

# United Nations Declaration on the Rights of Indigenous Peoples

## A Business Reference Guide

### Exposure Draft

10 December 2012

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United Nations Global Compact

## United Nations Global Compact LEAD (GC Lead)

10 December 2012

### **About the United Nations Global Compact**

The United Nations Global Compact is a call to companies everywhere to voluntarily align their operations and strategies with ten universally-accepted principles in the areas of human rights, labour, environment and anti-corruption, and to take action in support of UN goals, including the Millennium Development Goals. The UN Global Compact is a leadership platform for the development, implementation, and disclosure of responsible corporate policies and practices. Launched in 2000, it is largest corporate responsibility initiative in the world, with over 10,000 signatories based in 140 countries. For more information: [www.unglobalcompact.org](http://www.unglobalcompact.org)

### **About Global Compact LEAD**

Launched in January 2011 to drive innovation and quality of performance among participants of the UN Global Compact, Global Compact LEAD recognizes the critical need to support UN Global Compact participants to achieve higher levels of corporate sustainability performance – as outlined in the Global Compact's Blueprint for Corporate Sustainability Leadership. LEAD participants share a commitment to implement the Blueprint and willingness to lead the Global Compact with strong engagement at the global and local levels. LEAD currently has 56 participants representing all regions of the world.

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## Introduction

The United Nations estimates that there are over 370 million indigenous peoples in the world, living in over 90 countries.<sup>1</sup> In many areas, indigenous peoples have suffered and continue to suffer from abuse, discrimination, marginalization, a lack of political power, loss and degradation of their lands and resources and loss of identity and culture. As a result, many indigenous peoples live in poverty, suffer health issues and their cultures, languages and ways of life are threatened. For these reasons, indigenous peoples are often uniquely vulnerable to business activities. Further factors that exacerbate this vulnerability include their close physical and cultural ties to the land and historical treatment which has often involved dispossession and degradation of land and various human rights abuses, in many instances involving businesses and/or State actors. On occasions harm has eventuated from indigenous peoples unwittingly becoming parties to an agreement without informed understanding of its full implications. Further, there is often a lack of properly articulated legal rights protecting indigenous peoples and their cultures at the State level. Unfortunately, many private sector activities continue to have, both directly and indirectly, damaging effects on indigenous peoples, and in some cases the damage is irreparable.

Indigenous peoples, like all peoples, contribute in unique and crucial ways to the common social and cultural legacies of humankind. Further, indigenous peoples are traditional owners of significant lands, territories and resources, and a number of indigenous people are also business owners themselves. This guide seeks to provide guidance to businesses on positive and respectful engagement with indigenous peoples, which can have benefits for all.

## UN Declaration on the Rights of Indigenous Peoples

Indigenous peoples are entitled to all human rights established under international law. Further, and in recognition of indigenous peoples' status as culturally distinct and self-determining peoples, and the unique challenges they have historically faced in relation to exercising and enjoying their rights, two key international instruments elaborate their rights, including indigenous peoples' collective rights, specifically: the UN Declaration on the Rights of Indigenous Peoples ("UNDRIP") and ILO Convention 169, Indigenous and Tribal Peoples Convention.

The UNDRIP was negotiated between States and indigenous peoples for over twenty years before being adopted by the UN General Assembly in 2007.<sup>2</sup> The UNDRIP marked a significant achievement by indigenous peoples, who faced significant resistance from a number of States unwilling to acknowledge key indigenous rights, such as self-determination and land and natural resources rights.

The first step towards the UNDRIP was the establishment in 1982 of the UN Economic and Social Council's Working Group on Indigenous Populations, charged with developing human rights standards to protect indigenous peoples. The Working Group started drafting the UNDRIP in 1985, and in 1993 the draft text was submitted to (and in 1994 approved by) the Sub-Commission on the Prevention of Discrimination and Protection of Minorities. The draft was then sent to the UN Commission on Human Rights, which established its own Working Group for the UNDRIP. The adoption of the UNDRIP was called for by the 2005 World Summit and the 2006 Fifth Session of the Permanent Forum on Indigenous Issues (UNPFII), and the Human Rights Council adopted the UNDRIP in 2006. In September 2007, the UNDRIP was adopted by the UN General Assembly.<sup>3</sup>

The UNDRIP recognizes that indigenous peoples around the world have suffered significant injustices throughout history, and it identifies a number of collective rights of indigenous peoples, as well as incorporating various elements that seek to provide remediation. It also provides States with

<sup>1</sup> United Nations Department of Economic and Social Affairs, Division for Social Policy and Development, Secretariat of the Permanent Forum on Indigenous Issues, State of the World's Indigenous Peoples, New York, 2009 (ST/ESA/328) (UN Sales No. 09.VI.13), [http://www.un.org/esa/socdev/unpfii/documents/SOWIP\\_web.pdf](http://www.un.org/esa/socdev/unpfii/documents/SOWIP_web.pdf).

<sup>2</sup> Four countries voted against the Declaration (Australia, Canada, New Zealand and the United States).

<sup>3</sup> [http://www.un.org/esa/socdev/unpfii/documents/faq\\_drips\\_en.pdf](http://www.un.org/esa/socdev/unpfii/documents/faq_drips_en.pdf)

a framework to reduce inequality and disadvantage still experienced by many indigenous peoples. The UNDRIP is not itself legally binding (except to the extent that it reflects customary international law). However, it does establish an international standard for States and other parties, including businesses, to meet.

### What is the business responsibility in relation to indigenous peoples' rights?

States have the primary responsibility for respecting, protecting and fulfilling human rights, through policy, legislation and regulation, and adjudication. The *UN Guiding Principles on Business and Human Rights* ("Guiding Principles") specifically outline the **State duty to protect human rights** from abuse by businesses, based on the existing international obligations of States. The Guiding Principles further make it clear that, at a minimum, **businesses also have a responsibility to respect** human rights throughout their operations – that is, businesses must not cause or contribute to negative impacts linked to them through their business activities or relationships. Where a business has caused or contributed to the infringement of a human right, they must address the adverse impact through appropriate measures for prevention and mitigation and, where appropriate, remediation.

The relationship between business and indigenous peoples may also lead to positive outcomes. In recognition of the private sector's potential to create positive human rights impacts, the principles of the UN Global Compact encourages participants to not just respect but also **support** human rights through contributions that promote and advance them (for example, through core business activities, strategic social investment and philanthropy, advocacy and public policy engagement, and partnership and collective action).<sup>4</sup> While businesses are encouraged to support and promote human rights, such activities do not offset a failure by a company to respect human rights through their operations.

"Companies engaging in activities that may infringe the rights of indigenous peoples, as enshrined within the UN Declaration on the Rights of Indigenous Peoples, face increasing reputational risks potentially leading to issues with access to capital, damage to brand, licence to operate, and operational risks such as the threat of litigation and increased regulation", EIRIS<sup>5</sup>

There is growing pressure on businesses and drive from within businesses to ensure that they respect human rights and that they play a part in supporting and promoting human rights in order to maintain their social and legal licence to operate and be more sustainable and inclusive. Businesses are also reporting that positive engagement with indigenous peoples can bring a range of benefits – stronger relationships with communities and other stakeholders resulting in fewer conflicts and disputes, stronger government relationships (with attendant benefits), reputational benefits, employee engagement, and the ability to learn from indigenous peoples' unique knowledge (with consent and respect for their intellectual property).

**The purpose of this publication is to illustrate how the rights of indigenous peoples are relevant in a business context, and to provide guidance to businesses on how to respect and support the rights of indigenous peoples in their activities and sphere of influence.** While this Guide focuses on the rights of indigenous peoples, businesses must also ensure that they do not negatively impact on the rights of any person (with particular regard for other vulnerable groups including women and children). Accordingly, the actions suggested in this Guide should be taken alongside a broader set of actions that businesses take to respect and support the human rights of all people.

Key international instruments and principles referred to in this Guide include:

- UN Declaration on the Rights of Indigenous Peoples ("UNDRIP") (reproduced in Appendix A);
- ILO Convention 169, Indigenous and Tribal Peoples Convention;

<sup>4</sup> For a discussion of the relationship between the Guiding Principles and the principles of the UN Global Compact, see the explanatory note available here: [http://www.unglobalcompact.org/docs/issues\\_doc/human\\_rights/Resources/GPs\\_GC%20note.pdf](http://www.unglobalcompact.org/docs/issues_doc/human_rights/Resources/GPs_GC%20note.pdf)

<sup>5</sup> EIRIS, 'Investors urged to focus attention on rights of indigenous peoples', 2009, <http://www.eiris.org/files/press%20releases/indigenouspeoplesjun09.pdf>

- The UN Global Compact’s Principles (reproduced in Appendix B); and
- UN Guiding Principles on Business and Human Rights (“Guiding Principles”).

This Guide draws on a number of previously published materials, including:

- *Human Rights Translated: A Business Reference Guide*, Castan Centre for Human Rights Law, International Business Leaders Forum, and Office of the United Nations High Commissioner for Human Rights;
- *The Corporate Responsibility to Respect Human Rights: An Interpretive Guide*, Office of the High Commissioner for Human Rights;
- *The Community Guide to the UN Declaration on the Rights of Indigenous Peoples*, Australian Human Rights Commission;
- *Understanding and Implementing the UN Declaration on the Rights of Indigenous Peoples: An Introductory Handbook*, Indigenous Bar Association, Canada;
- Conference Report, The Hague (2010), International Law Association, Rights of Indigenous Peoples Committee;
- Human Rights and Business Dilemmas Forum: Indigenous Peoples, UN Global Compact;
- Report to the Human Rights Council (Summary of activities. Progress report on study on extractive industries), UN Special Rapporteur on the Rights of Indigenous Peoples, Professor James Anaya;
- Report of the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) on indigenous peoples and the right to participate in decision making with a focus on extractive industries;
- Report of the Expert Mechanism on the Rights of Indigenous Peoples on the role of languages and culture in the promotion and protection of the rights and identity of indigenous peoples; and
- *Guidelines on Indigenous Peoples’ Issues*, UN Development Group.

### Who are indigenous peoples?

UNDRIP does not define “indigenous peoples”, but instead provides, through various introductory text and articles, some of the defining shared context, including the shared “historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests”. It should be noted that, in some countries, relevant peoples may be referred to or may prefer to be referred to by other descriptors, such as tribal or first peoples; some groups which may fall within the general concept of indigenous peoples may prefer not to be separately identified in this way at all in which case such preference must be respected.

It is useful to consider existing international instruments, such as in ILO Convention 169 on Indigenous and Tribal Peoples which identifies indigenous and tribal peoples as<sup>6</sup>:

- (a) tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;
- (b) peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.

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<sup>6</sup> ILO Convention 169 on Indigenous and Tribal Peoples, Article 1

In its report *State of the World's Indigenous Peoples* (2009), the UN Department of Economic and Social Affairs cites the following working definition from Martínez Cobo<sup>7</sup> which assists in understanding the concept of "indigenous peoples":

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 on 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 system.

Their historical continuity may consist of the continuation, for an extended period reaching into the present of one or more of the following factors:

- a. Occupation of ancestral lands, or at least of part of them
- b. Common ancestry with the original occupants of these lands
- c. Culture in general, or in specific manifestations (such as religion, living under a tribal system, membership of an indigenous community, dress, means of livelihood, lifestyle, etc.)
- d. Language (whether used as the only language, as mother-tongue, as the habitual means of communication at home or in the family, or as the main, preferred, habitual, general or normal language)
- e. Residence in certain parts of the country, or in certain regions of the world
- f. Other relevant factors.

On an individual basis, an indigenous person is one who belongs to these indigenous populations through self-identification as indigenous (group consciousness) and is recognized and accepted by these populations as one of its members (acceptance by the group).

This preserves for these communities the sovereign right and power to decide who belongs to them, without external interference.

In identifying indigenous peoples, business must fully involve the relevant peoples, and respect the principle of self-identification as indigenous.

The UN Department of Economic and Social Affairs' Resource Kit on Indigenous Peoples' Issues<sup>8</sup> also suggests a number of practical questions to ask in seeking to identify indigenous peoples, including: do the peoples self-identify as indigenous? Are they recognized as indigenous in legislation? What is the group's general situation compared with that of the dominant society? While none of these questions is decisive (for example, there are countries where governments refuse to recognize indigenous peoples' status and as such a lack of recognition by government or legislation does not necessarily mean that a people is not indigenous), they may be useful to consider.

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<sup>7</sup> Martínez Cobo, José (1986/7), 'Study of the Problem of Discrimination against Indigenous Populations', UN Doc. E/CN.4/Sub.2/1986/7 and Add. 1-4, paras. 379-382. Available online at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G86/104/62/PDF/G8610462.pdf?OpenElement>

<sup>8</sup> [http://www.undg.org/docs/10162/resource\\_kit\\_indigenous\\_2008.pdf](http://www.undg.org/docs/10162/resource_kit_indigenous_2008.pdf), p. 9

## **How to Use this Guide**

### **Purpose**

This publication provides guidance to business on how to respect and support the rights of indigenous peoples, by illustrating how these rights are relevant to a business' activities and providing practical suggestions.

The guidance offered in this publication is not prescriptive and a 'one-size-fits-all' approach is not possible. The diversity of issues and contexts, as well as a company's size, sector, ownership and structure, means that the scale and complexity of the measures necessary to ensure respect for indigenous peoples' rights and opportunities to support the rights will vary depending on a number of factors. These are likely to include the indigenous peoples involved and their particular cultures, histories and desires regarding development, the business involved and its objectives, the proposed activities and the regulatory environment, and on the severity of the company's adverse impact.

As a result of the diversity of contexts giving rise to business engagement with indigenous peoples, businesses should engage in meaningful consultation and partnership with indigenous peoples to adapt the principles discussed and practices suggested in this Guide to their particular situations and contexts.

### **Structure and methodology**

Readers do not necessarily need to read this guide from start to end, but may instead go straight to the sections or rights of interest or relevance. The introductory sections set the scene for business engagement with indigenous peoples. Part I of this guide outlines key actions for businesses to take in relation to indigenous peoples' rights, from making a policy commitment, to due diligence, consultation and consent-seeking. Part II provides a description of each right in the UNDRIP, suggests practical actions that businesses can take to respect and support each right, and examples to help illustrate those suggested actions. A number of the examples have been simplified from real examples; others are hypothetical.

Further resources are also listed to provide business with additional practical guidance to assist in integrating respect and support for indigenous peoples' rights into day-to-day business strategy and operations.

## Glossary

**Article** refers to an article in the UNDRIP, unless otherwise stated

**Guiding Principles** means the UN Guiding Principles on Business and Human Rights<sup>9</sup>

**Indigenous peoples** has no single definition; see the discussion on page 6

**OHCHR** means the UN Office of the High Commissioner for Human Rights

**State** means country or, in practical terms, national government

**UNDRIP** means the UN Declaration on the Rights of Indigenous Peoples

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<sup>9</sup> For a discussion of the relationship between the Guiding Principles and the principles of the UN Global Compact, see the explanatory note available here: [http://www.unglobalcompact.org/docs/issues\\_doc/human\\_rights/Resources/GPs\\_GC%20note.pdf](http://www.unglobalcompact.org/docs/issues_doc/human_rights/Resources/GPs_GC%20note.pdf)

# **Part I: Key business actions**

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## Respect and support for indigenous peoples' rights

This publication provides guidance to business on respecting and supporting the rights of indigenous peoples, by illustrating how these rights are relevant to a business' activities providing practical suggestions to business.

**THE CORPORATE RESPONSIBILITY TO RESPECT** – in accordance with the UN Guiding Principles, *all* businesses have a responsibility to avoid causing or contributing to adverse impacts on indigenous peoples' rights, and addressing any such impacts with which the business is involved. This responsibility applies not only to the business' own activities, but also to any adverse impacts which may be directly linked to its operations, products or services by its business relationships.

**THE CORPORATE COMMITMENT TO SUPPORT** – in accordance with the UN Global Compact Principles, in addition to respecting indigenous peoples' rights, Global Compact participants are asked to take voluntary actions that seek to promote and advance indigenous peoples' rights, including through core business activities, strategic social investments, philanthropy, advocacy and public policy engagement, and partnership and collective action. Such activities should be undertaken in collaboration with relevant indigenous communities. The corporate commitment to support indigenous peoples' rights is also relevant for non-participants of the UN Global Compact.

As an initial step, business must recognize the principles underpinning indigenous peoples' rights. Indigenous peoples are entitled to enjoy all human rights and fundamental freedoms under international law, including those individual and collective rights that are set out in the UNDRIP and the ILO Convention No.169 on Indigenous Tribal Peoples. Two fundamental elements of indigenous peoples' rights, on which the ability to exercise and enjoy a number of other rights rest, are the **right to self-determination** (discussed on page 36) and **free, prior and informed consent** (discussed on page 24) which, among other things, require that business fully and meaningfully engage indigenous peoples in, and in many cases obtain their free, prior and informed consent for, business activities that will affect them or their rights.

While this Guide focuses on the rights of indigenous peoples, businesses must also ensure that they do not negatively impact on the rights of any person (with particular regard for other vulnerable groups including women and children). The Guiding Principles and the UN Global Compact Management Model<sup>10</sup> set out fundamental actions that businesses should take to ensure that they meet their obligation to respect, and their commitment to support, human rights, including the rights of indigenous peoples. These include making a policy commitment, conducting human rights due diligence, defining goals and strategies, implementing strategies and policies (which must include the establishment of or cooperation with legitimate processes to enable the remediation of any infringements of rights), and monitoring and reporting on progress. Accordingly, the actions suggested in this Guide should be part of a broader set of actions that businesses take to respect and support human rights, including indigenous peoples' rights.

While all businesses, regardless of size, sector, operational context, ownership or structure, have a responsibility to respect indigenous peoples' rights, what is required of a particular business in adopting these fundamental actions will depend on these factors and, most importantly, the severity of the business's adverse impacts on the rights of indigenous peoples<sup>11</sup> - that is, the gravity of the

<sup>10</sup> The UN Global Compact Management Model: Framework for Implementation is available here: [http://www.unglobalcompact.org/docs/news\\_events/9.1\\_news\\_archives/2010\\_06\\_17/UN\\_Global\\_Compact\\_Management\\_Model.pdf](http://www.unglobalcompact.org/docs/news_events/9.1_news_archives/2010_06_17/UN_Global_Compact_Management_Model.pdf). For a discussion of the relationship between the Guiding Principles and the principles of the UN Global Compact, see the explanatory note available here: [http://www.unglobalcompact.org/docs/issues\\_doc/human\\_rights/Resources/GPs\\_GC%20note.pdf](http://www.unglobalcompact.org/docs/issues_doc/human_rights/Resources/GPs_GC%20note.pdf)

<sup>11</sup> Principle 14 of the Guiding Principles. For a discussion of this, see *The Corporate Responsibility to Respect Human Rights: An Interpretive Guide*, UN Office of the High Commissioner for Human Rights (<http://www.business-humanrights.org/media/documents/corporate-responsibility-to-respect-interpretive-guide-nov-2011.pdf>)

impact, the number of people affected and whether it can be remediated. In short, the management steps that a business should take to respect indigenous peoples' rights will be proportionate to the level of risk of adverse impacts on those rights. Set out below are the key fundamental actions in relation to indigenous peoples' rights that business should take, or give consideration to in light of the nature and context of the business and severity of its adverse impacts.

The Guiding Principles make it clear that, at a minimum, **all businesses have a responsibility to respect human rights**, including those of indigenous peoples set out in the UNDRIP, throughout their operations. That is, businesses must:<sup>12</sup>

- (a) avoid causing or contributing to adverse indigenous peoples' rights impacts through their own activities, and address such impacts when they occur; and
- (b) seek to prevent or mitigate adverse indigenous peoples' rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.

For these purposes, a business' activities include acts and omissions, and its business relationships include those with business partners, entities in the business' value chain and any other State or non-State entity that is directly linked to the business' operations, products or services.

Where a business has caused or contributed to an adverse indigenous peoples' rights impact, the business must actively engage in remediation, through legitimate processes and in partnership with those affected.

In addition to respecting indigenous peoples' rights, the Global Compact principles also ask Global Compact participants to take voluntary actions in partnership with indigenous peoples to advance indigenous peoples' rights, including through core business activities, strategic social investments, philanthropy, advocacy and public policy engagement, and partnership and collective action. The due diligence process will often identify such opportunities. Voluntary actions to support and champion indigenous peoples' rights must be in addition to and not a substitute for actions taken to respect their rights (which is the minimum standard for all business enterprises), and should also be guided by the core principles of indigenous peoples' rights including self-determination and free, prior and informed consent.

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<sup>12</sup> Principle 13 of the Guiding Principles, [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)

**All business should take the following fundamental actions to meet their responsibility to respect indigenous peoples' rights:**

- 1. Adopt and implement an indigenous peoples' rights policy, committing the business to respect and support indigenous peoples' rights**
- 2. Conduct due diligence and impact assessments to identify actual or potential impacts on indigenous peoples or their rights**
- 3. Consult with indigenous peoples in relation to matters that may affect them or their rights**
- 4. Obtain (and maintain) free, prior and informed consent from indigenous peoples where appropriate**
- 5. Establish or cooperate with an effective and culturally appropriate grievance mechanism**
- 6. Establish or cooperate with legitimate processes to remediate any adverse impacts on indigenous peoples' rights**
- 7. Monitor and report on the business' performance in relation to indigenous peoples' rights**

These fundamental actions are important to ensure respect for the individual and collective rights of indigenous peoples. Each fundamental action, and suggested approaches for implementing it, is discussed in detail in the remainder of Part I.

Note: While some of these actions naturally follow from others, this list should not be seen as a flow chart or steps to be taken in the order given. For example, before developing a policy on indigenous peoples' rights, it is recommended that businesses engage with relevant indigenous peoples in order to involve them in the policy development process. Many of these actions will also be ongoing.

# Policy commitment

## Action: Adopt and implement an indigenous peoples' rights policy, committing the business to respect and support indigenous peoples' rights

An indigenous peoples' rights policy is a public statement adopted by a business, endorsed and supported by the business' highest governing levels, committing the business to certain actions in relation to indigenous peoples' rights. Companies should develop an indigenous peoples' rights policy, or include a specific section on indigenous peoples' rights in their human rights policy or overall code of conduct. In either case, the policy should fully recognize the rights of indigenous peoples as set out in the UNDRIP, and commit the company to, at a minimum, respecting the rights, and to actively supporting and advancing the rights where possible. The policy should reference the UNDRIP and other relevant State-level and international law, legislation and regulation relating to human rights or specifically indigenous peoples' rights, including notably ILO Convention No.169. Indigenous peoples should be involved in the development of the policy.

Having an indigenous peoples' rights policy, and even the process of developing the policy, will help businesses to understand and identify where there are risks to indigenous peoples' rights in their operations and through their business relationships, and to develop processes for mitigating risks and addressing any infringements of rights that do occur. Once a business has an indigenous peoples' rights policy, it is encouraged to require business partners (for example, sub-contractors and joint venture partners) to adhere to the policy, and support them in developing their own such policy.

Businesses benefit from developing an indigenous peoples' rights policy in the following ways:

- It publicly confirms the company's commitment to meeting its responsibility to respect the rights of indigenous peoples, and demonstrates good business practice;
- It assists the company in identifying policy gaps and areas of risk;
- It builds trust with external stakeholders, and can assist the company in understanding and meeting stakeholder expectations;
- It can provide reputational benefits;
- It provides guidance for managers and employees in relation to matters that may impact on the rights of indigenous peoples; and
- It helps companies to meet their commitment to the UN Global Compact (for participant companies).

"Given the level of NGO and media attention to the issue of indigenous peoples' rights and the introduction of laws and regulation in many countries, companies with strong commitments and effective engagement processes will undoubtedly benefit in an environment where access to land and resources is becoming increasingly restricted" EIRIS<sup>13</sup>

## How to develop an indigenous peoples' rights policy<sup>14</sup>

### Getting started

- Assign senior management responsibility to drive, implement and review the policy.

<sup>13</sup> EIRIS, 'Investors urged to focus attention on rights of indigenous peoples', 2009, <http://www.eiris.org/files/press%20releases/indigenouspeoplesjun09.pdf>

<sup>14</sup> This section draws heavily on the UN Global Compact and Office of the High Commissioner for Human Rights, 2011, *Guide on How to Develop a Human Rights Policy*, [http://www.unglobalcompact.org/docs/issues\\_doc/human\\_rights/Resources/How\\_to\\_Develop\\_a\\_Human\\_Rights\\_Policy.pdf](http://www.unglobalcompact.org/docs/issues_doc/human_rights/Resources/How_to_Develop_a_Human_Rights_Policy.pdf)

- Involve all relevant parts of the business in the process of developing, implementing and reviewing the policy (including all parts of the core business as well as human resources, corporate affairs, legal, procurement and security).
- Involve internal and external stakeholders in the process. It is crucial that indigenous peoples with whom the business interacts and works are engaged in the process of developing, implementing and reviewing the policy. Indigenous peoples should be engaged early in the policy development process, in accordance with international standards. Businesses should conduct pre-engagement analysis to understand relevant indigenous communities and develop an outreach and communication strategy for engaging with them (discussed in the section 'Consultation, engagement and decision-making').
- Map existing policies to identify existing coverage of indigenous peoples' rights and gaps (this may include, for example, policies relating to human rights, equal opportunity/diversity, occupational health and safety, environment, ethical conduct, procurement, community investment etc).

### Key inclusions

At a minimum, the policy should include:

- An explicit commitment to respect indigenous peoples' rights, including their individual human rights and the collective rights set out in the UNDRIP and ILO Convention 169. In relation to this element, the Special Rapporteur on states<sup>15</sup>:

Any policy commitment made in relation to human rights and Indigenous peoples should include how the business enterprise will seek to obtain the free, prior and informed consent of Indigenous peoples, and respect, protect and fulfill all the rights and obligations contained in the UN Declaration on the Rights of Indigenous Peoples.

- Provisions on fundamental labour rights (e.g., freedom from forced labour and child labour, equality, non-discrimination, diversity and inclusion); and
- Provisions on non-labour rights, which will depend on the nature of the business and the areas in which it operates and impacts.

Businesses should also consider including:

- A commitment to support all human rights of indigenous peoples;
- A commitment to working with business partners to encourage the adoption of indigenous peoples' rights policies in the business' sphere of influence;
- The process undertaken to develop the policy (including how indigenous peoples were consulted);
- References to voluntary standards and codes of conduct; and
- Legal jurisdiction issues (the company's approach to indigenous peoples' rights where State laws and regulations differ from indigenous peoples' rights under international instruments such as the UNDRIP).

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<sup>15</sup> Expert Mechanism on the Rights of Indigenous Peoples, 2012, *Comment on the Human Rights Council's Guiding Principles on Business and Human Rights as related to Indigenous Peoples and the Right to Participate in Decision-Making with a Focus on Extractive Industries*, [http://www.ohchr.org/Documents/Issues/IPeoples/EMRIP/Session5/A-HRC-EMRIP-2012-CRP1\\_en.pdf](http://www.ohchr.org/Documents/Issues/IPeoples/EMRIP/Session5/A-HRC-EMRIP-2012-CRP1_en.pdf)

### Implementation and integration throughout business operations

Once the indigenous peoples' rights policy has been developed, the business must implement the policy and embed it throughout its operations. Failure to implement the policy can cause significant reputational damage to a business. The due diligence process, discussed in the next section, is a key step to embedding the policy.

In addition, the business should:

- Communicate internally to promote the policy and the business' expectations in relation to the policy (e.g., relevant elements of the policy could be included in appropriate employees' key performance indicators);
- Communicate externally about the policy (e.g., some businesses may make a public announcement about the adoption of the policy and, on an ongoing basis, the business may refer to the policy in job advertisements);
- Incorporate the policy into company training as appropriate and consider whether specific training may be required for particular areas of the business; and
- Engage in ongoing consultation with indigenous peoples to build and strengthen relationships (see 'Consultation, engagement and decision-making').

### Further resources

Business and Human Rights Resource Centre, *Company Policy / Steps*, <http://www.business-humanrights.org/Categories/Companypolicysteps>

UN Global Compact and Office of the High Commissioner for Human Rights, *Guide on How to Develop a Human Rights Policy*, 2011, [http://www.unglobalcompact.org/docs/issues\\_doc/human\\_rights/Resources/How\\_to\\_Develop\\_a\\_Human\\_Rights\\_Policy.pdf](http://www.unglobalcompact.org/docs/issues_doc/human_rights/Resources/How_to_Develop_a_Human_Rights_Policy.pdf)

# Due diligence and impact assessments

**Action: Conduct due diligence and impact assessments to identify actual or potential impacts on indigenous peoples or their rights**

## Due diligence

In order to meet their obligation to respect indigenous peoples' rights, businesses must identify and understand the ways in which their activities may impact on the ability of indigenous peoples to exercise and enjoy their rights. This requires the relevant business to conduct rights-focused due diligence to enable the business to identify, prevent, mitigate and account for how they address its impacts on the rights of relevant indigenous peoples (human rights due diligence is also a key requirement under the Guiding Principles). The due diligence process should include:<sup>16</sup>

- (a) assessing actual and potential impacts on indigenous peoples' rights;
- (b) integrating and acting upon the findings;
- (c) tracking responses; and
- (d) communicating how impacts are addressed.

The UN Office of the High Commissioner for Human Rights states that:

[i]n the context of the Guiding Principles, human rights due diligence comprises an ongoing management process that a reasonable and prudent enterprise needs to undertake, in the light of its circumstances (including sector, operating context, size and similar factors) to meet its responsibility to respect human rights.

This description applies equally to indigenous peoples' rights due diligence.

Rights-focused due diligence will also help the business to implement and embed its indigenous peoples' rights policy throughout its operations. Due diligence in relation to indigenous peoples' rights may be part of a broader human rights due diligence process, or may be undertaken as a separate process. In any event, indigenous peoples' rights must be considered specifically; businesses cannot simply rely on general human rights due diligence in relation to indigenous peoples' rights, for reasons including the following:<sup>17</sup>

- It is possible that a particular activity may not impact on the rights of non-indigenous peoples, but the same activity could adversely impact indigenous peoples' rights. For example, given the relationship indigenous peoples' often have with their lands, it could be that the resettlement of indigenous peoples has a far more significant impact on them than the same resettlement would have on non-indigenous peoples.
- Indigenous peoples' are culturally distinct and self-determining peoples, and under the UNDRIP they have individual and collective rights, each of which must be considered.
- The due diligence process must involve meaningful engagement with and participation by relevant indigenous peoples. The way a business engages with indigenous peoples may differ from the way the business engages with non-indigenous peoples in relation to the same project.

<sup>16</sup> Guiding Principle 17

<sup>17</sup> This issue is discussed at Right 2 Respect, 2011, *Human Rights Due Diligence and Indigenous Peoples: What is required?*, <http://www.right2respect.com/2011/08/human-rights-due-diligence-and-indigenous-peoples-what-is-required/>

For example, valid engagement with non-indigenous peoples may not constitute valid engagement with indigenous peoples if the relevant governance structures were not respected.

Due diligence should be conducted initially to identify risk areas and inform the indigenous peoples' rights policy. Businesses should also conduct due diligence or impact assessments (discussed below) in relation to particular activities, including prior to making investments in a project, before commencing a project, for the purposes of mergers and acquisitions activities, when entering a new country or new region, when entering into arrangements with new business partners or when the context or circumstances change.

Due diligence can encompass a range of elements: desk research to identify government policies and reports; engagement with indigenous organizations and other relevant civil society organizations; visits to project sites; and meaningful consultation with local indigenous communities. The appropriate scope of due diligence for a particular business will depend on the business's size, structure and context and, most importantly, the severity of adverse impacts on indigenous peoples' rights. In any event, though, the key elements of due diligence – assessing, integrating and acting, tracking and communicating – together with processes for remediation (discussed below) provide a framework applicable to all businesses.<sup>18</sup>

Key factors to consider in conducting indigenous peoples' rights due diligence include the following:

- Indigenous peoples must be engaged in the due diligence process. (See the section 'Consultation, engagement and decision-making' for guidance on engaging with relevant indigenous peoples, including for the purpose of due diligence.)
- Businesses must specifically take account of the different impacts that the project may have on indigenous men and women, recognizing that women often bear a greater proportion of negative impacts of development projects.
- The due diligence process must take account of actual and potential adverse impacts on indigenous peoples' cultures and values, which are often poorly understood by businesses. Consider engaging an expert with ethno-development expertise to assist or conduct the due diligence if the business does not have the appropriate expertise in-house.

Businesses must also integrate the results of their due diligence process into business operations and take appropriate action to address any impacts on indigenous peoples' rights, and track the effectiveness of its response. Businesses should also make the results of its due diligence and impact assessments available to the relevant indigenous peoples in a culturally appropriate format (and respecting confidentiality considerations), and ensure that technical information is presented in an accessible format. The results should also be made available externally for transparency (again, respecting confidentiality considerations).

Due diligence in relation to indigenous peoples' rights is not a one-off undertaking; it is an iterative process that businesses must continually undertake to ensure that any changes in plans, circumstances or context do not create adverse rights' impacts and to remain consistent with any normative developments.

### Impact assessments

While due diligence is an ongoing process that considers a business' whole operations (including its business relationships), businesses will often also be required to prepare impact assessments in relation to specific proposed activities (in a number of countries, this will be a regulatory requirement). Such impact assessments must also specifically consider impacts on indigenous peoples and their rights. The factors listed above in relation to due diligence apply equally to impact assessments. In addition, business should also consider the following:

<sup>18</sup> UN Office of the High Commissioner for Human Rights, 2011, *The Corporate Responsibility to Respect Human Rights: An Interpretive Guide*, p. 27, <http://www.business-humanrights.org/media/documents/corporate-responsibility-to-respect-interpretive-guide-nov-2011.pdf>

- Many impact assessments take place in accordance with legislative or regulatory processes, which, for various reasons, can hinder the ability of indigenous peoples to effectively participate:<sup>19</sup>
  - The legislative or regulatory process may not expressly require the involvement of indigenous peoples, even where they are being impacted. In such cases, the business should involve relevant indigenous peoples regardless.
  - Indigenous peoples may have insufficient financial resources to participate in the process. Business should provide funding and other necessary support to indigenous peoples to allow their full participation.
  - The legislative or regulatory timeframe may be too short to allow effective participation by indigenous peoples, who may have communication and decision-making structures that require a longer time period.
- Businesses must ensure that the impact assessment process takes account of and respects the relevant indigenous peoples' cultures and values, which may not easily sit with the business understanding of the context. For example, understanding the environmental impact in terms of indigenous peoples' spiritual values, and also, crucially, any intangible cultural impacts.
- Businesses should consider providing support (including financial support) to indigenous peoples to allow them to commission their own impact assessment by a third party of the indigenous peoples' choosing in addition to the impact assessment that the business has commissioned or prepared (and with an equivalent budget allocated to any such impact assessment).
- As with due diligence, impact assessment processes should continue for the duration of the activity.

### **What should a business do if a group identifies as indigenous but the government does not recognize them as such, or does not otherwise respect indigenous peoples' rights?**

In some countries, there are groups that identify as indigenous, but the government does not recognize them as such, due to concerns over the obligations that would follow such recognition, for example in relation to self-determination or land rights.

In such circumstances, businesses cannot hide behind government policies and positions; this will not protect the business from allegations of rights violations. Accordingly, businesses must ensure that they do not cause or contribute to an adverse rights impact occurring as a result of not respecting a group's legitimate rights as indigenous peoples (either directly through their own activities or otherwise linked to their operations, products or services by their business relationships, including with governments).

The following suggestions may assist businesses facing this situation.

- Businesses must undertake their own investigation into whether the group is indigenous, and respect groups' legitimate self-identification as indigenous;
- Where a group legitimately self-identifies as indigenous, proceed on this basis as if the group was formally recognized as such (for example, obtain FPIC (even if this takes place outside of, and is not required by, any government processes));
- Consider engaging with the government to explore the possibility of recognition and protection of rights. Ensure, though, that this will not worsen the indigenous peoples' position or create additional risks to them or their rights;

<sup>19</sup> O'Faircheallaigh, Ciaran, 1996, 'Making Social Impact Assessment Count: A Negotiation-based Approach for Indigenous Peoples' (Research Paper), <http://www.griffith.edu.au/business-government/griffith-business-school/pdf/research-paper-1996-making-social-impact-assessment.pdf>

- Be cautious of entering into agreements with governments that do not respect the rights of indigenous peoples. Incorporate expectations as to protection of and respect for indigenous peoples' rights into agreements with governments where possible; and
- If the business' proposed activities may cause or contribute to more negative impacts on indigenous peoples' rights than positive, then the business may need to withdraw from the project.

For further guidance on assessing risks and determining approaches to conducting business in States with poor human rights records (which is also relevant in relation to indigenous peoples' rights), see: *Decision Map: Doing Business in High-Risk Human Rights Environments*, Danish Institute for Human Rights.<sup>20</sup>

### Further resources

There are many publicly available resources providing guidance on conducting human rights due diligence and impact assessments, which can be used as a basis for due diligence in relation to indigenous peoples' rights (taking into account the comments above about particular considerations for indigenous peoples' rights due diligence). Some are included in the resources listed below. Additional resources in relation to human rights due diligence can be found at:

[http://www.unglobalcompact.org/Issues/human\\_rights/Tools\\_and\\_Guidance\\_Materials.html](http://www.unglobalcompact.org/Issues/human_rights/Tools_and_Guidance_Materials.html)

Global Compact Network, Netherlands, 2010, *How to do business with respect for human rights: a guidance tool for companies*,

[http://www.unglobalcompact.org/docs/issues\\_doc/human\\_rights/Resources/how\\_to\\_business\\_with\\_respect\\_for\\_human\\_rights\\_gcn\\_netherlands\\_june2010.pdf](http://www.unglobalcompact.org/docs/issues_doc/human_rights/Resources/how_to_business_with_respect_for_human_rights_gcn_netherlands_june2010.pdf)

Harvard Kennedy CSR Initiative, 2009, 'Due diligence for human rights: a risk-based approach (Working Paper)', [http://www.hks.harvard.edu/m-rcbg/CSRI/publications/workingpaper\\_53\\_taylor\\_etal.pdf](http://www.hks.harvard.edu/m-rcbg/CSRI/publications/workingpaper_53_taylor_etal.pdf)

International Council on Mining and Metals, 2012, *Integrating human rights due diligence into corporate risk management processes*, <http://www.icmm.com/page/75929/human-rights-in-the-mining-and-metals-industry-integrating-human-rights-due-diligence-into-corporate-risk-management-processes>

International Council on Mining and Metals, 2005, *Mining and Indigenous Peoples' Issues Review*, <http://www.icmm.com/page/1161/mining-and-indigenous-peoples-issues-review>

International Finance Corporation, 2007, *ILO Convention 169 and the Private Sector: Questions and Answers for IFC Clients*,

[http://www1.ifc.org/wps/wcm/connect/cba33980488556edba6a6515bb18/ILO\\_169.pdf?MOD=AJPERES](http://www1.ifc.org/wps/wcm/connect/cba33980488556edba6a6515bb18/ILO_169.pdf?MOD=AJPERES)

International Finance Corporation, 2012, *Performance Standard 1: Assessment and Management of Environmental and Social Risks and Impacts*,

[http://www1.ifc.org/wps/wcm/connect/topics\\_ext\\_content/ifc\\_external\\_corporate\\_site/ifc+sustainability/publications/publications\\_handbook\\_pps](http://www1.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/ifc+sustainability/publications/publications_handbook_pps)

International Finance Corporation, 2012, *Performance Standard 7: Indigenous Peoples*,

[http://www1.ifc.org/wps/wcm/connect/topics\\_ext\\_content/ifc\\_external\\_corporate\\_site/ifc+sustainability/publications/publications\\_handbook\\_pps](http://www1.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/ifc+sustainability/publications/publications_handbook_pps)

International Labour Organization, 2009, *Indigenous and Tribal Peoples' Rights in Practice: A Guide to ILO Convention No. 169*, [http://pro169.org/res/materials/en/general\\_resources/IPsRightsInPractice-singlepages.pdf](http://pro169.org/res/materials/en/general_resources/IPsRightsInPractice-singlepages.pdf)

O'Faircheallaigh, Ciaran, 1996, 'Making Social Impact Assessment Count: A Negotiation-based Approach for Indigenous Peoples' (Research Paper), <http://www.griffith.edu.au/business-government/griffith-business-school/pdf/research-paper-1996-making-social-impact-assessment.pdf>

Secretariat of the Convention on Biological Diversity, 2004, *Akwé: Kon Voluntary Guidelines for the Conduct of Cultural, Environmental and Social Impact Assessment regarding Developments Proposed to Take Place*

<sup>20</sup> [http://www.humanrightsbusiness.org/files/Publications/doing\\_business\\_in\\_highrisk\\_human\\_rights\\_environments\\_\\_180210.pdf](http://www.humanrightsbusiness.org/files/Publications/doing_business_in_highrisk_human_rights_environments__180210.pdf)

*on, or which are Likely to Impact on, Sacred Sites and on Lands and Waters Traditionally Occupied or Used by Indigenous and Local Communities*, <http://www.cbd.int/doc/publications/akwe-brochure-en.pdf>

UN Development Group, 2008, *Guidelines on Indigenous Peoples' Issues*,  
[http://www.ohchr.org/Documents/Publications/UNDG\\_training\\_16EN.pdf](http://www.ohchr.org/Documents/Publications/UNDG_training_16EN.pdf)

UN Office of the High Commissioner for Human Rights, 2012, *The Corporate Responsibility to Protect Human Rights: An Interpretative Guide*, <http://www.ohchr.org/EN/Issues/Business/Pages/Tools.aspx>

World Bank, 2005, *OP 4.10, Indigenous Peoples*,  
<http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/EXTPOLICIES/EXTOPMANUAL/0,,contentMDK:20553653~menuPK:4564185~pagePK:64709096~piPK:64709108~theSitePK:502184,00.html>

# Consultation, engagement and decision-making

## **Action: Consult with indigenous peoples in relation to matters that may affect them or their rights**

Consultation, participation and engagement with indigenous peoples form a crucial part of a business' due diligence and impact assessment, as well as achieving free, prior and informed consent when required (which is discussed in the following section). It is important to allow business to understand indigenous perspectives on matters that may affect indigenous peoples, and in developing trust between the business enterprise and the indigenous peoples and a positive, long-term relationship that will be beneficial to all involved.

Consultation can present implementation challenges, as it will depend on the local context and will require consideration on a case-by-case basis. Accordingly, as an initial step prior to engaging with indigenous peoples, it is recommended that businesses undertake pre-engagement analysis. This will help them to understand the relevant indigenous communities – their culture, governance and decision-making structures (including the relevant individuals to initially reach out to) and methods of communication – and will provide a basis for more successful relationship. With that understanding, businesses can then develop an outreach and communication strategy to support culturally respectful consultation and engagement.

Consultation must be consistent with the following points:

- Consultation must be undertaken in good faith, and it should start as early in the business' consideration of the activity as possible.
- The relevant indigenous peoples must agree to the process for consultation. (There will need to be initial engagement to discuss and agree to the process, informed by pre-engagement analysis, but an approach to consultation should be discussed as early as possible.)
- Consultation must be culturally sensitive, and respect the community's governance structures. As noted above, pre-engagement analysis can help a business to understand the relevant indigenous community's culture, its protocols and governance structures before engaging.
  - Businesses must identify and negotiate with the appropriate representatives within the affected indigenous community, and avoid working with imposed or self-appointed leaders not recognized by the relevant community.
  - Businesses should also seek to understand traditional laws; an action's legality under State law may not necessarily be considered legal under traditional indigenous law.
- Businesses must focus on listening to indigenous peoples, rather than imposing their own perspectives or approaches.
- Businesses must not interfere in indigenous governance processes by politicizing a project or offering special benefits to politically powerful groups or individuals to gain support.
- Communication must be undertaken in a way that the indigenous peoples understand. This may require the use of translators for written and verbal communication and the development of visual aids such as maps, animation and diagrams to assist with the explanation of technical concepts. Businesses must also be mindful that highly technical data (e.g., in relation to environmental matters) may need additional explanation. Visits to other operational sites can also help to show indigenous peoples what the project will involve.

- Respect gender sensitivities; the perspectives of indigenous women must be taken into account. Businesses should consider providing childcare during consultation meetings to support indigenous women's participation. The perspectives of other vulnerable groups within the community (e.g., children and youth, elders) must also be considered.
- Businesses must allow sufficient time for consultation. Indigenous communities and their internal consultation and decision-making processes may well take longer than the business' own such processes.
- The consultation processes should be reviewed during the consultation to ensure that they remain effective; they should be adjusted as the parties agree necessary.
- Engagement does not end if and when indigenous peoples give their consent to a project. Engagement and communication must continue throughout the duration of the project.

### Further resources

Expert Mechanism on the Rights of Indigenous Peoples, 2012, *Follow-up report on indigenous peoples and the right to participate in decision making, with a focus on extractive industries*, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/160/59/PDF/G1216059.pdf?OpenElement>

Expert Mechanism on the Rights of Indigenous Peoples, 2011, *Final study on indigenous peoples and the right to participate in decision-making*, <http://www.ohchr.org/Documents/Issues/IPeoples/EMRIP/AEVfinalreportStudyIPRightParticipate.pdf>

International Council on Mining and Metals, 2010, *Good Practice Guide: Indigenous Peoples and Mining*, <http://www.icmm.com/library/indigenouspeoplesguide>

International Council on Mining and Metals, 2005, *Mining and Indigenous Peoples' Issues Review*, <http://www.icmm.com/page/1161/mining-and-indigenous-peoples-issues-review>

International Finance Corporation, 2007, *ILO Convention 169 and the Private Sector: Questions and Answers for IFC Clients*, [http://www1.ifc.org/wps/wcm/connect/cba33980488556edbafcf6a6a6515bb18/ILO\\_169.pdf?MOD=AJPERES](http://www1.ifc.org/wps/wcm/connect/cba33980488556edbafcf6a6a6515bb18/ILO_169.pdf?MOD=AJPERES)

International Finance Corporation, 2012, *Performance Standard 7: Indigenous Peoples*, [http://www1.ifc.org/wps/wcm/connect/topics\\_ext\\_content/ifc\\_external\\_corporate\\_site/ifc+sustainability/publications/publications\\_handbook\\_pps](http://www1.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/ifc+sustainability/publications/publications_handbook_pps)

International Labour Organization, 2009, *Indigenous and Tribal Peoples' Rights in Practice: A Guide to ILO Convention No. 169*, [http://pro169.org/res/materials/en/general\\_resources/IPsRightsInPractice-singlepages.pdf](http://pro169.org/res/materials/en/general_resources/IPsRightsInPractice-singlepages.pdf)

UN Development Group, 2008, *Guidelines on Indigenous Peoples' Issues*, [http://www.ohchr.org/Documents/Publications/UNDG\\_training\\_16EN.pdf](http://www.ohchr.org/Documents/Publications/UNDG_training_16EN.pdf)

UN Special Rapporteur on the Rights of Indigenous Peoples, 2012, *Report of the Special Rapporteur on the rights of indigenous peoples, Professor James Anaya, Human Rights Council, Twenty-first session, 6 July 2012*, [http://www.unsr.jamesanaya.org/docs/annual/2012\\_hrc\\_annual\\_report\\_en.pdf](http://www.unsr.jamesanaya.org/docs/annual/2012_hrc_annual_report_en.pdf)

# Free, prior and informed consent

## Action: Obtain (and maintain) free, prior and informed consent from indigenous peoples where appropriate

The concept of free, prior and informed consent (“FPIC”) is fundamental to the UNDRIP as a measure to ensure that indigenous peoples’ rights are protected. In considering a proposed activity, it is suggested that focus initially be directed at the primary substantive rights of indigenous peoples that may be affected by a proposed activity (e.g., rights to land and resources, culture, self-determination etc.). FPIC may then be seen as a mechanism to protect those rights.<sup>21</sup> In this regard, the UN Special Rapporteur on the rights of indigenous peoples, Professor James Anaya, states:<sup>22</sup>

[C]onsultation and free, prior and informed consent standards are best conceptualized as safeguards against measures that may affect indigenous peoples’ rights. Other such safeguards include but are not limited to carrying out prior impact assessments, the establishment of mitigation measures, benefit sharing and compensation for any impacts, in accordance with international standards.

FPIC is required whenever there is a risk of impact to any right that is essential to the relevant indigenous peoples’ survival.<sup>23</sup> This includes any of the following actions, in relation to which the UNDRIP expressly refers to FPIC:

- removal and relocation of indigenous peoples (Article 10);
- taking of cultural, intellectual, religious or spiritual property (Article 11);
- adoption and implementation of legislative or administrative matters that may affect indigenous peoples (Article 19);
- confiscation, taking, occupation use or damage of indigenous people’s lands or territories (Article 28);
- storage or disposal of hazardous materials on indigenous peoples’ lands or territories (Article 29); and
- projects affecting indigenous peoples’ lands, territories or other resources, particularly in connection with the development, use or exploitation of mineral, water or other resources (Article 32).

Taken together with indigenous peoples’ right to self-determination, which means that indigenous peoples are entitled to decide their own paths of economic, social and cultural development, FPIC will be required in a broad range of situations.

There are points in time at which a business may need to demonstrate that it has received FPIC (for example, as part of a regulatory process, and before starting relevant activities), however FPIC is not a ‘one off’ exercise. In some circumstances, an indigenous community may be entitled to withdraw the consent that they have previously given, and businesses must ensure that they

<sup>21</sup> Special Rapporteur on the Rights of Indigenous Peoples, *Report of the Special Rapporteur on the rights of indigenous peoples, Professor James Anaya*, Human Rights Council, Twenty-first session, 6 July 2012, [http://www.unsr.jamesanaya.org/docs/annual/2012\\_hrc\\_annual\\_report\\_en.pdf](http://www.unsr.jamesanaya.org/docs/annual/2012_hrc_annual_report_en.pdf)

<sup>22</sup> Ibid

<sup>23</sup> Ibid

maintain FPIC throughout the life of a project. This will involve regular engagement with relevant indigenous communities. In this regard, the IFC's Extractive Industries Review Report states that FPIC.<sup>24</sup>

is a process by which indigenous peoples, local communities, government, and companies may come to mutual agreements in a forum that gives affected communities enough leverage to negotiate conditions under which they may proceed and an outcome leaving the community clearly better off.

Despite FPIC's relevance to many business activities, many businesses do not fully understand and/or implement FPIC in part because they are often working in complex political environments, where State actors may be keen for projects to start and may not themselves have respected indigenous peoples' right to FPIC. In such instances, businesses can and should still ensure that they do not start a project unless and until the relevant indigenous peoples have provided FPIC. Further, businesses should determine the process for achieving FPIC in collaboration with the relevant indigenous peoples, to ensure that it is appropriate and effective.

There is no simple checklist that a business can complete in order to assure that they have satisfied the FPIC requirement. Achieving FPIC is highly context dependent – that is, what a business will need to do in order to receive FPIC from the relevant indigenous communities (if indeed they are willing to provide their consent) will depend on all of the circumstances, including the situation and interests of the indigenous peoples and their cultures, and the specifics of the proposed activity and its social and environmental impacts. What is offered here is a description of each element of FPIC, and key issues that are often faced in relation to each element and factors that businesses must consider. The hope is that this discussion will assist companies in working with relevant indigenous peoples to design and implement a genuine, effective and culturally-appropriate process for achieving FPIC.

**Free** – the consent of the indigenous peoples must be given freely, without coercion, manipulation or undue influence or pressure.

- Businesses must consider the broader context and political environment facing the relevant indigenous peoples, including governmental processes that could affect their sense of freedom of decision. In some cases, indigenous peoples have provided consent when threatened with the compulsory acquisition of their lands by State actors, or the withdrawal of State funding, if they did not come to some agreement with the relevant businesses. In such cases, consent will not be “free”.<sup>25</sup>
- Indigenous peoples must be given sufficient time to consider their decision. Unreasonable time pressures can affect the freedom of decision. What is a reasonable amount of time will depend on the situation. However, businesses should engage with the relevant indigenous peoples to understand their decision-making processes.
- Businesses must not take advantage of a power imbalance. In order to avoid this, Oxfam Australia suggests the following:<sup>26</sup>

[T]he process of obtaining consent must be structured. Meetings should be conducted under an agreed agenda. Interactions between company and government officials should be limited to meetings with the community as a whole and their freely chosen representatives and advisors, rather than ad hoc interactions with individuals who may be vulnerable to manipulation or undue pressure. The equal participation of women and men should be ensured. Meaningful consent also requires that

<sup>24</sup> International Finance Corporation, *Striking a Better Balance – The World Bank Group and Extractive Industries: The Final Report of the Extractive Industries Review*, p. 22.

[http://www.ifc.org/ifcext/eir.nsf/AttachmentsByTitle/FinalManagementResponse/\\$FILE/finaieirmanagementresponse.pdf](http://www.ifc.org/ifcext/eir.nsf/AttachmentsByTitle/FinalManagementResponse/$FILE/finaieirmanagementresponse.pdf)

<sup>25</sup> An example of this situation is discussed in O'Faircheallaigh, Ciaran & Twomey, Justine for the Kimberley Land Council, 2010, *Kimberley LNG Precinct Strategic Assessment – Indigenous Impacts Report Volume 2. Traditional Owner Consent and Indigenous Community Consultation: Final Report*, [http://www.dsd.wa.gov.au/documents/Appendix\\_E-2.pdf](http://www.dsd.wa.gov.au/documents/Appendix_E-2.pdf)

<sup>26</sup> Oxfam Australia, 2011, *Free, prior and informed consent: a review of free, prior and informed consent in Australia*, [http://resources.oxfam.org.au/pages/view.php?ref=671&search=mining%2C%3A2011&order\\_by=relevance&sort=DESC&offset=0&archive=0&k=](http://resources.oxfam.org.au/pages/view.php?ref=671&search=mining%2C%3A2011&order_by=relevance&sort=DESC&offset=0&archive=0&k=)

communities have the right to obtain independent legal and other specialist representation and advice, if requested, because community capacity to engage these processes is fundamental.

**Prior** – consent must be obtained before any part of the relevant activity starts.

- The FPIC process often takes place at the same time as other processes (e.g., in relation to State approvals or licences). In such situations, businesses must remember that FPIC is not a mere formality to be obtained. It must be obtained before the proposed activity starts, and is only valid if obtained after all relevant information has been provided to indigenous peoples and they have had sufficient time to consider and make a decision about it. (Also see the discussion above, 'Consultation, consent and the project development process'.)

**Informed** – indigenous peoples must be provided with all relevant information in relation to the proposed activity (this should include, without limitation, revenue projections). The information must be provided in a way that the indigenous peoples can understand (e.g., must be available in their language), and they must be provided with sufficient time to consider the information.

- Businesses should consider how to convey information in a way that the relevant indigenous peoples can understand it. This may require the use of translators for written and verbal communication and the development of visual aids such as maps, animation and diagrams to assist with the explanation of technical concepts. Businesses must also be mindful that highly technical data (e.g., in relation to environmental matters) may need additional explanation. Visits to other operational sites can also help to show indigenous peoples what the project will involve and what they can expect. Businesses could also consider involving other indigenous groups with which they have had dealings in relation to other projects and who may be able to assist the relevant indigenous peoples to understand the project and formulate questions about it.
- Businesses should also provide support (including financial support) to relevant indigenous peoples for them to obtain their own independent advice on the project. This may include financial support to commission an impact assessment by a third party of the indigenous peoples' choosing in addition to the impact assessment that the business has commissioned or prepared (and with an equivalent budget allocated to any such impact assessment).

**Consent** – the relevant indigenous peoples must agree to the activity (which also means that they have the right to say no). Engagement or consultation, even when meaningful, does not constitute consent.

- The relevant indigenous peoples are entitled to decide whether or not to provide consent, in accordance with their own decision-making processes and through their own representative institutions. Businesses must not attempt to impose their own decision-making processes on indigenous communities. Businesses must also not seek to create division within communities in relation to a proposed activity.
- Business should consider engaging an independent and culturally-sensitive facilitator to assist with negotiations between the business and the affected indigenous peoples, to help ensure a fair agreement is reached.
- In some circumstances, indigenous peoples may revoke their consent. For example, if the business involved materially breaches its obligations to the indigenous peoples, or it becomes apparent that consent was given without the benefit of all relevant information within the business' knowledge, there may be a basis for revocation.

Additional suggested actions for business in relation to FPIC include the following:

- Develop and implement a process for verifying the FPIC process and its results. This may include making participatory monitoring arrangements and using independent experts selected in consultation with indigenous communities.
- Consider providing support for the community's decision-making processes.

## Consultation, consent and the project development process

Businesses can face a number of challenges in ensuring meaningful and valid consultation and consent throughout the life of a project, and the project development phase can be particularly challenging given its inherent uncertainties. For example, an extractives company may have gained consent from indigenous peoples to conduct exploration; then, if exploration results are positive, the business may wish to proceed quickly to mine development. However, the consent it had obtained would not extend to mine development, because the relevant information required for such consent would not have been available. Further, businesses may be required to comply with legislative time frames for licence approvals that are shorter than relevant indigenous decision-making processes.

In relation to these challenges, the following actions are suggested:

- In seeking consent for exploration, ensure that indigenous peoples are informed about what may be proposed if exploration results are positive.
- Recognize that even though FPIC may have been obtained for exploration, the business will again be required to obtain FPIC before it starts mine development.
- Consider agreeing to a process for FPIC to mine development with the indigenous communities during the exploration phase, so that this is already in place if the exploration results are positive.
- As exploration continues, ensure that indigenous peoples are kept up-to-date with all relevant information. The more up-to-date the business has kept the indigenous communities throughout the exploration process, the more efficient the process of obtaining further FPIC is likely to be.
- Ensure that the business is familiar with the relevant indigenous communities' decision-making processes, and seek to understand the likely time period that they will require to provide FPIC. The business may need to delay lodging an application if it would start a legislative time frame that was too short to allow for the relevant FPIC and decision-making processes.

## Examples

### *Involvement of indigenous support*

In negotiating with indigenous Australians in relation to a project, a Canadian uranium company involved indigenous Canadians in the negotiations to provide assistance, information and support to the indigenous Australians. The company also flew a number of the indigenous Australians to Canada so that they could see firsthand an operating uranium mine, also on indigenous land.

### *Facilitation of community decision-making*

An oil company moved into an area in Brazil, where an indigenous people were spread amongst 32 villages along a river. A number of environmental groups offered to help the indigenous community to drive out the company. However, the indigenous community did not know the approach that it collectively wanted to take. Indigenous NGO First Peoples Worldwide provided a small grant to the indigenous community, which allowed the purchase of petrol for boats and a communal meal at each village, to facilitate community discussion and decision-making. In the end, every village voted to engage with the company.

## Further resources

Expert Mechanism on the Rights of Indigenous Peoples, 2011, *Final study on indigenous peoples and the right to participate in decision-making*,  
<http://www.ohchr.org/Documents/Issues/IPeoples/EMRIP/AEVfinalreportStudyIPRightParticipate.pdf>

First Peoples Worldwide, 2012, *Indigenous Peoples Guidebook on Free, Prior and Informed Consent*, [http://www.firstpeoples.org/publish/FINALfinal\\_guidebook\\_5.10.12.pdf](http://www.firstpeoples.org/publish/FINALfinal_guidebook_5.10.12.pdf)

International Finance Corporation, 2012, *Performance Standard 7: Indigenous Peoples*, [http://www1.ifc.org/wps/wcm/connect/topics\\_ext\\_content/ifc\\_external\\_corporate\\_site/ifc+sustainability/publications/publications\\_handbook\\_pps](http://www1.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/ifc+sustainability/publications/publications_handbook_pps)

International Labour Organization, 2011, *General Observation on the ILO Indigenous and Tribal Peoples Convention, 1989, (No.69), Committee of Experts on Application of Conventions and Recommendations (CEACR)*, p.783, <http://www.ilo.org/public/libdoc/ilo/P/09661/09661%282011-100-1A%29.pdf>

Oxfam Australia, 2010, *Guide to Free, Prior and Informed Consent*, <http://resources.oxfam.org.au/pages/view.php?ref=528&k=>

Oxfam Australia, 2011, *Free, prior and informed consent: a review of free, prior and informed consent in Australia*, [http://resources.oxfam.org.au/pages/view.php?ref=671&search=mining%2C%3A2011&order\\_by=relevance&sort=DESC&offset=0&archive=0&k=](http://resources.oxfam.org.au/pages/view.php?ref=671&search=mining%2C%3A2011&order_by=relevance&sort=DESC&offset=0&archive=0&k=)

# Grievance mechanism

## **Action: Establish or cooperate with an effective and culturally appropriate grievance mechanism**

Businesses should establish or cooperate with a legitimate, effective<sup>27</sup> and culturally-sensitive grievance mechanism that is accessible to indigenous peoples (including women, elders, children and youth and persons with disabilities, and those who represent their interests) to report perceived infringements of their rights committed by employees or third parties working on behalf of the business. The grievance mechanism must provide efficient and effective responses to grievances filed. Businesses must also cooperate with legitimate judicial mechanisms.

Grievance mechanisms can also provide significant benefits to businesses, by helping them to identify and manage risks before they become significant, and develop stronger relationships with indigenous communities.

For a grievance mechanism to be effective, it should be:

- Developed in collaboration with the relevant indigenous community, and in a manner that is consistent with Articles 27, 28, 32 and 40 of the UNDRIP.<sup>28</sup> It must allow for the ways in which the community wants to raise concerns.
- Culturally appropriate. In developing the mechanism, consideration must be given to the indigenous community's traditional ways of resolving disputes (some may be direct, others indirect), community governance and decision-making structures, languages and sensitivities around particular issues. Indigenous communities may well require a grievance mechanism that is separate and different from the grievance mechanism available to the broader community.
- Accessible to the whole community and locally based. Consideration must be given to vulnerable or marginalized members of the community (for example, women, children or disabled people) and they must be able to raise concerns if they need to. Consider including multiple ways of being able to raise a concern (in person, by writing, by telephone, etc.).
- Known to the community. The business should ensure that the whole community knows about the grievance mechanism and how they can access it.
- Formal. The business should formalize and document the grievance mechanism, and accountability for the mechanism should be assigned.
- Predictable and transparent. The process for raising and resolving grievances must be clearly understood by the business and the community. Timelines for key steps in the resolution of a grievance should be known.
- Flexible. The mechanism should have flexibility to allow the complainant a choice in how their grievance is progressed. For example, a minor grievance could be resolved promptly and efficiently, and potentially in an informal manner. A more serious grievance is likely to require a different approach.
- Monitored and reported on. The business should monitor the grievance mechanism and resolution of grievances raised. If no grievances have been raised, or grievances have only been raised by men for example, these may be indications that the mechanism needs adjusting. It should also report back to the community on a regular basis, and allow the community to provide feedback on the mechanism.

<sup>27</sup> See the effectiveness criteria under Guiding Principle 31

<sup>28</sup> Expert Mechanism on the Rights of Indigenous Peoples, 2012, *Comment on the Human Rights Council's Guiding Principles on Business and Human Rights as related to Indigenous Peoples and the Right to Participate in Decision-Making with a Focus on Extractive Industries*, [http://www.ohchr.org/Documents/Issues/IPeoples/EMRIP/Session5/A-HRC-EMRIP-2012-CRP1\\_en.pdf](http://www.ohchr.org/Documents/Issues/IPeoples/EMRIP/Session5/A-HRC-EMRIP-2012-CRP1_en.pdf)

### Further resources

International Council on Mining and Metals, 2010, *Good Practice Guide: Indigenous Peoples and Mining*, <http://www.icmm.com/library/indigenouspeoplesguide>

International Finance Corporation, 2009, *Good Practice Note: Addressing Grievances from Project-Affected Communities*, <http://www1.ifc.org/wps/wcm/connect/cbe7b18048855348ae6cfe6a6515bb18/IFC%2BGrievance%2BMechanisms.pdf?MOD=AJPERES&CACHEID=cbe7b18048855348ae6cfe6a6515bb18>

Office of the Compliance Advisor/Ombudsman for the International Finance Corporation (IFC) Multilateral Investment Guarantee Agency (MIGA) Members of the World Bank Group, 2008, *A Guide to Designing and Implementing Grievance Mechanisms for Development Projects*, <http://www.cao-ombudsman.org/howwework/advisor/documents/implemgrieveng.pdf>

# Remediation

## **Action: Establish or cooperate with legitimate processes to remediate any adverse impacts on indigenous peoples' rights**

Businesses need to develop or cooperate with legitimate processes to remediate any adverse impacts on indigenous peoples' rights that they have caused or contributed to. Where a business identifies that it has caused or contributed to an adverse impact on human rights, it should provide for or cooperate in their remediation through legitimate processes, including effective operational level grievance mechanisms (discussed above) or judicial mechanisms, as appropriate. Operational level mechanisms should be sensitive to relevant indigenous cultures and accessible to all indigenous peoples (including women, elders, children and youth and persons with disabilities, and those who represent their interests).

An alternative approach is to use indigenous peoples' own remediation mechanisms. In either case, the type of remediation process adopted should have the consent of the relevant indigenous peoples.

# Monitoring and reporting

## **Action: Monitor and report on the business' performance in relation to indigenous peoples' rights**

In addition to assessing their impact on human rights and taking appropriate action to prevent and address adverse impacts, the Guiding Principles require businesses to track the effectiveness of the actions taken, and to communicate externally on this. Accordingly, business must monitor and publicly report on its performance in relation to indigenous peoples' rights, including areas of challenge and issues of non-compliance. Monitoring is necessary to ensure that the business enterprise is meeting its obligations and commitments. Reporting provides transparency and can bring reputational and relationship benefits, even where businesses admit to challenges. Businesses should also consider having these reports independently audited.

There is no one way to report on human rights (including indigenous peoples' rights) performance, however there is guidance available to companies, including the Global Reporting Initiative and UN Global Compact reporting tools and frameworks and the OHCHR Interpretive Guide on the Corporate Responsibility to Respect Human Rights<sup>29</sup>.

### **Further resources**

UN Global Compact, 2012, *Human Rights Communication on Progress Guidance*, [http://www.unglobalcompact.org/docs/issues\\_doc/human\\_rights/Resources/HR\\_COP\\_Reporting\\_Guidance.pdf](http://www.unglobalcompact.org/docs/issues_doc/human_rights/Resources/HR_COP_Reporting_Guidance.pdf)

Global Reporting Initiative, UN Global Compact and Realizing Rights, 2009, *A Resource Guide to Corporate Human Rights Reporting*, <https://www.globalreporting.org/resource/library/A-Resource-Guide-to-Corporate-Human-Rights-Reporting.pdf>

<sup>29</sup> See discussion on Guiding Principle 21, pages 57-63.

# Part II: UNDRIP Rights

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# Foundational principles

## Articles 1 and 2

### Equality and freedom from discrimination

#### The rights

Indigenous peoples are entitled to all human rights and fundamental freedoms that are enshrined in the Charter of the United Nations, the Universal Declaration of Human Rights and all international human rights laws. These include the rights to life, liberty, security of person, recognition as a person before the law, equality, nationality, ownership of property, freedom of thought, conscience and religion, freedom of opinion and expression, work, health and education, among others.

Article 1 affirms both individual and collective human rights for indigenous peoples. Other human rights instruments (including those expressly referred to in Article 1) emphasize an individualistic concept of human rights. However, indigenous peoples' individual identity is often not distinct from their identity as a member of their group or community. Accordingly, UNDRIP recognizes collective rights which protect indigenous peoples on a collective basis, which in turn supports indigenous peoples' ability to maintain their cultures, their right of self-determination and their survival as distinct social and cultural groups.

Article 2 affirms that indigenous peoples are entitled to be treated equally to all other people and not to be subjected to any form of discrimination. Indigenous peoples must be treated with respect and be able to exercise their fundamental human rights, including those based on their indigenous ancestry or identity.

Businesses have a responsibility to respect all human rights both under applicable domestic laws of the countries in which they operate and international standards. These rights are relevant to all parts of the business – from treating all customers equally regardless of indigenous or non-indigenous status, to ensuring that operations and business partners do not pollute indigenous peoples' water supplies, to respecting and transparently complying with regulatory processes (e.g., in relation to environmental approvals). Particular attention should be paid to the rights of indigenous women, elders, youth and children and persons with disabilities, who are often additionally vulnerable as indigenous people as a result of marginalization from broader society, and also sometimes within their own communities on the basis of these other factors.

#### Related standards

***ILO Convention 169, Article 3*** also affirms the right of indigenous peoples to enjoy all human rights and fundamental freedoms without hindrance or discrimination.

***Universal Declaration of Human Rights, Article 7*** declares the right of all humans to be free from discrimination and unjust treatment.

***International Covenant on Civil and Political Rights, Articles 20 and 26*** establish the right of all peoples to be free from discrimination and require States to make laws which prohibit discrimination and unjust treatment.

#### Suggested practical actions

##### Respect

- Take the key business actions set out in Part I (indigenous peoples' rights policy, human rights due diligence, consultation, consent seeking, grievance mechanism, remediation and monitoring and reporting).
- Conduct cultural awareness training, with the intention of unpacking cultural bias and identifying unconscious bias to promote equality and avoid discrimination.
- Conduct human rights training for employees, explicitly including the rights of indigenous peoples, to ensure that employees at all levels understand the company's commitment to

indigenous peoples' rights and how this is relevant to their particular role. Where possible, involve indigenous peoples in developing and delivering the training.

- Develop an indigenous employment strategy, in collaboration with relevant indigenous communities, to reduce discrimination and promote equal opportunity for indigenous peoples.
- Avoid entering agreements with States or other business partners that violate indigenous peoples' rights.

### **Support**

- Engage in public policy discussions in relation to indigenous peoples' rights to encourage the development of policies, legislation and regulation that protect them from discrimination.
- Partner with indigenous organizations – this could involve contributions related to the company's core business (e.g., the provision of products, services or expertise), or be philanthropic.
- Publicly commit to specific, time-bound actions on indigenous peoples' rights, track and report on progress.
- In supplier tender processes, include a requirement that suppliers be committed to respect and support the rights of indigenous peoples.
- Explore opportunities to involve indigenous people in the value chain such as sourcing from indigenous owned businesses. Consider joint ventures with indigenous businesses.
- Become a UN Global Compact participant.

## **Examples**

### ***Reconciliation Action Plans***

Reconciliation Australia, a national organization that promotes reconciliation between indigenous and non-indigenous Australians, developed an initiative that involves businesses and other organizations developing 'Reconciliation Action Plans' (or 'RAPs'). RAPs are business plans through which the business commits action in the areas of relationships, respect and opportunities. Over 300 organizations have so far developed RAPs.<sup>30</sup>

### ***Pro bono services, for example legal advice***

Many law firms provide pro bono legal assistance to indigenous peoples and indigenous organizations in matters related to their rights. Some law firms have taken this a step further, to actively promote an understanding in indigenous communities about their rights and how to access pro bono assistance.

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<sup>30</sup> For more information on the program and to access examples of RAPs, see Reconciliation Australia, [www.reconciliation.org.au](http://www.reconciliation.org.au)

## Articles 3, 4, 5, 6 and 23

### Self-determination, self-governance and nationality

#### The rights

Indigenous peoples have the right to self-determination (including in relation to development), autonomy, and to maintain their distinct political, legal, economic, social and cultural institutions. They are also entitled to a nationality. These rights give indigenous peoples control over their own lives and their futures, and their community's place in the world, free from outside coercion. These rights also cover indigenous peoples' freedom to govern their own local affairs. However, these rights do not exclude indigenous peoples from also participating in the political, economic, social and cultural life of their State.

The right to self-determination (Article 3) is a central pillar of the UNDRIP and is fundamental to the ability of indigenous peoples to preserve their unique identities and cultures, and to be in control of their own lives. The right to self-determination means that indigenous peoples are free to choose their political status and how they wish to pursue their economic, social and cultural development. They are also free to determine how (and if) to dispose of their lands and natural resources (discussed in relation to land and natural resources rights under Articles 25–29 and 32 below). Under Article 23, indigenous peoples also have the right to self-determination in respect of development. In particular, they are entitled to determine their own priorities and strategies for their communities' economic, social and cultural development, and set their own development objectives the pace at which their development occurs, and the degree to which their institutions are changed.

In exercising their right to self-determination, indigenous peoples also have the right to govern themselves in matters that relate to internal or local affairs, as well as how to finance their autonomous functions (Article 4). Indigenous peoples also have the right to maintain and develop their own distinct political, legal, economic, social and cultural institutions (Article 5). This does not in any way limit their ability to fully participate in the political, economic, social and cultural life of their State if they choose.

Indigenous peoples also have the right to a nationality (Article 6), which protects their ability to be recognized both as a member of their indigenous community and as a citizen of the State where he or she lives. As citizens, indigenous peoples must be afforded the same rights as all other citizens, including for example the right to vote, access to basic services and education.

Businesses are at risk of infringing upon these rights if they undertake activities that may adversely affect indigenous peoples, their lands or their exercise or enjoyment of any of their rights without first properly consulting with them (and, where required, obtaining their free, prior and informed consent), and taking their perspectives into account in developing such activities. These rights may also restrict businesses from impacting on areas where indigenous communities are resistant to certain forms of development; that is, development cannot be forced on indigenous peoples. As stated in the Human Rights and Business Dilemmas Forum:<sup>31</sup>

Corporate-led development initiatives require careful consideration because in some settings, it may not be appropriate to intercede with the aim of modernising the local economic dynamics thereby potentially undermining local social cohesion. In addition, formulating a development plan that makes the targeted indigenous group too dependent upon the presence of the business will result in dissension upon the departure from the area.

Businesses must also not engage in an activity or in a business relationship with a third party, even if authorized by the relevant State authorities, if the activity impacts negatively on the rights of indigenous peoples or without the prior consent of indigenous peoples where required. This includes entering into arrangements with State actors that do not respect indigenous peoples' rights

<sup>31</sup> UN Global Compact, *Human Rights and Business Dilemmas Forum – Indigenous Peoples*, <http://human-rights.unglobalcompact.org/dilemmas/indigenous-peoples/>

((e.g., by providing licences to companies to exploit natural resources without the required prior consent of relevant indigenous peoples). As a result of increasing privatization in many countries, businesses are also increasingly contracted to provide services on behalf of State bodies. At a minimum, they should ensure that their action or inaction and relationships do not impact negatively on indigenous peoples' access to these services. Opportunities to increase access should be considered.

There are, though, many opportunities for businesses to proactively support development by engaging with indigenous peoples and providing resources and expertise where the indigenous peoples have indicated such a desire and are welcoming of such outside participation.

### Related standards

***ILO Convention 169, Article 7*** enshrines the right of indigenous peoples to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development.

***Universal Declaration of Human Rights, Article 15*** affirms the right of all people to a nationality and protection from being deprived of that nationality.

***International Covenant on Civil and Political Rights and International Covenant on Economic, Cultural and Social Rights, Article 1*** states that all peoples have the right to self-determination and to freely determine their political status and freely pursue their economic, social and cultural development.

## Suggested practical actions

### Respect

- Take the key business actions set out in Part I (indigenous peoples' rights policy, human rights due diligence, consultation, consent seeking, grievance mechanism, remediation and monitoring and reporting).
- Consult with indigenous peoples in relation to any proposed development-related activities (including the funding of community programs) to ensure alignment with their own priorities and strategies for development.
- Understand and respect indigenous governance structures, traditional customs and laws and traditional dispute resolution practices, even when regional and national governments have not done so. Ensure company operations are legal under both formal and traditional governance structures.
- Do not interfere in Indigenous governance and decision-making processes during consultations, through bribery or persuasion of politically power groups or individuals.

### Support

- Establish development plans in collaboration with indigenous peoples, under which the indigenous peoples themselves make the decisions as to what economic, social and cultural development will be undertaken (with the company's contribution (e.g., monetary or physical resources, practical guidance or other support). Respect indigenous peoples' views on development.
- Encourage and provide support for indigenous peoples to gain independent legal, environmental, business and other advice, to inform their decisions.
- Encourage consultation with non-indigenous and other local indigenous communities regarding desired social and economic development to support strong relationships, identify collaboration opportunities and develop a positive legacy for the broader area.
- Engage in public policy advocacy to promote legitimacy of indigenous governance systems to regional and national governments.

## Examples

### ***Indigenous agency in community services***

A national petroleum company helped to fund the expansion of a health clinic which was founded and is run by an indigenous group, allowing the indigenous community agency in relation to its own community services.

### ***Responsible financing***

Five Dutch banks that fund the palm oil industry in Southeast Asia have agreed to provide finance in ways that respect the rights and wishes of indigenous communities affected by oil palm planting. Specifically, the banks have agreed to avoid financing projects that would result in the clearing of forests with high conservation values.

### ***Community Development Plan***

An extractives company has developed a community development plan that formalizes a partnership with local indigenous peoples, and focuses on the development of those communities. Under the plan, the company provides financial investment and the indigenous community decides, (with assistance and expertise from the company), projects to implement. Under the plan, over 300 projects have been implemented relating to education, healthcare and cultural heritage

### ***Involvement in development***

A global energy company developed a policy on relations with indigenous communities. The consultation process for this policy included joint workshops on community-corporate relationships, the creation of a working group involving stakeholders and representatives of the community, and final approval by the members of the indigenous groups.

# **Life, liberty, security and cultural integrity**

## Article 7

### Life, liberty and security

#### The right

Article 7 protects indigenous peoples' right to live in freedom and be protected from degrading treatment, acts of violence and any other acts that could mentally or physically harm them. This includes acts of genocide and the imposition of measures designed to destroy or diminish their population, such as forcibly removing children or forced assimilation. Indigenous peoples also have a collective right to live as a distinct group.

Relevant to this right are the rights to be free from forced labour and child labour. In some areas and sectors (such as agriculture and forestry), indigenous peoples are particularly vulnerable to being targeted for forced or child labour.<sup>32</sup> Indigenous peoples are also often more vulnerable to trafficking, including sex trafficking.

Businesses could find themselves complicit in violations of these rights through their relationships (contractual or otherwise) with States, other businesses or other parties that are infringing upon these rights, including security forces, security companies or armed groups. Businesses impacting on areas occupied or used by indigenous peoples through their operations or business relationships must ensure that they do not cause or contribute to physical risks to the relevant indigenous peoples. Unfortunately, there are a number of instances in which indigenous peoples living near mining sites have been beaten or killed by mine workers or security personnel employed by or linked to protect the mine. Businesses could also contribute to a violation of these rights by detaining and then handing to authorities indigenous peoples who they think have broken the law (e.g., trespass, property damage), where those authorities are known to mistreat indigenous peoples or detainees generally.<sup>33</sup> Security companies must ensure that they do not violate these rights in providing their services (and businesses contracting security companies must also seek to ensure that these rights are not infringed upon by the security personnel hired).

Indigenous women and children are particularly vulnerable to violence and forced labour. Give particular consideration to any risks that business activities pose to their rights to freedom and safety (including in relation to security forces).

#### Related standards

***ILO Convention 182 on worst forms of child labour and ILO Convention 29 on forced labour*** provide for specific guarantees against child and forced labour.

***ILO Convention 169 on Indigenous and Tribal Peoples, Article 4*** asserts the right of indigenous peoples to be protected from physical harm, as well as the right to protection of their institutions, property, labour, cultures and environment.

***Universal Declaration of Human Rights, Article 3*** recognizes the right of all people to life, liberty and security of person.

***International Covenant on Civil and Political Rights, Article 9*** recognizes the right to life, liberty and security of person, as well as protection from arbitrary arrest or detention.

#### Suggested practical actions

##### Respect

- Take the key business actions set out in Part I (indigenous peoples' rights policy, human rights due diligence, consultation, consent seeking, grievance mechanism, remediation and monitoring and reporting).

<sup>32</sup> International Labour Organization, 2011, *Report of the Committee of Experts on the Application of Conventions and Recommendations*, [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_151556.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_151556.pdf)

<sup>33</sup> International Council on Mining and Metals, 2012, *Integrating human rights due diligence into corporate risk management processes*, <http://wp.cedha.net/wp-content/uploads/2012/06/Integrating-human-rights-due-diligence.pdf>

- Require business partners, including key suppliers, to comply with the business' indigenous peoples' rights policy and respect indigenous peoples' rights by establishing expectations, engaging with business partners and monitoring and evaluating performance.<sup>34</sup>
- Observe international and local child trafficking and labour regulations and require compliance by suppliers and contract workers as part of the business relationship.
- If security personnel are employed or contracted by the business or one of its partners in relation to a contract with the business, ensure that security personnel observe all relevant international human rights norms and standards. Businesses should ensure that they do not engage unnecessarily threatening security forces. Establish policies and procedures consistent with the Voluntary Principles on Security and Human Rights.
- Work with indigenous peoples regarding land access and other arrangements to reduce the likelihood of incidences of trespass and, as such, the need for security interactions. (For example, it may be beneficial to build a safe walkthrough at a site to allow indigenous peoples to travel easily through their communities; another example may be to work with indigenous elders to identify potential activities that could lead to conflict between indigenous peoples and security personnel – for example, entry onto project sites – and ways to minimize the likelihood of such interactions).
- Where a State does not respect indigenous peoples' rights to life, liberty and security, if possible, do not conduct operations there. Make it known to the State why the company is not doing so. If the company does proceed, make it known to the State the company's views on its violations of these rights and work with the indigenous peoples and State to improve conditions.

### **Support**

- When operating in conflict territories, ensure company operations do not directly or indirectly agitate tensions related to wider sociopolitical issues.

### **Examples**

#### ***Indigenous-owned security firm***

An indigenous-owned security firm provides services to a number of organizations, including security training and background checks on people working with indigenous children.

#### ***Cessation of talks to protect security of indigenous peoples***

A multinational petroleum company engaged in talks with a regional indigenous government in relation to drilling in their territory. The central government of the relevant country, which does not recognize the legitimacy of the regional government, was angered by the talks, and so the company halted the talks so as not to jeopardize the safety of the regional community by encouraging further feuds between the two groups.

### **Further resources**

International Labour Organization, 2006, *Guidelines for combatting child labour among indigenous and tribal peoples*,  
[http://pro169.org/res/materials/en/child\\_labour/Guidelines%20for%20combating%20Child%20Labour%20among%20indigenous%20and%20tribal%20peoples.pdf](http://pro169.org/res/materials/en/child_labour/Guidelines%20for%20combating%20Child%20Labour%20among%20indigenous%20and%20tribal%20peoples.pdf)

<sup>34</sup> For guidance on applying human rights expectations and other sustainability principles throughout the supply chain, see UN Global Compact and BSR, 2010, *Supply Chain Sustainability: A Practical Guide for Continuous Improvement*, [http://www.unglobalcompact.org/docs/issues\\_doc/supply\\_chain/SupplyChainRep\\_spread.pdf](http://www.unglobalcompact.org/docs/issues_doc/supply_chain/SupplyChainRep_spread.pdf)

## Articles 9 and 33

### Identity and group membership

#### The right

Just as modern States have established criteria for citizenship, indigenous peoples often have long established criteria for membership in their communities. Article 9 recognizes the right of an indigenous person to belong to an indigenous community, clan, tribe, nation or group, in accordance with that community's or group's traditions and customs. Article 33 is related and affirms the right of indigenous peoples to determine their own identity or group membership in accordance with their customs and traditions. These Articles also implicitly recognize a collective right for indigenous peoples to maintain their own communities, clans, tribes, nations or other groups in accordance with their traditions and customs. Indigenous peoples also have the right to determine the structures and select the membership of their institutions, and the procedures for doing so.

Businesses must not only recognize the identity of the indigenous peoples with whom they interact or who their activities could impact, but also ensure that any interactions respect the community structures and institutions that are in place. Appropriate due diligence in relation to these matters can help facilitate meaningful engagement and mutual positive outcomes. Businesses will infringe this right if they support the establishment of indigenous organizations or groups that are not legitimate, in order to 'construct' consent.

#### Related standards

*ILO Convention 169, Articles 7, 8 and 9* provide for the protection of indigenous institutions and customs that preserve collective identity.

*International Covenant on Civil and Political Rights, Article 27* establishes the right of all communities and individuals to freely enjoy their culture, practice their religion and speak their language.

#### Suggested practical actions

##### Respect

- Take the key business actions set out in Part I (indigenous peoples' rights policy, human rights due diligence, consultation, consent seeking, grievance mechanism, remediation and monitoring and reporting).
- Conduct research on various indigenous identity groups (tribes, clans, ethnicities, religions, nationalities, etc.) and the relations among them. Ensure that all effects of company operations, positive or negative, are evenly distributed across identity groups to reinforce connections among identity groups and reduce the potential for conflict between them.
- Conduct research into traditional vs. formal local social structures, to ensure that the business is engaging appropriately with indigenous peoples. (Traditional social structures or norms in an indigenous community may have been affected by colonization, development or other external influences – e.g., the spread of missionaries in some areas has led to patriarchal social structures where traditionally there was joint decision-making. A business may inadvertently seek support for its activities through the wrong channels if it does not have a clear understanding of a community's social and governance structures. Without the appropriate understanding, businesses also risk inadvertently supporting the embedding of non-traditional structures.)
- Ensure that indigenous employees are not prevented from affirming their identity in the workplace. Ensure that human resource policies have sufficient flexibility to allow indigenous employees absences from work to attend traditional ceremonies, rites, etc., without discrimination or punishment.

- Ensure that influx of outside populations (including business employees and contractors) does not disrupt the identity or ways of life of local indigenous peoples, or diminish the influence of indigenous peoples in their communities. (For example, businesses could consider operating “closed” camps, where non-local workers are required to remain within the project site so that they do not enter or impinge on indigenous lands.)

### **Support**

- Conduct cultural awareness training for employees (involve indigenous peoples in developing and facilitating the training).
- Establish mentoring or social groups in the workplace to support and promote indigenous identity.

## **Examples**

### ***Support for shared traditions***

A mining company works to protect the ancestral traditions of the indigenous peoples located near one of its mines by implementing artisanal crafts workshops and by supporting the community’s creation of a book which recounts its shared traditions and emphasizes its collective identity.

## **Further resources**

International Council on Mining and Metals, 2010, Good Practice Guide: Indigenous Peoples and Mining, <http://www.icmm.com/library/indigenouspeoplesguide>

UN Development Program, Bureau for Development Policy, International Policy Centre for Inclusive Growth, 2009, ‘Poverty in Focus: Indigenising Development’, <http://www.un.org/esa/socdev/unpfii/documents/IPCPovertyInFocus17.pdf>

Secretariat of the United Nations Permanent Forum on Indigenous Issues, 2010, ‘Training Module on Indigenous Peoples’ Issues’, [http://www.un.org/esa/socdev/unpfii/documents/trainingmodule\\_en.pdf](http://www.un.org/esa/socdev/unpfii/documents/trainingmodule_en.pdf)

## Article 10

### Removal and relocation

#### The right

Indigenous peoples continue to be involuntarily removed and relocated from their lands and territories to make way for development projects, many of which involve the private sector (e.g., exploration, mining or other extractives projects, agriculture, forestry projects and infrastructure development). In some cases, indigenous people have been removed from land violently. There are also instances where indigenous peoples who have been forced from their traditional land and into urban slum areas have then suffered a second forced relocation when the slums are demolished. Removal of indigenous peoples from their land threatens their physical survival, as well as the survival of their economic structures, cultures and religions, particularly given the strong relationship that frequently exists between indigenous peoples and their lands and natural environments.

Article 10 requires that indigenous peoples not be forcibly removed from their lands or territories, and that the free, prior and informed consent (“FPIC”) of the indigenous peoples concerned be obtained before any relocation takes place (see discussion of FPIC in Part I). Implicit in this right is the notion that fully informed, meaningful and non-coercive negotiations will take place between indigenous peoples and the companies or governments involved.

Article 10 also stipulates that indigenous peoples not be relocated without prior agreement on “just and fair” compensation for any such relocation. What constitutes “just and fair” compensation is not to be determined solely by the companies or governments involved. Rather, the affected indigenous communities must agree to the type and amount of compensation. Acceptable forms of compensation may include monetary compensation, land-for-land compensation and benefit-sharing agreements. In addition to the financial impacts of relocation, it will also have non-financial impacts including loss of culture, which must also be compensated for.

Finally, Article 10 requires that, where possible, indigenous peoples being relocated should be given the option of returning to their lands or territories.

To respect and support the rights in Article 10, businesses must ensure that they do not cause or contribute to the involuntary removal or relocation of indigenous peoples (including by State actors and other business partners and relationships which may be motivated to drive projects forward without regard for human rights). Further, businesses should consider the relocation and resettlement of indigenous peoples as a last resort, given its potential significant adverse impacts. Businesses must also ensure that any relocation that is proposed only occurs after the FPIC from affected indigenous peoples is obtained, with just and fair compensation for any agreed removal and relocation which must also be agreed. In some countries, indigenous peoples’ land rights are fully recognized by national law, while in others indigenous communities hold no legal rights. Companies must recognize indigenous peoples’ rights to the lands or territories they use or inhabit even when such rights are not protected by national law.

#### Related standards

**ILO Convention No. 169, Article 16** enshrines the right of indigenous peoples not to be removed from their lands as the principle. Where the relocation of these peoples is considered necessary as an exceptional measure, such relocation shall take place only with their free and informed consent. The Convention allows for involuntary removal in some (very extraordinary) circumstances; accordingly, where removal or relocation is being considered, business enterprises should comply with the more stringent requirements in UNDRIP, Article 10 including in relation to obtaining FPIC.<sup>35</sup>

<sup>35</sup> International Law Association, 2010, *Report of the Hague Conference (2010): Rights of Indigenous Peoples*, <http://www.ila-hq.org/en/committees/index.cfm/cid/1024>

## Suggested practical actions

### *Respect*

- Take the key business actions set out in Part I (indigenous peoples' rights policy, human rights due diligence, consultation, consent seeking, grievance mechanism, remediation and monitoring and reporting).
- As part of the due diligence and impact assessment processes, actively seek alternative approaches to the project that do not require the removal or relocation of indigenous peoples. Any alternative approaches must also be assessed for actual or potential impacts on indigenous peoples' rights. Only proceed with removal or relocation of indigenous peoples as a last resort. If the removal or relocation of indigenous peoples is considered unavoidable, obtain their free, prior and informed consent (including in relation to the act of removal or relocation, the terms and pace of the relocation and the compensation to be awarded to the affected peoples).
- Consider negotiating benefit-sharing agreements rather than lump sum payments so that indigenous peoples are properly compensated. Compensation should be paid both for the financial and non-financial impacts of relocation. In relation to the cultural impacts of relocation, businesses should consider providing community compensation in addition to individual compensation.

### *Support*

- Support indigenous peoples' (either directly or through partnerships with local indigenous organizations) access to independent legal and technical experts. This will allow them to obtain advice regarding their rights, the social and economic consequences of relocation, and the value of their land and its resources.
- Partner with or support indigenous peoples' organizations that promote governmental and corporate respect for indigenous land rights and the associated requirements of FPIC, agreement on compensation prior to relocation, and right of return. Support may also be provided to organizations that help educate indigenous communities about FPIC and help develop protocols for FPIC-based interactions with businesses.
- Acknowledge the historical ownership and use of land (even in urban areas, if relevant).

## Examples

### *Compensation for past removal*

In 1952, indigenous people were forcibly removed from their land by the regional government to make way for a hydroelectric power plant. Sixty years later, the multinational company that controlled the plant ceded 11,000 square miles back to the indigenous people as part of a pledge for mutually beneficial company-community relations.

### *Relocation as a last resort*

An international oil company has put in place a policy that any project that requires resettlement must first demonstrate that no other workable option exists. If relocation becomes necessary, the company monitors the situation and conducts a long-term acquisition and resettlement action plan. (The policy does not, though, commit the company to obtaining the free, prior and informed consent of indigenous peoples before relocating them, which is required in order to respect the indigenous peoples' rights under the UNDRIP.)

## Further resources

UN Global Compact, *Human Rights and Business Dilemmas Forum: Indigenous Peoples –Community Relocation*, <http://human-rights.unglobalcompact.org/dilemmas/community-relocation/>

International Finance Corporation, 2012, *Performance Standard 5: Land Acquisition and Involuntary Resettlement*,

[http://www1.ifc.org/wps/wcm/connect/topics\\_ext\\_content/ifc\\_external\\_corporate\\_site/ifc+sustainability/publications/publications\\_handbook\\_pps](http://www1.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/ifc+sustainability/publications/publications_handbook_pps)

International Finance Corporation, 2012, *Performance Standard 7: Indigenous Peoples*,

[http://www1.ifc.org/wps/wcm/connect/topics\\_ext\\_content/ifc\\_external\\_corporate\\_site/ifc+sustainability/publications/publications\\_handbook\\_pps](http://www1.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/ifc+sustainability/publications/publications_handbook_pps)

International Labour Organization, 2011, *General Observation on the ILO Indigenous and Tribal Peoples Convention, 1989, (No.69), Committee of Experts on Application of Conventions and Recommendations (CEACR)*, p.783, <http://www.ilo.org/public/libdoc/ilo/P/09661/09661%282011-100-1A%29.pdf>

World Bank, 2005, OP 4.12, *Involuntary Resettlement*,

<http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/EXTPOLICIES/EXTOPMANUAL/0,,contentMDK:20064610~menuPK:64701637~pagePK:64709096~piPK:64709108~theSitePK:502184,00.html>

# **Culture, language, spirituality**

## Articles 8, 11, 12, 13 and 15

### Maintenance and dignity of culture, language and spirituality

#### The rights

Articles 8, 11, 12, 13 and 15 establish rights relating to indigenous peoples' cultures – rights to control and protect their heritage, their way of life and their legacies – which are fundamental to achieving cultural self-determination. These Articles also set out certain State obligations which, while not directly binding on the private sector, can provide guidance for businesses engaged with or conducting activities that could impact indigenous peoples, especially for businesses working with a State.

Article 8 contains the right of indigenous peoples not to be subjected to forced assimilation or cultural destruction. Implicit in this is also the right of indigenous peoples to maintain their integrity as distinct peoples. Forced assimilation includes acts of identity deprivation, dispossession of land and resources, displacement and negative propaganda. Loss of language, tradition, religion and knowledge are common cultural elements lost in acts of assimilation. Article 8 requires States to provide mechanisms for not only redress in the event such right is violated but also methods to prevent such acts from occurring in the first place. Forced assimilation can result from the involuntary relocation of indigenous peoples, or from influxes of other people, and their cultures and norms, into indigenous communities and areas traditionally owned, occupied or used by indigenous peoples.

Business respect and support for this right can help to ensure the survival of indigenous cultures, and promote positive relations between indigenous and non-indigenous peoples. Businesses operating in regions with indigenous peoples must ensure that they do not take any actions that could cause, contribute to or encourage forced assimilation or cultural destruction (and should also ensure that business partners including State actors do not take any such actions that relate to the business' operations or areas on which they conduct activities). Business should also look for opportunities to proactively support indigenous peoples in their efforts to preserve their cultures.

Article 11 deals with indigenous peoples' right to practice and revitalize their cultural traditions and customs, including manifestations of their cultures such as important sites, significant objects and intellectual property of various forms. Under this Article, States must provide redress through effective mechanisms, including restitution. Businesses could find themselves in situations where their activities have adversely impacted indigenous peoples' cultural, intellectual, religious and spiritual property rights, and in such cases appropriate redress should be determined in consultation with the impacted peoples.

"If we do not understand each other, if we do not know the culture or the history of each other, it is difficult to see the value and dignity of each other societies" - Chief Justice Yazzie, of the Navajo Nation Supreme Court<sup>32</sup>

Article 12 sets out indigenous peoples' rights to their spiritual traditions, including the right to practice and teach their religions as they see fit, to have access to their sacred places and to take possession of their ancestors' remains. This Article requires States to consult with indigenous peoples as appropriate to arrange for the repatriation of ceremonial objects and human remains. In circumstances where they are causing or contributing to impacts on traditional indigenous lands, businesses could also find themselves in possession of indigenous property in which case they should conduct similar processes to return it to its indigenous owners. Businesses should also respect this right if they identify any such property while conducting their activities.

Article 13 focuses on indigenous peoples' rights to maintain their languages (in written and spoken form), which are important manifestations of their culture. Under this Article, States must ensure that indigenous peoples can use their own languages to understand and be understood in political, legal and administrative proceedings; business should also ensure that in all of its dealings with

<sup>36</sup> Quoted in Driscoll, Lisa, 1993, 'Tribal Courts: New Mexico's Third Judiciary', 32 *N.M.B. Bulletin*, 18 February 1993

indigenous peoples, they are able to communicate in their own languages if they wish, which may require business to provide interpretation or take other appropriate measures.

Article 15 affirms the right of indigenous peoples to the dignity and diversity of their cultures, traditions, histories and aspirations, and to have these accurately and appropriately reflected in educational curriculums and public information.

Discrimination and other injustices against indigenous peoples are often based on prejudices and misconceptions, including in relation to their cultures, traditions, histories and aspirations. Article 15 aims to address discrimination and intolerance through ensuring that indigenous cultures are reflected in education and public information in an accurate and appropriate manner. Furthermore, States are required under Article 15 to work with indigenous peoples to not only combat prejudice and discrimination, but to also actively develop tools that “promote tolerance, understanding, and good relations among indigenous peoples and all other segments of society.”

Article 15 recognizes education and public information as a primary means by which non-discrimination, tolerance, understanding and good relations between and among societal groups can be promoted.

Business needs to ensure that it respects this right in any communications it makes that relates to or refers to indigenous peoples, by ensuring that any such content is accurate and respects indigenous peoples’ cultures and cultural diversity. Business also has an opportunity to promote understanding and relations between indigenous and non-indigenous peoples, by taking steps to create positive awareness of indigenous cultures and cultural diversity.

### Related standards

*ILO Convention 169, Article 4* provides for the right of indigenous peoples to their cultural identity.

## Suggested practical actions

### **Respect**

- Take the key business actions set out in Part I (indigenous peoples’ rights policy, human rights due diligence, consultation, consent seeking, grievance mechanism, remediation and monitoring and reporting).
- As part of the due diligence process, ensure that projects and business partners do not cause, contribute to or encourage the forced assimilation of indigenous peoples, including by State bodies prior to the company arriving on site (risk factors to look for include projects on land that is or has been occupied or used by indigenous peoples, where they are no longer present or will need to move from the land).
- Ensure communications from the company of relevance to indigenous peoples are in a language that the indigenous peoples understand.
- Ensure that indigenous peoples are able to communicate effectively in their own language in discussions with the company, by providing interpretation and translation services when needed.
- Provide appropriate venues and allow adequate time for the indigenous peoples with whom the company is involved (including employees) to practice their religious customs and traditions, including both private religious expressions and public ceremonies.
- Partner with local indigenous peoples to understand their cultures and to ensure that any project description, press release or statement from the company does not depict or describe indigenous peoples in a derogatory or discriminatory manner.

- Ensure that any statements, press releases or descriptions of indigenous peoples do not infringe on such indigenous peoples' right to dignity and respect their culture, tradition, history and aspirations. If in doubt, confirm with the relevant indigenous peoples.
- Develop a process regarding the use of photographs and video footage of indigenous peoples (give particular consideration to the use of images of indigenous persons who are deceased, which is a sensitivity in some indigenous cultures).
- Develop a process to appropriately manage instances where an indigenous person may pass away on site (particularly relevant for fly-in, fly-out mining operations and similar businesses). Such situations must be managed with dignity and due regard for local indigenous culture.
- Display indigenous flags and/or other cultural identifiers in or at the workplace.

### **Support**

- Conduct cultural awareness training for employees (involve indigenous peoples in developing and facilitating the training). Organize events to celebrate indigenous culture. Ensure that these are not 'tokenistic'; they must be of a type and sufficient duration to provide real insights into the relevant indigenous cultures. Senior managers, decision-makers, and other specific employees may require more intensive training.
- Consider using some indigenous language/words in the business (for example, naming meeting rooms in an indigenous language), but ensure their use is not exploitative or derogatory.
- Support projects that celebrate and preserve indigenous cultural customs (e.g., the documentation and recording of a traditional language).
- Enable (where possible) employees to practice their religion (for example, through the provision of prayer rooms).
- Consider how to incorporate indigenous styles of learning and knowledge to strengthen business practice/approaches.
- Identify opportunities to remedy past socio-cultural and environmental damage (e.g., by restoring damaged cultural sites or vegetating disturbed areas) in consultation with indigenous peoples.
- Provide financial or other support to indigenous organizations involved in the preservation of indigenous traditional knowledge and cultural heritage.
- Partner with local indigenous peoples to educate employees on the importance of the value of cultural diversity and the culture of the indigenous peoples.
- To the extent any misconceptions or prejudices of indigenous peoples exist in a community, partner with local indigenous peoples to educate the members of such community to address such negative views.
- Translate important documents into indigenous languages.

### **Examples**

#### ***Translation of important communications into local languages***

An extractives company provided financial and other support for the translation of the UNDRIP into the language of local indigenous peoples. Translation of important documents and communications into indigenous languages supports the survival not only of those languages, but of the related indigenous cultures, and can also support broader rights by ensuring that indigenous peoples fully understand the content of communications relevant to them. In this case, the translation helped the indigenous peoples to understand their rights.

### ***Cultural awareness training***

Many companies who have operations in countries with indigenous peoples conduct cultural awareness training for their employees (often developed and run by indigenous peoples themselves). Such training promotes cultural awareness and understanding in both the workplace and broader community, which promotes indigenous peoples' rights more broadly. Engaging indigenous peoples to develop and run the training not only gives it additional validity, but can also support their economic empowerment.

### ***Tourism industry***

In conjunction with indigenous peoples, a hotel chain developed information for guests on local indigenous culture and heritage, which is made available in hotel lobbies and rooms. The information includes promotion of local indigenous tourism operators. The hotel also supports and promotes indigenous artists by purchasing and displaying indigenous art.

### ***Cultural mapping***

An international technology company worked with an indigenous tribe to create a publicly-available and interactive cultural map in order to capture, share and preserve the natural and cultural richness of the tribe's ancestral lands. The company also developed a project to preserve disappearing indigenous languages around the world by cataloguing indigenous languages via the online posting of videos, audio clips, books, and other publications.

### ***Employee and community cultural awareness***

An international mining company ran a workshop for its employees and the community in order to engage them in dialogue about the rights of indigenous peoples and to foster cross-cultural collaboration. The training involved information and activities designed to promote understanding of sacred land, kinship and the history of indigenous peoples in the region.

### ***No investment in companies violating rights***

A global investment firm has pledged to avoid investing in companies that repeatedly engage in practices violating the rights of indigenous peoples. The firm also promotes a culture of tolerance by dialoguing with companies that manufacture or market products with labels and images offensive to indigenous peoples and their culture.

### ***Welcome to Country***

In Australia, it is common to conduct "Welcome to Country" and "Acknowledgement of Country" ceremonies at appropriate events, which acknowledges the traditional owners of the land on which the event takes place. A number of businesses have developed protocols for such ceremonies.

## **Further resources**

UNESCO, 2005, *Ten Keys to the Convention on the Protection and Promotion of the Diversity of Cultural Expressions*, <http://unesdoc.unesco.org/images/0014/001495/149502e.pdf>

# Education, information and employment

## Article 14 Education

### The right

It is an unfortunate reality that in many areas, the education of indigenous peoples falls far short of that of non-indigenous peoples. This results from a number of factors, including social marginalization, remote geographic location and unique family and legal situations.

Article 14 seeks to address this by affirming indigenous peoples' right to establish and control their own educational systems and institutions, and to provide education in their own language and in a manner appropriate to their culture. Indigenous peoples also have the right to access State education without discrimination. States are required to take effective measures to ensure that indigenous peoples have access, when possible, to education in their own culture and language.

An important aspect of Article 14 is indigenous peoples' right to self-determination in relation to education, in terms of the right to develop and maintain their knowledge, and teach and learn in a culturally appropriate way. In turn, education is also crucial to the achievement of broader self-determination in that it is itself empowering. (Self-determination is discussed in greater detail under Article 3.)

Child labour is one example of how a business may be implicated in a failure to respect this right. Another is a failure to pay a living wage to adult workers, which could force their children into employment. Businesses can promote the rights in Article 14 by supporting culturally-appropriate educational opportunities for indigenous children and adults.

#### Related standards

**Universal Declaration of Human Rights, Article 6** establishes the right of all people to an education, including access to elementary, technical, professional and higher education.

**ILO Convention 169, Articles 27, 28 and 29** establish the right to comprehensive education and access to national academic institutions. In addition, these Articles specify the right of indigenous peoples to educate their children in their native language and about community customs.

**International Covenant on Civil and Political Rights, Article 18** sets out the right of guardians and communities to educate their children according to their own values and belief systems.

**International Covenant on Economic, Cultural and Social Rights, Article 13** states that all people have the right to a free and comprehensive education that promotes understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups.

### Suggested practical actions

#### Respect

- Take the key business actions set out in Part I (indigenous peoples' rights policy, human rights due diligence, consultation, consent seeking, grievance mechanism, remediation and monitoring and reporting).
- Adopt and implement a child labour policy in full compliance with relevant international human rights and International Labour Organization standards.
- As part of the due diligence or impact assessment process, ensure that company activities do not limit indigenous peoples' access to educational facilities. For example, heavy construction, infrastructure or other projects that cause significant physical disruption have the potential to limit access to educational facilities. In such cases, engage with the relevant indigenous

peoples' in order to determine how best to ensure continued access to schools and education facilities.

- Collaboratively consider, support and foster both traditional and mainstream economic activities and employment pathways for indigenous communities, recognizing that sustainable employment and economic development initiatives in remote / regional indigenous communities will often require hybrid solutions.
- Ensure that any training or educational opportunities offered or supported by the business are also made available to indigenous peoples without discrimination, and where possible, are culturally appropriate for indigenous peoples accessing them.

### **Support**

- Support educational institutions where they exist (otherwise consider supporting the establishment of educational institutions). Collaborate with these institutions to develop curriculums enabling local indigenous youth to acquire skills that can lead to future employment with the business (or other opportunities), while still maintaining knowledge of their community's culture (for example in relation to traditional conservation, land and natural resource management and other culturally relative and valuable activities).
- Proactively identify or create opportunities to support education and employment initiatives that are culturally encoded and that recognize the continuity of traditional economic activity.
- Support pre-employment initiatives for indigenous peoples. Offer work placements and internships to indigenous peoples to support their education and enhance their opportunities for future employment, including for example management / supervisory and cultural competency training. Ensure that appropriate learning support (e.g., numeracy, literacy, cross-cultural training) is in place to support successful outcomes.
- Support and empower indigenous employees (short and long term) to gain further education to enhance their opportunities for future employment. Targeted initiatives (for example, scholarships) may assist in redressing historical inequality in access.
- Partner with indigenous organizations and companies with the goal of sharing knowledge, e.g., through the secondment of employees (mutual secondments could also be considered) and employment pathways.
- Partner with or support indigenous peoples' projects to protect and promote indigenous peoples' right to education, including their right to culturally and linguistically sensitive education as part of the business' social responsibility programs.

## **Examples**

### ***Funding for higher education***

A gold mining company signed a collaborative agreement with a number of indigenous peoples to establish a fund to assist members of the tribes to access higher education. The fund is linked directly to the revenues of the local mine.

### ***Support for indigenous high school***

A number of companies support a high school that provides interactive, online education, to address the difficulties that the indigenous communities face in physically attending traditional schools.

### ***Culturally and linguistically sensitive education***

A food company partnered with a civil society organization to develop a program to provide bilingual and bicultural education to children in indigenous communities from which it sourced ingredients. The program places particular emphasis on girls' education and bilingual instruction.

### ***Support for the education of indigenous children and adults***

A retail corporation, which owns several major department stores, partnered with a local non-profit to support education for under-resourced children in the community, many of who are indigenous or of indigenous descent. The company has participated in adult literacy programs and has donated to the cause in order to reduce poverty and illiteracy in the region.

## Article 16

### Media

#### The right

Article 16 provides that indigenous peoples have the right to establish their own media in their own languages, while retaining access to all forms of non-indigenous media without discrimination. Article 16 also requires States to take effective measures to ensure that State-owned media reflects indigenous cultural diversity, and also encourage privately-owned media to reflect the same.

The media is a powerful political tool in society, and indigenous peoples' ability to fully access and participate in existing media channels as well as establish and control their own media channels is crucial to supporting their exercise and enjoyment of their fundamental human rights, including freedom of expression, self-determination and right to information.<sup>37</sup>

Ensuring that indigenous peoples' have a right to establish media that reflects their own values and norms can also support the preservation and promotion of their cultures, languages, spirituality and traditions, and share their culture with others outside of their communities. It also provides a channel for indigenous peoples to challenge discrimination and existing stereotypes and narratives about them, tell their stories in their own way, publicize contraventions of their rights, and influence broader political and social agendas which have often marginalized indigenous voices. Further, it provides a means for communities to remain connected internally and also with other communities (including other indigenous communities), which can be a particular challenge given that many indigenous communities are geographically isolated from urban centers.

Ensuring indigenous peoples' access to all forms of non-indigenous media is also crucial, as it allows them to connect with communities beyond their own, and supports the participation of indigenous peoples in the broader community. Businesses, especially those in the media industry, should consider what action they can take to respect and support indigenous peoples' access to media and right to produce their own media.

#### Related standards

**Universal Declaration of Human Rights, Article 19** states that all people have the right to free speech and expression and the right to seek, receive and impart information through media.

**ILO Convention 169, Article 30** sets out the right of indigenous peoples to mass communication in their own languages.

**International Covenant on Civil and Political Rights, Article 19** sets out the right to freedom of expression and opinion and the right to access media and impart information publicly.

#### Suggested practical actions

##### Respect

- Take the key business actions set out in Part I (indigenous peoples' rights policy, human rights due diligence, consultation, consent seeking, grievance mechanism, remediation and monitoring and reporting).
- Companies engaged in radio, television, film, printed or online media or any other similar form of communication should work to ensure that indigenous communities have access to their material.

<sup>37</sup> International Law Association, 2010, *Report of the Hague Conference (2010): Rights of Indigenous Peoples*, <http://www.ila-hq.org/en/committees/index.cfm/cid/1024>

- Media companies should ensure that their content reflects the cultural diversity of indigenous peoples.
- Media companies should consider incorporating information and entertainment responsive to and reflective of indigenous cultures (indigenous peoples should be actively involved in developing such content) and should consider providing communication in indigenous peoples' own languages.
- Media companies should look for opportunities to hire indigenous media professionals.
- Non-indigenous media channels should ensure that their content is not discriminatory or racist; indigenous voices should be included when indigenous issues are discussed.
- Ensure that any statements, press releases or descriptions of indigenous peoples do not infringe on such indigenous peoples' right to dignity and respect their culture, tradition, history and aspirations, and does not depict or describe Indigenous Peoples in a derogatory or discriminatory matter. If in doubt, confirm with the relevant indigenous peoples.
- Develop a process regarding the use of photographs and video footage of indigenous peoples (give particular consideration to the use of images of indigenous persons who are deceased, which is a sensitivity in some indigenous cultures).

### ***Support***

- Companies can support indigenous media outlets, such as radio stations, newspapers, and television stations through philanthropy, the provision of physical resources, the provision of pro bono assistance, and the secondment of professionals etc.
- Companies should consider using indigenous media outlets when conducting projects that impact an indigenous community, to ensure that the indigenous communities are reached.
- Publicly acknowledge indigenous contributions to the business.
- Highlight with the media successful corporate engagement practices that may serve as examples to other companies.

### **Examples**

#### ***Media coverage training***

A university helped build an online educational guide for Canadian journalists who report in indigenous communities. The guide advises journalists on how to accurately and meaningfully cover stories on indigenous peoples.

#### ***Radio services sponsorship***

An energy company sponsors a nationwide radio services organization in Australia. The organization provides programming and media marketing services for over one hundred indigenous community radio stations.

## Article 17

### Labour rights

#### The right

Indigenous peoples are often particularly vulnerable members of the workforce, as a result of a lack of understanding of their rights, underlying discriminatory attitudes in the workplace, higher rates of poverty and lower rates of education and training. Article 17 affirms indigenous peoples' right to enjoy all labour rights under domestic and international law, and to be free from economic exploitation, including through the provision of appropriate and adequate remuneration for services performed. Fundamental labour rights that indigenous and non-indigenous workers are entitled to include those set out in the International Labour Organization's Core Conventions. Article 17 also aims to specifically protect indigenous children from dangerous work that is likely to threaten not only their health but their life potential through an adverse impact on participation in education or recreational activities.

The use of child labour and implementation of fair compensation policies may not be regulated under the domestic laws in which a business operates. Where international labour standards and domestic laws are inconsistent, businesses must as a minimum respect the rights the relevant provisions in the International Bill of Rights and the ILO fundamental conventions, as well as of indigenous peoples to be free from economic exploitation, as set out in Article 17 of the UNDRIP.

A particular challenge facing indigenous peoples in relation to their labour rights is the ability to practice traditional occupations, often because it depends on their ability to access traditional lands, territories and natural resources.<sup>38</sup> Indigenous peoples' ability to practice their traditional occupations is closely tied to other rights, as recognition of and support for traditional occupations tends to also support maintenance of indigenous cultures, languages and traditional knowledge, and their right to self-determination.

Businesses must remain committed to providing working conditions for indigenous peoples and other workers that meet or exceed national and international standards and ensure that they do not economically exploit indigenous peoples. Providing decent work to indigenous people can make a significant contribution to their economic empowerment, and businesses should actively look for ways to involve indigenous peoples in their workforce. Businesses can also support indigenous peoples' labour rights through recognition of and support for their traditional occupations.

#### Related standards

The ILO Fundamental Conventions set out the fundamental labour rights of all workers: ILO Convention 29 on Forced Labour, ILO Convention 105 on Abolition of Forced Labour Convention, ILO Convention 138 on Minimum Age, ILO Convention 182 on Worst Forms of Child Labour, ILO Convention 87 on Freedom of Association and Protection of the Right to Organise, ILO Convention 98 on the Right to Organise and Collective Bargaining Convention, ILO Convention 100 on Equal Remuneration and ILO Convention 111 on Discrimination (Employment and Occupation).

**ILO Convention 169, Articles 20, 21 and 22** require States to take action to prevent discrimination between indigenous and non-indigenous workers, and to protect their right to practice traditional activities and to preserve their economic systems.

**Universal Declaration of Human Rights, Article 3** declares the right of all people to safe employment, as well as access to employment benefits, fair remuneration and freedom of association.

**International Covenant on Economic, Cultural and Social Rights, Articles 6, 7 and 8** recognize the right of all people to safe work, including the right to freely choose and accept work, the right to fair wages and safe working conditions and the right to join trade unions.

<sup>38</sup> International Labour Organization, 2007, *Eliminating Discrimination against Indigenous and Tribal Peoples in Employment and Occupation: A Guide to ILO Convention 111*, <http://pro169.org/res/materials/en/discrimination/Guide%20to%20ILO%20Convention%20No%20111%20on%20discrimination.pdf>

## Suggested practical actions

### *Respect*

- Take the key business actions set out in Part I (indigenous peoples' rights policy, human rights due diligence, consultation, consent seeking, grievance mechanism, remediation and monitoring and reporting).
- Observe international and local child trafficking and labour regulations and require compliance by suppliers and contract workers as part of the business relationship.
- Where domestic law is silent or sets lower requirements than international standards, apply relevant international standards (at a minimum, the International Bill of Human Rights and the eight ILO fundamental conventions) throughout the workforce.
- Implement selection criteria for suppliers and contractors that requires compliance with international standards, including on human rights and labour practices. This will help to ensure that indigenous peoples' labour rights are respected throughout the company's value chain.

### *Support*

- Engage with local indigenous peoples to determine whether they are interested in employment. If they are, actively and specifically recruit indigenous employees, and support their integration into business activities and culture, i.e., by providing health care services, childcare, elder care, job training, housing and education for workers and their families.
- Where work can be done by local indigenous peoples, offer the work first to them before hiring from outside the local community.
- Include indigenous owned and operated businesses in the supply chain. Encourage joint ventures or the employment of local indigenous people throughout the business' supply chain to contribute to a prosperous and vibrant indigenous business sector.
- Where possible, commit a percentage of management positions for employees from local indigenous communities. Ensure that these positions hold legitimate authority and are not 'token' roles, which is detrimental to morale and skills development.
- Advertise job vacancies in places that are accessible to indigenous peoples (e.g., community bulletin boards).
- Conduct hiring processes directly without interference from States or other third parties, which could introduce bias.
- Ensure that appropriate support is in place to help indigenous employees succeed in the workplace. Mentoring programs, learning and family support, cross-cultural awareness and other initiatives can help to retain indigenous employees. Provide indigenous employees with training so that they understand their rights in the workplace.
- Provide all employees with training on cultural awareness and discrimination.
- Distribute hiring and lay-offs across identity groups to promote diversity in the workplace and ensure fair distribution of benefits. Acknowledge that hiring based solely on merit can agitate existing divisions among identity groups, as certain groups may be circumstantially better qualified due to existing socioeconomic divisions. Where lay-offs are unavoidable, provide indigenous communities with adequate preparation, assistance and support to manage the impacts. Be particularly sensitive to the way that different cultural groups view the loss of employment.

### Examples

#### *Engaging with experts*

A multi-national cosmetics company works with a team of anthropologists, social scientists, psychologists, economists, biologists and administrators to establish and maintain relationships with the small farmers, many of whom are indigenous, who produce raw materials for the company's products.

#### *Indigenous employees*

An international mining company hires indigenous workers from local communities and has employee-support programmes designed to support indigenous workers, including pre-vocational training, culturally appropriate recruitment practices, and mentoring, among other services. Another company has established a policy at some of its mines that requires a certain percentage of jobs at the site go to individuals from the local indigenous community.

### Further resources

International Labour Organization, 2007, *Eliminating Discrimination against Indigenous and Tribal Peoples in Employment and Occupation: A Guide to ILO Convention 111*,  
<http://pro169.org/res/materials/en/discrimination/Guide%20to%20ILO%20Convention%20No%20111%20on%20discrimination.pdf>

# **Participatory development, economic and social rights**

## Articles 18 and 19

### Participation in decision-making

#### The rights

Article 18 recognizes that indigenous peoples have a right to participate in decisions that would affect their rights. They must be able to participate through representatives who they choose. Indigenous peoples also have the right to form their own decision-making institutions, which States and other third parties should recognize.

Article 19 requires States to consult and cooperate with indigenous peoples through their own representative institutions, and to obtain their free, prior and informed consent before adopting or implementing legislative or administrative measures that may affect them. (FPIC is discussed in further detail in Part I).

Articles 18 and 19 are closely tied to the concept of political self-determination, as enshrined in the United Nations Declaration on Human Rights and discussed above in relation to Article 3. The importance of indigenous peoples' involvement in matters that affect them is a recurring theme throughout the UNDRIP. A particular risk exists for the extractive industries and infrastructure development companies impacting on land traditionally owned, occupied or used by indigenous peoples, or any impact that could alter the environment on such lands. Businesses should appropriately involve indigenous peoples in any matters that could affect them. Even in relation to philanthropic efforts, companies must ensure that they appropriately involve the relevant indigenous peoples in designing and implementing programs and obtaining their consent when these activities impact on them. The way in which indigenous peoples participate in any decision-making or other engagement should also be determined together with the relevant indigenous peoples, and the appropriate process will depend on the circumstances and the traditions and cultures of the indigenous peoples involved. If possible, indigenous peoples' own decision-making processes should be followed.

#### Related standards

**ILO Convention 169, Article 6** requires States to provide means by which indigenous peoples can freely participate, to at least the same extent as other sectors of the population, at all levels of decision making in elective institutions and administrative and other bodies responsible for policies and programmes that concern them.

**International Covenant on Civil and Political Rights, Article 25** asserts the right of all people to take part in public affairs and decision-making, either directly or via freely chosen representatives.

#### Suggested practical actions

##### Respect

- Take the key business actions set out in Part I (indigenous peoples' rights policy, human rights due diligence, consultation, consent seeking, grievance mechanism, remediation and monitoring and reporting).
- Ensure that indigenous peoples are given an acceptable and culturally appropriate amount of time to make decisions
- Ensure that the decision-making process is inclusive and includes all community members. Hold community meetings in places that are easily accessible, and provide transportation when necessary.
- When decisions are being made by representatives of Indigenous communities ensure these representatives were selected through traditional decision-making processes, and that they remain accountable to community needs.

## Support

- Establish development plans in collaboration with indigenous peoples, under which the indigenous peoples themselves make the decisions as to what development will be undertaken (fully informed with information provided by the business and independent sources, and with support from the company as appropriate and desired by the relevant indigenous peoples).

## Examples

### *Participation in working group*

A multinational oil company established a working group in a village near one of its operations sites that includes representatives from the community and from the company, as well as holding twice-yearly meetings to provide project updates to the entire community.

## Further resources

Expert Mechanism on the Rights of Indigenous Peoples, 2012, *Follow-up report on indigenous peoples and the right to participate in decision making, with a focus on extractive industries*, <http://daccess-dds-n.y.un.org/doc/UNDOC/GEN/G12/160/59/PDF/G1216059.pdf?OpenElement>

Expert Mechanism on the Rights of Indigenous Peoples, 2011, *Final study on indigenous peoples and the right to participate in decision-making*, <http://www.ohchr.org/Documents/Issues/IPeoples/EMRIP/AEVfinalreportStudyIPRightParticipate.pdf>

International Council on Mining and Metals, 2010, *Good Practice Guide: Indigenous Peoples and Mining*, <http://www.icmm.com/library/indigenouspeoplesguide>

International Council on Mining and Metals, 2005, *Mining and Indigenous Peoples' Issues Review*, <http://www.icmm.com/page/1161/mining-and-indigenous-peoples-issues-review>

International Finance Corporation, 2007, *ILO Convention 169 and the Private Sector: Questions and Answers for IFC Clients*, [http://www1.ifc.org/wps/wcm/connect/cba33980488556edba6fca6a6515bb18/ILO\\_169.pdf?MOD=AJPERES](http://www1.ifc.org/wps/wcm/connect/cba33980488556edba6fca6a6515bb18/ILO_169.pdf?MOD=AJPERES)

International Finance Corporation, 2012, *Performance Standard 7: Indigenous Peoples*, [http://www1.ifc.org/wps/wcm/connect/topics\\_ext\\_content/ifc\\_external\\_corporate\\_site/ifc+sustainability/publications/publications\\_handbook\\_pps](http://www1.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/ifc+sustainability/publications/publications_handbook_pps)

International Labour Organization, 2011, *General Observation on the ILO Indigenous and Tribal Peoples Convention, 1989, (No.69), Committee of Experts on Application of Conventions and Recommendations (CEACR)*, p.783, <http://www.ilo.org/public/libdoc/ilo/P/09661/09661%282011-100-1A%29.pdf>

International Labour Organization, 2009, *Indigenous and Tribal Peoples' Rights in Practice: A Guide to ILO Convention No. 169*, [http://pro169.org/res/materials/en/general\\_resources/IPsRightsInPractice-singlepages.pdf](http://pro169.org/res/materials/en/general_resources/IPsRightsInPractice-singlepages.pdf)

UN Development Group, 2008, *Guidelines on Indigenous Peoples' Issues*, [http://www.ohchr.org/Documents/Publications/UNDG\\_training\\_16EN.pdf](http://www.ohchr.org/Documents/Publications/UNDG_training_16EN.pdf)

UN Special Rapporteur on the Rights of Indigenous Peoples, 2012, Report of the Special Rapporteur on the rights of indigenous peoples, Professor James Anaya, Human Rights Council, Twenty-first session, 6 July 2012, [http://www.unsr.jamesanaya.org/docs/annual/2012\\_hrc\\_annual\\_report\\_en.pdf](http://www.unsr.jamesanaya.org/docs/annual/2012_hrc_annual_report_en.pdf)

## Articles 20 and 21

### Development, political, economic and social activities

#### The rights

Article 20 affirms the right of indigenous peoples to their political, social and economic institutions and their own way of life and means of development, each of which is fundamental to the survival of indigenous cultures. Article 20 also requires that any indigenous peoples deprived of their means of subsistence and development be fairly and justly compensated.

In addition to the rights of indigenous peoples to continue their way of life, Article 21 recognizes indigenous peoples' right to improve their social and economic conditions, including in relation to health, education, employment and training and housing. States must both allow indigenous peoples to pursue their own means of economic subsistence and development, and ensure that indigenous peoples are appropriately included in State development efforts.

Indigenous institutions can take many forms, and may be formal (such as physical institutions or legally constituted organizations) or informal (such as simply ways of doing things). In any case, when engaging with indigenous peoples, businesses should seek to understand and respect such institutions. Businesses should seek to understand indigenous peoples' ways of life and ensure that they do not negatively impact them. Businesses should specifically consider the needs of indigenous women, elders, youth and children and those with disabilities (discussed further under Article 22).

#### Related standards

**ILO Convention 169, Articles 7 and 23** declare the right of indigenous peoples to determine their own development path, including the right to practice traditional economic activities and to preserve political and social institutions that promote self-determination and self-governance.

**International Covenant on Civil and Political Rights and International Covenant on Economic, Cultural and Social Rights, Article 1** assert the right of all peoples to freely determine their economic, social and cultural development.

#### Suggested practical actions

##### Respect

- Take the key business actions set out in Part I (indigenous peoples' rights policy, human rights due diligence, consultation, consent seeking, grievance mechanism, remediation and monitoring and reporting).
- Understand that joint venture partnerships with Indigenous-owned companies promoting mutual economic benefits have equal, if not greater importance to philanthropic initiatives.

##### Support

- Where possible, support existing development, political, economic and social institutions (rather than establishing new ones).
- Establish development plans in collaboration with indigenous peoples, which allow for indigenous peoples themselves to make the decisions as to what development will be undertaken (with the company's guidance).
- Ensure that indigenous economies that are based around communal ownership or barter systems are not disrupted by an influx of cash from the business' presence. Provide money management education and support for these communities.

- Provide infrastructure and other development opportunities to indigenous peoples along with those introduced as part of the business activities. Development opportunities may also include governance support and training to support indigenous peoples to engage with businesses and States. Ensure that the indigenous peoples consent to any such infrastructure or other development opportunities.
- Develop an indigenous employment strategy, in collaboration with relevant indigenous communities, to assist indigenous people to reach a critical mass in the workplace and therefore reduce discrimination and promote equal opportunity.
- Employ male and female workers from indigenous communities and support the integration of those employees into the business activities and culture, i.e., by providing health care services, childcare, elder care, job training, housing and education for workers and their families.
- Ensure that appropriate support is in place to help indigenous employees succeed in the workplace. Mentoring programs, learning and family support, cross-cultural awareness and other initiatives can help to retain indigenous employees.
- Partner with indigenous organizations – this could involve contributions related to the company's core business (e.g., the provision of products or services), or be philanthropic.
- Partner with or support indigenous peoples' projects to protect and promote education, employment, vocational training and retraining, housing, sanitation, health and social security.
- Collaboratively consider, support and foster both traditional and mainstream economic activities and employment pathways for indigenous communities, recognizing that sustainable employment and economic development initiatives in remote / regional indigenous communities will often require hybrid solutions.
- Explore opportunities to involve indigenous people in the value chain such as sourcing from indigenous owned businesses.
- Consider joint ventures with indigenous businesses.

### Examples

#### ***Tourism industry***

An international private non-profit has teamed up with a local tourism board to develop eco- and agro-friendly tours and resources for visitors. The company has involved the affected indigenous communities in building sustainable infrastructure to support the high volume of tourists in the area.

#### ***Supplier diversity***

An international computer hardware company helped found an advisory council devoted to the expanding supplier diversity practice in growth markets. The computer company has sourced from aboriginal suppliers in Australia and in other countries in order to promote indigenous inclusion in the global economy.

An international mining company with a mine jointly owned by an indigenous company annually spends a large part of its budget on locally-acquired goods and services provided by the indigenous community. The company is also working on a consistent means of tracking and reporting on indigenous suppliers at its other operations.

## Articles 22 and 44

### Indigenous women, elders, youth, children and persons with disabilities

#### The right

Within indigenous communities, women, the elderly, youth and children and persons with disabilities may be particularly vulnerable, and accordingly Article 22 requires that, in implementing the UNDRIP, these groups are afforded special consideration. States have a duty to protect these groups from harm, violence, discrimination and any other activities or lack of actions that could compromise their well-being. Article 44 states that all rights and freedoms recognized in the UNDRIP are equally guaranteed to male and female individuals.

In designing and implementing activities and engaging in business relationships with others that may impact indigenous peoples, and in engaging with indigenous peoples about such activities or business relationships, businesses must ensure that any particular vulnerabilities of these groups are identified and addressed within the due diligence process. This may require separate consultation with such groups.

#### Related standards

***ILO Convention 169, Article 3 states that*** the provisions of the Convention shall be applied without discrimination to male and female members of these peoples.

***International Covenant on Economic, Cultural and Social Rights, Article 2*** states that all people are entitled to enjoy the rights set out in the Covenant without discrimination as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

#### Women's Empowerment Principles

The Women's Empowerment Principles are a set of Principles for business offering guidance on how to empower women in the workplace, marketplace and community. For further information (including how to sign the CEO's Statement of Support for the Principles), see [www.weprinciples.org](http://www.weprinciples.org)

#### Children's Rights and Business Principles

The Children's Rights and Business Principles guide companies on the full range of actions they can take in the workplace, marketplace and community to respect and support children's rights. For further information, see [www.unglobalcompact.org/Issues/human\\_rights/childrens\\_principles.html](http://www.unglobalcompact.org/Issues/human_rights/childrens_principles.html)

#### Suggested practical actions

##### Respect

- Take the key business actions set out in Part I (indigenous peoples' rights policy, human rights due diligence, consultation, consent seeking, grievance mechanism, remediation and monitoring and reporting).
- Promote employment of female workers from indigenous communities and support the integration of those employees into the business activities and culture, i.e., by providing health care services, childcare, elder care, job training and education targeted at female workers and their families. It is also important to consider cultural considerations regarding the separation of male and females and other factors.

##### Support

- Implement a mentoring program for indigenous and non-indigenous people to role model, support and mentor indigenous women entering the workforce.

- Support initiatives and projects that help indigenous women, youth, children and persons with disabilities to access education, training and employment. (This can assist in promoting their employment and integration into business activities and culture.)
- Provide childcare during consultations to support the participation of indigenous women. Provide childcare for employees to support and retain indigenous women employees.

### Examples

#### *Indigenous youth*

An international mining company donates \$75,000 yearly to an employment program that assists indigenous students living near one of its mines in finding long-term local employment opportunities.

An international extraction firm supports community programmes that provide education and vocational skills-training to indigenous youth in order to reduce the student drop-out rate.

An international mining company supports a local non-profit designed to develop young aboriginal leaders and empower them to create positive change in their communities.

#### *Indigenous women*

An Australian mining company developed a program that enhances employment opportunities and provides leadership development for indigenous women.

Another mining company established a capital fund, the interest on which is divided equally between men and women to support their respective cultural activities.

### Further resources

Rio Tinto, 2009, *Why Gender Matters: A resource guide for integrating gender considerations into communities work at Rio Tinto*,  
[http://www.riotinto.com/documents/ReportsPublications/Rio\\_Tinto\\_gender\\_guide.pdf](http://www.riotinto.com/documents/ReportsPublications/Rio_Tinto_gender_guide.pdf)

## Article 24

### Health

#### The right

Indigenous peoples have the right to maintain, control, protect and develop their traditional medicines and health practices, while retaining access to all health services, so that they may enjoy the highest attainable standard of physical and mental health. This right allows indigenous peoples to conserve and protect their medicinal plants, animals and minerals (and their knowledge in relation to these; see also Article 31 in relation to traditional knowledge), but also provides that they shall not be barred access to other social and health services.

The health of indigenous peoples is often significantly lower than that of the overall population. Factors such as proximity to health services, affordability and language proficiency are just a few reasons that contribute to this problem. In some instances, indigenous people may suffer from health risk factors such as poor nutrition, excessive alcohol consumption, smoking and the abuse of other drugs and substances. For this reason, protecting indigenous peoples' right to all social and health services is crucial to the survival of their communities and cultures, and their development opportunities.

Businesses should ensure that they do not access indigenous medicinal resources without consent, and do not adversely impact indigenous peoples' intellectual property rights through, for example, patenting their knowledge of traditional medicines without consent. Where companies are accessing indigenous medicinal resources, they must ensure that their activities do not damage stocks (of relevance to those conducting activities on lands occupied or used by indigenous peoples). Businesses should consider ways in which access to health services and products by indigenous peoples could be enhanced where it is insufficient (of relevance to companies in the health industry, and also those with appropriate distribution channels which could be used to assist in this respect). It is also important for companies to respect the health of indigenous employees, and provide them with the same health benefits (e.g., health insurance and workplace health programs) as all other employees.

There are several ways businesses can respect and support the health of indigenous peoples. Businesses that manufacture pharmaceuticals have the unique ability to provide indigenous peoples with access to medicines they produce. Businesses that work in areas with indigenous communities can assist in the creation and maintenance of health service facilities. Businesses that work in the areas with indigenous communities can also engage with them to assist in the preservation of their medicinal plants, animals and minerals.

#### Related standards

*ILO Convention 169, Article 25* asserts the right of indigenous peoples to access adequate, community-based health services that are culturally and spiritually appropriate.

*Universal Declaration of Human Rights, Article 25 and International Covenant on Economic, Cultural and Social Rights, Article 11* declare the right of all people to an adequate standard of living and access to adequate healthcare. *ICECSR, Article 12* recognizes the right of all people to enjoy the highest attainable standard of physical and mental health.

#### Suggested practical actions

##### Respect

- Take the key business actions set out in Part I (indigenous peoples' rights policy, human rights due diligence, consultation, consent seeking, grievance mechanism, remediation and monitoring and reporting).

- Ensure that the business' activities do not negatively impact indigenous peoples' health, for example by contaminating or polluting their air, drinking water or food supply.
- Understand that indigenous peoples living in remote areas with limited outside contact may have heightened susceptibility to health risks.

### ***Support***

- Identify or create opportunities to support initiatives that are culturally encoded and that recognize the continuity of traditional indigenous economic activity including food/medicine collection and manufacture (for example, traditional and socially useful natural resource management practices).
- Where healthcare support or provision is provided to employees, consider using a provider that has a specialty in indigenous health, that has indigenous practitioners and staff, and that can provide care in a culturally appropriate manner.
- Consider supporting initiatives to train indigenous people in health professions to increase indigenous access to healthcare.
- Support initiatives to incorporate traditional Indigenous healing practices with modern medicine, and ensure that Indigenous Peoples are adequately compensated for their traditional knowledge.

## **Examples**

### ***Promoting eye health***

An international eye-wear and eye-care company established a programme of clinics in remote indigenous communities to improve access to optometry services and community awareness about eye health. The company also supports an indigenous scholarship to encourage indigenous students to pursue studies in optometry.

### ***Supporting indigenous students focused on health***

A multinational pharmaceutical company established a graduate fellowship for indigenous students who are studying or researching issues and topics in aboriginal health.

### ***Sporting Infrastructure***

A global manufacturer of sporting goods is working with a non-profit organization to deliver sporting equipment to remote indigenous communities in Australia. The partnership is an important part of the nonprofit organization's plan to raise awareness of health topics in those communities.

# Land and natural resources

## Article 25

### Land and natural resources – spiritual basis

#### The right

Article 25 affirms indigenous peoples' right to maintain and strengthen their spiritual relationship with the land and natural resources that they traditionally own, use or occupy (or owned, used or occupied in the past), and to uphold their responsibilities to future generations in this regard. Indigenous peoples often have strong spiritual ties to their ancestral lands and territories, and to the natural resources (water, coast, rocks, plants, animals) on and around them. Further, indigenous peoples' individual and collective identity, healthcare systems, social and legal structures and cultures are often inextricably linked to these spiritual relationships. Nevertheless, indigenous land and resources continue to be damaged through the pursuit by governments and the private sector of development projects and other activities, resulting in serious and often irreversible negative impacts on indigenous peoples and their lands and spirituality.

Article 25 affirms indigenous peoples' inherent, collective right to “maintain and strengthen” their spiritual relationship with their traditional lands and resources. As a practical matter, indigenous peoples' ability to enjoy this right depends on a range of factors, including access to and preservation of land and resources. Removal or relocation of indigenous peoples, environmental damage and removal of natural resources inhibits exercise of the right. Large development projects (e.g., mineral, oil, gas and timber extraction, dams for hydroelectric plants or infrastructure projects) are particularly likely to interfere with indigenous peoples' spiritual lives and cultures because they often necessitate physical displacement of indigenous peoples or substantial, long-term (often permanent) alteration of the environment.

“Territories and land have material, cultural and spiritual dimensions for indigenous communities and, through their deep understanding of and connection with the land, they have managed their environments sustainability for generations. In order to survive as distinct peoples, indigenous peoples and their communities need to be able to own, conserve and manage their territories, lands and resources on the basis of their collective rights” – UN Development Group, *Resource Kit on Indigenous Peoples' Issues*

Not only does Article 25 protect indigenous peoples' right to maintain and strengthen their spiritual relationship with the land and natural resources, it requires that indigenous peoples be able to “uphold their responsibilities to future generations in this regard”. To do this, indigenous peoples must maintain a degree of control over their ancestral land and resources, and their environment must not be significantly altered (in the short or long-term). Sacred sites, in particular, are important for indigenous peoples' transmission of spiritual beliefs to future generations and, thus, should be protected.

The Inter-American Court of Human Rights has recognized the spiritual basis for indigenous property and resource rights in several instances, and a selection of governments, such as the Australian government, have taken steps toward preserving such rights. Regardless of legal status under State law, however, under Article 25, businesses should respect spiritually-based indigenous land and resource rights under indigenous or customary laws.

In order to respect and support the rights in Article 25, businesses must first recognize that indigenous peoples' relationship to land and natural resources may well not align with the non-indigenous approach to land, resources and concepts of property – that is, indigenous peoples' cultures may not recognize “ownership” of land, and they may have a spiritual connection to land that is not technically, under the law of the relevant country, considered to be owned by those peoples – which does not in any way diminish the spiritual relationship. It will be indigenous peoples themselves who can provide guidance on what activities may or may not impact this right, and their views in this regard should be sought and incorporated into impact assessments and project planning.

## Related standards

**ILO Convention 169, Article 13** requires States to respect the spiritual and cultural connections of indigenous peoples to their ancestral territories, and to take indigenous peoples' spiritual values into consideration when applying relevant policies. **Article 14** requires states to recognize the right of ownership and possession of indigenous peoples over their lands, and the need for adequate procedures to resolve their land claims.

## Suggested practical actions

### Respect

- Take the key business actions set out in Part I (indigenous peoples' rights policy, human rights due diligence, consultation, consent seeking, grievance mechanism, remediation and monitoring and reporting).
- As part of the due diligence or impact assessment process:
  - Where adverse impacts cannot be avoided, identify (through consultation with indigenous peoples) the least disruptive method of pursuing such activities. This may involve altering the timeline of a project or employing special, low impact technical practices.
  - Where relocation or other negative impacts cannot be avoided (and assuming consent has been obtained), mitigate the effects of the business' activities to the extent possible. Consult with indigenous peoples to determine what mitigation efforts will be most effective.
  - Seek input from and consult with indigenous peoples regarding final landforms and rehabilitation options.
- Manage hazardous materials (including nuclear waste) with extreme care. These substances may have long-term or irreversible effects on land and resources and, thus, may permanently damage indigenous peoples' spiritual relationships and cultures. Obtaining free, prior and informed consent is particularly important in these cases given the potential severity and duration of the impacts. Businesses could also engage with indigenous people regarding the appropriate management of these substances, rather than just gaining consent for their use.
- Adopt a "precautionary approach" to environmental issues where there are potential threats of serious or irreversible environmental impact on indigenous peoples' land, territories or resources.

### Support

- Partner with or support indigenous peoples' groups that work to promote governmental and corporate understanding of indigenous spiritual beliefs, specifically as they relate to the environment.
- Develop programmes that provide education and training to indigenous peoples in relation to land and resource conservation (recognizing that they may already have significant knowledge in this area).
- Invest in projects that assist indigenous peoples with strengthening and maintaining their spiritual relationships and cultural heritage.
- Support research and development related to preservation of the environment, particularly in areas of spiritual significance to indigenous peoples.
- Develop voluntary, proactive and collaborative management plans that enable indigenous peoples to access company owned leases / lands for the purpose of practicing traditional economic, cultural and spiritual activity.

### Examples

#### ***Cultural heritage training for indigenous peoples***

A mining company has established a program to provide archaeological training to indigenous peoples, to help develop their skills relevant to maintenance of cultural heritage sites.

#### ***Cultural heritage awareness training***

A number of extractives companies engage local indigenous communities to provide cultural heritage awareness training to workers.

#### ***Traditional land-use studies***

A national energy firm sponsors traditional land-use studies in conjunction with local tribes in order to preserve spiritually important sites and maintain culture for future generations.

### Further resources

UN Department of Economic and Social Affairs, 2009, *State of the World's Indigenous Peoples*, [http://www.un.org/esa/socdev/unpfii/documents/SOWIP\\_web.pdf](http://www.un.org/esa/socdev/unpfii/documents/SOWIP_web.pdf)

UN Development Group, 2008, *Guidelines on Indigenous Peoples' Issues*, [http://www.ohchr.org/Documents/Publications/UNDG\\_training\\_16EN.pdf](http://www.ohchr.org/Documents/Publications/UNDG_training_16EN.pdf)

UN Permanent Forum on Indigenous Issues, 2011, *Report on the tenth session (May 16-27, 2011)*, [http://www.un.org/esa/socdev/unpfii/documents/session\\_10\\_report\\_EN.pdf](http://www.un.org/esa/socdev/unpfii/documents/session_10_report_EN.pdf)

## Articles 26, 27, 28, 29 and 32

### Land and natural resources – ownership, use, development, exploitation and conservation

#### The rights

There are countless instances of indigenous peoples having been dispossessed of their lands and natural resources as a result of colonization or other actions. The private sector has often been involved in, or benefited from, such dispossession.

Articles 26, 27 and 28 set out broad land rights for indigenous peoples, including rights to own, use, develop and control the lands, territories, and resources that they have traditionally owned, occupied, used or otherwise acquired, as well as providing a process for redress where lands have been taken, occupied, or used without consent. When taken with the right to self-determination, this means that indigenous peoples have an inalienable right to full sovereignty over all of their natural wealth and resources, which must be respected by businesses involved in developing, or seeking to develop, such resources. Further, indigenous peoples must be involved in the control, implementation and benefits of any development.

Legal recognition of indigenous peoples' rights to land and natural resources are fundamental. These rights support indigenous peoples' ability to enjoy many of their other rights (such as cultural rights and rights to development). However, experience has shown that land and natural resources rights are often the least respected, even in jurisdictions where indigenous peoples' land rights have clear legal recognition.

It is a State responsibility to give legal recognition and protection to indigenous peoples' land rights and to establish and implement appropriate redress procedures; however, businesses, especially where it impacts on areas that are or have been owned, occupied or used by indigenous peoples, must also understand and respect these rights.

Article 26 states that indigenous peoples have the right to own, use, develop and control the lands, territories and resources they have traditionally owned, occupied, used, or acquired, or possess by reason of traditional ownership. Included in this right are lands, territories, and resources that indigenous peoples have traditionally owned or used, but are not currently owned or occupied by them. Article 26 also requires States to take the affirmative step of giving legal recognition and protection to these lands, territories and resources, being mindful of the customs and traditions of the indigenous peoples in order to tailor the legal recognition and protection to ensure it is consistent with indigenous peoples' use of and relationship with the land and resources.

Article 27 requires States to establish a fair and open process to recognize and adjudicate the rights of indigenous peoples relating to their lands, territories, and resources, which takes into account the relevant indigenous peoples' laws, traditions, customs, and land tenure system. Furthermore, indigenous peoples have the right to be involved in establishing the process, and to participate in it.

In the Endorois indigenous peoples case, the African Commission on Human and Peoples' Rights concluded that: "Articles 26 and 27 of the [UNDRIP] use the term 'occupied or otherwise used'. This is to stress that indigenous peoples have a recognised claim to ownership to ancestral land under international law, even in the absence of official title deeds."<sup>39</sup>

Article 28 details indigenous peoples' right to redress where lands, territories, or resources that they have traditionally owned, occupied, or used have been confiscated, taken, occupied, used, or damaged without their free, prior, and informed consent. In such cases, indigenous peoples are

<sup>39</sup> The African Commission on Human and Peoples' Rights, 2003, 276 / 2003 – *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya*, para.207, [http://www.hrw.org/sites/default/files/related\\_material/2010\\_africa\\_commission\\_ruling\\_0.pdf](http://www.hrw.org/sites/default/files/related_material/2010_africa_commission_ruling_0.pdf)

entitled to redress, preferably by restitution, but otherwise by just, fair, and equitable compensation. Article 28 indicates that unless otherwise freely agreed by the concerned peoples, compensation should take the form of lands, territories, or resources equivalent to those taken.

Article 29 provides that indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands and resources. The Article requires that States establish and implement assistance programs for indigenous peoples for such conservation and protection. Article 29 also requires States to take effective measures to ensure that hazardous materials are not stored or disposed of on indigenous peoples' lands or territories without their free, prior and informed consent. States should also take effective measures, as needed, to ensure that programmes are implemented to monitor, maintain and restore the health of indigenous peoples affected by any such materials.

The rights set out in Article 29 recognize the often inextricable link between environmental protection and the physical and cultural security of indigenous peoples; that is, exposure to environmental contamination can seriously threaten the health and cultures of indigenous peoples. Historically, indigenous peoples have been forced to comply with government policies and business practices that often invaded or disrupted the fragile environments of the areas in which they live. State and industry development has often resulted in the relocation of indigenous peoples, or the damage or decimation of the lands on which they depend. Article 29 seeks to address this problem.

In response to Article 29, some States have instituted national or local frameworks for the protection of indigenous lands including the requirement for free, informed consent and consultation. While Article 29 incorporates language directed at the affirmative obligation of the state, States often pass this requirement on to the operating industry by Constitution or local regulation. Even where this is not the case, or where States are neglecting their own obligations, business respect and support for this right is vital for the conservation of indigenous peoples' lands and resources.

Article 32 establishes another significant right relating to land. It provides that indigenous peoples are entitled to decide their own priorities and strategies for the use or development of their lands, territories and other resources. This ensures that indigenous peoples can benefit from the development and exploitation of their lands, if they choose to take that path.

Beyond extractive exploitation, benefits could include those derived from managed conservation, use and enjoyment of resources. Resources include land, air, sea coasts, oil, gas, minerals, timber, waterways, and any genetic resources (flora and fauna) found there. Historically, these resources have sustained indigenous peoples' traditional societies and this right to development ensures that indigenous peoples can continue to derive benefits, as they choose, from their lands and resources.

In addition, Article 32 requires States to consult and cooperate with indigenous peoples to obtain their free, prior and informed consent before approving any project that would affect their lands, territories or other resources. States are further required to provide mechanisms through which indigenous peoples will receive redress for any such activities, and to mitigate any adverse impacts of projects.

The right to development is particularly relevant to businesses that impact on areas owned, occupied or used by indigenous peoples. When such businesses act without the consent of the relevant indigenous peoples, existing indigenous industries, food security, public and environmental health, and even the physical security of communities may be put at risk and undermine indigenous societies. However, where indigenous peoples are properly consulted on and agree to projects that develop their land and resources, then mutually beneficial arrangements can result.

### Related standards

**ILO Convention 169, Article 14, 15, 16 and 17** state that indigenous peoples have the right to legal ownership and possession of their ancestral territories and that their right to the natural resources pertaining to their lands shall be specially safeguarded. **Article 15** also states that indigenous peoples have the right to participate in the use, management and conservation of these resources.

**Universal Declaration of Human Rights, Article 17** declares that all people have the right to own property, and to not be arbitrarily deprived of that property.

*International Covenant on Civil and Political Rights and International Covenant on Economic, Cultural and Social Rights, Article 1* states that all peoples may, for their own ends, freely dispose of their natural wealth and resources.

## Suggested practical actions

### Respect

- Take the key business actions set out in Part I (indigenous peoples' rights policy, human rights due diligence, consultation, consent seeking, grievance mechanism, remediation and monitoring and reporting).
- Adopt a "precautionary approach" to environmental issues where there are potential threats of serious or irreversible environmental impact on indigenous peoples' land, territories or resources. Where there is a suspicion of harm, focus on prevention, rather than remediation after the harm has occurred.
- Keep up-to-date records of any lands, territories, or resources of indigenous peoples that have been granted legal recognition or protection by States where business is conducted. Similarly, for all States where the company conducts business, keep up-to-date records of any lands, territories, or resources that have been provided as compensation to indigenous peoples. Consult with the affected indigenous groups before conducting business that may impact any listed land, territory, or resource to ensure the group has granted free, prior, and informed consent to the activity.
- Seek to understand, and respect, indigenous peoples' communal land ownership systems where they exist.
- Where States have established and implemented a land adjudicatory process as discussed in Article 27, and indigenous peoples have consented to that process, respect its decisions and recommendations.
- Respect any decisions granting redress for the confiscation, occupation, use or damage of indigenous' peoples lands.
- Ensure that compensation for land and resources extends not only to landowners but also to indigenous peoples who occupy or use the land, or are otherwise affected by the activity.
- Observe standards of transparency in benefit sharing with indigenous peoples. Do not provide financial or other benefits to indigenous peoples in exchange for investment rights without first acquiring free, prior and informed consent. And when indigenous peoples consent to activities on their land, base payments or benefit sharing arrangements on regular, annual reviews of the activity and profitability.
- Ensure that population increases caused by business activity do not strain natural resources.
- In cases where a State has violated or may violate indigenous peoples' land and resources rights, do not conduct any business activities or provide support to the State's activities that impact the relevant lands or resources.
- As part of the due diligence or impact assessment process:
  - Where adverse impacts cannot be avoided, identify (through consultation with indigenous peoples) the least disruptive method of pursuing such activities. This may involve altering the timeline of a project or employing special, low impact technical practices.
  - Where relocation or other negative impacts cannot be avoided (and assuming consent has been obtained), mitigate the effects of the business' activities to the extent possible. Consult with indigenous peoples to determine what mitigation efforts will be most effective.
  - Seek input from and consult with indigenous peoples regarding final landforms and rehabilitation options.

- Seek to cooperatively manage the environmental impact of activities with local indigenous communities. Indigenous peoples are likely to have traditional knowledge that can be incorporated into environmental management plans, contributing to better environmental outcomes.
- Develop investment agreements that contribute to the fullest extent possible to reinforcing local employment and provide access to a living wage for the indigenous population affected. Such agreements may also include opportunities for the establishment of local indigenous businesses that contract with or supply the business.
- Adhere to industry sustainability standards (e.g., Global Reporting Initiative, Roundtable on Sustainable Palm Oil etc.).
- Manage hazardous materials (including nuclear waste) with extreme care. These substances may have long-term or irreversible effects on land and resources and, thus, may permanently damage indigenous peoples' spiritual relationships and cultures. Obtaining free, prior and informed consent is particularly important in these cases given the potential severity and duration of the impacts. Businesses could also engage with indigenous people regarding the appropriate management of these substances, rather than just gaining consent for their use.
- Provide compensation and restitution for damages inflicted upon the land, territory and resources of indigenous people and the rehabilitation of degraded environments caused by any existing or historic activities that did not obtain free, prior and informed consent. Ensure that incomes from activities cover all costs associated with closure and restoration and include sufficient funds to provide for potential future liabilities.

### **Support**

- Develop voluntary, proactive and collaborative management approaches that enable indigenous peoples to access resource sector owned leases / lands for the purpose of practicing traditional economic, cultural and spiritual activity.
- Involve indigenous peoples in developing and monitoring environmental management plans. Given their traditional knowledge of the land and resources, indigenous peoples are likely to be more sensitive to any harm occurring and therefore able to identify issues at an earlier stage.
- Develop programs that provide education and training to indigenous peoples in relation to land and resource conservation (recognizing that they may already have significant knowledge in this area).
- Support research and development related to preservation of the environment, particularly in areas of spiritual significance to indigenous peoples, and involve indigenous peoples in developing and monitoring environmental management plans. Given their traditional knowledge of the land and resources, they are likely to be more sensitive to any harm occurring and therefore able to identify issues at an earlier stage. Where appropriate, provide training to local indigenous peoples on conservation (recognizing that they may already have significant knowledge in this area).
- In any property development on land that has been traditionally owned or used by indigenous peoples, including an urban development, consider ways to protect or celebrate cultural heritage within the site.
- Acknowledge the historical ownership and use of land (even in urban areas, if relevant).
- Identify ways to positively improve the environment on and near a project site, or in another area traditionally owned by indigenous peoples (e.g., consider whether the company can help to clear waterways, clear rubbish and reestablish vegetation).
- Invest in capacity building among indigenous peoples. Partner with or support learning networks and projects to train indigenous people in resource management, technology, and money

markets to increase understanding of the impact of development and integrate traditional and foreign management techniques in an optimal fashion.

- Support the development of indigenous peoples' capacity to enact culturally encoded land and natural resource management practices. Foster multi-stakeholder partnerships and co-management frameworks that support indigenous land and natural resource management initiatives on conservation estates.
- Invest in indigenous-controlled wilderness and wildlife conservancies as part of social responsibility initiatives.
- Support initiatives that record and build the body of local traditional ecological knowledge so this knowledge can be integrated into existing ecological and conservation research / management initiatives.
- Contribute to indigenous enterprises such as cooperative societies and to non-usurious credit facilities to increase indigenous-run development initiatives alongside foreign investment.

### Examples

#### ***Mining industry***

Many mining companies cooperatively manage environmental impacts with local indigenous communities.

As a specific example, a diamond company has a mine in a region with a significant number of heritage sites of importance to local indigenous peoples. After several years of negotiation, the company entered into a land use agreement with the indigenous peoples. Under the agreement, the indigenous peoples are recognized as the traditional owners and custodians of the land, and at the end of the mine's life the lease will be transferred to them at which time the company has agreed to support their claim for full legal title to the lands under national law. In the interim, the company provides financial benefits to the traditional owners, which are indexed to the company's profits and put into trusts for long-term employment, education, business development and community development initiatives in the region. A relationship committee manages the agreement and the relationship between the company and indigenous peoples.

#### ***Investment in the surrounding community***

A mining company entered into an agreement with local indigenous peoples to create a trust for profit sharing with the community, prioritizing training and employment of indigenous workers and promoted the use of indigenous businesses in mine-related contracts. The agreement also set up a dispute resolution forum and environmental management rules for the mine and adjacent lands.

#### ***Conservation training***

One mining company has established an indigenous cadetship programme at one of its sites, after local indigenous peoples asked to become more involved in the management of the land and resources. The programme provides conservation training and work experience to local indigenous peoples.

#### ***Supply chain compliance***

An international manufacturer has pledged to only source wood and wood pulp from sustainable and responsible suppliers who are held to a code of conduct that requires ecologically sustainable harvesting practices and prohibits infringement upon the land and forest access rights of indigenous peoples.

#### ***Preservation of biodiversity***

An international cosmetics company works with suppliers and buyers to maintain biodiversity in the Amazon rainforest, home to many of the region's indigenous communities.

## **Tourism industry**

A global cruise line has pledged its commitment to promoting sustainable tourism at its destination ports. The company trains employees and educates passengers on ways to be environmentally and socially conscious in the communities where its ships dock, including in indigenous communities. The company particularly emphasizes protection of natural life and of biodiversity in these areas, in order to promote sustainable development and community health and sustenance.

## **Benefit sharing**

As part of its land-use agreement with an Alaskan tribe to maintain a natural gas pipeline through its territory, a transnational fuel company provides gas to the community at no charge, which dramatically lowers heating costs for residents while reducing the community's ongoing GHG emissions.

## **Further resources**

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Sawyer, Suzanne and Terence Gomez, Edmund, 2008, *Transnational Governmentality and Resource Extraction: Indigenous Peoples, Multinational Corporations, Multilateral Institutions and the State*, <http://www.un.org/esa/socdev/unpfii/documents/TransnationalGovernmentalityandResourceExtraction.pdf>

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UN Permanent Forum on Indigenous Issues, 2011, *Report on the tenth session (May 16-27, 2011)*, [http://www.un.org/esa/socdev/unpfii/documents/session\\_10\\_report\\_EN.pdf](http://www.un.org/esa/socdev/unpfii/documents/session_10_report_EN.pdf)

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## Article 30

### Military activities

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#### The right

Article 30 sets out a general prohibition on military activities taking place on indigenous peoples' lands or territories without their consent, or unless justified in the public interest. Where States propose to conduct military activities on indigenous peoples' lands, they must consult with relevant indigenous peoples before doing so.

Business is often involved in military activities (commonly through military contracting as suppliers of goods and services), and in such instances has a clear role to play in respecting and supporting the right set out in Article 30. In some cases, governments use military force to move indigenous peoples from their land to make way for business activities; there have also been instances of business hiring forces to clear indigenous peoples' from their land (the right of indigenous peoples not to be removed from their lands involuntarily is discussed in greater detail under Article 10). Further, conflicts linked to wider sociopolitical matters and contexts can be agitated by a business' presence even where the business is not involved in the conflict. Business must respect and support the rights of indigenous peoples' not to have military activities take place on their lands, and ensure that it is not directly or indirectly involved in or supportive of such military activities.

#### Suggested practical actions

##### *Respect*

- Take the key business actions set out in Part I (indigenous peoples' rights policy, human rights due diligence, consultation, consent seeking, grievance mechanism, remediation and monitoring and reporting).
- In cases where a State has violated or may violate the rights in Article 30, do not contract with the State to provide goods or services that would support military activities on indigenous lands. Make it known to the State why the company is not contracting with it.

##### *Support*

- Where a business works with States that conduct military activities on indigenous lands, consult with indigenous peoples to ensure that the group freely agreed to or requested the activities.
- Include peaceful and constructive conflict management approaches in business operating procedures, and adhere to them in addressing any conflict that directly or indirectly affects the business.
- When operating in conflict territories, ensure company operations do not directly or indirectly agitate tensions related to wider sociopolitical issues.

## Article 31: Cultural heritage and traditional knowledge

### The right

Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions (sometimes referred to as “cultural and intellectual property”). This right protects a broad range of matters, including expressions of traditional culture (e.g., writings, oral traditions and artworks) and inherited scientific knowledge, technology and natural resources (e.g., human remains, artefacts, landscapes and ecosystems, traditional medicines and other knowledge of plants and animals).

Cultural heritage and traditional knowledge are intimately connected to indigenous peoples’ identities and the survival of indigenous societies. The existence of, and ongoing relationship with, the natural world often underpins indigenous society.

Respect and support for this right protects indigenous people from misappropriation and despoliation of their heritage and knowledge, protects the indigenous peoples’ intellectual and natural wealth for the benefit of its members and the broader community and enables the maintenance and development of indigenous cultures, knowledge and societies. Unfortunately, there have been many instances of “biopiracy” (akin to theft of indigenous peoples’ intellectual property) – where companies commercialize products developed from natural resources, often based on indigenous knowledge but without the consent of, or benefits flowing back to, the relevant indigenous peoples.

The breadth of concepts included in this right (cultural heritage, traditional knowledge and traditional cultural expressions) means that existing, mainstream forms of legal protection of intellectual property, such as copyright and patents, are not only inadequate for the protection of this right but can be inherently unsuitable. For example, current intellectual property laws require specification of knowledge in sophisticated scientific terms, into which traditional indigenous knowledge is not always easily translated. Further, intellectual property laws function by limiting ownership, and providing value to an owner for sharing the information with the aim of encouraging further innovation. This structure itself is inconsistent with many indigenous cultures. By contrast, Article 31 contemplates a more holistic entitlement. Consistent with this, some states with large indigenous populations, such as the United States and Australia, have instituted distinct national schemes for the protection of indigenous heritage; however many have not. Business respect for this right (even in countries where national law provides no equivalent) is critical.

The **Convention on Biological Diversity (CBD)** is an international, legally binding treaty aimed at conserving biodiversity, ensuring its sustainable use, and fair and equitable sharing of benefits arising from biodiversity resources. The CBD Global Platform on Business and Biodiversity provides various tools, guidance and case studies for business to support biodiversity, some of which also relate to working with indigenous peoples. For further information see [www.cbd.int](http://www.cbd.int) and [www.cbd.int/en/business/](http://www.cbd.int/en/business/)

The **World Intellectual Property Organization** also recognizes traditional knowledge, genetic resources and traditional cultural expressions as important assets of indigenous peoples. For WIPO resources on this topic, see <http://www.wipo.int/tk/en/>

#### Related standards

**Universal Declaration of Human Rights, Article 27** states that all people have the right to the protection of the moral and material interests of products of which he or she is the author.

**UNESCO Convention concerning the Protection of the World Cultural and Natural Heritage, Convention on the Protection and Promotion of the Diversity of Cultural Expressions, Convention for the Safeguarding of the Intangible Cultural Heritage and Convention on the Protection of the Underwater Cultural Heritage** all contain provisions relating to the protection of cultural heritage.

## Suggested practical actions

### *Respect*

- Take the key business actions set out in Part I (indigenous peoples' rights policy, human rights due diligence, consultation, consent seeking, grievance mechanism, remediation and monitoring and reporting).
- Obtain consent before using any cultural or intellectual property. Do not apply for patents or assert copyright based on indigenous heritage materials without such consent. Ensure that any arrangements with indigenous peoples that relate to the use of any cultural or intellectual property grant them an equitable interest in the products ultimately produced that provides fair benefits (e.g., through compensation or royalties).
- Obtain consent before using images or names of indigenous peoples as part of logos, trademarks, trade names or in other company materials – particularly those that may be interpreted as disparaging or that promote stereotypes.
- For creative industries, ensure that you actively consult with, and seek the free, prior and informed consent of indigenous peoples whose societies or artefacts may be portrayed or displayed in productions or exhibitions.
- For manufacturers of consumer items, refrain from manufacturing items wholly appropriating native motifs and themes or replicas of native products, out of context and without permission.
- For pharmaceutical or technology companies, develop cooperative arrangements for knowledge transfer that do not destroy landscapes, flora or fauna local to indigenous peoples and which grant them an equitable interest, including compensation or royalties, in the products ultimately produced.

### *Support*

- Partner with or support indigenous peoples' projects to protect and promote their cultural heritage as part of the business' social responsibility programmes (e.g., databases or "native" trademark initiatives and preservation of artefacts). If no such projects exist in the relevant area, consider ways to build the capacity of indigenous peoples to protect and develop their cultural heritage and traditional knowledge.
- Establish programmes to learn, share and preserve traditional knowledge.
- Develop voluntary, proactive and collaborative management approaches that enable indigenous peoples to access resource sector owned leases / lands for the purpose of practicing traditional economic, cultural, spiritual activity and to maintain cultural heritage
- Foster collaborative research partnerships that support the collation and preservation of traditional ecological, cultural and heritage knowledge.

## Examples

### *Pharmaceutical Industry*

Rather than engage in biopiracy, some pharmaceutical companies have employed equitable benefit sharing arrangements with indigenous peoples that both promote the progress of science for the general public and respect the heritage of indigenous peoples.

One particular company works with a number of indigenous communities, who share their traditional knowledge of rainforest plants' health benefits and provide plants to the company, from which it develops herbal supplements, skin care and other products. In return, a percentage of profits is returned to indigenous communities including through education and scholarships, medical supplies, boats, communication and other equipment. The company also supports the communities

with commercializing and trading their handicrafts. Further, the company supports the communities with legal claims in relation to, and efforts to protect, the rainforest.

### ***Film Industry and Respect for Sacred Places***

A film director wanted to use footage of a mountain that was sacred to local indigenous peoples, so much so that some refrain from drawing or even looking at its peak. The director engaged with the indigenous peoples to understand their position, and agreed to film the mountain from adjacent land and then used CGI effects to make it unrecognizable.

### ***Traditional knowledge workshops***

A mining company conducts 'traditional knowledge workshops' at which indigenous peoples demonstrate and share knowledge about traditional practices and arts. The company has hired film crews and photographers to create a documentary, with the aim of promoting and preserving the traditional knowledge for the future.

# **Identity, institutions and relations**

## Articles 34 and 35

### Development and maintenance of institutional structures and customs

#### The right

Article 34 sets out the right of indigenous peoples to promote, develop and maintain their own institutional structures, customs, traditions, spirituality, procedures and practices and systems of cultural expression that sustain the cultural identities of indigenous peoples. Article 34 also establishes the right of indigenous peoples to promote, develop and maintain any of their laws and legal systems, in accordance with international human rights standards.

The survival of indigenous customs are at risk without coherent and informed state and private policies towards indigenous peoples generally, and indigenous traditional practices and structures in particular. Loss of territories, destruction of ecosystems, restrictions on nomadic ways of life, discriminatory policies, lack of respect for communities living in voluntary isolation and a lack of recognition of indigenous traditional customs and institutions have all threatened the promotion and protection of indigenous knowledge and practices.<sup>40</sup>

The rights set out in Article 35 also recognize and support the notion that respect for indigenous structures and practices contributes to the sustainable and equitable management of the environment and the promotion of diversity and richness of civilizations. Indigenous peoples are the primary source of information about their cultures and how they are best preserved and promoted. Accordingly, it is vital that indigenous peoples take a lead role in identifying, and developing processes for protecting, important cultural places, structures and values. These rights also relate to the process for achieving free, prior and informed consent, which must respect indigenous institutional structures.

#### Related standards

***ILO Convention 169, Articles 1, 8 and 9*** declares the right of indigenous peoples to maintain and develop their political, economic and social institutions, and to protect their traditions and customs. The Convention also declares that the customs of indigenous peoples in regard to penal matters shall be taken into consideration by the authorities and courts.

#### Suggested practical actions

##### Respect

- Take the key business actions set out in Part I (indigenous peoples' rights policy, human rights due diligence, consultation, consent seeking, grievance mechanism, remediation and monitoring and reporting).
- Develop a cultural awareness and cultural competency education programme for local employees working with indigenous peoples or in areas traditionally owned, occupied or used by indigenous peoples.
- Allow indigenous peoples access to places for ceremonies or other practices, and to traditional resources including plants and waters so that they may maintain cultural activities.

<sup>40</sup> UN Department of Economic and Social Affairs, 2009, *State of the World's Indigenous Peoples*, [http://www.un.org/esa/socdev/unpfii/documents/SOWIP\\_web.pdf](http://www.un.org/esa/socdev/unpfii/documents/SOWIP_web.pdf)

### **Support**

- Where possible, support existing development, political, economic and social institutions (rather than establishing new ones).
- Invest in community education, health and employment programmes.
- Collaboratively consider, support and foster both traditional and mainstream economic activities and employment pathways for indigenous communities, recognizing that sustainable employment and economic development initiatives in remote / regional indigenous communities will often require hybrid solutions.
- Offer to safely remove and store cultural material from the project site until the project is completed, at which time return it to the indigenous peoples.
- Repair or restore historic structures
- Develop voluntary, proactive and collaborative management approaches that enable indigenous peoples to access resource sector owned leases / lands for the purpose of practicing traditional economic, cultural, spiritual activity and to maintain cultural heritage.

### **Examples**

#### ***Preservation of customary subsistence practices***

An international petroleum company developed a programme in partnership with indigenous communities at one of its drilling sites to protect native marine life in the case of an oil spill, with the aim of preserving the customary subsistence practices and economic institutions of the communities.

#### ***Mining industry***

Some mining companies develop Land Use and Participation Agreements where a portion of revenues (or a payment per unit of output) are put into trusts for long-term employment, education and business development in the region and to fund more immediate community development initiatives. Relationship Committees are also established between the indigenous peoples and company representatives to monitor and implement the Agreement and to review the management of land rights, land management, indigenous peoples' site protection, income generation, and employment opportunities.

## Articles 36 and 37

### International relations: borders and treaties

#### The rights

Articles 36 and 37 set out rights indigenous peoples have regarding international relations, both within their communities as well as their communities' relationships with governments.

Article 36 recognizes that indigenous communities may not live entirely within the boundaries of a single modern day State, but instead may live across borders. Article 36 affirms that indigenous peoples, in particular those divided by international borders, have the right to maintain and develop contacts, relations, and cooperation both with their own peoples as well as with other peoples, which is critical to the ability to maintain their communities and cultures. These contacts, relations, and cooperation include, but are not limited to, activities for spiritual, cultural, political, economic, and social purposes. States have a positive duty to take effective measures to facilitate this right, in consultation with the indigenous peoples. Businesses causing, contributing to or otherwise linked to impacts on or near territories occupied by indigenous peoples who may be divided by international borders must ensure that its activities do not impact the indigenous peoples' ability to carry out any cross-border contact, relations and cooperation (e.g., because the location of activities interferes with the routes used by indigenous peoples).

Article 37 recognizes that while indigenous peoples may not have their own internationally-recognized government, the group can still enter into agreements with States and those agreements are binding on such States. There are unfortunately many instances where States have entered into treaties with indigenous peoples and not honoured their obligations; Article 37 affirms the right of indigenous peoples to recognition, observance, and enforcement of treaties, agreements, and arrangements concluded with States and their successors. It further requires States to honour and respect such treaties, agreements, and arrangements. Business should seek to identify whether its activities may be contrary to a treaty or other agreement or arrangement between indigenous peoples and government; for example, a government may grant a licence or permit to undertake activity in contravention of a treaty obligation that the government has to indigenous peoples. Business should ensure that it conducts appropriate due diligence and impact assessment, including engagement with relevant indigenous peoples, to identify any treaties, agreements or arrangements between indigenous peoples and government, and should respect the rights of indigenous peoples in such treaties, agreements or arrangements even where the government does not do so.

#### Related standards

*ILO Convention 169, Article 32* also requires governments to take appropriate measures to facilitate cross-border contact and cooperation between indigenous and tribal peoples.

#### Suggested practical actions

##### Respect

- Take the key business actions set out in Part I (indigenous peoples' rights policy, human rights due diligence, consultation, consent seeking, grievance mechanism, remediation and monitoring and reporting).
- Ensure domestic and international projects do not interfere with indigenous peoples' right to maintain and develop contacts across international borders, both with their own members and with other peoples. Where a project could interfere with a group's contacts and communications, receive its informed consent for the project and, once granted, work with the group to establish alternatives for the duration of the project.

- Respect all treaties, agreements, and other arrangements indigenous peoples have entered into, as well as those their States may have entered into. Consider these treaties, agreements, and arrangements to have the full force of law as any other international treaty or agreement.
- When entering into an agreement with a foreign host-government (such as a contract relating to an investment or a business agreement with that government), consult with any indigenous groups that may be affected by that business or agreement. Seek the group's consent and enter into a parallel agreement with the indigenous groups.
- In cases where a State is not recognizing, observing, or enforcing a treaty, agreement, or other arrangement with indigenous peoples, do not conduct business activities or support activities that may in anyway further the State's disregard for the treaty, agreement, or arrangement. Make it known to the government why the business is not proceeding with the proposed activities.
- Where a project could impact indigenous peoples across borders, support the maintenance and development of contacts, relations, and cooperation between them.

### ***Support***

- Partner with or support indigenous peoples' groups or NGOs providing outreach about indigenous peoples' rights under Articles 36-37.

# Implementing UNDRIP

## Article 38

### States' obligation to implement UNDRIP

#### The right

Article 38 requires States to take appropriate measures (including legislation), in consultation and cooperation with indigenous peoples, to achieve the aims of the UNDRIP.

States have a key role to play in achieving the ends of the UNDRIP, including in relation to the regulation of businesses. State actions to safeguard indigenous peoples' rights can include legislation, publishing guidelines for development cooperation and engagement with indigenous populations to avoid exploitation and foster mutually beneficial relationships.

As stated in the preamble to the UNDRIP, States are encouraged "to comply with and effectively implement all their obligations as they apply to indigenous peoples under international instruments, in particular those related to human rights, in consultation and cooperation with the peoples concerned. This highlights the mutually reinforcing nature of the UNDRIP and other existing international instruments, including ILO Convention 169 on Indigenous and Tribal Peoples.

At a minimum, businesses must, consistent with the Guiding Principles, respect internationally-recognized rights, including those set out in the UNDRIP, ILO Convention 169 on Indigenous and Tribal Peoples, the International Bill of Rights and the core ILO conventions and applicable legislation relating to indigenous peoples' rights. Businesses can support other State-initiated programmes and commit to higher voluntary guidelines and standards. They can also engage in public policy debate to encourage States to take the necessary steps to protect indigenous peoples' rights.

#### Related standards

*ILO Convention 169, Article 2* puts States under an international obligation to take actions for the full realization of the social, economic and cultural rights of indigenous peoples with respect for their social and cultural identity, their customs and traditions and their institutions. *Article 4* requires States to adopt special measures to protect the persons, institutions, property, labour, cultures and environment of indigenous peoples.

#### Suggested practical actions

##### Respect

- Take the key business actions set out in Part I (indigenous peoples' rights policy, human rights due diligence, consultation, consent seeking, grievance mechanism, remediation and monitoring and reporting).
- Familiarize employees and business partners with the international standards and existing domestic legal framework as it applies to engaging with indigenous peoples and adhere to such standards.

##### Support

- Engage in public policy discussions in relation to indigenous peoples' rights to encourage the development of policies, legislation and regulation that protect and advance the rights.

## Articles 39 and 40 Adjudication of conflicts and access to assistance

### The rights

Assistance, access and due process are necessary components to ensuring indigenous peoples are able to exercise and enjoy their rights.

Indigenous peoples are often marginalized members of society and therefore often do not have access to the resources, financial or otherwise, to protect or enforce their rights. Under Article 39, indigenous peoples have a right to receive from States the financial and technical support they need to understand, promote and achieve the rights set out in the UNDRIP.

Article 40 affirms the right of indigenous peoples to access just and fair procedures, prompt decisions and effective remedies, where there is a conflict or dispute with States or other parties in relation to an alleged infringement of the indigenous peoples' rights. The decision must give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned, as well as to international human rights.

#### Related standards

*Universal Declaration of Human Rights, Article 8* declares the right of all people to an effective remedy for any acts that violate the fundamental rights granted by the constitution or by law.

### Suggested practical actions

#### *Respect*

- Take the key business actions set out in Part I (indigenous peoples' rights policy, human rights due diligence, consultation, consent seeking, grievance mechanism, remediation and monitoring and reporting).

#### *Support*

- Support indigenous peoples to gain independent financial and technical assistance and advice to enable them to understand, promote and enforce their rights.

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**Articles 41 and 42**  
**Promotion of the rights**

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**The rights**

Articles 41 and 42 are a “call to action” for States, intergovernmental organizations and UN agencies to contribute to the realization of the provisions of the UNDRIP and to promote and apply respect for the rights set out in the UNDRIP.

Businesses may be partner with UN agencies, inter-governmental or governmental organizations in efforts which facilitate implementation of the aims of the UNDRIP.

**Suggested practical actions****Respect**

- Take the key business actions set out in Part I (indigenous peoples’ rights policy, human rights due diligence, consultation, consent seeking, grievance mechanism, remediation and monitoring and reporting).

**Support**

- Engage in public policy discussions in relation to indigenous peoples’ rights to encourage the development of policies, legislation and regulation that protects and advances the rights.
- Become a signatory to the UN Global Compact and take immediate practical actions to implement its principles with respect to human rights (including indigenous peoples’ rights), labour, environment and anti-corruption. Submit to means of public accountability and transparency by making such actions public through annual submissions of the “Communication on Progress” as required for participation.
- Provide financial support to UN Inter-agencies initiatives focused on the implementation of UNDRIP at the country level, including for example the United Nations Indigenous Peoples Partnership (UNIPP) established by the ILO, OHCHR, UNDP, UNICEF and UNFPA.

**Examples*****United Nations Indigenous Peoples’ Partnership (“UNIPP”)***

UNIPP seeks to facilitate the implementation of international standards on indigenous peoples, in particular UNDRIP and ILO Convention concerning indigenous and tribal peoples in independent countries (ILO Convention 169). The initiative seeks to enable dialogue and understanding between indigenous peoples, governments, civil society and business through partnership. UNIPP has established a multi-partner trust fund to mobilize and manage resources to implement its strategic policies.<sup>41</sup>

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<sup>41</sup> For further information, see [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---normes/documents/publication/wcms\\_186285.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_186285.pdf) and <http://mptf.undp.org/factsheet/fund/IPP00>

**Article 43**  
**UNDRIP as minimum standards**

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**The right**

Article 43 provides that the rights recognized in the UNDRIP are the minimum standards required for indigenous peoples' survival, dignity and well-being. This provision recognizes that there are many circumstances in which higher standards are required. In their engagement with indigenous peoples, businesses should ensure that they respect the rights set out in UNDRIP, and consider whether further action is required in order to ensure the survival, dignity and well-being of the relevant indigenous peoples.

As discussed in Part I, all businesses are required, at a minimum, to respect indigenous peoples' rights including those set out in the UNDRIP. Businesses are also encouraged to take voluntary actions to promote and advance indigenous peoples' rights, including through core business activities, strategic social investments, philanthropy, advocacy and public policy engagement, and partnership and collective action. Such activities should be undertaken in collaboration with relevant indigenous communities.

**Suggested practical actions*****Respect***

- Take the key business actions set out in Part I (indigenous peoples' rights policy, human rights due diligence, consultation, consent seeking, grievance mechanism, remediation and monitoring and reporting).

***Support***

- Engage in public policy discussions in relation to indigenous peoples' rights to encourage the development of policies, legislation and regulation that protect and advance the rights.
- Become a signatory to the UN Global Compact and take immediate practical actions to implement its principles with respect to human rights (including indigenous peoples' rights), labour, environment and anti-corruption.

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# Appendices

## Appendix A:

# UN Declaration on the Rights of Indigenous Peoples

The General Assembly,

*Guided* by the purposes and principles of the Charter of the United Nations, and good faith in the fulfilment of the obligations assumed by States in accordance with the Charter,

*Affirming* that indigenous peoples are equal to all other peoples, while recognizing the right of all peoples to be different, to consider themselves different, and to be respected as such,

*Affirming also* that all peoples contribute to the diversity and richness of civilizations and cultures, which constitute the common heritage of humankind,

*Affirming further* that all doctrines, policies and practices based on or advocating superiority of peoples or individuals on the basis of national origin or racial, religious, ethnic or cultural differences are racist, scientifically false, legally invalid, morally condemnable and socially unjust,

*Reaffirming* that indigenous peoples, in the exercise of their rights, should be free from discrimination of any kind,

*Concerned* that indigenous peoples have suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests,

*Recognizing* the urgent need to respect and promote the inherent rights of indigenous peoples which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies, especially their rights to their lands, territories and resources,

*Recognizing also* the urgent need to respect and promote the rights of indigenous peoples affirmed in treaties, agreements and other constructive arrangements with States,

*Welcoming* the fact that indigenous peoples are organizing themselves for political, economic, social and cultural enhancement and in order to bring to an end all forms of discrimination and oppression wherever they occur,

*Convinced* that control by indigenous peoples over developments affecting them and their lands, territories and resources will enable them to maintain and strengthen their institutions, cultures and traditions, and to promote their development in accordance with their aspirations and needs,

*Recognizing* that respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment,

*Emphasizing* the contribution of the demilitarization of the lands and territories of indigenous peoples to peace,

economic and social progress and development, understanding and friendly relations among nations and peoples of the world,

*Recognizing in particular* the right of indigenous families and communities to retain shared responsibility for the upbringing, training, education and well-being of their children, consistent with the rights of the child,

*Considering* that the rights affirmed in treaties, agreements and other constructive arrangements between States and indigenous peoples are, in some situations, matters of international concern, interest, responsibility and character,

*Considering also* that treaties, agreements and other constructive arrangements, and the relationship they represent, are the basis for a strengthened partnership between indigenous peoples and States,

*Acknowledging* that the Charter of the United Nations, the International Covenant on Economic, Social and Cultural Rights<sup>2</sup> and the International Covenant on Civil and Political Rights,<sup>2</sup> as well as the Vienna Declaration and Programme of Action,<sup>3</sup> affirm the fundamental importance of the right to self-determination of all peoples, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development,

*Bearing in mind* that nothing in this Declaration may be used to deny any peoples their right to self-determination, exercised in conformity with international law,

*Convinced* that the recognition of the rights of indigenous peoples in this Declaration will enhance harmonious and cooperative relations between the State and indigenous peoples, based on principles of justice, democracy, respect for human rights, non-discrimination and good faith,

*Encouraging* States to comply with and effectively implement all their obligations as they apply to indigenous peoples under international instruments, in particular those related to human rights, in consultation and cooperation with the peoples concerned,

*Emphasizing* that the United Nations has an important and continuing role to play in promoting and protecting the rights of indigenous peoples,

*Believing* that this Declaration is a further important step forward for the recognition, promotion and protection of the rights and freedoms of indigenous peoples and in the development of relevant activities of the United Nations system in this field,

*Recognizing and reaffirming* that indigenous individuals are entitled without discrimination to all human rights recognized in international law, and that indigenous peoples possess collective rights which are indispensable for their existence, well-being and integral development as peoples,

*Recognizing* that the situation of indigenous peoples varies from region to region and from country to country and that the significance of national and regional particularities and various historical and cultural backgrounds should be taken into consideration,

*Solemnly proclaims* the following United Nations Declaration on the Rights of Indigenous Peoples as a standard of achievement to be pursued in a spirit of partnership and mutual respect:

## **Article 1**

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<sup>4</sup> and international human rights law.

## **Article 2**

Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

## **Article 3**

Indigenous 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.

## **Article 4**

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

## **Article 5**

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

## **Article 6**

Every indigenous individual has the right to a nationality.

## **Article 7**

1. Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person.

2. Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.

## **Article 8**

1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.

2. States shall provide effective mechanisms for prevention of, and redress for:

(a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;

(b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;

(c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;

(d) Any form of forced assimilation or integration;

(e) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.

## **Article 9**

Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right.

## **Article 10**

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

## **Article 11**

1. Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.

2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

## **Article 12**

1. Indigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.

2. States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned.

## **Article 13**

1. Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems

and literatures, and to designate and retain their own names for communities, places and persons.

2. States shall take effective measures to ensure that this right is protected and also to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.

#### **Article 14**

1. Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.

2. Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination.

3. States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.

#### **Article 15**

1. Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information.

2. States shall take effective measures, in consultation and cooperation with the indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all other segments of society.

#### **Article 16**

1. Indigenous peoples have the right to establish their own media in their own languages and to have access to all forms of non-indigenous media without discrimination.

2. States shall take effective measures to ensure that State-owned media duly reflect indigenous cultural diversity. States, without prejudice to ensuring full freedom of expression, should encourage privately owned media to adequately reflect indigenous cultural diversity.

#### **Article 17**

1. Indigenous individuals and peoples have the right to enjoy fully all rights established under applicable international and domestic labour law.

2. States shall in consultation and cooperation with indigenous peoples take specific measures to protect indigenous children from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development, taking into account their special vulnerability and the importance of education for their empowerment.

3. Indigenous individuals have the right not to be subjected to any discriminatory conditions of labour and, *inter alia*, employment or salary.

#### **Article 18**

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

#### **Article 19**

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

#### **Article 20**

1. Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.

2. Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.

#### **Article 21**

1. Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, *inter alia*, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.

2. States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.

#### **Article 22**

1. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration.

2. States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.

#### **Article 23**

Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

## **Article 24**

1. Indigenous peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals. Indigenous individuals also have the right to access, without any discrimination, to all social and health services.

2. Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realization of this right.

## **Article 25**

Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

## **Article 26**

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.

2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.

3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

## **Article 27**

States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

## **Article 28**

1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.

2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.

## **Article 29**

1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.

2. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.

3. States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.

## **Article 30**

1. Military activities shall not take place in the lands or territories of indigenous peoples, unless justified by a relevant public interest or otherwise freely agreed with or requested by the indigenous peoples concerned.

2. States shall undertake effective consultations with the indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, prior to using their lands or territories for military activities.

## **Article 31**

1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.

2. In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.

## **Article 32**

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.

2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

## **Article 33**

1. Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.

2. Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.

## **Article 34**

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

## **Article 35**

Indigenous peoples have the right to determine the responsibilities of individuals to their communities.

## **Article 36**

1. Indigenous peoples, in particular those divided by international borders, have the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with their own members as well as other peoples across borders.

2. States, in consultation and cooperation with indigenous peoples, shall take effective measures to facilitate the exercise and ensure the implementation of this right.

## **Article 37**

1. Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honour and respect such treaties, agreements and other constructive arrangements.

2. Nothing in this Declaration may be interpreted as diminishing or eliminating the rights of indigenous peoples contained in treaties, agreements and other constructive arrangements.

## **Article 38**

States, in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration.

## **Article 39**

Indigenous peoples have the right to have access to financial and technical assistance from States and through international cooperation, for the enjoyment of the rights contained in this Declaration.

## **Article 40**

Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all

infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.

## **Article 41**

The organs and specialized agencies of the United Nations system and other intergovernmental organizations shall contribute to the full realization of the provisions of this Declaration through the mobilization, inter alia, of financial cooperation and technical assistance. Ways and means of ensuring participation of indigenous peoples on issues affecting them shall be established.

## **Article 42**

The United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialized agencies, including at the country level, and States shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration.

## **Article 43**

The rights recognized herein constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world.

## **Article 44**

All the rights and freedoms recognized herein are equally guaranteed to male and female indigenous individuals.

## **Article 45**

Nothing in this Declaration may be construed as diminishing or extinguishing the rights indigenous peoples have now or may acquire in the future.

## **Article 46**

1. Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.

2. In the exercise of the rights enunciated in the present Declaration, human rights and fundamental freedoms of all shall be respected. The exercise of the rights set forth in this Declaration shall be subject only to such limitations as are determined by law and in accordance with international human rights obligations. Any such limitations shall be non-discriminatory and strictly necessary solely for the purpose of securing due recognition and respect for the rights and freedoms of others and for meeting the just and most compelling requirements of a democratic society.

3. The provisions set forth in this Declaration shall be interpreted in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith.

## Appendix B: The Principles of the UN Global Compact

The UN Global Compact calls on business leaders to embrace and enact the following set of universal principles within their sphere of influence.

### ***HUMAN RIGHTS***

- Principle 1 Businesses should support and respect the protection of internationally proclaimed human rights; and  
Principle 2 make sure that they are not complicit in human rights abuses.

### ***LABOUR***

- Principle 3 Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining;  
Principle 4 the elimination of all forms of forced and compulsory labour;  
Principle 5 the effective abolition of child labour; and  
Principle 6 the elimination of discrimination in respect of employment and occupation.

### ***ENVIRONMENT***

- Principle 7 Businesses are asked to support a precautionary approach to environmental challenges;  
Principle 8 undertake initiatives to promote greater environmental responsibility; and  
Principle 9 encourage the development and diffusion of environmentally friendly technologies.

### ***ANTI-CORRUPTION***

- Principle 10 Businesses should work against corruption in all its forms, including extortion and bribery.