




# **THE RESPONSIBILITIES OF INDUSTRY WITH RESPECT TO THE HUMAN RIGHTS OF INDIGENOUS PEOPLES**

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THE SITUATION OF THE HUMAN RIGHTS AND FUNDAMENTAL  
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## RUGGIE FRAMEWORK FOR BUSINESS AND HUMAN RIGHTS

- The State duty to protect (against human rights abuses by non-State actors, including businesses, affecting persons within their territory or jurisdiction)
- Corporate responsibility to respect human rights (in accordance with national and international standards) – reinforced by, e.g., The Global Compact
- Access to remedies (access to formal judicial systems and non-judicial grievance mechanisms from company level up through national and international levels)



## COMPANY RESPONSIBILITY TO RESPECT HUMAN RIGHTS

- Global Compact Principles
  - Responsibility to support and act in accordance with human rights standards
  - Responsibility to avoid complicity in human rights abuses by government or other actors
- Sphere of influence: Responsibility extends to : a) where the company's activities or relationships have an impact; and b) wherever a company has leverage over other actors that may cause harm to human rights
- Due diligence: a company must take steps to become aware of, prevent and address adverse human rights impacts. Requires awareness of company's sphere of influence, relevant human rights standards, any human rights impacts of company activity, and potential for complicity in human rights infractions by others.
- Companies operating in proximity to indigenous peoples should ensure that they do not themselves infringe the human rights of affected communities or contribute to any act or omission on the part of the State that does so.



## THE HUMAN RIGHTS OF INDIGENOUS PEOPLES

International instruments specific to indigenous peoples: UN Declaration on the Rights of Indigenous Peoples, ILO No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries.

Also, other human rights instruments as interpreted by UN treaty bodies and the Inter-American Commission and Inter-American Court of Human Rights

- Individual and collective rights
- Non-Discrimination
- Self-Determination as “peoples”
- Cultural Integrity
- Rights to lands, territories and natural resources
- Rights of consultation
- Culturally appropriate development



## THE HUMAN RIGHTS OF INDIGENOUS PEOPLES

### UN Declaration on the Rights of Indigenous Peoples

#### Preamble paragraphs

*“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...

*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...”





## PRINCIPLES TO GUIDE DEVELOPMENT PROJECTS IN INDIGENOUS TERRITORIES

- Development respectful of culture and identity
- Development consistent with indigenous peoples' own cultural norms, values, aspirations and development goals
- Respect for indigenous self-determination: implies that any development project on indigenous lands be based on a real equitable partnership between indigenous peoples, states, companies



## INDIGENOUS COLLECTIVE LAND AND NATURAL RESOURCE RIGHTS

### UN Declaration on the Rights of Indigenous Peoples

#### Art. 26

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



## INDIGENOUS COLLECTIVE LAND AND NATURAL RESOURCE RIGHTS

### ILO Convention No. 169

#### Art. 14

“(1) The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognized. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect.

(2) Governments shall take steps as necessary to identify the lands which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession.

(3) Adequate procedures shall be established within the national legal system to resolve land claims by the peoples concerned.”





## THE DUTY OF STATES TO CONSULT

### UN Declaration on the Rights of Indigenous Peoples

#### Art. 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.”

#### Art. 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.”



## THE DUTY OF STATES TO CONSULT

### ILO Convention No. 169 on Indigenous and Tribal Peoples

#### Art. 6

“(2) The consultations ... shall be undertaken, in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures.”

**Duty to consult is corollary of universally accepted human rights including cultural integrity, equality, right to property and self-determination.**



## ELEMENTS OF DUTY TO CONSULT: STATE OBLIGATIONS THAT CORPORATIONS MUST BE AWARE OF

- Duty applies whenever a State decision, development activity or other measure may affect indigenous peoples' rights or interests, even when those interests do not correspond to an already recognized right to land or other legal entitlement
- Consultation process must respect indigenous peoples' own institutions of representation and decision-making
- Consultations as negotiations *prior* to the decisions on proposed measures
- Indigenous peoples must be provided with full and objective information about all aspects of the project, including studies on environmental and social impacts, that must be presented at early stages of the consultation
- Obtaining indigenous peoples' consent should be an objective of the consultations – free, prior and informed consent
- States must ensure arrangements in which indigenous peoples have the financial, technical and other assistance they need, without using such assistance to leverage or influence indigenous positions in the consultations
- Project proposals under discussion must be in conformity with the full range of applicable individual and collective rights of indigenous peoples



## ELEMENTS OF A NEGOTIATED AGREEMENT RESULTING FROM CONSULTATION

- Clear definition of the indigenous land and natural resource rights implicated in the proposed project, and appropriate arrangements to respect or protect those rights
- Mitigation measures, including compensation when appropriate, for any adverse impacts on the living conditions of the affected people such as impacts on the environment and natural resources, subsistence activities or cultural and spiritual practices
- Participation of indigenous peoples in the proposed project as real partners
- Equitable benefit-sharing, including economic benefits derived from the project