

WHY A MODEL LAW FOR THE RIGHT TO SAY NO?

The Right to Say No Campaign



Communities Have the Right to Say No!

Communities in South Africa have for decades been saying no to mining activities on their lands, in their oceans and on their river banks.

Through their resistance on the ground and in the courts, communities have won landmark judgements (Maledu and Baleni) that affirm that communities have the Right to Say No. These are important victories for affected communities throughout South Africa.

While this sets important precedent (case law), the current legal framework does not adequately protect Free, Prior and Informed Consent (FPIC). Nor does it provide a binding mechanism through which communities can refuse projects that threaten their survival.

The Model Law for the Right to Say No responds directly to this gap.



Communities are Rights Holders!

In development processes, communities are often reduced to “stakeholders” while in reality, communities are, in fact, rights-holders.

Because of this “stakeholder” approach, customary land is often treated as “available” land, consultation is often meaningless and used to override opposition and thus, development is imposed without consent.

In domestic and international law, communities have a legal right to refuse development projects on their land. Even though this right is not fully codified outside of case law in South Africa, the Right to Say No still exists.

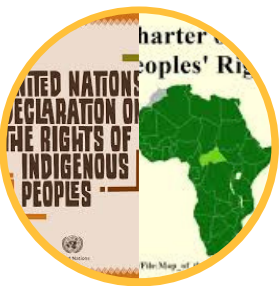
The Right to Say No is grounded in:

- **International law** through the African Charter on Human and Peoples’ Rights and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP);
- **Human Rights Standards** set through FPIC;
- **Domestic legislation** through the Interim Protection of Informal Land Rights Act (IPILRA);
- **Customary Practice** through the established communities’ democratic practices over generations; and
- **Constitutional jurisprudence** through the Baleni and Maledu judgements

Each of these instruments reinforce each other.



The Current Legal Framework



UNDRIP & African Charter on Human and Peoples' Rights

Key Principles:

- The right to self-determination
- Right to land, territories and resources
- Right to control development on ancestral lands

Core requirement:

- FPIC for and before approval of any project

In practice this means:

- Consultation is not consent
- Consent must be freely given, before any decisions are made and based on full information



If consent is required then refusal (withholding consent) is a lawful outcome.



The Current Legal Framework



Interim Protection of Informal Land Rights Act

Key Protections:

- Informal and customary land rights are recognised
- Rights-holders may not be deprived of their land and resources without consent
- Consent must come from rights-holders themselves



Despite not having title deeds, customary land owners have real and legally recognised property rights.

What IPILRA does not allow:

- Substitution of consent with consultation
- State assumption of ownership over customary land
- Dispossession for “development” without approval

Without consent, any deprivation is unlawful!



What Saying “NO” Really Means

Saying no means :

- Rejecting top-down development
- Demanding and co-creating alternatives from below
- Demanding lawful, consent-based processes
- Exercising constitutionally guaranteed land rights



What does saying no mean in practice?

For the **state**: Cannot approve projects or grant licenses without consent

For **developers/corporations**: Must secure genuine community approval through consent

For **communities**: Lawfully entitled to refuse or grant consent

For **courts**: Duty to enforce consent requirements



Why a Model Law for the Right to Say No?

The current legal framework is often violated due to non-implementation, enforcement challenges, misrepresentation of consultation, elite capture and political pressure and blatantly ignoring community decision-making processes.

Because of this, affected communities are co-developing a law from below that seeks to codify the right of affected communities to say no to extractive activities, placing collective decision-making power at the center of development processes.

Affected communities have articulated clear demands for this model law:

- clear definitions of consent
- transparent procedures
- community controlled decision-making processes
- gender-sensitive participation mechanisms
- enforceable accountability measures
- reparations for past injustices
- reflect lived realities



What will a Model Law for the Right to Say No mean for Communities?

In a context where extractive projects are frequently justified in the name of national growth or global transitions, the Right to Say No insists that democracy begins at the site of impact.

A model law means:

- Communities are **rights-holders**.
Communities have the right to say no protected in law
- Communities are **active participants** and **decision-makers** in development projects on their land
- Communities are **protected from dispossession** and resource grabs
- Communities can **determine their own development futures**



Stand with Us to Demand a Model Law for the Right to Say No!

To win the Right to Say No on the ground, is to win the Right to Say No in law. Law-making is not reserved for those with legal and technical expertise. Law-making happens from below and through collective struggle to shift the balance of power. Stand with us as we stand against corporate power!

What is the Right to Say No Campaign?

It is a network of communities and popular formations fighting in defence of their land and that is active across SA where there is self-organised resistance to extractivism – the extraction and exploitation of natural resources on a massive scale for profit. The campaign is mobilising against systematic dispossession of our land, the grabbing of our natural resources and the super-exploitation by transnational corporations in their greed for profits.

To join the Right to Say No Campaign or for more information, please contact:



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