

Selected Resources

Indigenous Peoples' Rights to Land, Forests and other Natural Resources (Territories)

This list of selected resources complements the respective documents on indigenous peoples and human rights, and on resource extraction and human rights.

Indigenous territorial rights, i.e. the rights to land, forests and other natural resources, are crucial for the realisation of their basic human rights and their continued existence and self-determined development.

Internationally, a number of conventions, standards and regimes cover aspects of indigenous territoriality in the following sectors or processes that have historically impinged on the rights of indigenous peoples.

Indigenous peoples' rights and protected area management (conservation)

Due to the detrimental impacts of protected areas on indigenous peoples in many parts of the world, rights-based approaches to protected area management have long been demanded by indigenous peoples and NGOs.

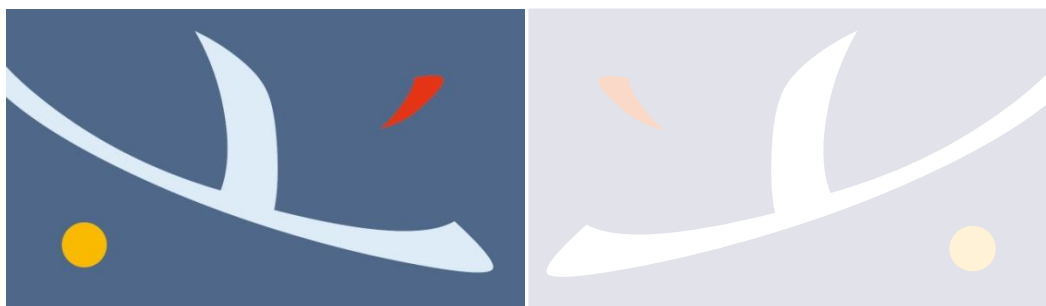
The **Conservation Initiative on Human Rights (CIHR)** is a consortium of eight international conservation organisations that seek to improve the practice of conservation by promoting the integration of human rights in conservation policy and practice. The rights of indigenous peoples are explicitly mentioned in the CIHR "**Conservation and Human Rights Framework**":

- http://cmsdata.iucn.org/downloads/cihr_framework_e_sept2010_1.pdf

Indigenous peoples' rights, the climate change regime and tropical forest management

In recent years, tropical forests have received significant attention at the international level. In the context of the UN Framework Convention on Climate Change (UNFCCC), the international and national REDD (Reduced Emissions from Deforestation and Forest Degradation) processes are seen as having both potential benefits and risks for forest-dependent indigenous peoples.

- General overview of REDD+: <http://www.un-redd.org/AboutREDD/tabid/582/Default.aspx>
- FAO (2013), Tenure of indigenous peoples territories and REDD+ as a forestry management incentive – the case of Mesoamerican countries: <http://www.fao.org/docrep/018/i2875e/i2875e00.htm>
- Union for the Conservation of Nature and Natural Resources (IUCN, 2010), Briefing document "Indigenous peoples and climate change/ REDD – an overview of current discussions and main issues": http://cmsdata.iucn.org/downloads/iucn_briefing_ips_and_redd_aug_2010_report_1.pdf
- IUCN (2010), Indigenous peoples and REDD-plus – challenges and opportunities for the engagement of indigenous peoples and local communities in REDD-plus: http://cmsdata.iucn.org/downloads/iucn_briefing_ips_and_redd_aug_2010_summary.pdf



- Study of the Office of the UN High Commissioner for Human Rights (OHCHR) on the relationship between climate change and human rights (A/HRC/10/61, 2009): <http://www.ohchr.org/EN/Issues/HRAndClimateChange/Pages/Study.aspx>
- International Council on Human Rights Policy (2008), Climate change and human rights - a rough guide: http://www.balticuniv.uu.se/index.php/component/docman/doc_download/109-climate-change-and-human-rights

There are two major interrelated trends to advance the rights of indigenous peoples, focusing on substantive and procedural rights, respectively: securing **indigenous peoples' tenure rights** and implementing the principle of **free, prior informed, consent** (FPIC).

Securing indigenous tenure rights in forest areas (focus: substantive rights)

In many parts of the world, forests have been declared public property without respecting the customary rights of their indigenous inhabitants. Approaches are now being developed on how to address this dilemma:

- Rainforest Foundation Norway (2012), Rights-based rainforest protection – why securing the rights of forest peoples is the right way to save the forest: <http://www.regnskog.no/languages/english/attachment/35433?ts=1399641d486>
- Rights and Resources Initiative (2012), What rights? A comparative analysis of developing countries' national legislation on community and indigenous peoples' forest tenure rights: http://www.rightsandresources.org/documents/files/doc_4924.pdf
- Rights and Resources Initiative (2012), Customary land tenure in the modern world - rights to resources in crisis: reviewing the fate of customary tenure in Africa: http://www.rightsandresources.org/documents/files/doc_4699.pdf

Developing procedures for free, prior, and informed consent (FPIC) (focus: procedural rights)

FPIC – as stipulated by the UN Declaration on the Rights of Indigenous Peoples and ILO Convention No. 169 - is one of the key procedural rights of indigenous peoples. Below are references to recent publications on the concept of FPIC and information on how to use it, in the context of REDD+ and beyond:

- UN-REDD Programme (2013), Guidelines on free, prior and informed consent: http://www.un-redd.org/Launch_of_FPIC_Guidelines/tabid/105976/Default.aspx
- UN-REDD Programme (2013), Legal companion to the UN-REDD programme guidelines on FPIC - International law and jurisprudence affirming the requirement of FPIC:

http://www.unredd.net/index.php?option=com_docman&Itemid=134&view=list&slug=legal-companion-to-fpic-guidelines-2655

- Forest Carbon Partnership Facility & UN-REDD Programme (2012), Guidelines on stakeholder engagement in REDD+ readiness with a focus on the participation of indigenous peoples and other forest-dependent communities: [https://www.forestcarbonpartnership.org/sites/fcp/files/2013/May2013/Guidelines%20on%20Stakeholder%20Engagement%20April%2020,%202012%20\(revision%20of%20March%2025th%20version\).pdf](https://www.forestcarbonpartnership.org/sites/fcp/files/2013/May2013/Guidelines%20on%20Stakeholder%20Engagement%20April%2020,%202012%20(revision%20of%20March%2025th%20version).pdf)
- FSC (Forest Stewardship Council, 2012), FSC Guidelines for the implementation of the right to free, prior and informed consent (FPIC): <http://www.fao.org/sustainable-forest-management/toolbox/tools/tool-detail/en/c/217966/>
- BSR (Business for Social Responsibility, 2012), Engaging with free, prior, and informed consent: http://www.bsr.org/reports/BSR_Engaging_With_FPIC.pdf
- Asia Indigenous Peoples Pact (AIPP)/ International Work Group for Indigenous Affairs (IWGIA, 2012), Training manual on free, prior and informed consent (FPIC) in REDD+ for indigenous peoples: http://www.iwgia.org/iwgia_files_publications_files/0593_FPIC-Manual-eb.pdf
- RECOFTC – The Center for People and Forests (2012), A training manual, putting free, prior, and informed consent into practice in REDD+ initiatives: <http://www.recoftc.org/project/grassroots-capacity-building-redd/training-manuals-and-guides/putting-free-prior-and-informed-consent-practice-redd-initiatives>
- RECOFTC/ BMZ/ GIZ/ NORAD (2011), Free, prior, and informed consent in REDD+. Principles and approaches for policy and development: <http://www.forestpeoples.org/sites/fpp/files/publication/2012/08/fpicinreddmanual127patrick-anderson.pdf>
- International Alliance of Indigenous and Tribal People of the Tropical Forests (IAITPTF)/ Indigenous Peoples' Foundation for Education and Environment (IPF, 2011), Handbook on free, prior and informed consent for practical use by indigenous peoples' communities: http://www.thai-ips.org/Documents/FPIC_Handbook_Final.pdf
- Marcus Colchester (2010), Free, prior and informed consent - making FPIC work for forests and peoples: <http://www.forestpeoples.org/sites/fpp/files/publication/2010/10/tfdpicresearchpapercolchesterhi-res2.pdf>
- Oxfam America (2014), Free, prior, and informed consent in Africa – an emerging standard for extractive industry projects: <http://www.oxfamamerica.org/static/media/files/community-consent-in-africa-jan-2014-oxfam-americaAA.PDF>

New risks and approaches for the realisation of indigenous rights to natural resources

Violations of the rights of indigenous peoples to their homelands or territories and to natural resources have been a core human rights issue for many years. The frequency of evictions is a growing cause of concern.

The then **UN Special Rapporteur on the rights of indigenous peoples** James Anaya discusses in his 2013 report extractive industries and their implications for the rights of indigenous peoples. The report systematically analyses models of natural resource development, states' obligations, corporate responsibilities, consultation processes and the FPIC principle.

- UN Special Rapporteur on the rights of indigenous peoples (2013), Extractive industries and indigenous peoples (A/HRC/24/41):
http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session24/Documents/A-HRC-24-41_en.pdf

Relevant **BMZ strategy papers**:

- BMZ (2010), Extractive resources in German development cooperation, see especially chapter IV:
http://www.bmz.de/en/publications/type_of_publication/strategies/StrategyPaper302_04_2010_en.pdf
- BMZ (2012), Investments in land and the phenomenon of "land grabbing" - challenges for development policy:
http://www.bmz.de/en/publications/type_of_publication/strategies/Strategiepapier321_02_2012.pdf

Indigenous peoples and "land grabbing"

"Land grabbing" for agriculture has been a focus of international standard setting in recent years. These processes and instruments can be used in the defence of indigenous rights:

In 2014, the UN Permanent Forum on Indigenous Issues published its **study on best practices and examples in respect of resolving land disputes and land claims**, incl. consideration of the National Commission on Indigenous Peoples (Philippines), the Chittagong Hill Tracts Land Dispute Resolution Commission (Bangladesh) and the Working Group on Indigenous Populations/Communities of the African Commission on Human and Peoples' Rights (E/C.19/2014/4):

- http://www.un.org/en/ga/search/view_doc.asp?symbol=E/C.19/2014/4

The FAO **Voluntary Guidelines on the responsible governance of tenure of land, fisheries and forests in the context of national food security** aim to support governments, especially in developing countries, in safeguarding the rights of local people to own or access land, forests and fisheries. The Guidelines define minimum

standards and safeguards, and contain a dedicated chapter „indigenous peoples and other communities with customary tenure systems”, stressing the importance of good faith consultations and FPIC:

- http://www.fao.org/fileadmin/user_upload/newsroom/docs/VGsennglish.pdf

The 2010 **Principles for responsible agricultural investment that respects rights, livelihoods and resources**, drafted by FAO, IFAD, UNCTAD and the World Bank, specifically mention indigenous peoples under Principles 1 (land and resource rights), 5 (responsible agro-enterprise investment) and 6 (social sustainability, esp. fair compensation in case of displacement):

- http://siteresources.worldbank.org/INTARD/214574-1111138388661/22453321/Principles_Extended.pdf

Indigenous peoples and business

Business has an important role with regard to indigenous peoples' problems caused by extractive industries and "land grabbing". Private sector responsibilities have been at the core of recent debates at the international level:

Result of a lengthy consultation process coordinated by the UN Special Representative on business and human rights, Prof. John Ruggie, and endorsed by the UN Human Rights Council in 2011, the „Protect, respect and remedy" framework on which the **UN Guiding Principles on business and human rights** („Ruggie Principles") are based, enshrines state obligations to protect individuals from human rights violations by private enterprises, provide for grievance mechanisms, and establish corporate responsibilities with regard to human rights. Indigenous peoples are mentioned in Article 12 as "specific groups or populations that require particular attention."

- http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

The objective of the 2012 OECD **Recommendation of the Council on common approaches for officially supported export credits and environmental and social due diligence** (The "Common Approaches") is to promote coherence between OECD members' export credit guarantees and human rights policies:

- <http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=TAD/ECG%282012%295&doclanguage=en>

IWGIA et al. (2012), Indigenous peoples, transnational corporations and other business enterprises:

- http://www.iwgia.org/iwgia_files_publications_files/0566_BRIEFING_2.pdf

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Evictions, displacement and resettlement

In the context of land and resource rights, the following principles and guidelines with regard to (the avoidance of) forced evictions and resettlement can be useful references:

The 2007 **UN Basic Principles and Guidelines on development-based evictions and displacement** particularly emphasise the situation of „vulnerable and marginalised sectors of society“:

- http://www.ohchr.org/Documents/Issues/Housing/Guidelines_en.pdf
- UN Committee on Economic, Social and Cultural Rights (1997), General Comment No. 7 on the right to adequate housing: forced evictions:
[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/959f71e476284596802564c3005d8d50?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/959f71e476284596802564c3005d8d50?Opendocument)
- UN Fact sheet No. 25 on forced evictions and human rights (2014):
<http://www.ohchr.org/Documents/Publications/FS25.Rev.1.pdf>

In 2012, the International Finance Corporation updated its “Sustainability framework”, defining responsibilities for managing environmental and social risks:

- Performance standard and guidance notes Nos. 5, 6 and 7:
http://www.ifc.org/wps/wcm/connect/c8f524004a73dae_ca09afdf998895a12/IFC_Performance_Standards.pdf?MO D=AJPERES

World Bank (2001, revised 2013), Operational policy 4.12 on involuntary resettlement:

- <http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/EXTPOLICIES/EXTOPMANUAL/0,,contentMDK:20064610~menuPK:4564185~pagePK:64709096~piPK:64709108~theSitePK:502184,00.html>

European Bank for Reconstruction and Development (2014), Environmental and social policy, Performance requirement No. 5 on land acquisition, involuntary resettlement and economic displacement:

- <http://www.ebrd.com/downloads/research/policies/esp-final.pdf>

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