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How to compensate the loss of nature? An Indigenous Peoples rights perspective

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Indigenous Peoples and the environment



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Source: <https://www.amity-tours.com/we-tripantu-mapuche-new-year/>



Source: <https://www.portalam biental.com.mx/ambientalismo/20230810/destacan-el-papel-de-la-juventud-indigena-en-la-conservacion-de-los-recursos>

Special relation protected by Law



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1. United Nations (“UN”) Declaration on Human Rights (1945)
2. International Labor Organization Convention N°169 (1989)
3. UN Declaration on Indigenous Peoples Rights (2007)
4. National legislation and/or case law (v.gr. Canadian “Duty to Consult”)
5. United Nations Guiding Principles on Business and Human Rights (2011)



How to compensate the loss of nature in relation to Indigenous Peoples?



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Duty to Consult (Convention N°169)

1. Principles

2. Consent?

2.1 General rule: aim, but not a requisite for a State's measure involving affectation to Indigenous Peoples.

2.2 Exception: resettlement of Indigenous Peoples (Art. 16 N°2 Convention 169)

2.3 Contra-exception: proper procedures (*narrow interpretation*)

Free, Prior and Informed Consent (FPIC)

1. Principles

2. Consent

2.1 General rule: consent need to be obtained.

2.2 Exception: to demonstrate highest efforts in order to achieve consent.

Lawyers as innovators, organisers and agents of compensation



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1. To who or whom should I ask?
2. What should I understand by “susceptibility of affectation” as a trigger for the duty to consult?
3. How should I obtain the consent?
4. Evidence and fulfillment of Indigenous Peoples governance.



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¡Gracias!

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