

Promoting the rights of indigenous peoples

Guidelines for the Norwegian Foreign Service



NORWEGIAN MINISTRY
OF FOREIGN AFFAIRS



A young boy takes part in a demonstration to promote protection of the Amazon rainforest, in connection with the 2012 Rio+20 Conference in Rio de Janeiro, Brazil. Photo: Christophe Simon / NTB Scanpix

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Dear colleagues,

Norway seeks to play an active part in the international efforts to protect and promote the rights of indigenous peoples throughout the world and to improve their living conditions.

These guidelines provide basic information about indigenous peoples and their rights, particularly in relation to the relevant priority areas in Norway's foreign and development policy. Norwegian and international development policy has changed considerably in recent years. Development issues, business activities and the extraction of natural resources are becoming increasingly interwoven, as is evident in international cooperation in the areas of climate change and forest conservation, as well as in the business sector.

There is a continual need to focus on the rights of indigenous peoples and how Norway's efforts in this area can be most effective, and to build knowledge on this topic. There have been favourable developments internationally in recent years regarding indigenous peoples' rights. Important international recognition of these rights is given in the UN Declaration on the Rights of Indigenous Peoples, adopted by the UN General Assembly in 2007. Follow-up mechanisms are in place, and indigenous issues are on the agenda in all the international processes in which representatives for indigenous peoples participate. These include climate change negotiations, forest initiatives and developments in the area of business and human rights.

The 2004 *Guidelines for Norway's Efforts to Strengthen Support for Indigenous Peoples in Development Cooperation* provide a sound policy basis for our activities, but certain aspects of these guidelines are outdated. The field of indigenous rights continues to develop.

The UN will hold a high-level meeting on the rights of indigenous peoples in 2014. After that meeting, the Ministry of Foreign Affairs will consider whether there is a need to update the current guidelines or to draw up a separate action plan.

Our aim is to provide informative guidelines for the Ministry of Foreign Affairs, Norad and our diplomatic and consular missions that can have an awareness-raising effect and provide direction in promoting indigenous peoples' rights. NGOs, the business sector and others that receive Norwegian support for projects that may have an impact on indigenous issues will also find these guidelines useful. Our efforts in this area are governed by Norwegian and international human rights obligations, including obligations to respect the rights of indigenous peoples.

We ask you to study these guidelines thoroughly and make active use of them when considering how indigenous peoples' rights can be integrated into the activities where you work.

We look forward to constructive cooperation on protecting and promoting the rights of indigenous peoples in all activities that receive support from Norway.



Espen Barth Eide
Minister of Foreign Affairs



Heikki Eidsvoll Holmås
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1 Introduction and goals

International human rights form the normative basis for our development policy. These rights are at least as important in work related to indigenous peoples as in other areas of development policy.

One goal of these guidelines is to provide information about the international legal obligations Norway has undertaken to protect indigenous peoples. By being aware of and honouring these obligations, we can contribute to sustainable development that safeguards human rights, including the rights of indigenous peoples. A further objective is to shed light on the need to integrate indigenous peoples' rights into international cooperation that is supported by Norway. Indigenous peoples must be recognised as key actors and rights holders in development policies that may affect their lives and land areas.

The white paper *Climate, Conflict and Capital* (Report No. 13 (2008–2009) to the Storting) points out that a rights-based development policy has a strong normative effect. The active use of human rights as a framework for development cooperation will raise awareness among both governments and the general population. The result will be stronger local ownership and greater sustainability. Implementation of the human rights conventions is therefore a goal in itself, as well as being an integrated approach to be used in all development efforts.

The white paper *Sharing for prosperity* (Report No. 25 (2012-13) to the Storting), in describing the rights-based approach to Norwegian development policy, points out that the principles of non-discrimination, involvement, participation in decision-making, human dignity, transparency, legal safeguards and accountability should permeate all aspects of Norwegian development cooperation.

Norway's international efforts cover a wide range of areas, and include the International Climate and Forest Initiative, initiatives to promote clean energy, and Norwegian business activities. Challenges for Norway's human rights policy can arise in any of these areas.



An Aboriginal girl performs a traditional dance at a festival in Sydney, Australia. Photo: Richard Milnes / NTB Scanpix

These guidelines seek to ensure that Norway pursues a coherent, integrated policy that takes into consideration the rights of indigenous peoples.

Our overall goal is to foster respect for the rights of indigenous peoples by ensuring that the Norwegian foreign service:

- is well-informed on this matter, and focuses on indigenous peoples in all relevant contexts
- works actively to put indigenous issues on the agenda in both bilateral and multilateral contexts
- bases development activities supported by Norway on relevant UN conventions, as well as the ILO Convention concerning Indigenous and Tribal Peoples in Independent Countries (No. 169) and the UN Declaration on the Rights of Indigenous Peoples
- helps ensure that the rights of indigenous peoples are integrated into relevant international normative work
- focuses on the rights of indigenous peoples in business activities that are supported by Norway, and in dialogue with Norwegian companies operating in countries that have indigenous peoples.

2 Checklists

Checklist for the diplomatic and consular missions

The following checklist is intended to help increase awareness at the diplomatic and consular missions of the situation for indigenous peoples. The answers to these questions will help you to identify issues and challenges that should be addressed.

- ✓ Are there indigenous peoples in the country where you are working? Note that the authorities in a number of our partner countries do not use the term indigenous peoples. Different terms may be used in different countries.
- ✓ Do the authorities recognise that there are indigenous peoples living within the borders of their country? Have they ratified the ILO Convention concerning Indigenous and Tribal Peoples in Independent Countries (No. 169) and/or endorsed the UN Declaration on the Rights of Indigenous Peoples?
- ✓ Does the legislation of the country reflect the international obligations it has undertaken regarding the rights of indigenous peoples?
- ✓ Do indigenous peoples have recognised territorial rights in the country?
- ✓ Do they have recognised cultural rights (including education in their mother tongue or bilingual education)?
- ✓ What are the living conditions like for the indigenous peoples? What is the situation for indigenous women and children? What is the situation for indigenous people in the cities?
- ✓ Are the indigenous peoples organised in a national or regional umbrella organisation or network?
- ✓ Have the authorities established a separate public body that is responsible for issues relating to indigenous peoples?
- ✓ How are the indigenous peoples organised regarding contact with the authorities? Has a consultation mechanism been established?
- ✓ What about the political participation of indigenous peoples in the country? Are there conditions in place that give indigenous peoples a real opportunity to participate politically, on an equal footing with the rest of the population in the country?

- ✓ Are there indigenous peoples' representatives or human rights defenders who promote the interests of the indigenous peoples? What matters have been raised? Have they been resolved in a satisfactory manner?
- ✓ Are there indigenous peoples' representatives or human rights defenders who promote the interests of the indigenous peoples vis-à-vis the authorities at all levels, from the local to the national level?
- ✓ Is there cooperation between indigenous peoples' representatives in the country and indigenous peoples' representatives or organisations in other countries?
- ✓ What indigenous issues are relevant in the country where you work?
- ✓ Are there any ongoing or latent conflicts, including conflicts over land or between indigenous peoples and authorities or companies that Norwegian actors ought to be aware of, in order to avoid being involved in conflict and human rights violations? To what extent are indigenous issues relevant for Norwegian projects in the country (e.g., in the areas of forest conservation, energy, business, the extractive industries, women, or culture)?
- ✓ Which UN organisations or other international organisations in the country are active in promoting indigenous peoples' rights? For instance, does UNDP have a coordinating role to help ensure that the operational activities of the UN in the country comply with the UN's own human rights standards, including the UN Declaration on the Rights of Indigenous Peoples?
- ✓ When is the next time the human rights situation in the country is to be evaluated by the UN treaty bodies? Should Norway raise the issue of the situation for the indigenous peoples in the country in the UN Universal Periodic Review (UPR)?
- ✓ Should indigenous issues be raised with the respective authorities, also in our bilateral human rights consultations?
- ✓ Is it appropriate to cooperate with government bodies on indigenous issues?
- ✓ Is it appropriate to support local indigenous organisations either directly or through other partners?
- ✓ Do Norwegian business activities in the country affect indigenous peoples? If so, how?
- ✓ What is the situation for indigenous women in the country? Are they consulted in processes that are relevant to them?

Checklist for the Ministry

The checklist below should be used in the Ministry to ensure that the rights of indigenous peoples are adequately safeguarded in our multilateral and bilateral development cooperation:

- ✓ Ensure that the annual work plans and reports on the annual plans from the embassies explicitly include information about the embassy's work regarding the rights of indigenous peoples.
- ✓ Include the rights of indigenous peoples in relevant discussions in governing bodies for UN funds, programmes and specialised agencies, and at board meetings in the development banks. Call for the implementation of the UNDG Guidelines on Indigenous Peoples' Issues and the banks' own standards. This can also be done during the annual meetings of the United Nations Permanent Forum on Indigenous Issues (UNPFII), where the UN organisations' implementation of the UN Declaration on the Rights of Indigenous Peoples is the subject of special hearings.
- ✓ Ensure that multilateral efforts comply with the organisations' own standards. Norway's obligations under international law are to form the basis for all bilateral agreements entered into. When choosing a partner for cooperation on a specific project, examining the various organisations' environmental and social standards should be an important element in the assessment.
- ✓ Ensure that Norwegian position papers and agreements, for instance regarding climate cooperation or under the Energy + partnership and the Oil for Development programme, take into account the rights of indigenous peoples and ensure their participation in dealing with the issues that are of significance for them.
- ✓ Ensure that the rights of indigenous peoples are safeguarded in the international processes related to Norway's International Climate and Forest Initiative, and ensure that indigenous peoples participate in drawing up and implementing national plans within their country.

3 Who are indigenous peoples?

Definition

There is no internationally accepted definition of the term “indigenous peoples”. Typically, indigenous peoples are not the dominant group in the larger society of which they are a part, but they have traditional ties to a specific geographical region dating back to a time before the present state boundaries were established in that region. As a rule, they have a distinctive culture that is based on natural resources, and they differ from the majority population socially, culturally and/or linguistically. Moreover, indigenous peoples are usually a minority group in the country where they live, although this is not always the case. In certain countries in Latin America, such as Guatemala and Bolivia, indigenous peoples collectively make up a majority of the population. Common to many indigenous peoples is the fact that the authorities have attempted to suppress their culture, and they have been subjected to long-standing policies of assimilation.

It is primarily indigenous peoples’ ties to their traditional land areas that distinguish them from national (ethnic) minorities. In order for indigenous peoples to be able to maintain their culture and way of life, it is essential that they can retain their connection to their traditional land areas. ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries (the Indigenous and Tribal Peoples Convention) from 1989 contains provisions on indigenous peoples’ rights of ownership, possession and use of natural resources and land areas.

It should, however, be noted that for political reasons certain countries use other terms, for example “ethnic minorities”, for groups that would normally be considered indigenous peoples. Other terms that are used include “tribal peoples” and “forest peoples”. These terms may be used in order to avoid granting these people the rights of those with indigenous status.

Under ILO Convention No. 169, which Norway ratified in 1990, indigenous peoples are defined as follows in Article 1 (b):



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Photo: Dolores Ochoa / AP / NTB scanpix



Photo: Jan Sochor / Demotix / NTB Scanpix

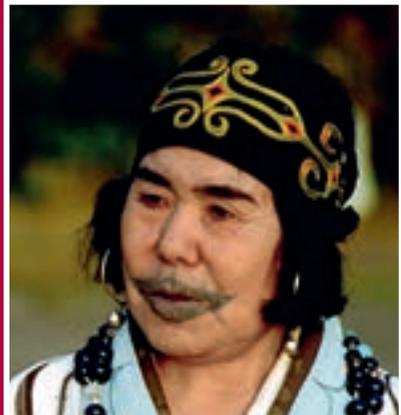


Photo: Morton Beebe/Corbis / NTB Scanpix

“Peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.”

Self-identification as indigenous or tribal is the fundamental criterion for determining the groups to which the provisions of the Convention apply. However, the peoples concerned need not have been the first ones to settle in the geographical region in question in order to be covered by the Convention. It is sufficient that they were living there before the present state boundaries were established.

On the basis of the definition given in the ILO Convention, there are currently around 370 million indigenous people, spread across more than 70 countries. There are major regional and national differences in the situation of indigenous peoples, mainly due to the political, legal and economic frameworks established by states. There are indigenous peoples on all continents, but around 70 % of indigenous peoples live in Asia. Article 33 (1) of the UN Declaration on the Rights of Indigenous Peoples (2007) also refers to the self-identification of indigenous peoples:

“Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.”

Both the ILO Convention and the UN Declaration on the Rights of Indigenous Peoples set out the fundamental rights of the world’s indigenous peoples. They point to both the individual human rights of indigenous individuals, and their collective rights as distinct peoples.

Some key issues

The past two decades have seen positive normative developments internationally for indigenous issues. In practice, however, indigenous peoples are still subjected to serious human rights violations. On several continents, indigenous peoples are threatened with extinction because they have lost their rights to land or resources, or as a result of the exercise of power by authorities or other groups or actors – particularly in connection with the extraction of natural resources. Indigenous peoples in many countries find that their rights are not being respected. They are subjected to structural discrimination, and in most countries they have limited opportunity to participate in decision-making processes on matters that affect them. Indigenous peoples remain the poorest of the poor, and they score lower than other population groups on most standard of living indicators, including education and health.



In Phoenix, Arizona, men drum to promote respect for indigenous peoples' rights as part of the "Idle No More" protest movement, which originated in Canada in 2012. Photo: Parker Haeg / Demotix / NTB scanpix

Another fundamental problem is that many countries are unwilling to acknowledge that there are indigenous peoples within their boundaries, because this will mean that they are required to fulfil a set of obligations under international law. A number of countries choose instead to have a separate policy for what they call ethnic or national minorities, which does not include the rights of indigenous peoples as set out in international law. This is the case in a number of Norway's partner countries and countries where Norway has clear business interests. Even though these countries avoid calling these groups indigenous, Norway does not accept the view that these peoples are not entitled to special protection of their rights.

However, what is most important is not to agree on a universal definition that can be used to classify all indigenous peoples, but to identify indigenous peoples where they are living (nationally or locally) and to recognise their rights. No matter what term is used for indigenous peoples in a national context, the problems they encounter will be the same. For example, the forest peoples of the Democratic Republic of Congo face the same problems, whether they are called forest people or indigenous people.

In the year 2000, the African Commission on Human and Peoples' Rights established the Working Group on Indigenous Populations/Communities in Africa, with a view to promoting debate on the issue and making recommendations as to how the rights of the most marginalised and excluded groups on the African continent could be safeguarded and promoted. The Working Group's first report states that, under the African Charter on Human and Peoples' Rights, indigenous peoples are to be protected, but that the human rights situation for indigenous peoples in Africa is alarming. The Working Group has visited various African countries, and country reports have been written on a number of them, including Burundi, Botswana, Namibia, Libya, the Republic of Congo (Congo-Brazzaville), Niger, Uganda, the Central African Republic, Gabon, Rwanda, the Democratic Republic of Congo, and Kenya.

In many cases, the problems associated with global climate change and the growing pressure on the world's natural resources have exacerbated the situation for indigenous peoples. Indigenous peoples are organising themselves in order to fight for their interests and rights and are playing an active role in climate negotiations. By integrating an indigenous perspective into the negotiations, indigenous peoples are demonstrating how both climate change and the suggested measures to promote emissions reductions and climate change adaptation can have an impact on their livelihoods and rights. Nevertheless, indigenous peoples still need protection in order to be able to maintain their traditional way of life locally.

“Indigenous peoples have been living in a “green economy” for centuries. When economies today look for new ways to achieve sustainable development, they should look at old practices in indigenous communities. Ancient indigenous traditions can help overcome modern problems.”

UN Secretary-General Ban Ki-moon's opening speech at the UN Permanent Forum on Indigenous Issues (UNPFII-10), 2011

Indigenous communities can be negatively affected by large development projects or business investments in their traditional land areas. The extraction of natural resources can have a major environmental and social impact. In some instances, projects of this kind can undermine the basis for indigenous peoples' livelihoods. Oil production, mining, plantations and logging are all activities that can have an impact on indigenous peoples' traditional way of life.

In order to avoid human rights violations, it is crucial that the authorities and companies involved are aware of what needs to be taken into account when commercial activities are carried out in areas inhabited by indigenous people.

Consultations

Under Article 6 of ILO Convention No. 169, indigenous peoples have a right to be consulted whenever consideration is being given to legislative or administrative measures which may affect them directly. Consultations with indigenous peoples are an important means by which states can ensure that they are complying with their obligations under international law. The obligation to consult is widely considered to be a cornerstone of ILO Convention No. 169. In order to implement the other provisions of the Convention, it is often necessary to consult the affected indigenous interest groups.

**On the subject of consulting indigenous peoples,
Article 6 of ILO Convention No. 169 states the following:**

1. In applying the provisions of this Convention, governments shall:
 - a) consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly;
 - b) establish means by which these peoples can freely participate, to at least the same extent as other sectors of the population, at all levels of decision-making in elective institutions and administrative and other bodies responsible for policies and programmes which concern them;
 - c) establish means for the full development of these peoples' own institutions and initiatives, and in appropriate cases provide the resources necessary for this purpose.
2. The consultations carried out in application of this Convention shall be undertaken, in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures.

The UN Declaration on the Rights of Indigenous Peoples also contains provisions on indigenous peoples' right to participate and to be consulted in decision-making. Although the Declaration is not a binding document

under international law, it sets out important guiding principles for establishing the rights of indigenous peoples. It does not establish any new or special rights for indigenous peoples, but builds on the existing universal human rights and applies these to the special situation of indigenous peoples. The UN Declaration on the Rights of Indigenous Peoples is thus particularly important in countries that have indigenous populations but have not ratified ILO Convention No.169.

Under Article 6 of the ILO Convention, states have an obligation to consult indigenous peoples with the objective of achieving agreement or consent. Moreover, under Article 19 of the UN Declaration on the Rights of Indigenous Peoples, states are to consult and cooperate with the indigenous peoples concerned in order to obtain their free, prior and informed consent (FPIC) before adopting and implementing legislative or administrative measures that may affect them. Whether the ILO Convention or the UN Declaration on the Rights of Indigenous Peoples is used as the basis, the main points are the same. Achieving consent or agreement is not an absolute requirement, but the authorities are to enter into the process in good faith and with the goal of achieving consent or agreement.

In Norway, the obligation to consult has been implemented through the *Consultations between the Central Government Authorities and the Sami Parliament*, laid down by Royal Decree on 1 July 2005.

The right of indigenous peoples to be consulted is closely linked to their right to self-determination, which is set out in Article 3 of the UN Declaration on the Rights of Indigenous Peoples. The details of what the right to self-determination entails are not fully clarified.

The question of **representativeness** is very important in the context of consultations with indigenous peoples. According to Article 6 of the ILO Convention, states are to consult the peoples concerned through appropriate procedures and in particular through their representative institutions. In a Nordic context, the Sami Parliament (Sámediggi) in the various countries is, as a starting point, the representative body for all Sami interests. However, the authorities

may have an obligation to consult other Sami interest groups as well, for instance those involved in reindeer husbandry. The question of representativeness should be given specific consideration in each case. In other countries, where organisations for indigenous peoples may not exist or be recognised, the question of who should represent them is more complicated. But uncertainty about who should represent the indigenous interest groups concerned is never an acceptable reason for not consulting them. Sufficient time should be taken to identify the groups and communities that will be affected and the mechanisms they have for political participation and decision-making.

It is important to include **indigenous women** in the consultations. In societies where there are conflicts between indigenous peoples and the majority population, indigenous women may find gender issues to be divisive within the indigenous community and may therefore under-report gender-based discrimination in their community. In many indigenous communities, women do not traditionally participate in governing bodies and women's views do not tend to be heard. Many indigenous women therefore face “double discrimination”, both as women in the indigenous community and as indigenous people in the society at large.



An AINU woman in her home. The Japanese authorities have recently recognised the AINU people as an indigenous people in the country. Photo: Ko Sasaki / The New York Times/ NTB Scanpix

4 Promoting the rights of indigenous peoples in Norwegian development cooperation

Norway supports projects at both bilateral and multilateral levels for indigenous peoples. Funding is provided via Norwegian and international organisations, UN funds and programmes, and grants managed by the embassies. Within Norway's thematic priority areas, such as the International Climate and Forest Initiative and initiatives to promote clean energy, we also provide funding for projects focusing on indigenous peoples. This support may be in the form of long-term cooperation or ad hoc funding.

Relevant priority areas include support for network-building and the establishment of indigenous organisations, for capacity-building among both indigenous peoples and relevant authorities in various areas of indigenous rights (e.g. national legislative processes related to forest management and the extraction of natural resources), or for participation by indigenous peoples in international meetings on topics that might affect their interests.

Norway has also assisted the national authorities in a number of countries that have wanted to learn from Norway's experience in implementing ILO Convention No. 169, particularly with regard to consultations between the Norwegian authorities and the Sami parliament (Sámediggi).

Bilateral cooperation

A number of Norwegian embassies are involved in development cooperation activities that aim to promote indigenous peoples' rights and the establishment of indigenous peoples' organisations. These include a programme that is engaged in direct cooperation with indigenous organisations (Brazil), support via UN organisations (Guatemala), and projects under Norway's International Climate and Forest Initiative (Indonesia).

A number of embassies have received allocations to establish small grants funds, and the embassies concerned make decisions on the support they provide to indigenous projects (for instance in Latin America).

Cooperation through NGOs

A substantial proportion of Norway's funding for indigenous organisations, much of which is administered by Norad, is channelled through Norwegian or international organisations. These organisations and their partners carry out important work in many countries to strengthen indigenous peoples' rights and to provide information about human rights violations against indigenous peoples. Through their work, a number of Norwegian and international organisations that receive funding from Norway help strengthen indigenous peoples' organisations and enhance indigenous peoples' opportunities for political participation in the societies where they live.

In connection with large-scale Norwegian priority initiatives, such as Norway's International Climate and Forest Initiative and the Oil for Development (OfD) programme, separate support schemes have been established for civil society organisations. Some of this support is granted to organisations working to promote indigenous peoples' rights.

Multilateral cooperation: the UN system and the development banks

The *UN Development Group (UNDG) Guidelines on Indigenous Peoples' Issues* describe how UN country teams are to integrate an indigenous perspective into all their operational activities. These guidelines, which were prepared by the UNDG Task Team on Indigenous Issues with representation from various UN funds and organisations, clearly follow up the UN Declaration on the Rights of Indigenous Peoples. Moreover, they provide information on the international human rights framework that forms the basis for the UN approach to indigenous issues, and they contain practical advice for designing programmes with a special focus on indigenous peoples.

Both the World Bank and the regional development banks, through their extensive lending and project activities, and not least in their role as a driving force in relation to national development strategies, play a key role in many countries that have indigenous peoples. The development banks finance a large number of development projects that directly affect the everyday life and traditional ways of life of indigenous peoples.

The World Bank has its own guidelines, *Operational Policy (OP) 4.10 – Indigenous Peoples* (revised in 2013). The Inter-American Development Bank (IDB) also has its own operating guidelines for implementation of its indigenous peoples policy. The African Development Bank (AfDB) and the Asian Development Bank (ADB) have not developed their own standards or guidelines on this issue.

In recent years the rights of indigenous peoples have been given greater attention in forums where their position was previously weak. It is particularly worth noting that in several of its decisions, the Conference of the Parties to the UN Framework Convention on Climate Change (UNFCCC) refers to indigenous peoples and requires that their rights must be respected. For more details, see the following section.

Climate and forest cooperation

ILO Convention No. 169 and the UN Declaration on the Rights of Indigenous Peoples contain the guiding principles for Norway's International Climate and Forest Initiative. The Conference of the Parties to the UN Framework Convention on Climate Change has also established a set of safeguards to be respected in programmes for climate and forest conservation. Several of these safeguards refer to indigenous peoples, requiring that their rights are respected and that they are ensured full and effective participation in decision-making. These safeguards are also binding for Norway's initiative.

In Norway's International Climate and Forest Initiative, activities are based on both bilateral and multilateral agreements and cooperation with NGOs.

With regard to the multilateral programmes under the UN (UN-REDD) and under the World Bank (the Forest Carbon Partnership Facility (FCPF) and the Forest Investment Program (FIP)), it is their respective standards with regard to indigenous peoples that apply.

As UN-REDD is part of the UN system, its standards are higher than those of the World Bank, because the UN must comply with various international agreements that are of relevance for indigenous peoples. Of particular significance in this context is the principle of participation and consultations with the aim of reaching agreement (or *free, prior and informed consent* often abbreviated as FPIC). In countries where various actors cooperate on forest conservation, the highest standard applies.



A chief of the Tucano people in the Amazon, Brazil. Photo: Tom Schandy / NN / Samfoto / NTB Scanpix

The UN and the World Bank have adopted joint guidelines for the participation of indigenous peoples in programmes in this area, called the *Joint Guidelines on Stakeholder Engagement in REDD + Readiness With a Focus on the Participation of Indigenous Peoples and Other Forest-Dependent Communities*.

The UN-REDD programme has also developed more detailed guidelines for the consultation and engagement of indigenous peoples. The objective is to reach agreement (or free, prior and informed consent). These guidelines state that indigenous peoples have the right to effectively participate both in decision-making and in designing measures and initiatives that may affect them.

In international climate and forest cooperation, it is necessary to identify the interests and rights of affected communities, including indigenous peoples' territorial rights and how they are to be followed up. The consultation and engagement of indigenous peoples is a requirement in Norway's agreements under the International Climate and Forest Initiative and a condition for Norwegian support. With regard to forest conservation, emphasis is also placed on the fact that in many cases, local communities are often the best source of knowledge about responsible natural resource management, and this knowledge is crucial for ensuring that initiatives are sustainable. The fact that forests are often the basis for indigenous peoples' livelihoods must also be taken into account.

As far as our bilateral agreements under the International Climate and Forest Initiative are concerned, Norway and our partners have many shared human rights commitments. If human rights violations occur in projects funded by Norway, we will raise this issue with the competent authorities in the countries concerned. Brazil, Guyana, Tanzania and Indonesia are among the countries Norway has concluded agreements with. Of these four countries, only Brazil has ratified ILO Convention no. 169. Multilateral organisations are involved in project implementation and thus also in quality assurance of the cooperation in several countries, including Guyana and Indonesia.

5 Indigenous peoples' rights and the business sector

International framework for business and human rights

Norway played a key role in developing the UN Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework, which were unanimously endorsed by the UN Human Rights Council in June 2011. The Guiding Principles are a global standard for preventing and addressing the risk of adverse impacts on human rights linked to business activity.

The same year, the UN Human Rights Council also established a working group on business and human rights with a three-year mandate to implement and disseminate the Guiding Principles.

The UN Guiding Principles were established due to growing international recognition that business-related human rights violations are a major problem throughout the world. The principles are structured according to the three main pillars of the "UN Protect, Respect and Remedy" framework. They help to clarify the respective roles and responsibilities of states and companies in respecting and safeguarding human rights. They also give recommendations to states and companies on how to prevent and protect against human rights violations, and how to make it easier for those affected to claim compensation if a violation has taken place.

The UN Guiding Principles on Business and Human Rights are built on a three-pillar framework:

Protect: The state duty to protect against human rights abuse.

Respect: The corporate responsibility to respect human rights.

Remedy: Access to remedy for those affected by business-related human rights abuse.

The Guiding Principles also provide recommendations on how states and business enterprises are to proceed when planning activities that may have an impact on indigenous peoples' land areas and their use of natural resources. A process of "due diligence" is to be carried out, which should include assessments of any adverse human rights impacts on indigenous peoples that the business enterprise may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships.



Demonstration in Manila, the Philippines, against a mining project that people fear will force indigenous communities to move. Photo: Bullit Marquez / AP / NTB Scanpix

Other important international standards for corporate social responsibility include:

- the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises, which provide non-binding principles and standards for responsible business conduct when addressing social and environmental issues, including indigenous peoples' rights. The OECD Guidelines have a separate chapter on human rights, and they call on enterprises to carry out "human rights due diligence", to ensure that they fulfil their responsibilities to respect human rights.
- the International Finance Corporation (IFC) Performance Standard 7, which sets requirements for how private sector actors are to take indigenous peoples into account, in accordance with international standards for indigenous rights.

Both the OECD Guidelines and the IFC Performance Standards were revised in 2011, and are now largely in line with the UN Guiding Principles.

Norway has established a National Contact Point (NCP) for the OECD Guidelines. The Norwegian NCP for the OECD Guidelines handles complaints of human rights violations, environmental damage and other possible breaches of the Guidelines involving Norwegian enterprises operating abroad. The NCP does not make any legally binding decisions, but it can assess whether or not enterprises have breached the OECD Guidelines. No other international guidelines for corporate social responsibility have a complaints mechanism of this kind.

Embassies in countries where Norwegian companies have operations should be familiar with the international requirements that apply to companies' activities as set out in the UN Guiding Principles, the OECD Guidelines and the World Bank and IFC standards.

Follow-up by Norwegian companies and authorities

Norwegian companies are expanding their activities in many countries that have indigenous peoples. The UN Guiding Principles are an extremely useful tool for ensuring that Norwegian business interests do not come into conflict with the internationally recognised rights of indigenous peoples. In this context, it is crucial that business actors carry out due diligence and risk assessments focusing on human rights, including the rights of indigenous peoples (see ILO Convention No. 169 and the UN Declaration on the Rights of Indigenous Peoples). Moreover, it is absolutely essential that both business enterprises and authorities engage indigenous groups when activities are being planned that may affect their interests or way of life.

The Norwegian authorities will draw up an action plan for following up the UN Guiding Principles at the national level. This action plan will apply to all ministries and central government institutions that interact with the business sector in some way. The plan will make clear how the Norwegian authorities, through various measures, will seek to ensure that the business sector fulfils its responsibility to respect human rights.

Norway's International Energy and Climate Initiative (Energy+)

In 2011, Norway launched the International Energy and Climate Initiative (Energy+). The purpose of the initiative is to promote energy access for all through the development of renewable energy sources and energy efficiency measures in developing countries. These measures are also intended to reduce greenhouse gas emissions. Energy+ is based on cooperation between the public and private sectors. It aims to encourage increased private sector investments in renewable energy and energy efficiency in developing countries. This is to be achieved by using performance-based financing to stimulate increased energy access combined with emissions reductions. In addition, Energy+ aims to help create better institutions, improved legislation, and reforms in the energy sector. Activities under the Energy+ initiative are intended to make it easier for the private sector to make the necessary investments. Energy+ is modelled on the UN-REDD programme.

The requirement to safeguard human rights and indigenous peoples' interests is covered by the following sentence in the guiding principles of the Energy+ initiative:

“All investments and activities implemented under the auspices of the Energy+ Partnership will comply with national and international social and environmental commitments, standards and practices.”

Increased access to energy is important for improving indigenous peoples' opportunities for development, but any energy infrastructure projects that involve significant disturbance of the natural environment may have a negative impact on indigenous peoples' traditional way of life. There are many examples of such projects that have had a negative impact on indigenous communities.

Most hydropower projects are so large in scale that it is important to focus on how they can be made as sustainable as possible. Social and environmental aspects of the projects must be dealt with in a responsible way, in accordance with international standards.

A working group has been appointed to ensure that Norway's international engagement in hydropower projects complies with the highest social and environmental standards, cf. the white paper *Towards greener development: On a coherent environmental and development policy* (Meld. St. 14 (2010–2011)).

Norwegian experience based on hydropower projects:

An interesting project on sustainable energy investments has been under way in Norway for a few years, involving Norwegian energy companies, environmental and development organisations, and the Norwegian authorities. The project has focused on international social and environmental standards, giving particular attention to indigenous rights and what is meant by the duty to consult affected groups.

This means that before an investment decision is made, the International Finance Corporation (IFC) standards are examined to determine which of them are relevant. An environmental and social impact assessment should be undertaken, referring to the IFC standards and the host country's own legislation and rules. This assessment should clarify whether indigenous peoples are living in the area concerned and whether they have been adequately consulted in the licensing process and the project assessment.

However, even if an environmental and social impact assessment indicates that the project can go ahead, there is no guarantee that resistance will not arise at a later stage in the project.

The project reached consensus on the following three points:

- Investors and developers should strive to ensure that the projects are in line with ILO Convention No. 169.
- Consultations with indigenous peoples on hydropower projects are to be carried out with the aim of achieving agreement or consent in accordance with ILO Convention No. 169, or with the aim of obtaining their free, prior and informed consent (FPIC), in accordance with the UN Declaration on the Rights of Indigenous Peoples.
- Carrying out consultations with indigenous peoples is primarily a central government responsibility, but it is also in the interests of the enterprises involved to engage with all stakeholders. If the authorities fail to carry out consultations in a responsible manner, this represents a significant risk to the project.

If agreement is not reached with the local community, this can lead to protests, demonstrations and/or legal proceedings, and thus to delays and additional costs for the project. If consultations with indigenous peoples are not carried out, Norway will not support the project in question, and Norwegian companies will be advised to pull out of it.



Young boy working in a brick factory on the outskirts of Antigua, Guatemala. Photo: Robert Harding Images

Appendix I: Presentation of the international framework on indigenous peoples' rights

The international normative framework on indigenous issues has undergone major changes in recent decades. Developments at the international level have also had a major impact on Norway's efforts at a national level relating to the rights of the Sami people. A number of international organisations have developed social and environmental standards that refer to indigenous peoples' rights, or revised their existing standards to include indigenous peoples' rights. Indigenous peoples are protected by general human rights and by instruments of international law that deal directly with indigenous issues. Norway has played a leading role in developing the international normative framework on indigenous issues. The various provisions on the rights of indigenous peoples are intended to strengthen legal protection for indigenous peoples, including their right to participate in decision-making.

Conventions that are particularly important for the protection of indigenous peoples' rights

ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries (1989) is one of the important international legal standards for ensuring that indigenous peoples' cultures and ways of life are maintained and further developed. The ILO Convention is the only binding instrument under international law that focuses solely on the rights of indigenous and tribal peoples, and that is designed to protect these peoples from abuses by states. It is a key element of the foundation for the Norwegian Government's indigenous policy. ILO Convention No. 169 replaces ILO Convention No. 107 on Indigenous and Tribal Populations (1957), which had an outdated approach and was perceived as discriminatory. On a number of occasions, the ILO has made it plain that consultations and participation are the cornerstone of ILO Convention No. 169. In addition, the Convention contains provisions relating to a range of other areas, such as the rights to land, education, language and culture.

Norway played an active role in the work to develop ILO Convention No. 169, and was the first country to ratify the Convention, in 1990. As of 2013, 22 countries have ratified the Convention. Most of these are in Latin America: Mexico (1990), Bolivia (1991), Colombia (1991), Costa Rica (1993), Paraguay (1993), Peru (1994), Honduras (1995), Guatemala (1996), Ecuador (1998), Argentina (2000), Venezuela (2002), Dominica (2002), Brazil (2002), Chile (2008) and Nicaragua (2010).

Three other European countries have ratified the Convention: Denmark (1996), the Netherlands (1998) and Spain (2007).

In the Asia-Pacific region, only Fiji (1998) has ratified the Convention to date. Nepal (2007) was the first Asian country to ratify the Convention. In Africa, the only country to have ratified the Convention so far is the Central African Republic (2010).

Article 27 of the UN Covenant on Civil and Political Rights (1966) is a key provision in international law for the protection of minorities, which can also be applied to indigenous peoples. One of the reasons for its importance is that the Covenant has been ratified by the majority of countries, and it is therefore binding under international law for these countries. Article 27 lays down the principle that persons belonging to ethnic, religious or linguistic minorities shall not be denied the right, in community with the other members of their group, "to enjoy their own culture, to profess and practice their own religion, or to use their own language." It safeguards the culture and cultural forms of expression, such as language and religion, of both indigenous peoples and other minorities. A common interpretation of Article 27 in the context of indigenous peoples is that it also covers the material basis for indigenous peoples' exercise of their cultural rights, also referred to as the "nature-based way of life" or natural resource basis of their culture. In addition to protection of cultural heritage, the UN Human Rights Committee has, both in general comments and in the consideration of complaints, interpreted Article 27 as containing a procedural requirement on the right of indigenous peoples to effectively participate in decision-making processes. What exactly a right of this kind entails is not made clear.

- ***The International Convention on the Elimination of All Forms of Racial Discrimination*** (1969) is the most important convention for ensuring equality between members of different ethnic groups. The Convention is intended to protect people from discrimination on the grounds of race, colour or ethnic origin.
- ***The UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions*** (2005) refers to indigenous peoples' cultural rights, as enshrined in Article 27 of the UN Declaration of Human Rights, Article 27 of the International Covenant on Civil and Political Rights, Article 19 of the International Covenant on Economic, Social and Cultural Rights, and Article 5 of ILO Convention No. 169.

On several continents, the cultures of indigenous peoples are being threatened by the loss of rights to land and resources and the exercise of power by authorities and other groups or actors. There are two aspects of culture that are especially relevant in this context: the right to practise one's own culture, and the right to sustainable development.

Article 2 (3) of the Convention states that protection and promotion of the diversity of cultural expressions "presuppose the recognition of equal dignity of and respect for all cultures, including the cultures of persons belonging to minorities and indigenous peoples."

The Convention builds on the UNESCO Universal Declaration on Cultural Diversity from the 2001 General Conference. Article 4 of the Declaration states that "the defence of cultural diversity is an ethical imperative, inseparable from respect for human dignity. It implies a commitment to human rights and fundamental freedoms, in particular the rights of persons belonging to minorities and those of indigenous peoples."

- ***The UN Convention on Biological Diversity (CBD)*** (1993) contains provisions that are relevant to indigenous peoples, including provisions dealing with the importance of taking traditional knowledge into account in nature management. Article 8 (j) of the Convention is of particular relevance to indigenous peoples, and states that indigenous peoples' traditional lifestyles are to be respected and preserved. Two sets of voluntary guidelines for supporting implementation of Article 8 (j) have been drawn up (<http://www.cbd.int/traditional/default.shtml>).
- ***The Nagoya Protocol under the CBD*** contains provisions on access to traditional knowledge held by indigenous and local communities when it is associated with genetic resources, and on the equitable sharing of benefits from the use of such knowledge. The Protocol attaches importance to the prior and informed consent (PIC) or approval and involvement of these indigenous and local communities, and to mutually agreed terms having been established. (Norway signed the Protocol in 2011. The Storting gave its consent to ratification on 10 June 2013. The Protocol will enter into force as soon as 50 countries have ratified it).
- ***The World Intellectual Property Organization (WIPO)*** works to promote the use and protection of material and intellectual property rights. Indigenous peoples are entitled to the protection of such rights, both collectively and individually. Work is under way to establish an international legal instrument to ensure the effective protection of traditional knowledge and traditional cultural expressions. An intergovernmental committee is working on this issue in WIPO. For more information see: www.wipo.int/tk/en/igc/
- ***The United Nations Convention on the Rights of the Child*** (1989) and the ***UN Convention on the Elimination of All Forms of Discrimination against Women*** (1979) set out that women and children of indigenous origin have the same right to protection as all other people. According to Article 30 of the Convention on the Rights of the Child, "in those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language."

The UN Declaration on the Rights of Indigenous Peoples (UNDRIP)

The UN Declaration on the Rights of Indigenous Peoples was adopted by the UN General Assembly by an overwhelming majority of states on 13 September 2007. The Declaration, which sets out fundamental rights for the world's indigenous peoples, was the result of many years' work. It does not establish any new or special rights for indigenous peoples, but builds on the existing universal human rights and applies these to the special situation of indigenous peoples. The Declaration sets out both the individual human rights of indigenous individuals and their collective rights as distinct peoples.

The Declaration contains provisions on civil and political rights, on fundamental needs such as food, health and education, and on the use of traditional resources and land areas. It establishes indigenous peoples' right to the lands, territories and resources which they have traditionally owned or used. These rights are limited to the right to own, use, develop and control the lands, territories and resources that they currently possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.

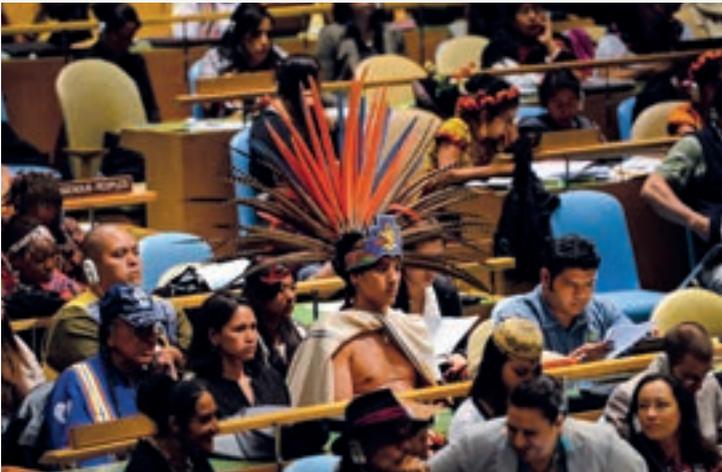
Indigenous peoples have the right to participate in decision-making in matters which would affect their rights (Article 18). Moreover, states shall consult and cooperate in good faith with indigenous peoples in order to obtain their free, prior and informed consent (FPIC) before adopting and implementing legislative or administrative measures that may affect them (Article 19).

The right of indigenous peoples to be consulted is related to their right to self-determination, which is also set out in the UN Declaration (Article 3). What the right to self-determination involves is not clarified in detail. Often, it will be possible to safeguard the right to self-determination by giving indigenous peoples a right to autonomy or self-government in matters relating to their internal and local affairs (Article 4), while at the same time allowing them to participate fully and effectively in a democratic society, and especially in decision-making processes that affect them.

The UN Declaration on the Rights of Indigenous Peoples was drawn up by states and various indigenous groups working in close collaboration. The Norwegian Government played an active part in developing the Declaration, in close cooperation with the Sámediggi (Sami parliament). Norway's aim was to achieve the adoption of a declaration that could help strengthen the legal protection afforded to the world's indigenous peoples.

The three UN mechanisms for indigenous peoples' rights

There are currently three mechanisms in the UN system that focus on indigenous issues. There is close interaction between these three mechanisms on the coordination of international efforts in the field of indigenous issues. Norway has played an important role in supporting the establishment of all three mechanisms in the UN system, and in supporting their work to fulfil their mandates. In 2014, the UN will hold the first World Conference on Indigenous Peoples. Norway is providing financial assistance to promote the participation of representatives of indigenous peoples in international meetings in the UN and in processes that are relevant for their communities. Norway also seeks to raise indigenous issues in UN forums whenever this is natural, for example in sessions of the UN General Assembly and in the UN Human Rights Council, including in the Universal Periodic Review process.



The UN Permanent Forum on Indigenous Issues. Photo: Niu Xiaolei / Xinhua / Sipa / NTB scanpix

■ In 2001, a decision was made to establish the **UN Permanent Forum on Indigenous Issues** (UNPFII) as an advisory and coordinating body for indigenous issues at the UN. With the establishment of the Permanent Forum, governmental and non-governmental representatives were for the first time given equal status to participate in a permanent representative body within the UN system. The Forum holds annual meetings, at which indigenous issues in various areas are discussed. Topics that have been discussed include indigenous peoples and the Millennium Development Goals, climate change and indigenous peoples, indigenous peoples' lands and territories, and the UN Declaration on the Rights of Indigenous Peoples.

■ **The UN Special Rapporteur on the Rights of Indigenous Peoples.**

In 2001, what was then the Commission on Human Rights decided to appoint a Special Rapporteur on the rights of indigenous peoples. The main task of the Special Rapporteur is to assess the situation of indigenous peoples in various countries, and to present recommendations and proposals for measures and activities that can help to strengthen the rights of indigenous peoples at country level. In recent years, the countries on which reports have been presented include Peru, Ecuador, Guatemala, Chile, Panama, Australia, and Russia. The Special Rapporteur has also written a report on the situation of the Sami people in Norway, Sweden and Finland.

The Special Rapporteur also addresses specific cases of alleged violations of the rights of indigenous peoples and conducts thematic studies. In recent years, one of the topics the Special Rapporteur has studied is the principle of consultations and the rights of indigenous peoples in connection with business activities.

Every September, the Special Rapporteur reports to the UN Human Rights Council. At the same time, the Office of the High Commissioner for Human Rights (OHCHR) presents its report on the UN's efforts to promote the rights of indigenous peoples during the previous year.

- **The Expert Mechanism on the Rights of Indigenous Peoples** (EMRIP) was established by the Human Rights Council in 2008. It is made up of five independent experts on the rights of indigenous peoples, and its task is to present studies, research and thematic advice on indigenous peoples' rights to the UN Human Rights Council and UN member states. Thematic reports are drawn up on topics such as indigenous peoples' right to education, the role of languages in the promotion and protection of indigenous peoples' rights and identity, indigenous peoples' participation, and business activities and indigenous peoples' rights. The Expert Mechanism plays an important role in efforts to implement the UN Declaration on the Rights of Indigenous Peoples.

Appendix II: Sources

International framework relevant for indigenous peoples' rights

- ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries (1989)
- United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) (2007)
- Know Your Rights, an adolescent-friendly version of the United Nations Declaration on the Rights of Indigenous Peoples, produced in 2013 by UNICEF in collaboration with the Secretariat of the United Nations Permanent Forum on Indigenous Issues (UNPFII) and the Global Indigenous Youth Caucus
- Universal Declaration of Human Rights (1948)
- International Covenant on Civil and Political Rights (ICCPR) (1966)
- International Convention on the Elimination of All Forms of Racial Discrimination (CERD) (1966)

Guidelines and standards relevant for indigenous peoples' rights

- United Nations Development Group Guidelines on Indigenous Peoples' Issues
- World Bank: Operational Policy on Indigenous Peoples 4.10 (revised in 2013)
- International Finance Corporation (IFC) Environmental and Social Performance Standards –Performance Standard 7 on indigenous peoples
- Inter-American Development Bank: Operational Policy on Indigenous Peoples and Strategy for Indigenous Development

- FNs Guiding Principles on Business and Human Rights
- OECD Guidelines for Multinational Enterprises
- UN-REDD: Joint Guidelines on Stakeholder Engagement in REDD+ Readiness With a Focus on the Participation of Indigenous Peoples and Other Forest-Dependent Communities
- Rainforest Foundation Norway (2012): Rights-based rainforest protection. Why securing the rights of forest peoples is the right way to save the forest
- Meld. St. 25 (2012–2013) Sharing for prosperity. Promoting democracy, fair distribution and growth in development policy, white paper from the Ministry of Foreign Affairs
- Meld. St. 14 (2010–2011) Towards greener development. On a coherent environmental and development policy, white paper from the Ministry of Foreign Affairs
- Report No. 13 (2008–2009) to the Storting: Climate, conflict and capital. Norwegian development policy adapting to change, white paper from the Ministry of Foreign Affairs
- Report No. 10 (2008–2009) to the Storting: Corporate social responsibility in a global economy, white paper from the Ministry of Foreign Affairs
- Proposition No. 76 (2005–2006) to the Storting on ratifying UNESCO's Convention on the protection and promotion of the diversity of cultural expressions (in Norwegian only)
- Information on how the Ministry of Foreign Affairs promotes human rights, as well as other thematic guidelines on human rights can be found on regjeringen.no/en/dep/ud/selected-topics/human-rights

Selected institutions and organisations working on indigenous issues:

- Expert Mechanism on the Rights of Indigenous Peoples (EMRIP), with an overview of thematic reports on the rights of indigenous peoples ohchr.org/EN/Issues/IPeoples/EMRIP
- UN Permanent Forum on Indigenous Issues (UNPFII), with a link to thematic issues <http://undesadspd.org/IndigenousPeoples.aspx>
- United Nations Special Rapporteur on the Rights of Indigenous Peoples, James Anaya. Website with links to thematic reports and country reports: unsr.jamesanaya.org
- UN Human Rights Council <http://www.ohchr.org/en/hrbodies/hrc/pages/hrcindex.aspx/ohchr.org>
- ILO website on indigenous and tribal peoples ilo.org/indigenous
- Indigenous Peoples' Center for Documentation, Research and Information (DoCip), Geneva docip.org
- International Work Group for Indigenous Affairs (IWGIA) iwgia.org
- Minority Rights Group International (MRG) minorityrights.org
- Indian Law Resource Center (ILRC) indianlaw.org
- Asian Indigenous Peoples Pact (AIPP) aippnet.org
- Forest Peoples Programme forestpeoples.org
- Rainforest Foundation Norway regnskog.no/en/home
- Gáldu Resource Centre for the Rights of Indigenous Peoples galdu.org/web/?giella1=eng
- Sámediggi – the Sami parliament sametinget.no
- Saami Council saamicouncil.net
- Forum for Development Cooperation with Indigenous Peoples uit.no/sesam/forum
- WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore wipo.int/tk/en/igc/
- Norwegian Ministry of Government Administration, Reform and Church Affairs web-based information on Norwegian Sami policy www.regjeringen.no/en/dep/fad/Selected-topics/Sami-policy.html?id=1403



The Riddu Riddu indigenous peoples' international cultural festival is held every year in Manddalen in Nord-Troms county, North Norway. Photo: Paul Sigve Amundsen / Samfoto / NTB scanpix

Published by:
Norwegian Ministry of Foreign Affairs

Public institutions may order additional copies from:
Norwegian Government Administration Services
Distribution Services
Internet: www.publikasjoner.dep.no
E-mail: publikasjonsbestilling@dss.dep.no
Telephone: +47 22 24 20 00

Publication number: E-926 E
Design: 07 Media
Photos on cover, from left to right:
Kevin Frayer / AP / NTB scanpix,
Christophe Simon / TOPSHOTS / AFP / NTB Scanpix,
Tim Wimborne/ REUTERS / NTB scanpix

Print: 10/2013 – Impression 500