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■ AQ FEATURE

Business Responsibility to Respect Indigenous Rights

BY [Paloma Muñoz Quick](#)

Companies have a number of tools available to help them comply with UN and other international human rights standards.

While numerous United Nations mechanisms¹ have addressed the impact of business activities on Indigenous rights, it was only in 2011—with the UN Human Rights Council’s unanimous endorsement of the UN Guiding Principles on Business and Human Rights—that the role of businesses in respecting, or abusing, these rights was officially acknowledged.

The Guiding Principles’ “do-no-harm” approach was developed by Harvard University Professor John Ruggie, the UN special representative to the secretary general for business and human rights. They rest on three pillars.

1. States are obliged to protect against human rights abuses by companies.
2. Corporations are obliged to act with due diligence to ensure that their activities do not adversely affect the rights of those living on the targeted lands.
3. Victims of adverse impacts have the right to seek a remedy.


The Guiding Principles call on businesses to ensure, at a minimum, that—regardless of the size, location and type of project—their activities adhere to those rights contained in the International Bill of Rights and the International Labour Organization core conventions. Moreover, corporations should comply with the additional requirements under ILO 169 and the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), such as free, prior and informed consent (FPIC)—or *consulta previa*.²

Adhering to the Guiding Principles requires the following.

1. Policy Commitment

Human rights principles must be a policy within the company. That policy should be made clear to all personnel and business partners through compulsory training, and must also be communicated directly to affected Indigenous groups in their own language. A notable example is the policy adopted by Repsol S.A., a Spanish multinational oil and gas company based in Madrid that mandates that all company employees recognize and respect Indigenous rights, irrespective of whether these rights have been incorporated into national legislation in the countries where it operates.³

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2. Human Rights Due Diligence

Companies must identify, prevent, mitigate, and account for the human rights impact of their activities. Known as “human rights due diligence,” this practice is understood to meaningfully involve Indigenous communities in every phase of a proposed project, including design, evaluation of potential impacts and implementation.

Such due diligence includes:

Impact Assessments

Companies should incorporate human rights considerations into Environmental, Social and Health Impact Assessments (EISHAs).⁴ These assessments, typically used by extractive industries, do not always include specific procedures to identify and address actual or potential human rights impacts. Whether they are contained in an EISHA or are produced separately, the assessments should be designed to include meaningful consultation that enables community members to influence decisions that may affect them, and to flag risks before they become abuses.⁵ Prior consent of the affected community is necessary for resettlement or whenever the exploitation of Indigenous land or resources could affect cultural heritage.⁶ If such consent is not forthcoming, a company should consider adjusting project design, or whether it can proceed with the project at all.⁷

Repsol S.A., for example, uses independent third-party studies based on interviews with a broad group of community members, local authorities and NGOs, to analyze real and potential impacts on Indigenous rights in the areas of operation. Following any study, an action plan to align operations with the company policy is developed, and implementation is reviewed each year.⁸

Integration of Findings

Companies must integrate the findings of their impact assessments— on areas ranging from hiring and environmental management to gender equity— with relevant policies and procedures at every level.⁹ For instance, to ensure that personnel are held accountable, a company may include human rights in key performance indicators for staff and provide relevant training.¹⁰ For example, the staff at Colombia's Cerrejón coal mine, located in the La Guajira Department, receives training in the Indigenous Wayúu culture to better understand the group's relationship to nature, language, identity, culture, and ethnicity.

Tracking

Monitoring for adverse human rights impacts should continue throughout the project, using qualitative and quantitative indicators that reflect the local context and Indigenous peoples' perspectives, and can often be developed and tracked in consultation with communities.¹¹ According to the Global Reporting Initiative, indicators can include:

Internal process indicators that measure to what extent the company has established processes and procedures for human rights risk management, such as a grievance mechanism;

Incident indicators that measure how often the activities of a company result in human rights abuses, for example how many community grievances have been logged in a given month;

Outcome indicators measuring any changes in human rights-related areas that affect the standard of living of affected groups, such as the percentage of the local community with access to clean water.¹²

Communicating

Transparency is essential. Companies should regularly report to affected communities on the efforts they are making to respond to any identified human rights impacts, in a manner that allows stakeholders to evaluate the company's human rights performance. That includes, for instance, producing information in local languages and ensuring that it is widely disseminated.

The flagship human rights reporting example is the white paper "Talking the Human Rights Walk," produced by Nestlé. In 2013, Nestlé became the first major multinational to report publicly on the human rights impacts of its activities, and on the efforts it has made to address them at the corporate and country level.¹³

3. Remediation

When companies identify their responsibility for adverse human rights impacts, they should provide for, or cooperate in, their remediation. This can be done through the establishment of operational-level grievance mechanisms, such as hotlines, community relations offices or mediation roundtables, and by fully cooperating in any judicial process arising from adverse impacts. The grievance mechanisms should recognize the role of traditional laws and customs governing land use, and the authority of Indigenous governance institutions. Special attention should be paid to physical, linguistic, cultural, and gendered accessibility. Logbooks of reported grievances should be accessible to Indigenous communities to ensure transparency, and a periodic review of the mechanism should incorporate feedback from Indigenous communities.

A good example of such grievance mechanisms is BHP Billiton's efforts to address complaints of Indigenous communities at its former Tintaya copper mine in Peru. The company worked with local and international NGOs to establish dialogue and participated in a multi-stakeholder "Dialogue Table" where participants formed working commissions to investigate and resolve grievances relating to land, environmental impacts, sustainable development, and human rights. The resulting Tintaya Agreement established a three-year development fund for communities, and ensured ongoing joint environmental monitoring.

Since their creation, the Guiding Principles have gained acceptance. Many multinationals have adopted human rights due diligence measures of their own, not least because they offer protection against lawsuits and other liability issues.

A 2012 study found that 65 percent of mining companies were actively working toward compliance with the Guiding Principles.¹⁴

Companies seeking to prevent and mitigate adverse impacts on Indigenous communities have a number of resources at their disposal, including representative NGOs and government ministries in many countries with sizeable Indigenous populations. At the international level, the Human Rights and Business Country Guide identifies major Indigenous groups in a number of Latin American countries, and provides links to further resources and representative bodies.

Recognizing the special vulnerability of Indigenous peoples creates an opportunity, as well as a responsibility, for companies. The platform established by the Guiding Principles establishes a template for engagement that not only ensures sustainable, peaceful relationships with local communities, but creates long-term value.

Endnotes

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Muchas gracias for this article. Many companies today have more power and larger budgets than even the nation states where they operate and it's crucial that we look at their impact on human rights. I appreciate how you make it clear that this is not just a matter of good intentions, but of actual legal responsibility.

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