violations of the rights to participation and consultation, the use of indigenous territories, cultural identity and a healthy environment.


Philippines:

In January 2011, the Human Rights Commission of the Philippines issued a recommendation to the government regarding a Financial and Technical Assistance Agreement it had signed with a foreign company, Oceana Gold. The Commission recommended that the government revoke the agreement since the rights of the indigenous people of Barangay Dipidio in Kasibu, Nueva Viscaya, had allegedly been violated.


Information, education, and awareness-raising

NHRIs and indigenous representative organisations can collaborate in the development of platforms to provide information, education and public awareness on business and indigenous peoples’ rights issues. They can also carry out outreach campaigns to raise awareness among indigenous peoples about their rights with regard to business activities opportunities.

Empowerment

NHRIs can provide indigenous peoples and their representative organisations with assistance in developing their capacities to analyse all the potential impacts of business projects that impact on their lands, territories and natural resources. They can also assist indigenous communities engage in consultation processes with companies on equitable footing.
**Engagement with businesses**

**AUSTRALIA**

The Australian Human Rights Commission engages with business to provide them with guidance about indigenous peoples’ rights in Australia. The Commission releases annual Native Title reports, and the 2010 report explained how to undertake a meaningful and effective consultation process with Aboriginal and Torres Strait Islander peoples. The Commission has also developed corporate social responsibility guidelines regarding mining and resource development on Aboriginal land.

*For more information:*

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**Information & awarenessraising**

**AUSTRALIA**

In 2010, the Australian Human Rights Commission published “The Community Guide to the UN Declaration on the Rights of Indigenous Peoples”. The aim of the guide is to assist Aboriginal and Torres Strait Islander peoples to become familiar with the UN Declaration, and learn about their rights and how to use them to address issues concerning their communities. The guide addresses, among other things, indigenous peoples’ rights to self-determination and FPIC.

*For more information:*

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**International presence**

**ORGANISATION FOR ECONOMIC COOPERATION AND DEVELOPMENT**

In January 2011, the Chairperson of the International Coordinating Committee (ICC) of NHRIs and the Chairperson of the New Zealand Human Rights Commission participated in an informal expert meeting on human rights issues in relation to the update of the OECD Guidelines for Multinational Enterprises. They stressed that the OECD guidelines should address indigenous peoples’ rights and explicitly reference the UN Declaration and ILO Convention No. 169.

*For more information:*