

1.5 International rights for Indigenous Peoples

At the international level there has been a strong drive to define a body of rights that specifically address the situation of Indigenous Peoples. These rights have developed in response to the growing recognition within the international community that Indigenous Peoples have suffered protracted and ongoing marginalization, discrimination and human rights abuses. This body of rights is primarily concerned with protecting collective rights, whereas the focus of most international human rights instruments is on the individual.

The two most important instruments at the international level relating to Indigenous Peoples' rights are the 2007 UNDRIP and ILO's Convention No 169 on Indigenous and Tribal Peoples of 1989 (ILO Convention 169). Key rights articulated in these instruments include the rights of Indigenous Peoples to:

- self-determination
- lands, territories and resources
- maintenance of their cultures, including their cultural heritage, and recognition of their distinct identities, customs and structures
- their spiritual traditions and property
- be asked for their FPIC in decisions that may affect them, and access to legal redress.

As noted, the extent to which Indigenous Peoples are legally recognized and their rights protected varies widely between countries. This has prompted the UN Special Rapporteur on the rights of Indigenous Peoples to argue that states have a duty to *effectively consult* with Indigenous Peoples and that this duty is grounded in the core human rights instruments of the UN.⁷

Further, the UN Special Rapporteur has also argued that the responsibility of business to respect human rights, as outlined in the Guiding Principles on Business and Human Rights (endorsed by the United Nations Human Rights Council in 2011), "extends to compliance with international standards concerning the rights of indigenous peoples, in particular those set forth in the United Nations Declaration on the Rights of Indigenous Peoples, no less than it applies to compliance with other international human rights standards".⁸

ICMM member companies' commit in the position statement to acknowledge and respect the rights of Indigenous Peoples even if there is no formal recognition of these rights by a host country or if there is a divergence between a country's international commitments and its domestic law.

⁷ J Anaya, *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people*, Human Rights Council, fifteenth session, 19 July 2010, page 14, UN document A/HRC/15/37.

⁸ J Anaya, *Report of the Special Rapporteur on the rights of Indigenous Peoples, James Anaya: extractive industries and Indigenous Peoples*, Human Rights Council, twenty-fourth session, 1 July 2013, page 15, UN document A/HRC/24/41.

