

COVID-19 & Indigenous Peoples

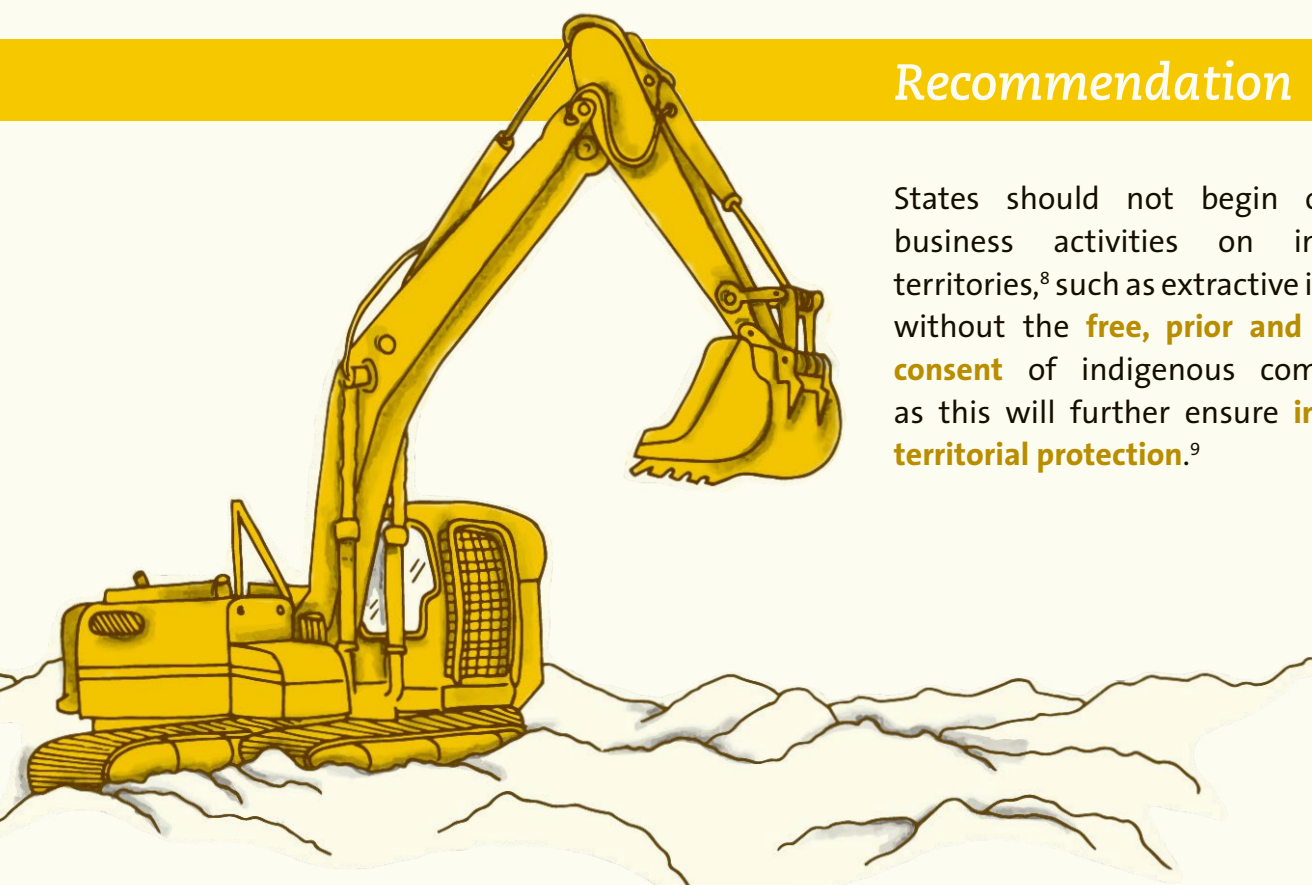


Free, prior and informed consent in the context of business activities

State measures, in a bid to stimulate the economy, have given priority to the private sector,¹ allowing many companies to continue their operations and activities, including those that **encroach on** and **adversely impact indigenous lands**.² Many governments have made attempts to make environmental regulations and licensing processes less rigorous³ and have approved business activities during states of emergency, **without the free, prior and informed consent** of indigenous peoples, endangering their territorial rights and exposing them to a heightened risk of contracting COVID-19.⁴ While business and megaprojects continued operating during the pandemic, measures were implemented to restrict indigenous peoples' activities.⁵ In March 2020, indigenous communities from the Amazon issued a statement demanding a moratorium on logging, mining, oil extracting and agribusiness activities on their lands,⁶ however, activities like mining were considered essential.⁷

Recommendation

States should not begin or renew business activities on indigenous territories,⁸ such as extractive industries, without the **free, prior and informed consent** of indigenous communities, as this will further ensure **indigenous territorial protection**.⁹



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Specific Recommendations:

Report of the Special Rapporteur on the Rights of Indigenous Peoples¹⁰

- “Given the new pandemic-related risks, the resumption or continuation of business activity occurring on indigenous territory should take place only with the renewed consent of concerned indigenous peoples. States should consider a moratorium on all logging and extractive industries operating in proximity to indigenous communities. Neither State authorities nor businesses should be permitted to exploit the situation to intensify activities to which indigenous peoples have objected.”
- “States should refrain from introducing legislation or approving extractive or similar projects in the territories of indigenous peoples in any circumstance where measures against COVID-19 prevent proper consultation and consent. States should equally refrain from proceeding to or threatening indigenous peoples with eviction of from their lands and seek to demilitarize indigenous lands.”

Report of the Special Rapporteur on human rights defenders¹¹

- “Businesses, while responsible for protecting human rights defenders, are often complicit in attacks on them, including on those working on land rights, indigenous rights and environmental rights. Many such defenders are among those working in remote rural areas.”
- “Pay particular attention to the most exposed groups, in particular those working in remote or isolated areas, environmental defenders, defenders of the rights of lesbian, gay, bisexual, transgender and intersex persons, women human rights defenders and those who work for women’s rights, defenders who are children, defenders working on the climate crisis, defenders working in the area of business and human rights, defenders working on migrant rights and related issues and defenders working on the rights of persons with disabilities.”

OHCHR: COVID-19 and Indigenous Peoples’ Rights¹²

- “Ensure indigenous territorial protection and the health of indigenous peoples during the pandemic by considering a moratorium on extractive mining, oil, and logging activities, industrial agriculture, and all religious proselytization within or on the border of indigenous territories, and take mitigating measures against encroachment upon indigenous land.”

The right of indigenous peoples to free, prior and informed consent is recognized in:

International Covenant on Civil and Political Rights¹³

- “Article 1:
 1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”

International Covenant on Economic, Social and Cultural Rights¹⁴

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General Comment No. 24 on State Obligations in the Context of Business Activities¹⁵

- “The obligation to respect economic, social and cultural rights is violated when States parties prioritize the interests of business entities over Covenant rights without adequate justification, or when they pursue policies that negatively affect such rights. This may occur for instance when forced evictions are ordered in the context of investment projects. Indigenous peoples’ cultural values and rights associated with their ancestral lands are particularly at risk. States parties and businesses should respect the principle of free, prior and informed consent of indigenous peoples in relation to all matters that could affect their rights, including their lands, territories and resources that they have traditionally owned, occupied or otherwise used or acquired.”
- “States parties should ensure that, where appropriate, the impacts of business activities on indigenous peoples specifically (in particular, actual or potential adverse impacts on indigenous peoples’ rights to land, resources, territories, cultural heritage, traditional knowledge and culture) are incorporated into human rights impact assessments. In exercising human rights due diligence, businesses should consult and cooperate in good faith with the indigenous peoples concerned through indigenous peoples’ own representative institutions in order to obtain their free, prior and informed consent before the commencement of activities. Such consultations should allow for identification of the potentially negative impact of the activities and of the measures to mitigate and compensate for such impact. They should also lead to design mechanisms for sharing the benefits derived from the activities, since companies are bound by their duty to respect indigenous rights to establish mechanisms that ensure that indigenous peoples share in the benefits generated by the activities developed on their traditional territories.”

General Comment No. 14 on the Right to the Highest Attainable Standard of Health¹⁶

- “The Committee considers that development-related activities that lead to the displacement of indigenous peoples against their will from their traditional territories and environment, denying them their sources of nutrition and breaking their symbiotic relationship with their lands, has a deleterious effect on their health.”

UN Declaration on the Rights of Indigenous Peoples¹⁷

- “Article 32
 1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.
 2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.
 3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.”



References

1. Human Rights Council 48th Session, (A/HRC/48/54), para. 14
2. The United Nations Permanent Forum on Indigenous issues (E/C.19/2021/9) states that, "During the emergency, governments have prioritized those areas of the economy which they considered necessary for economic recovery. Thus, States have promoted extractive, energy and agro-industrial projects that affect indigenous territories", para. 54, at <https://undocs.org/Home/Mobile?FinalSymbol=E%2FC.19%2F2021%2F9&Language=E&DeviceType=Desktop>
3. Human Rights Council 48th Session, (A/HRC/48/54), para. 9
4. United Nations 75th General Assembly (A/75/185): Report of the Special Rapporteur on the Rights of Indigenous People, para. 86 and 87, at <https://undocs.org/Home/Mobile?FinalSymbol=A%2F75%2F185&Language=E&DeviceType=Desktop>
5. The United Nations Permanent Forum on Indigenous issues (E/C.19/2021/9) states that, "The pandemic has exacerbated inequality and conditions of extreme poverty for most indigenous peoples by suspending the activities by which they earn their livelihoods, such as the sale of handicrafts or trade in agricultural products", para. 22, at <https://undocs.org/Home/Mobile?FinalSymbol=E%2FC.19%2F2021%2F9&Language=E&DeviceType=Desktop>
6. United Nations 75th General Assembly (A/75/185): Report of the Special Rapporteur on the Rights of Indigenous People, para. 88, at <https://undocs.org/Home/Mobile?FinalSymbol=A%2F75%2F185&Language=E&DeviceType=Desktop>
7. "Mining in Latin America: An essential activity?", Business News Americas, 8 April 2020, at <https://www.bnamericas.com/en/features/mining-in-latin-america-an-essential-activity>
8. Ibid n (2), para. 106 and 107
9. Office of the High Commissioner for Human Rights: COVID-19 and Indigenous Peoples' Rights, p.9, at https://www.ohchr.org/Documents/Issues/IPeoples/OHCHRGuidance_COVID19_IndigenousPeoplesRights.pdf
10. United Nations 75th General Assembly (A/75/185), para. 106 and 107
11. United Nations 75th General Assembly (A/75/165), para. 35 and 91(F)
12. Office of the High Commissioner for Human Rights, p.9
13. The Human Rights Committee, Part I
14. Committee on Economic, Social and Cultural Rights, Part I
15. Committee on Economic Social and Cultural Rights: General Comment No. 24 of the International Covenant on Economic, Social and Cultural Rights, para. 27
16. Committee on Economic Social and Cultural Rights: General Comment No. 14 on Article 12 of the International Covenant on Economic, Social and Cultural Rights, para. 12 and 17
17. United Nations Declaration on the Rights of Indigenous Peoples, p. 23