



# INDIGENOUS PEOPLES, HUMAN RIGHTS AND BUSINESS ACTIVITIES

## UNGPs and the protection of the rights of Indigenous Peoples in the context of business operations

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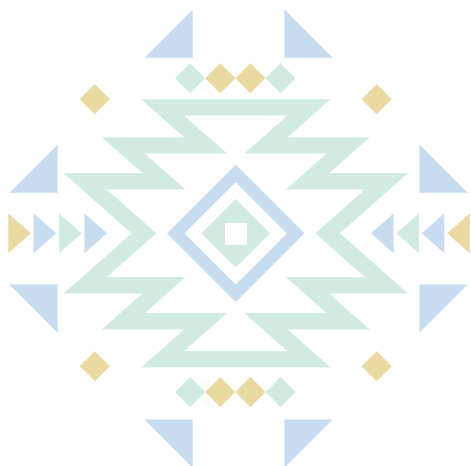
UN human rights bodies have reiterated that indigenous peoples' individual and collective human rights are disproportionately impacted by business operations that take place in or around their traditional lands and territories. These impacts include forced displacement, dispossession of lands and resources, and other gross human rights violations, including massacres, murder, torture, rape, incarceration and judicial harassment and other types of violence and criminalization.

Due to this situation, developments at the international level regarding compulsory human rights due diligence by the private sector, as well as compliance with the State duty to protect from human rights violations have particular importance in the defense of indigenous peoples' rights. One such development was the adoption in 2011 of the *United Nations Guiding Principles on Business and Human Rights: a Framework to Protect, Respect and Remedy* (UNGPs). As a widely endorsed framework, there were expectations that UNGPs would contribute to ensuring respect for and protection of human rights in the context of business operations.

More than ten years after their adoption, expectations have not been fulfilled. After assessing progress in implementation, the UN Working Group on Business and Human Rights (WGBHR) concluded that big gaps remain, including in protection of indigenous peoples confronting violations of their rights in the context of business activities and in the protection and respect of the rights enshrined in United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), including free, prior and informed consent (FPIC).

This briefing paper provides information regarding the UNGPs, the UNGP+10 process and the work of the UNWGBHR in relation to indigenous peoples' rights, and some initiatives undertaken by Indigenous Peoples Rights International (IPRI) and its ally organizations so that further implementation of UNGPs ensures respect for the UNDRIP and contributes to the end of the violence and criminalization against indigenous peoples in the context of business operations.

## The UN Guiding Principles on Business and Human Rights



*The United Nations Guiding Principles on Business and Human Rights provide an authoritative guide for States, business enterprises and indigenous peoples as to how to meet international standards and enhance their practices with regard to preventing and addressing adverse business-related Impacts on the human rights of indigenous peoples, so as to achieve tangible results.*

*As highlighted therein, particular attention should be paid throughout to the rights, needs and challenges faced by those at heightened risk of becoming vulnerable or marginalized.*

*This is crucial for Indigenous peoples, who are often disproportionately adversely affected by business activities. States and business enterprises should therefore address the rights of indigenous peoples when meeting their respective State duty to protect against human rights abuses and the corporate responsibility to respect human rights.[1].*

On 16 June 2011, the United Nations Human Rights Council (HRC), adopted without a vote the UN Guiding Principles on Business and Human Rights. This was the culmination of a long process of discussion among UN member states about the regulation of business activities, mainly transnational corporations (TNCs) but also inclusive of State-owned enterprises. Since that time, various UN treaty bodies, regional tribunals and others have also weighed in on various aspects of business and human rights, supplementing the applicable standards in this area.

The perception that there was a lack of control over a private sector that had increasing power all over the world and which has been identified as a threat to sovereignty by developing countries, started the discussions in the UN in the 1970s, the main idea being to develop some guidelines or a code of conduct by which TNCs could be held accountable. In 1973, the UN Commission on Transnational Corporations was established. It was made up of 48 member states and spent nearly 20 years in developing a draft code of conduct that was never adopted. The Commission was absorbed by the UN Committee on Trade and Development (UNCTAD) in 1994.[2]

A new attempt to clarify and regulate the impacts and accountability of the private sector started with the establishment in 1998 of a Working Group under the Sub-Commission on Human Rights to examine the methods of work and activities of transnational corporations. In 2003, the Sub-Commission adopted the *Norms on the responsibilities of transnational corporations and other commercial business in the sphere of human rights*.[3] This imposed specific and direct legal obligations on TNCs in relation to human rights law, a measure opposed by some prominent states and many TNCs. But the UN Human Rights Commission did not adopt the draft. Instead, it decided to develop a specific study to clarify the human rights situation of TNCs.

[1] A/68/279. A/68/279 Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises: "Business-related impacts on the rights of indigenous peoples", 7 August, 2013, para 54.

[2] The failure to agree on any kind of regulatory instrument to control business activities led to an increasing push to support voluntary initiatives, fostering business self-regulation, a trend that culminated in 2000 with the creation of the UN Global Compact, which published in 2013 a Business Reference Guide to the UNDRIP <https://www.unglobalcompact.org/library/541>. Business associations have also developed guidance on indigenous peoples, such as IPIECA (oil sector) and ICMM (metals and mining).

[3] E/CN.4/Sub.2/2003/12/Rev.2, 26 August 2003.

The study recommended the appointment of a special procedure to further examine the matter and provide guidance. In 2005, the UN Secretary General appointed Professor John Ruggie as *Special Representative on the issue of human rights, transnational corporations and other business enterprises*.

Professor Ruggie worked under this mandate from 2005 to 2011 to develop a guiding framework which could have the support of all stakeholders, including States, business and civil society. He adopted a pragmatic approach, stating that some voluntary principles accepted by all could create indirect obligations and that would eventually produce better results than a non-consensual binding instrument, which would be difficult to agree on and even more difficult to implement. He also opined that TNCs did not have human rights obligations in a legal sense under international law, but, rather, that they have various “responsibilities” in this regard, and it is States are the bearers of legal obligations to regulate business and protect rights holders under their jurisdiction from violations in business operations.

In June 2011, he submitted to the HRC what he proposed as a General Framework based on three pillars to be implemented with the orientations provided by some foundational and operative Guiding Principles (GP). As mentioned, the UNGPs were adopted in 2011 by HRC Resolution 17/4.[4]

## **Protect, Respect, Remedy**

The UNGPs are a set of orientations for States and TNCs detailing the measures they should adopt to comply with their human rights obligations and responsibilities, respectively.[5]

The UNGPs are clustered around three pillars. The first one is the States’ obligation, as parties to international human rights treaties, to respect, protect and fulfill human rights. The obligation to protect requires that States protect against violations committed by third parties, such as individuals or business companies. This also includes an obligation to prevent foreseeable harm and regulate TNCs in relation to human rights.

The second pillar is the business responsibility to respect human rights. In the absence of direct, international legal obligations on TNCs (a finding that remains contested by some), Professor Ruggie elaborated on the concept of business “responsibility to respect.” Business should meet this responsibility through the adoption of public human rights policies, a process of human rights due diligence, and the establishment of adequate, internal redress mechanisms to supplement those of the State. The human rights due diligence should include undertaking human rights impact assessments of their operations, developed as part of substantive consultations with potentially affected persons and/or groups.

[4] <https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/G11/144/71/PDF/G1114471.pdf?OpenElement>

[5] [https://www.ohchr.org/documents/publications/guidingprinciplesbusinessshr\\_en.pdf](https://www.ohchr.org/documents/publications/guidingprinciplesbusinessshr_en.pdf)

The third pillar is access to remedy. Both States and business must put in place adequate complaints and redress measures to effectively remedy non-compliance with their duties and responsibilities. These mechanisms can be both judicial, quasi-judicial (such as those provided through National Human Rights Institutions, NHRIs) and administrative at the State-level and non-judicial at the business or project level. The main objective is that they are effective (prompt, accessible, appropriate, and capable of resolving issues or disputes), and provide adequate reparation to victims.

The UNGPs are directed to all business, whatever their size and sector, and intend to create a culture of respect for all human rights by the private sector, as well as stress the State duty to protect its citizens from human rights violations.

### The UN Working Group on Business and Human Rights

When the HRC adopted the UNGPs, it also established a special procedure to promote their implementation, namely, the UN Working Group on Business and Human Rights.[6] The WGBHR is composed by five independent experts, one per each UN region. The mandate of the Working Group has evolved over the years. Currently, the WGBHR communicates with governments and the private sector on allegations of violations of human rights, makes country visits and develops thematic reports on issues linked to its mandate. It also coordinates the UN Forum on Business and Human Rights, a multi-stakeholder annual meeting which provides inputs from all the different actors for the consideration of the Working Group.[7]

## Indigenous Peoples rights, the UNGPs and the work of the UNWGBHR

When defining the scope of human rights to be respected by businesses, the UNGPs refer to the fundamental human rights instruments (Bill of Rights) and the core ILO conventions at a minimum.

Commenting on GP 12, the UNGPs point out that *‘Depending on circumstances, business enterprises may need to consider additional standards. For instance, enterprises should respect the human rights of individuals belonging to specific groups or populations that require particular attention, where they may have adverse human rights impacts on them. In this connection, **United Nations instruments have elaborated further on the rights of indigenous peoples; women; national or ethnic, religious and linguistic minorities; children; persons with disabilities; and migrant workers and their families. Moreover, in situations of armed conflict enterprises should respect the standards of international humanitarian law.**’*[8]

In the case of indigenous peoples, this ‘further elaboration’ is mainly the UNDRIP (2007), ILO Convention 169 (1989) and the relevant jurisprudence of UN Treaty Bodies and regional human rights tribunals and bodies (e.g., the Inter-American Court of Human Rights).

[6] Its full official title is Working Group on the issue of human rights and transnational corporations and other business enterprises

[7] <https://www.ohchr.org/en/hrc-subsidiary-bodies/united-nations-forum-business-and-human-rights>

[8] See [https://www.ohchr.org/documents/publications/guidingprinciplesbusinessshr\\_en.pdf](https://www.ohchr.org/documents/publications/guidingprinciplesbusinessshr_en.pdf), p.14.

In 2010, the UN Special Rapporteur on the Rights of Indigenous Peoples, Professor James Anaya provided specific guidance on the corporate responsibility to respect with regards to indigenous peoples' rights according to the rights enshrined in UNDRIP.[9] According to the Special Rapporteur, in exercising their human rights due diligence, companies should:

- identify indigenous peoples potentially affected by their operations, even in contexts where there is no State recognition of indigenous status/identity,
- identify and respect indigenous ownership and use of land, regardless of legal title,
- ensure adequate consultations with indigenous peoples and that State has met its obligations in this regard,
- develop impact studies fully incorporating a HR-based approach,
- establish compensation for adverse impacts considering the social, cultural and spiritual aspects of indigenous peoples' lives that may have been affected, and
- develop benefit-sharing agreements that support indigenous development priorities and strengthen their decision-making mechanisms and institutions.

UN Treaty Bodies have also addressed under their different methods of work, the serious impacts business operations continue to have on indigenous peoples and provided decisions and recommendations. Some examples of the work of the Treaty Bodies on this issue include:

- CERD, Lars-Anders Ågren et al. vs. Sweden, on mining operations violating Sami rights. CERD/C/102/D/54/2013 (2020).[10]
- CERD, Urgent Action Procedure, Decision 1(100) Canada (13 December 2019) on dam and pipeline projects. [11]
- CERD, Urgent Action procedure, Guyana, (17 May 2018) requesting that the State "provide information on steps taken to: 1. Refrain from approving projects and granting mining concessions that affect the lands, territories or resources of Indigenous Peoples without obtaining their free, prior and informed consent, and revoke such projects in Tassarene and Kangaruma villages and on Marudi Mountain to which the Indigenous Peoples did not consent.[12]
- CCPR, Communication, Benito Oliveira Pereira and Lucio Guillermo Sosa Benega and the Indigenous Community of Campo Agua'ẽ, of the Ava Guaraní People v. Paraguay, on massive violations caused by large-scale soy farming. CCPR/C/132/D/2552/2015 (2021).[13]
- CESCR, Concluding Observations, Argentina, on FPIC in relation to extractive activities and indigenous consultation and FPIC protocols. E/C.12/ARG/CO/4.[14]
- CRC, Concluding Observations, Democratic Republic of the Congo, recommending the State to establish regulations to ensure that extractive industries comply with international and national human rights, labour, environmental and other standards. CRC/C/COD/CO/3-5.[15]
- CEDAW, Concluding Observations, Suriname, expressing concern about the lack of legal framework to ensure accountability of foreign-owned companies for violations of indigenous women's rights. CEDAW/C/SUR/CO/4-6.[16]
- CAT. Concluding Observations, Panama, on arbitrary arrests and excessive use of force in protests against mining operations and hydroelectric production in Ngobe Bugle territory. CAT/C/PAN/CO/4.[17]

[9] A/HRC/15/37, 19 July 2010

[10] [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CERD%2FC%2F102%2FD%2F54%2F2013&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CERD%2FC%2F102%2FD%2F54%2F2013&Lang=en)

[11] [https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/CAN/INT\\_CERD\\_EWU\\_CAN\\_9026\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/CAN/INT_CERD_EWU_CAN_9026_E.pdf)

[12] [https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/GUY/INT\\_CERD\\_ALE\\_GUY\\_8821\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/GUY/INT_CERD_ALE_GUY_8821_E.pdf)

[13] [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2F132%2FD%2F2552%2F2015&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2F132%2FD%2F2552%2F2015&Lang=en)

[14] <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/329/63/PDF/G1832963.pdf?OpenElement>

[15] <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/048/46/PDF/G1704846.pdf?OpenElement>

[16] <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N18/070/68/PDF/N1807068.pdf?OpenElement>

[17] <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/278/46/PDF/G1827846.pdf?OpenElement>

## The work of the WGBHR on indigenous peoples' rights

In 2013 the WGBHR submitted a report to General Assembly focused on business-related impacts on the rights of indigenous peoples.[18] The Working Group recognizes that indigenous peoples are amongst the most affected groups by extractive, agro-business and energy operations, which impact in their rights to maintain their traditional way of life, their cultural identity, their access to land and their security of land tenure. Forced displacement, serious violations of the civil and political rights, and to rights to life and physical integrity are amongst the impacts derived from business operations impacting their lands and territories.[19]

The report provides specific recommendations to States and business on measures to be adopted to apply the UNGPs when business operations impact indigenous peoples' rights.

The WGBHR calls on States, *inter alia*, to consider ratifying ILO Convention 169 and fully implement the UNDRIP, including by home States of TNCs operating in indigenous territories in other countries. States should ensure that mechanisms are in place to prevent and address adverse human rights impacts of TNCs and that their human rights obligations are met when pursuing investment treaties or contracts. States should also ensure indigenous peoples have adequate access to all relevant information and can effectively participate in decisions that affect them. In this sense, consultations should be an essential component of all contracts entered into with international investors where there may be an impact on indigenous peoples. States should ensure the effective implementation of the requirements for FPIC; reinforce the capacity of the justice system and NHRIs to address grievances brought by indigenous peoples relating to business activities; and support indigenous peoples to develop their own representative structures to effectively participate in decision-making, respecting their choices as to who their representatives shall be. States should particularly consider indigenous peoples' rights in the development of National Action Plans (NAPs). The report also refers to the extraterritorial obligations of home States with regard to TNCs registered in their jurisdictions, who should ensure *that indigenous peoples affected by the operations of those enterprises abroad have access to effective remedy*. [20]

Business enterprises, for their part, should pay particular attention to the potential impacts of any operations in the lands and territories of indigenous peoples, commit to respect indigenous peoples rights, as set out in the UNDRIP, in their policy commitments, human rights due diligence, and remediation processes; ensure their grievance mechanisms comply with the criteria of accessibility required in the UNGPs (Principle 31), focusing on dialogue as a means to address and solve grievances; and make sure to adequately inform, consult and engage with indigenous peoples.

The WGBHR also recommends that indigenous peoples develop protocols on free prior informed consent processes, coherent with international human rights law, and make these available to States and corporations, as well as strengthen their institutions.[21]

[18] A/68/279 2013 Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises: "Business-related impacts on the rights of indigenous peoples"

[19] A/68/279, para 1

[20] A/68/279 para 55 j)

[21] A/68/279, para 57 a) and b)

The report also analyses the role indigenous customary dispute resolution mechanisms and judicial systems can play in terms of grievance and remedy.

The WGBHR has also paid attention to State duties and business responsibilities with regard to the rights of indigenous peoples in its country missions. The box below summarizes the main issues analyzed during its visits.

Report	Issues/ Paragraphs[22]
<p>Visit to Honduras A/HRC/44/43/Add.2, 15 May 2020</p>	<ul style="list-style-type: none"> <li>• Need for a clear institutional and regulatory framework on participation (20)</li> <li>• Lack of framework to ensure right to FPI consultation and consent (23) in line with UNDRIP and ILO C169; need for a fully inclusive process with IPs to develop any instrument on the matter (24-29; 101; 109b)</li> <li>• Land rights 109 (f)</li> <li>• Labour conditions in Mosquitia (58-59; 109 (j) (i))</li> <li>• Indigenous women (61)</li> <li>• Violence and criminalization (66-67; 78-79 109 (g) (i))</li> </ul>
<p>Visit to Thailand A/HRC/41/43/Add.1, 21 May 2019</p>	<ul style="list-style-type: none"> <li>• Recognition and socioeconomic situation (69-71)</li> <li>• Lack of consultation/FPIC, respect for land rights/conservation and criminalization (72-74; 95h)</li> <li>• Statelessness (75)</li> <li>• Inclusion in NAP (102 d)</li> </ul>
<p>Visit to Kenya A/HRC/41/43/Add.2, 21 May 2019</p>	<ul style="list-style-type: none"> <li>• Lack of protection for land rights and African HR system decisions (25; 86 (j))</li> <li>• Participation/information on mining projects (56; 58-59)</li> <li>• Consultation and FPIC (86 (i))</li> <li>• Resettlement and eviction (86 (g))</li> </ul>
<p>Visit to Canada A/HRC/38/48/Add.1, 23 April 2018</p>	<ul style="list-style-type: none"> <li>• Socio economic disparities (7)</li> <li>• Impacts (17-18; 49-50)</li> <li>• Criminalization of peaceful protest (47)</li> <li>• Consultation and FPIC (50; 51-55; 76; 79(q); 82))</li> <li>• Benefit-sharing (60;</li> <li>• Mount Polley breach and EIAs (61-62; 79(j))</li> <li>• Participation in advisory body on responsible business conduct (79 (b))</li> <li>• Disappearances of indigenous women (79(o))</li> <li>• Respect for indigenous relations with lands (82)</li> <li>• Inclusion in NAP (85 (c))</li> </ul>
<p>Visit to Peru A/HRC/38/48/Add.2 9 May 2018</p>	<ul style="list-style-type: none"> <li>• Disproportionate impacts (62)</li> <li>• Consultation and FPIC (25; 63-68; 46;49; 82; 90(d); 90(e))</li> <li>• Land rights (26; 47; 48; 91(e))</li> <li>• Forced labour (60)</li> <li>• Self-identification (69; 90(t))</li> <li>• Gaps in protection (90(b))</li> <li>• NAP (90(c))</li> </ul>

[22] Numbers in between brackets indicate paragraph(s) referenced from each report

<p>Visit to Mexico A/HRC/35/32/Add.2 27 April 2017</p>	<ul style="list-style-type: none"> <li>• Inadequate HR due diligence of State and companies (7)</li> <li>• Case of eolic companies in Oaxaca, failed consultation (24-28)</li> <li>• GM soybeans in Maya lands in Campeche and Yucatán, consultation and impacts (29-30)</li> <li>• Toluca-Naucaalpan highway consultation, harassment and violence (31-35)</li> <li>• Aqueduct in Sonora consultations, repression, forced disappearances, incarceration (36-37)</li> <li>• Consultation 40-43 and FPIC (108(c))</li> <li>• Defenders (83)</li> <li>• NAP (108 (g))</li> </ul>
<p>Visit to the USA A/HRC/26/25/Add.4 6 May 2014</p>	<ul style="list-style-type: none"> <li>• Impacts of business activities (77-80) and</li> <li>• need for the State to address them (102 (n))</li> </ul>
<p>Visit to Mongolia A/HRC/23/32/Add.1 2 April 2013</p>	<ul style="list-style-type: none"> <li>• Lack of effective remedies (36)</li> <li>• Lack of consultation (49)</li> <li>• Impacts of mining (59-60)</li> <li>• Way of life and children (92(b))</li> </ul>

In the period 2020-21, the following allegations of business operations negatively impacting on the rights of indigenous peoples were the object of joint communications by the UNWGBHR and the Special Rapporteur on the Rights of Indigenous Peoples.

Communications sent	Case
<ul style="list-style-type: none"> <li>• Botswana BWA 3/2021</li> <li>• Canada CAN 7/2021</li> <li>• Namibia NAM 2/2021</li> <li>• National Petroleum Corporation of Namibia</li> <li>• OTH 255/2021</li> <li>• ReconAfrica OTH 252/2021</li> </ul>	<p><b>BOTSWANA</b></p> <p>Impacts of oil and gas exploration and extraction on the lands of the San indigenous peoples of Botswana and Namibia</p>
<ul style="list-style-type: none"> <li>• Chile CHL 6/2021</li> <li>• Colombia COL 7/2021</li> <li>• GeoPark OTH 213/2021</li> <li>• UNDP Colombia and Head quarters</li> <li>• OTH 215/2021 OTH 214/2021</li> </ul>	<p><b>COLOMBIA</b></p> <p>On alliance signed by UNDP and oil company GeoPark based in Chile. The operations of the company had had negatives impacts on the human rights of Siona indigenous people in Putumayo, Colombia</p>
<ul style="list-style-type: none"> <li>• Kenya KEN 2/2021</li> <li>• Kendong Ranch Ltd. OTH 200/2021</li> </ul>	<p><b>KENYA</b></p> <p>Criminalization of Maasai HRDs and ongoing land dispute between Maasai peoples and Kedong Ranch Limited</p>
<ul style="list-style-type: none"> <li>• Guatemala GTM 5/2021</li> </ul>	<p><b>GUATEMALA</b></p> <p>Criminalization, detention, violation of due process against Q'eqchi' HRD Bernardo Caal Xól</p>
<ul style="list-style-type: none"> <li>• Australia AUS 2/2021</li> <li>• Denmark SNK 2/2021</li> <li>• Greenland minerals Ltd</li> <li>• OTH 189/2021</li> </ul>	<p><b>GREENLAND</b></p> <p>Human rights violations and environmental damage of the uranium mining project Kuannersuit or Kvanefjeld in Southern Greenland by Greenland Minerals A/S</p>



<ul style="list-style-type: none"> <li>• Chhaya Devi Complex Pvt. Ltd</li> <li>• OTH 183/2021</li> <li>• Marriot Internacional OTH 184/2021</li> <li>• NEPAL NPL 1/2021</li> <li>• USA USA 16/2021</li> </ul>	<p style="text-align: center;"><b>NEPAL</b></p> <p>Violations of the rights of indigenous Newar peoples over their lands, resources, spiritual and cultural sites for construction of business complex in Kathmandu</p>
<ul style="list-style-type: none"> <li>• Accord OTH 177/2021</li> <li>• Club Med OTH 178/2021</li> <li>• Dorna Sports OTH 181/2021</li> <li>• France FRA 3/2021</li> <li>• Paragon OTH 179/2021</li> <li>• Spain ESP 2/2021</li> <li>• USA USA 15/2021</li> <li>• Vinci OTH 180/2021</li> <li>• Asian Infrastructure Investment Bank</li> <li>• OTH 24/2021</li> <li>• Indonesia IDN 5/2021</li> <li>• Indonesia Tourism Development Corporation ITDC OTH 49/2021</li> </ul>	<p style="text-align: center;"><b>INDONESIA</b></p> <p>Business and investment in the development of the Mandalika region, Indonesia, resulting in human rights violations of indigenous peoples and communities</p>
<ul style="list-style-type: none"> <li>• EMSA S.A. OTH 1/2021</li> <li>• Nicaragua NIC 1/2021</li> </ul>	<p style="text-align: center;"><b>NICARAGUA</b></p> <p>Murder of indigenous defender Nacilio Macario, Mayangna, RACC Nicaragua</p>
<ul style="list-style-type: none"> <li>• Bangladesh BGD 8/2020</li> <li>• Marriot International OTH 85/2020</li> <li>• R&amp;R Holdings Limited OTH 84/2020</li> <li>• USA USA 32/2020</li> </ul>	<p style="text-align: center;"><b>BANGLADESH – CHT</b></p> <p>Threat of eviction of Mro families for the construction of luxury tourism resort, Barbadan District, CHT, lack of consultation and intimidation</p>
<ul style="list-style-type: none"> <li>• Guatemala GTM 3/2020</li> <li>• Cauchos y Palmas Sociedad Anónima</li> <li>• OTH 25/2020</li> <li>• Industrias Chiquibul Sociedad Anónima</li> <li>• OTH 26/2020</li> <li>• Nacional Afroindustrial Sociedad Anónima</li> <li>• OTH 27/2020</li> <li>• Reforestadora de Palmas del Petén</li> <li>• Sociedad Anónima (REPSA) OTH 28/2020</li> <li>• Tikindustrias Sociedad Anónima</li> <li>• OTH 30/2020</li> </ul>	<p style="text-align: center;"><b>GUATEMALA</b></p> <p>Violation of labor rights (forced labor) of workers, mainly indigenous, in the palm oil plantations in Petén, Guatemala</p>
<ul style="list-style-type: none"> <li>• Cerrejon OTH 65/2020</li> <li>• Colombia COL 7/2020</li> </ul>	<p style="text-align: center;"><b>COLOMBIA</b></p> <p>Negative impacts of the operations of mining company Cerrejón in Wayuu people in the Guajira, Colombia</p>

<ul style="list-style-type: none"> <li>• Australia AUS 2/2020</li> <li>• Canada CAN 5/2020</li> <li>• China CHN 15/2020</li> <li>• Frieda River Limited OTH 53/2020</li> <li>• Highlands Frieda Limited</li> <li>• OTH 54/2020</li> <li>• Papua New Guinea PNG 1/2020</li> </ul>	<p style="text-align: center;"><b>PAPUA NEW GUINEA</b></p> <p>Concerns on serious human rights risks on the proposed Frieda River gold and copper mine and associated tailings dam, Papua New Guinea</p>
<ul style="list-style-type: none"> <li>• Bank of Ayuhaya OTH 15/2020</li> <li>• Export-Import Bank of Thailand</li> <li>• OTH 17/2020</li> <li>• Korea Western Power Company</li> <li>• OTH 4/2020</li> <li>• Krung Thai Bank OTH 14/2020</li> <li>• Lao Holding State Enterprise</li> <li>• OTH 5/2020</li> <li>• Lao People’s Democratic Republic</li> <li>• LAO 1/2020</li> <li>• Ratchaburi Electricity Generating Holding OTH 6/2020</li> <li>• Republic of Korea KOR 3/2020</li> <li>• SK Engineering Construction</li> <li>• OTH 7/2020</li> <li>• Thailand THA 2/2020</li> <li>• Thanachart Bank OTH 16/2020</li> <li>• The Export and Import Bank of Korea (Korea Eximbank) OTH 8/2020</li> <li>• Xe-Pian Xe-Namnoy Power Company</li> <li>• OTH 9/2020</li> </ul>	<p style="text-align: center;"><b>LAO PDR</b></p> <p>Human rights impacts of the collapse of an auxiliary dam in Attapeu Province, Lao PDR.</p>

## Ten years after: UNGP+10

Reports and communications by the UNWGBHR shown above clearly indicate that ten years after the adoption of the UNGPs serious implementation and compliance gaps continue to be evident. This is not fully mitigated by the increased attention of the treaty bodies and others to these issues, even if these efforts are potentially establishing more robust standards than those articulated in the UNGPs and related work.

Conscious of this situation, in 2021 the UNWGBHR decided to assess implementation of the UNGPs and to develop a roadmap for further implementation, responding to the urgent need for more coherent action. The roadmap was based on a stocktaking process with multiple stakeholders which helped identify the progress made and the remaining gaps.[23]

[23] Raising the Ambition - Increasing the Pace. UNGP 10+. A roadmap for the next decade on business and human rights. Available at: <https://www.ohchr.org/Documents/Issues/Business/WG/ungps10plusroadmap.pdf>

## UNGP 10 + roadmap: Priority areas and goals

<p><b>Strategic direction</b></p>	<p><b>Action area 1: UNGPs as a compass for meeting global challenges</b></p> <ul style="list-style-type: none"> <li>• Goal 1.1: Make business respect for human rights a core element of just transition and sustainable development strategies</li> <li>• Goal 1.2: Enhance collective action to tackle systemic challenges</li> <li>• Goal 1.3: Optimize digital transformation through respect for human rights</li> <li>• Goal 1.4: Ensure coherence and alignment in standards development</li> </ul>
<p><b>Protect, respect, remedy</b></p>	<p><b>Action area 2: State duty to protect</b></p> <ul style="list-style-type: none"> <li>• Goal 2.1: Improve policy coherence to reinforce more effective government action</li> <li>• Goal 2.2: Seize the mandatory wave and develop a full smart mix</li> </ul> <p><b>Action area 3: Business responsibility to respect</b></p> <ul style="list-style-type: none"> <li>• Goal 3.1: Scale up business uptake and translate commitments to respect into practice</li> <li>• Goal 3.2: Embed human rights due diligence in corporate governance and business models</li> <li>• Goal 3.3: Challenge business practices that are inconsistent with respect for human rights</li> </ul> <p><b>Action area 4: Access to remedy and meaningful stakeholder engagement</b></p> <ul style="list-style-type: none"> <li>• Goal 4: Move from paper to practice in tackling barriers to access to remedy</li> </ul>
<p><b>Cross-cutting issues</b></p>	<p><b>Action area 5: More and better stakeholder engagement</b></p> <ul style="list-style-type: none"> <li>• Goal 5: Ensure meaningful stakeholder engagement to reinforce protect, respect and remedy</li> </ul> <p><b>Action area 6: More and better leverage to drive faster change</b></p> <ul style="list-style-type: none"> <li>• Goal 6.1: Seize financial sector ESG momentum and align the S in ESG with the UNGPs</li> <li>• Goal 6.2: Leverage other business community “shapers” beyond regulators and finance</li> </ul> <p><b>Action area 7: More and better tracking of progress</b></p> <ul style="list-style-type: none"> <li>• Goal 7.1: Spur State action and accountability through more systematic learning, data gathering and monitoring</li> <li>• Goal 7.2: Improve the tracking of business impacts and performance</li> </ul> <p><b>Action area 8: More and better international cooperation and implementation support</b></p> <ul style="list-style-type: none"> <li>• Goal 8.1: Plug the gap in UN system integration of the UNGPs</li> <li>• Goal 8.2: Enhance capacity-building and coordination to support faster and wider UNGPs uptake and implementation</li> <li>• Goal 8.3: Spur regional races to the top</li> </ul>



In the stocktaking process,[24] the need to confront ‘*the rising threats faced by human rights and environmental defenders, including representatives of indigenous peoples [...] who raise concerns about the business-related impacts*’ was identified as well as the need to strengthen the protection of and respect for those who may be at heightened risk of vulnerability and who often suffer disparate and disproportionate negative impacts, including indigenous peoples. Enhancing access to remedy for harms, and the need to work together with all actors, including indigenous peoples, to monitor and hold accountable States and TNCs were also identified as priorities.

The roadmap identifies some outcomes needed for the next decade for the different areas and goals, as well as some indicative and illustrative actions to achieve them. Indigenous peoples are mentioned in some of these outcomes and actions.

For Goal 1.2 (*Enhance collective action to tackle systemic challenges*) an identified outcome is to have collective action initiatives involved in capacity-building, monitoring and accountability, including ‘*collaborative platform (or platforms) to effectively respond to threats faced by human rights and environmental defenders (including representatives of indigenous peoples and trade unions) and civil society organizations who raise concerns about business-related impacts*’.[25]

In terms of access to remedy (action area 4) the roadmap identifies as an outcome for the next decade that *an increasing number of States are able to demonstrate progress in concrete measures to reduce barriers to access to remedy for rights-holders who have suffered from business-related human rights abuse*. As an illustrative action to achieve it, it proposes business to [w]ork with external stakeholders, including unions, representatives of affected communities (for example indigenous peoples’ organizations), and civil society organizations to ensure that the design and performance of grievance mechanisms meaningfully involve affected stakeholder groups.

To enhance stakeholder engagement (action area and goal 5), the roadmap identifies as a needed outcome that *International standards of free, prior and informed consent (FPIC) for indigenous peoples are increasingly recognized in corporate commitments to human rights in relevant sectors (e.g. agriculture, energy, extractives and infrastructure)*. Some proposed actions to achieve stakeholder engagement include States to *commit to and articulate policies to prevent and address violent attacks on all those who raise concerns about business-related impacts, including union representatives and human rights and environmental rights defenders, and explicitly recognize challenges for women and indigenous defenders*. Businesses, on their part, should [r]ecognize that [...] *meaningful engagement with indigenous peoples’ communities includes meeting international FPIC standards and should engage with civil society organizations and those working directly with affected stakeholders (including indigenous peoples’ networks) to support human rights and environmental defenders*. The UN system is called to *help establish and support platforms to facilitate interactions between business organizations and enterprises with civil society organizations, human rights and environmental defenders, indigenous peoples’ networks, trade unions and others working with directly affected stakeholders at the field level*.

[24] See A/72/170 “Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms”, 2017. See also A/HRC/47/39/Add.2 The Guiding Principles on Business and Human Rights: guidance on ensuring respect for human rights defenders, 2021.

[25] P. 8

Finally, to spur State action and accountability (action area 7), all actors, including indigenous peoples' networks, should [c]all on States, regional organizations and the UN to develop systematic gathering of data, lessons learned and platforms for peer learning and review – and engage constructively in such processes to drive wider and deeper UNGPs implementation. The roadmap also suggests at the regional level that all actors [c]all on States, regional organizations and the UN to develop regional dialogue platforms/forums and systematic gathering of lessons learned and platforms for peer learning and review – and engage constructively in such processes to drive wider and deeper UNGPs implementation. In this sense, UN entities should continue to involve trade unions, indigenous peoples' networks, human and environmental defenders, civil society organizations, business enterprises and business organizations in the implementation of regional strategies and the context of regional forums.

## Indigenous Peoples and UNGPs 10+

Due to the overwhelming impacts of TNCs' operations on the enjoyment of their rights, indigenous peoples have actively participated at the UN Forum on Business and Human Rights. They have stressed the need for full respect of their rights as enshrined in UNDRIP and denounced the ongoing and pervasive violations as well as the lack of adequate complaints and redress mechanisms to deal with such violations. They have also submitted formal complaints alleging human rights violations and provided information during the country missions.

As an indigenous-led initiative to fight violence and criminalization against indigenous peoples and the resulting impunity, and in response to the UNGPs+10 process, IPRI together with partner indigenous and support organizations decided to develop a set of activities related to the assessment and future implementation of the UNGPs. This is intended to ensure that they can effectively contribute to preventing and addressing the violence and criminalization indigenous peoples are facing in the context of TNCs operations. This includes:

1. A **study on UNGPs implementation** with regards to indigenous rights was developed together with IWGIA to contribute to the stocktaking exercise to assess progress and gaps. [26]
2. During 2021, IPRI coordinated a series of meetings with indigenous organizations from the different regions to develop an **indigenous roadmap** for the better implementation of the UNGPs as a tool in the defense of the individual and collective rights of indigenous peoples. Inputs provided in that discussion have been systematized for further consultations with indigenous organizations that will identify key priorities and specific actions to be undertaken at the national, regional and international levels.
3. IPRI is also supporting **research on business operations impacting indigenous peoples' rights** in different regions of the world. Such operations are having major impacts in the rights of affected indigenous peoples, including forced displacement, dispossession of lands and resources, disrespect for FPIC and the myriad of effects derived from these violations, e.g., on the right to life, security, food and other fundamental human rights. Some of the cases under study include:


[26] AYLWIN, Jose; RORH, Johannes, (2021) The UN Guiding Principles on Business & Human Rights and Indigenous Peoples. Progress achieved, the implementation gap and challenges for the next decade. IPRI/IWGIA. Copenhagen. Available at <https://www.iprights.org/resources/publications/the-un-guiding-principles-on-business-human-rights-and-indigenous-peoples>.

- In Russia, NorNickel has been operating in Taimyr and Mirmanks regions in the Russian North, in the traditional territories of the Sámi, Nenets, Nganasan, Enets, Dolgan and Evenk since the 1930s. Its activities have impacted their traditional ways of life and generated forced displacements and overwhelming pollution. In 2020, an oil spill in Taymir had devastating impacts on indigenous peoples' livelihoods. Complaints about the operations and inadequate remedies have been answered by NorNickel and the Russian authorities with the harassment of indigenous activists.
- In India, the government is promoting oil palm production as part of a national policy to decrease dependence on imports. The State of Mizoram, where 94.43% of the population are Scheduled Tribes, has been targeted for expansion of oil palm cultivation, ignoring the rights of the Adivasi communities and the massive environmental impacts. Main companies operating in the State after signing an agreement with the Mizoram Government are Godrej Afrovet Ltd. and Ruchi Soya Industries, after 3F Oil Palm Agrotech Pvt. Ltd withdrew from Mizoram in 2021.
- In the Philippines, Pan Pacific Renewable Power Philippines Corporation (PPRPPC) is developing Gened 1 and 2 hydroelectric dams on the Apayao river, which will affect the ancestral domain of the Isnag. A process of FPIC regarding the project, directed by the National Commission on Indigenous Peoples (NCIP), has been denounced as fraudulent by the affected communities.
- In Mexico, Producción Alimentaria Porcícola, Sociedad de Producción Rural de Responsabilidad Limitada de Capital Variable (PAPO) intends to build a mega pig farm in Homún, Yucatán, where 91% of the population self-identifies as Maya. The farm will impact the water system of the area, including the cenotes (deep sinkholes with underground freshwater pools) which are of high spiritual value for the Maya and a source of income through small community tourism projects. No adequate consultation has taken place and EIAs are alleged to be defective.

## Conclusions

The UNGP enjoy high consensus and are a useful tool to assess State and business compliance with the human rights of indigenous peoples. Violence, criminalization and impunity regarding human right violations committed in the context of business activities continue and may be increasing in some regions and sectors. Indigenous peoples are amongst the most affected groups. Violations of their individual and collective rights, particularly over their lands and resources, have serious impacts on their very survival as distinct peoples.

In promoting the further implementation of the UNGPs, relevant UN human rights bodies, particularly the WGBHR, should stress need for compliance with the internationally recognized standards on the rights of indigenous peoples, particularly UNDRIP.

IPRI is committed to work with indigenous peoples and their allies so that the implementation of the UNGPs helps to produce the changes needed. 

***Indigenous Peoples, Human Rights and Business Activities: UNGPs and the protection of the rights of Indigenous Peoples in the context of business operations***

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