

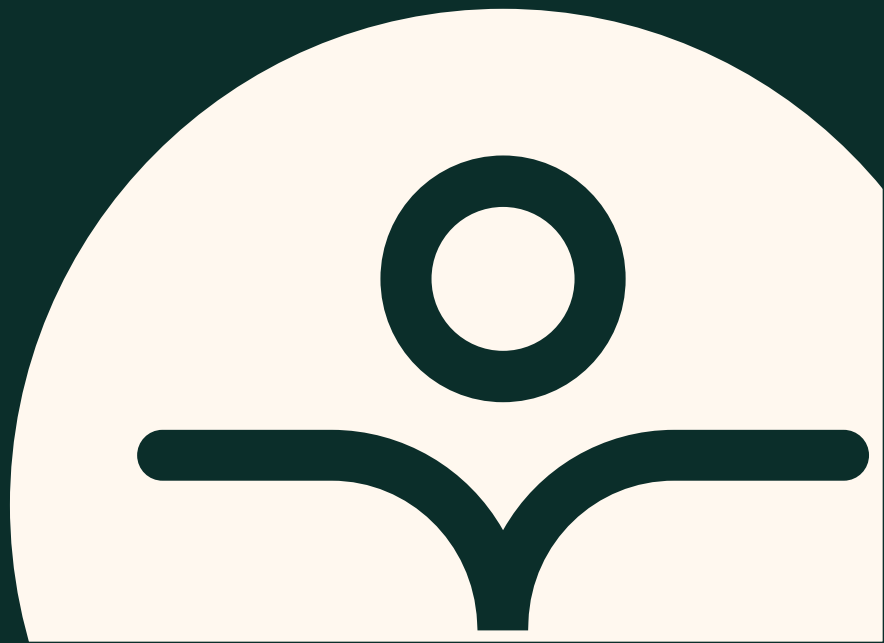


Accountability
Framework
initiative

OPERATIONAL GUIDANCE


RESPECTING THE RIGHTS OF INDIGENOUS PEOPLES AND LOCAL COMMUNITIES

This document contains detail on the scope of company responsibilities to respect the rights of Indigenous Peoples and local communities, ways to identify impacts to these rights, and actions to ensure respect for these rights.



The **Accountability Framework** was created through a consultative process with a wide range of stakeholders including companies, NGOs, and government, and following applicable good practices for multi-stakeholder initiatives. It represents the consensus of the entire **Accountability Framework initiative (AFi) Coalition**, whose members as of the date of this publication include:



AFi Backbone Team is hosted by: 

The AFi is supported by government and foundation funding partners, including:

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Suggested citation: Accountability Framework initiative, 2025. The Accountability Framework Operational Guidance on Respecting the Rights of Indigenous Peoples and Local Communities. Available from <https://accountability-framework.org>

Version:

This document version (published in June 2025) was developed in accordance with the AFi's [Policy on Revisions to the Accountability Framework](#) and supersedes any prior document versions. For an explanation of changes, please [click here](#).

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Purpose and summary

This guidance focuses on respecting the rights of Indigenous Peoples and local communities (IP and LC) in relation to companies' operations, supply chains, and financial investments. It elaborates on the Accountability Framework's Core Principle 2.2, which outlines key elements of company commitments and responsibilities to respect these rights. It also supports implementation of other Core Principles that have implications for these rights, such as Core Principle 7 on responsible site establishment, Core Principle 8 on site management and long-term protection, and Core Principle 9 on access to remedy and remediation.

This Operational Guidance focuses on the first two elements of Core Principle 2.2 (2.2.1 and 2.2.2). It is complemented by separate Operational Guidance documents that address the remainder of Core Principle 2.2:

- [Operational Guidance on Free, Prior, and Informed Consent \(FPIC\)](#) (addressing 2.2.3)
- [Operational Guidance on Remediation and Access to Remedy](#) (addressing 2.2.4)

It covers the following topics:

- Section 1 provides definitions and explanations of the peoples and communities whose rights are addressed in this guidance, and the basis for these rights in international law.
- Section 2 explains the sets of rights that are commonly affected by agricultural and forestry supply chains, with additional detail on:
 - formal and customary rights to lands, territories, and resources
 - rights to self-determination and self-governance
 - rights to an adequate standard of living, including livelihoods and food security
 - cultural rights
 - rights to equality and non-discrimination, including gender equality
- Section 3 describes the actions that companies should take to help ensure full respect for the rights of IP and LC, including the roles of companies at different stages of the supply chain.

Annexes provide additional detail on the preceding topics, as well as specific guidance on respecting the rights of environmental and human rights defenders.

To put this Operational Guidance into practice often requires tailored solutions, expert advice, and local support to address the specific challenges and nuances of each context where IP and LC rights are at stake. Companies are therefore encouraged to enhance their capabilities and seek support from qualified experts and organisations to help implement this guidance in each context where they work.

1

Introduction

Throughout the world, Indigenous Peoples and local communities have suffered from subjugation, marginalisation, exclusion, discrimination, and dispossession. Power imbalances and a lack of resources to defend their rights—combined with inadequate articulation and implementation of laws and policies to respect these rights—have contributed to widespread harms to these peoples and communities. Many of these impacts are significant in scope and scale, and some are irreparable.

Agricultural and forestry supply chains are amongst the greatest threat and source of harm to the rights, livelihoods, and cultures of Indigenous Peoples and local communities. This is partly because agriculture and forestry are land- and resource-intensive activities. If not carefully sited, planned, and implemented, these activities can have severe negative impacts on the lands, territories, and resources over which Indigenous Peoples and local communities have formal and customary rights.

This Operational Guidance explains how companies can act to fully respect the rights of Indigenous Peoples and local communities associated with their operations, supply chains, and financial investments. Doing so is an ethical mandate, and increasingly a legal obligation, for companies. It is also a way that companies can mitigate business risks associated with rights violations. These include risks and costs associated with operational and supply chain disruptions, grievances, litigation, community disputes, needs for remediation, and reputational damage.

1.1 Peoples and communities to whom this guidance applies

Human rights are universal, as set out in the International Bill of Human Rights and other international human rights instruments. For this reason, the Accountability Framework's Core Principle 2 calls on companies to fully respect all human rights in the context of their operations, supply chains, and financial investments. This responsibility is well established in international law and business-oriented instruments, such as the UN Guiding Principles on Business and Human Rights (UNGPs) and the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct.

Beyond the set of universal human rights that applies to all persons, there are certain additional rights that are specific to Indigenous Peoples and local communities. These rights are grounded in international laws that pertain to such groups, as well as in these groups' systems of collective governance and customary land and resource tenure.

The rights of Indigenous Peoples and local communities are addressed in Core Principle 2.2 and in this Operational Guidance. These materials apply to the following peoples and communities:

- **Indigenous Peoples**, whose characteristics and rights are clearly outlined in international law;
- **tribal peoples**, whose characteristics and rights are also clearly outlined in international law, and who may or may not self-identify as Indigenous Peoples in any given case; and
- **local communities** that have collective customary tenure systems and otherwise align with the Accountability Framework's definition of this term.

Collectively, these peoples and groups are referred to as ‘Indigenous Peoples and local communities’ (and abbreviated as ‘IP and LC’) throughout the Accountability Framework. See Box 1 for definitions of these three groups.

As implied by the definitions, and as validated by international human rights jurisprudence, these three groupings may also include peoples and communities who refer to themselves (and/or are referred to by others) by different titles or categories. For instance, this guidance may also apply to Afro-descendants that possess characteristics of IP and LC, such as collective customary tenure; distinct social, cultural, and economic conditions; and regulation in whole or part by their own customs, traditions, or laws.¹

Box 1. Definitions

The Accountability Framework provides definitions of Indigenous Peoples, tribal peoples, and local communities that are grounded in international laws and jurisprudence. These definitions—and the rights recognised for each group—apply regardless of the nomenclature or designations for these groups used by states or others. Please see the Accountability Framework definitions for explanatory notes and sources related to the following.

Indigenous Peoples

Distinct groups of people who self-identify as Indigenous Peoples and possess some or all of the following characteristics:

- they are descended from or have historical continuity with peoples who inhabited the region prior to colonisation or the establishment of present state boundaries
- they retain some or all of their own social, economic, cultural, and political institutions and legal systems, irrespective of their legal status in a given country
- they seek to preserve and perpetuate their distinct cultural identity, such as languages, traditional beliefs, customs, laws and institutions, worldviews, and ways of life
- they maintain a collective attachment to, and aspiration to control, their lands, territories, and natural resources, which they seek to transmit to future generations as a basis of their continued existence as peoples
- they have experienced or are experiencing subjugation, marginalisation, dispossession, exclusion, or discrimination

Indigenous Peoples are recognised as such under international law regardless of the terms that may be applied to them by national laws, policy frameworks, or other instruments or entities. These terms may include ‘tribal people,’ ‘first peoples,’ ‘secluded tribes,’ ‘hill people,’ or others.

Tribal peoples

Distinct groups of people who:

- self-identify as tribal peoples;
- have social, cultural, and economic conditions that distinguish them from other sections of the national community; and
- are regulated wholly or partially by their own customs or traditions or by special laws or regulations.

¹The ILO Indigenous and Tribal Peoples Convention, 1989, (No. 169) has been used as a basis for recognition of Afro-descendant peoples’ territorial and collective rights in Latin America. However, not all Afro-descendants self-identify as tribal peoples. Afro-descendants that do not self-identify as tribal peoples may self-identify as local communities, as defined here. Regardless of their self-identification or terms used to describe them, Afro-descendants and other groups meeting any of the definitions in Box 1 should be considered as possessing the rights and entitled to the protections and processes detailed in this Operational Guidance.

Local communities

Distinct groups of people who have collective customary tenure systems, which they govern wholly or partially under customary law, and who maintain their own political, social, cultural, and economic institutions.

As defined by the Accountability Framework, local communities refer specifically and solely to those groups that have collective customary systems of land and resource tenure (which includes land and resource governance). These communities' use of customary tenure systems qualifies them to claim and exercise collective rights over their lands, territories, and resources.

Local communities as defined here are sometimes referred to as 'traditional local communities' or 'traditional peoples' and are distinct from other groups within the broader category of local communities that do not have collective customary systems of land and resource tenure. Persons that are not part of local communities with collective customary tenure systems are nevertheless rightsholders and enjoy the full set of human rights afforded to all persons under international law, as well as legal and statutory rights that may vary from place to place.

These three groups often share common characteristics, such as:

- possessing collective customary tenure systems
- pursuing livelihoods that are associated with their lands, territories, and resources
- attaching particular meaning to land and natural resources as sources of culture, customs, history, and identity
- depending on such land and resources to sustain their livelihoods, social organisation, culture, traditions, and beliefs

Additionally, the three groups are not entirely distinct or mutually exclusive: for instance, some peoples may self-identify as both Indigenous and tribal, and groups that self-identify as tribal peoples may also meet the definition of local communities.

Indigenous Peoples, tribal peoples, and local communities are covered by an overlapping (although not identical) set of international human rights laws and instruments, and they share certain common human rights related to their common attributes. (See Section 1.2 for more on these laws and instruments.) Due to their common characteristics and similar rights, the Accountability Framework recommends that companies take a common approach to identifying and acting to respect the rights of Indigenous Peoples, tribal peoples, and local communities, as outlined in this Operational Guidance.

It is important to note that this common approach includes local communities as defined above, but not the broader, generic concept of local communities, when that term is taken to mean any group of people living and interacting in a particular place. In other words, Indigenous Peoples or tribal peoples should not be conflated with local communities when that term is used in a generic or colloquial fashion. Box 2 provides additional explanation of this distinction and of the treatment of local communities in this guidance.

Box 2. Which local communities are addressed by this guidance, and why?

Whilst international law provides criteria for identifying Indigenous Peoples and tribal peoples, this is not the case for local communities. Absent a clear definition, the term could be taken to refer to any number of groupings, some of which share much in common with Indigenous Peoples and others of which have little in common. Thus, using the term ‘local communities’ in its generic sense does not provide adequate clarity about the characteristics of communities that are covered under the term, nor the set of rights that pertains to these communities.

The ambiguity of the term ‘local communities’ when used in its generic sense raises problems from two sides. On one side, some Indigenous Peoples’ organisations and experts have expressed concern that unduly conflating Indigenous Peoples and local communities—including through the implied equivalency of the acronym ‘IPLCs’—could weaken the self-determination basis of Indigenous Peoples’ rights or undermine the recognition of rights that international law affords specifically to Indigenous Peoples. On the other side, some local communities share key characteristics and vulnerabilities with Indigenous Peoples. Excluding them from efforts to recognise and respect collective rights could result in severe human rights violations.

To address these issues and minimise ambiguity, the Accountability Framework provides a more specific definition of local communities, as stated in Box 1. This definition includes local communities that are similar in key regards to Indigenous Peoples and tribal peoples, whilst excluding communities that are not. More specifically, it includes communities that:

- Have characteristics that meet the criteria qualifying them for collective rights, such as maintaining collective land and resource tenure systems and their own political, social, cultural, and economic institutions. In some cases, these groups may meet international law criteria for Indigenous Peoples or tribal peoples but might not self-identify as Indigenous or tribal. In other cases, they may be considered as ethnic groups or minorities.
- Follow traditional lifestyles and manage their resources and territories in customary ways, for instance through practices that are compatible with conservation and sustainable use, as outlined in Articles 8j and 10c of the Convention on Biological Diversity.

When ‘local communities’ are defined in this way, it is appropriate for companies to take a common approach to identifying and acting to respect the rights of Indigenous Peoples, tribal peoples, and local communities, as is recommended in this Operational Guidance. Doing so enables companies to be consistent and conservative in their approaches to respecting rights, whilst minimising the risk that some rights could be disregarded due to mis-categorisation of the peoples or communities affected by the company’s operations, supply chains, or financial investments.

This common approach is without prejudice to the distinct rights of any constituent group, including of Indigenous Peoples under international law. It is also without prejudice to the full set of internationally-recognised human rights that apply to all persons, as well as to legal and statutory rights that may vary from place to place.

1.2 IP and LC rights in relation to all human rights

As noted above, companies have a responsibility to respect all internationally-recognised human rights (Core Principle 2.1), as well as rights that may be specific to IP and LC (Core Principle 2.2). The Accountability Framework also specifically addresses workers’ rights (Core Principle 2.3), and the rights of environmental and human rights defenders (Core Principle 2.1.9, with further detail provided in Annex 1 of this Operational Guidance). Companies are expected to conduct human rights due diligence on an ongoing basis to help ensure respect for all human rights that might be impacted by their businesses. This approach is specified in the UN Guiding Principles on Business and Human Rights (UNGPs) and other international instruments, and is discussed further in Section 3.1.



Human rights applicable to all persons are set out in the International Bill of Human Rights (consisting of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights), other international and regional human rights instruments, and other internationally-recognised voluntary and regulatory instruments. These rights apply equally to all persons, regardless of gender, without discrimination, and to all members of IP and LC. Core Principle 2.1 outlines the elements that companies should include in their commitments, and address through their due diligence and implementation systems, to help ensure respect for these universal human rights.

In addition to the rights afforded to all persons as individuals, IP and LC enjoy specific rights, many of which are exercised collectively at the community level. These rights are enshrined in numerous international laws and instruments pertaining to particular groups including:

- the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), which incorporates rights already enshrined in other binding and ratified international treaties, and which applies specifically to Indigenous Peoples
- the ILO Indigenous and Tribal Peoples Convention, 1989, (No. 169), which includes rights that vest equally in Indigenous Peoples and tribal peoples
- the UN Declaration on the Rights of Peasants (UNDROP), which includes several rights applicable to IP and LC
- various additional treaties, declarations, standards, and authoritative guidance, as summarised in Annex 2.

1.3 States' duties and companies' responsibilities regarding IP and LC rights

States have a duty under international law to respect, protect, and fulfil human rights, including IP and LC rights. They have a further duty to establish national laws and policies that are adequate for this purpose, and to implement them. The duty to respect, protect, and fulfil internationally-recognised human rights applies even in countries where national laws or their implementation are not adequate. States also must protect against human rights abuses within their territories and jurisdictions by third parties, including business enterprises.

Companies have a responsibility not to undermine, obstruct, or weaken state efforts to protect IP and LC rights. This includes the responsibility to:

- recognise and comply with applicable law pertaining to respect for human rights in all jurisdictions implicated by their operations, supply chains, and financial investments;
- avoid undermining or impeding states' abilities to protect IP and LC rights to lands, territories, and resources;
- avoid actions that would prejudice or otherwise hinder IP or LC in securing recognition, promotion, or protection of their rights from the state; and
- avoid otherwise contributing to interference in IP and LC enjoyment of their rights, including any actions that might negatively affect the value of, limit access to, or infringe on the connection IP and LC enjoy with respect to their lands, territories, and resources.

Companies also have the responsibility to respect IP and LC rights, as further elaborated in Section 3 of this guidance. Companies' responsibilities in relation to IP and LC rights are not contingent upon states' legal frameworks, actions, or inactions. Consistent with Principle 12 of the UNGPs, companies are expected to respect internationally-recognised human rights even when national laws fail to guarantee them, and even when governments fail to implement and enforce laws intended to protect them. This expectation applies equally for company supply chains that cross multiple jurisdictions with different laws. To help meet this responsibility, companies should conform their policies and activities to the UNGPs, UNDRIP, ILO 169, and relevant provisions of other international instruments (see Annex 2). The following sections provide guidance for doing so.

2

Key rights applicable to IP and LC

This section identifies and discusses rights of IP and LC that are commonly implicated in the context of agricultural and forestry supply chains. Section 2.1 provides a list of these rights, whilst Sections 2.2 through 2.6 provide additional elaboration for sets of rights that typically warrant special attention in this context.

2.1 Overview of key rights applicable to IP and LC

The following rights of IP and LC are ones that tend to be frequently affected by company operations, supply chains, and financial investments in the agriculture and forestry sectors. This list is not exhaustive and does not represent a hierarchy of rights. However, it does offer a point of orientation to help ensure that company policies and practices address the rights of IP and LC that are most likely to be affected by their businesses. See Annex 2 for key international law references related to each of these rights and sets of rights.

- rights to lands, territories, and resources, including water (see Section 2.2)
- the right to self-determination and related rights (see Section 2.3)
- the right to self-governance (see Section 2.3)
- the right to an adequate standard of living (including livelihoods, adequate food and food security, clothing, and housing, and to the continuous improvement of living conditions) (see Section 2.4)
- cultural rights (see Section 2.5)
- rights to equality and non-discrimination, including to gender equality (see Section 2.6)
- the right to free, prior, and informed consent (FPIC) (see Box 4, as well as the [Operational Guidance on Free, Prior, and Informed Consent](#))
- rights to development and to decide their own priorities for development
- the right to a clean, healthy, and sustainable environment
- the right to meaningful participation in the decisions that may affect them
- the right to be free from forced eviction²
- the right to work, right to free choice of employment, and right to enjoyment of just and favourable conditions of work (including the right of IP and LC to practice their traditional occupations)
- the right to life and right to be free from violence
- the right to equality before the law and equal protection of the law (including rights to legal personality and access to justice)
- the right to remedy

² Forced eviction can include whole or partial physical displacement, as well as economic displacement. Examples of economic displacement include restrictions on access to or use of resources, or destruction or degradation of resources (eg, deforestation), which adversely impacts IP or LC livelihoods, food security, or income. Of particular concern are displacement scenarios that jeopardise the physical or cultural survival of the affected IP or LC.

The many rights of IP and LC are interrelated, interdependent, and indivisible. For example, the right of IP and LC to decide their own paths for development cannot be fulfilled without respect for a range of other rights, such as rights to self-determination, cultural rights, and rights to lands, territories, and resources. Additionally, as noted in Section 1.3, companies have a responsibility to respect these rights even when they are not adequately protected by national laws or the implementation or enforcement of such laws.

2.2 Rights to lands, territories, and resources

Following Core Principle 2.2.2, companies should “[i]dentify and respect Indigenous Peoples’ and local communities’ formal and customary rights to lands, territories, and resources in the context of any company activity.” This includes rights to own, occupy, use, and administer these lands, territories, and resources. Lands, territories, and resources includes water resources of all types, including freshwater rivers, lakes, and groundwater; coastal and marine resources; and wetlands of all types.

Experience demonstrates that when these rights are adversely affected by agricultural or forestry supply chains, other rights are likely to be impacted as well. This is because of the deep connection that IP and LC have with their land, territories, and resources. Thus, the rights to lands, territories, and resources are also grounded in other internationally-recognised rights, such as the right to self-determination; the right to an adequate standard of living; the right to property; the right to a clean, healthy, and sustainable environment; cultural rights; and the right to free choice of employment, including traditional occupations and livelihoods.

Characteristics of rights to lands, territories, and resources

IP and LC rights to lands, territories, and resources are a bundle of rights, including the rights of ownership, access and exclusion, possession, control, use, development, and administration. These rights pertain to resources including freshwater and coastal resources, plants, wildlife, and other natural resources. Collectively, these rights empower IP and LC to decide who may enter and traverse their lands and territories, who may lease or otherwise make use of them, and how the resources within them will be managed.

The rights to lands, territories, and resources include both customary and formal (statutory) rights. Customary rights are not contingent on state recognition. Companies must respect the broad scope of rights to lands, territories, and resources regardless of whether the state has recognised them through the issuance of a title or other legal act. Similarly, challenges and claims against a company for violating these rights can be sustained regardless of whether the rights are formally recognised.

IP and LC rights to lands, territories, and resources may originate from traditional use and occupation, from subsequent acquisition, or both:

- **Traditional ownership, occupation, or use:** These rights are based on IP or LC historic and customary use or occupation of their lands, territories, and resources. Such customary rights arise from the peoples’ or communities’ customary ownership and use in accordance with their own traditions, norms, and values. Customary rights to ancestral lands include areas from which IP and LC have been involuntarily displaced.
- **Acquisition in other ways:** These rights to lands, territories, or resources are secured through purchase, settlement, compensation arrangement, or other means, where such lands, territories, or resources were not previously part of the customary ownership or use. The origin of these rights means they are more likely to be recognised formally within the legal framework of the state.

IP and LC rights to lands, territories, and resources are not contingent on permanent occupation or use. IP and LC frequently hold rights over land that they do not permanently occupy but rather use intermittently. For instance, pastoralists and other mobile and semi-mobile peoples and communities may use land for seasonal or periodical farming, grazing, hunting, herding, fishing, gathering plants for medicinal use, spiritual or ceremonial purposes, or other uses. Therefore, companies should not construe the lack of permanent settlements or current occupation as the absence of IP or LC use or rights. Rather, a full investigation of IP and LC use of land, resources, and territories must be conducted in conjunction with the potentially affected populations to ensure that company actions do not cause adverse impacts to IP and LC rights. See Section 3.2 and Annex 3 for more information on the processes and set of studies that should inform such assessments.

2.3 Rights to self-determination and self-governance

Self-determination is the right of peoples to freely determine their political status, and economic, social, and cultural development without external interference. All peoples have the right to self-determination, as affirmed by the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). UNDRIP also enshrines the right of Indigenous Peoples to self-determination, which, together with non-discrimination, forms the basis for most of the collective rights of IP, and is integral to their full exercise of these rights. Self-determination is critical for the autonomy and self-governance of IP and LC.

Self-governance is the right of IP and LC to self-govern their own affairs through their own institutions and customary laws. This includes governance of their people, lands, territories, and resources, and decision-making about how these assets will be used to improve livelihoods and sustain their cultural identities as defined by them. The right to self-governance is crucial to enable IP and LC to manage, govern, and exercise their rights to lands, territories, and resources. Failure to understand and take steps to respect this right can present challenges to ensuring valid representation and engagement as part of consultation and FPIC processes, and can impede companies' ability to respect other rights.

The right to self-governance is further reflected in and exercised through IP and LC rights to:

- control their lands, territories, and resources
- maintain and strengthen their distinct political, legal, economic, social, and cultural institutions
- determine priorities and strategies for the development or use of their lands, territories, and resources
- administer these development programmes through their own institutions
- meaningfully and effectively participate in decisions that may affect them, through representatives chosen by themselves in accordance with their own procedures
- maintain and develop their own Indigenous decision-making institutions
- have their legal personality recognised (see Box 3)³

Commodity production or trade may adversely impact rights to self-determination and self-governance when it interferes with IP or LC decision-making processes, or constrains their autonomy to manage their own affairs. This may happen when a company's development plans, activities, or land or resource claims restrict or prevent IP and LC from making decisions about the management of their land and resources through their own institutions. These rights are also jeopardised when a company selectively engages with some institutions or representatives of IP and LC (eg, institutions that have their legal personality recognised) whilst disregarding or marginalising others (eg, traditional governing structures without legal personality). Likewise, inequitable provision of benefits or privileges to certain leaders, representatives, or segments of the community (such as those that express support for company activities or plans) or fomenting of discord or factions within IP or LC governing structures typically violate right to self-determination and self-governance.

Company respect for these rights may also face challenges due to IP or LC internal conflicts around who governs their lands, resources, and peoples. Examples of such challenges and ways for companies to address them are discussed in Annex 4.

³This list of rights related to self-governance includes language excerpted from UNDRIP Articles 5, 18, 20, 23, 26(2), and 32.

Box 3. Legal personality of IP and LC

The term ‘legal personality’ refers to whether an individual, group, or entity is recognised under law as capable of having legal rights and duties including the right to sue, be sued, hold property titles and interest, and enter into contracts. Recognition of legal personality is critical to the protection, respect, and fulfilment of human rights. For IP and LC, it is crucial that this recognition of legal personality include recognition for the collective, not only for individuals. Where governments do not fully recognise the legal personality of IP and LC, companies will need to take additional measures to ensure that IP and LC rights are respected.

One important step for companies is to conduct an applicable law assessment that considers the treatment of legal personality of IP and LC under national laws. This assessment should address questions such as:

- Do IP and LC have recognition of their legal personality under national law? If so, is such recognition consistent with the norms, values, and customary laws of these peoples?
- Have the affected IP or LC applied for legal recognition (where this is an option)? If so, is this request being properly addressed or are there unreasonable delays or undue prejudice in state responses?
- Are the affected IP or LC prevented from securing titles because they lack legal personality that permits them to hold titles, whether collectively or individually?
- Does the lack of full legal personality restrict the access of IP or LC to justice or remedy, or undermine their right to equality before the law?⁴

For additional detail on applicable law assessment and good practice for conducting an assessment, see the Accountability Framework [Operational Guidance on Voluntary Commitments and Applicable Law](#).

2.4 Right to an adequate standard of living

The right to an adequate standard of living includes the rights to livelihoods, adequate food and food security, clothing, housing, and to the continuous improvement of living conditions.

A group’s livelihood refers to how they make a living and provide for their basic needs, including food and water. The IP and LC right to livelihoods is underpinned by other rights including cultural rights and the right to work (as described in Section 2.1). The right to self-determination also establishes that in no case may a people be deprived of its own means of subsistence.

The right to adequate food is fully enjoyed when a person (alone or in community with others) has both economic and physical access to adequate food or the ability to obtain it. This can be achieved through various means, including cultivation, fishing, hunting, and access to affordable purchase. Food security is recognised as an essential precondition to the right to adequate food, and is therefore often described as a right in and of itself.⁵

The right to adequate housing is of central importance for the enjoyment of all economic, social and cultural rights. Among others, essential components of the right to adequate housing include security of tenure (including of land and property), accessibility, habitability, and cultural adequacy.⁶ The right to housing is also therefore directly linked to rights to lands, territories, and resources.

⁴ Source: adapted UNDP guidance note on Social and Environmental Standard 6: Indigenous Peoples (2022).

⁵ For more information, see the OHCHR Fact Sheet No 16 and Fact Sheet No. 34.

⁶ See Committee on Economic, Social and Cultural Rights, General Comment No. 4 (right to adequate housing), 1992, UN Doc. No. E/1992/23.



IP and LC rights to an adequate standard of living typically depend heavily on the full exercise of their rights to lands, territories, and resources, as well as on the cultural practices and customary laws related to the use and management of these. For this reason, company operations and practices that impinge on these rights, practices, or customary laws are likely also to adversely affect IP and LC rights to an adequate standard of living.

2.5 Cultural rights

Cultural rights are a group of rights that pertain to the ability of IP and LC to determine and protect their own cultural identity and development. These include:

- the right to cultural identity, including respect for IP and LC cultural institutions
- the right to be free of discrimination when asserting their cultural identity
- the right to maintain, control, develop, and protect their cultural heritage (including traditional knowledge, sacred sites, and cultural practices; see Annex 5 for examples of cultural heritage)
- the right to practice and revitalise their cultural traditions and customs and participate in the cultural life and cultural values of their peoples and communities
- the right to maintain and transmit their culture to future generations
- the right to be free from the assimilation or destruction of their culture
- the right to sustain their cultural institutions
- the right to preserve and enrich their languages as an integral part of their cultural identity
- the right to the ownership, use, control, and management of their lands, territories, and resources
- the right to practice a particular way of life associated with the use of land and resources (eg, traditional activities such as fishing, hunting, and spiritual activities)

The cultural rights, cultural identity, and cultural survival of IP and LC are inextricably linked to their access to and use of the lands, territories, and resources they have traditionally used or occupied.

2.6 Right to equality and non-discrimination

Equality and non-discrimination are fundamental human rights and human rights principles that underpin the realisation of all other rights and are enshrined in international human rights law. As with the right to self-determination, many IP and LC rights are derived from the rights to equality and non-discrimination.

This set of rights pertains to both legal equality (ie, equal treatment under and before the law) and equality of outcomes. Achieving this requires more than equal treatment for everyone; it calls on adopting special measures to address the historical and structural discrimination that IP and LC have faced, and continue to face, so that they can fully enjoy their rights on equal footing.

UNDRIP, UNDROP, ILO 169, and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) also reinforce specific rights and protections for women and girls that are members of IP and LC. These include:

- equal rights and participation in decision-making, including in FPIC processes
- equal rights to land and resources, despite traditional or national legal barriers that may exist
- equal access to livelihood opportunities

IP and LC women and girls often face multiple forms of discrimination that can interact and amplify one another (a phenomenon referred to as 'intersectional discrimination'). To address this problem, it is important not to consider individual forms of discrimination in isolation but rather to take measures that prevent discrimination, marginalisation, violence, and inequality more broadly whilst ensuring the full participation of affected persons.

3

Company actions to respect the rights of IP and LC

This section details the actions and approaches that companies should take to help ensure that IP and LC rights, as described in Section 2, are respected in company operations, supply chains, and financial investments. This material is organised as follows:

- Section 3.1 summarises sets of actions that all companies should take via an overall human rights due diligence approach.
- Sections 3.2 through 3.4 focus on the obligations of companies that own, manage, or seek to acquire land, resources, or rights to use them. Such companies and operations are most directly responsible for on-the-ground implementation of actions to respect IP and LC rights.
- Section 3.5 addresses the roles and responsibilities of commodity buyers to help ensure full respect for IP and LC rights associated with their supply chains.

3.1 Human rights due diligence

Human rights due diligence (HRDD) is an ongoing process implemented by a company to identify, prevent, mitigate, and account for how it addresses human rights risks and adverse impacts in its business. This is a universal expectation for companies under widely accepted international references including the UNGPs and OECD Due Diligence Guidance for Responsible Business Conduct. HRDD includes six elements, as summarised below:

1. Embed respect for human rights into company policies and management systems.
2. Identify, assess, and prioritise actual and potential impacts to human rights, including those that the company may cause, contribute to, or be directly linked to through business relationships.
3. Take action to cease, prevent, mitigate, and address risks and impacts.
4. Track implementation and performance, including through the company's own monitoring systems as well as through independent verification.
5. Communicate about performance, including actions taken, their effectiveness, and on-the-ground outcomes.
6. Provide or cooperate in providing fair and just remedy where harms to human rights have occurred.

Effective due diligence recognises that IP and LC are not homogenous groups or communities, but rather consist of individuals and sub-groups that face different vulnerabilities and risks based on governance systems, gender, age, livelihood roles, and other factors. Due diligence includes identifying and working to prevent, mitigate, and address the specific human rights risks and impacts of vulnerable sub-groups. This includes the use of gender-disaggregated methods to identify and assess human rights impacts, as well as gender-sensitive approaches to address impacts and risks.

HRDD should be at the core of every company's approach to respecting IP and LC rights. The AFI's [Topic Summary on Due Diligence](#) provides more information on HRDD, and, more broadly, on integrated environmental and human rights due diligence (EHRDD). It details each of the six elements and explains how the Accountability Framework can support companies in implementing effective due diligence. Companies should ensure that their HRDD systems are designed and implemented to address IP and LC rights effectively in relation to each of the six elements. Following are some key measures for doing so.

Policy commitment and embedding within the company (HRDD element 1)

All companies should have a clear, publicly accessible policy commitment to respect the rights of IP and LC in their operations, supply chains, and financial investments. This can be a stand-alone policy or can be integrated into a broader human rights or sustainability policy. At a minimum, the policy should cover the elements of the Accountability Framework's Core Principles 2.1, and 2.2. This includes a commitment to carry out operations consistent with the internationally-recognised human rights instruments listed in Section 2. Following Core Principle 3, the policy commitment should apply company-wide (including at the corporate group level) for all agricultural and forestry commodities produced and/or sourced.

In addition, all companies should have effective management systems to drive implementation of their human rights commitments. This includes governance structures with senior leadership accountability, involvement of all relevant company functions (such as sustainability, procurement, finance, and legal), and alignment of employee incentives with human rights outcomes.

The AFI's guide on [how to write an ethical supply chain policy](#) and the [Topic Summary on Company Management Systems](#) provide additional information on embedding commitments within the company as part of this element in the due diligence process.

Assessing impacts, taking action, and tracking results (HRDD elements 2-4)

Actions to carry out HRDD elements 2, 3, and 4 typically differ according to the company's position in the supply chain position:

- Companies that own, manage, or control production or processing facilities hold primary responsibility for directly ensuring that their operations and activities respect IP and LC rights. This requires assessing impacts and taking action to prevent and mitigate harms prior to the establishment of new or expanded operations (ie, in the scoping, planning, and development processes), as discussed further in Section 3.2. It also requires ongoing assessment, actions, and tracking during the operation of such facilities (Section 3.3), and providing for remedy as required at any point in time (Section 3.4).
- Downstream companies, such as traders, manufacturers, and retailers, that are more distanced from production or processing facilities typically place greater emphasis on supply chain management and supplier engagement to implement HRDD related to IP and LC rights (see Section 3.5). Nevertheless, they are ultimately responsible for impacts to IP and LC rights in their supply chains, and this may require them also to conduct direct assessment, action, and monitoring at the supply base level.
- Vertically integrated companies and other businesses that both own/manage production operations and purchase commodities in their capacities as traders or processors should implement relevant sets of actions as appropriate to their role in each instance.

Supporting these sets of actions, monitoring and independent verification are important for tracking effectiveness and outcomes for respecting IP and LC rights, and for informing adjustments to these sets of actions as needed.⁷

The intention of HRDD is to guide companies in tailoring their responses to the specific risks associated with each business context. Where risks to IP or LC are particularly high, enhanced levels of monitoring, independent verification, rightsholder engagement, and preventive and responsive actions are typically required. Indications of higher risk contexts (red flags) include weak governance, contexts where IP or LC lands are not legally recognised, past or current conflict zones or conflicts over lands, and situations involving IP that wish to remain isolated.

⁷For more detail on this topic, see the [Operational Guidance on Monitoring and Verification](#).

Communicating about performance (HRDD element 5)

Transparency is critical for driving progress, supporting accountability, and recognising achievements towards effective due diligence. Companies at all stages of the supply chain are expected to publicly communicate about:

- their human rights policy commitments
- summaries of risk assessments
- actions taken to prevent, mitigate, and address risks and impacts, and the outcomes of these actions
- systems to monitor and verify performance and compliance
- summary of grievance management, including the status of grievances and steps taken to remediate any harms

Public reporting should be transparent yet sensitive to IP and LC data privacy and protection considerations and requirements. Rightsholders should be involved in decisions regarding what information is disclosed, and these decisions should respect their wishes. Companies should avoid disclosing confidential or culturally sensitive information. For instance, instead of disclosing the location of sacred sites, companies could report on the processes used to identify and respect such areas, demonstrating that appropriate safeguards are in place. Where necessary to ensure credibility and rigour, this information should be independently verified.

See the [Operational Guidance on Reporting, Disclosure, and Claims](#) for more information about reporting related to human rights.

Provide or cooperating in providing remedy (HRDD element 6)

In case of adverse impacts to IP or LC rights, companies are expected to provide for, or cooperate in providing, fair and just remedy for the impacts that they caused, contributed to, or are directly linked to. This is explained further in Section 3.4 (for entities that own, manage, or control production or processing operations) and in Section 3.5.6 (for commodity buyers).

Rightsholder and stakeholder engagement (all six HRDD elements)

Effective due diligence should be informed and supported across all six elements by systematic, structured, ongoing, and good faith engagement with rightsholders and other stakeholders and affected persons to help identify and address actual or potential human rights impacts. This includes:

- consultation, participation, and meaningful good faith engagement with IP and LC at all stages of the due diligence process, including remedy
- engagement with other stakeholders, including environmental and human rights defenders and other rightsholders, NGOs, government, and other companies working in the same sourcing regions
- use of an operational level grievance mechanism (following the effectiveness criteria of the UNGPs, Principle 31) to enable rightsholders and other stakeholders and affected persons to raise concerns or complaints and seek their resolution

Ongoing engagement with IP and LC is in addition to the structured engagement process of free, prior, and informed consent (FPIC; see Box 4). Ongoing engagement with IP and LC helps foster trust to identify and address issues as they arise, and can provide a foundation for effective and meaningful FPIC when it is required. Engagement processes should be based on legitimate representation across the community, including representation of women, youth, elders, and other potentially vulnerable or underrepresented groups.

Box 4: Free, prior, and informed consent

Free, prior, and informed consent (FPIC) is a collective human right of IP and LC to give or withhold their consent prior to the commencement of any activity that may affect their customary or statutory rights, lands, resources, territories, livelihoods, or food security. FPIC should be carried out in a culturally appropriate manner, in accordance with the traditions, norms, and values of the affected IP and LC, and through the representatives and institutions they choose. The FPIC process should be documented in an FPIC agreement that describes who participated, how they participated, whether consent was granted, and (if so) the conditions of that consent, among other information. (See Section 3.2.2 for more information about FPIC agreements.)

Whilst FPIC is a right to give or withhold consent on a prior basis, FPIC processes should be ongoing throughout the lifecycle of any activity that may affect IP and LC customary and statutory rights. FPIC processes may also be required when the right to FPIC was not originally fully respected, or otherwise as part of remedy processes to address adverse impacts to IP and LC rights.

The role of FPIC processes as part of company actions to respect IP and LC rights are explained further in the following sections. For more information on FPIC and good practices for carrying out this process, see the [Operational Guidance on Free, Prior, and Informed Consent](#).

Collaborative action to respect IP and LC rights (multiple HRDD elements)

Companies often have limited control over factors needed to ensure respect for IP and LC rights, particularly when it comes to addressing the root causes of rights violations. In such situations, companies should engage in collaborative action at the landscape, jurisdictional, and/or sectoral levels to promote respect for IP and LC rights in production and sourcing regions. This may include working with peer companies, suppliers, NGOs, rightsholders, and other stakeholders. Engagement with governments is also important because respect for IP and LC rights often depends on national and sub-national legal frameworks, and the degree to which they are effectively implemented and enforced.

Examples of collaborative actions include supporting efforts to formally recognise IP and LC land and resource tenure rights, providing resources to facilitate culturally appropriate participatory processes led by IP and LC, strengthening grievance mechanisms, and engaging in or supporting land-use planning processes. The [Operational Guidance on Achieving Commitments Through Collaboration](#) outlines good practice for engaging in such collaborative efforts, whilst Section 3.5.7 of this guidance elaborates on the role that downstream companies can play. See also [Respecting Rights of Indigenous Peoples and Local Communities in Landscape Initiatives: A Guide for Practitioners on Minimum Safeguards and Evolving Best Practice](#), developed by AFi Coalition member Proforest in partnership with Landesa, which provides guidance on respecting IP and LC rights in landscape initiatives.

Supporting IP and LC self-determined development priorities (multiple HRDD elements)

Increasingly, good practice in HRDD in the context of IP and LC involves going beyond the avoidance and mitigation of human rights risks to proactively support the self-determined development priorities of IP and LC, when invited to do so. Self-determined development priorities refer to the development goals, plans, and actions that IP and LC define and pursue based on their own values, cultures, identities, needs, and aspirations.

Life Plans are one way in which some IP and LC document their self-determined development priorities. These plans typically address topics such as culture, economic development, livelihoods, environmental protection, and other aspects that the community considers important for its future survival and wellbeing. They may also contain information on community engagement and decision-making, as well as mechanisms for financing, managing, and achieving the community's plans. Life Plans can be an important tool for strengthening internal cohesion and documenting agreed-upon plans and priorities within the community.

However, these same matters may also be documented in other formats and/or can be communicated orally as part as consultation and engagement processes. Regardless of how IP and LC self-determined development priorities are documented or communicated, these priorities should be considered as a primary basis to inform plans and negotiations related to any proposals to make use of IP or LC lands, territories, resources, labour, or knowledge.

Companies should also consider opportunities to support IP- and LC-led development initiatives or to partner with IP and LC to advance their self-determined priorities. For instance, this could involve joint business ventures, IP and LC participation in value-addition activities, capacity building for enterprise development, supporting market access for products associated with traditional economic activities, and recognition or compensation for the role of IP and LC traditional knowledge in product development or resource management. These types of approaches can enable IP and LC to exercise greater autonomy and participate in value chains as more equal partners rather than simply providing access to lands or raw materials as part of extractive economic models.

3.2 Actions to respect IP and LC rights in relation to site establishment

Site establishment refers to the entire set of activities related to developing or expanding commodity production or primary processing operations. This includes:

- acquiring land, resource rights, or concessions (eg, for timber or agriculture)
- securing licenses and permits
- carrying out land development (eg, clearing vegetation, planting crops, and building infrastructure)

Site establishment can pose great risks to IP and LC rights, as it can involve the appropriation or re-assignment of rights to lands, territories, and resources, as well as adverse impacts to the other rights listed in Section 2. For this reason, companies should be particularly diligent in ensuring respect for IP and LC rights throughout the site establishment process.

Core Principle 7 outlines essential practices for responsible site establishment, including several elements related to IP and LC rights. These are elaborated in more detail below. Many of the actions conducted or initiated during the site establishment process are followed up on or continued throughout the lifecycle of company activities and operations, as described further in Section 3.3.

Prior to site establishment (including prior to acquiring land or resource rights or concessions), companies should conduct a thorough process of scoping, assessment, and site planning to ensure that all activities respect IP and LC rights and adhere to other company commitments, obligations, and applicable law. Where site establishment may affect IP and LC rights, an FPIC process must be conducted. Activities may proceed only if FPIC is granted, the negotiated terms of consent are mutually agreed and documented, and plans for site establishment and operation adhere to these terms. Even if the government offers a company a concession, license, or right to land or resources, the company should not accept this interest in land or resources unless and until FPIC has been secured from the IP or LC whose rights this transaction might affect.

The three following sub-sections explain the activities and elements required to carry on responsible site establishment, including initial scoping and pre-assessment (Section 3.2.1), participatory assessment and site planning (Section 3.2.2), and site planning outcomes (Section 3.2.3).

3.2.1 Scoping and pre-assessment

Before initiating a full process of assessment, FPIC, and site planning towards the goal of site establishment, a company should first conduct a scoping and pre-assessment phase. This includes several key initial activities:

- assess whether the proposed project would trigger any no-go criteria (see Box 5), in which case proposals should be abandoned or else significantly modified before investing time and money in the full assessment and planning process
- initiate early dialogue with IP and LC to orient them to the company's proposed operations and activities
- ensure that IP and LC understand their rights, including the right to withhold consent, and reinforce that participation does not imply consent for the project to proceed
- clarify legal permissions for the company to proceed with site planning and site assessment
- seek initial consent from potentially affected IP and LC to proceed to the next phase of scoping and planning

If the project triggers any no-go criteria, then typically it needs to be abandoned, re-designed, or deferred, depending on whether and how it may be possible to address the no-go factors (see Box 5). Otherwise, if the affected IP and LC consent to further scoping, the company can conduct several further pre-assessment steps:

- identify legitimate IP and LC representatives and institutions for subsequent consultation and FPIC
- consult with affected rightsholders to jointly identify and scope the studies and assessments to be conducted during the assessment and site planning phase (see Section 3.2.2, below)
- discuss the development aspirations and plans of the affected IP and LC with these groups, assess the extent to which the proposed activities align with these aspirations and plans, and consider modifications to the proposals, if needed, before initiating the full assessment and site planning process



Box 5. No-go criteria

To avoid significant human rights harms, as well as business risks, companies should not pursue projects in areas or under situations that pose inherent and difficult-to-mitigate major risks to IP and LC rights. These ‘no-go’ areas and situations include:

- **Territories of Indigenous Peoples in voluntary isolation:** Some IP choose to remain uncontacted or isolated to preserve their autonomy and traditional ways of life. Under UNDRIP and ILO 169, these territories are protected from outside interference, including commodity production. Company operations on these lands can have deadly consequences for these peoples, for instance due to lack of immunity to outside diseases and disruption of their ways of life.
- **Areas of active or high conflict:** Site establishment or commodity production in regions experiencing ongoing land disputes, violent conflict, or widespread instability present unacceptable risks to IP and LC. See Section 3.2.4 for more information about company responsibility and appropriate courses of action in situations of ongoing land conflict.
- **Internal barriers to pursuing and attaining valid FPIC:** Valid FPIC may be difficult or impossible to obtain where there are deep divisions within an IP or LC group, absence of legitimate or representative leadership, or evidence of irregular or corrupt practices (eg, legal irregularities, coercion, manipulation, bribery, or undue influence related to the company’s development plans and permissions). In these cases, site establishment processes should be halted until these issues are resolved and a credible, legitimate FPIC process can be ensured.
- **Legally protected lands and other high-sensitivity sites:** Companies should assume that territories that are legally protected under national or international law (eg, recognised IP or LC territories) are off-limits for commodity production or commercial development. Where IP or LC in such territories wish to initiate development processes based on their self-determined priorities and decisions, this should be on their own initiative and under terms of their choosing. In addition to protected territories, sites that are sensitive or have high or irreplaceable ecological or cultural values are generally unsuitable for commodity production. These sites, and measures to protect them, should be comprehensively identified and specified during the assessment and site planning process.

The above no-go factors can often be assessed relatively quickly. This should be done during the scoping and pre-assessment phase to avoid investing considerable time and money pursuing projects that would carry unacceptable human rights or business risks.

3.2.2 Participatory assessment and site planning process

Following the scoping and pre-assessment phase, if the decision is made to proceed, then the company should initiate a full assessment and planning process. The goals of this process are to:

- understand the project’s social and environmental context, risks, and opportunities
- assess the potential impacts of project proposals on people and the environment
- identify measures to avoid and mitigate adverse impacts whilst increasing project benefits relative to IP and LC self-determined priorities
- seek FPIC from affected IP and LC to proceed with the project under mutually agreed terms

Assessment and site planning should be participatory and include meaningful engagement of potentially affected rightsholders and other stakeholders. It should also take full consideration of IP and LC self-determined development priorities, as explained earlier. Also as noted above, engagement processes should include legitimate representation of the diversity of potentially affected persons and groups, including women, youth, elders, and other potentially vulnerable or underrepresented groups.



When IP and LC are present or may be affected, the assessment and site planning process is typically integrated with the FPIC process and, like FPIC, its outcomes are documented and incorporated into refined plans for site establishment and management. [The Akwé: Kon Guidelines](#), published by the Convention on Biological Diversity, offer a widely recognised framework for fostering the full involvement of IP and LC in the assessment of cultural, environmental, and social impacts of developments that are proposed to take place on (or are likely to impact) sacred sites or lands and waters traditionally occupied or used by IP and LC.

The assessment and planning process should include specific studies and assessments related to IP and LC rights to help ensure that these rights are properly identified, assessed, and respected before site establishment. These assessments are summarised below, with additional detail provided in Annex 3. The specific combination of studies carried out in any given case, and the scope of each, should be informed by consultation with rightsholders during the scoping and pre-assessment phase, as described earlier.

It is often most effective and efficient to conduct these various studies as part of an integrated assessment, engagement, and planning approach. For instance, an environmental and social impact assessment (ESIA), required by law for many types of projects in most countries, provides an integrated framework for assessing and addressing environmental, social, and economic impacts of a proposed project. Where there are risks to IP or LC rights, companies should also conduct a human rights impact assessment (HRIA). Grounded in international human rights frameworks, HRIA is a structured approach for identifying, understanding, assessing, and addressing the potential adverse impacts of a proposed project on human rights. HRIA emphasises meaningful participation of rightsholders, non-discrimination, and transparency.⁸ Integrating multiple studies and engagement activities under the ‘umbrellas’ ESIA and HRIA can help ensure that project impacts are fully assessed and addressed in a systematic manner and in relationship to one another.

Land and resource tenure study

This study determines which persons and groups may have legally-recognised or customary rights to lands, territories, and resources in the area in question. It also assesses the ways in which IP and LC own, use, control, and manage their lands, territories, and resources.

Land and resource use study

This study builds on the tenure study to further characterise all uses of the subject lands, territories, and resources, and how they relate to IP and LC livelihoods, development priorities, and the enjoyment of other fundamental rights.

Assessment of IP and LC livelihoods and food security

To avoid adverse impacts to livelihoods and food security, it is important to understand the basis of IP and LC livelihoods and food sources, and how these vary over time and across space for different groups in the community. As IP and LC livelihoods typically depend heavily on their lands, territories, resources, cultural practices, and customary laws, this assessment focuses on understanding such relationships, dependencies, and potential risks or threats to livelihoods and food security.

Assessment of cultural heritage

This assessment identifies sites, areas, knowledge, and practices of cultural significance that may be affected by the proposed activities. It should be conducted jointly with the affected IP or LC and consider all forms of cultural heritage, including those identified in Annex 5. As part of this assessment and more broadly, companies should adopt ‘chance find’ procedures, which specify that any potential cultural heritage discovered in the context of company operations is not disturbed until an assessment by a competent specialist and the affected IP or LC is completed and, if needed, mitigation measures are employed.

⁸ For more information about HRIA, see the [Human Rights Impact Assessment Guidance and Toolbox](#), published by the Danish Institute for Human Rights.

HCV or integrated HCV/HCSA assessment

The [High Conservation Value Approach](#) (HCV) is a methodology to identify, protect, and monitor biological, ecological, social, and cultural values of outstanding significance or critical importance. Conducting an HCV assessment prior to site establishment enables the company to identify key values and develop a site plan that will foster their protection. The scope of this assessment includes several values that can be of critical importance for IP and LC, including water resources and other ecosystem services, basic necessities for IP and LC (including livelihoods, health, and nutrition), and cultural values.

The [High Carbon Stock Approach](#) (HCSA) is applicable in moist tropical forest biomes, where it is used to support the implementation of responsible supply chains that avoid deforestation and fully respect human rights. The HCSA includes a multi-step methodology to develop integrated conservation and land use plans that consider both ecological and human values, including IP and LC rights. The HCV Approach is integrated into HCSA assessments to provide a streamlined overall process for site assessment and planning to protect conservation values and the rights of IP and LC. Where it is applicable, the HCSA is a helpful tool for systematically addressing IP and LC rights as part of an integrated site planning approach.

Applicable law assessment

This study should identify any laws (including national, regional, and international laws, as well as IP and LC customary laws) relevant to IP and LC rights that companies will need to follow in relation to agricultural or forestry operations. It should also assess the extent to which applicable laws may facilitate respect for IP and LC rights, where such laws (or lack of laws) may risk undermining such rights or lead to adverse impacts, and how companies can mitigate any such risks. See the [Operational Guidance on the Relationship Between Voluntary Commitments and Applicable Law](#) for additional information on applicable law and how to conduct an applicable law assessment.

3.2.3 Site planning outcomes

The findings and outcomes of the assessment and planning process should be fully documented. If FPIC has been granted and the company intends to move forward with the project, then plans should be refined based on the assessment and planning process, including adequate and agreed-upon measures to avoid, minimise, and mitigate adverse impacts to IP and LC rights. This includes all the following elements, each of which is explained further below:

1. IP and LC are provided with fair and equitable consideration for the consent they have provided and any interference with their rights.
2. The outcomes of the FPIC process, including the terms and conditions of consent, if it was granted, are formally documented in an FPIC agreement.
3. The company develops and adopts an IP and LC plan to help ensure that IP and LC rights are respected during site establishment and operation.

Fair and equitable consideration

Where IP or LC choose to grant consent for activities that impinge on their rights, or where adverse impacts are otherwise anticipated, IP and LC should be provided with consideration that is equitable, just, and fair in the given context. Consideration generally includes the following three sets of measures. These are not the same, and the provision of one may not be double counted as fulfilling the other.⁹

- **Continued access to lands, territories, and resources:** As part of the measures to avoid, minimise, and mitigate adverse impacts, project plans and agreements should to the greatest extent possible avoid any restrictions on IP and LC accessing and using their lands, territories, and resources. Where

⁹ In some cases, compensation and benefit sharing may manifest similarly, for instance as monetary payments or various types of in-kind remuneration provided to the affected IP and LC upfront and/or over time. However, these two mechanisms serve complementary purposes in providing fair and just remuneration, as described in the main text. Therefore, it is important that they not be conflated, and that the overall package of consideration to IP and LC address both, as applicable.

limitations are necessary and agreed to through a legitimate FPIC process, they should be defined as narrowly as possible to enable the proposed activities whilst maximising protection of IP and LC rights. Restrictions should be specified for the shortest time necessary and should incorporate a right to return as soon as the reason for the restriction ends. Land tenure and land use studies are pivotal tools for reaching a proper arrangement on continued access, as they assess how the affected IP and LC use their lands, territories, and resources, and how they depend on these for their physical and cultural survival.

- **Compensation:** To the extent that access to lands, territories, and resources are reduced, IP and LC should receive fair and just compensation.¹⁰ This can come in many forms, both monetary and non-monetary. When property rights are infringed or re-assigned, the default practice of paying the fair market value of the subject lands or resources may not be sufficient as fair and just compensation, given the special connections that IP and LC have to these assets, and their dependencies upon them for their physical and cultural survival. For a broader description of compensation in the context of remedy, see Section 3.4.
- **Benefit sharing:** Benefit sharing involves including IP and LC as beneficiaries of revenues or profits of the activities or operations that are enabled with their consent or through use of their lands or resources. Benefit sharing is expected in consideration of the consent provided, and is additional to continued access and compensation. Benefit sharing may include joint ventures and other models that enable IP and LC to capture a greater share of the economic value generated from their lands, resources, and knowledge.

The overall package of consideration should be developed by mutual agreement as part of the FPIC process and documented in detail in the FPIC agreement. It should be informed by and support the overall development priorities and needs of the IP or LC, as defined by these groups themselves in accordance with their own norms, values, and customs. It should also consider the different uses and values assigned to resources by the different groups within the community, such as women and men, elders and youth, hunters, gatherers, fishers, farmers, and other groups. Benefits that disproportionately enrich local elites (eg, community leaders) or vocal supporters of the company are presumed not to be equitable benefits. On the contrary, benefits of this type could be perceived as a form of coercion or improper inducement for consent, which would render the FPIC process and its outcome invalid.

FPIC agreement

The FPIC process (including who participated and how) and its negotiated outcomes should be documented in an FPIC agreement. If consent was granted, the FPIC agreement serves to formalise this consent as well as the conditions for the contest and for the activities overall. All company plans and activities—both at the site establishment phase and in subsequent and ongoing operations—must be consistent with these negotiated outcomes. To ensure accountability, access, and transparency, the FPIC agreement should be signed by all parties and recorded and retained in a form and format that is accessible to the signatory IP or LC and remains under their control.

The FPIC agreement should specify the details of all forms of consideration provided to IP and LC, including continued access, compensation, and benefit sharing, as described above. This includes:

- the nature of each element of consideration or remuneration (monetary or non-monetary)
- from whom each is received, how often, and for how long (eg, monthly, annually, for the lifetime of the company operation)
- who receives the consideration or remuneration on behalf of the community (eg, a council of elders, a community cooperative, or association of teachers)

¹⁰ The term and concept of compensation are used both here (where compensation is provided to IP and LC in consideration of rights or access that they consent in advance to relinquish under a valid FPIC process), and in relation to remediation and remedy (where compensation is provided to address and remedy a harm after the fact; see Section 3.4). Either or both applications of this concept may apply in any given context.

The FPIC agreement should also specify what will happen in the event of a breach of the agreement by either party. The repercussions of different forms of breach should be clear and could include, for instance, a cure period to fix the breach, suspension of the agreement, or, in more severe cases, immediate cancellation of the project.

With regard to continued access to lands, territories, and resources, generally, a single breach or multiple unsubstantial breaches by the IP or LC (eg, entering a forest to collect non-timber products outside of the agreed-upon place or time) should not be a reason to deny other rights or benefits, or to negate the agreement. To reduce the likelihood of breaches or misunderstanding, the company could provide assistance to the affected IP or LC to ensure that the access arrangement is known by all members.

FPIC agreements should also specify a schedule for periodic review of the agreement as well as conditions or changes that would trigger the need for a new FPIC process phase. Examples could include proposed expansion or modification of the operation or specific harms to IP and LC rights. Such specifications are consistent with FPIC being an ongoing process throughout the lifecycle of project or operation.

IP and LC plan

The company should develop an IP and LC plan, which is a management plan documenting the measures that the company will take to address and respect IP and LC rights, both during site establishment and on an ongoing basis.¹¹ The IP and LC plan should fully reflect the outcomes of the assessment and site planning process, including continued access, compensation, and benefit sharing; the FPIC agreement; and any other measures needed to avoid, minimise, and mitigate adverse impacts. It serves to consolidate all relevant information, processes, plans, and remunerative measures related to the rights of the affected IP or LC. It should also include mechanisms for positive engagement with IP or LC as well as any agreed-upon support of IP- or LC-led economic and social development priorities. To the extent that such information is documented in other places, the IP and LC plan can incorporate this material by reference.

The IP and LC plan should be consistent with the FPIC agreement, but it is not identical to the FPIC agreement in that the latter is a binding agreement between two parties whereas the former is a management plan of the company. In this regard, the IP and LC plan provides a useful basis for both the company and its business partners to monitor and verify the effectiveness of the company's approach to respecting IP and LC rights, and to adapt this approach as needed over time. As long as the two are consistent with one another and mutually supportive, the exact relationship between the IP and LC plan and the FPIC agreement may be determined by the parties based on what is most appropriate in the given context.

3.2.4 Company responsibility in situations of ongoing land conflicts

Companies should not acquire interests in land or resources that are subject to ongoing conflicts. In such cases, the company should refrain from or cease efforts to acquire or gain control of land or resources until the conflicts are resolved. This may require the company to decline a grant, sale, or transfer of an interest in land; withdraw a permit or concession request; not pursue renewals and extensions; not subcontract the interest to another entity; and not take any other action that could sustain or further efforts to acquire or gain control over the lands and resources.

Where land conflicts are being addressed through grievance mechanisms or other formal dispute resolution processes, the company must not pursue efforts to acquire or gain control until a final resolution occurs through these mechanisms. In all other cases, resolution should occur through a negotiation process mutually agreed by the affected parties, consistent with applicable law. For the resolution to be mutually agreed, the parties must have agreed on the format and process for decision-making or consensus building (eg, mediation, facilitation, arbitration, or traditional/customary law-based dispute resolution mechanisms),

¹¹The requirement to provide an IP and LC plan as part of new development projects is specified in standards and procedures of several international organisations, all of which provide guidelines on the appropriate content of the plan in accordance with their own specific standards. These include: World Bank Operational Manual OP 4.10 on Indigenous Peoples, Annex B – Indigenous Peoples Plan; IFC Guidance Note for Performance Standard 7, Annex A; and UNDP Social and Environmental Standard 6 on Indigenous Peoples, Annex 1. These sources all refer to the 'Indigenous Peoples Plan' but the guidance is applicable to both IP and LC, consistent with the approach taken by the Accountability Framework as described in Section 1.

as well as its terms (eg, who may present evidence, what kind of evidence may be brought forward, and how the process guards against undue coercion and influence by others).

Where the conflict involves at least one party that is an IP or LC alleging rights or interests in land or resources, its resolution will need to be the outcome of a legitimate consultation and FPIC process.

Where the ongoing conflict is between multiple IP or LC groups (eg, over the extent of a shared border or a use right over a land of concern), the mutually-agreed procedure should be the mechanism of their choosing. This is not an FPIC process, and the company has no responsibility with respect to this process. Once the conflict over property rights is resolved, the company should then follow the usual requirements and practices (including FPIC) if they wish to pursue activities that could affect the rights of IP or LC.

3.3 Actions to respect IP and LC rights in relation to site operation

Site operation refers to the ongoing management of production and primary processing sites once they have been established. Fundamentally, this involves implementing the IP and LC plan and the FPIC agreement that were enacted at the site establishment stage. It also involves:

- **Monitoring:** Implementation of the IP and LC plan and FPIC agreement, as well as the status of and impacts to IP and LC rights, should be monitored on an ongoing basis. This should be done with the consent of, and in consultation with, IP and LC in a manner that ensures the protection of sensitive information. Community monitoring approaches should be incorporated where possible (see Box 6).¹²
- **Ongoing consultation:** Affected IP and LC should be consulted on an ongoing basis in relation to site operation and other company activities.
- **Review and adaptive management:** The IP and LC plan—and the FPIC agreement if necessary—should be regularly reviewed and adjusted if necessary to continue to prevent, avoid, and mitigate adverse impacts to IP and LC rights whilst supporting positive impacts. This should be done in consideration of monitoring information, ongoing consultation, and other relevant factors. Revisions to the IP and LC plan should be done in consultation with the affected IP and LC, whilst revisions to the FPIC agreement require affirmative consent.
- **Identifying human rights impacts:** As part of the overall HRDD process, companies should identify—and enable and support others to identify—any adverse impacts to IP and LC rights so that these may be addressed immediately, including through a remedy process if needed. Processes to identify adverse impacts include but are not limited to ongoing monitoring and grievance mechanisms.
- **Verification:** Implementation and outcomes of the IP and LC plan, FPIC agreement, grievance mechanism, and related processes should be independently verified to help increase oversight and validate information regarding efforts to respect IP and LC rights.

This adaptive approach to respecting IP and LC rights recognises that adverse impacts may arise not only from failure to implement agreed-upon plans but also from various unanticipated circumstances. Regardless of the cause, the company should work with the affected IP and LC to ensure respect for rights on an ongoing basis.

To support the preceding activities, it is important that companies have appropriate staff capacity and that external experts (including IP and LC experts) are retained when necessary to implement and adaptively manage the IP and LC plan and to conduct or support the ongoing measures listed above.

¹² For more information on good practices for human rights monitoring, see the [Operational Guidance on Monitoring and Verification](#).

Box 6. Community monitoring

Community monitoring is a collaborative process in which local rightsholders partner with companies or investors to collect, analyse, and share data related to company operations, supply chains, or financial investments, and the potential or actual impacts of these activities on rights, lands, and resources. This approach is distinct from but can complement community-based monitoring, which is fully community-led, meaning that communities design, manage, and implement monitoring processes independently from companies.

The Interlaken Group, coordinated by AFI Coalition member Rights and Resources Initiative, provides [Principles of Community Monitoring](#) to guide effective community monitoring. Aligned with the Accountability Framework, this resource helps companies integrate community monitoring into their human rights due diligence processes to effectively monitor the status of IP and LC rights and the effectiveness of measures to protect these rights.

As outlined in the document, community monitoring can be a powerful tool not only to improve monitoring and accountability but also to build trust and identify key actions to mitigate human rights and environmental impacts. It outlines key elements for community monitoring, including:

- mutually agreed procedures grounded in FPIC
- support from companies or others in community capacity to carry out accurate monitoring
- clear data management and data sharing protocols that are transparent, fair, and respect communities' needs for safety and confidentiality
- mechanisms for lodging and addressing grievances

Actions where rights-related site establishment processes were not fully applied

The requirements and processes for site establishment outlined in Section 3.2 should be fully conducted and concluded prior to site establishment activities. However, there may be situations where this was not done, for instance if the company acquires operations or takes on new suppliers for which site establishment preceded the company's involvement.

If the full set of measures to respect IP and LC rights was not conducted at the site establishment phase, this should be rectified as soon as possible. A helpful first step is to conduct a gap assessment in consultation with the affected IP and LC to identify what steps were properly followed and where additional work is needed. Appropriate measures and processes to fill these gaps can then be identified, including:

- assessments and studies (as described in Section 3.2) to properly understand IP and LC land tenure, land use, cultural heritage, and risks and impacts of the operation to IP and LC rights
- consultation and FPIC processes to identify how best to address any risks or harms of the operation to IP and LC rights
- development and implementation of a plan to remedy any harms that occurred due to the nature of (or lack of) processes, plans, agreements, or activities at the site establishment stage (see Section 3.4)
- documentation of outcomes and agreements via an IP and LC plan and a FPIC agreement (including provisions for continued access, compensation, and benefit sharing, as described above), which should serve to guide site operations going forward

3.4 Remedy to address adverse impacts to IP and LC rights

Core Principle 2.2.4 specifies that companies should provide for or cooperate in remediation through mutually-agreed procedures where adverse impacts to human rights or to the lands, territories, or resources of IP or LC have occurred in the context of company operations, supply chains, or financial investments. Remedy should be fair and just, meaning that it is proportionate to the harm and returns the affected rightsholders to the same position or level of wellbeing they would have if no harm had occurred. It should also consider that different persons or groups may have suffered different types of harm or may require different remedies to counteract the harms they have suffered. For instance, because they often do not have formal title to land, women may be at increased risk of harm related to displacement without compensation and loss of access to land that is suitable for farming.

Detailed guidance on remedy for human rights violations in general—including good practice for establishing and implementing company grievance mechanisms—is provided in the [Operational Guidance on Remediation and Access to Remedy](#). This section highlights some of the key points of that more detailed guidance on remedy, specifically as they pertain to IP and LC.

Typical forms of remedy for human rights violations include:¹³

- restitution to restore the rights and conditions that existed before the harm
- compensation in monetary and/or non-monetary forms
- rehabilitation via processes or services that enable persons that were harmed to reconstruct their lives and livelihoods as far as possible
- satisfaction, such as public apologies or various judicial remedies
- guarantees of non-repetition to prevent future harms
- other preventive remedies

To implement fair and just remedy, the company should work in good faith with the affected IP or LC to determine the nature and scope of the adverse impacts and act to resolve them. This should be done through an FPIC process, through which the ‘mutually-agreed procedures’ referenced above can be specified. These may include binding or non-binding facilitation, mediation through an IP or LC dispute resolution mechanism, arbitration, or other approaches. Any procedures that are mutually agreed by the parties may be acceptable provided that they do not undermine or prejudice either of the parties’ rights to access other state and non-state grievance mechanisms available to them.

Remediation processes and measures related to IP and LC should be tailored to address key considerations that are particular to these groups, as detailed further below.

3.4.1 Remediation processes

Grievance resolution and remediation processes should be designed jointly and with mutual agreement by the affected IP or LC to help ensure that they will be conducted without coercion, duress, reprisal, or fear of reprisal. Following are some key measures for doing so:

- **FPIC:** Determination of remedy for harms to IP and LC rights should typically be carried out through a FPIC process, including documentation of the agreed outcomes.
- **Applicable law:** Initial discussions should address and seek to reach a common understanding regarding the applicable laws (IP and LC customary law) and any other principles that will inform the remediation process. These parameters should be broad enough to address impacts to lands, territories, and resources beyond those that are formally recognised by the state.
- **Scope:** Processes should consider the expansive notion of IP and LC rights to lands, territories, and resources, which encompasses not only economic or legal value but also customary, cultural, spiritual, and environmental values that may have been lost.

¹³ Source: UN Human Rights Office of the High Commissioner, [Report on access to effective remedy for business-related human rights abuses](#) (2017).

- **Roles and decision-making:** Process design should identify the decision-makers, parties to, and other participants in the grievance and related processes. As part of this, each party should specify who has the authority to make final decisions, who may be invited to observe the process, and who has the right to speak and participate in deliberations. These specifications should be consistent with the laws, customs, values, and norms for decision-making and representation of the affected IP or LC, and with their Life Plans or similar documents, if they exist. A gender-sensitive approach to participation should be reflected throughout, ensuring that women are supported to participate meaningfully in the design, implementation, and resolution of the remediation processes.
- **Format, communications, and logistics:** Timeframes, means of communication, types of meetings and discussions held, language, provision of translations or translators, formats and protocols for sharing information, use of mediators or facilitators, and other details of the proceedings should be structured to enable effective participation in a culturally appropriate manner.
- **Technical support, independent advice, and counsel:** There are often inherent power and capacity imbalances between the IP and LC whose rights have been violated and those that caused or contributed to the harms or are in a position to help remedy them. To help address this, the remediation process should provide for reasonable technical support, independent advice, and counsel to support IP and LC in the process.

3.4.2 Remediation measures

As a general matter, remediation must be fair, just, and proportionate to the harm. In the case of adverse impacts to IP and LC, there are specific parameters and guidelines for what this means, some of which are provided for in international law. Remediation measures and final resolution of any grievance or harm should be determined by mutual agreement. Measures could include, for instance, compensation to the parties harmed, improved access to lands and resources, restitution of lands, or a new benefit sharing arrangement.

In some cases, resolution may require partial or full suspension of operations. If this is the case, then the company is still responsible for providing or supporting adequate remedy. In accordance with Core Principle 9.2, the company should not divest its interests in land until outstanding grievances are fully resolved or obligations have been legally transferred to another party (eg, a new owner).

Following are specific guidelines on remedy for harms to IP and LC rights, based on relevant international laws and standards:

- Remedies should be determined through direct, informed consultation, agreement, and FPIC with the affected IP and LC themselves, in line with their self-determined priorities and choices.
- Where land is concerned, restitution (ie, return of the given lands) should be considered and pursued first and foremost. Where this is not possible, other avenues should be pursued.
- Where the provision of alternative land has been mutually deemed as an appropriate form of remedy, as specified in UNDRIP Article 28(2) and ILO 169, the alternative land must be at least equal in size, quality, and status (including legal status). Equal status would typically mean that if the land and resources previously appropriated or harmed were titled, any new land provided would need to have the same level of state recognition and protection.
- Where compensation is foreseen, a mutual discussion and agreement should take place as to what constitutes fair compensation. The agreement should specify the form of the compensation (monetary and/or non-monetary); from whom each is received, how often, and for how long (eg, monthly, annually, for the lifetime of the company operation); and who receives the compensation on behalf of the community. Total compensation should take into account not only economic values, but also the consequences of the infringement of rights on social, cultural, and civil and political rights of IP and LC. For instance, when land or resource rights have been harmed, the default practice of paying the fair market value of the subject lands or resources may not be sufficient as fair and just compensation, given the special connections that IP and LC have to these assets and their dependencies upon them for their physical and cultural survival.

- Remediation measures should be grounded in the rights to equality and non-discrimination, and tailored to provide redress for the different harms suffered by different individuals and groups.
- Any agreement on remediation measures and grievance resolution should also specify what will happen if the agreement is not respected. See additional detail under the subsection on ‘FPIC agreement’ above.
- The resolution should specify a process for ongoing participatory consultation, monitoring, independent verification, and FPIC related to this resolution.

3.5 Roles and responsibilities for commodity buyers

The preceding sections 3.2 through 3.4 focused on the role of commodity producers and site owners and managers in respecting IP and LC rights. Commodity buyers are also responsible for making sure that IP and LC rights are respected in their supply chains, but they often need to focus on different sets of actions to do so.

To the extent that they do not own or manage production or processing operations (or in other ways have direct control over actions at the supply base level) a main way that buyers fulfil this responsibility is through managing and supporting their suppliers to do so. This requires buyers to conduct supply chain mapping and traceability to understand the origins of products in their supply chains so that they can take appropriate measures to address supply chain risks. Based on this information about their supply origins, buyers can develop and implement an integrated approach to manage and monitor for supply chain compliance and improvement, as explained in Core Principles 4, 5, and 6 and the [Operational Guidance on Supply Chain Management](#). Building on that general treatment of the topic of supply chain management, the following sub-sections provide specific information about how each aspect of the supplier management process can be designed, tailored, and implemented to help ensure respect for IP and LC rights. Additional resources for commodity buyers to address risks and impacts to IP and LC rights are listed in Box 8, at the end of this section.

3.5.1 Internal capacity building and training

Internal capacity building and training is an essential element of embedding respect for human rights into a company’s operations and supply chains. All relevant employees across different company divisions (eg, finance, human resources, human rights, internal audit, legal, procurement, and sustainability) and cross-functional teams should be adequately trained on human rights due diligence and on IP and LC rights. This includes a working understanding of the rights described in Section 2, as well as how to assess risk and safeguard these rights through procurement policies, supplier codes and contracts, and other mechanisms. Employees should have opportunities for staying up to date with evolving good practice, tools, and resources. Employee incentive structures should also be aligned with human rights outcomes.

If the requisite expertise on these topics does not already exist in-house, then the company should engage third parties to help provide it or to develop and implement trainings.

Operational-level business units (eg, country or commodity sourcing teams) should also have the resources and expertise to ensure high-quality assessments, studies, monitoring and reporting systems, and IP and LC engagement programs.

3.5.2 Assessment of risk and salience to inform company action

Buyers should conduct human rights risk assessments to identify sourcing regions where IP or LC are present and, in these areas, how the company’s supply chains may pose risks to IP and LC rights. The assessment process will vary depending on the company’s size and position in the supply chain (for instance, whether the company sources directly from producers and primary processors or operates further downstream in the supply chain and purchases through intermediaries).

At a minimum, risk should be assessed against the sets of rights outlined in Section 2. Assessments should consider risk attributes associated with the commodities sourced, sourcing geographies, and supplier performance. Generally, risk classifications should serve to identify where there is the potential for the most

severe negative impacts based on the salience criteria of the UN Guiding Principles on Business and Human Rights (scope, scale, and irremediability), alongside the likelihood of harm.¹⁴

Given that buyers often source products broadly across multiple regions, a first step is often to assess risk using desk-based methodologies, starting with high-level risk mapping of countries and commodities before moving to more granular sub-national or supplier-level risk assessments where needed.¹⁵ Assessments should include or be supplemented by other information sources such as consultation with environmental and human rights defenders and other rightsholders, consultation with other stakeholders, and community monitoring (see Box 6).

Where these initial assessments indicate higher risk levels, companies may need to conduct a more detailed risk assessment or human rights impact assessment (HRIA; see Section 3.2.1) to better understand the risks and their root causes. Indicators of higher risk levels include:

- geographic areas with past or current land conflict, forced displacement, weak enforcement of IP and LC rights, high levels of corruption, or known human rights violations involving IP or LC
- sourced commodities that are associated with deforestation, ecosystem conversion, or water use that negatively impacts IP or LC rights and resources
- suppliers that lack commitments to respect IP and LC rights or do not have processes and capacity to carry out effective FPIC or ongoing IP and LC engagement
- suppliers with a history of IP or LC rights violations

When sourcing includes indirect suppliers, buyers should also assess whether their direct suppliers have strong commitments and practices in place to ensure respect for IP and LC rights in their upstream supply chains.

Findings from risk assessments and HRIsAs should be used to inform implementation of the other elements of human rights due diligence and supply chain management. Where risk and salience are high, companies will need to closely monitor on-the-ground conditions and engage more closely with suppliers. This includes making sure that there is ongoing and meaningful engagement with IP and LC. Where risk and salience are lower, it is still important to institute systems and procedures to identify any actual or potential adverse impacts, such as grievance mechanisms and stakeholder engagement.

Risk assessment and HRIA should inform decisions about whether to onboard new suppliers or expand sourcing into new areas. For instance, as discussed in Section 3.2, such assessments may help reveal 'no go' areas and situations, which buyers should generally avoid so as not to contribute to human rights harms.

3.5.3 Procurement policies and systems

Buyers should have responsible procurement policies and practices aligned with their commitments to respect IP and LC rights. These should cover all purchasing, including materials purchased on spot markets. Procurement policies should clearly state requirements related to free, prior, and informed consent (FPIC), meaningful engagement with IP and LC, and access to remedy (including through grievance mechanisms) where harms have occurred in association with business activities.

Procurement policies should be implemented through purchase control systems that help ensure that all batches of materials purchased align with these policies. Where buyers have (or are intending to have) recurring or ongoing relationships with specific suppliers, they should also implement measures to help ensure that these suppliers act effectively to respect IP and LC rights on an ongoing basis. These include legal and administrative measures such as contract clauses, supplier codes of conduct, and supplier questionnaires. They also include supplier screening at the outset of the relationship followed by continuous supplier engagement, as explained in the next two sub-sections.

When buyers aggressively pursue low prices or other practices that are unfavourable to suppliers (eg, delayed payments or sudden changes in order specifications), this may create financial and operational

¹⁴ See UN Guiding Principles Reporting Framework: [Salient Human Rights Issues](#)

¹⁵ Examples of tools to conduct such assessments are included in the AFI's compendium of risk assessment, traceability, and monitoring tools, available [here](#).

pressures upstream in the supply chain, which can contribute to human rights risks and violations. Buyers should therefore evaluate how their purchasing practices may affect IP and LC rights and orient these practices to support and facilitate respect for these rights. Examples include longer-term purchase contracts, more timely payments, and the use of premiums or incentives to support and reward suppliers for strong sustainability performance. These are key elements of the concept of ‘shared responsibility’ between the buyer and its suppliers to address impacts on the ground. Such practices can benefit buyers by helping to foster trusting relationships and continuity of high-quality supply with their suppliers.

3.5.4 Supplier screening

Before initiating new commercial relationships, buyers should screen suppliers against their procurement policies, paying special attention to whether each supplier:

- has a commitment to respect IP and LC rights that aligns with Core Principle 2.2 of the Accountability Framework
- is effectively implementing the actions needed to respect IP and LC rights, as described throughout Sections 3.2-3.5
- has in place IP and LC plan(s) and FPIC agreement(s), as applicable, that formalise and guide their approach to respecting IP and LC rights in a manner that reflects mutual agreement with the affected IP and LC

Screening should also assess actual performance of the supplier, for instance whether there are any known grievances related to IP and LC rights, and, if so, the status of their resolution. If the supplier purchases materials from other suppliers, then the buyer should ensure that the supplier has effective control mechanisms in place to fully respect IP and LC rights in relation to these indirect supplies.

3.5.5 Supplier engagement

Where buyers have long-term or recurring relationships with suppliers, they should engage these suppliers on a continuous basis to ensure adherence to the buyers’ procurement policies and to support and strengthen supplier capacity to respect IP and LC rights. Actions taken to respect IP and LC rights should generally be integrated into broader supplier engagement processes rather than being structured as a stand-alone process. Key elements to incorporate into these supplier engagements include:

1. **Aligned policies, goals, and systems related to responsible supply chains:** Engagement processes should work to ensure that the supplier’s own commitments and management and control systems are aligned with those of the buyer and are effective for addressing any risks to IP and LC rights. Control mechanisms include systems the supplier uses for risk and impact assessment, traceability, purchase control, monitoring, and sharing information with the buyer. Special attention should be given to supplier policies and practices related to FPIC, IP and LC engagement, and grievance mechanisms, as discussed previously. Buyers should work with suppliers to identify and address any gaps in the presence or adequacy of these elements.
2. **Co-creation of implementation plans:** Where actual or potential risks or impacts to IP and LC rights have been identified, the supplier should develop implementation plans to prevent, mitigate, or address such risks. These plans should be developed in collaboration with the affected IP or LC rightsholders. Buyers may find it helpful to work with their suppliers in developing such plans, including specification of time-bound milestones and targets. The co-development process also affords a chance to identify actions that the buyer will take to support the supplier to achieve compliance or improve performance.
3. **Supplier support processes:** Buyers should engage with their suppliers to understand any challenges they face carrying out implementation plans or otherwise taking action to address risks or harms to IP and LC rights that were identified in collaboration with the affected peoples. Buyers should provide support where it is most needed, considering especially the needs of smaller or lower capacity suppliers. Support can come in different forms such as training, technical assistance,

financial support or cost-sharing, access to capital, supplier incentives, and collaboration with other stakeholders to address the root causes of violations to IP and LC rights in the sourcing area.

4. **Monitoring:** The buyer should routinely monitor the practices and performance of its suppliers related to IP and LC rights. On an ongoing basis, this may be done through information furnished by the supplier and via the supplier's grievance mechanism. In higher risk settings, or if there is reason to believe that there are new risks or harms to IP and LC rights, then the buyer may need to conduct its own investigations, monitoring, or audits. Monitoring is important both for tracking (ie, to assess compliance, monitor risks to human rights, and evaluate the effectiveness of mitigation measures), and as part of a management feedback loop to identify and promptly respond to challenges.¹⁶
5. **Mechanisms to respond to performance:** Buyers should have policies or protocols to respond based on supplier performance levels. In the event of negative performance (eg, instances of significant violations of IP or LC rights, or grievances against the supplier that are not expeditiously addressed), buyers should be prepared to investigate and work with the supplier to help address the issue, and in some cases may need to suspend purchasing or terminate the relationship with the supplier.¹⁷ To afford buyers the latitude to take such measures, procurement contracts should include the clauses that enable the buyer to take appropriate commercial action in response to non-compliance. Buyers may also respond to positive performance (eg, if the supplier is meeting targets set in its implementation plan) through incentives or benefits such as increased purchasing.
6. **Independent verification:** Buyers should seek independent, third-party verification of practices and outcomes related to IP and LC rights to the extent necessary for: i) ensuring reliable information to guide the buyer's actions related to respecting IP and LC rights; and ii) meeting legal requirements and stakeholders' expectations for independent assurance. Verification processes should incorporate and validate monitoring data and other information on IP and LC rights, for instance from grievance mechanisms, community monitoring, interviews, and assessments. Auditors should be accredited by a reputable organisation to help ensure that they follow appropriate methodologies and have the requisite expertise about IP and LC rights in the contexts where they work. Verification results (or summaries thereof) should be made accessible to relevant stakeholders to support accountability and transparency.

3.5.6 Addressing adverse impacts to IP and LC rights and remediation of harms

Even when companies have adopted strong purchasing and supplier engagement practices, it may be difficult to completely avoid risks or impacts to the rights of IP and LC at all times. For instance, in long supply chains, buyers may have less leverage and oversight of their indirect suppliers. In other cases, human rights require progressive realisation over time. Companies at all stages of the supply chain should adopt a robust approach to remediation that includes both proactive and responsive measures.¹⁸

At a proactive level, each company should have a well-defined response strategy and set of procedures in place to address adverse impacts to IP and LC rights, even if none are currently known. This demonstrates readiness to act in a timely and effective manner if and when it becomes necessary to do so. An effective operational-level grievance mechanism is an essential component of this proactive approach. The grievance mechanism should be available to any person or group affected by the company's business operations (including its supply chain), and allow such affected or interested parties to make an inquiry, express a concern, or file a formal complaint. In addition to providing access to remedy, an effective grievance mechanism should also enable problems to be identified and addressed early before they escalate and should help to identify risks or patterns of violation over time. The grievance mechanism should comply with the eight effectiveness criteria for grievance mechanisms included in the UNGPs (Guiding Principle 31).¹⁹

¹⁶ More information on monitoring related to IP and LC rights, see the [Operational Guidance on Monitoring and Verification](#), as well as the AFI's compendium of monitoring tools available [here](#).

¹⁷ For more information on responses to non-compliance, see the [Operational Guidance on Supply Chain Management](#).

¹⁸ For more information about remediation and access to remedy for human rights in general, see the [Operational Guidance on Remediation and Access to Remedy](#). This sub-section complements that Operational Guidance by providing additional details specific to IP and LC.

¹⁹ For more information on effective grievance mechanisms, see the [Operational Guidance on Remediation and Access to Remedy](#).

When adverse impacts to IP or LC rights do occur, the company has the responsibility to act, regardless of where it sits in the supply chain. This is a core tenet of human rights due diligence following the UNGPs (see Section 3.1). When adverse impacts are detected, a first step is to conduct a participatory assessment with the affected IP and LC to determine the nature and severity of the harms, actors that contributed to the harms, and root causes and other factors that may have led to the harms. Generally, this assessment is conducted by (or with the involvement or support of) producers, processors, or other upstream suppliers that are closest to the affected IP and LC. However, if this assessment was not done (or is not adequate), then the buyer should engage its suppliers to request, and if necessary support, completion of such an assessment, or should undertake the assessment itself.

The company should then determine the appropriate course of action to address the impacts through a process involving meaningful consultation with affected IP and LC or their legitimate representatives. Following the UNGPs, the appropriate course action depends on the connection of the company to the impacts that occurred, specifically whether the company caused, contributed to, or was linked to the impact through its business relationships.²⁰ Most commonly, commodity buyers are linked to adverse impacts, meaning that they did not directly cause or contribute to the harm, but are linked to it through purchased goods in their supply chains. In this case, the buyer's obligation is to use its leverage to influence its suppliers to cease activities that caused or contributed to the harm, prevent or mitigate the risk of recurrence, and provide for or contribute to remediation.

Box 7. Exercising leverage

Leverage refers to the influence that companies can have over their suppliers. Buyers can establish and apply leverage to support remedy through a variety of approaches, including:

- **commercial provisions:** through contract clauses and financial incentives
- **support to suppliers:** through the provision of financial, technical, capacity building, or other support
- **collective action:** by working jointly with other companies or civil society organisations to exercise positive or negative influence over the supplier

If a supplier is unwilling or unable to take the necessary steps to address and remedy the harms, even through a phased approach, then the buyer will need to escalate its efforts to achieve the needed remedy. Failure to do so could increase the buyer's liability for the continuing harms: by not taking proper steps and due diligence to address known harms, the buyer becomes more complicit in them. Escalated action could include:

- efforts to increase the buyer's leverage over its supplier, for instance through additional support, commercial incentives, or collective action in collaboration with other buyers or stakeholders
- more direct engagement by the buyer, or through partners closer to the source of the harms, to provide or support remedy
- reduction in or suspension of purchasing from the supplier whilst the buyer continues to engage with the supplier to address outstanding harms

Termination of supplier relationships due to sustained and significant human rights violations may sometimes be warranted, but should be approached carefully to avoid perpetuating or even worsening adverse impacts. Termination of supplier relationships usually also means that the buyer is no longer able to influence the supplier to address harms on the ground. For these reasons, companies should follow good practice for responsible disengagement, weighing the human rights and environmental risks and benefits for choosing

²⁰ For more information on these relationships between the company and human rights harms and their ramifications for the company's responsibilities to act, see the AFI's [Topic Summary on Due Diligence](#).

whether to retain, suspend, or terminate relationships with suppliers. If the decision is taken to terminate the supplier relationship, the buyer should ensure that additional harms are not incurred due to the exit, for instance by developing an exit plan to mitigate adverse impacts, informed by a human rights impact assessment and in consultation with the affected IP and LC as well as other rightsholders and stakeholders.²¹

Finally, to support accountability and transparency, buyers should publicly report on impacts to IP and LC rights in their supply chains as well as steps taken to avoid, prevent, mitigate, and remedy harms. This includes the nature and status of grievances in the company's supply chain. See the [Operational Guidance on Reporting, Disclosure, and Claims](#) for additional information on good practice for reporting and disclosure.

3.5.7 Multi-stakeholder collaboration to respect IP and LC rights

Many challenges to respecting IP and LC rights—such as land tenure conflicts, deforestation, water use, and economic marginalisation—cannot always be effectively addressed through supplier management alone. These may be systemic issues that require collective action involving peer companies, governments, NGOs, multiple rightsholders and stakeholders, suppliers, and other actors. Through collaboration in landscape, jurisdictional, or sectoral initiatives, buyers may be able better to address these challenges by leveraging shared resources, aligning expectations, and supporting systemic change. Additionally, because suppliers often work with multiple buyers, this collaborative approach can reduce duplication of efforts and help ensure that buyer expectations and protections for IP and LC rights are consistently communicated, implemented, and monitored.

Examples of key actions for buyers include:

- engaging in industry and multi-stakeholder initiatives that advocate for and adopt sector-wide commitments, implementation guidelines, supplier codes of conduct, and other tools for respecting IP and LC rights
- investing and participating in landscape initiatives that build local capacity for respecting IP and LC rights, support development of land tenure and resource assessments, and advance efforts to map IP and LC lands, territories, and resources to enhance their legal recognition
- investing and participating in national and jurisdictional initiatives to push for implementation of existing laws related to IP and LC rights and advocate for legal recognition of IP and LC rights, land tenure security, and other necessary policy reforms where these are deficient
- improving access to remedy by working collectively to establish or strengthen grievance mechanisms and to support training of land rights mediators that can improve resolution of land rights conflicts
- supporting production models that foster collaboration and improve the livelihoods of IP and LC (eg, smallholder and community benefit sharing arrangements)
- investing in IP- and LC-led economic development in sourcing regions by funding programmes that support entrepreneurship and self-determined economic opportunities, capacity-building, and market access initiatives

²¹ See the [Operational Guidance on Supply Chain Management](#) for additional guidance on responsible disengagement.

Box 8: Resources for buyers

In addition to the AFi Operational Guidance documents and resources cited above, the following external resources are available to support buyers in taking action to respect IP and LC rights.

- Amazon Watch, [Respecting Indigenous Rights: An Actionable Due Diligence Toolkit for Institutional Investors](#) (2023)
- Forest Peoples Programme, [Stepping Up: Protecting collective land rights through corporate due diligence](#) (2021)
- Danish Institute for Human Rights, [Respecting the rights of indigenous peoples: a due diligence checklist for companies](#) (2019)
- UN Global Compact, [Business Reference Guide to the UN Declaration on the Rights of Indigenous Peoples](#) (2013)
- UN Global Compact, [Business & Human Rights Navigator](#)
- Nestlé's Salient Issue Action Plan for Indigenous Peoples' and Local Communities' Land Rights (within [Nestlé's Human Rights Salient Issue Action Plans](#), 2023) provides an example of a commodity buyer action plan that incorporates many of the above elements
- The [SourceUp platform](#) provides resources on landscape and jurisdictional initiatives, and enables companies to identify active initiatives around the globe



Annex 1: Protecting environmental and human rights defenders

This annex provides guidance on safeguarding the rights of environmental and human rights defenders (EHRDs). The Accountability Framework defines EHRDs as:

individuals or groups who, in their personal or professional capacity and in a peaceful manner, act to protect and promote human rights, eliminate human rights violations, or protect the environment, including water, air, land, flora, and fauna

EHRDs can include IP and LC, other communities and their members, workers, trade unionists, journalists, lawyers, activists, whistleblowers, and others.

EHRDs can play a critical role in helping to uphold responsible practices and rule of law related to commodity supply chains. They can also help alert companies and other stakeholders to adverse impacts and risks to human rights and the environment. For these reasons, protection of EHRDs is essential not only in its own right, but also as a means to help ensure that companies respect all other human rights and fulfil other responsible supply chain commitments and obligations. EHRDs are also key stakeholders to include in company stakeholder engagement processes.

Overview of EHRD rights

Protection of human rights defenders is provided for in the UN Declaration on Human Rights Defenders. Other instruments and frameworks provide for the protection of human rights defenders specifically in the context of company activities. These include the UN Guiding Principles on Business and Human Rights (UNGPs), the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct (updated in 2023), and supply chain due diligence laws in multiple jurisdictions.

Environmental defenders and their rights are also increasingly recognised in standards pertaining to commodity supply chains, and are typically treated similarly or identically to human rights defenders.²² In reality, environmental protection and human rights are often closely inter-linked, as are their defence. Reflecting this reality, the Accountability Framework follows the approach of many other organisations in referring to environmental and human rights defenders as a single category of rightsholders without providing differentiated treatment based on the specific rights or values they seek to defend. Core Principle 2.1.9 of the Framework states that companies should commit and take adequate measures to:

Protect the security of environmental and human rights defenders, whistle-blowers, complainants, and community spokespersons and protect their confidentiality and (when requested and lawful) their anonymity.

Worldwide, threats to EHRDs and to their civic freedoms continue to increase whilst the space for them to work effectively continues to decrease. Through their actions to defend the environment and human rights, EHRDs face heightened dangers such as stigmatisation, criminalisation, intimidation, threats, forced disappearance,²³ forced displacement, physical and psychological attacks, and murder. They are increasingly subject to digital surveillance and threatened by economic or legal retaliation such as Strategic Lawsuits Against Public Participation (SLAPPs).

EHRDs are entitled to the same rights as other individuals. The key rights implicated in situations involving EHRDs include their:

- right to life
- right to physical and mental integrity

²² One example is the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (also known as the Escazú Agreement), which outlines state obligations to protect and provide an enabling environment for human rights defenders in environmental matters.

²³ Forced (or enforced) disappearance refers to the arrest, detention or abduction of persons by, or with the authorisation, support or acquiescence of, a state or a political organisation, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time. (Source: United Nations)

- right to security
- right to organise among themselves and with others
- right to meet or assemble freely
- right to speak freely regarding opinions and expressions
- right to gain access to information
- right to have access to justice and an effective remedy
- right to solicit, receive, and utilise resources for the purpose of protecting the environment and human rights

In the cases where IP and LC act as EHRDs, their protection must also ensure respect for their collective rights, including rights to lands, territories, and resources. Similarly, where EHRDs are acting to defend the rights of IP and LC, protection must address the collective rights of these groups, such as the right to self-determination, FPIC, lands, territories, and resources, as well as a range of other collective rights including those outlined in Section 2.

Because EHRDs often work in association with other EHRDs or networks, protection often requires both actions that protect the individual and actions that enable broader protection of EHRDs. This includes strengthening the overall enabling environment for EHRDs, for instance through protection of the right to lawful exercise of the occupation or profession of EHRD; the right to form associations and non-governmental organisations; the right to provide and access legal assistance or other advice; and the right to solicit, receive, and utilise resources for the purpose of protecting the environment and human rights (including the receipt of funds from abroad).

Company actions to protect EHRDs

Protection of EHRDs requires companies to take proactive measures to identify, cease, prevent, and mitigate adverse impacts to EHRDs associated with their operations and supply chains. This includes using their leverage and influence to foster an environment where EHRDs can pursue their work without harm or threat. When adverse impacts occur to EHRDs or their rights, companies must also take action to address and remedy these impacts. All these actions should be guided by the UN Declaration on Human Rights Defenders and the UNGPs, as well as the other international instruments referenced above.

More specifically, companies should incorporate the following sets of actions that are specific to EHRDs into their overall human rights due diligence procedures, as outlined in Section 3.1 of this Operational Guidance. Where downstream buyers are not positioned to implement these actions directly, they should require and support such implementation throughout their supply base via effective supplier management and engagement processes as described in Section 3.5. Resources to support implementation of these actions are provided in the box at the end of this annex.

Company policy on EHRD

Companies should adopt a publicly available policy that commits them to protect the rights of EHRDs in all operations and supply chains. This can be a standalone policy or part of a broader human rights or sustainability policy. The policy should be endorsed by, and have designated accountable person(s) from, senior management and/or the Board of Directors, as appropriate. It should include the following elements:

- commitment to respect international human rights law
- commitment to protect the rights of EHRDs, uphold EHRDs' right to defend human rights and the environment, and avoid actions or omissions that lead to harms to EHRDs
- statement of the importance to the company of the role of EHRDs in advancing respect for human rights and protecting the environment

- commitment to take seriously, investigate, and take appropriate action on each complaint received
- commitment to address and remedy EHRD rights violations if and when they occur, including by engaging with company staff, suppliers, business partners, contractors, or others as needed to achieve this outcome
- commitment not to support or engage in Strategic Lawsuits Against Public Participation (SLAPPs)
- commitment to publicly condemn attacks, threats, and intimidation against EHRDs, and not to make statements that discredit, stigmatise, or discriminate against EHRDs
- commitment to support state authorities and other relevant actors, including EHRDs, to assess and monitor environmental and human rights impacts and investigate human rights violations,
- commitment to facilitate access to information to investigate, address, or remedy potential or actual harms to EHRDs
- commitment to address harms and threats faced specifically or especially by female EHRDs

Embedding the EHRD policy into company operations

Consistent with human rights due diligence processes overall, companies should embed their EHRD policy throughout company operations by means of operating procedures, procurement policies, supplier codes and contracts, and other measures as needed. These should:

- identify the roles and responsibilities within the company for implementing (and overseeing implementation of) all related policies and procedures
- clearly state that any act of violence, reprisals, harassment, or other infringements on the rights of EHRDs by staff, suppliers, business partners, contractors, or other agents will carry immediate consequences
- include requirements or incentives that encourage positive actions by staff, suppliers, business partners, contractors, and other agents working with the company to create an environment that respects EHRD rights
- be clearly communicated to all relevant staff, suppliers, business partners, contractors, and others acting on the company's behalf

Actions to identify and address risks and impacts, and monitor performance

In line with elements 2-4 of the human rights due diligence approach (see Section 3.1), companies should work to identify risks and impacts to EHRDs on an ongoing basis, pursue measures to address harms that arise, and monitor implementation and performance. Following is guidance to increase the effectiveness of these processes.

- Assessments undertaken in relation to the company's operations or supply chains—such as risk assessments and human rights impact assessments—should identify potentially affected EHRDs, and assess risks to them and to their rights. This includes consideration of factors that may put EHRDs at heightened risk, such as national laws that do not adequately protect internationally-recognised EHRD rights as well as contexts with prior harms, threats, or reprisals against EHRDs. Assessments should be done in consultation with EHRDs using a gender-responsive and culturally-sensitive approach. Specific attention should be paid to the collective nature of EHRD activities, as well as to potential collective harm.
- As part of the site establishment process (see Section 3.2), the company should consult with EHRDs (and/or their chosen representatives) to inform assessments and site planning processes that help ensure full respect for human rights and protection of the environment. Where EHRDs are IP or LC, EHRD engagement should be integrated into or coordinated with the FPIC process carried out prior to site establishment and on an ongoing basis.

- Measures to mitigate and address harms should include preventative measures, as well as timely and effective response to any incidents. Measures should be developed and implemented with the close collaboration of EHRDs and be responsive to the specific realities of each context.
- Company policies and procedures on supplier non-compliance should include provisions for addressing harms to EHRD and to their rights, including use of leverage to effectively address non-compliance in the company's supply base. Consistent with appropriate responses to non-compliance overall, this may include ending business relationships with suppliers that harm, threaten, ostracise, or criminalise EHRDs.
- Companies should incorporate tracking of EHRD due diligence into their mechanisms for monitoring and independent verification. They should also monitor the status of the enabling environment for EHRDs in the company's production and sourcing regions.

Training

Companies should train all relevant staff and contractors (including private security firms that provide security on site) on how to engage with EHRDs in a manner that respects their rights and enables them to act in their capacities without interference. Such training supports several elements of the due diligence approach. Trainings should include:

- overview of the rights of all persons to participate in public affairs and the importance of not interfering with freedom of movement, opinion, speech, or rights of assembly and association
- identification of different types of harms and threats to EHRDs that must be prevented and avoided, such as victimisation, intimidation, criminalisation, ostracism, and other physical and mental harms, as well as threats or harms to relatives, friends, or other EHRDs
- emphasis on the importance of avoiding harm to or retaliation against those who voice complaints, object to company operations or actions, or seek remedy for environmental or human rights harms
- sensitisation of staff and workers to the vulnerabilities of EHRDs, particularly those that may also be marginalised in other ways, such as women, migrant workers, the disabled, and youth
- clarification that where EHRDs are working to defend the collective rights of IP and LC, companies may be required to take additional or more specific actions to ensure full respect for those rights

Grievance procedures

Companies should provide publicly accessible, secure, effective, and non-retaliatory grievance mechanisms that are equipped to handle harms and threats to EHRDs in a timely manner, and that support EHRDs in attaining remedy.²⁴ Grievance mechanisms should:

- ensure that whistleblowers and complainants are able to report alleged wrongdoings without them, their relatives, or others involved in the complaint facing retaliation for doing so
- permit retaliation as a ground for complaint
- protect the confidentiality, safety, and (when requested and lawful) the anonymity of complainants, whistleblowers, and witnesses
- include a transparent and timely mechanism for independent investigation of complaints and for following up on retaliation complaints to ensure that EHRDs are not victimised for seeking remedy
- be transparent and disclose the complaints received, how they were addressed, and the outcome of the grievance process (unless asked by the grievance holder not to do so)

²⁴ For more information on effective grievance mechanisms, see the [Operational Guidance on Remediation and Access to Remedy](#).

Enabling environment for EHRDs rights and freedoms

Where possible, companies should proactively engage EHRDs (and/or their self-chosen representatives) to identify and implement activities that will protect EHRDs over the long term, and provide the enabling conditions for them to freely and safely exercise their right to defend human rights and the environment. Depending on the specific needs identified through initial such engagement, this may entail companies taking measures such as:

- engaging and collaborating regularly with local civil society actors and monitoring groups to raise awareness around protection of EHRDs and to ensure their concerns are effectively addressed
- supporting EHRDs in their own efforts to ensure accountability and justice for any acts of retaliation against them, for instance through cooperation with law enforcement, provision of financial assistance, and capacity building
- as part of the company's overall approach to rightsholder engagement (see Core Principle 2.1.3), pursuing EHRD engagement in a proactive manner and signal to EHRDs they can approach the company with any concerns and with a guarantee of non-reprisal
- collaborating with business partners and other companies operating in or sourcing from the same area to improve the enabling conditions for protection of EHRDs

Supporting state protection of EHRD rights

To the extent possible, companies should support governments in carrying out their duties to protect EHRDs and uphold their right to defend human rights and the environment. This may include:

- identifying and pursuing appropriate forms of advocacy to support EHRD protection, for instance in relation to national laws, policies, and programs
- ensuring that company policies, operations, and supply chains do not undermine state protections of EHRD rights, and avoid any acts or omissions that would undermine the state's efforts to protect EHRDs
- cooperating with and supporting states to implement measures to protect EHRDs when they may be at risk
- publicly recognising the right to freedom of assembly and association (including to organise and form unions) and encouraging governments to recognise this right

Resources to support company implementation of EHRD

- International Service for Human Rights, [Indicators on how to track businesses' respect of the rights of human rights defenders](#) (2024)
- Oxfam, [Threats to human rights defenders: Six ways companies should respond](#) (2023)
- Unilever, [Principles in support of human rights defenders](#) (2023)
- Human Rights Council, [UN Guiding Principles on Business and Human Rights: guidance on ensuring respect for human rights defenders](#) (2021)
- International Service for Human Rights and Business and Human Rights Resource Centre, [Business support for civic freedoms and human rights defenders](#) (2018)
- Business and Human Rights Resource Centre, [Human rights defenders policy tracker](#)
- Zero Tolerance Initiative, [Zero Tolerance Resource Hub](#)

Annex 2: International law references for IP and LC rights

This annex lists the main international law references for the rights and groups of rights that are covered in this Operational Guidance. These include treaties, declarations, and authoritative guidance from international human rights bodies.

Right/group of rights	International law
Rights to lands, territories, and resources	<ul style="list-style-type: none"> • Treaties: CERD; CEDAW; ICESCR; ILO Convention No. 169 • Declarations: UDHR; UNDRIP; UNDROP • Authoritative guidance from human rights bodies: CEDAW General Recommendation No. 39 – Rights of indigenous women and girls; CERD General Recommendation No. 23 – Rights of indigenous peoples; CESCR General Comment No. 26 – Land and economic, social and cultural rights
Right to self-determination, including free, prior, and informed consent (FPIC)	<ul style="list-style-type: none"> • Treaties: ICCPR; ICESCR • Declarations: UNDRIP
Right to an adequate standard of living (including livelihoods, adequate food and food security, clothing, and housing, and the continuous improvement of living conditions)	<ul style="list-style-type: none"> • Treaties: ICESCR; CERD; CEDAW; ILO Convention No. 169 • Declarations: UNDRIP; UNDROP • Authoritative guidance from human rights bodies: CEDAW General Recommendation No. 39 – Rights of indigenous women and girls; CERD General Recommendation No. 23 – Rights of indigenous peoples; CESCR General Comment No. 26 – Land and economic, social and cultural rights; CESCR General Comment No. 4 – right to adequate housing
Cultural rights	<ul style="list-style-type: none"> • Treaties: ICESCR; ICCPR; CERD; CEDAW; ILO Convention No. 169 • Declarations: UNDRIP; UNDROP • Authoritative guidance from human rights bodies: CEDAW General Recommendation No. 39 – Rights of indigenous women and girls; CERD General Recommendation No. 23 – Rights of indigenous peoples; CESCR General Comment No. 26 – Land and economic, social and cultural rights; ICCPR General Comment No 23 – Rights of Minorities
Rights to equality and non-discrimination	All international legal instruments in this table enshrine the right of equality and non-discrimination, and the right to enjoy all human rights covered without discrimination.
Rights to development and to decide their own priorities for development	<ul style="list-style-type: none"> • Treaties: ILO Convention No. 169 • Declarations: UNDRIP; UNDROP; UNDRD • Authoritative guidance from human rights bodies: CEDAW General Recommendation No. 39 – Rights of indigenous women and girls; CERD General Recommendation No. 23 – Rights of indigenous peoples; CESCR General Comment No. 26 – Land and economic, social and cultural rights
Right to a clean, healthy, and sustainable environment	<ul style="list-style-type: none"> • Resolution: UN General Assembly Resolution A/76/L.75-EN • Treaties: ILO Convention No. 169 • Declarations: UNDRIP; UNDROP • Authoritative guidance from human rights bodies: CEDAW General Recommendation No. 39 – Rights of indigenous women and girls; CESCR General Comment No. 26 – Land and economic, social and cultural rights

Right/group of rights	International law
Right to meaningful participation in the decisions that may affect them	<ul style="list-style-type: none"> • Treaties: ICESCR; CERD; CEDAW; ILO Convention No. 169 • Declarations: UNDRIP; UNDROP • Other standards: UNGPs • Authoritative guidance from human rights bodies: CESCR General Comment No. 7 – forced evictions; CESCR General Comment No. 26 – Land and economic, social and cultural rights; CEDAW General Recommendation No. 39 – Rights of indigenous women and girls; CERD General Recommendation No. 23 – Rights of indigenous peoples
Right to be free from forced eviction	<ul style="list-style-type: none"> • Treaties: ICESCR; CERD; CEDAW; ILO Convention No. 169 • Declarations: UNDRIP; UNDROP • Authoritative guidance from human rights bodies: CESCR General Comment No. 7 – forced evictions; CESCR General Comment No. 26 – Land and economic, social and cultural rights; CEDAW General Recommendation No. 39 – Rights of indigenous women and girls; CERD General Recommendation No. 23 – Rights of indigenous peoples
Right to work, right to free choice of employment, and right to enjoyment of just and favourable conditions of work (including the right to practice their traditional occupations)	<ul style="list-style-type: none"> • Treaties: ICESCR; ICCPR; CERD; CEDAW; ILO Convention No. 169; ILO Convention No. 111 • Declarations: UNDRIP; UNDROP • Authoritative guidance from human rights bodies: CEDAW General Recommendation No. 39 – Rights of indigenous women and girls; CERD General Recommendation No. 23 – Rights of indigenous peoples; CESCR General Comment No. 26 – Land and economic, social and cultural rights; CCPR General Comment No. 23 – Rights of Minorities
Right to life and right to be free from violence	<ul style="list-style-type: none"> • Treaties: ICCPR; CERD; CEDAW; ILO Convention No. 169 • Declarations: UNDRIP; UNDROP; UNDHRD; Declaration on the elimination of violence against women • Authoritative guidance from human rights bodies: CEDAW General Recommendation No. 39 – Rights of indigenous women and girls; CERD General Recommendation No. 23 – Rights of indigenous peoples; CESCR General Comment No. 26 – Land and economic, social and cultural rights
Right to equality before the law and equal protection of the law (including the rights to legal personality and access to justice)	<ul style="list-style-type: none"> • Treaties: ICCPR; CERD; CEDAW; ILO Convention No. 169 • Declarations: UNDRIP; UNDROP; UNDHRD • Authoritative guidance from human rights bodies: CEDAW General Recommendation No. 39 – Rights of indigenous women and girls; CESCR General Comment No. 26 – Land and economic, social and cultural rights
Right to remedy	<ul style="list-style-type: none"> • Treaties: ICCPR; CERD; CEDAW; ILO Convention No. 169 • Declarations: UNDRIP; UNDROP; UNDHRD • Other standards: UNGPs • Authoritative guidance from human rights bodies: CEDAW General Recommendation No. 39 – Rights of indigenous women and girls; CESCR General Comment No. 26 – Land and economic, social and cultural rights

Annex 3: Studies and assessments related to IP and LC rights

This annex provides additional detail on studies and assessments that companies should conduct or facilitate to better understand aspects of IP and LC rights, risks or threats to these rights, and measures required to prevent, avoid, and mitigate such risks. See Section 3.2 for an overview of the full process of assessment, engagement, and site planning that should take place prior to site establishment.

Land and resource tenure study

The purpose of this study is to determine which persons and groups may have legally-recognised or customary rights to lands, territories, and resources in the area in question. It also assesses the ways in which IP and LC own, use, control, and manage their lands, territories, and resources.

The scope of the assessment should be commensurate with the complexity and scale of the circumstances, including the nature of the interest in land or resources that the company is seeking; the extent of the IP or LC lands, territories, and resources in question; the claims of the various stakeholders; and the severity of potential impacts. The integrity of the findings will depend on securing credible and verifiable information from relevant parties. This generally requires companies to ask IP and LC for this information. Companies should be prepared to offer them financial support to carry out this study.

A credible and thorough land and resource tenure study should include, at a minimum:

- identification of the lands, territories, and resources over which IP or LC have rights based on traditional occupation and/or use
- the nature of the populations' traditional uses of the lands, territories, and resources concerned, taking into consideration the distinct values and uses of those resources by different individuals and groups within the population (eg, women, men, elders, youth, gatherers, fishers, medicine people)
- the customary laws of the IP or LC related to land ownership, use, and management, including how land is transferred, assigned, and inherited among members
- identification of interests in the land or resources that might be claimed by the state or a third party
- existence of titles or other formal recognition of the subject IP and LC lands, territories, and resources, including determination of whether these titles or recognitions cover the full extent of these lands, territories, and resources
- the location and nature of any ongoing conflicts related to lands, territories, and resources, including situations where there are overlapping claims by alleged rightsholders
- applicable law providing for state duties to delimit, demarcate, and title IP or LC lands, territories, and resources
- applicable law pertaining to authority that the state asserts to limit the rights of IP or LC (eg, by providing concessions to third parties or establishing protected areas)
- the existence of any agreements between IP or LC and other parties related to the lands, territories, or resources in question, and, if such agreements exist, whether they were concluded through a legitimate FPIC process

Steps in conducting a land and resource tenure study include the following:

- Research official records containing relevant maps, land registrations, land surveys, land claims,²⁵ water-related documentation, and administrative or judicial decisions and records.

²⁵ 'Claim' includes legal petitions before judicial or administrative bodies in accordance with the law, as well as requests for land titles and/or denunciations and requests before government bodies. The latter are particularly important as sometimes affected IP or LC lack the capacity to make formal complaints and/or are limited to do so because the law in some way prevents it.

- Gather and examine maps (including participatory community maps and maps contained in FPIC documentation or Life Plans), as well as any studies of lands, territories, and resources conducted by the affected IP or LC. Where no maps exist, the study should include a process to identify and map lands and resources that the concerned IP and LC own, occupy, or use.
- Review other relevant literature and studies (eg, independent studies of illegal occupation conducted by a local university or civil society organisation).
- Speak with government officials, IP and LC leaders and representatives, civil society organisations, and any other useful information sources, such as members of neighbouring communities.

The results of the study should be documented and shared with the stakeholders consulted to verify the accuracy of the information they contributed. If comments are provided, then the study should account for those inputs.

Land and resource use study

Complementing the land and resource tenure study, the purpose of the land and resource use study is to provide a more detailed participatory analysis of how IP or LC use their lands, territories, and resources and how this use relates to IP and LC livelihoods, development priorities, and the enjoyment of other rights.

The scope of the study should include the lands, territories, and resources that may be directly affected by company operations and development plans, as well as adjacent areas used by IP or LC whose populations could be negatively impacted. For instance, if company activities could potentially contaminate or alter the course of a river that is critical to the subsistence fisheries of IP or LC living outside the boundaries of company ownership or control, the scope of the study should extend to such areas. Similarly, if the company proposes to construct a road that may increase access or migration to previously remote Indigenous territories, then the study should consider such potential adverse impacts.

The study should include engagement with potentially affected IP and LC to answer the following questions and document findings in appropriate formats, including maps as appropriate, to the extent that the IP and LC agree to make such information known:

- What relationships do IP and LC have with the lands, territories, and resources that may be affected, especially as pertains to their physical or cultural survival? This includes customary uses on a permanent, seasonal, or cyclical basis. The study should document areas used for different purposes, including:
 - temporary or permanent settlements
 - cultivation and food production
 - hunting, fishing, gathering, and collection of plants for medicine and other purposes
 - cultural, ceremonial, or spiritual purposes
- What are the development plans and vision of the affected IP and LC for the future use and management of their lands, territories, and resources? This may include plans for economic development, conservation, accommodating population growth, and other objectives.
- What are the customary laws, values, customs, and traditions of the affected IP and LC related to land, resources, and territorial ownership and use? This may include rules or customs on when, where, and what can be hunted or gathered, how lands are divided and shared among families, and role of different genders or groups in land tenure and use.
- What political and cultural institutions do the IP and LC use to govern and administer their resource use, management, and conservation?

This study requires a very inclusive approach involving different population segments of the affected IP or LC (eg, women, men, youth, and elders) who have different knowledge and expertise, and who use the lands and resources differently. Company representatives or those conducting the study should consult not only with designated leaders, but also hunters, fishers, gatherers, medicine people, shamans or other spiritual leaders, forest rangers, and other segments of the community.

At the outset of this study, a pre-consultation with the affected peoples is advisable to reach mutual agreement about how to carry out the study in a culturally appropriate manner. Prior to finalisation, study's results should be shared with the affected IP and LC in accessible languages and formats to validate the findings, or correct them if necessary.

Assessment of livelihoods and food security

The purpose of this assessment is to understand the basis of IP and LC livelihoods and food security, so that these can be fully protected in relation to company operations and their potential impacts. The assessment should address the following questions and should be carried out in a manner that protects the confidentiality, privacy, and intellectual property of IP and LC and their knowledge and cultural heritage.

- How do the affected IP or LC and their constituent members earn their livelihoods? What activities contribute to their income, subsistence, food, health, water, and nutritional security?
- In what way do these livelihoods depend on access to the environment, natural resources, and/or the broader local economy?
- What subsistence activities are conducted to satisfy basic needs (eg. gathering food and forest products, fishing, hunting, farming, trapping, animal husbandry), and who in the community is responsible for these tasks (eg. elders, youth, women, men)?
- Are there customary laws that govern these subsistence activities and practices? Who adopts and administers these laws within the affected populations?
- Do the affected IP and LC participate in bartering, trade, or other economic engagement with other peoples, communities, or formal or informal external markets?
- What are the personal, local, or traditional ecological knowledge, skills, endowments, and practices of the IP or LC that contribute to protecting their livelihoods and ensuring their food security?
- What are the key assets that underlie IP and LC ways of making a living (eg. farms, fields, pastures, tree crops, livestock, natural resources, tools, machinery, and cultural assets)? Which of these assets require special attention to ensure their protection and continued contributions to livelihoods and food security?
- What expectations do the IP and LC have with respect to their lands and resources for current and future generations, including expectations for the growth of their populations and expanding or decreasing needs?
- How have the IP and LC adapted over time to their surroundings to meet basic needs such as food, shelter, and health?
- What current and proposed company activities may impact IP and LC livelihoods and food security? How could existing operations and plans for future operations be modified to avoid those impacts?
- In addition to the company's activities and plans, is there a risk of larger cumulative impact to livelihoods and food security due to activities of other actors, as well? If so, what types of cooperative measures could help to address these impacts?
- How do the IP and LC intend to monitor their livelihoods and food security over time, including the effectiveness of measures to protect these rights?

Annex 4: Addressing challenges to respecting the right to self-governance

Respect for the right to self-governance can present challenges for several reasons, which occur most frequently in the context of FPIC processes and IP and LC stakeholder consultations. This is because these processes often require companies to engage with IP and LC that have pre-existing internal conflicts around who governs their lands, resources, and territories, and peoples.

Causes of conflict and associated challenges

Conflicts that present challenges for respecting the right to self-governance are commonly caused by one or more of the following:

- **When the state imposes a form of governance on IPs or LCs:** In many countries, national law defines and imposes a specific form of governance over Indigenous territories that is not only different than their traditional or historic forms of governance, customs, and norms, but also dependent on government resources and more closely aligned with national objectives. This is often done despite objections to these structures by many IP and LC members, and the rivalry they often pose to traditional governance structures, such as Councils of Elders, matriarchal political institutions, and others.
- **When a state-imposed governance structure holds the legal personality of IP or LC:** In some cases, state-imposed governance structures are recognised by law as having the legal personality of a given IP or LC. This means that these imposed structures are the only ones that can hold land titles or enter into legal agreements on behalf of the IP or LC. They may also be the entities that are empowered to contract or make agreements related to the disposition of IP and LC lands and resources, and to legally represent these peoples when collective rights to property are at issue. The result in all these situations may be that IP and LC do not have proper representation, self-governance, or autonomy to make decisions, defend their rights, and advocate for their interests.
- **When IPs and LCs lack full title to their lands:** In some situations, IP and LC ancestral lands and territories are only partially titled, leaving parts of their customary lands, territories, and resources without formal legal recognition. In some places, national laws recognise IP and LC governance structures as having jurisdiction over only a portion of their lands (those titled), whilst a governmental body may assert jurisdiction and governing authority over the rest of the claimed ancestral lands, territories, and resources.
- **When IP or LC communities share areas of land and resources:** IP and LC territories are not always discretely defined. In many cases, IP or LC use the same areas of land or resources as other communities, which may also be IP or LC. This can occur, for example, in areas where some groups are nomadic or semi-nomadic, where different communities use the same area of land or resources for different purposes, or where they have customary access and use rights agreed with other communities. Such arrangements may go back generations.
- **When unwelcomed outsiders have moved into IP or LC lands or territories:** In many countries, ancestral lands and territories are, by law, exclusively for the possession and use of their rightful IP or LC owners and users. However, over decades settlers and settlements have come into IP and LC territories for a variety of reasons. These non-Indigenous residents often demand representation within Indigenous governing structures, or a right to be included equally in consultation and FPIC processes.
- **When Indigenous self-governance structures exclude or marginalise groups:** In some cases, local Indigenous governance structures operate in a way that may make it difficult for companies to achieve inclusive participation and benefit sharing across the entire affected IP and LC population. For instance, such structures may exclude or limit the voice of certain groups or individuals, such as those that oppose current leaders or hold different political views. Notwithstanding the potential complexity of the situations described above, companies are still obliged to respect the right to self-governance. Guidance for doing so is provided below. Additional guidance is provided in the [Operational Guidance on Free, Prior, and Informed Consent](#) (particularly its annex).

Guidelines for companies

While the preceding scenarios and conflicts often evade easy solutions, the following approaches can help companies contribute to solutions while avoiding actions or omissions that may cause or worsen human rights harms.

Impartiality and neutrality

Companies should refrain from taking sides about who represents the IP or LC, and therefore who legitimately governs the peoples and their lands, territories, and resources. However, it is important for companies to map out these arrangements, and related decision-making and representativity structures, in consultation with the concerned peoples. This is with a view to fully understanding governance arrangements and the potential consequences of company actions on these arrangements and on rights of the different concerned IP or LC.

Similarly, companies should not put themselves in a position of deciding who is and is not a member of an IP or LC per their customary laws, norms, and values. Likewise, they should not declare or take sides regarding who can and cannot participate in decision-making. These determinations should be left to the IP or LC themselves. Companies could neutrally offer to support internal mechanisms to resolve these questions but should take care in doing so to avoid exerting influence or being perceived as doing so.

Inclusiveness

Where operations may impact lands and resources that are not titled to an IP or LC (or perhaps even titled to others), but are claimed by them, companies should include those peoples and communities (and their chosen governance structures) in all due diligence processes and assessments.

Whilst companies may not dictate community decision-making mechanisms, they do have the responsibility to take appropriate measures to ensure that they are not complicit in discriminatory practices. This includes proactively identifying and working to address discrimination against women or other vulnerable or marginalised segments of the community. Companies are likewise responsible for ensuring that all IP and LC members are generally informed about the company's current and proposed production and trade activities and are being represented by those with whom the company is instructed to engage.

Involving governance structures of IP and LC own choosing

Where applicable law assessments reveal that the chosen governance structures of IP and LC are denied legal personality, this may mean that existing legally recognised governance structures are not in fact the legitimate representatives of the communities concerned. Companies should consider measures to mitigate against harms that could arise from the state's omissions in this regard. For instance, leaders from the community's excluded governance structures should be identified and included in consultations or FPIC processes.

At the same time, with regard to IP and LC self-determined governing structures, companies should not jump to conclusions about the adequacies or representativeness of a particular governing structures or institutions. These are sensitive matters. It is prudent for companies to invest the time at the beginning of their due diligence process (eg, as part of the assessments summarised in Section 3.2) to investigate and understand the relevant laws and sociopolitical dynamics impacting IP and LC governance. This should include consultation with leaders, community advisors, representatives, a cross section of IP and LC members (considering gender equity and inclusiveness), civil society actors that work with them, and human rights commissions or ombudsmen.

Facilitating consensus

Companies should consider supporting consensus-building initiatives, including local community dispute resolution efforts, between and among IP and LC governing entities that assert overlapping rights and/or jurisdictions. This could contribute to achieving broader support for company activities, avoiding future grievances, reducing the risk of perceived favouritism between stakeholders, and enhancing the enjoyment of human rights that might otherwise be impacted by the company.

Annex 5: Examples of cultural heritage

Following is an indicative (not exhaustive) list of examples of cultural heritage.²⁶

Human-made cultural heritage

- religious buildings, such as temples, mosques, churches
- exemplary Indigenous or vernacular architecture
- buildings, or remains of buildings, of architectural or historic interest
- historic or architecturally-important townscapes
- historic roads, bridges, walls, fortifications, dams, aqueducts, and viaducts
- archaeological sites
- commemorative monuments
- historic sunken ships

Natural cultural heritage

- springs and wells
- sacred waterfalls
- sacred groves and individual sacred trees
- historic trees
- sacred mountains and volcanoes
- caves currently or previously used for human habitation
- paleontological sites (ie, deposits of early human, animal, or fossilised remains)
- natural landscapes of outstanding aesthetic quality

Combined human-made and natural cultural heritage

- sites used for religious or social functions such as weddings, funerals, or other traditional community activities
- places of pilgrimage
- burial grounds
- family graves in the homestead
- historic gardens
- cultural landscapes
- natural stones bearing historic inscriptions
- historic battlegrounds
- combined human and natural landscapes of aesthetic quality
- cave paintings

²⁶ Source: UNDP citing to World Bank, Physical Cultural Resources Safeguard Policy Guidebook, and UNESCO Convention for the Safeguarding of Intangible Cultural Heritage.

Movable cultural heritage

- historic or rare books and manuscripts
- paintings, drawings, icons, and jewellery
- religious artefacts
- historic costumes and fabrics
- memorabilia relating to the lives of prominent individuals or to events, such as historic battles
- statues, statuettes, and carvings
- pieces broken off monuments or historic buildings
- unregistered archaeological artefacts
- antiquities, such as coins and seals
- historic engravings, prints, and lithographs
- natural history collections, such as shells, flora, minerals

Intangible cultural heritage

- oral traditions and expressions
- performing arts
- social practices, rituals, and festive events
- knowledge and practices concerning nature and the universe
- traditional craftsmanship



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