

# Rights of indigenous peoples

---

According to Art. 1 of the ILO [Indigenous and Tribal Peoples Convention, 1989 \(No. 169\)](#), indigenous peoples are “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”.

A fundamental criterion for determining whether someone is indigenous is self-identification as indigenous. The criteria outlined in international law for identifying indigenous peoples mean that groups that display all or some of those criteria can be treated as indigenous for the purpose of safeguarding their rights, regardless of whether a national government has or has not recognised them as such.



▼ Read more

The two main instruments that explicitly define indigenous peoples' rights under international law are the [UN Declaration on the Rights of Indigenous Peoples \(UNDRIP\)](#) and [ILO Convention No. 169](#). Indigenous peoples' rights are also embedded in, and constitute an integral element of, the broader international human rights regime. These instruments and policies to promote and respect indigenous peoples' rights are intended to address the disadvantaged position of indigenous peoples and to ensure effective equality between indigenous peoples and all other sectors of a given society.



There are over 370 million indigenous people in the world, and while they only amount to around 5% of the world population they represent 15% of the world's poorest people. While indigenous peoples may have a lot of cultural, social and political differences, indigenous peoples from all over the world have faced and continue to face common issues and threats to the protection of their rights as distinct groups. Indigenous peoples are heavily dependent on their lands, territories and natural resources for their basic needs and livelihoods and are one of the most vulnerable groups when it comes to negative impacts of business activities.

Big infrastructure projects, investments in extractive industries and large-scale agriculture are increasingly posing a threat to the rights of indigenous peoples and their ability to maintain their lands, livelihoods and cultures. Such projects often pose a threat to indigenous peoples' right to self-determination. Projects that are frequently the source of these threats include, for example, mines, dams, highways, plantations and logging activities.

Often, indigenous peoples are not involved in the planning of the project or in the decisions that risk impacting their lives and rights. If and when indigenous peoples are somehow involved in project development, it often happens at a late stage when damage has already been caused and/or the communities are not allowed sufficient time to make decisions. The risks are significant since project-affected indigenous peoples risk permanently losing their livelihoods and cultures, and [may be resettled without adequate compensation or adequate quality and status of land to enable their means of livelihood](#).

According to both the UNDRIP and ILO Convention No. 169, indigenous peoples have the right to determine their own development. This, in turn, gives rise to interrelated rights to **consultation and participation** with the objective of obtaining **consent** from indigenous peoples to measures proposed by the state. Policies and projects are regularly defined without the participation of indigenous peoples, so they may therefore be incompatible or conflicting with indigenous peoples' aspirations or real needs in relation to development. In the worst-case scenario, a project may constitute a violation of indigenous peoples' rights from the outset, in relation to, for example, lands or to adequate consultation processes.

When engaging with indigenous peoples, companies must consult in good faith with the peoples concerned, through appropriate procedures and through indigenous peoples' own representative institutions, with a view to achieving consent. In line with the requirement for free, prior and informed consent, it is important that indigenous peoples are able to propose or withhold consent to projects that will have adverse impacts on their communities. [They must be able to do so without fear of reprisals or acts of violence and be free from undue pressures to accept or enter into consultations](#). Corporate policies in relation to land rights sometimes state that consent is only required when projects are likely to have "significant adverse impacts" (or similar). This is not considered good practice since it indirectly makes the claim that there are many situations when consent is not needed.

Both ILO Convention No. 169 (Art. 16) and UNDRIP (Art. 8[2] and 10) recognise the right of indigenous peoples to ownership and possession of land and the resources pertaining to that land, and they stipulate that indigenous peoples shall participate in the benefits of development activities that affect their lands and territories, and receive fair compensation for any damages, which they may sustain as a result of such activities.

Therefore, consultations should be based on full disclosure of information about both positive and negative potential impacts of the project, including possible mitigation measures and potential benefits. Companies should consider the rights of indigenous peoples and corresponding appropriate measures in respect of screening, impact assessments, and implementation and monitoring of projects, and related ongoing dialogue and consultation mechanisms. Furthermore, any mitigating measures, and compensation and benefit-sharing mechanisms should also respect their rights.

▼ Links to SDGs and targets


Companies respecting indigenous peoples’ rights may contribute to the SDGs on ending poverty (SDG 1), combatting hunger (SDG 2) and life on land (SDG 15), among others.

When companies e.g. ensure free, prior and informed consent of indigenous peoples, and fairly compensate them for access to their lands and use of their resources if an agreement has been struck, they can contribute to ensure due recognition of the affected indigenous peoples’ ownership and control over land and natural resources (1.4).

Through appropriate land acquisition processes that consider both customary collective land use and ownership, and through consulting indigenous peoples through their legitimate representative institutions as well as with specific sectors of indigenous communities, including women, businesses can also contribute to targets on equal access to land (2.3) and control over land and other forms of property for women (5.a).







*These are merely examples of ways in which actions to respect the rights of indigenous peoples can contribute to certain SDGs and is not an exhaustive list of such links.*




Cases on Rights of indigenous peoples

Case brief	Goals	Targets	Due diligence
<p><b>Bank's policy on improper land acquisitions</b></p> <p>In 2014 the National Australia Bank (NAB) released a <a href="#">policy statement on improper land acquisitions</a>. The policy includes a commitment to not lend to companies where credible evidence exists that these companies have engaged in "improper land acquisition". It also requires companies whose operations include significant land acquisition, to which NAB provides financial advice and support, to prove by 2020 that they are respecting the land rights of local and indigenous communities. This includes seeking evidence of clients' application of free, prior and informed consent "when the project has the potential to have adverse impacts on affected communities of indigenous people".</p>	<div></div>	<div><div>1.1</div><div>1.4</div><div>12.2</div></div>	<div><div>Corporate commitment</div><div>Assessing impacts</div><div>Integrating and acting upon findings</div><div>Tracking and monitoring</div><div>Communicating and reporting</div><div>Stakeholder engagement</div></div>

For its own part, NAB has committed to engage and educate its own employees through training programmes around the issue of illegal land acquisition. NAB has also committed to engaging with relevant stakeholders, suppliers and customers in order to encourage good practice that respects and protects the land rights of potentially and actually impacted communities.

NAB additionally committed to annual public reports on the actions that the bank has taken to meet such standards. In its [2016 Progress Report](#), NAB reported that it had not identified any cases where credible evidence existed that its customer companies had engaged in improper land acquisition. It also reported that information on improper land acquisition was included in its training for credit managers and relevant bankers. Additionally, [NAB's 2017 Equator Principles Report](#) contains case studies that detail the bank’s social and environmental due diligence, including land management and indigenous peoples.

Case brief	Goals	Targets	Due diligence
<p><b>Corporation commits to respect community ownership</b></p> <p>The <a href="#">Red Dog Mine</a> in Alaska was <a href="#">developed in 1982</a> under an operating agreement between NANA Regional Corporation (NANA), an Alaska Native Corporation (ANC) owned by the Iñupiat people of Northwest Alaska, and Teck Alaska – Canada's largest diversified mining company. The agreement granted Teck exclusive rights to build and operate the Red Dog Mine and to market its metal production in exchange for royalties to NANA which owns the land on which the mine is located. Since the beginning of the agreement, NANA has kept approximately \$480 million of the total \$1.3 billion that has been produced in net proceeds from the mine. Additionally, over half of the Red Dog employees are Iñupiat. An advisory committee, with members drawn equally from both Teck and NANA, identifies opportunities to work towards the goal of 100% local employment.</p>	   	<div>1.4</div> <div>2.3</div> <div>11.1</div> <div>12.2</div>	<a href="#">Stakeholder engagement</a>
<p><b>Companies use their leverage for community and indigenous peoples' land rights</b></p> <p>The <a href="#">Interlaken Group</a> is a network of leaders from influential companies, investors, civil society organisations (CSOs), and government and international organisations, that seeks to increase the leverage of private sector actors to secure community land rights, with a <a href="#">particular focus on indigenous peoples</a>. From the private sector, representatives of, for example, Coca-Cola, Nestlé and Unilever count among the members of the group.</p> <p>One of its primary stated objectives is to "scale up efforts to secure community land rights and strengthen communities' ability to exercise their rights to govern and manage their lands and forests", especially those of indigenous peoples and women, by aligning their actions with the UN Voluntary Guidelines on the Responsible Governance of Tenure (VGGT), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and other international agreements securing tenure rights including the SDGs, the New York Declaration on Forests, and the Paris Climate Agreement. It has also has made an explicit commitment to FPIC. It publishes and disseminates tools and analysis related to land rights and commits to supporting companies and their investors to promote improved land governance and the land rights of rural people.</p> <p>Among other things, the Interlaken Group has published a guide called <a href="#">Respecting Land and Forest Rights</a> for companies that have already signed up to the VGGT.</p>	    	<div>1.4</div> <div>5.a</div> <div>12.2</div> <div>13.1</div> <div>15.1</div> <div>15.2</div> <div>15.3</div> <div>15.b</div>	<a href="#">Corporate commitment</a> <a href="#">Integrating and acting upon findings</a> <a href="#">Communicating and reporting</a> <a href="#">Stakeholder engagement</a>

Case brief	Goals	Targets	Due diligence
<p><b>Suppliers held accountable by company for community land rights</b></p> <p>In 2014 Nestlé released a <a href="#">Commitment on Land &amp; Land Rights in Agricultural Supply Chains</a> where it adopted a zero tolerance policy against land grabs and stated that it will hold its suppliers accountable for respecting community land rights. In order to achieve this goal, Nestlé aims to adhere to all national and international legal frameworks concerning land rights, to implement operational practices that manage and address illegal land acquisition, to establish grievance mechanisms for community members, engage with stakeholders to ensure that governments, communities, farmers, and other relevant groups are effectively cooperating with each other, and to issue regular progress reports on the matter. In the policy, Nestlé also commits to work with its suppliers to improve land rights wherever gaps are identified and to engage with stakeholders to improve access to land for men and women, communities and indigenous peoples.</p>	<div>    </div>	<div> <div>1.1</div> <div>1.4</div> <div>5.a</div> <div>12.2</div> </div>	<div> <div>Corporate commitment</div> <div>Assessing impacts</div> <div>Integrating and acting upon findings</div> <div>Tracking and monitoring</div> <div>Communicating and reporting</div> <div>Access to remedy</div> </div>

**DISCLAIMER***The case briefs featured on this site are not an endorsement of a particular company, their approach to human rights as such or their business model in general. Case briefs serve only as isolated illustrative examples for inspiration. The case briefs do not reflect all commitments or actions by any given company. In developing the case briefs DIHR has NOT evaluated the actual human rights and developmental outcomes or impacts of mentioned policies and activities. As such cases have been included for their ability to conceptually illustrate the link between human rights due diligence and sustainable development, not due to their verified impacts.*