Feature
The Business Case for Indigenous Rights
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As the effects of climate change worsen and concern about the need to protect the environment and biodiversity grows, financial regulators are now turning their attention to how companies report on climate-related risks to investors and the public. In the United States, the Securities and Exchange Commission (SEC) has initiated a process, including releasing a draft rule this March, that requires companies to disclose financial risks related to climate change. Overseas, the European Commission is in the process of developing a taxonomy of investment products to encourage more sustainable investments.

One crucial factor that businesses and investors may overlook in assessing climate risks is Indigenous and tribal peoples’ rights. Studies have proven that biodiversity preservation and climate stability are best ensured when Indigenous and tribal people’s rights—especially land rights—are respected. For example, the Intergovernmental Panel on Climate Change’s 2019 report on climate change and land use found that agricultural practices that incorporate Indigenous and local knowledge adjust more effectively to deforestation and biodiversity loss, and a 2020 study in *Frontiers in Ecology and the Environment* reported that ancestral lands and lands under title by Indigenous peoples are the most biodiverse and best conserved on the planet. Old-growth forests and biodiverse ecosystems are crucial for climate change mitigation, because without the power of their carbon sequestration and temperature regulation, the world cannot reach the Paris Climate Agreement goal of limiting global warming to 1.5 degrees Celsius above preindustrial levels.

However, when Indigenous and tribal peoples attempt to defend their land rights, they are often threatened, attacked, and even killed. According to data collected by the NGO Global Witness, more than 1,540 land and environmental defenders were murdered protecting their land between 2012 and 2020. The human-rights NGO Front Line Defenders’ 2021 global analysis report documented that 211 land, environmental, or Indigenous and tribal peoples’ rights defenders were murdered in 2020—26 of those were Indigenous peoples. Since 2017, Front Line Defenders has documented the murder of 420 Indigenous and tribal peoples’ rights defenders. Impunity for these attacks is the norm, not the exception.

Even within the narrow interpretations of the business mandates to maximize profit and protect investors, the failure to respect Indigenous and tribal peoples’ rights exposes companies and their investors to pervasive legal, political, reputational, and operational risks. These risks can take the form of project delays and even cancellations, resulting in significant financial loss. Yet companies directly implicated in land-rights abuses rarely disclose to investors the risks inherent in operating on and/or near Indigenous and tribal peoples’ lands, which can affect the finances of companies—not to mention these harmful actions can accelerate environmental degradation, climate change, and human-rights abuses.

Some banks, asset managers, and other investment firms have recognized the importance of respecting Indigenous and tribal rights by instituting policies to identify, assess, prevent, and mitigate these risks. In 1999, the Calvert Social Investment Fund led the sector by formally...
adoption of stand-alone criteria for Indigenous peoples’ rights based on international instruments, becoming one of the first companies to use a rights-based framework to screen investments. Trillium Asset Management followed in 2003 by instituting a screening policy that examines company policies and actions to understand whether it “has demonstrated a pattern of disrespectful or exploitative behavior” toward Indigenous peoples. And in March 2021, BlackRock, the world’s largest asset manager, stated its expectation that companies “obtain (and maintain) the free, prior, and informed consent [FPIC] of Indigenous peoples for business decisions that affect their rights.” Securities regulators are also beginning to recognize the importance of disclosures of this nature; the European Commission is currently reviewing a Non-Financial Reporting Directive to create greater transparency in how companies manage social and environmental challenges.

As advocates working at the intersection of Indigenous rights, human rights, environmental protection, and investor accountability, we argue that companies should adopt more robust due diligence in accounting for Indigenous and tribal peoples’ rights. The international legal standards and norms for these rights are already enshrined. We have reviewed cases from around the world—-drawn from our own work at human- and climate-rights nonprofits and that of colleagues—that demonstrate how disregarding these rights leads to delays, lawsuits, and financial losses for companies and their investors. To avoid these problems, businesses should adopt corporate policies and their regulators should formulate concrete rules to require companies to disclose the involvement in activities that affect Indigenous and tribal rights. We suggest that all parties accept targeted criteria for considering these rights in relation to business operations; climate risks; and environmental, social, and governance (ESG) standards.

**Land Connection**

Indigenous and tribal peoples have a deeply intimate relationship with their environment, have unique ways of relating with both the land and people, and live in ways that are often not understood, valued, or respected by outside entities.

For Indigenous and tribal peoples, land is not merely a possession or a means of production. Their histories and identities are tied to their territory through memories, stories, and sacred and cultural practices. The United Nations Permanent Forum on Indigenous Issues explains that “Indigenous peoples’ special relationship with their lands—a fundamental element of their spiritual, religious, cultural, and physical survival—is often at odds with corporate and government interests” in extracting and capitalizing upon their natural resources.

Oil drilling, mining, agribusiness, and other types of development projects can threaten Indigenous peoples’ survival. According to the UN Permanent Forum on Indigenous Issues, “[t]he impact of such projects includes environmental damage to traditional lands, in addition to loss of culture, traditional knowledge, and livelihoods.”

The harms wrought by environmental destruction and climate change affect not only Indigenous peoples’ means of sustenance but also their relationship with their land, as well as their ability to maintain their identities and customs. Indigenous peoples vary enormously from one to the next. Many Indigenous and tribal territories are collectively owned and managed, with complex networks of relationships, usage rights, and diverse decision-making structures. Many, especially forest peoples, do not live as settled agriculturalists on a small plot of land. For some, their farming systems are based on rotational agriculture that is spread across extensive areas. Hunter-gatherer peoples spend much of their time in the forest, at camps, and on farms, sometimes several days’ travel from their communities, where they hunt, fish, and gather medicinal plants and building materials, such as clay for pottery, essential for their way of life.

In remote regions like the Amazon rain forest, West Papua, and the Andaman Islands, some Indigenous peoples continue to live in voluntary isolation. Any attempt to establish contact or operate in their territory violates their right to self-determination, could force their displacement, and poses a serious health risk through exposure to communicable and deadly diseases. Even a simple cold virus could nearly wipe out an entire people, such as when half the Nahua population in the Peruvian Amazon was decimated by disease in the months following contact with commercial loggers in 1984.

**Self-Determination as Law**

Indigenous and tribal peoples’ special relationship with their lands has given rise to a body of international legal standards that protects it. Businesses and investors must know these laws and standards to mitigate various risks.

The UN Declaration on the Rights of Indigenous Peoples (Declaration), the American Declaration on the Rights of Indigenous Peoples, the International Labor Organization Indigenous and Tribal Peoples Convention No. 169 (ILO 169), and jurisprudence of bodies like the Inter-American Court of Human Rights (IACHR) have established that if activities related to a business or commercial project impact Indigenous peoples, then the project should not proceed without the FPIC of those Indigenous people. And where their rights would be violated, it may not go forward at all.

Adopted by the United Nations in 2007, the Declaration enumerates the rights that “constitute the minimum standards for the survival, dignity, and well-being of the Indigenous peoples of the world.” Like all people, Indigenous peoples are rights bearers under all international human-rights instruments, including the UN Charter and the Universal Declaration of Human Rights. However, the 2007 Declaration applies specifically to Indigenous peoples. At the time of its adoption, 144 UN member nations voted in favor and only 4—the United States, Canada, Australia, and New Zealand—voted against it. By 2016, all four reversed their position and now support it.

One of the core rights outlined in the Declaration is that of self-determination. The UN Expert Mechanism on the Rights of Indigenous Peoples, a program composed of seven experts who advise the UN Human Rights Council on Indigenous peoples’ rights,
explains that all rights are linked to self-determination: “Indigenous peoples’ cultures include tangible and intangible manifestations of their ways of life, world views, achievements, and creativity, and should be considered an expression of their self-determination and of their spiritual and physical relationships with their lands, territories, and resources.”

Self-determination necessarily encompasses Indigenous peoples’ right to make decisions and have equitable participatory rights in projects affecting them. Article 26 of the Declaration states that “Indigenous peoples have the right to the lands, territories, and resources which they have traditionally owned, occupied, or otherwise used or acquired,” and have the right to “own, use, develop, and control the lands, territories, and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.” Safeguarding the right to self-determination, therefore, is acutely important when corporations enter agreements or start development regarding Indigenous peoples’ land, territories, and resources.

In addition to the Declaration, the member states of the Organization of American States (OAS)—every country in the Americas except Cuba—adopted in 2016 the American Declaration on the Rights of Indigenous Peoples, which also affirms the right of Indigenous peoples to self-determination. Like the Declaration, the American Declaration recognizes a series of rights related to management and control of territories, including those under traditional ownership, including those under traditional ownership—meaning that Indigenous peoples need not hold legal title for the government to solicit and/or obtain consent.

While, like the Declaration, the American Declaration is a non-binding declaration, 25 of the 35 OAS member states have ratified or adhered to the American Convention on Human Rights—a binding instrument that entered into force in 1978. The convention created the Inter-American Commission on Human Rights and the IACHR to uphold fundamental rights, like the right to property and judicial protection.

Finally, 23 countries have ratified ILO 169, thereby assuming binding treaty obligations. This convention declares specific rights for Indigenous and tribal peoples, including “the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions, and spiritual well-being and the lands they occupy or otherwise use.”

These international standards have created a framework of best practices for Indigenous peoples to exercise their right of self-determination via FPIC. The tenets of this principle mean that consent must be given freely, by people fully informed of the potential consequences prior to making any decision, and according to their own decision-making processes. More precisely, Indigenous peoples are free from coercion or manipulation to make decisions in their own time, in their own ways, and subject to their own norms and customary laws. They understand and are involved in decision-making processes and can give or withhold their consent during a project’s planning stages, and this participation and consent process continues through the design and implementation phases of the project. Indigenous peoples must have access to the legal and technical expertise, as well as information in the appropriate languages, that enable them to understand the implications of any decision on their lives and make informed decisions.

If Indigenous or tribal peoples choose to withhold consent or refuse to enter negotiations, a project cannot legally proceed, because it violates their right to self-determination over their lands, territories, and resources. In short, a license to operate requires any business to solicit FPIC in a rights-based process and with an outcome that fully respects an Indigenous community’s decision.

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Rights and Risk
Given the global consensus in support of Indigenous peoples’ right to self-determination and control of their lands, corporate disregard of their rights often generates significant on-the-ground conflict that leads to legal, political, reputational, financial, and operational risks for companies and their investors.

Our review of company reports filed with the SEC reveals that companies are not disclosing the risks derived from the potential or active harms to Indigenous and tribal rights or their attendant resources, despite the clear financial peril involved. The following are some examples of these relevant, and often undisclosed, risks facing companies around the world. In many cases, these companies were eventually forced to report—sometimes to the SEC, sometimes to the media—significant financial losses resulting from their refusal to respect Indigenous and tribal peoples’ rights.

Legal risks include the possibility of local courts overturning government-granted concessions based on land-rights violations, lawsuits resulting from human-rights abuses committed in connection with projects, and legal cases before international institutions such as the IACHR. The continuation of projects without obtaining FPIC can result in major delays due to domestic or international court decisions requiring a corporation to regress to an earlier stage in the development of the project or to perform additional environmental analysis to adequately consult affected communities.

For example, Los Angeles-based oil company Occidental Petroleum (OXY) spent eight years fighting a lawsuit in US courts filed by Achuar communities in Peru for the environmental contamination and health impacts caused by OXY’s operations in northern Peru. The case was eventually settled in 2015, when OXY agreed to spend an undisclosed amount on development programs in Achuar
communities. Our review of OXY’s annual disclosures to the SEC from 2007 (the year the suit was filed) until the 2015 settlement shows no mention of the suit or any mention of Indigenous land rights or community opposition as a business risk.

Companies can also be indirectly affected by international court decisions. For example, in 2007 the IACHR ordered changes to law and practice after the Suriname government granted logging and mining concessions to various companies in the Saramaka people’s ancestral territory without their consent.

In its ruling, the court affirmed Indigenous peoples’ communal property rights, both of which require special measures to guarantee their physical and cultural survival under international human rights law. The court also asserted that state action and domestic legislation were “not sufficient to guarantee the Saramaka people the right to effectively control their territory without outside interference.”

The court ordered Suriname to review and consider modification of existing mining and logging concessions in light of the judgment, and to update legal provisions to ensure full management and control of the lands and natural resources in the Saramaka collective territory. While the government of Suriname has been reluctant to implement the court’s ruling, the Saramaka people have pledged to continue their efforts to defend their lands.

National courts and laws are integrating the requirements of international treaties and conventions for the treatment of Indigenous peoples, creating additional risk for governments and companies should a project proceed without the FPIC of affected communities. In October 2021, Norway’s supreme court ruled that the Storheia and Roan wind farms, located in Sami reindeer herders’ territories, violated Samis’ rights under international conventions. The court further invalidated the operating permits for the 151 wind turbines. However, the court did not state how or whether the turbines should be removed, leaving both the government and the company in legal and operational limbo until they determined how to effectuate the court order.

Similarly, in 2021 the British Columbia Supreme Court of Canada delivered a decision in favor of the Blueberry River First Nations, finding that their rights to hunt, fish, and trap within their traditional territory were violated by the provincial government, which granted permits for many forms of industrial development without the community’s approval. The ruling created significant regulatory uncertainty for project proponents in British Columbia, and it implied a future diminished legal burden for First Nations to show that business and commercial developments infringe on their rights. These decisions signal that Indigenous rights are being implemented in domestic regimes around the world and that all actors must understand the related factors as integral to their risk-profile metrics.

Political risks may include referendums, legislation, or increases in regulation that delay, cancel, or otherwise inhibit corporate activity. For example, a 2017 binding referendum in Cajamarca, Colombia, rejected plans for a $35 billion AngloGold Ashanti gold mine. (AngloGold Ashanti did mention community opposition in its 2017 annual filings to the SEC.) In another example, Ecuador’s Constitutional Court ruled mining concessions in Los Cedros forest unconstitutional, effectively canceling mining company projects there. And in Liberia in 2018, the congress passed the Land Rights Act, which expanded customary land tenure rights to local communities.

Social unrest and conflict caused by disapproval of a project can also produce significant delays to operations. Governments often fail to consult with affected Indigenous peoples prior to leasing a concession or approving a project application. Even if affected peoples initially agree to a project, unforeseen harms, or a failure to involve affected peoples in decision-making, can lead to complications and backlash that blocks the company’s operations—at significant cost to the company.

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The case of Malaysian palm oil conglomerate Sime Darby Berhad illustrates the political risk of ignoring the land rights of Indigenous and tribal peoples, and the interplay of the political risk with operational and legal risks. In 2009, Sime Darby signed a 63-year concession contract for 220,000 hectares (544,000 acres) of land in northwestern Liberia, comprising one-fifth of the company’s land bank. The Liberian government agreed to allocate land free of encumbrances to the conglomerate, which in turn agreed to pay $5 per hectare (more than $12 per acre) annually and to provide employment for more than 30,000 Liberians. The project was initially expected to involve capital expenditures of $3.1 billion over 15 years.

However, Sime Darby never secured FPIC from local rights holders. In November 2012, more than 150 representatives of communities affected by Sime Darby’s palm-oil plantations issued a declaration stating that no consultation had taken place—nor had they granted consent—before their land was given to the conglomerate.

At the same time, the Land Rights Act strengthened the hand of traditional communities in Liberia. In the years following Sime Darby’s initial investment, Liberia passed several laws pertaining to FPIC and land rights that increased the company’s chances of having the project blocked or delayed by costly litigation. With new laws in place and continuous unrest among affected communities, Sime Darby faced engaging in FPIC dialogue with 55 distinct villages to secure full concessions for development. To judge from the conglomerate’s past experience, such a process could take up to two years, and some communities could wind up refusing to relinquish their land or negotiate down the amount of land for plantation development. Neither outcome appealed to the conglomerate.
Sime Darby ultimately spent more than $200 million on its Liberian operations and filed a $26.81 million impairment for the 2018 financial year. In 2019, it sold its plantation assets for $1 plus an earn-out payment. During the three months in which the sale took place, the company reported a net loss of $10.6 million and a 3.5 percent drop in revenue.

Reputational risks arise from the negative publicity caused by the exposure of human-rights abuse, deforestation, and pollution. Society expects that companies do no harm, and in our globalized, digital 21st-century world, a toxic dump or an oil spill in the Amazon no longer goes unnoticed. Images of environmental destruction caused by a company can result in lasting damage to its image and reputation, as well as to its relationships with customers, shareholders, and financial institutions. Indigenous peoples are organizing protests at shareholder meetings, speaking to the press, and filing lawsuits alerting shareholders to these abuses—all actions that heighten risks caused by continuing operations without due diligence.

The Standing Rock Sioux Tribe’s fight against the Dakota Access Pipeline (DAPL) on their territory demonstrates how reputational risk intersects with political, legal, and operational risks. As early as 2014, the tribe expressed its desire for the proposed pipeline to be rerouted away from their territory, and in 2016 they filed a legal case against the US Army Corps of Engineers, to which the proponent company, Dakota Access, LLC, a subsidiary of Energy Transfer Partners, soon joined as an intervenor-defendant. The tribe simultaneously launched media campaigns demonstrating how the pipeline violated their rights. Despite both the pending litigation and clear communications showing their opposition, Energy Transfer Partners continued construction and, in the process, decimated ancestral burial sites and objects with cultural and spiritual value for the Standing Rock Sioux and tribes across the Great Plains. Indigenous peoples and allies from around the world gathered in Standing Rock to protest continued pipeline construction. At one point, nearly 15,000 people were present at Standing Rock as part of the #NoDAPL movement, and millions more were following closely on social media and in the press. The company and local security forces’ response to the protests led to the arrests of water protectors and resulted in additional human- and civil-rights violations.

Not only did the Standing Rock Sioux Tribe’s opposition generate multiple risks to Energy Transfer Partners and the DAPL project, but they successfully activated a shareholder-advocacy campaign targeting the financial institutions providing funding for the pipeline’s construction. After they organized socially responsible investors and met with various financial institutions, several European banks pulled their financial commitments from the pipeline. A 2018 analysis by First Peoples Worldwide, a program at the University of Colorado Boulder dedicated to increasing corporate accountability to Indigenous peoples, found that, despite the initial cost estimate of $3.8 billion, the pipeline cost more than $12 billion by the time it was operational in June 2017, after financial losses accumulated from the long delays in construction due to social unrest and legal proceedings. Furthermore, Energy Transfer Partners’ stock price significantly underperformed relative to market expectations, and it experienced a long-term decline in value that continued after the project’s completion. From August 2016 to September 2018, its stock declined by almost 20 percent, while the S&P 500 increased by nearly 35 percent.

Despite efforts by the tribe and allied investors, oil began flowing through the pipeline in June 2017. However, the pipeline’s legal and operational uncertainty continued. In July 2020, US District Court Judge James E. Boasberg ordered that the pipeline be shut down so that the federal government could complete a new and more comprehensive environmental impact analysis. The court relied heavily on statements from the tribe showing that the bare minimum review that occurred did not consult the tribe and was therefore insufficient. In a broad sense, this ruling set an important precedent showing that consultation is a nonnegotiable aspect of risk assessment and environmental analysis to mitigate legal, reputational, and social risks.

In February 2022, the US Supreme Court denied the proponent company’s appeal of the legal case, effectively ending litigation. While the tribe and others applauded this decision, oil is still flowing through the pipeline, under Lake Oahe, and no definitive emergency response policy is in place should a spill occur—a fact that underscores potential additional operational risks more than five years after the pipeline’s completion.

The case of DAPL is not unique. Corporate harms and abuses of Indigenous and tribal peoples are occurring throughout the world. For instance, Canadian oil company ReconAfrica is currently facing increasing scrutiny for its exploratory drilling for oil and gas in the sensitive wilderness of Namibia and Botswana, home to the watershed of the Okavango Delta and six community-run wildlife reserves.

Local community members have expressed concerns that ReconAfrica’s initial exploration activities have already violated Indigenous and human rights. Namibian law requires companies to ensure not just that Indigenous and tribal peoples are consulted but also that the public is notified about any proposed project and has a chance to raise concerns, which must be addressed in the assessment’s final report to receive government approval. ReconAfrica released the draft assessment in March 2021, yet numerous individuals and advocacy organizations said the consultation was extremely limited: There were no available translations to local languages, and the company placed limits on audience attendance, ignored questions, and canceled sessions. In May 2021, a local farmer filed a lawsuit against ReconAfrica for failing to consult with local peoples. The company, noticing the growing opposition, has threatened legal action against journalists covering the project. The head of a tribally run conservation area says he fears for his life for speaking out.

In May 2021, an anonymous whistleblower filed a complaint with the US SEC, alleging that ReconAfrica misled investors about its plans to explore for oil and gas deposits in the region by promoting revenue projections to investors based on activities for which it has not secured permission or permits. The whistleblower also alleged that the company “fail[ed] to disclose the compensation paid to the publications of third-party materials or their financial interests in the company’s stock.” National Geographic reported that the day after it requested comment, ReconAfrica filed new disclosures and amended reports with Canadian regulators.

The transnational nature of these projects demonstrates the need to identify, assess, and mitigate risks at all levels to ensure
protections for Indigenous and tribal peoples, as well as to effectively diminish risk for shareholders and investors.

Operational risks can stem from community protests and blockades, which may delay or even permanently obstruct a project, or render necessary inputs inaccessible. As research conducted by the Harvard Kennedy School’s Corporate Social Responsibility Initiative demonstrated, “most extractive companies do not currently identify, understand, and aggregate the full range of costs of conflict with local communities.” Community disruptions, for example, can cost mining projects $20 million to $50 million per week.

In the most extreme cases, investors can lose their entire stake. Take, for example, the case of Block 64, in which a host of companies—including Occidental Petroleum, Talisman (now Repsol), and GeoPark—has attempted to explore and drill for oil in this field in the Peruvian Amazon. Block 64, as the field is known, lies in the heart of the Achuar, Wampis, and Kichwa peoples’ lands. In fact, since Block 64’s creation in 1995, at least nine oil companies have purchased concessions for drilling projects, and all have subsequently withdrawn after fierce opposition from local community members.

Amazon Watch reviewed company filings to the SEC during the time periods when these companies held Block 64 leases and found limited to no mention of Indigenous opposition to Block 64 oil development. The closest any company came to mentioning this opposition was Talisman, which in a March 2012 filing described how a “local federation” (likely alluding to the Federation of the Achuar Nationality of Peru [FENAP]) had blockaded a river and impeded the transport of Talisman contractors. The most recent oil company to leave Block 64 was GeoPark, which announced its departure in July 2020. GeoPark’s decision came after six years of opposition from local Indigenous communities, beginning with FENAP’s declaration of intent to force GeoPark out after the company’s 2014 initiation of oil exploration activities in the block. The Wampis Nation later voiced opposition, denouncing GeoPark in 2018. Indigenous opposition led GeoPark to withdraw its environmental impact study in 2019. That same year, communities filed a lawsuit to annul Block 64 entirely for lack of consultation. In 2020, the Wampis filed a criminal complaint against GeoPark, given the danger the continued presence of company workers during the COVID-19 pandemic posed to them.

Nevertheless, while GeoPark’s 2020 SEC filings discussed the company’s decision to withdraw from the Block 64 contract, they made no mention of community opposition. The filings did, however, note an impairment loss of $34 million due to the withdrawal, and both 2017 and 2018 filings mention construction costs of at least $36.8 million—indicating that the company may have lost more than $70 million from its Block 64 misadventure.

Due Diligence and Disclosures

Because companies often cannot rely on the government in the countries where they operate to protect Indigenous rights, their alignment with international standards and norms is necessary. Investors, therefore, should have full knowledge of the risks posed by lack of respect for the rights of Indigenous and tribal peoples. Furthermore, the SEC and other regulators should require all companies to document the following information for their direct operations, as well as their direct and indirect suppliers:

- How their business model implicates issues of Indigenous and/or tribal peoples’ rights, including through their supply chains, contractors, and subcontractors.
- The names of any and all Indigenous and/or tribal peoples whose territories (both legally recognized ones and any territories currently under request for legal recognition) in any way overlap with operations or would be directly affected by them (e.g., by downstream pollution from oil-drilling waste products).
- Any and all land-rights grievances or complaints filed by local communities in the company’s areas of operations, the company’s response, and statements from complainants on how they assessed the response.
- Any open processes in which the company is seeking to consult with or obtain the consent of Indigenous or tribal peoples who would be affected by a planned or in-process activity by the issuer, subsidiary, or supplier.
- All consultation processes carried out in the past reporting year, including information on what entity carried out the consultation, and, if consent was obtained, how the affected Indigenous peoples expressed that consent.
- All legal processes in the United States and/or foreign jurisdictions related to land-rights disputes, consultation or consent processes, or other Indigenous-rights matters.
- All projects undertaken by the issuer or subsidiaries that require the relocation of Indigenous and/or tribal communities, including any and all compensation, monetary or otherwise, provided in exchange for relocation.

These disclosure requirements should apply to any company, subsidiary, or supplier whose operations require the use of land, including subsoil. While they apply especially to the agriculture, mining, oil and gas, energy infrastructure, logging, and biofuels sectors, these are not the only ones implicated in such issues. For example, in 2016, Indigenous peoples in Oaxaca, Mexico, halted construction of a wind farm by the consortium Energía Eólica del Sur, which is partly owned by an Australian investment bank, after successfully demonstrating that the government failed to adequately consult Indigenous peoples near the town of Juchitán de Zaragoza. Disclosures should apply to any sector, subsidiary, or supplier whose operations involve any kind of land use.

Further, forward-looking action requires full disclosure of these impacts, with the same degree of sophistication and integrity with which other ESG factors are explored. This can be done by instituting due diligence policies guaranteeing the protection of Indigenous rights across operations and throughout the supply chain. Respecting Indigenous peoples’ rights throughout ESG and climate commitments is necessary to fully understand an ESG risk profile. Implementing FPIC in a rights-based approach will allow companies not only to avoid conflict and costly delays but to capture data on leading ESG risk indicators related to human rights and sustainability. These data can then be disclosed to shareholders and issuers. As forecasts point to a steep increase in climate-change-related effects, real-time action on due diligence and disclosures that accounts for all human, climate, and business risks is necessary and urgent.