

Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractives Sector

Draft for comment | April 2015



Context

Companies can contribute to positive social and economic development when they involve stakeholders, such as local communities, in their planning and decision making. This is particularly true in the extractive sector, which is associated with extensive social, economic and environmental impacts.

The OECD has prepared a Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector intended to provide practical guidance to mining, oil and gas enterprises in addressing the challenges related to stakeholder engagement.

This guide is part of the work the OECD undertakes to create practical sectoral applications for the recommendations found in the OECD Guidelines for Multinational Enterprises.

Invitation to contribute

Government, business and civil society representatives, international organisations, and the general public are invited to contribute comments to the current draft of this Guidance. Comments should be sent to barbara.bijelic@oecd.org by 5 June 2015.

A compilation of comments received will be published online at the end of the consultation period.

Contact

If you have any questions regarding the consultation, please email barbara.bijelic@oecd.org.

Find out more about OECD work on stakeholder engagement in the extractive sector please see: <https://mneguidelines.oecd.org/stakeholder-engagement-extractive-industries.htm>.

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OECD DUE DILIGENCE GUIDANCE FOR MEANINGFUL
STAKEHOLDER ENGAGEMENT IN THE EXTRACTIVE SECTOR

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Preface

The OECD Guidelines for Multinational Enterprises (the ‘OECD MNE Guidelines’) are the most comprehensive set of recommendations in existence today on responsible business conduct (RBC) addressed by governments to multinational enterprises (MNEs) operating in or from adhering countries. In 2011 the OECD MNE Guidelines underwent revision and a new provision on stakeholder engagement was added stating that MNEs should ‘engage with relevant stakeholders in order to provide meaningful opportunities for their views to be taken into account in relation to planning and decision making for projects or other activities that may significantly impact local communities’.¹

At the same time, the OECD MNE Guidelines call for multinational enterprises to ‘carry out risk-based due diligence... to identify, prevent and mitigate actual and potential adverse impacts... and account for how these impacts are addressed’.²

Properly conducting meaningful stakeholder engagement is particularly important in the extractive sector, which is associated with large, resource-seeking financial and infrastructure investments, immobile production, a long project lifecycle and extensive social, economic and environmental impacts.

In response to the inclusion of these new principles in the OECD MNE Guidelines during the update and the importance of this subject, the OECD Working Party on Responsible Business Conduct agreed to constitute an OECD-hosted multi-stakeholder Advisory Group to provide substantive input on the development of a Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector.

The Advisory Group was formed in March of 2013. It is co-chaired by the governments of Canada and Norway and is comprised of OECD and non-OECD countries, industry participants from the oil, gas, mining and metals sectors, civil society organisations, trade union bodies, international organisations and indigenous peoples’ representatives.³

This Guide has been developed by the OECD Secretariat and the Centre for Social Responsibility in Mining (CSRSM) based on consultation and feedback from the Advisory Group.

¹ OECD Guidelines for Multinational Enterprises, Chapter II, Paragraph A14

² OECD Guidelines for Multinational Enterprises, Chapter II, Paragraph A10

³ Members of the Advisory Group comprise Canada, Norway, France, Colombia, the Netherlands, BIAC, CAPP, ICMM, PDAC, EUROMETAUX, Euromines, Mining Association of Canada, World Gold Council, AngloAmerican, Cameco, Chevron, Cerrejon, Shell, Talisman Energy, Vale, Moores-Rowland Indonesia, TUAC, OECD Watch, Oxfam Australia, Partnership Africa Canada, Project of Economic, Social and Cultural Rights (ProDESC), International Work Group for Indigenous Affairs, Green Advocates, FIDH, Mining Watch Canada, SOMO, RAID, IndustriALL, ILO, IFC, MEDEF, TUAC and representatives from the Sami, Ogoni and Kamchatka communities.

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OVERVIEW

Introduction

Companies involved in the exploration and extraction of natural resources have the potential to generate income, sustain livelihoods, foster local development and generate significant revenues in the areas in which they operate. Such companies often operate in remote areas, and can be the first contact communities have with the extractive sector, paving the way for future relations. However, extractive operations can have a significant social and environmental footprint and thus are often at risk of causing or contributing to adverse impacts, including human rights infringements, economic set-backs and environmental degradation.

Meaningful stakeholder engagement is critical to avoiding some of the potential adverse impacts of extractive operations as well as optimising potential value.

Engaging with stakeholders also makes good business sense in that it can contribute to:

- attaining and protecting a ‘social licence to operate’ facilitating current and potential future operations and expansions
- avoiding reputational risks and costs through identifying emerging community issues at an early stage and dealing with them proactively rather than reactively
- reducing time in obtaining approvals and negotiating agreements
- avoiding the costs of conflict arising from lost productivity due to temporary shutdowns and senior staff time being diverted to manage grievances
- improving corporate risk profile and, potentially, the ability to secure access to capital on more favourable terms
- attracting and retaining employees, particularly in the context of recurring skills shortages

Nature of the Guide

The aim of this Guide is to offer practical guidance for the extractive sector in line with the OECD MNE Guidelines on due diligence for stakeholder engagement.

This guide does not go into detail on how to execute stakeholder engagement activities. Many detailed and context specific ‘how to’ guides on stakeholder engagement already exist and are referenced throughout this document. Rather, the guide provides a framework for identifying and managing risks with regard to stakeholder engagement activities to ensure they play a role in avoiding and addressing adverse impacts as defined in the OECD MNE Guidelines.⁴

The guidance does not create new standards. It refers to existing standards to help enterprises observe them and undertake risk-based due diligence. While it does not create new standards under the OECD MNE Guidelines, it can help governments in their efforts to promote the OECD MNE Guidelines and in clarifying existing standards in the context of stakeholder engagement. The guidance only refers to the most relevant parts of the OECD MNE Guidelines and other standards and does not aim to substitute them. Enterprises should thus refer directly to each of these

⁴ See *Important Terms and Scope: Meaningful Stakeholder Engagement and Due Diligence*, p.9 of this Guide

standards before making any claims regarding their observance. Not all countries adhering to the OECD MNE Guidelines endorse the standards considered in this guidance.

Who should use this Guide?

This Guide is primarily intended for on-the-ground and/or site-level personnel of extractive enterprises that come into contact with communities and stakeholders, or for larger firms, staff that are responsible for stakeholder engagement activities (the term ‘stakeholder facing staff’ is used throughout the guide to refer to both types of actors). It also includes recommendations to the executive management of extractive operations. This guide can also serve as a reference to stakeholders themselves and the National Contact Points (NCPs) for the OECD MNE Guidelines on approaches recommended to industry.

Extractive sector enterprises are considered to include enterprises conducting exploration, development, extraction, processing, transport, and/or storage of oil, gas and minerals.

This guide is intended for industrial operations and does not extend to artisanal or informal extractive activity, although it does offer guidance on stakeholder engagement with artisanal and small-scale miners.⁵

How to use this guide

This guide is divided into five sections including (1) a due diligence framework for meaningful stakeholder engagement, (2) recommendations to upper management on the strategic positioning of stakeholder engagement, (3) recommendations to on-the-ground personnel, (4) an annex including a monitoring and evaluation framework for overseeing stakeholder engagement activities, (5) four annexes including thematic guidance on engaging with indigenous peoples, women, workers and artisanal and small-scale miners.

The first section provides an overview of the processes and steps that should be taken to ensure that stakeholder engagement effectively serves its function of avoiding and addressing adverse impacts.

The second section provides recommendations for upper management on how to ensure stakeholder engagement is adequately prioritised at an organisational level.

The third section, recommendations to site-level staff, is the focus and the bulk of this guide. In this section practical due diligence guidance for ensuring that stakeholder engagement is effective at avoiding and addressing adverse impacts is provided. Readers should refer to this section for guidance on best practices, strategies for responding to specific challenges and references to other resources for site-level stakeholder engagement activities.

The fourth section, Annex A, provides a monitoring and evaluation framework for stakeholder engagement activities themselves. Readers should refer to this section for an illustrative reference on how different aspects of engagement can be monitored and assessed.

Thematic guidance is provided on engaging with indigenous peoples, women, workers and artisanal miners in Annexes B, C D and E, respectively. While meaningful engagement will involve similar principles regardless of the identity of the stakeholder, specific guidance is provided for these groups due to their unique status and potential vulnerabilities. Readers engaging with these groups should reference these annexes.

⁵ See Annex E: *Engaging with artisanal and small-scale miners*, p. 89 of this Guide.

Action items are signified by an arrow [➡] to allow for quick navigation.

Due diligence rationale are provided throughout the guide and are signified by a star symbol [☆].

Important terms and scope

Due Diligence

In the context of the OECD MNE Guidelines ‘due diligence’ is understood as the process through which enterprises identify, prevent and mitigate actual and potential adverse impacts and account for how these impacts are addressed.⁶

As understood in the OECD MNE Guidelines the risks identified in a due diligence process encompass adverse impacts throughout a range of issues covered by the OECD Guidelines (e.g. disclosure, human rights, employment and industrial relations, environment, combating bribery, bribe solicitation and extortion, and consumer interests).

Due diligence is an integral part of decision-making and risk management systems and is an ongoing, proactive and reactive process. It is to be carried out throughout the entire life-cycle of a project. The OECD MNE Guidelines recommend carrying out *risk-based* due diligence, meaning that the nature and extent of due diligence will depend on the risks related to a particular situation.⁷ In the context of this guide, this will mean that operations that result in limited risks and impacts to stakeholders may scale their due diligence efforts accordingly.

Meaningful Stakeholder Engagement

Meaningful stakeholder engagement refers to ongoing engagement with stakeholders that is two-way, conducted in good faith and responsive.

- **Two-way engagement** means expressing opinions, sharing perspectives and listening to alternative viewpoints to reach mutual understanding. Some sharing of decision-making power through moving away from the enterprise as a primary decision-maker to a more mutual process of decision-making between the interested and affected parties is important. It also means that stakeholders are actively involved in driving engagement activities themselves.
- **‘Good faith’ engagement** means active and honest participation in engagement with the intention of finding common ground, and being prepared to alter initial positions to reach agreement on appropriate pathways forward. Stakeholder engagement depends on the good faith of the participants on both sides. However, it should be noted that a refusal to engage with extractive corporations or approve of an extractive operation does not equate ‘bad faith’ on the part of stakeholders, barring the use of violence or deception.
- **Responsive engagement** means that there is follow-through on outcomes of stakeholder engagement activities through implementation of commitments, ensuring that any adverse impacts are appropriately addressed including through provision of remedies when companies have caused or contributed to the impact(s), and incorporation of stakeholder views in project decisions.

⁶ OECD Guidelines for Multinational Enterprises, Chapter II, Paragraphs A11 and A12

⁷ OECD Guidelines for Multinational Enterprises, Chapter II, Paragraph A10

- **Ongoing engagement** means that stakeholder engagement activities continue throughout the lifecycle of an operation and are not a one-off endeavour.

Meaningful Stakeholder Engagement and Due Diligence

Stakeholder engagement is an expectation of responsible business conduct. It can also be an effective activity for identifying and avoiding potential adverse impacts of an extractive operation, appropriately mitigating and remedying impacts when they do occur, and ensuring that potential positive impacts of extractive activities are optimised for all stakeholders. In this sense, stakeholder engagement is an important means of implementing due diligence. This is because stakeholders themselves are often best able to identify potential or actual impacts on themselves or their surroundings.

However, if stakeholder engagement activities are not properly supported, developed or executed, their due diligence function may not be realised, and adverse impacts may not be avoided or addressed. Furthermore, bad stakeholder engagement can in and of itself give rise to actual or perceived adverse impacts and jeopardise potential benefits to stakeholders.

This due diligence guidance does not represent a comprehensive approach to due diligence for the extractives sector but instead recommends systems and processes to ensure stakeholder engagement activities effectively avoid and address actual or potential impacts.

Stakeholders and Rights-holders

Stakeholders

Stakeholders are persons or groups who are directly or indirectly affected by a project, as well as those who may have interests in a project and/or the ability to influence its outcome, either positively or negatively.⁸ From a due diligence perspective impacted stakeholders will be the priority for engagement and may include but are not limited to:

- potentially impacted local communities (including nomadic communities, communities living near an extractives concession, downstream from a river near the site, or along a transport route or near associated infrastructure such as energy grids or processing plants)
- indigenous peoples
- project workers (including local and migrant workers)
- land owners
- artisanal miners
- host governments (local, regional and national)
- local CSOs, community-based organisations and local human rights defenders

⁸ Source: International Finance Corporation, Stakeholder Engagement: A Good Practice Handbook for Companies Doing Business in Emerging Markets (2007). p. 10

Additionally interested stakeholders that may be important for meaningful engagement may include:

- NGOs
- industry peers
- investors/shareholders
- business partners
- the media

Rights-holders

All people have human rights and thus all stakeholders as individuals are 'rights-holders.'⁹ However, not all stakeholders will have their human rights put at risk or impacted by an extractive project or its associated activities. It is important to identify human rights risks related to extractive activities among stakeholders and recognise such stakeholders as 'rights-holders' in the context of engagement activities. For example, individuals living in a community whose only local water source has been polluted by an extractive operation may be rights-holders. Workers facing discrimination in the workplace may also be rights-holders. In addition, certain groups such as indigenous and tribal peoples are recognised as being vested with collective rights and consequently the group itself would be considered a rights-holder. Identifying rights-holders will help to ensure that human rights with regards to these risks are recognised and respected.

Modes of engagement

Throughout the guide certain colloquial terms are used that have specific connotations in the context of stakeholder engagement. The terms below should be understood as described:

- **Informing/Reporting:** This refers to one-way communication, generally from the enterprise to stakeholders focused on providing information.
- **Consulting:** This refers to two-way communication focused on sharing information and collecting information to adequately understand the project's context and the preferences, concerns and expectations of each party and to ensure all parties learn from one another's perspectives.
- **Negotiating:** This refers to two-way communication focused on sharing decisions with the objective of coming to a shared agreement.
- **Responding:** This refers to taking action in response to an issue, concern or certain information.

Differences between the mining and petroleum sectors

The mining and petroleum industries share similar characteristics such as the need for large investment, immobile production and potentially significant impacts on similar stakeholders. There are, however, important differences within and between the extractive industries.¹⁰ These differences have implications for stakeholder engagement at the site level. For example:

⁹ Within the OECD MNE Guidelines the term 'rights-holder' is used in the context of human-rights. See OECD Guidelines for Multinational Enterprises, Chapter IV Paragraph 45

¹⁰ Industry associations for the mining sector and those for the oil and gas sectors converge on a range of high-level principles and commitments. Both have endorsed the UN Guiding Principles on Business and Human Rights, for example, and require their members to undertake human rights due diligence. This

- Methods used to extract resources, such as open cut mining versus drilling oil or gas, have a range of 'footprint' types, and can raise different sets of concerns among stakeholder groups.
- The location of resources often determines the number and type of communities affected, as well as the nature of impact and risk. There can be a marked difference between off-shore oil and gas extraction (as well as sea-bed mining) and onshore extraction, where most mining takes place. Fishing communities may be the primary stakeholders affected by off-shore exploration and extraction, for example.
- Processing and transport methods vary. Oil and gas extraction often brings with it overland pipelines, whereas minerals tend to be transported by road or rail. Both industries use shipping methods and port facilities which may form part of their area of impact even though they may, at times, be far removed from the point of extraction.
- Differences in the life span of projects exist, for example, mining projects may be capital intensive for many years, through exploration, advanced exploration and construction, before production begins. The timeline prior to production is far more varied within the diverse mining sector than within the petroleum sector.
- Mining licensing processes and contracts between the state and the private sector often differ in form from those of oil and gas. For example, more than half of ventures in the petroleum sector take place under Production Sharing Contracts (PSCs), whereby the host government retains ownership of the petroleum under the ground and the company is entitled to a share of the petroleum it extracts. PSCs are not prevalent in the mining sector, although Joint Ventures (JVs) with state-owned companies feature in both extractive industries. In some jurisdictions, host governments retain ownership of petroleum in all respects, paying a fee to the company for oil or gas production in terms of a Service Contract. The licensing process can also differ for oil and gas versus mining contracts. It is increasingly common for petroleum licensing to be by competitive bid, while most mining contracts are awarded on a 'first come, first served' basis. This is because typically there is more information and less uncertainty with regard to the value of an oil and gas deposit as compared to a mineral deposit. Mining companies need to make considerable investment in exploration to determine the economic feasibility of a mineral deposit and typically only 1 in 1000 mineral deposits becomes a commercial mine.

Guide provides references to established guidance in both sectors, such as those from the International Council for Mining and Metals (ICMM) and IPIECA, the global oil and gas industry association for environmental and social issues.

DUE DILIGENCE FRAMEWORK FOR MEANINGFUL STAKEHOLDER ENGAGEMENT IN THE EXTRACTIVES SECTOR

This Guide provides a framework for addressing risks with regard to executing stakeholder engagement activities to ensure they are meaningful and contribute to avoiding and addressing adverse impacts. Due diligence rationales are provided throughout this guide.

In this guide, the division of due diligence recommendations into steps reflects a logical grouping of different processes. It does not suggest that due diligence or stakeholder engagement activities are linear or one-off processes.

I. Recommendations to Management:

1. Position stakeholder engagement strategically
 - a) Establish and clearly communicate a company policy or commitment on stakeholder engagement.
 - b) Integrate stakeholder engagement into core management systems.
 - c) Consider stakeholder engagement issues when forming business relationships.
 - d) Establish a feedback loop to integrate stakeholder views into project decision making.

II. Recommendations to Site-Level Staff

1. Ensure that staff charged with stakeholder engagement activities have a strong understanding of the local and operating context
 - a) Consult with technical staff, local sources and relevant documents.
 - b) Vet information for accuracy.
 - c) Continuously update understanding.
2. Ensure that stakeholders and their interlocutors are appropriately identified and prioritised
 - a) Ensure most impacted stakeholders are identified and prioritised.
 - b) Verify stakeholder representatives.
3. Establish the necessary support system for meaningful stakeholder engagement
 - a) Set aims and objectives that provide the correct framework for stakeholder engagement activities.
 - b) Develop systems to ensure stakeholder facing staff treat stakeholders with respect.
 - c) Provide the support and information necessary for stakeholders to represent their perspectives and interests.
 - d) Optimise resources (human and financial) for engagement activities.

4. Design appropriate and effective stakeholder engagement activities and processes
 - a) Plan appropriate timelines for stakeholder engagement activities.
 - b) Identify which mode of engagement is needed or required.
 - c) Identify and apply best practices.
 - d) Identify and respond to external challenges to engagement.
 - e) Establish clear and functional processes to enable remediation of adverse impacts.
 - f) Engage with stakeholders to ensure remediation is appropriate.
5. Ensure follow-through
 - a) Establish a process for tracking follow-through on agreements, commitments and remedies.
 - b) Regularly report back to stakeholders on follow-through for agreements, commitments and remedies.
6. Monitor and evaluate stakeholder engagement activities and respond to identified shortcomings
 - a) Establish indicators and assessment criteria that evaluate the effectiveness of stakeholder engagement activity.
 - b) Establish a participatory monitoring and evaluation processes.
 - c) Solicit external review of stakeholder engagement activities.
 - d) Respond to identified shortcomings as relevant.

RECOMMENDATIONS TO MANAGEMENT

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Positioning Stakeholder Engagement Strategically

☆ *Due diligence rationale:*

If the importance of stakeholder engagement is not recognised, understood or adequately communicated at an organisational level stakeholder engagement activities may not be adequately resourced or planned for. Additionally, the outcomes of stakeholder engagement activities may not be taken into consideration throughout project decisions, and business relationships may be formed which may undermine stakeholder engagement efforts, leading to adverse impacts.

While site-level staff have a responsibility to plan, execute and monitor the implementation of meaningful stakeholder engagement, management has a responsibility to ensure that stakeholder engagement is strategically positioned and internalised at all levels of the organisation.

A. Developing a clear policy framework on stakeholder engagement

➔ Management should ensure a commitment to meaningful stakeholder engagement features in corporate policy, or some other form depending on corporate culture, and that it is endorsed by senior leadership within the company.

Ideally commitments will reflect the following:

- Recognition of a long-term view of stakeholder engagement focused on relationship building and avoiding adverse impacts to stakeholders.
- A commitment to meaningful stakeholder engagement as a requirement in project planning and execution.
- Alignment with the OECD Guidelines on Multinational Enterprises and other international benchmarks for stakeholder engagement recognising that due diligence goes beyond commercial risk management processes to identify, mitigate and respond to real and potential adverse impacts on local communities and other stakeholders.
- Commitment to the inclusion of most impacted and vulnerable groups in stakeholder engagement activities.
- Strong policies against the use of manipulation, interference, coercion, intimidation or illegal conduct (e.g. bribery, misrepresentation) in the course of stakeholder engagement activities and established corrective procedures for such conduct.
- Commitments to transparency related to stakeholder engagement, including in public reporting on stakeholder engagement commitments, in addition to sharing information and reporting to stakeholders throughout the engagement process, particularly on assessments of project-related risks.
- Commitments to provide access to appropriate remedies when the company has caused or contributed to adverse impacts which could be conducted via grievance mechanisms, mediation or other dispute resolution procedures.¹¹

¹¹ See Recommendations to Site-Level Staff Step 4(e): *Establishing clear and functional remediation processes*, p. 58 of this Guide.

B. Integrating stakeholder engagement into core management systems

➔ Companies should integrate stakeholder engagement into regular business operations.

This can save time and costs, ensure alignment with operational realities and ensure that engagement is not overlooked as a peripheral exercise. Integrating stakeholder engagement may include:

- Involving staff tasked with stakeholder engagement and stakeholders themselves in conducting transparent social, environmental and human rights impact assessments.
- Integrating stakeholder engagement in central risk assessments and monitoring frameworks.
- Developing a process for communicating the importance of stakeholder engagement to all operational levels, including corporate offices, site managers and freely chosen worker representatives, key contractors and suppliers, development partners and other collaborators.
- Establishing a system for recording and tracking information that can provide a repository of knowledge relevant to stakeholder engagement accessible to current and future staff.
- Including stakeholder engagement in sustainability and social responsibility reporting.¹²

C. Considering stakeholder engagement issues when making investments or forming business relationships

➔ Companies should consider their commitment to meaningful stakeholder engagement when forming business relationships or making investments that could impact stakeholders.

This is particularly relevant to the selection of contractors and project partners that are anticipated to interact with stakeholders.

- **Communicating:** Are internal policies and values clearly communicated to external actors who could impede the stakeholder engagement process, such as business partners and governments, prior to forming new business relationships? Are policies and values communicated through contracts, terms of reference or memoranda of understanding?
- **Anticipating issues:** Has the enterprise discussed how instances of misalignment of the enterprise's commitment on stakeholder engagement with that of a host government or business partner will be handled? Are formal procedures for addressing inconsistencies included in contracts, terms of reference or memoranda of understanding?
- **Applying leverage or practicing avoidance:** Is the enterprise confident that it will be able to uphold its own policies and values on stakeholder engagement throughout the lifecycle of an operation? Can the enterprises use leverage to influence the external actors who may be contributing or causing adverse impacts to stakeholders or decide to avoid entering a relationship or operating in a context where this will not be possible?¹³

¹² For further guidance on sustainability reporting and software applications for tracking commitments, see IFC, Stakeholder Engagement: A Good Practice Handbook for Companies Doing Business in Emerging Markets (2007)

¹³ For more information on this theme see Id. p. 23; Zandvliet, L and M. Anderson in *Getting it Right: Making Corporate-Community Relations Work*, Greenleaf Publishing: UK (2009) , 'Chapter 11: Working with Governments'

D. Establishing a feedback loop to integrate stakeholder views into project decision making¹⁴

- ➔ Companies should establish systems which promote integration of stakeholder views into project decision making at a management level.
- Establishing direct lines of communication between senior management and personnel on the ground involved with stakeholder engagement and a process for communicating potential changes or project decisions under consideration which could impact stakeholders or agreed to commitments.
 - When relevant, have senior management sign off on additions to the commitments register and report on the fulfilment of commitments or agreements and the provision of remedy.
 - When stakeholder perspectives have not been incorporated or commitments and remedies have not been provided as previously agreed to an explanation should be provided to affected stakeholders of why this is the case.

¹⁴ See Recommendations to Site-Level Staff Step 5(a): *Ensuring follow-through*, p. 61 of this Guide.

RECOMMENDATIONS TO SITE-LEVEL STAFF

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Step 1: Ensuring staff leading on-site stakeholder engagement understand the local and operating context

☆ Due diligence rationale:

Those leading on-site stakeholder engagement activities will need to understand the scope of impact of the project and the local context in which the project is taking place. If staff tasked with stakeholder engagement do not adequately understand the local and operating context they may not be able to identify stakeholders and appropriately design and implement engagement activities. As a result some impacted groups or individuals may be marginalised or excluded from engagement activities or even put at risk. Adverse impacts may not be addressed or avoided, positive impacts may not be optimised and stakeholders may be dissatisfied with outcomes of engagement resulting in conflict.

See Table I(2) at the end of this section for an overview of information which may be relevant for designing and implementing stakeholder engagement.

A. Consulting the right sources

- ➔ In order to ensure staff leading on-site stakeholder engagement activities understand the local and operating environment they should ideally participate in conducting impact assessments or otherwise consult with technical staff on anticipated physical impacts of the project. Staff should also conduct preliminary field research to understand local context and consult other sources as relevant.

1. Impact Assessments

Generally, information on operational impacts will be collected and analysed through the completion of impact assessment, for example a Social and Environmental Impact Assessment (SEIA) or a Human Rights Impact Assessment (HRIA).¹⁵

Impact assessments can have a strong role in shaping engagement activities as they will provide the basis for identifying impacted stakeholders and issues that should be engaged on with stakeholders.

- ➔ If possible there should be participation in designing and conducting impact assessments by stakeholder facing staff as well as stakeholders themselves.

For example, financial support can be provided to communities to conduct impact assessments on their own or with experts of their choice to assure their perspectives align with company findings.¹⁶

- ➔ In situations where staff tasked with stakeholder engagement do not take part in impact assessment, the assessment should be verified for completeness and accuracy using some of the methods discussed below. In cases where an impact assessment has not yet been conducted (e.g.

¹⁵ There are a number of existing tools on how to gain a good understanding of the local context and to manage knowledge, for example, Anglo-American's *Socioeconomic Assessment Toolbox Version 3* (2012). For a guidance on Human Rights Impact Assessments See IFC, *Guide to Human Rights Impact Assessment and Management* (2010).¹⁵ In the case of indigenous peoples, the *Akwe Kon Guidelines on the conduct of social, cultural, spiritual and environmental impact assessments* are recognised as best practice (2004).

¹⁶ For a good example of a community-based Human Rights Impact Assessment tool see: *Getting it right :Community-based HRIA Guide* Rights and Democracy (2011)

during early exploration) consultations with technical staff and some of the other sources listed in this section can provide a basis of understanding of the local and operating context.

2. Preliminary field research¹⁷

In addition to understanding impacts, understanding local dynamics will be important to designing stakeholder engagement activities appropriately tailored to the culture and context. Preliminary field research may be conducted through:

- Household surveys, particularly in countries where census data is not available.
- Interviews with relevant individuals working for the organisation or with other companies operating in the region (e.g. staff in operations, project planning, exploration, community relations, external affairs, legal counsel, environment, finance, procurement, health and safety).
- Interviews with relevant external parties (e.g. anthropologists who may have worked in the area, national confederations and sectoral trade unions, civil society with local expertise).
- Speaking with specific stakeholder groups including traditional leaders, youth, women, ethnic or under-represented minorities and other stakeholders for insight into the local political context, existing social order, social relations, and other relevant considerations.

3. Legal sources and other

Other relevant sources to understand local and operating environments may include those in Table I(1):

Table I(1): Document-based resources for understanding context

Document-based resources
<p>Primary sources:</p> <ul style="list-style-type: none"> • Contracts, licenses, relevant regulation and legislation, company policy describing the legal and regulatory regime the project is subject to • Social or Human Rights baseline studies/impact assessments commissioned by other parties, or during earlier phases of the project • Environmental baselines/impact assessments, which can provide information on air and water quality, water availability and sources, soil conditions, climate, rainfall, and status of flora and fauna • Health baseline studies/impact assessments that provide a benchmark of key health indicators • Land mapping and other information about the project • Key indicators collected through geographical information systems maps and other sources • Other existing materials or inherited information in the case of acquisition (if obtainable) • Local community grievances and demand records <p>Secondary sources:</p> <ul style="list-style-type: none"> • Studies by academics, government agencies and industry bodies • Documents written by the company trade union or local trade union • Country risk analysis, often undertaken prior to entering a particular jurisdiction

¹⁷ For more information see Recommendations to Site-Level Staff: Step 4(c) *Identifying and applying best practices*, p. 48 of this Guide.

- Reports written by NGOs and sectoral, national and international trade union bodies
- Data produced by government bodies on employment, poverty levels, health and education standards, wages, conditions of work and occupational health and safety, etc.
- Census data, data on income and poverty rates (this may be unreliable in some developing country contexts)
- Information about community investment or development programs related to other extractive industry projects in the area or region
- Studies and reports by multilateral and bilateral development institutions (e.g. The World Bank, UN Development Programme, UN Special Rapporteur, ILO)
- Studies undertaken by communities, for example indigenous peoples or their representative organisations about key issues that may be relevant to project development
- Available reports prepared by other enterprises operating in the local area or region

B. Vetting information for accuracy

➡ In addition to collecting complete information it is important to evaluate it for accuracy and credibility. This is especially true for inherited sources, such as previous social baselines and research done by a partner or acquired company, and secondary sources.

This can be done through triangulating information to compare it with other sources, considering the nature and source of the information, consulting with third parties such as civil society organisations on points of doubt, and verifying findings or assumptions about certain stakeholder groups with the stakeholders in question once consultation mechanisms have been set up.

When relying on information obtained from third parties (e.g. other extractive operators working in the region; national and local civil society organisations, academics, or government representatives) the following issues should be considered:

- **Local reputation:** How is the party viewed by local communities and other actors such as CSOs, worker organisations, industry and government bodies (as relevant)?
- **Objectivity:** Does the party have any conflicts of interest such as commercial interests in the operation? Potentially problematic funding sources? Political interests?
- **Capacity:** What are the profiles and skills of the members/or staff of the party/organisation?
- **Relevance and expertise:** How has the party previously demonstrated its relevance and expertise in a certain subject area?
- **History:** How long has the party been present in the area? How and why did it originate?

Some information will be valuable not because it is factual but because it represents important perspectives. In these instances, even if perceptions are not accurate they are important to understanding context, specifically in terms of expectations of stakeholders.

C. Continuously updating understanding

➡ Finally, information on the local and operating environment should be updated over time, as more is learned through stakeholder engagement activities and as project circumstances change.

Project staff may wish to consult the table below and fill it in with the relevant and necessary information in the context of their own stakeholder engagement activities.

Table I(2): Understanding Local Context to Shape Stakeholder Engagement Activities

Type of information	Description	Examples for Oil/Gas and Mining	Potential Relevance for Stakeholder Engagement
Areas of impact ¹⁸	<p>The geographic area within which project activities are likely to have human rights, social, cultural and environmental impacts. These should include potential negative impacts as well as positive impacts, such as opportunities for employment or business development.</p> <p>The area can extend far beyond the physical area of the project site and include downstream and trans-boundary regions, as well as nearby towns and settlements.¹⁹</p> <p>Special attention should be paid to potential cumulative impacts (e.g. how the operation may add to the impacts of external operations or past and future impacts.)</p>	<p>Oil and gas: Broad area of impact (transport routes, bodies of water);</p> <p>Off-shore includes ocean, seabed, reefs and close-to-shore communities;</p> <p>Unconventional oil and gas extraction likely to have wider area of impacts than conventional drilling, e.g. oil sands surface mining over a wide area, multiple well heads for shale gas extraction;</p> <p>Oil or gas pipelines have a large area of impact, sometimes trans-boundary across two or more countries.</p> <p>Mining: Area of impact usually limited to areas in or near concessions, but may include areas downstream if mine is located near a river, or impacts along roads or rail transport routes, e.g. dust, noise, traffic congestion or accidents, resettlement required to make way for transport</p>	<p>Identification of impacted stakeholders and rights-holders.</p> <p>Identification of potential cumulative impacts to stakeholders.</p>

¹⁸ Ascertaining the area of the impact will involve considering the characteristics of the project and will also necessitate some understanding of the local context such as the social context (e.g. levels of poverty or corruption, presence of indigenous peoples); characteristics of the location (e.g. fragile ecological conditions, industrial estate), type of land use and tenure (e.g. contested land tenure, communities reliant on subsistence agriculture).

¹⁹ Certain impacts may not fit into this geographical area, such as the project's contribution to national revenues, or the impact of the project on global warming. These impacts should be included in the enterprise's due diligence considerations; however, it may not be possible or appropriate to deal with these impacts through site-level stakeholder engagement activities.

Type of information	Description	Examples for Oil/Gas and Mining	Potential Relevance for Stakeholder Engagement
		<p>infrastructure;</p> <p>Railway lines may have trans-boundary impacts in two or more countries if mine is in landlocked country.</p>	
Historical events	<p>Key historical events in the area or region that may be relevant to the project, and which may affect engagement with stakeholders. This may include legacy issues from prior development projects; cumulative impacts of past, on-going or foreseeable activities; history of conflict in the area, including between community groups; previous protests over land, resources and infrastructure ownership, use and/or access.</p>	Same for oil and mining	<p>Identification of potential cumulative impacts on stakeholders.</p> <p>Identification of opposition groups and vulnerable groups.</p> <p>Identification of challenges to engagement (e.g. inherited issues, violence and opposition).</p>
Regulatory regime and relevant standards	<p>The regulatory regime governing an operation and obligations or commitments around stakeholder engagement activities may include: applicable international standards such as the OECD MNE Guidelines, other instruments related to international human rights (in order to avoid direct human rights infringements or complicity therein); national laws of the countries where the enterprise is domiciled or publicly-traded (if applicable), national, regional or local law of where the enterprise is operating; contracts, financing agreements, contractor agreements, and supplier agreements, as relevant and how such regulatory regimes are enforced.</p>	<p>Oil and Gas: Type of petroleum contract, e.g. concession, production sharing contract, or service contract.</p> <p>Mining: Mining codes, laws, regulations and licensing terms.</p>	<p>Identification of stakeholder groups with special legal status and rights-holders.</p> <p>Identification of legal obligations with regard to stakeholder engagement (e.g. obligation to obtain consent, to provide a specific form of remedy); identification of appropriate modes of engagement.</p> <p>Identification of challenges to engagement (e.g. legislative requirements and repressive regimes).</p>

Type of information	Description	Examples for Oil/Gas and Mining	Potential Relevance for Stakeholder Engagement
Political and governance	National, regional and local political issues that might influence engagement with local communities and other stakeholders such as presence or the absence of a strong civil society, trade unions and democratic institutions; local perceptions about corruption, tolerance towards criticisms of the government, administrative structures and formal decision-making processes; dynamics of competing political parties; integrity of the judicial system and rule of law.	<p>Oil and Gas: High expectations and/ or negative perceptions about oil and gas projects among stakeholders e.g. ‘resource nationalism’; subnational political dynamics, separatism or secessionism in extreme cases in oil-rich regions.</p> <p>Mining: Mining in remote areas where political governance and administration is weak, even in developed countries.</p>	<p>Identification of challenges to engagement (e.g. repressive regimes, capacity constraints, bad-faith on the part of stakeholders and other groups).</p> <p>Identification of appropriate modes of engagement.</p>
Government structure and roles	Different roles, powers, and underlying interests at the local, regional and national levels of government, and between different departments and agencies responsible for the various aspects of regulating the extractive industries. Capacity and institutional presence of the government at different levels.	<p>Mining: Dynamics between different levels and agencies of government important for point-source mining industry to understand, particularly when mine is remotely located.</p> <p>Oil and Gas: JVs with national petroleum companies are prevalent in oil and gas industry. Government roles as regulator and producer may be challenging for engagement.</p>	<p>Identification of stakeholders.</p> <p>Identification of challenges to engagement (e.g. capacity constraints, competing interests and expectations amongst stakeholders).</p> <p>Identifying appropriate modes of engagement.</p>
Demographics and social relations	Characteristics of the population in the local area/region, including: population size, age, and trends; migration patterns; relations between men and women, relations between different ethnic groups; presence of vulnerable or marginalised groups and indigenous peoples; crime rates and security.	Same for oil and mining	<p>Identification of stakeholders and rights-holders.</p> <p>Identification of challenges to engagement (social or cultural norms, local power dynamics, socio-economic constraints).</p> <p>Identification of aims of stakeholder engagement activities (e.g. creating shared value).</p> <p>Identifying appropriate modes of engagement.</p>

Type of information	Description	Examples for Oil/Gas and Mining	Potential Relevance for Stakeholder Engagement
Economy and employment	National and subnational data (both regional, local and trans-boundary if relevant) on income, poverty levels, sources of employment, availability of qualified workers, business environment, working conditions and standard of living, quality of life, literacy rates.	Same for oil and mining	<p>Identification of stakeholders and vulnerable groups.</p> <p>Identification of challenges to engagement (social or cultural norms, socio-economic constraints).</p> <p>Identification of aims of stakeholder engagement activities (e.g. creating shared value).</p> <p>Identification of appropriate modes of engagement (e.g. benefit sharing through local procurement, optimising benefits locally).</p>
Human rights	Strength of human rights protections under domestic law; track record of the governments in compliance with recommendations of UN and regional human rights bodies; track record of industry and enterprises in addressing human rights issues in the past, including through access to remedies; practices of local, regional and national security forces (e.g. violent repression of protests, involvement in disappearances of human rights defenders), the access to remedy for victims of human rights abuse.	Same for oil and mining	<p>Identification of at risk rights-holders.</p> <p>Identification of appropriate modes of engagement, including remedy processes.</p> <p>Identification of challenges to engagement, e.g. legislative requirements and repressive regimes, violence and opposition).</p>
Socio-economic factors and infrastructure	Factors affecting the ability of people to secure a livelihood, including: access to productive resources, security of land tenure, employment opportunities; factors that may contribute to vulnerability (e.g. health conditions, gender, discrimination, ethnicity or religious status); patterns of social exchange and reciprocity outside the formal economic system; condition and accessibility of health services,	Same for oil and mining	<p>Identification of stakeholders and vulnerable groups.</p> <p>Identification of appropriate modes of engagement (e.g. benefit sharing through shared-use infrastructure etc.).</p> <p>Identification of challenges to engagement (social or cultural norms,</p>

Type of information	Description	Examples for Oil/Gas and Mining	Potential Relevance for Stakeholder Engagement
	education, utilities, transportation and other infrastructure (e.g. roads, rail, air, sea). The vulnerability of subsistence/traditional economic activities to infrastructure/demographics/ecosystem changes.		socio-economic constraints, logistical constraints).
Gender factors	Gender roles, responsibilities and relations within specific contexts and groups; recognition of gender issues by the government.	Same for oil and mining	Identification of stakeholders, at risk rights-holders, and vulnerable groups. Identification of challenges to engagement (social or cultural norms, socio-economic constraints, logistical constraints).
Cultural factors	Languages spoken, belief systems, cultural practices, cultural heritage (including places of cultural and spiritual significance), and traditional decision-making. Presence and recognition of indigenous peoples. ²⁰ Protocols as they relate to engagement (e.g. permission to enter a community, whether initial engagement with an authority group, such as a government body or community leaders, may be necessary as a matter of protocol).	Same for oil and mining	Identification of stakeholders, at risk-rights-holders and vulnerable groups. Identification of appropriate modes of engagement (e.g. engaging to obtain consent through traditional decision making processes). Identification of challenges to engagement (social or cultural norms, socio-economic constraints, logistical constraints).
Social organisation	Formal and informal characteristics of the established social order; aspects of household and community organisation and capacity that affects participation in decision-making processes and access to services and information.	Same for oil and mining	Identification of stakeholders and vulnerable groups. Identifying appropriate modes of engagement. Identification of challenges to engagement (social or cultural norms,

²⁰ For more information see Annex B on *Meaningful Engagement with Indigenous Peoples*, p. 73 of this Guide.

Type of information	Description	Examples for Oil/Gas and Mining	Potential Relevance for Stakeholder Engagement
			socio-economic constraints, local power dynamics; capacity constraints).
Workers' rights ²¹	<p>General conditions of work including wages, working time, social protection, occupational health and safety. The prevalence of work-related human rights abuse such as discrimination, and child labour. The role of the State in providing labour protection and protecting workers' rights.</p> <p>The extent and nature of industrial relations (management – trade union relations) and collective bargaining. The extent to which the right of workers to form or join trade unions and to bargain collectively is respected. The extent to which trade unions are independent of employer and government.</p>	<p>Oil and gas workers may not be unionised in many oil-producing countries, particularly under repressive governments; or may not be represented by an independent union.</p> <p>Mine workers in many countries have a long history of industrial unionism, e.g. in Canada, the US, the UK and South Africa.</p>	<p>Identification of groups with special legal status (e.g. workers).</p> <p>Identifying appropriate modes of engagement.</p> <p>Identification of challenges to engagement (e.g. local power dynamics, repressive regimes).</p>

²¹ For more information see Annex D on *Meaningful Engagement with Workers*, p. 84 of this Guide.

Step 2: Identifying priority stakeholders and interlocutors

A. Identifying and prioritising most impacted stakeholders

☆ Due diligence rationale:

If impacted stakeholders, particularly rights-holders and vulnerable populations, are not explicitly recognised and prioritised during stakeholder identification and mapping activities then stakeholder engagement activities risk prioritising those actors or groups with the most power or influence. If uninfluential yet severely impacted stakeholders are overlooked they may not be factored into engagement strategies and some adverse impacts may not be avoided or addressed through engagement activities.

A preliminary identification of stakeholders should encompass the total list of communities, workers and other individuals and groups whose interests may be affected by the project. Some stakeholders may not be aware that they are 'stakeholders' as there will be persons or groups that are unaware that they would be adversely affected by the project until the impact occurs. This list of stakeholders will be different depending on the type of operation or phase of the lifecycle the operation is engaged in. For example:

Specific stakeholders for oil/gas may include:	Specific stakeholders for mining may include:
<ul style="list-style-type: none">• Close to shore communities for offshore projects• Commercial and subsistence fishers for offshore projects• Coastal tourism sector• Communities living along pipelines	<ul style="list-style-type: none">• Artisanal miners• Land owners (formal and informal)• Nomadic communities• Communities living along rail or road transport routes

➔ Companies should ensure all potentially impacted stakeholders and rights-holders are identified as such during stakeholder identification exercises.

Potential rights-holders can be identified based on impact assessments and as well as analysis of potential risk factors within the local context. (See Table I(2) and Table II(1) below for more guidance.

Table II (1): Identifying potential human rights impacts of extractive activities

Issue	Examples of adverse impacts and human rights linkages	Factors increasing likelihood of human rights impacts if present:	Relevant stakeholders and stage of project lifecycle:
Resettlement	<ul style="list-style-type: none"> - Extractive activities can result in displacement and loss of access to traditional lands and livelihoods. - Inadequate community engagement can result in poorly planned livelihood restoration programs. - Potential Rights linkage: e.g. right to a livelihood, right to food, right to health.²² 	<ul style="list-style-type: none"> ➤ Resettlement is the responsibility of national authorities with weak capacity and/or a poor record of engaging with local communities impacted by development projects. ➤ Region where resettlement will take place is resource scarce. ➤ Local communities have a unique status (e.g. indigenous) or cultural heritage they would like to protect. ➤ Land in question has cultural or spiritual value for local people. ➤ Local communities have insecure land ownership/tenure status. 	To local communities during construction; expansion of operations.
In-migration	<ul style="list-style-type: none"> - Influx of people from outside the area seeking economic opportunities can drive up the cost of housing and food and increase the level of homelessness among vulnerable groups. Cultural rights of previous residents such as indigenous communities may be threatened by in-migration. - In-migration can also lead to the creation of tension and conflict, particularly when groups' interests vary (e.g. external workers seeking to protect their jobs and a local community seeking to defend its right to a healthy 	<ul style="list-style-type: none"> ➤ Local communities have a unique status (e.g. indigenous) or cultural heritage they would like to protect. ➤ There are high levels of poverty in the area and few opportunities for employment. ➤ There is a scarcity of land and natural resources capable of supporting large number of migrants. ➤ There are large numbers of people belonging to 	To local communities, specifically vulnerable populations and migrant workers primarily during feasibility studies and construction but also operations.

²² See [The Universal Declaration of Human Rights](#), Article 25.

	<p>environment).</p> <ul style="list-style-type: none"> - Potential Rights linkage: e.g. right to an adequate standard of living including right to food and housing,²³ right to participate in cultural life,²⁴ right to life, liberty and personal security.²⁵ 	<p>vulnerable groups in the area (e.g. the aged, those in ill health, youth, and ethnic minorities subject to discrimination).</p>	
<p>Access to resources and food security</p>	<ul style="list-style-type: none"> - Offshore gas extraction can restrict people's access to fishing grounds causing negative impacts on health and livelihoods; open-pit mining will degrade agricultural land; the high volumes of water frequently used in extractive activities can deplete local water sources. - Potential Rights linkage: e.g. right to an adequate standard of living, right to food and right to health.²⁶ 	<ul style="list-style-type: none"> ➤ Local communities are dependent on marine or other natural resources for subsistence and livelihood needs. ➤ There are high levels of poverty in the area and few opportunities for employment. ➤ There are large numbers of vulnerable people in the area, for example the aged, youth and ethnic minorities. ➤ Local communities have insecure land ownership/tenure status. 	<p>To stakeholders relying on resources within area of impact, during construction and operations.</p>
<p>Security</p>	<ul style="list-style-type: none"> - Private security staff and/or public security forces may use excessive force to remove landowners protesting peacefully about an overland pipeline that will cross their land. - Potential Rights linkage: right to security of person and right to freedom of expression.²⁷ 	<ul style="list-style-type: none"> ➤ Concerns have been raised by human rights groups or others about the lack of basic freedoms in the region and/or country (e.g. freedom of speech, freedom of assembly etc.) ➤ There is a history of repression in the region and/or country against people or groups who participate in civil protest 	<p>To advocacy groups or organisations, communities opposed to the project prior to concession issuance, during construction and operations.</p>

²³ See [The Universal Declaration of Human Rights](#), Article 25

²⁴ See [The Universal Declaration of Human Rights](#), Article 25, 27

²⁵ See [The Universal Declaration of Human Rights](#), Article 3

²⁶ See [The Universal Declaration of Human Rights](#), Article 25

²⁷ See [The Universal Declaration of Human Rights](#), Article 3, 19

Cultural heritage	<ul style="list-style-type: none"> - Extractive activity can damage areas of cultural and spiritual importance to local communities, in particular indigenous peoples. - Potential Rights linkage: e.g. right to participate in cultural life.²⁸ 	<ul style="list-style-type: none"> ➤ Local communities have a unique status (e.g. indigenous) or cultural heritage they would like to protect. ➤ There are documented sites of spiritual significance or cultural heritage in the area. 	To stakeholders with cultural heritage or sites located within area of impact; during construction and operations.
Community health	<ul style="list-style-type: none"> - Adverse impacts on local people's health can arise from groundwater contamination or other forms of pollution. - Potential Rights linkage: e.g. right to health.²⁹ 	<ul style="list-style-type: none"> ➤ Local communities rely on natural water sources (e.g. rivers, bores) for their daily water needs. ➤ Local communities are reliant on land and natural resources in areas surrounding extractive operations for their livelihood. 	Communities within area of impact or relying on resources within the area of impact during operations and construction.
Gender relations	<ul style="list-style-type: none"> - Men in a community may gain access to employment and economic opportunities and women are excluded, or subject to sexual harassment. - Potential Rights linkage: e.g. right to freedom from discrimination.³⁰ 	<ul style="list-style-type: none"> ➤ Civil society organisations or other groups have expressed concerns over discrimination against women or gender based violence. ➤ Limited participation of women in formal labour markets. 	To women in local communities or migrant populations during construction, operations and closure
Social change	<ul style="list-style-type: none"> - Increased number of people from outside the area and availability of cash in the local economy can contribute to an increase in alcohol consumption, prostitution and gambling. - Potential Rights linkage: e.g. right to health and right to security of person.³¹ 	<ul style="list-style-type: none"> ➤ Social vices (alcoholism, drug use, prostitution, gambling) have been identified as a significant problem in the area. ➤ Significant in-migration. ➤ Civil society organisations or other groups have expressed concerns over discrimination against women or gender-based violence. 	To local communities, particularly women, during operations and closure.

²⁸ See The Universal Declaration of Human Rights, Article 27

²⁹ See The Universal Declaration of Human Rights, Article 25

³⁰ See The Universal Declaration of Human Rights, Article 7

³¹ See The Universal Declaration of Human Rights, Article 3, 25

Conflict	<ul style="list-style-type: none"> - The discovery of natural resources can generate local conflict or regional conflict, leading to violence and forced migration. - Potential Rights linkage: e.g. right to a livelihood, right to life, liberty and personal security.³² 	<ul style="list-style-type: none"> ➤ Current or past history of violent conflict between groups in the area. 	To local and regional populations primarily during feasibility but also construction, operations and closure.
Environmental degradation	<ul style="list-style-type: none"> - Extractive industry activities can degrade soil quality and contribute to air and water pollution. - Potential Rights linkage: e.g. right to health.³³ 	<ul style="list-style-type: none"> ➤ The area has been identified (e.g. by international or national organisations or academics) as being ecologically fragile or having high ecological value. ➤ Several other extractive operations are ongoing in the region leading to cumulative environmental impacts. 	To stakeholders relying on resources within area of impact, primarily during operations but also construction.

➔ Companies should also consider how certain impacts may vary amongst different stakeholder groups and prioritise the most vulnerable groups for engagement.

Stakeholder groups are not homogenous and will not be equally affected by the various impacts of an extractive operation. Research consistently shows that it is marginalised groups who often bear the brunt of adverse impacts while having limited opportunities to engage or enjoy the benefits that resource development may bring.

³² See [The Universal Declaration of Human Rights](#), Article 3, 25

³³ See [The Universal Declaration of Human Rights](#), Article 25

For example:

- Social dislocation and gender imbalance caused by in-migration of a transient male workforce can place women at risk of health and security impacts, such as sexual violence, sexually transmitted diseases and increased alcohol abuse in the community.³⁴
- Impacts on land or resettlement may be problematic for local communities and particularly for indigenous peoples that have spiritual connections to land or whose traditional way of life is closely connected with their territories.
- Extractive operations may bring employment opportunities to some while taking them away from others such as artisanal miners which previously operated on a concession or local fisherman in cases of off-shore oil exploration and drilling.
- Local human rights defenders, workers and community leaders may be targets of violence, particularly in conflict or weak governance zones.

When engaging with these groups it will be necessary to consider whether special arrangements are necessary or whether special challenges exist to protect and enable their participation.³⁵

Stakeholder identification and mapping activities are necessary component of planning for stakeholder engagement. Many techniques exist; however, all generally aim to identify different categories of stakeholders and develop strategies for engagement based on certain criteria (e.g. level of impact, influence, support or opposition etc.).

Under traditional 'influence-interest' models, a common stakeholder mapping technique, those with low power or influence towards a project may be not be viewed as key stakeholders and thus may be party to a lesser form of engagement.³⁶ However, in the context of due diligence engagement with impacted stakeholders, and particularly rights-holders should be prioritised regardless of their capacity to influence. Indeed stakeholders that lack influence will often represent the most vulnerable and severely impacted groups and will thus require additional attention through engagement processes (see Table II(2) below for an illustration).

³⁴ For gender impact assessment framework for mining projects, see Hill, C. and Newell, K., Women, Communities and Mining: The Gender Impacts of Mining and the Role of Gender Impact Assessment. Carlton: Oxfam Australia (2009)

³⁵ See generally Recommendations to Site-Level Staff Step 4, *Designing appropriate and effective stakeholder engagement activities and processes*, p. 44 of this Guide.

³⁶ See e.g. IFC Guide to Human Rights Impact Assessment and Management (last accessed March 2, 2015); WWF, *Cross-Cutting Tool Stakeholder Analysis* (October, 2005).

Table II (2) Stakeholder Mapping for Due Diligence

		High	Priority (e.g. investors)	High priority (e.g. rights-holders)
		Low	Low priority (e.g. peer industries)	Top priority (e.g. vulnerable and marginalised rights-holders)
Capacity to influence			Low	High

Source: Adapted from IFC, 2010. *Strategic Community Investment: A Handbook for Companies Doing Business in Emerging Markets*

- ➔ Enterprises should verify findings or assumptions about certain stakeholder groups with stakeholders that staff are already engaging with and the stakeholders in question once consultation mechanisms have been established, and continuously update stakeholder maps as more is learned through engagement activities and as project circumstances change.

B. Identifying representatives or interlocutors for stakeholder groups

☆ Due diligence rationale:

Companies will often rely on representatives of stakeholder groups throughout engagement activities. If such representatives are not well selected or verified, the actual perspectives of stakeholders may not be represented, which can undermine the objectives of stakeholder engagement and damage relationships.

Consultation and negotiation with a widespread group will often not be possible or practical, therefore companies will often have to engage with representatives of stakeholders or other interlocutors. Representatives can be formal, such as trade unions or political representatives of constituents, or informal.

- ➔ Companies should verify stakeholder representatives to make sure they are truly communicating the perspectives of their constituents and that the views of vulnerable stakeholders are likewise represented. Companies should re-evaluate representatives as they change or stakeholder groups evolve.

Some questions to consider include:

- **Is diversity amongst stakeholder groups recognised in representation?** As noted above, stakeholder groups are not homogenous, thus representatives should reflect the diversity of interests that may be present. Caution should be paid to avoid tokenism. For example, while it will be important to identify female leaders who are able to engage effectively, companies should not assume that high-profile women speak for all women within a particular social

group. Likewise, one government representative will likely not represent the views of all relevant government bodies.

- **Are stakeholders involved in electing their own representatives?** Often stakeholder groups will already have systems in place with recognised community leaders or representatives. These representatives will often be a logical choice; however, wider consultations should be done to assess whether such representatives are believed to represent the perspectives of their constituency and whether additional representatives of important minority views are necessary.
- **Is the role of proxy representatives considered?** Representatives that do not actually belong to a stakeholder group themselves but are in tune with the needs and wants of the group, such as civil society organisations or appointed neutral agents, may serve as proxy representatives for stakeholder groups. This should only be the case where such representation is requested or authorised by the rights-holders in question.
- **Are red flags accounted for?** Throughout the engagement process, engaging with representatives that appear to use their position for personal gain should be avoided. Additionally, representatives that have a conflict of interest or a side agenda not endorsed by the community (e.g. commercial or political interests) should be avoided. Lastly, representatives that do not actively or competently engage in the process, for example by missing important meetings or trainings or failing to accurately report back to their constituents, should be replaced. Periodic check-ins with stakeholder groups more widely can be helpful in assessing whether they feel their views are being adequately represented and to discuss how to proceed when it is believed that this is not the case (i.e. when red flags have been identified).
- **Are the representatives or interlocutors independent of the company?** As noted, companies should allow stakeholders to select their own representatives and should avoid interfering with these selections, for example through using capacity building to favour more company-friendly interlocutors. When red flags have been identified by the company with regard to representatives selected by stakeholders they should consult more widely with stakeholder groups as to how to proceed.

Step 3: Establishing the necessary support system for meaningful stakeholder engagement

A. Setting appropriate aims and objectives

☆ Due diligence rationale:

If the purpose of stakeholder engagement is mischaracterised or misunderstood, for example if it is limited to mitigating commercial risks for the company, some adverse impacts may not be avoided or addressed as engagement with less influential stakeholders may be overlooked.

➔ Aims and objectives for engagement activities should be articulated that reflect a long-term view of meaningful stakeholder engagement focused on relationship building and avoiding adverse impacts to stakeholders, which should be aligned with corporate policy and endorsed by senior management within the enterprise.³⁷

Framing the aims and objectives this way ensures that stakeholder engagement is not merely a box-ticking exercise or applied solely to mitigate commercial risks. Where possible, aims and objectives should include optimising shared value for the enterprise and its stakeholders, in addition to avoiding and addressing adverse impacts.³⁸

B. Developing systems to ensure that company staff treats stakeholders with respect

Due diligence rationale:

☆ *When company staff are not culturally sensitive or respectful towards stakeholders relationships with stakeholders can be damaged and stakeholder engagement activities can be undermined or made more challenging.*

In order to build strong relationships and trust with stakeholders they must be treated with respect and treated like equals in the engagement process.

➔ All staff that may come into contact with stakeholders should be trained to understand the importance of cultural appropriateness and respectful behavior.

- **Prohibiting bad-faith conduct:** As a rule engagement should be free of manipulation, interference, coercion and intimidation. Site level codes of conduct should recognise this principle and corrective procedures for such conduct should be established in line with corporate policies.³⁹
- **Ensuring cultural appropriateness:** Site-level codes of conduct or trainings that outline required standards of behaviour for all employees and contractors should be developed and should cover issues such as: dress code, dietary issues (for catered meetings), protocol and etiquette.
- **Building trust outside the workplace:** Beyond actual engagement activities, it is important that all staff anticipated to be in contact with stakeholders be made aware of implicit

³⁷ See Recommendations to Management: *Positioning Engagement Strategically*, p. 15 of this Guide.

³⁸ See Box 4 *Using Stakeholder Engagement to Optimise Shared Value*, p. 48 of this Guide

³⁹ See Recommendations to Management (a): *Developing a clear policy framework on stakeholder engagement*, p. 16 of this Guide.

messaging and in this regard make efforts to show respect to stakeholder groups both inside and outside the workplace. For example, frequenting local restaurants and businesses can help build an informal relationship with local communities and establish an understanding of mutual respect. Such a strategy may be particularly important for small-scale operators which may not have the capacity for frequent or comprehensive formal engagement efforts to build relationships. This type of conduct can be encouraged through corporate policy and/or codes of conduct.

C. Providing the support and information necessary for stakeholders to adequately represent their perspectives and interests

Providing the necessary information

☆ Due diligence rationale:

If material information is not provided to stakeholders they will not be able to engage with the company in an informed manner and thus will not be able to provide their perspectives or defend their interests. As a result, some adverse impacts to stakeholders may not be identified, avoided and may not be appropriately addressed. Furthermore, positive impacts may not be optimised and stakeholders may be dissatisfied with outcomes of engagement resulting in conflict.

➔ Companies should share material information with the stakeholders in a timely manner⁴⁰ and in a format they can understand and access in order to ensure that stakeholders are able to engage in an informed manner.

Material information is anything which would affect the decisions of affected stakeholders if it were not reported, or if it were misreported. It should generally include: 1) information about the operation and its foreseen impacts as well as 2) information about the stakeholder engagement process itself. (See Box 1 below for more detail). Information should be accurate and objective with explanation of any uncertainties. In assessing what information is material, stakeholders should be consulted. An example of a useful benchmark for the degree of disclosure is the degree of disclosures made to insurers or investors.

⁴⁰ For more information see Recommendations to Site-Level Staff Step 4(a) *Assigning realistic timelines for engagement activities*, p. 44 of this Guide.

Box 1: Potential Material Information

Initial information provision:

Information disclosed to stakeholders to ensure informed participation in the context of extractive projects should include:

- value statements or statements of business conduct that are intended for public disclosure
- corporate policies (e.g. environmental and social policies) and codes of conduct
- the objectives of the enterprise and its current and planned activities (including how much land and water will be used and where it will come from, planned infrastructure, anticipated life cycle of the project, land rehabilitation plans etc.)
- options for alternative project design (as relevant)
- foreseeable risk factors as they pertain to stakeholders and proposed management plans for those risks specifically in terms of access to land, water and livelihoods (e.g. resettlement plans, environmental mitigation plans etc.)
- information on stakeholder engagement processes
- information about how complaints and grievances can be conveyed
- commitments and obligations regarding the operation such as relevant contracts and agreements, including community benefit sharing agreements
- information regarding what the project is anticipated to contribute to national revenues, regional and local revenues, and what it has contributed
- social, environmental and human rights impact assessments and related baselines

Ongoing information provision:

Ongoing information provision may be related to management of impacts as they arise, as well as reporting on the stakeholder engagement process. This should include:

- **Process reporting:** What activities are planned, who will oversee them, what are the relevant procedures. This is especially important as transparency in decision making and clear procedures can be one of the most effective ways of dealing with competing expectations amongst stakeholders and building trust in the process.
- **Compliance reporting:** Adherence to regulations governing impacts, such as requirements for environmental and social impact assessments. It may also include reporting on payments of taxes or royalty payments to host governments consistent with the regulatory framework of certain jurisdictions, or with corporate commitments to international principles of transparency.
- **Reporting back:** Reporting back to stakeholders to demonstrate how their inputs have or have not been integrated into the operation planning and why, how any issues raised during the process have been resolved and to notify them of any next steps.⁴¹

➡ Companies should carefully balance a commitment to transparency with privacy concerns when sharing information.

⁴¹ See Recommendations to Site-Level Staff: Step 5 *Ensuring follow-through*, p. 61 of the Guide.

It is recognised that sometimes a commitment to transparency will have to be balanced with privacy concerns regarding both the company (business risks, commercial confidentiality and proprietary information) and stakeholders (personal privacy, safety or security). Additionally, companies should recognise the risks of disclosing speculative or unconfirmed information (e.g. unconfirmed reserve estimates could generate unrealistic expectations of a project among community members).

In such situations the pros and cons of transparency and privacy concerns must be carefully considered. Issues around confidentiality and reporting throughout engagement processes should be considered and discussed with relevant stakeholders in advance. If full transparency is thought to be imprudent, efforts should be made to:

- limit access to sensitive information to those approved by the information provider
- anonymise the source of information
- avoid providing false information in an attempt to address privacy issues
- where possible provide a valid explanation or justification for why the information has not been shared

➔ Once consultation mechanisms are established with stakeholders, stakeholders themselves should be consulted to help determine what information is most useful to them and in what form.

Providing the necessary support to stakeholders

☆ Due diligence rationale:

In some cases, if support to stakeholders is not provided (e.g. training, interpretation etc.) they may not be able to adequately communicate their perspectives or negotiate their position. As a result some adverse impacts to stakeholders may not be identified, avoided or appropriately addressed, positive impacts may not be optimised and stakeholders may be dissatisfied with outcomes of engagement resulting in conflict.

➔ Companies should provide the support necessary, free of undue influence, to ensure stakeholders can adequately assess and represent their own perspectives and interests.

Stakeholders and/or their representatives may often come from different cultural backgrounds, education systems and socio-economic classes. At times they may not be familiar with the technical aspects of an extractives operation, may not have formal experience with negotiations or communicate in the same language as the stakeholder engagement team and extractive activity operators. As relevant:

- The necessary arrangements should be made to allow stakeholders to communicate in their first language. When interpretation is required, the company should ensure that interpreters are approved by stakeholders. Furthermore, materials should be provided in the preferred language of stakeholders.
- Provision of trainings may be necessary for stakeholders to adequately engage, for example when they are involved in complex negotiations or overseeing implementation of commitments. Trainings should be tailored to the context but may include training on financial literacy, environmental literacy, basic extraction processes, participatory methods, extractive project investment and development, or negotiation techniques.

- An intermediary such as a local facilitator with the requisite skills, trusted and endorsed by the community, may be selected with the agreement of stakeholders and appointed in instances where capacity building activities are not adequate or realistic. Alternatively funds to allow stakeholders to engage independent expertise to assist them may be provided.
- Adequate compensation to cover lost working hours and expenses incurred due to engagement activities should be provided. (See Table III(1) for more information).

D. Appropriately resourcing activities

☆ Due diligence rationale:

If sufficient resources (human and financial) are not provided for stakeholder engagement, activities might not be adequately implemented and some adverse impacts to stakeholders may not be avoided or addressed. Furthermore, potential opportunities may not be optimised.

➔ Resources required for stakeholder engagement activities should be identified and requested in advance, with the understanding that they may have to be adjusted according to changes in the local or operating context.

An example of typical resources are included in Table III(1). This list is not exhaustive, nor are all listed items applicable to every company. For exploration projects only the bolded provisions will likely be relevant.

Table III(1): Resources for Stakeholder Engagement

Type of resource	Application
Financial	<ul style="list-style-type: none"> - resources for engagement and outreach activities - resources for remedies to adversely impacted stakeholders as appropriate - compensation to stakeholders for costs of participation in engagement activities (e.g. lost working hours and per diem fees) and support to enable stakeholders to participate (e.g. childcare, transport, meals) (where appropriate). - resources for supporting stakeholders (e.g. capacity building, external advisors etc.) - resources for implementation of commitments
Human	<ul style="list-style-type: none"> - staff with stakeholder engagement experience including experience implementing consultation and conflict resolution processes - staff or intermediaries with positive record in terms of previous engagement efforts and a lack of allegations of human rights infringements - staff with language and cultural knowledge of the region (e.g. trained local facilitators, local translators or interpreters) - staff with experience in collation of data and analysis and M&E frameworks - legal expertise, including full awareness of regulatory and statutory

	<p>requirements, policies and procedures of the host country</p> <ul style="list-style-type: none"> - staff with communication and presentation skills with different audiences
Logistics	<ul style="list-style-type: none"> - support for complex arrangements in unfamiliar contexts (e.g. security or logistics support in remote or dangerous territories) - transportation if engagement is to be undertaken over a vast terrain - on-the-ground support for engagement teams
Technology	<ul style="list-style-type: none"> - mobile and/or satellite phones for remote engagements
Training/Capacity Building	<ul style="list-style-type: none"> - resources for independent training and capacity building for stakeholders as relevant

➡ In the event of resource constraints for stakeholder engagement activities site-level staff should try to advocate for additional resources and streamline resources to the extent possible to support stakeholder engagement activities.

The following are potential strategies to overcome resource constraints:

Increase awareness:

- For larger companies with senior leaders and decision makers, clarify the value of meaningful stakeholder engagement with senior leaders and decision-makers. Values may include cost reduction, risk prevention and mitigation, improved reputation, land access, values alignment, compliance with the legal regime.⁴²
- Explain the practical aspects of stakeholder engagement to those who may be unfamiliar with the process and the resources needed.
- Provide case studies of projects/operations where meaningful stakeholder engagement was not practised, and the consequences of this or where it was used successfully and the benefits achieved by good engagement practices.⁴³

Streamline resources: Some of the resource burden of stakeholder engagement operations can be eased through optimising efficiencies and synergies.

- **Use what you have:** The diversity of perspectives helpful to a stakeholder engagement process can often be drawn from existing staff. Resources associated with technology and logistics will generally also be necessary to core operations. Stakeholder engagement staff should identify what resources exist and how they can be shared for stakeholder engagement activities.

⁴² For more on the business case of stakeholder engagement see Davis, Rachel, and Daniel Franks, Costs of Company-Community Conflict in the Extractive Sector. Cambridge: CSR Initiative at the Harvard Kennedy School (2014); Shared Value Initiative, Extracting with Purpose Creating Shared Value in the Oil and Gas and Mining Sectors' Companies and Communities (2014); the Introduction section. p. 7 of this guide.

⁴³ Many case studies have been published demonstrating the important impacts of stakeholder engagement. See e.g. World Resources Institute, Development without Conflict: The Business Case for Community Consent (2007)

- **Centralize:** Centralising stakeholder engagement within management systems can also help reduce resource burdens for individual engagement efforts.⁴⁴ Where relevant, it may also be possible to develop regional engagement strategies where extractive operations are geographically close together.
- **Use external resources:** Third parties such as civil society groups or other extractive operations may have relevant information or complementary mandates that can be adapted to stakeholder engagement activities. Existing processes and programmes can support and complement engagement efforts and help avoid stakeholder fatigue if multiple engagement efforts are going on at the same time.

Box 2: Overcoming resource constraints of SME operations

The reputational benefits and risk mitigation of meaningful stakeholder engagement are important to all sizes and types of enterprises. Costs of community conflict and project delays are more likely to put smaller, single project enterprises out of business than larger enterprises. Likewise strong stakeholder engagement practices can increase the value of the enterprise for investors and potential buyers. Conversely, poor relations with stakeholders may limit opportunities to sell rights to a concession.

Junior companies tend to have fewer staff and financial resources to engage with stakeholders. At the same time, they often have greater flexibility in policy-making and implementation and generally have fewer impacts to manage, as compared to larger companies.

Engagement activities do not have to be expensive or time consuming to be meaningful. Quality of engagement, such as active listening and prioritising issues, is more important than quantity of time or money spent.

To ensure meaningful stakeholder engagement, small or junior companies should:

- Encourage all staff and contractors on site, including those whose jobs are mainly technical, to treat stakeholders with respect and seek to build trust.
- Enrol technical staff, such as exploration geologists and engineers, in on-line or short courses in stakeholder engagement (or community relations).
- Prioritise issues for engagement by focusing selectively on a few stakeholder groups for greatest possible impact with the available resources.
- Position the enterprise as a partner rather than as the only or principal actor in stakeholder engagement, e.g. with local government and/ or NGOs.
- Adopt participatory methods of oversight to build trust with stakeholders and maximise resources.

⁴⁴ See Recommendations to Management: *Integrating stakeholder engagement into core management systems*, p. 16 of this Guide.

Step 4. Designing appropriate and effective stakeholder engagement activities and processes

A. Assigning realistic timelines for engagement activities

☆ Due diligence rationale:

If realistic and appropriate timelines are not established stakeholder perspectives may not be adequately captured and relationships with stakeholders may be jeopardised. As a result, some adverse impacts to stakeholders may not be avoided or appropriately addressed, positive impacts may not be optimised and stakeholders may be dissatisfied with outcomes of engagement resulting in conflict.

While the lifecycles of various extractives operations will vary significantly, from months to decades, the same general principles with regard to setting timelines are applicable regardless of the length of the operation.

➔ Timelines should be planned for that allow for engagement to begin as early as practicable, provide stakeholders with sufficient time to engage meaningfully and are flexible enough to be adjusted to changes in the local context or operating environment. Timelines should also reflect the ongoing nature of stakeholder engagement.

- **Engagement should be started as early as practicable:** Early engagement is important as time is needed to build strong relationships with stakeholder groups and it allows companies to anticipate issues before they arise. It is important to consult with stakeholders prior to taking any decisions that may impact them and it will often be useful to consult with stakeholder groups from the point of entry to understand risk and opportunities and as relevant to help to develop engagement plans and activities. Exploration companies have an important role to play here (see Box 3: *Exploration activities and first impressions*, for more information).
- **Stakeholders should be provided with sufficient time to engage meaningfully:** Stakeholders should be provided with sufficient time to consider issues that impact them and to organise themselves. Stakeholders should not be expected to be able to make a decision around information they are hearing or understanding for the first time. Likewise, they should not be expected to participate in engagement activities they are not given sufficient notice of. Stakeholders should be consulted as to how much time they need to assess and provide feedback or questions on information they are provided.
- **Timeframes should be flexible and consider engagement throughout a project lifecycle:** The process of stakeholder engagement is dynamic, iterative and ongoing. Thus, assigned timelines for engagement activities must be purposefully flexible. Planned stakeholder engagement activities and identification of impacted stakeholders should be reviewed and adjusted in response to or in anticipation of the following events, as relevant:
 - advanced exploration
 - feasibility studies
 - acquisition of a deposit/concession
 - construction of new infrastructure
 - expansion or reduction of operations

- updates of social and/or environmental impact assessment
- revelation of problems through monitoring and evaluation and grievance mechanisms
- based on material feedback from stakeholders

Box 3: Exploration activities and first impressions

Exploration companies should practise all of the steps outlined in this guidance (scaled according to their level of impacts), irrespective of whether the project is likely to progress to the operational stage or not.

First impressions are vital to facilitating meaningful engagement with stakeholders for the duration of an extractive project. The exploration phase is therefore critical to establishing a positive environment for engagement. While it is also likely to be the stage at which human and financial resources are most scarce, as noted in Box 2, engagement activities do not have to be expensive or time consuming to be meaningful.

Furthermore the value of strong stakeholder engagement is increasingly recognised and may translate to an economic premium in the case of acquisition of projects while the risks of bad engagement are increasingly costly.

B. Identifying which mode of engagement is needed or required

☆ Due diligence rationale:

If the proper mode of engagement is not identified and applied stakeholders perspectives may not be adequately integrated into project decisions and a company may face liabilities (e.g. if it does not comply with legal obligations regarding engagement, such as an obligation to obtain consent).

Not all modes of engagement will be relevant for all types and stages of operations. For example, during initial exploration when the impacts of the operation are minimal and future impacts are largely unknown the modes of engagement will likely focus on information sharing and consultation.⁴⁵

➡ Enterprises should consider what kind of engagement is needed or required according to their stage of operations and engagement needs.

Consulting with stakeholders on what mode of engagement they anticipate or require will be helpful to identifying appropriate approaches.

Information Sharing:

May be achieved through personal visits, briefings, public meetings, radio broadcasts, social media, electronic or direct mail and newsletters, websites, blogs, regular columns in newspapers, public information booths.

Appropriate if there is a need to provide information to stakeholders about a project and its expected impacts (positive and negative). Relevant in all stages.

- *Have stakeholders requested information be shared with them?*

⁴⁵ This may vary according to the type of stakeholder group being engaged with. For example different modes may be necessary upon first contact with indigenous peoples. See Annex B: *Engagement with Indigenous Peoples*, p. 73 of this Guide.

- *Is it necessary to share certain information to enable stakeholders to engage in an informed manner (e.g. would the information affect the decisions of affected stakeholders if it were not reported, or if it were misreported?)*
- *Do stakeholder expectations need to be managed?*

Consultation/ learning:

May be conducted through surveys, interviews with leaders, group meetings, debates, consultative forums online dialogues.

Appropriate when needing to gather information in order to build an understanding of the project context and understand the concerns and expectations of stakeholders. Relevant in all stages of operations.

- *Are stakeholder expectations or perspectives needed (e.g. in designing a shared value project; in deciding what the best way to share information is; in determining impacts for a baseline assessment)?*
- *Do information, findings or conclusions need to be reviewed or vetted by stakeholders (e.g. shareholder mapping results or impact assessments)?*

Negotiation:

Can be conducted through traditional negotiation systems, through collective bargaining agreements, through a mediator, between the company and stakeholder groups or amongst stakeholder groups with competing expectations.

Appropriate when the objective is to obtain the agreement of stakeholders on the terms and conditions under which a project will proceed, including management of impacts and provision of benefits. Most relevant during project development, prior to operations commencing or prior to major expansions.

- *Are decisions which will impact stakeholders pending (e.g. where to locate a processing facility; how stakeholders will be compensated for damage to their land)?*

Consent:

Can include majority vote from the community, approval of a traditional decision-making body such as a council of elders, organised regional referendum or other forms determined by the affected persons themselves.

Appropriate when the objective is to obtain consent of impacted communities on whether a project may proceed. Consent of impacted communities may be a legal or operational requirement or an expectation in some operating contexts, particularly in the context of engagement with indigenous peoples.⁴⁶ Relevant during project exploration and project development, prior to operations commencing or prior to major expansions.

- *Is consent required by law, company policy or financing agreements?*
- *Would proceeding without consent pose a significant risk to rights-holders or operations?*

⁴⁶ See Annex B *Engaging with Indigenous Peoples*, p. 73 of this Guide, for more information about seeking consent when engaging with Indigenous Peoples.

Implementing commitments:

Engagement of stakeholders through construction planning, implementation, commissioning and operations (e.g. through a community oversight board, reporting back on progress and responding to any misalignment in expectations etc.).

Relevant when carrying out previously promised or negotiated commitments such as construction projects, the provision of services, payment into a community fund etc. or commitments required by regulatory permits. Relevant as negotiated or as required.

- *Are agreed to commitments being implemented?*
- *Are project decisions being made that relate to agreements or conclusions reached with stakeholders (e.g. planning of transport routes after an agreement has been reached with stakeholders that no transport routes will pass through community lands)?*

Addressing adverse impacts:

Establishment of grievance mechanisms that enable enterprises to identify and respond to community concerns. Responses may include apology, restitution, rehabilitation, financial or non-financial compensation, satisfaction and guarantees of non-repetition, modification in procedure, structure or communication.⁴⁷

Relevant when needing to respond to stakeholder concerns about a project and address adverse impacts. Relevant during all stages, but particularly during construction, operations and closure.

- *Has an adverse impact occurred that needs to be addressed?*

Benefit sharing:

Can be monetary or non-monetary as agreed between the enterprise and the relevant stakeholders through consultation or negotiation processes (e.g. the creation of local jobs within safe working environments; the diversification of income-generating opportunities; capacity development; technology transfer; improvements in local infrastructure; better access to credit and markets, particularly for small and medium-sized businesses; payments for environmental services; allocation of revenue; or the creation of trust funds).

Relevant during all stages, but particularly during construction, operations and closure.

- *Can positive aspects of the operation for stakeholders be optimised?*

⁴⁷ **Restitution** refers to the restoration of the impacted party to their original position, e.g. restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one's place of residence, restoration of employment and return of property; **rehabilitation** refers to the restoration of land, water or air quality. The restoration of health or mobility following an accident or illness; **compensation** can be financial or non-financial in nature and should be equivalent to what the adversely impacted person has lost (losses may include physical or mental harm, lost opportunities, employment, education and social benefits, material damages and loss of earnings, including loss of earning potential, moral damage, costs required for legal or expert assistance, medicine and medical services, and psychological and social services); **satisfaction** refers to effective measures aimed at the cessation of continuing violations, public apology, commemorations and tributes to the victims, reporting and disclosure on potential violations, punitive sanctions.

Box 4: Using stakeholder engagement to optimise shared value

In addition to using stakeholder engagement to avoid and address adverse impacts, stakeholder engagement should also strive to optimise value⁴⁸ through aligning the business interests of enterprises with community needs and priorities. In practice, this could mean:

- instead of building a clinic for local communities, a company could invest in a health programme to prevent and treat infectious diseases prevalent within local communities, to which their workforce is also susceptible, such as malaria, HIV or tuberculosis.
- supporting local enterprises to become competitive, efficient suppliers to the extractive project as a 'win-win' local procurement strategy.
- building dual-purpose transport infrastructure that benefits both the enterprise and its stakeholders, e.g. deciding to invest in road rather than railway infrastructure that is more accessible to public use.

Shared value initiatives benefit stakeholders but also offer a compelling business case.⁴⁹

Stakeholder engagement can facilitate shared value initiatives and help overcome some of their associated challenges by:

- Collecting improved information on where value could be created for stakeholders.
 - Identifying and communicating the potential benefits of shared value to upper management to overcome inadequate organisational structures and behaviours.
- Contributing to measuring the benefit of shared value through collecting feedback from stakeholders.

C. Identifying and applying best practices

☆ Due diligence rationale:

If engagement activities are not tailored to the goals of the company and the characteristics and perspectives of their audience then they may not be effective and may even put certain stakeholders at risk. Asking the right questions when designing engagement activities can also reveal potential challenges for engagement (e.g. capacity issues, privacy challenges) which require appropriate responses.⁵⁰

⁴⁸ Three levels of shared value creation for extractive enterprises include:

1. Reconceiving Products and Markets (building local markets for intermediate products created by extractive activity (e.g. electricity; irrigation water).
2. Redefining Productivity in Value Chains (improving local workforce capabilities; strengthening suppliers in the value chain; increasing local disaster and emergency preparedness, response and rehabilitation capabilities; improving utilisation of water, energy and other resources used in operations.
3. Creating an Enabling Local Environment (developing the local cluster supporting the extractives sectors; investing in shared infrastructure and logistics networks; partnering with government and other stakeholders in building community infrastructure; playing an active role in broad-based economic and community development; improving local and national governance capacity.

Source: Shared Value Initiative & FSG, *Extracting with Purpose: Creating Shared Value in the Oil and Gas and Mining Sectors' Companies and Communities*, (October 2014), Part 2.

⁴⁹ See IFC, *Strategic Community Investment: A Handbook for Companies Doing Business in Emerging Market*, Table 2.1 (2010).

⁵⁰ See Recommendations for Site-Level Staff: Step 4(d) Identifying and responding to external challenges to engagement, p. 52, of this Guide.

- ➔ Once the necessary modes of engagement are identified they should be designed in a way that is appropriate to the context and audience and reflects best practices. Consulting with stakeholders on will be helpful to identifying appropriate approaches.

Guiding questions and best practices are provided below.

Table IV (1): Identifying and applying best practices to engagement activities

Issues to consider	Best practices
INFORMATION SHARING	
<p><i>What are the goals of information sharing?</i></p> <p><i>Who is the audience?</i></p> <p><i>How can the audience access information?</i></p> <p><i>What is the capacity of the audience (language, literacy, technical competence)?</i></p> <p><i>Are there privacy issues?</i></p> <p><i>Is the information sensitive?</i></p> <p><i>What have stakeholders indicated they find important and useful in terms of information content and methods of information sharing?</i></p> <p><i>What other modes of engagement should be used in tandem with information sharing?</i></p>	<p>All material information should be shared in a timely manner.</p> <p>The target audience should be able to access information and be able understand it.</p> <p>Material information, particularly with regard to risk transparency, should be provided in a written form so that community members can share it with experts of their choosing.</p> <p>Information should be accurate and objective with explanation of any uncertainties.</p> <p>Provision of information should not violate privacy or generate risks for stakeholders.</p> <p>Upon provision of information stakeholders themselves should be consulted to help determine what information is most useful to them and in what form to avoid information fatigue.</p> <p>Information sharing should generally be used in tandem with other modes of engagement (e.g., consultation to ensure information has been understood/well communicated).</p>
CONSULTATION/LEARNING	
<p><i>What is the goal of the consultation?</i></p> <p><i>Who should be consulted?</i></p> <p><i>Is the source credible?</i></p> <p><i>Do they understand the purpose of the consultation?</i></p> <p><i>Are they informed about how their information will be used and, if relevant, how their privacy will be protected?</i></p> <p><i>Are any risks being posed to the stakeholder through consultation?</i></p>	<p>The specific purpose of the consultation should be made clear if possible and participation in consultation should be informed and voluntary.</p> <p>Information gathered from consultations should be verified.</p> <p>Use of collected information should be accessible by those that provide it and should not violate privacy or generate risks for stakeholders.</p>
NEGOTIATION	
<p><i>What is the goal of the negotiation?</i></p> <p><i>Has clarity been established on what is being negotiated and what is not?</i></p> <p><i>Who needs to be at the table?</i></p>	<p>Terms of and structure of negotiation should be mutually agreed to in advance and should conform to all relevant legal obligations.</p> <p>Negotiation should take place under equitable terms.</p>

Issues to consider	Best practices
<p><i>Have the terms of the negotiation been clearly established and agreed to? Specifically is their clarity about what constitutes ‘agreement’?</i></p> <p><i>Has an agenda and rules of procedure for the meeting been prepared in consultation with stakeholders?</i></p> <p><i>What are the relevant legal requirements of negotiation, such as obtaining consent from certain groups?</i></p> <p><i>What is the physical set up of the negotiation space?</i></p> <p><i>What are the respective capacities of parties at the table?</i></p> <p><i>Are any risks being posed to stakeholders through negotiation?</i></p> <p><i>Are outcomes of the negotiation recorded and is the record approved by relevant stakeholders?</i></p> <p><i>Is there a possibility of intimidation or violence between parties with competing interests?</i></p>	<p>Support should be provided as necessary to allow stakeholders to adequately represent their perspectives and interests.</p> <p>All relevant parties should be party to the negotiation.</p> <p>Negotiation processes, including ideas, questions and concerns raised should be documented to the extent possible.</p> <p>Final agreements and outstanding issues should be recorded and should be verified and validated by those present during the engagement activity.</p> <p>If there is a risk of violence, those at risk should be consulted regarding possible preventive measures in order to guarantee the necessary conditions to allow them to participate. Any negotiation should be postponed until all relevant parties can participate freely and without fear of reprisals or coercion.</p>
CONSENT	
<p><i>Is consent a legal, operational or policy requirement of the company?</i></p> <p><i>Which activities require consent?</i></p> <p><i>Whose consent must be obtained?</i></p> <p><i>When should consent be obtained? What does ‘consent’ mean to the company and to those from whom consent is being asked?</i></p> <p><i>What does a clear lack of consent look like?</i></p> <p><i>In cases where consent is granted, what are the conditions for the consent or the conditions for withdrawing consent?</i></p> <p><i>What are the risks of proceeding without consent to rights-holders or operations?</i></p>	<p>Clear criteria should be established by the relevant rights-holder as to who must grant consent, what constitutes consent, what constitutes a clear lack of consent.</p> <p>Consent should be given on an informed and voluntary basis and sought in a timely manner.</p> <p>What consent is being given for should be clearly defined and the process of seeking consent should be renewed as necessary.</p> <p>The conditions of consent and for withdrawing consent should be clearly defined.</p> <p>Engagement processes, including ideas, questions and concerns raised should be documented as far as possible.</p> <p>Final agreements and outstanding issues should be recorded and should be verified and validated by those present during the engagement activity.</p>
IMPLEMENTING COMMITMENTS	
<p><i>What is the basis of commitments?</i></p> <p><i>What are the time frames for the implementation of commitments?</i></p> <p><i>What are the resources needed?</i></p> <p><i>What are the opportunities for synergy (such as local employment opportunities)?</i></p> <p><i>What are the communities’ expectations regarding</i></p>	<p>As far as possible, timelines and deliverables should correspond to what was agreed to with stakeholders or initially promised.</p> <p>Misalignment in expectations should be addressed as soon as possible. Synergies with regard to community development should be optimised.</p> <p>Engagement processes, including ideas, questions and concerns raised should be documented to the extent</p>

Issues to consider	Best practices
<p><i>commitments?</i></p> <p><i>Is there any misalignment between expectations or what has been communicated and actual progress?</i></p> <p><i>How are commitments formalised?</i></p>	<p>possible.</p> <p>Agreements stipulating commitments should be formalised, monitored and reported on.⁵¹</p>
ADDRESSING ADVERSE IMPACTS	
<p><i>What are the legal obligations in terms of addressing adverse impacts? (e.g. are human rights impacts in question?)</i></p> <p><i>What is the company capable of providing?</i></p> <p><i>What are the expectations or preferences of stakeholders?</i></p> <p><i>Are adverse impacts collective or individual?</i></p> <p><i>Is the responsibility to address the impacts shared with another actor (government, a commercial partner?)</i></p> <p><i>What is the most appropriate form of response to address adverse impacts?</i></p> <p><i>What are the risks associated with the various responses?</i></p> <p><i>How can satisfaction with responses be determined?</i></p>	<p>As far as possible remedies for adverse impacts should adequately address the harm done and underlying causes to the harm in a timely and transparent manner.</p> <p>Any legal obligations regarding remedy should likewise be respected and the terms of remediation should, at a minimum, meet international guidelines on remediation where available.</p> <p>Remedies should aim to put stakeholders in a position that leaves them better off than before the impact.</p> <p>Stakeholders should be involved in deciding how adverse impacts are addressed and in assessing the value of damages.⁵²</p> <p>Remedies should be culturally appropriate and risks and benefits of different forms of remedy should be considered.⁵³</p> <p>Engagement processes, including ideas, questions and concerns raised should be documented as far as possible.</p> <p>Final agreements and outstanding issues should be recorded and should be verified and validated by those present during the engagement activity. Such agreements should not preclude access to judicial or non-judicial grievance mechanisms (e.g. through waivers).</p> <p>Satisfaction with how adverse impacts are addressed should be evaluated.</p>

⁵¹ See Recommendations to Site-Level Staff, Step 5: *Ensuring follow-through* for more information, p. 61 of this Guide.

⁵² Generally, compensation should account for all the relevant losses and can be provided in a range of forms including apology, restitution, rehabilitation, financial or non-financial compensation, and punitive sanctions, as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition. However, assessing damages is a complex process within stakeholder engagement and as it is within legal proceedings generally, and as such is outside of the scope of this guide. For additional resources see Martin Beristain, Carlos ‘*El derecho a la reparación en los conflictos socioambientales : Experiencias, aprendizajes y desafíos prácticos*’ Bilbao, Hegoa (2010)

⁵³ For additional guidance on remediation procedures specific to indigenous peoples See Doyle C (ed.) ‘*Business & Human Rights: Indigenous Peoples’ Experiences with Access to Remedy. Case studies from Africa, Asia and Latin America*’ (Chiang Mai, Madrid, Copenhagen: AIPP, Almaciga, IWGIA, 2015)

Issues to consider	Best practices
BENEFIT SHARING	
<p><i>What sort of benefits can the operation provide to stakeholders? How can these benefits be optimised?</i></p> <p><i>Which stakeholders will be benefited? Which will be excluded?</i></p> <p><i>What are the development priorities and social objectives of the affected government and community?</i></p> <p><i>What have the relevant stakeholders identified as priorities with regard to benefits?</i></p> <p><i>What are the potential risks with regard to benefits (e.g. benefits are unequitable or lead to adverse social changes)?</i></p>	<p>Strive to identify opportunities for optimising benefits.</p> <p>Strive to ensure that operations are in line with the development priorities and social objectives of the government and community where operations are located.</p> <p>Share benefits on the basis of the consultation process and ESHRIAs, in a way that does not unfairly benefit specific groups, but that fosters equitable and sustainable social development.</p>

D. Identifying and responding to external challenges to engagement

☆ Due diligence rationale:

Proactively identifying and developing strategies to external challenges ensures that stakeholder engagement activities are effective and that potential risks or issues to engagement are anticipated and avoided rather than being dealt with reactively.

➔ Specific external challenges to stakeholder engagement linked to the local and operating context of an operation should be identified and strategies to respond to challenges should be developed during the planning phase and revised according to changing circumstances and feedback from stakeholders.

A list of common challenges and response strategies are listed below.

Table IV (2): Responding to Common Challenges to Meaningful Stakeholder Engagement

Type of Challenge	Explanation	Strategy
Social or cultural norms	<p>Social or cultural norms or practices may prevent certain individuals or groups in a community from participating in engagement activities. For example, in some cultures women may not be permitted to participate in important community decision-making processes. In some contexts, religious denomination, ethnicity or caste may exclude some people from meetings or from important decision-making processes. Youth may be excluded from engagement in some cultures.</p>	<ul style="list-style-type: none"> • Hold separate meetings with different groups, with the objective of insuring marginal or potentially vulnerable people (e.g. ethnic minorities, lower caste groups) have a chance to participate in engagement. • Provide a forum for women to participate in engagement and ensure that the engagement team includes women. • Engage with youth organisations and schools on impacts relevant to young people, such as job and skills training opportunities. • Ensure engagement etiquette and techniques are culturally appropriate.
Power dynamics	<p>Local power brokers may dominate meetings with outsiders or create a coercive atmosphere which hinders meaningful and inclusive engagement.</p> <p>Engagement activities may put some stakeholders at risk (e.g. human rights defenders, community or worker representatives and leaders).</p>	<ul style="list-style-type: none"> • Hold face-to-face meetings with people in private so that they are less likely to feel inhibited in expressing their opinions because of the presence of locally influential or powerful people. • Have policies on confidentiality and assure people that the information they provide will be treated anonymously / confidentially to protect their privacy. • Have anonymous voting procedures or avoid keeping written records of very sensitive information. • If there is a danger that engagement with a particular stakeholder will put them at risk of harm, consider consulting third parties, such as NGOs or others who have previously worked with the stakeholder group, on how to proceed. • Power dynamics between stakeholders and extractive enterprises may be highly unbalanced and efforts should be made to equalise these dynamics in order to avoid implicitly hostile engagement situations (e.g. paying attention that the venue and layout of negotiation space make the stakeholder feel comfortable).
Logistical constraints	<p>Isolation, rugged terrain, and poor transportation infrastructure may make it</p>	<ul style="list-style-type: none"> • Hold meetings at locations where people normally gather for public meetings or can easily travel to.

	<p>difficult for certain stakeholders to participate in engagement activities. Poor communications networks may also hinder participation. The aged/youth and those with ill health or disabilities may face constraints in participating in engagement processes.</p>	<ul style="list-style-type: none"> • Provide transportation or make other provisions (e.g. use of call-in radio shows) for people in remote or isolated areas so that they can attend or participate in meetings or other engagement activities. • Be prepared to travel to meet specific groups of people (e.g. aged/youth, those with ill health or the disabled) at times and in places that suit them. Be flexible and provide extra time for engagement in the event that ill health or other factors require that meetings be rescheduled.
Socio-economic constraints	<p>People may not be able to afford the transportation costs or to take time off work to attend meetings and consultations. Stakeholders may not be literate or may have low levels of education.</p>	<ul style="list-style-type: none"> • Plan engagement at times and places that suit different stakeholders' schedules. For example, if an enterprise wants to engage with poor farmers it makes little sense to organise meetings during working hours at harvest time. • Provide transportation or cover travel costs for people to attend meetings. • Communicate in plain, non-technical language so that those with little education can understand; provide materials explaining the project in multiple media, such as brochures, pictures and maps. • Communicate important information several times to ensure stakeholders understand it.
Legislative requirements and repressive regimes ⁵⁴	<p>In some cases local law or practice may contradict company policy or international standards.</p>	<ul style="list-style-type: none"> • Clearly and widely communicate company commitment to respect internationally-recognised human rights, as expressed in the OECD MNE Guidelines. • In cases where local law contradicts company standards and policy, needs and expectations should be clearly communicated and negotiated upfront, prior to the commencement of operations.⁵⁵ • Where possible, lobby governments to comply with their human rights obligations. • Avoid contributing to the criminalisation of human rights defenders or the use of law enforcement agencies to repress peaceful protest or other forms of opposition to the

⁵⁴ A number of tools provide guidance on the kind of resources required for operating in high-risk or conflict zones. This includes: *OECD risk awareness tool for MNEs in weak governance zones* (2006), IPIECA's *Guide to operating in areas of conflict for the oil and gas industry* (2008).

⁵⁵ See Recommendations to Management: *Considering stakeholder engagement issues when making investments or forming business relationships*, p. 17 of this Guide.

		<p>project.</p> <ul style="list-style-type: none"> • Consider not entering or withdrawing from contexts where human rights cannot be respected.
Capacity constraints ⁵⁶	<p>Local government authorities or traditional leaders may not have had prior experience in engagement for a major extractive project, and may seek support for capacity building. Or, they may request assistance to help them manage the additional burden or pressure that comes from coordinating a community consultation or engagement process.</p>	<ul style="list-style-type: none"> • Consider the capacity of the group and make necessary adjustments when providing information, consulting with groups, or throughout negotiation (e.g. through training, providing external support etc.). • Provide direct support, or provide support through other agencies such as sectoral national and global trade unions or NGOs to build capacity.
Competing interests and expectations amongst stakeholders	<p>Enterprises favour one group over another in the distribution of benefits from a project during engagement activities, or are perceived as doing so.</p> <p>The needs, wants or expectations of various stakeholder groups may be competing or diametrically opposed, meaning there is no consensus on issues amongst stakeholders.</p>	<ul style="list-style-type: none"> • Enterprises should consider the full background context in which engagement is to take place, including pre-existing relationships within and between stakeholder groups and adopt an inclusive approach to engagement. • The criteria and process for distribution of benefits should be made clear, the interests and expectations of opposing groups should be understood, there should be transparency in decision making and dissatisfied groups should have an opportunity to have their concerns considered through strong objective remediation processes.⁵⁷ • The assistance of a neutral mediator could be sought; the role of such a mediator should not be to ensure consensus is reached between the parties, but rather that each side has a clear and objective understanding of their own best interests and to facilitate collaborative decision making between diverse stakeholders. • All points of views of stakeholders should be accommodated and responded to as far as possible. Without ignoring dissent, stakeholders should be prioritised according to those most and least impacted by the project.

⁵⁶ For more information see Recommendations to Site-Level Staff, Step 3 C: *Providing the support and information necessary for stakeholders to adequately represent their perspectives and interests*, p. 38 of this Guide.

⁵⁷ See Recommendations to Site-Level Staff Step 4 E: *Establishing clear and functional processes to enable remediation*, p. 58 of this Guide.

<p>Bad-faith on the part of stakeholders or other groups</p>	<p>Certain groups or stakeholders may try to take advantage of the stakeholder engagement process. For example, once it is known that relocation may take place around a concession individuals outside of a community may build makeshift huts on the relocation area and also demand compensation.</p>	<ul style="list-style-type: none"> • Cooperation with identified stakeholders, a good understanding of the context and clear and transparent procedures can help overcome some of these obstacles. Additionally, a company should clarify how it defines good faith engagement in terms of their own actions as well as what is expected in return, making sure that 'bad faith' is not equated to a community's rejection of and resistance to a company's entry or proposed activities. • Consult with the local community and building a solid knowledge base prior to engaging with stakeholders about relocation will provide an accurate estimate of the population that lives there. Share the findings and process for this assessment can help justify how compensation is awarded. Having a transparent and fair grievance mechanism will allow for all sides to be heard and issues to be resolved objectively.
<p>Violence and opposition</p>	<p>Stakeholders or civil society are actively campaigning against the company or project. Violence is used by some stakeholders to express dissatisfaction with the company or project.</p>	<ul style="list-style-type: none"> • Consider the underlying cause of the opposition as opposed to taking legal actions against community members that could result in further exacerbating the situation and contribute to the criminalization of non-violent rights defenders. • Avoid making public statements questioning the work of such groups or blaming them for any supposed delays or other disruptions to the project. • Always avoid responding with violence when taking security precautions. • Ensure adherence to the Voluntary Principles on Security and Human Rights in contracting and managing security personnel. • Reach out to opposition groups and renew invitations to engage in good faith engagement regularly. • In contexts where the opposition is widespread, not based on misinformation or bias, and ongoing despite attempts to meaningfully engage, a company should consider the risks involved with continuing an operation.
<p>Inherited issues stemming from poor stakeholder engagement</p>	<p>Poor stakeholder engagement by predecessors operating on the site, or a history of bad experience with extractive operations amongst community members creates difficult challenges for a new operator.</p>	<ul style="list-style-type: none"> • Identify such issues as part of understanding context from the first point of entry, and, if applicable, identify legacy issues prior to making any commitments and investments in a project. • Clearly communicate the relationship between the company and previous operators. Acknowledge up front the perceived issues around previous engagement or lack thereof. • Address adverse impacts that are inherited from a predecessor but which the company

		<p>continues to contribute to (e.g. discharge from operations that is being released into a community's water supply due to poor location of catchment area by the predecessor).</p> <ul style="list-style-type: none"> • Make clear what can be done going forward, what issues remain negotiable, whether they are able to account for adverse impacts from past operations, how the management and engagement strategy will differ from that of their predecessors. • In the case of human rights impacts, if no other remedy is available, the acquiring enterprise should provide, enable or support remediation itself, to the extent of its contribution to the impacts of its predecessor.
Misalignment between expectations and reality ⁵⁸	Stakeholders are unaware of the operational and financial characteristics of an extractive operation and therefore have high expectations in terms of the fiscal and development contribution an operation should make.	<ul style="list-style-type: none"> • Throughout engagement encourage stakeholders to share their expectations and likewise share expectations of the enterprise regarding the operation to identify any misalignment and to assure that all sides understand one another's positions. • Transparency regarding the operation and commitments can also be helpful to managing expectations. For example, disclosing contracts and reporting revenues and tax payments can help to provide stakeholders with a realistic understanding of the operation. • Provide needed support for stakeholders to understand the operational realities of the project.⁵⁹
Elite capture	Stakeholder representatives act in their own self-interest to and do not represent the views or best interests of their constituents.	<ul style="list-style-type: none"> • When negotiating agreements, implementing commitments or providing remediation, the value to and interests of the stakeholder group as a whole should be considered. • When red flags have been identified by the company with regard to representatives selected by stakeholders they should consult more widely with stakeholder groups as to how to proceed.⁶⁰

⁵⁸ Understanding expectations is particularly important in the exploration phase of a project as most exploration activities will not result in commercially viable extractives operations. Furthermore, for those exploration projects that do result in the discovery of deposit, expectations will already have been created, and the company that develops the discovery into an extraction project will need to be aware of such expectations.

⁵⁹ See Recommendations to Site-Level Staff Step 3 C: *Providing the support and information necessary for stakeholders to adequately represent their interests and perspectives*, p. 38 of this Guide.

⁶⁰ See Recommendations to Site-Level Staff, Step 2 B: *Identifying representatives or interlocutors for stakeholder groups*, p. 35 of this Guide.

E. Establishing clear and functional processes to respond to grievances

☆ *Due diligence rationale:*

If stakeholders do not have a means of raising issues with the company they cannot report unforeseen issues or concerns to the operational staff and the company may not be able to identify adverse impacts, provide appropriate remedy or prevent escalation of issues. Remediation processes also establish trust among stakeholders as the basis for future meaningful engagement.

Many impacts of an extractives operation will be known of in advance and addressing them will involve consultation and negotiation with affected stakeholders to identify the most appropriate response. Other times adverse impacts will not be foreseen and will need to be accounted for reactively. It is important that a company is aware of and responsive to issues as they arise.

- ➔ Clear and functional processes to respond to grievances should be established which allow stakeholders to raise concerns with the enterprise and allow the company to provide early and direct remedy when appropriate.

These processes should not preclude access to judicial or non-judicial grievance mechanisms, including the National Contact Points under the Guidelines.⁶¹ Nor should they be used to undermine the role of trade unions in addressing labour-related disputes.⁶² In jurisdictions where there is limited trust or confidence in legal system, or the system is otherwise inaccessible to affected people, company-established remediation processes or grievance mechanisms offer a potential pathway for resolving issues.

Remediation procedures should reflect certain characteristics. The effectiveness criteria for non-judicial grievance mechanisms contained in the UN Guiding Principles on Business and Human Rights provide an important reference point.⁶³

Legitimate	✓ Trustworthy
	✓ Accountable
Accessible	✓ Known
	✓ Variety of access points
	✓ Assistance to overcome barriers
Predictable	✓ Clear procedures
	✓ Clear timeframes
Equitable	✓ Fair access to information, advice and expertise
	✓ Fair treatment
Transparent	✓ Keeping parties informed about progress of cases
	✓ Providing information about the process to build confidence
Rights-compatible	✓ Outcomes and remedies must accord with internationally-recognised rights
	✓ No prejudice to legal recourse

⁶¹ OECD Guidelines for Multinational Enterprises, Chapter XIV, Paragraph 43

⁶² Id.

⁶³ See UN Guiding Principles for Business and Human Rights, (2011) Section B, Paragraph 31

- Continuous learning** ✓ Identification of lessons for (i) improving the mechanism and (ii) preventing future harm
- Based on engagement and dialogue** ✓ Consulting 'users' (including internal users) on design and performance⁶⁴

Source: A Guide to Designing and Implementing Grievance Mechanisms for Development Projects, The Office of the Compliance Advisor/Ombudsman.

The form remediation processes should take will vary according to the size and nature of the operation. For example, small operations or exploration companies operating on tight budgets should keep the grievance mechanism simple and proportional to the likely small number of grievances to be handled at this stage. Once the procedure is established, it can be ramped up to deal with a higher volume of grievances, e.g. at the construction or closure stages.

F. Engaging with stakeholders to ensure remediation is appropriate

☆ Due diligence rationale:

Companies have an obligation to remediate actual impacts that they cause or contribute to. However forms of remediation may not always be appropriate and in certain contexts may present risks to stakeholders. Consulting with stakeholders and responding to challenges in advance can ensure that remediation is appropriate and potential risks are avoided.

- ➔ Companies should consult with stakeholders and identify and respond to challenges to providing appropriate remediation.

Under the OCED MNE Guidelines companies should address actual impacts caused or contributed to through remediation.⁶⁵ However remediation can come in varying forms including restitution, rehabilitation, compensation, satisfaction and guarantees of non-repetition.⁶⁶ In addition to various forms, responses may also vary in scope and be individual or collective.⁶⁷ Not all forms of remediation will be appropriate to every context and furthermore some forms of remediation may create risks.

⁶⁴ For a good model on effective design of grievance mechanism in the context of oil and gas operations see IPIECA's Community Grievance Mechanism toolbox ; in the context of mining operations see ICMM, Human Rights in the Mining & Metals Sector: Handling and Resolving Local Level Concerns & Grievances (2009).

⁶⁵ OCED Guidelines for Multinational Enterprises, Chapter II: Commentary on General Policies, Paragraph 14

⁶⁶ See Guiding Principles on Business and Human Rights, Commentary to Section III.A, Principle 2; Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law

⁶⁷ Collective remediation may be appropriate in situations of collective harm, such as damage to spiritual lands, and can contribute to efficient use of resources.

Type of Challenge	Explanation	Strategy
Remediation is not appropriate or optimal to the context	Not all forms of remediation will be appropriate to all contexts. For example, experience shows that for communities that have not previously worked in a cash economy, or where savings and investment are uncommon, lump sum payments are often spent quickly, leading to long-term impoverishment.	<p>Where possible companies should consult with actors in the region with experience on remediation processes (e.g. CSO organisations, other operators in the region) to understand risks and best practices.</p> <p>Impacted stakeholders should be given an option in choosing the form remediation takes. Where the selected form presents risks to the stakeholders such risks should be discussed with the stakeholders and potential solutions agreed upon together (e.g. establishment of a trust, phased pay outs etc.).</p> <p>Companies should communicate with compliance officers and accountants on proper protocol for compensation payments to stakeholders, as a tax authority or auditor may be inclined to think such payments could in fact be bribes paid.</p>
Remediation is believed to be unsatisfactory by stakeholders	Assessing the value of damages can be a complex process and forms of remediation may vary. As such stakeholders may not feel they are adequately compensated	<p>Efforts should be made to provide remediation that leaves impacted stakeholders <u>better off</u> than before.</p> <p>Stakeholders should be given an option in choosing how adverse impacts are remediated and in assessing the value of damages.⁶⁸</p> <p>If stakeholders have not been included in the process of deciding how adverse impacts are accounted for, in the case where the remedy is already mandated by local law for example, an explanation of why it was chosen as well as its risks and benefits should be provided to stakeholders.</p> <p>Stakeholders should be followed up with after remediation is provided to evaluate their satisfaction.</p>
Conflicts are created amongst impacted stakeholders who believe remediation to be inequitable	Provision of remediation can create conflicts among some stakeholders who may feel that they were not equitably compensated in comparison to others.	<p>The criteria and process for remediation should be made clear and should be equitable and objective.</p> <p>There should be transparency in decision making and stakeholders should have access to information on how similar impacts have been remediated prior to reaching agreements on remediation.</p>

⁶⁸ Generally compensation should account for all the relevant losses listed in Table III(1). However assessing damages is a complex process within stakeholder engagement and as it is within legal proceedings generally, and as such is outside of the scope of this guide. For additional resources see “El derecho a la reparación en los conflictos socioambientales : Experiencias, aprendizajes y desafíos prácticos” <http://publ.hegoa.efaber.net/publications/234>

Step 5: Ensuring follow-through

☆ Due diligence rationale:

Following through and reporting back to stakeholders on how outcomes of stakeholder activities have been taken into account in practice allows stakeholder to feel that their perspectives are being considered and is also helpful in managing expectations of stakeholders. If the outcomes of stakeholder engagement activities are not followed through on relationships with stakeholders might be damaged and impacts may not be optimised.

Additionally accounting for how adverse impacts are addressed is a key step of due diligence as defined by the OECD MNE Guidelines.⁶⁹

A. Establishing a process for tracking follow-through on agreements, commitment and remedies.

➔ A commitments register should be maintained to track follow-through on outcomes of stakeholder engagement including final agreements reached through negotiation processes, commitments made to stakeholders by the company, responses to complaints and agreements as to how adverse impacts should be addressed.⁷⁰

A commitments register should include:

- timelines for implementation of commitments agreed to and communicated amongst relevant stakeholders, including provision of remedy
 - identification of person/team responsible for implementation of commitments
 - some detail agreed to by stakeholders on how commitments will be implemented
- current status of commitment implementation
- record of final agreements reached with communities and their implications for project planning
- record of ongoing negotiations; issues for which agreement has not yet been reached and implications for project planning

Inputs to the commitments register should be signed off by those with agency over implementation of commitments or relevant project decisions. Where action will be required from executive or upper-level management they should be involved in the approval of and reporting on the commitments register.⁷¹

⁶⁹ OECD Guidelines for Multinational Enterprises, Chapter II Paragraph 10(A)

⁷⁰ There are a number of useful software applications available for stakeholder engagement data management. For examples see the IFC, Stakeholder Engagement: A Good Practice Handbook for Companies Doing Business in Emerging Markets (2007) p. 90, such as Comm-Trac™, Credit 360, Entropy System™, React, Smart Dialogue™ and 3PTracking™

⁷¹ See Recommendations to Management: Section D: *Establishing a feedback loop to integrate views into project decision making*, p. 18 of this Guide.

B. Regularly reporting back to stakeholders on follow-through on agreements, commitments and remedies.

- ➔ Reports on observance (or lack thereof) of commitments and agreements should be communicated to stakeholders in a timely fashion. Stakeholders should be given an opportunity to express their satisfaction or lack thereof with commitment implementation.

Reporting should be done by those in charge of implementation of commitments or provision of remedies.

In cases where there is a discrepancy with what was previously agreed and the action an explanation for the discrepancy should be provided and stakeholders should be given a chance to react to a change in circumstances before final project decisions are made.

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Step 6: Monitoring and evaluating stakeholder engagement activities and responding to identified shortcomings

☆ Due diligence rationale:

It is important to monitor and evaluate the effectiveness of stakeholder engagement activities both to ensure that engagement activities are accomplishing their objectives, particularly with regard to avoiding and addressing adverse impacts to stakeholders, and that resources are not being wasted through activities that are not well implemented or conceived.

A. Establishing indicators and assessment criteria that evaluate the effectiveness of stakeholder engagement activity

➔ Some measurable indicators to evaluate stakeholder engagement activities should be identified, agreed to and monitored over time.

In general, the best indicator of successful stakeholder engagement activities will be reflected in the quality of relationship between the company and stakeholders which can be evaluated based on feedback from stakeholders.

Feedback can be collected throughout engagement activities (e.g. through consulting local communities, collecting feedback from people who attend meetings and forums, taking note of issues brought to remediation procedures) or through additional processes.

For example, enterprises can provide community suggestion boxes, which enable people to submit anonymous feedback on the engagement processes, or distribute 'citizen report cards' that provide a way for people to assess the quality of relationships between a company and its stakeholders. An annual or semi-annual 'perception' survey can be used to measure the quality of relationships between a company and stakeholder over time to gauge changes in satisfaction levels, which can help reveal a need to make adjustments to the process or take action to address underlying issues.

Larger operations with complex stakeholder engagement programs may need to establish more specific indicators and more formal monitoring and evaluation (M&E) processes. Potential indicators and general assessment criteria for stakeholder engagement activities based on the principal steps and objectives of stakeholder engagement are provided in Annex A to this guide. However, project level indicators can also be developed and tailored to specific activities. See Table VI (1) for an example.

Table VI(1): Excerpt of hypothetical activity-specific indicators and assessment for evaluating stakeholder engagement⁷²

Aim: Build trust with a near-mine community on the issue of planned construction of a tailings dam		
Objectives	Indicators	Assessment Criteria
Understand local people's concerns about the construction of a new tailings dam	<ul style="list-style-type: none"> - Number of meetings with community members to hear concerns; number of people in attendance. - Degree of stakeholder agreement with the list of concerns recorded during consultations. 	<ul style="list-style-type: none"> - Good: 3-4 meetings held; 50-100 people in attendance. - Moderate: 1-2 meetings held; 25-50 people in attendance. - Poor: 0-1 meetings held; 0-25 people in attendance. - Good: Most or all relevant stakeholders agree that there is alignment with recorded concerns and their own. - Moderate: Most or all relevant stakeholder agree that principal concerns are represented but that specific concerns of minority groups are not represented. - Poor: Most or all relevant stakeholders agree that material concerns are not represented in the record.
Disclose relevant information about dam safety and environmental impacts to impacted communities	<ul style="list-style-type: none"> - Percentage of enquiries from community members responded to by the enterprise in relation to the proposed dam construction (e.g. written or oral replies to people's questions) - Ability of stakeholders to understand and access the results of an environmental impact assessment regarding the tailings dam. 	<ul style="list-style-type: none"> - Good: 90-100% of enquires responded to - Moderate: 60-90% of enquires responded to - Poor: Less than 60% of enquires responded to - Good: Results of the study are fully disclosed to all relevant stakeholders in a format they can access and understand. - Moderate: The results of the study are disclosed but in a technically complex format difficult for the general public to understand. - Poor: The findings of the study are not disclosed.

B. Establishing participatory monitoring and evaluation

➔ Participatory M&E activities should be encouraged and enabled to the extent possible.

Participatory monitoring of stakeholder engagement can strengthen trust and give stakeholders a greater sense of empowerment and ownership in a project.⁷³ It will mean including stakeholders in the process beyond simply through collecting feedback from them. The table below provides a summary of some of the differences between conventional and participatory monitoring and evaluation strategies.

⁷² Please note that the included indicators and assessment criteria are meant to be illustrative rather than prescriptive. Companies are encouraged to develop criteria that are relevant to their objectives and operational realities.

⁷³ More information on participatory monitoring can be obtained from Parker, R. and Dakin, R. *Managing Risk and Maintaining License to Operate: Participatory Planning and Monitoring in the Extractive Industries* (2008); CAO, *Participatory Water Monitoring A Guide for Preventing and Managing Conflict* (2008)

	Conventional M&E	Participatory M&E
Who plans and manages the process:	Senior managers, or outside experts	Local people, project staff, managers, and other stakeholders, often helped by a facilitator
Role of 'primary stakeholders' (the intended beneficiaries):	Provide information only	Design and adapt the methodology, collect and analyse data, share findings and link them to action
How success is measured:	Externally-defined, mainly quantitative indicators	Internally-defined indicators, including more qualitative judgments
Approach:	Predetermined	Adaptive

Source: Institute of Development Studies, IDS Policy Briefing: Participatory Monitoring and Evaluation: Learning from Change (1998)

C. Soliciting external review

➔ Enterprises should periodically seek independent external review of their stakeholder engagement.

Such assessments enhance credibility and strengthen a company's reputation with regard to stakeholder engagement practices.

The form external verification should take will depend on the size, scale and type of operations. For example, smaller or short-term operations may simply appoint an independent facilitator to collect and aggregate feedback from stakeholders.

Rather than directly hiring consultants to conduct this review, where possible enterprises should seek review from independent parties. Independent parties will not have interests (financial, political or otherwise), which could impact their objectivity. These may include industry associations, academic institutions and civil society organisations.⁷⁴

D. Responding to results of monitoring and evaluation activities

Unforeseen impacts or shortcomings of stakeholder engagement activities can be revealed through established monitoring and evaluation processes as well as in an ad hoc manner, e.g. through feedback provided by stakeholders informally or through issues raised within grievance processes.

➔ When shortcomings are revealed or unforeseen negative impacts occur the reasons behind the shortcomings should be identified and the systems should be adjusted accordingly.

- **Could more effective communication resolve the issue raised?** Is there a specific misunderstanding which is causing conflict? Has false information been communicated? Was the information communicated incomplete or too complex? Is the conflict stemming from a perceived lack of transparency?

⁷⁴ For an example of a strong external verification system in the context of mining see: Mining Association of Canada, Towards Sustainable Mining Initiative – Community and Aboriginal Engagement Protocol

- **Could more effective procedures resolve the issue raised?** Are there unclear or misunderstood procedures? Have procedures not been followed in practice? Do current procedures favour certain groups over others? Is there an issue of direct or indirect discrimination due to procedures?
- **Could more effective structures resolve the issue raised?** Could staff capacity or resources be improved to address the issue? Could collaboration with other enterprises or partners in government or civil society address the issue?

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ANNEX A: MONITORING AND EVALUATION FRAMEWORK FOR MEANINGFUL STAKEHOLDER

ENGAGEMENT

The table below represents a deliberately simple, illustrative framework for monitoring and evaluation (M&E). The indicators and assessment criteria are meant to provide guidance to companies on the elements that should be considered when conducting M&E of stakeholder engagement processes but are not meant to be prescriptive. Companies may reference this framework or adapt it to their own M&E activities.

Objectives	Potential Indicators	Good/Moderate/Poor practices
Understanding context and identifying stakeholders		
<p>Develop an understanding of local and operating context</p> <p>Identify impacted stakeholders and vulnerable groups</p> <p>Identify stakeholder representatives</p>	<ul style="list-style-type: none"> - Diversity and quality of sources consulted in understanding the context and quality of information collected - Frequency of re-identification of impacted stakeholder groups in response to project changes, feedback from relevant groups and misalignment with expected results - Degree to which identified stakeholder representatives align with perspectives of stakeholders 	<p>Good: Staff charged with stakeholder engagement participates in impact assessments. A diversity of sources is consulted to understand the local and operating context including consultation with technical staff and preliminary context-scoping interviews. Conclusions about impacted stakeholders and rights-holders are verified with stakeholders themselves once consultation mechanisms are established and are adapted as necessary to align with those perspectives. Identified stakeholder representatives represent a range of relevant groups and important group dynamics. Identified stakeholder groups and representatives are adapted in response to changes in the project plan, operating context and availability of better information garnered through regular consultation with relevant stakeholders. Engagement with most impacted and vulnerable stakeholders is prioritised.</p> <p>Moderate: Some desk research is conducted and identified community leaders are consulted in identifying impacted stakeholder and vulnerable groups. Findings are not triangulated amongst a diversity of sources but align with most stakeholder perspectives. Stakeholder representatives comprise leaders from various groups but do not represent marginalised groups or minorities. Findings are adapted at different steps of the lifecycle of the project and when false assumptions are revealed but not through regular consultation. Engagement is prioritised based on impact to stakeholders as well as influence on the project.</p> <p>Poor: Limited sources such as inherited SEIAs are relied on to understand impacts to stakeholders. Stakeholder groups and relevant technical staff are not consulted on conclusions with regard to identified impacted stakeholders and vulnerable groups and thus they do not align with stakeholder perspectives. Findings are not adapted in response to contextual changes. Stakeholder representatives comprise self-declared leaders of majority groups. Most influential stakeholders are prioritised for engagement without regard to the severity of impact.</p>

Objectives	Potential Indicators	Good/Moderate/Poor practices
Establishing the necessary support system for meaningful stakeholder engagement		
Identify appropriate aims and objectives for engagement activities	<ul style="list-style-type: none"> - Degree to which aims and objectives are clear, realistic and aligned with corporate policy and international standards of what constitutes meaningful stakeholder engagement (e.g. this Guide) 	<p>Good: Aims and objectives are realistic, specific, considered in advance of engagement, align with corporate policy and international standards (e.g. are rooted in avoiding adverse impacts and optimising benefits for stakeholders), and are vetted by executive management.</p> <p>Moderate: Aims and objectives are vague and not discussed with management.</p> <p>Poor: Aims and objectives are not developed or correspond only to commercial objectives.</p>
Ensure that staff treat stakeholders with respect	<ul style="list-style-type: none"> - Number of complaints from stakeholders based on inappropriate staff conduct - Frequency of interaction with stakeholders outside the workplace (through frequenting local restaurants etc.) - Degree of comfort stakeholders feel in interacting with company staff as displayed through comfort in sharing views and conduct towards engagement staff 	<p>Good: No complaints from communities about inappropriate behaviour towards them by company staff. An effort is made to interact on an informal basis by company staff on a regular basis (e.g. through shopping at local markets, eating at local restaurants). Stakeholders from all groups are relaxed and unafraid to speak their minds during engagement activities.</p> <p>Moderate: Occasional complaints about staff behaviour from stakeholders. Staff interacts with stakeholders minimally outside their professional capacity. Stakeholders are respectful but not active in participation during engagement activities.</p> <p>Poor: Frequent complaints about staff by stakeholders. No interaction of staff with stakeholders beyond their professional capacity. Stakeholders appear intimidated and threatened by company representatives during engagement activities or are openly hostile towards engagement staff.</p>
Ensure stakeholders are informed	<ul style="list-style-type: none"> - Degree to which information provided to stakeholders corresponds to what they view as material - Ability of a range of stakeholders to explain and communicate material aspects of the project, such as what the anticipated impacts are, and how the engagement process is structured - Level of comfort of stakeholders with how information relevant to them is managed 	<p>Good: Nearly all target stakeholders are able to explain and communicate material aspects of the project. Information shared is accurate, clear and corresponds to stakeholder perspectives of what is material. Appropriate modifications are made to the content and form of information to ensure that it is accessible to the relevant stakeholder groups which may have varying levels of capacity. When providing information about stakeholders, consistent attempts are made to understand privacy sensitivities and reach agreement with relevant groups on how information can be used and shared. Information given in confidence is adequately protected. As far as possible justification is given in instances where full transparency is not possible.</p> <p>Moderate: The majority of stakeholders are able to explain and communicate material aspects of the project. Information shared is accurate and clear and accessible to a range of stakeholders. However, stakeholders are not consulted on what they view as material and thus suffer from information fatigue or are not informed of issues they find relevant. The company uses its discretion in deciding which information is sensitive and makes efforts to protect</p>

Objectives	Potential Indicators	Good/Moderate/Poor practices
		<p>confidential information.</p> <p>No explanation is given in instances where full transparency is not possible.</p> <p>Poor: The majority of stakeholders are not able to explain and communicate material aspects of the project. Information is not tailored to the target audience and therefore may be unclear and inaccessible to stakeholders. Information material to stakeholders is not shared with them. No adequate management systems are in place with regard to sensitive information.</p>
<p>Provide the support necessary for stakeholders to adequately represent their perspectives and positions</p>	<ul style="list-style-type: none"> - Quality and relevance of support provided to stakeholders for engagement purposes - Ease and ability of stakeholders to communicate and represent their interests during engagement 	<p>Good: Stakeholders are provided adequate training and support or are provided with sufficient resources to engage external assistance so that they are capable of adequately representing their perspectives and interests during engagement activities.</p> <p>Moderate: External support is provided to stakeholders by the company, but stakeholders are not involved in selecting their own experts and investment for development of skills useful for engagement process is not provided to stakeholders directly.</p> <p>Poor: No support is provided to address capacity issues amongst stakeholders.</p>
<p>Appropriate resource activities</p>	<ul style="list-style-type: none"> - Ratio of resources needed to resources attained for stakeholder engagement 	<p>Good: Stakeholder engagement activities are resourced as a core component of operations, or shortcomings in resource needs are effectively bridged through streamlining of other existing resources. Staff possesses the necessary skills to undertake stakeholder engagement.</p> <p>Moderate: Some resourcing is allocated to stakeholder engagement activities however, resourcing is insufficient. Staff has communicated to upper management the importance of stakeholder engagement and has integrated it within operations to take advantage of operational synergies with some success.</p> <p>Poor: Stakeholder engagement is not adequately resourced, efforts have not been made to communicate the value of stakeholder engagement to management, and stakeholder engagement activities are not integrated within operations.</p>
<p>Designing appropriate and effective stakeholder engagement activities and processes</p>		
<p>Assign realistic and appropriate timelines for engagement</p>	<ul style="list-style-type: none"> - Ease of process in adapting timeframes in response to contextual issues - Timing of initial contact with stakeholder groups in relation to project plans 	<p>Good: Timelines are discussed with stakeholders themselves and reflect operational and contextual realities. Some flexibility is built into timelines. Stakeholders are engaged at the earliest possible time, they are given sufficient notice of meetings and sufficient time to consider and internally discuss any proposals or decisions.</p>

Objectives	Potential Indicators	Good/Moderate/Poor practices
	<ul style="list-style-type: none"> - Average time stakeholders are given to react to certain issues - Average length of notice stakeholders are given regarding meetings and other engagement activities 	<p>Moderate: Timelines reflect operational realities but are not discussed with stakeholders ahead of time and thus must be readjusted.</p> <p>Poor: Timelines are unrealistic and inflexible. Stakeholders are not consulted when establishing timelines and thus delays are incurred. Stakeholders do not have sufficient notice or time to adequately engage.</p>
Plan appropriate engagement activities	<ul style="list-style-type: none"> - Degree to which engagement priorities reflect the perspectives of stakeholders and key partners - Level of involvement of stakeholders in planning engagement activities - Number of issues that are discussed and addressed with stakeholders proactively versus reactively throughout the engagement process - Degree to which challenges to engagement are anticipated during the planning stage 	<p>Good: Engagement activities are planned in advance with the input of relevant stakeholders to understand the best mode of engagement and to anticipate and plan around any challenges to engagement. Nearly all issues are anticipated rather than reacted to throughout the engagement process.</p> <p>Moderate: Engagement activities are planned in advance but key partners and stakeholder groups are not consulted during the planning stage and therefore challenges to engagement are not anticipated or addressed proactively through the design of the activities.</p> <p>Poor: Engagement activities are not properly planned or are done in an ad hoc manner. The range of engagement planned is limited to one-way information provision which does not plan for stakeholders to take an active role in the engagement or decision-making process. Challenges to engagement are not considered or anticipated ahead of time.</p>
Ensure engagement is efficient and effective	<ul style="list-style-type: none"> - Degree to which objectives of engagement activities are accomplished - Percentage of conclusions or agreements reached that are not later refuted - Percentage of stakeholders participating in engagement activities that feel the process was fairly conducted 	<p>Good: Terms of engagement are clearly established and agreed to in advance of engagement activities. Engagement activities are well managed, allow a good balance of participation and accomplish agreed-upon objectives. A clear record of conclusions is developed and available to relevant stakeholders to the extent that privacy issues allow.</p> <p>Moderate: Rules of engagement are unilaterally established by the company. During meetings only select representatives are called on to participate. Objectives of meetings are vague or unrealistic. Records of engagement are unclear or incomplete.</p> <p>Poor: Rules of engagement are not established prior to engagement, meetings and engagement activities do not have clearly articulated objectives and records of engagement are not kept or are lacking in transparency.</p>

<p>Establish a remediation process</p> <p>Appropriately address adverse impacts</p>	<ul style="list-style-type: none"> - Percentage of stakeholders adversely impacted who feel adverse impacts have been adequately addressed - Percentage of stakeholders who feel channels for raising grievances are accessible, equitable and effective - Rate of reoccurring issues related to stakeholder engagement processes 	<p>Good: Stakeholders are involved in the process of deciding how adverse impacts should be addressed and in considering issues raised through grievance mechanisms. Nearly all relevant stakeholders feel responses are appropriate to the context and delivered equitably. When adverse impacts are unforeseen the adverse impacts are appropriately addressed and the underlying cause of the impacts is likewise considered and appropriately responded to.</p> <p>Moderate: Adverse impacts are addressed a timely manner but stakeholders are not consulted on the form that remedy should take, thus not all remedies are appropriate to the context and delivered equitably. The underlying cause of impacts is only considered and responded to after unforeseen adverse impacts arise several times.</p> <p>Poor: Adverse impacts are not addressed in a timely fashion and the form responses take are unilaterally provided by the company, thus most stakeholders report dissatisfaction with responses and grievance mechanisms. Clear channels for grievances and communication from stakeholders are not established and take place in an ad hoc fashion. In the case of unforeseen impacts, the underlying cause of impacts is not considered or responded to.</p>
Following through on outcomes of stakeholder engagement activities		
<p>Follow through on outcomes of stakeholder engagement activities</p>	<ul style="list-style-type: none"> - Percentage of commitments met - Level of stakeholder satisfaction with company performance with regard to its commitments 	<p>Good: A commitments registrar is maintained and is regularly reported on to relevant stakeholders. The delivery of commitments or provision of remedies is done as efficiently as possible and delays or changes to agreements are reported and explained to stakeholders. Stakeholders have an opportunity to express satisfaction (or lack thereof) with how the company adheres to commitments and agreements.</p> <p>Moderate: A commitments registrar is kept but does not adequately assign responsibilities for tasks or timelines. The company complies with the majority of its commitments but does not provide sufficient explanation when it does not.</p> <p>Poor: No commitments registrar is kept and thus stakeholders do not have an idea of when commitments will be fulfilled.</p>
Monitoring and Evaluation		
<p>Develop relevant and effective monitoring and evaluation mechanisms</p>	<ul style="list-style-type: none"> - Ability to assess strength of relationships with different stakeholders and accomplishment of objectives with regard to stakeholder engagement. 	<p>Good: Indicators and assessment criteria align with company objectives and aims and are clear and measurable. Company regularly collects feedback from stakeholders to assess the effectiveness of engagement activities.</p> <p>Moderate: Indicators and assessment criteria align with aims and objectives but are not sufficiently clear. The company collects feedback from stakeholders to assess the effectiveness</p>

		<p>of engagement activities in an ad hoc manner.</p> <p>Poor: Indicators are not established ahead of time or are vague and impracticable. The company does not collect feedback from stakeholders to assess the effectiveness of engagement activities.</p>
Assure monitoring and evaluation is objective, effective and participatory	<ul style="list-style-type: none"> - Degree of participation of stakeholders in the design and execution of M&E activities. 	<p>Good: Stakeholders participate throughout the M&E process (e.g. designing and adapting the methodology, collecting and analysing data, sharing findings and linking them to action).</p> <p>Moderate: Feedback from stakeholders is highly relied upon to measure the strength of stakeholder engagement activities but stakeholders are not included in the design or execution of M&E activities.</p> <p>Poor: Stakeholders are not consulted throughout M&E activities.</p>
Undertake credible external verification of engagement activities	<ul style="list-style-type: none"> - Degree of objectivity and thoroughness of monitoring and evaluation 	<p>Good: Verification is conducted by an objective and external third party.</p> <p>Moderate: Verification is conducted by consultants hired by the company for that purpose.</p> <p>Poor: No third party verification is done to evaluate engagement activities.</p>
Shortcomings revealed through M&E are investigated and responded to	<ul style="list-style-type: none"> - Rate of reoccurring issues related to stakeholder engagement processes - Progress based on assessment criteria of M&E frameworks over time 	<p>Good: M&E results are carefully analysed and disappointing or unforeseen results are further investigated to understand underlying issues. Once identified, these issues are addressed through modification of systems or accounting for any adverse impacts. The same issues rarely reoccur resulting in demonstrated progress according to assessment criteria.</p> <p>Moderate: M&E results are analysed but action is taken only when a pattern or reoccurrence of disappointing or unforeseen results can be detected. The same issues reoccur, however some progress according to assessment criteria is demonstrated.</p> <p>Poor: The results of M&E activities are not reviewed in great detail and are retained primarily for record-keeping purposes. The same issues frequently reoccur and little improvement is demonstrated over time.</p>

ANNEX B. ENGAGING WITH INDIGENOUS PEOPLES

In many respects the same steps and principles for meaningful stakeholder engagement and due diligence outlined in the core of this guidance will apply in the context of engagement with indigenous peoples. However, as a component of their right to self-determination and collective rights with regard to land and cultural integrity indigenous peoples should be able to determine and protect their own way of life. Thus, certain characteristics of indigenous peoples will require special consideration including: their governance institutions, practices and associated right to self-determination; their customary land tenure rights; their spiritual and cultural heritage; their historical discrimination; their unique and at times vulnerable position in society; their recognition under international law, as well as at times special legal status under national legislation and policy.

Extractive activities that involve indigenous peoples should be aware of these unique considerations.

1. Understanding context

In the context of operations that impact indigenous people, a strong understanding of the local context will be particularly important specifically with regard to understanding the legal status and rights of indigenous peoples, the historical marginalisation or discrimination of certain groups and their cultural and organisational characteristics (see Table B(1) for more information).

- ➔ In addition to consultation with technical staff and local sources, legal expertise should be sought to clarify legal obligations with regard to engagement with indigenous peoples. Stakeholder facing staff should also pre-consult with indigenous peoples themselves or experts on the particular indigenous group with due regard for objectivity.⁷⁵

⁷⁵ See Recommendations to Site-Level Staff, Step 1 B: *Vetting information for accuracy*, p. 22 of this Guide.

When engaging with indigenous peoples special attention should be paid to the following information:

Table B(1): Understanding context when engaging with indigenous peoples

Type of information	Description
Regulatory context	Expectations, commitments or legal requirements for engaging with indigenous peoples about resource development, specifically whether there are domestic legal requirements to obtain free, prior and informed consent (FPIC) from indigenous peoples for extractive activities; recognition of the collective rights of indigenous peoples; special legal status of indigenous peoples under domestic law or lack of recognition of indigenous peoples' rights in domestic legal frameworks.
Land rights: Customary land tenure	Pre-existing land uses; existence of customary land tenure rights; ⁷⁶ extent of customary tenure systems (over land, surface, subsoil resources); whether such customary tenure is formally recognised in the jurisdiction.
Self-governance	Indigenous peoples governance structures, legal systems and processes for decision making, consultation and giving or withholding consent.
Historical marginalisation or discrimination	These may include discriminatory laws, social stigmatisation and poor or non-existent service delivery arrangements.
Cultural and spiritual heritage	This may include 'tangible' aspects (e.g. archaeological sites, buildings etc.) and 'intangible' aspects (e.g. oral traditions, languages, beliefs, religion and traditional practices like hunting) ⁷⁷ or genetic resources or traditional knowledge.

2. Ensuring that indigenous peoples are appropriately identified and prioritised

- ➔ At the site-level, enterprises should consider the unique characteristics of indigenous peoples and identify all the collective rights of indigenous peoples, as well as the human rights of indigenous individuals which are potentially impacted by their activities.

⁷⁶ Questions to consider: Is the land used by indigenous peoples used to support traditional livelihoods (e.g. shifting cultivation, nomadic grazing, fishing, hunting, and harvesting of forest resources)? Is the land accessed (or avoided) for cultural, spiritual or religious purposes (e.g. religious ceremonies, festivals), or has it been in the past? Is there evidence that indigenous peoples have inhabited or used the land in the past (e.g. the presence of 'tangible' cultural heritage such as indigenous rock art or cultural artefacts)? See ICMM, *Good Practice Guide: Indigenous peoples and Mining* (2010) for more information.

⁷⁷ Guidance on documenting cultural heritage can be found in Rio Tinto *Why Cultural Heritage Matters: A Resource Guide for Integrating Cultural Heritage Management into Communities Work at Rio Tinto* (2010).

Box 5: Identifying Indigenous Peoples

There is no single definition of indigenous peoples. However, the ILO, drawing from its Convention No. 169, has referred to indigenous peoples as a distinct social and cultural group possessing the following characteristics in varying degrees:

- Self-identification as members of a distinct cultural group.
- Traditional lifestyles.
- Culture and way of life different from the other segments of the national population, e.g. in their ways of making a living, language, customs etc.
- Own social organisation and traditional customs and laws.⁷⁸

In some contexts local law does not recognise indigenous peoples. However self-identification as indigenous or tribal should be regarded as a fundamental criterion for identifying tribal or indigenous peoples.⁷⁹

Regardless of the recognised legal framework in which an operation takes place, indigenous peoples may experience adverse impacts differently or more severely than other stakeholder groups, based on their relationship to their land which often plays a major role in social, cultural and religious practices, and their culture and socio-economic status.

- **Land:** Indigenous peoples often have a special connection with and rights to land – whether or not these are officially recognised – which distinguishes them from other stakeholder groups. Thus, impacts related to land such as a lack of access or degradation of land may touch indigenous peoples more severely than other stakeholder groups. For example, fully compensating for losses based on damage to land for indigenous people may be difficult or impossible due to the intangible value associated with sacred sites or areas of cultural significance. Furthermore, the customary land rights of indigenous people at times may not be recognised by national laws.
- **Culture:** Indigenous peoples may possess unique cultural values and characteristics which may be negatively impacted. For example, issues of privacy can be of particular importance to indigenous peoples, in such instances appropriate engagement practice could include seeking consent when recording information about rituals, ceremonies and rites of passage to assure against disruption of cultural life. Additionally, given that indigenous peoples' way of life is usually intimately linked with their territories, resettlement may lead to a loss of social

⁷⁸ For a definition in an international treaty see ILO Convention on Indigenous and Tribal Peoples, 1989 (No. 169) :

'Tribal peoples: their social, cultural and economic conditions distinguish them from other sections of the national community, and their status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;

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

The Convention refers to indigenous and tribal peoples, recognizing for both groups the same set of rights. Stakeholder engagement should relate to both these peoples irrespective of how they are referred to in the national context.

⁷⁹ See ILO Convention 169, Art. 1.2

networks, cultural erosion and loss of language. Employment in large-scale business activities may likewise be a detriment to traditional activities.

- **Socio-economic status:** In many parts of the world, indigenous peoples are among the most marginalised and vulnerable segments of the population. They often face discrimination and experience high levels of poverty and social disadvantage. Often, indigenous peoples are less informed about and less able to defend their rights and cultural heritage. This means indigenous peoples may be less resilient to shocks and to adverse impacts and may be more vulnerable towards serious economic and social consequences. Additionally, indigenous peoples' livelihoods are often directly linked to the land. Thus, environmental impacts and / or land acquisition and resettlement by the extractive sector can have an adverse impact on indigenous peoples' livelihoods.

3. Establishing the necessary support system for meaningful stakeholder engagement with indigenous peoples

- ➡ All staff that may come into contact with indigenous peoples should be trained to demonstrate respect for their culture, way of life, governance systems, traditional knowledge, and rights to and special connection with their lands, territories and natural resources.

Staff can demonstrate respect for indigenous peoples' culture by learning local customs and language. The ability to speak the local language, even at a 'courtesy' level, will be helpful.

- ➡ Resources to support the engagement with indigenous peoples (e.g. technical and legal support, community capacity building, local facilitators as well as opportunity costs for communities of engaging in the process) should be agreed on and communicated to the indigenous peoples being engaged with from the outset.

As many indigenous communities represent marginalised communities who may live in isolation from broader communities they may require additional support to be able to engage adequately.

4. Designing appropriate and effective stakeholder engagement activities and processes

A. Identifying which mode of engagement is needed or required

- ➡ Companies should always obey domestic laws and regulations as well as respect applicable internationally recognised human rights concerning indigenous peoples and their own operating requirements.

- *Is consent required?*⁸⁰

Many international instruments express a State duty to engage in consultation to obtain the free prior and informed consent (FPIC) of indigenous peoples. For example, the concept of FPIC is found at the international level in policy documents such as the UN Declaration on the Rights of Indigenous People and International Labour Organization Convention No. 169 (ILO 169) on Indigenous and Tribal

⁸⁰ As noted in subsection 1 of this annex, legal expertise should be sought to clarify legal obligations with regard to engagement with indigenous peoples.

Peoples.⁸¹ The Inter-American Commission on Human Rights has also referred to it at the regional level and it has been recognised by the Inter-American Court of Human Rights.⁸² The OECD MNE Guidelines make reference to UN instruments on the rights of Indigenous Peoples in the context of adverse human rights impacts; however they do not include any language on Free, Prior and Informed Consent (FPIC).⁸³

Although several multilateral standards refer to FPIC, whether indigenous peoples have the right to FPIC, and how FPIC should be understood in practice has been widely debated. For example some States, civil society organisations and indigenous groups advocate for FPIC as the right of indigenous peoples to grant or withhold approval for actions affecting their rights. Other States approach the concept of FPIC as calling for a process of meaningful consultation with indigenous peoples on issues of concern to them and make explicit that FPIC is not interpreted to provide indigenous peoples with a veto.

It has been argued that international standards with regard to FPIC should apply equally to non-State actors, such as extractives operations. Additionally many countries have national laws consistent with a commitment to consult and cooperate to obtain FPIC, although few have yet adopted laws that explicitly mention FPIC.⁸⁴

- *Is consent expected under company policy, financing agreements or other operating requirements?*

The expectation of non-State actors to obtain the FPIC of indigenous peoples may also be included in financing conditions of private or international financial institutions, for example the Performance Standards of the IFC require FPIC of Indigenous Peoples in certain contexts.⁸⁵ Additionally it is increasingly reflected in corporate policy, or operational considerations. FPIC may likewise be referenced in voluntary standards.⁸⁶

- *Would proceeding without consent pose a significant risk to rights-holders or operations?*

⁸¹ The key international instruments relating to indigenous peoples are the United Nations Declaration on the Rights of Indigenous Peoples (2007) (UNDRIP) and the International Labour Organization Convention No. 169 (ILO 169) on Indigenous and Tribal Peoples. The UN Declaration on the Rights of Indigenous Peoples recommends that States consult and cooperate with indigenous peoples concerned in order to obtain their free, prior and informed (FPIC) in a number of situations, including the approval of projects affecting their land and territories or other resources (See Articles 19 and 32). The ILO Convention No. 169, which is legally binding, requires State parties to consult with indigenous peoples with the objective of reaching agreement or consent on proposed measures (see Article 6).

⁸² Inter-American Commission on Human Rights, Indigenous and Tribal Peoples' Right over their Ancestral Lands and Natural Resources: Norms and Jurisprudence of the Inter-American Human Rights System. Chapter IX Rights of Participation, Consultation and Consent; See *Kichwa Indigenous People of Sarayaku v. Ecuador, Merits and Reparations, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 245, ¶ 127 (June 27, 2012)*.

⁸³ See OECD Guidelines for Multinational Enterprises (2011); Chapter IV, paragraph 40

⁸⁴ FAO, Respecting free, prior and informed consent – practical guidance for governments, companies, NGOs, indigenous peoples and local communities in relation to land acquisition (2014), p. 7

⁸⁵ See IFC, Guidance Note 7 (2012)

⁸⁶ Voluntary standards including FPIC include among others ECOWAS Directive on the Harmonization of Guiding Principles and Policies in the Mining Sector (2009), African Commission on Human and Peoples' Rights, 224: Resolution on a Human Rights-Based Approach to Natural Resources Governance (May 2012).

Irrespective of regulatory or operational requirement, throughout their project planning enterprises should anticipate that indigenous peoples may expect consultation seeking FPIC and that risks may be generated if such expectations are not met.⁸⁷

➡ In countries where domestic laws and regulations mandate different approaches to engaging with indigenous peoples or fall short of clear recommendations on community consultation, companies should consider local expectations and seek an engagement strategy that meets stakeholder expectations to the extent that it does not place them in violation of domestic law. In this regard, the following key steps may be useful to engage with indigenous peoples:

- Agree with affected indigenous peoples on a **process for working towards FPIC and commit to this process through a formal or legal agreement.**⁸⁸ The process should be based on good faith negotiation free of coercion, intimidation or manipulation.
- Consult on **what constitutes appropriate consent** for affected indigenous peoples in accordance with their governance institutions, customary laws and practices, for example, whether this is a majority vote from the community or approval of the council of elders. Whatever measure of consent is decided, it should demonstrate that the project has the broad consensus of the community.
- Ensure that consultations seeking consent occur **before activities commence or any adverse impacts have occurred.**
- Recognise that consent is not a static, one-off activity. If consent is given, agree on what specific activities have been given consent for, what negotiations are ongoing and if and when consent for other activities or project milestones is required.⁸⁹
- **Document commitments/agreements** that have been reached, including, as relevant, specification of what activities appropriate consent has been granted for and areas of ongoing negotiation, and share them with the indigenous community in a form and language they can understand and in a timely manner.
- Determine what action (s) can be taken in the event that: a) indigenous peoples refuse to enter into negotiations; and b) indigenous peoples do not agree/give their consent for activities in their territory (see Box 6 below).

⁸⁷ For example, of what general expectations communities may have with relation to FPIC, see Oxfam Australia, Guide to Free Prior and Informed Consent (2014); Doyle C. and Carino J., Making Free Prior and Informed Consent a Reality: Indigenous Peoples and the Extractive Industries, Middlesex University, PIPLinks & ECCR (2013).

⁸⁸ It has been suggested that FPIC can be understood as a heightened and more formalised form of community engagement. As a result, in certain cases companies may be motivated to enter into a more formal consultation process when developing an extractive process on or near indigenous territory that may have significant adverse impacts. See Lehr & Smith, Implementing a Corporate Free Prior Informed Consent Policy, Foley Hoag, 2010, p. 8). The World Resources Institute advises companies trying to overcome the challenges of operationalising FPIC procedures through legal recognition of the process – ex. formal agreement, in combination with other good stakeholder engagement practices. See World Resources Institute, Development without Conflict: The Business Case for Community Consent (2007).

⁸⁹ For example milestones commonly include a significant expansion of operations, while triggers may include the need for resettlement.

Box 6: Responding to Lack of Consent or a Refusal to Engage

When consent is withheld by an indigenous community a company should consult with the community to understand the reasons behind the lack of consent and whether ongoing concerns can be addressed or accommodated. Consent previously granted under free, prior and informed conditions should not be withdrawn arbitrarily.

In cases where their consent is not forthcoming or where indigenous peoples refuse to engage, material risks to the company and human rights risks to indigenous peoples may be generated.

Enterprises should respect the human rights of individuals belonging to specific groups or populations that require particular attention, where they may have adverse human rights impacts on them. In this connection, United Nations instruments have elaborated further on the rights of indigenous peoples.⁹⁰ In situations where proceeding with projects will cause adverse human rights impacts to indigenous peoples a company should take the necessary steps to cease or prevent such impacts.⁹¹

Enterprises should consider the conditions in accordance with international standards under which the extractive operations should not be implemented, regardless of any authorization by the State to do so.

If through its due diligence processes⁹² a company concludes that consent is required, activities should not proceed in situations where there is a lack of consent.

B. Identifying and applying best practices

Best practices for modes of engagement with indigenous peoples will largely mirror those of the core guide; however, additional care will have to be taken to ensure that traditional processes and norms are reflected in engagement activities with indigenous peoples.

➔ Indigenous peoples should be consulted and their full and effective participation and involvement ensured in designing engagement activities as well as during impact assessments, and throughout monitoring and evaluation activities.⁹³ Indigenous peoples should also be consulted during initial project planning.

Unless otherwise requested by indigenous communities traditional decision-making processes should be integrated into the design and implementation of stakeholder engagement activities. This promotes mutual respect and trust between enterprises and indigenous peoples and reduces the chance of misunderstandings when important decisions about projects are made.⁹⁴

⁹⁰ OECD Guidelines for Multinational Enterprises (2011), Chapter IV, para 40

⁹¹ OECD Guidelines for Multinational Enterprises (2011), Chapter II B para 18-19, Chapter IV, para 42.

⁹² As noted in subsection 1 of this annex, legal expertise should be sought to clarify legal obligations with regard to engagement with indigenous peoples.

⁹³ See the Akwe Kon Guidelines on the conduct of social, cultural, spiritual and environmental impact assessments for best practices in impacts assessments with regard to indigenous peoples (2004). Chapter I.3(a); Chapter II.C (15)

⁹⁴ See generally, UNHCR, Progress Report on the Study on Indigenous peoples and the Right to Participate in Decision-Making (2010).

Indigenous peoples should be free to exercise their own forms of decision making through their own institutions without interference by companies. Although these vary from context to context, traditional decision making may provide that:

- decisions are reached through inclusive and participatory processes;
- dispute resolution processes are led by leaders or council members;
- wisdom and experience play an important role;
- the resolution of disputes occurs through consensus;
- the restoration of community peace, unity and harmony, rather than punishment, is the primary objective.

Likewise, processes for addressing grievances should be culturally appropriate and developed with due consideration to, or make use of, the affected indigenous people's judicial and customary dispute settlement mechanisms.

- ➔ In dealing with indigenous peoples, companies should respect their authorities and organisations and the communities' choices of representatives in accordance with their own procedures. Decisions made by the communities' chosen representatives should not be undermined by subsequent attempts to approach community members.

ANNEX C: ENGAGING WITH WOMEN

While the core steps and principles outlined in this guidance apply across all contexts, it is also important to apply a gender perspective through stakeholder engagement to allow enterprises to account for the often unequal power relationships between men and women.

1. Understanding context

- ➔ Staff leading stakeholder engagement should consult gender disaggregated data and identify gender issues during preliminary research to ensure engagement activities and strategies are designed and implemented to appropriately account for gender dynamics.

Gender disaggregated data can be found in secondary sources such as official census statistics, public or NGO surveys, business associations, historical societies, academic studies and local histories or ethnographies where they exist.

The information included in Table C(1) may be relevant to consider in the context of engagement with women:

Table C(1): Understanding context when engaging with women⁹⁵

Type of information	Description
Demographics and social relations	Proportion of households headed by women; comparative wealth between female-headed households and male-headed households. Differences in health indicators between men and women. Differences between the daily activities and responsibilities of women and men (e.g. division of labour for various aspects and stages of farming).
Marginalisation or discrimination	Whether women are restricted from filling certain occupations, or denied access to education or health services. Whether physical, or sexual harassment or abuse exist in the workplace, household or community environments.
Culture	How local cultural traditions and social expectations define gender roles for men and women.
Power dynamics	Whether there are differences between men and women in decision making in the home, the community, in places of worship or in village councils. Whether there are differences between women's and men's access to and control over resources and the reasons behind these differences.

2. Ensuring that impacted women and their interlocutors are appropriately identified and prioritised

- ➔ At the site level stakeholder facing staff should consider how impacts may vary across stakeholders based on their gender and identify the most at vulnerable stakeholders in this regard.

Some of the impacts may affect men and women differently.⁹⁶ For example:

⁹⁵ Table adapted from Adapted from the World Bank, Gender responsive social analysis: A Guidance note, p. 17. (2005)

⁹⁶ For gender impact assessment framework for mining projects, see Hill, C. and Newell, K., Women, Communities and Mining: The Gender Impacts of Mining and the Role of Gender Impact Assessment. Carlton: Oxfam Australia (2009)

- Payment of royalties or compensation to men as the head of the family can deny women access to and control over financial benefits, and may exclude female-headed households. It also skews power relations between men and women, reinforcing women's economic dependence on men.
- Environmental impacts can increase women's domestic workload, for example, having to walk greater distances to access water, wood, forest products or arable land for subsistence farming.
- Employment of mostly men to the new extractive project may result in increased domestic and community-based workload for women, as male labour is taken away from traditional subsistence activities.
- Social dislocation and gender imbalance caused by in-migration of a transient male workforce can place women at risk of health and security impacts, such as sexual violence, sexually transmitted diseases and increased alcohol abuse in the community.

The position of individual women within stakeholder groups depends on a number of intersecting factors, such as age, disability, marital status, education, income and wealth. Women that may be particularly vulnerable to adverse impacts may include:

- female heads of households
- female children
- elderly women
- women with disabilities or ill-health
- women discriminated against due to their race, class, caste or sexual orientation
- unemployed or low-income female workers
- sex workers

➡ Enterprises should identify female leaders who are able to engage effectively, but should not assume that high-profile women speak for all women within a particular social group.

3. Designing appropriate and effective stakeholder engagement activities and processes for engagement with women

➡ Enterprises should aim for gender balance in staffing for stakeholder engagement.

Usually, female stakeholders will be more comfortable engaging when they can see women working alongside men within the organisation.

➡ When selecting modes of engagement, enterprises should include forms of engagement that are more likely to result in equal participation by men and women. This may involve:

- reaching out to women who are unable or unlikely to leave their homes to attend meetings;
- meeting exclusively with women, or with established women's groups;

- targeting consultations or information dissemination in clinics, schools or other locations frequented by women.

4. Monitoring and evaluation of inclusive engagement with men and women

➡ Gender specific indicators should be incorporated into monitoring and evaluation activities of stakeholder engagement.

Potential indicators may include:

- Number of women in leadership positions within the stakeholder group engaged by the enterprise.
- Number of women in total within the stakeholder groups engaged by the enterprise (disaggregated by intersecting factors, such as age, socio-economic status, disability, literacy).
- Level of satisfaction in participation in stakeholder engagement activities, by gender.
- Level of involvement in activities, such as consultative meetings, participatory monitoring, agreement-making, by gender.

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ANNEX D: ENGAGING WITH WORKERS AND TRADE UNIONS

Workers employed by extractive companies, subcontractors and service providers are unique stakeholders due to their legal identity and relationship with the enterprise. In addition to the codified modes of engagement in industrial relations, which generally govern relationships and engagement between workers and employers, this module offers practical guidance on engaging with workers and their representatives to avoid adverse impacts and optimise benefits from extractive activities.

1. Understanding context

Legal obligations with regard to workers are important for stakeholder-facing staff to understand; however, due diligence of general legal requirements for employment is likely to be conducted at the corporate level prior to investment in a project.

- ➔ Those leading stakeholder engagement activities on site should consult with the relevant individuals at the corporate level as well as with union leaders to understand the history of industrial relations and the leading interests of workers. In context, where unions are not established workers themselves can be consulted with in addition to the sources highlighted in section II of this guide.⁹⁷

Some of the key information that should be understood in the context of engaging with workers is listed below.

Table D (1): Understanding the context to engage with workers

Type of information	Description
Regulatory Framework and Relevant Standards	<ul style="list-style-type: none"> Workers' rights (e.g. freedom from discrimination, freedom of association, the right to collective bargaining, and the right to safe working conditions, referenced in the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy and OECD MNE Guidelines, Chapter V). Laws on working standards and industrial relations (e.g. minimum wage, maximum working hours, safety standards etc. often included in national employment or labour laws, and collective bargaining agreements). Provisions for preferential local employment (often included in contracts and or industry agreements, or the national mining or petroleum code). Grievance procedures, consultation procedures and other factors governing the employment relationship and the management-labour relationship (often included in collective bargaining agreements).
History of Industrial Relations	<ul style="list-style-type: none"> History and context of industrial relations and unions operating in the particular sector (e.g. violence against workers attempting to organise; discrimination against trade union activists; inter-union conflicts, whether unions are genuinely representative of workers' interests, government treatment of unions); context of working conditions in practice (wages and benefits; social protection and social security, occupational health and safety).
Employee profiles	<ul style="list-style-type: none"> Number of workers employed by an enterprise and their contractual relationships (e.g. direct employees, subcontractors and other third party service providers).

⁹⁷ See specifically Recommendations to Site-Level Staff Step 1A: *Consulting the right sources* pp. 20-21 of this Guide.

2. Ensuring that workers and their interlocutors are appropriately identified and prioritised

➔ Companies should ensure all potentially impacted or vulnerable workers are identified as such during stakeholder identification exercises.

Table D (2): Potential adverse impacts to workers of extractive activities

Issue	Examples of adverse impacts	Factors increasing likelihood of adverse impacts
Job insecurity	Inconsistent demand for labour results in higher job insecurity for workers.	<ul style="list-style-type: none"> ➤ Volatility of commodity markets ➤ Uncertainty regarding operation expansions or lifecycle ➤ Uncertainty regarding financing for the project
Health and Safety	Dangerous working conditions in the extractive industry can pose health and safety risks to workers. Working in isolated environments can pose a risk of mental health issues amongst workers.	<ul style="list-style-type: none"> ➤ Lack of safety equipment or training ➤ Use of old equipment ➤ Migrant worker population, living in isolation
Forced Labour	In some cases local law or practice may contradict company policy or international standards. ⁹⁸	<ul style="list-style-type: none"> ➤ Remote location of mineral and energy resources often requiring migrant workers
Child Labour	In some cases local law or practice may contradict company policy or international standards. ⁹⁹	<ul style="list-style-type: none"> ➤ Different local norms regarding child labour ➤ Little domestic regulation of child labour ➤ There are high levels of poverty in the area and few opportunities for employment

➔ Enterprises should also consider how certain impacts may vary amongst different stakeholder groups and identify the most vulnerable groups to prioritise for engagement.

Note that workers are a diverse group of people and that some may be more exposed to the risk of adverse impacts than others. Attention should be given to those who are most likely to be adversely impacted. For example:

- Workers with family responsibilities may be more seriously impacted than others by long shifts or inflexible working hours.

⁹⁸ E.g. [ILO Forced Labour Convention, 1930 \(No. 29\)](#); [ILO Abolition of Forced Labour Convention, 1957 \(No. 105\)](#); [ILO Protocol of 2014 to the Forced Labour Convention, 1930](#) and [Forced Labour \(Supplementary Measures\) Recommendation, 2014 \(No. 203\)](#)

⁹⁹ E.g. [Minimum Age Convention, 1973 \(No. 138\)](#); [Worst Forms of Child Labour Convention, 1999 \(No. 182\)](#)

- Workers employed by sub-contractors such as construction workers may be numerous and particularly exposed to health and safety risks. Their rights to freedom of association and collective bargaining may also be more limited than those employed directly by the enterprise.

➔ Companies should engage with appropriate worker representatives.

Where there are bona fide trade unions present they will be the right representatives to consult with on behalf of direct employees. A bona fide trade union is an entity which the workers control themselves, and is accountable only to those workers.

Where there are no trade unions active, the enterprise should work with the workers to identify appropriate representatives. Encouraging workers to elect their own representatives through procedures for free and independent elections is something that can be done regardless of whether a bona fide trade union is present. Useful guidance for identifying appropriate representatives can be found in the core of this guide.¹⁰⁰

3. Designing appropriate and effective stakeholder engagement activities and processes

➔ Specific external challenges to engagement with workers identified and strategies to respond to challenges should be developed during the planning phase and revised according to changing circumstances and feedback.

Type of Challenge	Explanation	Strategy
Perceptions of inequity in employment practices	<p>Migrant workers may be perceived as having access to employment opportunities and other benefits that local people feel entitled to resulting in tensions.</p> <p>Perceptions of inequity in the way that workers are treated risks a dissatisfied and divided workforce.</p> <p>If expectations regarding employment for local workers are not met relationships with the company may be damaged.</p>	<ul style="list-style-type: none"> • Be transparent about recruitment criteria and processes • Where possible try to optimise local employment opportunities • Manage expectations as far as possible.¹⁰¹

¹⁰⁰ See specifically Recommendations to Site-Level Staff, Step 2 B: *Identifying representatives or interlocutors for stakeholder groups*, p. 35 of this Guide.

¹⁰¹ See Table IV(2) Responding to Common Challenges to Meaningful Engagement, p. 53 of this Guide for additional guidance on managing expectations.

<p>Poor industrial relations</p>	<p>In some cases local law or practice may contradict company policy or international standards on industrial relations. In some contexts there may simply not be a developed culture of strong industrial relations.</p>	<ul style="list-style-type: none"> • Clearly and widely communicate company commitment to respect industrial relations standards.¹⁰² • In cases where local law contradicts company standards and policy, needs and expectations should be clearly communicated and negotiated up front, prior to the commencement of operations.¹⁰³ • Companies may try to facilitate adherence to industrial relations standards by: <ul style="list-style-type: none"> ○ establishing company-specific collective bargaining mechanisms ○ encouraging workers to elect their own representatives through procedures for free and independent elections, ○ establishing a Global Framework agreement with a sectoral trade union body in order to jointly support sound industrial relations).
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➔ All workers involved in a project should be engaged with regardless of the nature of their employment relationship with the enterprise. Modes of engagement should be adapted as appropriate based on where trade union representation exists.

For **workers represented by a trade union**, engagement should take place with a trade union over individual engagement.¹⁰⁴ Attempting to bypass unions in order to settle matters exclusively on an individual basis may be contrary to meaningful engagement.

For **workers not represented by a bona fide union**:

- The company should make any effort to allow for workers to conduct free election of representatives as well as for national and sectoral unions to enter the premises and engage with workers.
- In countries where formal trade unions are banned or government-controlled, enterprises should still take steps to promote consultation and co-operation between employers and workers on matters of mutual concern.
- The enterprise should assign someone to set up and maintain a process for two-way worker-management communication and ensure that worker representatives in this process are chosen by the workers.
- Workers should be allowed to choose their own representatives and engage collectively with management.

¹⁰² As articulated in the OECD MNE Guidelines, Chapter V: Employment and Industrial Relations and ILO Core Conventions, e.g. Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) ; Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

¹⁰³ See *Positioning stakeholder engagement strategically*, p. 15.

¹⁰⁴ For more general and detailed guidance from a trade union perspective on the OECD Guidelines, refer to the TUAC [Trade Union Guide to the OECD Guidelines for Multinational Enterprises: Recommendations for Responsible Business Conduct in a Global Context](#) (2012).

- Engagement with workers should be as inclusive as possible. For example, meetings should be scheduled at a time when most workers are able to attend. If the site operates on a number of shifts, more than one meeting should be held so that workers on different shifts may participate.
- If a formal process for engagement has not been set up, efforts should be made to engage informally. This is especially the case in repressive country contexts, where workers may be afraid to form or join an organisation or voice grievances in a formal setting.

Additional specific measures could be taken such as:

- Providing free facilities to workers' representatives in order to regularly and freely meet workers on the premises.
- Providing information to workers' representatives which is needed for meaningful negotiations on conditions of employment and information and which enables them to obtain a true and fair view of the performance of the entity or, where appropriate, the enterprise as a whole.
- Reasonable notice to representatives of workers when considering changes in their operations which would have major employment effects.
- An agreed grievance mechanism accessible to all individuals working at an extractive project site, including direct enterprise employees and contract and agency workers.
- Whistle-blower protection to protect anonymity and assurance against reprisals for lodging complaints or reporting violations.
- Establishing cooperation with labour inspectorates as a matter of priority.

ANNEX E: ENGAGING WITH ARTISANAL AND SMALL-SCALE MINERS

There are an estimated 25 million artisanal and small-scale miners (ASM) operating in over 50 countries and about 150 million people depend directly or indirectly on this activity for their livelihood.

Although ASM is often associated with negative impacts such as environmental degradation, dangerous working conditions and organised crime, it can also be a tremendous driver for economic growth in rural areas of developing countries. ASM can provide employment, increase local purchasing power, stimulate local economic growth and slow urban migration.

The often unclear legal status of ASM, and the serious risks and impacts that large-scale mining operations can have on ASM activity, and vice versa, make artisanal and small-scale miners and the government authorities regulating ASM activity unique and important stakeholder groups to engage with.

1. Understanding context

➔ In order to ensure a good understanding of the extent and nature of the artisanal mining activity stakeholder-facing staff should consult local legal sources about the legal status of artisanal activity as well pre-consult with miners themselves.

Some of the key information that should be understood in the context of engaging with artisanal and small-scale miners is listed below:

Table E (1): Understanding the landscape to engage with workers

Nature of ASM activity	How many artisanal miners are operating in and around the concession? How long have they been present on the concession? Do they operate seasonally or full time? Is activity increasing, decreasing or stable? What technology or methods are used? What are the drivers of ASM (mineral prices, poverty, traditional activity)?
Legal status of ASM activity	Is ASM legal, illegal, formalised or informal? What, if any, is the formalisation process for ASM? To what extent does the local regulatory environment allow for authorisation of ASM?
Demographics and relations	Where do the artisanal miners come from? What is the relationship with the local community? What is the relationship with prior operators in the region (if relevant)?
Human rights context	Is ASM in any way affiliated with conflict financing and serious infringements of human rights? ¹⁰⁵ Are there indications of the worst forms of child labour? ¹⁰⁶

¹⁰⁵ For additional guidance see [OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High Risk Areas](#) (Second edition) OECD (2013).

¹⁰⁶ The worst forms of child labour have been defined by the International Labour Organization, [Article 3 of ILO Convention No. 182](#).

2. Ensuring that artisanal miners are appropriately identified and prioritised

➔ Companies should identify the extent and scale of artisanal miners that may be impacted by their operations.

ASM activity can vary significantly and as such there is no one clear definition of it. However, key features of ASM may include:

- Reliance on simple techniques and physical labour with minimal machinery or technology used.
- Operations without legal mining titles (concession, claim) or a valid contract with the title holder.
- Low productivity since ASM often takes place in very small or marginal plots, is limited to surface or alluvial mining, and uses inefficient techniques.
- Lack of safety measures, healthcare or environmental protection.
- Seasonal activity (e.g., to supplement farm incomes) or temporary activity in response to high commodity prices.
- Economic insecurity.¹⁰⁷

While often the legal status of ASM is at best uncertain, understanding the 'legitimacy' of ASM will be an important factor in shaping an engagement strategy. It is important to note that a lack of legal status or formality, however, is not prima facie indication that ASM activity is illegitimate. See Box 8 for more detail.

Box 7: Legitimate artisanal and small-scale mining¹⁰⁸

The legitimacy of artisanal and small-scale mining is a difficult concept to define because it involves a number of situation-specific factors. For the purposes of this guide, legitimate refers, among others, to artisanal and small-scale mining that is consistent with applicable laws.

When the applicable legal framework is not enforced, or in the absence of such a framework, the assessment of the legitimacy of artisanal and small-scale mining will take into account the good faith efforts of artisanal and small-scale miners and enterprises to operate within the applicable legal framework (where it exists) as well as their engagement in opportunities for formalisation as they become available (bearing in mind that in most cases, artisanal and small-scale miners have very limited or no capacity, technical ability or sufficient financial resources to do so).

In either case, artisanal and small-scale mining, as with all mining, cannot be considered legitimate when it contributes to conflict and serious infringements associated with the extraction, transport or trade of minerals.

¹⁰⁷ List adapted from Hentschel, T. et al., Global Report on Artisanal & Small-Scale Mining, Minerals Mining and Sustainable Development (2002)

¹⁰⁸ Adapted from OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High Risk Areas (Second edition) OECD (2013), Supplement on Gold, Definitions

The principal potential adverse impacts to artisanal and small-scale miners of formal mining operations are economic and security related. For example:

- A loss of livelihoods, and hence disruption of local communities that can be entirely dependent on ASM can occur when artisanal miners are prohibited from working on a concession.
- Local police and armed forces can present a security and human rights risk to artisanal miners operating illegally on the concession when excessive force is used.

3. Designing appropriate and effective engagement activities and processes

➔ Companies should carefully consider how they plan to respond to ASM activity to shape their engagement activities.

In the context of ASM, deciding on the objectives of engagement will be one of the most important aspects of the engagement activity. Depending on the nature and context of the ASM activity (e.g. whether it is 'legitimate' or not, whether there are severe human rights risk, the availability of alternative livelihoods, etc.) a decision will have to be made on whether and to what extent engagement will focus on cooperation around continued ASM activity or engagement on how ASM activity can be ceased without causing adverse impacts to communities reliant on the activity.

In terms of risks to the company, poor engagement with artisanal and small-scale mining communities can lead to conflict and confrontation with the company and loss of resources through continued unregulated activity. However, engagement focused around cooperation and integration of ASM could lead to social development and poverty reduction through mineral development.

Depending on the context the aims of engagement could be:

- Regularisation/Formalisation of ASM
- Establishment of Alternative Livelihood Programs
- Execution of Resettlement Action Plan for ASM Miners
- Purchasing programmes for ASM mineral products
- Employment of ASM as workers
- Segregation of the concession

Guidance on these individual strategies is beyond the scope of this guide but several external resources provide useful recommendations on these themes.¹⁰⁹

¹⁰⁹ Specifically, see CASM (World Bank), ICMM and IFC CommDev, Working Together: How Large-scale Mining can Engage with Artisanal and Small-scale Miners (2010) ; OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High Risk Areas (Second edition). OECD (2013); Responsible Jewellery Council Standards Guidance, (November, 2013).

➔ Specific external challenges to engagement with ASM should be identified and strategies to respond to challenges should be developed during the planning phase and revised according to changing circumstances and feedback from ASM communities.

Many of the challenges relevant for general stakeholder engagement will likewise apply in the context of ASM. However, challenges related to the unregulated and at times dangerous context of ASM warrant special attention.

Table E(2): Potential challenges to engagement with ASM

<p>Distrust, opposition and violence</p>	<p>ASM communities are fearful or distrustful of company based on the assumption that their activities will be repressed or they will be dislocated. Violence may be used to express dissatisfaction with the company or project.</p>	<ul style="list-style-type: none"> • Clarify aims and objectives as a starting point on engagement. • In cases where dislocation will be necessary explain the reasoning and justification behind the dislocation and the benefits of engagement (e.g. to contribute to deciding how dislocation will be accounted for, to provide better information on the available options for the affected stakeholders). • Always avoid responding with violence when taking security precautions. • Ensure adherence to the Voluntary Principles on Security and Human Rights in contracting and managing security personnel. • Reach out to opposition groups and renew invitations to engage in good faith engagement regularly.
<p>Human rights issues</p>	<p>Serious human rights infringements are occurring in the context of ASM such as the worst forms of child labour or support of violent non-state armed groups or criminal networks.</p>	<ul style="list-style-type: none"> • Clearly and widely communicate company commitment to human rights and fundamental freedoms. • If the company does not have the ability to mitigate the situation through applying leverage (e.g. through economic incentives through purchasing programs), any linkage to the activity through business relationships should be avoided.

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