Realization of Indigenous Peoples' Rights

How business can contribute and ILO tools to support their efforts
Setting the scene

- "Indigenous and tribal peoples": common denominator for more than 370 million people, found in more than 70 countries worldwide in all regions of the world
- Great heterogeneity among indigenous and tribal peoples: set of objective and subjective criteria, but self-identification is key
- Indigenous and tribal peoples’ rights are articulations of universal human rights
Indigenous peoples around the world

Source: Indigenous Cultures of the World (National Geographic, 1999)
The general challenges indigenous peoples face

- Indigenous peoples face barriers and disadvantages in the labour market
- Their knowledge and skills is often not valued
- Access to crucial services is lower than national averages in most countries
- Often victim of multiple discriminations
- Power imbalances between indigenous peoples and governments and business
Relevant instruments

Indigenous and tribal peoples have been a key concern for the ILO since its creation

- Provision of policy advice and technical assistance to social partners on the rights of indigenous peoples as part of its mandate
- Adoption of specific international labour standards, addressed to governments

Fundamental Principles and Rights at Work (GC Labour Principles):

- Uphold the freedom of association and the effective recognition of the right to collective bargaining
- Uphold the elimination of forced and compulsory labour
- Uphold the effective abolition of child labour
- Uphold the elimination of discrimination in respect of employment and occupation

ILO MNE Declaration

- Main areas: general policies, employment, training, conditions of work and life and industrial relations
Rationale or objectives of ILO Convention 169

- Redress or correct assimilationist approach to indigenous and tribal peoples’ situation (Preamble of C.169): *Indigenous communities are not temporary societies to be assimilated, but rather distinct societies to be respected*

- Enable ITPs to decide their own priorities and shape their development or future (Article 7 C.169): *Correct paternalistic approach of knowing what is better for indigenous peoples*

- Eliminate socio economic gaps that may exist in the national community (Article 2 C.169)

  “Experience shows that it is nearly impossible for indigenous peoples to enjoy Fundamental Principles and Rights at Work (FPRW) in a country that fails to recognize them or to protect their specific rights.” (ILC 2012)
ILO C169: Status and country context for business

Status and uniqueness of ILO Convention 169

- The only international binding Convention on ITPs open for ratification by governments
- Ratified by 22 countries (15 Latin America and Caribbean, 4 Europe, 2 Asia and Pacific, 1 in Africa), others considering ratification
- Global key reference point beyond ratifying countries, including within the business sector e.g. IFC Note on C.169
- Convention No. 169 and the UNDRIP complement each other
- Uses “indigenous” and “tribal” concepts: Widened scope, including Afro- descendants in certain countries (e.g. Colombia and Nicaragua)
Some key obligations of ratifying States

- Recognize indigenous peoples’ land rights (based on occupation or use) and identify these lands
- Establish adequate procedures to resolve land claims
- Consult indigenous peoples before the exploration or exploitation of natural resources pertaining to their lands (whether or not they have a land title deed)
- Ensure indigenous peoples’ participation in the formulation, implementation and evaluation of development plans affecting them directly and in the impact assessment studies
- Ensure wherever possible indigenous peoples’ participation in the benefits arising out of the exploration and exploitation of natural resources and compensation for any damages
- Do not relocate indigenous peoples without their free and informed consent, which does not mean veto right
Challenges for business

- Recognition of rights of indigenous people within the country of operations
- Concession agreements or major investment projects leading to relocation of people or major change in their natural environment
- Timely access to all relevant information about proposals affecting indigenous territories
- Free, prior and informed consent processes which companies do not control
- Relations with communities surrounding the operations
  - Due diligence
  - Country specific context
  - Environmental and social impact assessments
  - Various scenarios possible
Scenario I. Enterprise operating in indigenous peoples’ lands & where the country concerned is a party to the C169

Due diligence would include looking into the following Government responsibilities:

❖ The process used for identifying indigenous and tribal peoples’ lands is consistent with the requirements of Convention No. 169.
❖ Legal or other procedures for resolving indigenous peoples’ land claims and disputes are acceptable and have been subject to consultation.
❖ The title to land has derived originally from indigenous peoples and whether this title was obtained properly, in accordance with the law.
❖ The relevant government authorities have recognized the indigenous peoples’ rights to natural resources.
❖ Appropriate consultation has taken place prior to the granting of exploration and exploitation licenses on their lands.
❖ Mechanisms are in place to enable the communities concerned to participate in the benefits of the project and to compensate them fairly.
Scenario II. *Enterprise operating in indigenous peoples’ lands where the country concerned is not a party to the C169 or without an existing legal framework on indigenous peoples*

**UN Framework on business and human rights to guide the actions:**

- It means avoiding the infringement of the rights of others and addressing adverse impacts that may occur.
- The responsibility exists independently of States’ human rights duties. It applies to all companies in all situations.
- The responsibility is determined by the impact caused.
- Three sets of factors need to be considered: the country context, the impact of the company’s activities and abuse connected to activities.
- The corporate response to managing the risks of infringing the rights of others is to exercise human rights due diligence, which comprises four basic components:
  - 1. a statement of policy articulating the company’s commitment to respect human rights;
  - 2. periodic assessment of actual and potential human rights impacts of company activities and relationships;
  - 3. integrating these commitments and assessments into internal control and oversight systems; and
  - 4. tracking and reporting performance.
Scenario III: Enterprise as employer of indigenous peoples or indigenous peoples as workers of an enterprise

Relevant instruments:
- ILO Convention on equal remuneration (C.100) and discrimination in employment and occupation (111), other FPRW:

Issues (ILO Guide on Convention 111)
- Lack of available employment data on indigenous peoples due to limited knowledge of their particular situations
- Many indigenous workers often face discrimination in employment as they cannot compete on an equal footing to find decent and productive employment, because their knowledge and skills are not appropriately valued and because of their often limited access to formal education and/or vocational training.
- Indigenous workers are often in a working situation that deprives them of their fundamental labour rights, including freedom of association and collective bargaining, non-discrimination and freedom for forced and child labour.
- Indigenous workers generally earn less and the income they receive compared to the years of schooling completed is less than their non-indigenous peers. This gap increases with higher levels of education.
Particular vulnerability of indigenous women

- Have less access to education and training at all levels;
- Are more affected by un- and under- employment;
- Are more often involved in non-remunerated work;
- Receive less pay for work of equal value;
- Have less access to material goods and formal recognition needed to develop their occupation or to obtain access to employment;
- Have less access to administrative and leadership positions;
- Experience worse conditions of work, for example related to working hours and occupational safety and health;
- Are particularly vulnerable to sexual abuse and harassment and trafficking, as they often have to seek employment far away from their communities;
- Are limited by discriminatory cultural practices which, for example inhibit the education of the girl-child or prevent women from inheriting land or participating in decision-making processes.
Scenario III: Enterprise as employer of indigenous peoples or indigenous peoples as workers of an enterprise

ILO Guide on Eliminating discrimination against indigenous and tribal peoples in employment and occupation (Convention No.111) : protection against:

- Direct discrimination
- Indirect discrimination

MNE Declaration:

- Employment promotion: “Multinational enterprises should give priority to the employment, occupational development, promotion and advancement of nationals of the host country at all levels (…)”
- Equality of opportunity and treatment: “(…) Multinational enterprises should accordingly make qualifications, skill and experience the basis of the recruitment, placement, training and advancement of their staff at all levels”
- Security of employment: “Multinational enterprises (…) should endeavour to provide stable employment for their employees and should observe freely negotiated obligations concerning employment stability and social security”
Scenario IV: *Enterprise as client or business partner of indigenous peoples*

In line with the *Employment Policy Convention, 1964 (No. 122)*, Governments and enterprises are encouraged to facilitate the insertion of indigenous peoples in the labour market, lead to skills development, and increase decent employment and business opportunities for them.

The *ILO MNE Declaration* encourages companies to:

“(…) give consideration to the conclusion of contracts with national enterprises”;

“(…) adopt suitable measures to ensure that lower income groups and less developed areas benefit as much as possible from the activities of multinational enterprises”

Some ways in which companies could further support these goals, where appropriate, include:

*Assisting indigenous peoples to access credit, market facilities, agricultural extension and skills training facilities*

*Sourcing from indigenous peoples*

*Assisting indigenous peoples to establish cooperatives*


ILO Helpdesk for business [www.iolo.org/business](http://www.iolo.org/business)

ILO MNEs and Enterprise Engagement Unit [www.iolo.org/multi](http://www.iolo.org/multi)
THANK YOU

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