

Selected Resources

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

Contents

Indigenous Peoples' Rights and Protected Area Management (Conservation)	1
Indigenous Peoples' Rights, the Climate Change Regime and Tropical Forest Management	2
New Risks and Approaches for the Realization of Indigenous Rights to Land and Natural Resources	3

This list of selected resources complements the document "Indigenous Peoples and Human Rights" and the accompanying "Selected Resources – Indigenous Peoples and Human Rights".

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

Mapping the Human Rights Impact of Globalization

International Forum on Globalization (2006): Globalization: Effects on Indigenous Peoples

Though already somewhat dated, this map provides a first overview of the distribution and scale of the impact of economic globalization on indigenous peoples which often amounts to serious violations of their human rights and specific territorial rights as indigenous peoples.

<http://www.ifg.org/programs/indig/IFGmap.pdf>

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

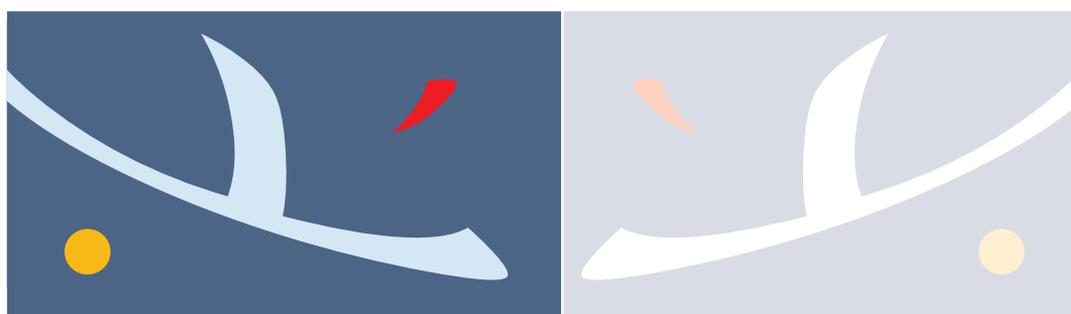
Indigenous Peoples' Rights and Protected Area Management (Conservation)

Due to the detrimental impacts of parks and other protected areas on indigenous peoples in many parts of the world (in the extreme forced resettlement), rights-based approaches to **protected area management** have long been demanded by indigenous peoples and NGOs and are increasingly being adopted by bodies like the IUCN (International Union for the Conservation of Nature and Natural Resources).

The **Conservation Initiative on Human Rights (CIHR)**, in operation since 2008, is a consortium of eight large international conservation organizations 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" which includes the following commitments: to respect and promote human rights, protect "the vulnerable", encourage good governance and to address conservation-human rights links in the design, implementation and monitoring of conservation programmes.

<https://community.iucn.org/cihr/Pages/default.aspx>

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



Indigenous Peoples' Rights, the Climate Change Regime and Tropical Forest Management

Besides the already mentioned Convention on Biodiversity (CBD), other **UNCED agreements** (Agenda 21 and the conventions and international processes related to climate, forests and desertification) also take indigenous rights and interests into account, though not yet at the level of legally binding treaties.

In recent years, **tropical forests** have received most attention. In the context of the United Nations Framework Convention on Climate Change (UNFCCC), the international and national **REDD (Reduced Emissions from Deforestation and Forest Degradation)** processes are seen to have both potential benefits and risks for forest-dependent indigenous peoples. There is thus a need to pay special attention to the rights of indigenous peoples in the context of REDD.

Background Reading

Climate Change and Human Rights: A Rough Guide (2008)

http://www.ichrp.org/files/reports/45/136_report.pdf

General overview on REDD:

<http://www.un-redd.org/AboutREDD/tabid/582/Default.aspx>

The **International Alliance of Indigenous and Tribal Peoples of the Tropical Forest (IAITPTF)**, founded in 1992 (office in Panama), promotes the rights of indigenous peoples in nine tropical forest regions.

<http://www.international-alliance.org/>

There are currently two major interrelated trends to advance the rights of indigenous peoples in this context, focusing on substantive and procedural rights, respectively: securing **indigenous peoples' tenure rights** and implementing the principle of **free, prior informed consent (FPIC)**. These complex topics cannot be discussed in detail, but the publications and sites listed below can serve as entry points for development practitioners confronted with these issues.

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 situation.

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 (2012a): 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

Rights and Resources Initiative (2012b): 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

Developing Procedures for Free Prior Informed Consent (FPIC)(focus: procedural rights)

FPIC – as based on UNDRIP, ILO 169 and to some degree the CBD – is one of the key procedural rights of indigenous peoples. Below are references to recent publications that offer introductions to the concept of FPIC and information on how to use it to protect the rights of indigenous peoples, in the context of REDD and beyond. Some were explicitly developed for indigenous peoples themselves.

UN-REDD Programme (2013): Guidelines on Free, Prior and Informed Consent.

http://www.un-redd.org/Stakeholder_Engagement/Guidelines_on_FPIC/tabid/55718/Default.aspx and

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&task=cat_view&gid=2655&Itemid=53

FPCP & 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)

Tara Ward (2011): The Right to Free, Prior, and Informed Consent: Indigenous Peoples' Participation Rights within International Law.

<http://www.law.northwestern.edu/journals/jihr/v10/n2/2/Ward.pdf>

R2R (2011): 'Free, Prior and Informed Consent' under UNDRIP: What Does it Really Mean?

<http://www.right2respect.com/2011/06/%E2%80%99free-prior-and-informed-consent%E2%80%99-under-the-un-declaration-on-the-rights-of-indigenous-peoples-what-does-it-really-mean>

KfW (2012): REDD and Indigenous Peoples. REDD Expert Dialogue 3.

http://www.kfw-entwicklungsbank.de/ebank/DE_Home/Sektoren/Naturressourcen_Tropenwald/REDD_Professional_Dialog_3_REDD_and_Indigenous_Peoples.pdf

RECOFTC & GIZ (2011): Free, Prior, and Informed Consent in REDD+. Principles and Approaches for Policy and Development.

http://www.forclime.org/images/stories/RECOFTC-GIZ_FPIC_in_REDD_2011.pdf

RECOFTC (Karen Edwards et al., 2012). A Training Manual. Putting Free, Prior, and Informed Consent into Practice in REDD+ Initiatives.

<http://www.recoftc.org/site/resources/Putting-Free-Prior-and-Informed-Consent-into-Practice-in-REDD-Initiatives.php>

FSC (2012). FSC Guidelines for the implementation of the right to free, prior and informed consent (FPIC). Version 1.

http://www.unredd.net/index.php?option=com_docman&task=doc_details&Itemid=&gid=8973

Marcus Colchester (2010): Free, Prior and Informed Consent. Making FPIC Work for Forests and Peoples.

http://environment.yale.edu/tfd/uploads/TFD_FPIC_ResearchPaper_Colchester_lo-res.pdf

Oxfam Australia (2010): Guide to Free, Prior and Informed Consent.

<http://www.culturalsurvival.org/files/GuideToFreePriorInformedConsent.pdf>

IAITPTF & IPF (2011): Handbook on Free, Prior and Informed Consent For Practical Use by Indigenous Peoples' Communities.

<http://www.thai-ips.org/Documents/PFIC-handbook-ENG.pdf>

AIPP & IWGIA (2012): Training Manual on Free, Prior and Informed Consent (FPIC) in REDD+ for Indigenous Peoples.

http://ccmin.aippnet.org/index.php?option=com_content&view=article&id=1041&Itemid=176

New Risks and Approaches for the Realization of Indigenous Rights to Land and Natural Resources

Violations of the rights of indigenous peoples to their homelands or territories have been a core human rights issue for many years, but external pressures on these territories are increasing. The frequency of evictions ("involuntary resettlements") is a growing cause for concern.

The three UN institutions specialized on indigenous peoples, especially the Special Rapporteur, James Anaya, are currently focussing on extractive industries.

Indigenous Peoples and Extractive Industries

The 2013 report of the Special Rapporteur to the Human Rights Council addresses issues related to extractive industries and implications they have for the rights of indigenous peoples. In the report, James Anaya systematically sets forth a series of observations and recommendations regarding models of natural resource development, the obligations of States, the responsibilities of companies, consultation processes, and the principle of free, prior and informed consent (FPIC) to protect the rights of indigenous peoples, within the context of challenges posed by extractive industries on a global scale.

<http://unsr.jamesanaya.org/annual-reports/report-to-the-human-rights-council-a-hrc-24-41-2013>

German development cooperation has issued the following position papers on this issue:

BMZ (2011): Extractive Resources in German Development Cooperation

In September 2011, BMZ published its commitment to help ensure that resource wealth can be harnessed sustainably for pro-poor economic growth. Indigenous peoples' rights and concerns are dealt with explicitly under the heading "establish ecological and social minimum standards", based on international human rights norms as well as voluntary instruments and due diligence to be used by the private sector.

http://www.bmz.de/en/publications/type_of_publication/strategies/StrategyPaper302_04_2010_en.pdf (English)

http://www.bmz.de/de/publikationen/reihen/strategiepapiere/Strategiepapier299_04_2010.pdf (German)

Indigenous Peoples and “Land Grabbing”

“Land grabbing” for agriculture has also been a focus of international standard setting in recent years. These processes can be made use of in the defence of indigenous rights.

German development cooperation has issued the following position paper based on the international processes, standards and guidelines listed below:

BMZ (2012): Investments in Land and the Phenomenon of “Land Grabbing”. Challenges for Development Policy

In March 2012, BMZ issued this strategy paper which clarifies the position of German development policy: “Utilising the opportunities of responsible investments and preventing land grabbing.” Recognition of existing land and water rights, including e.g. collective rights recognized under customary law, is one key principle, and the special situation of vulnerable groups like indigenous peoples is referred to several times.

http://www.bmz.de/en/publications/type_of_publication/strategies/Strategiepapier321_02_2012.pdf (English)

http://www.bmz.de/de/publikationen/reihen/strategiepapiere/Strategiepapier316_2_2012.pdf (German)

At the international level, the most important recent guidelines are the following:

UN (2012): Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security

Result of an inclusive consultation process started by FAO in 2009 and endorsed by the Committee on World Food Security (CFS), the guidelines are aimed at helping governments, especially in developing countries, safeguard the legitimate rights of local people, with an emphasis on „vulnerable and marginalized“ people, to own or access land, forests and fisheries. The guidelines define minimal standards and safeguards and contain a special chapter „indigenous peoples and other communities with customary tenure systems“ which stresses the importance of good faith consultations and FPIC.

<http://www.fao.org/nr/tenure/voluntary-guidelines/en> (various languages)

FAO et al. (2010): Principles for Responsible Agricultural Investment that Respects Rights, Livelihoods and Resources (“RAI Principles”)

Issued by FAO, IFAD, UNCTAD and the World Bank Group in 2010, these principles react to the sharp increase in investment after the 2008 price spike in food and fuel prices with preliminary principles. Indigenous peoples are specifically mentioned under Principle 1 (respecting land and resource rights) and Principle 5 (responsible agro-enterprise investment) and Principle 6 (social sustainability, especially fair compensation in case of displacement), but the overall document can be of relevance.

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

Business and the Rights of Indigenous Peoples

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

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

Business has an important role with regard to indigenous peoples’ problems caused by extractive industries and land grabbing. The following international developments with regard to private sector responsibilities, supported by the German government, are also of relevance for indigenous peoples:

OECD (2012): Recommendation ... on Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence („Common Approaches“)

The objective of these recommendations, the implementation of which will be monitored by the OECD Secretariat, is to promote coherence between OECD members’ export credit and human rights policies, among others. Projects covered include those which are planned to be carried out in „sensitive locations“ which include „areas of importance for indigenous peoples or other vulnerable groups.“

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

UN (2011): Guiding Principles on Business and Human Rights (so called „Ruggie Principles“)

Also result of a lengthy consultation process coordinated by UN Special Representative on Business and Human Rights Prof. John Ruggie since 2005, the „Protect, Respect and Remedy“ Framework and the Guiding Principles based on it and endorsed by the UN Human Rights Council establish state obligations to protect citizens from violations of human rights by private business and establish grievance mechanisms, and the moral (though not legal) corporate responsibility to respect human rights. Indigenous peoples are mentioned in Art. 12 as „specific groups or populations that require particular attention.“

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11164&LangID=E>

Evictions, Displacement and Resettlement

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

UN (2007): Basic Principles and Guidelines on Development-Based Evictions and Displacement

These principles particularly stress the situation of „vulnerable and marginalized sectors of society“ like indigenous peoples and include references to previous UN guidelines, especially

Juliane Osterhaus,
juliane.osterhaus@giz.de

Sondra Wentzel
sondra.wentzel@giz.de



- General Comment 7 The right to adequate housing: forced evictions (1997) and
- UN Fact Sheet No. 25 Forced Evictions and Human Rights (1993).

<http://www.ohchr.org/EN/Issues/Housing/Pages/ForcedEvictions.aspx> (various languages)

Donor policies on „involuntary“ resettlement e.g. by the

- **World Bank (2011): OP 4.12 Involuntary Resettlement**
<http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/EXTPOLICIES/EXTOPMANUAL/0,,contentMDK:20064610~menuPK:4564185~pagePK:64709096~piPK:64709108~theSitePK:502184,00.html>
- **IFC (2012): PF 5 Land Acquisition and Involuntary Resettlement**
 (link as under II.D.) and
- **EBRD (2012): PR 5 Land Acquisition, Involuntary Resettlement and Economic Displacement**
 (link as under II.D.)

Published by Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH

Registered offices
 Bonn and Eschborn, Germany

Cross sectoral programme
 'Realising Human Rights in Development Cooperation'
 Dag-Hammarskjöld-Weg 1 - 5
 65760 Eschborn, Germany
 T +49 (0)61 96 79 - 1523
 F +49 (0)61 96 79 - 801523
sv-menschenrechte@giz.de
www.giz.de

Layout Ira Olaleye
 As at August 2013

GIZ is responsible for the content of this publication.

In cooperation with German Institute for Human Rights
 Zimmerstraße 26/27
 10969 Berlin, Germany

On behalf of Federal Ministry for Economic Cooperation and Development (BMZ)

Division Human rights; gender equality; culture and development

Addresses of the BMZ offices

BMZ Bonn Dahlmannstraße 4 53113 Bonn, Germany T +49 (0)228 99 535 - 0 F +49 (0)228 99 535 - 3500	BMZ Berlin Stresemannstraße 94 10963 Berlin, Germany T +49 (0)30 18 535 - 0 F +49 (0)30 18 535 - 2501
--	---

poststelle@bmz.bund.de
www.bmz.de