OECD DUE DILIGENCE GUIDANCE FOR

MEANINGFUL STAKEHOLDER ENGAGEMENT IN THE EXTRACTIVE SECTOR

OECD

Context

This document contains the text of the **OECD Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector** approved by the OECD Investment Committee and OECD Working Party for Responsible Business Conduct. An official version of this text is currently being processed for publication.

This Guidance was developed through a multi-stakeholder process with members of the OECD-hosted multi-stakeholder Advisory Group on Meaningful Stakeholder Engagement in the Extractive Sector. This Advisory Group comprises representatives of OECD and non-OECD countries, business, civil society, international organisations and indigenous people's representatives. In 2015 the OECD invited public comment on the draft Guidance to ensure participation from the widest range of stakeholders possible.

This Guidance is intended to provide practical guidance to mining, oil and gas enterprises in addressing the challenges related to stakeholder engagement. It is part of the work the OECD undertakes to create practical sectoral applications for the recommendations found in the OECD Guidelines for Multinational Enterprises.

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

Contact

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FOREWORD

The OECD Guidelines for Multinational Enterprises (the 'OECD Guidelines'), which form an integral part of the Declaration on International Investment and Multinational Enterprises (the 'Investment Declaration'), are the most comprehensive set of recommendations in existence today on responsible business conduct (RBC).

OECD Guidelines for Multinational Enterprises *(OECD Guidelines)*

The OECD Guidelines are one of four parts of the 1976 OECD Declaration on International Investment and Multinational Enterprises, by which Adherents commit to provide an open and transparent international investment environment and to encourage the positive contribution of multinational enterprises (MNEs) to economic and social progress. There are currently 46 Adherents - 34 OECD and 12 non-OECD economies –to the Declaration.[1]

The OECD Guidelines have been revised several times, most recently in 2011. They are the most comprehensive set of government-backed recommendations on what constitutes RBC. They cover nine major areas of RBC: information disclosure, human rights, employment and industrial relations, environment, bribery and corruption, consumer interests, science and technology, competition, and taxation. They are addressed by governments to MNEs operating in and from Adherents.[2]

Each Adherent must set up a National Contact Point (NCP) to further the effectiveness of the OECD Guidelines by undertaking promotional activities, handling inquiries, and contributing to the resolution of issues that arise relating to the implementation of the OECD Guidelines in specific instances. The OECD Guidelines are the first international instrument to integrate the corporate responsibility to respect human rights as set out in the UN Guiding Principles for Business and Human Rights and to incorporate risk-based due diligence into major areas of business ethics related to adverse impacts.[2]

[1] Argentina (1997), Australia (1976), Austria (1976), Belgium (1976), Brazil (1997), Canada (1976), Chile (1997) Colombia (2011), Costa Rica (2013), Czech Republic (1995), Denmark (1976), Egypt (2007), Estonia (2001), Finland (1976), France (1976), Germany (1976), Greece (1976), Hungary (1994), Iceland (1976), Ireland (1976), Israel (2002), Italy (1976), Japan (1976), Jordan (2013), Korea (1996), Latvia (2004), Lithuania (2001), Luxembourg (1976), Mexico (1994), Morocco (2009), Netherlands (1976), New Zealand (1976), Norway (1976), Peru (2008), Poland (1996), Portugal (1976), Romania (2005), Slovak Republic (2000), Slovenia (2002), Spain (1976), Sweden (1976), Switzerland (1976), Tunisia (2012), Turkey (1981), United Kingdom (1976), United States (1976)

[2] Due diligence applies to all the chapters of the OECD Guidelines, except science and technology, competition and taxation.

In 2011 the OECD 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 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 updated OECD Guidelines and in view of the importance of this subject, the OECD Working Party on Responsible Business Conduct, a subsidiary body of the Investment Committee, agreed to develop a Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector and in 2013 set up an OECD-hosted multi-stakeholder Advisory Group to provide substantive input on its development.

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

This Guidance has been developed by the OECD Secretariat based on consultation and feedback from the Advisory Group and work undertaken by the Centre for Social Responsibility in Mining (CSRM). It was approved by the OECD Investment Committee and OECD Working Party on Responsible Business Conduct on December 4, 2015.

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

This Guidance is part of the work the OECD undertakes to support practical sectoral applications for the recommendations found in the OECD Guidelines. The Guidance refers to existing standards to help enterprises observe them and undertake risk-based due diligence. The Guidance only refers to the parts of the OECD Guidelines and other standards that are most relevant to stakeholder engagement and due diligence and does not aim to substitute them. Enterprises should thus refer directly to each of these standards before making any claims regarding their observance. Not all adherents to the Investment Declaration4 endorse the standards considered in this Guidance.

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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 government representatives of Canada, Norway, France, Colombia, the Netherlands, industry representatives from the Business and Industry Advisory Committee to the OECD (BIAC), Canadian Association of Petroleum Producers (CAPP), International Council on Mining and Metals (ICMM), Prospectors & Developers Association of Canada (PDAC), European Association of Metals (EUROMETAUX), Euromines, Mining Association of Canada (MAC), World Gold Council, AngloAmerican, Cameco, Chevron, Cerrejon, Shell, Talisman Energy, Vale, Moores-Rowland Indonesia, civil society representatives from the Trade Union Advisory Committee to the OECD (TUAC), OECD Watch, Oxfam Australia, Partnership Africa Canada, Project of Economic, Social and Cultural Rights (ProDESC), International Work Group for Indigenous Affairs, Green Advocates, International Federation for Human Rights (FIDH), Mining Watch Canada, the Centre for Research on Multinational Corporations (SOMO), Rights and Accountability in Development (RAID), IndustriALL, International Labour Organization (ILO), International Finance Corporation (IFC), Mouvement des Entreprises de France (MEDEF), and representatives from the Sami, Ogoni and Kamchatka communities.

4 The OECD Guidelines form an integral part of the Declaration on International Investment and Multinational Enterprises.

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1. OVERVIEW

Introduction

Enterprises involved in the exploration and extraction of oil, gas and minerals have the potential to generate income, sustain livelihoods, foster local development and generate significant revenues in the areas in which they operate. Such enterprises often operate in remote areas, and can be the first contact local 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, such as human rights infringements, economic set-backs and environmental degradation.

The activities of enterprises involved in exploration for and extraction of natural resources are carried out in the context of laws and regulations that give rights to and place obligations on the enterprises and other stakeholders. These regulations may prescribe that certain types of engagement are to take place, either by enterprises or by the government. Regardless of the requirements in law, meaningful stakeholder engagement is critical to avoiding some of the potential adverse impacts of extractive operations as well as optimising potential contributions.

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

- attaining and retaining a 'social licence to operate' facilitating current and potential future operations and expansions

- early identification of risks of adverse impacts either at the site of extractive operations or along in-country supply chains

- avoiding reputational risks for the enterprise 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 personnel time being diverted to manage grievances

- improving corporate risk profile used by investors 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 Guidance

The aim of the present document is to offer practical guidance for the extractive sector in line with the provisions of the OECD Guidelines on due diligence for stakeholder engagement. Extractive sector enterprises are considered to include enterprises conducting exploration, development, extraction, processing, transport, and/or storage of oil, gas and minerals.

This Guidance 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 Guidance provides a due diligence framework for enterprises operating in the extractive sector to identify and manage risks with regard to stakeholder engagement activities to ensure they play a role in avoiding and addressing adverse impacts as defined in the OECD Guidelines.[1] As such this Guidance is not meant to substitute guides on stakeholder engagement that already exist but to complement them.

Who should use this Guidance?

This Guidance is primarily intended for on-the-ground personnel of extractive sector enterprises that come into contact with communities and stakeholders, or for larger firms, personnel that are responsible for stakeholder engagement activities (the term 'stakeholder facing personnel' is used throughout the Guidance to refer to both types of actors). It also includes recommendations to the executive management of extractive operations. This Guidance can also serve as a reference to stakeholders themselves and the National Contact Points (NCPs) for the OECD Guidelines on approaches recommended to industry. This Guidance does not extend to artisanal or informal extractive activity, although it does offer guidance on stakeholder engagement with artisanal and small-scale miners.[2]

How to use this Guidance

This Guidance is divided into five sections including (1) a due diligence framework for meaningful stakeholder engagement, (2) recommendations for corporate planning or 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 thematic 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 corporate planning, which can be made to management on how to ensure stakeholder engagement is adequately prioritised at an organisational level.

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[1]   See *Important Terms and Scope: Meaningful Stakeholder Engagement and Due Diligence*.

[2]   See Annex E: *Engaging with artisanal and small-scale miners*.

The third section, recommendations to on-the-ground personnel, is the focus and the bulk of this Guidance. This section provides practical due diligence guidance for ensuring that stakeholder engagement is effective at avoiding and addressing adverse impacts. Readers should refer to this section for guidance on best practices, strategies for responding to specific challenges and references to other resources for on-the-ground 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.

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

Due diligence rationales, explaining how the recommended action addresses risks with regard to executing stakeholder engagement, are provided throughout the Guidance.

Important terms and scope

Meaningful Stakeholder Engagement and Due Diligence

Due Diligence

In the context of the OECD 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.[3] The risks identified in a due diligence process encompass adverse impacts related to a range of issues covered by the OECD Guidelines including 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 on-going, proactive and reactive process. It is to be carried out throughout the entire life-cycle of a project. The OECD Guidelines recommend carrying out *risk-based* due diligence, meaning that the nature and extent of due diligence will depend on the risks of adverse impacts related to a particular situation.[4] In the context of this Guidance, this will mean that for operations that are unlikely to result in adverse impacts or operations where the adverse impacts are not significant, enterprises may scale their due diligence efforts accordingly. However, all enterprises regardless of their size and the nature of their operations should conduct due diligence.

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[3]   OECD Guidelines for Multinational Enterprises, Chapter II, Paragraphs A11 and A12.

[4]   OECD Guidelines for Multinational Enterprises, Chapter II, Paragraph A10.

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 that parties freely express opinions, share perspectives and listen 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** depends on the participants of both sides of engagement. It means that the parties engage with the genuine intention to understand how stakeholder interests are affected by enterprise activities. It means that the enterprise is prepared to address its adverse impacts and that stakeholders honestly represent their interests, intentions and concerns.

- **Responsive engagement** means that there is follow-through on outcomes of stakeholder engagement activities through implementation of commitments agreed to by the parties, ensuring that adverse impacts to stakeholders are appropriately addressed including through provision of remedies when enterprises have caused or contributed to the impact(s), and that stakeholder views are taken into account in project decisions.

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

Due Diligence for Meaningful Stakeholder Engagement

Stakeholder engagement is an expectation of responsible business conduct. It is also 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. Stakeholders themselves can contribute important knowledge to help identify potential or actual impacts on themselves or their surroundings. The values and priorities of impacted stakeholders are vital considerations in evaluating impacts and identifying appropriate avoidance or mitigation steps.

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 Guidance does not represent a comprehensive approach to due diligence for the extractive sector but instead recommends due diligence systems and processes to ensure stakeholder engagement activities effectively identify, prevent, mitigate actual and potential adverse impacts and account for how actual impacts are addressed.

Similarly to risk-based due diligence, stakeholder engagement activities may be proportional to the risks and impacts that an extractive operation may cause or contribute to. For example, where

extractive operations will involve resettlement of communities more extensive information sharing, consultation and negotiation may be needed as compared to a situation where impacts are more limited, for instance in the case of modification of local transport routes due to extractive infrastructure.

Stakeholders and Rights-holders

Stakeholders

For the purpose of this Guidance, stakeholders are persons or groups who are or could be directly or indirectly affected by a project or activity. From a due diligence perspective priority should be given to those stakeholders for whom the risk of adverse impacts is greatest or the potential adverse impact is severe or could become irremediable. Priorities for engagement could include but are not limited to:

- potentially impacted local communities (including nomadic communities, communities living near an extractive 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

- farmers

- workers (including local and migrant workers)

- artisanal miners

- host governments (local, regional and national)

- local civil society organisations (CSOs), community-based organisations and local human rights defenders

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.'[5] 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 may be polluted by an extractive operation may be rights-holders. Workers facing discrimination in the workplace are also rights-holders. In addition individual human rights, certain groups such as indigenous and tribal peoples can have collective rights and consequently the group itself may be considered a rights-holder. Identifying rights-holders is the first step to ensure that human rights with regards to these risks are recognised and respected.

Modes of engagement

Throughout the Guidance 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:** one-way communication, generally from the enterprise to stakeholders focused on providing information.

- **Consulting:** communication focused on sharing information and collecting information to adequately understand the project or activity's context and the preferences, concerns and expectations of each party and to ensure all parties learn from one another's perspectives.

- **Negotiating**: two-way communication with the objective of coming to a shared agreement.

- **Responding:** taking action in response to an issue, concern or certain information.

Differences between the mining and oil and gas sectors

The mining and oil and gas sectors share similar characteristics such as the need for large investment, immobile production and potentially significant adverse impacts on stakeholders. There are, however, important differences within and between the extractive industries.[6] These differences have implications for stakeholder engagement at the site level. For example:

- 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.

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[5] The OECD Guidelines refer to the term 'rights-holder' in the context of human rights. Therefore this Guidance uses the term rights-holder in the context of stakeholders subject to real or potential human rights impacts. This is without prejudice to other 'rights' such as land rights etc. See OECD Guidelines for Multinational Enterprises, Chapter IV Paragraph 45

[6] This Guidance provides references to established guidance in both the mining as well as the oil and gas 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.

- The location of resources often determines the number and type of communities affected, as well as the nature of the adverse impacts and their likelihood. 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. Onshore oil and gas extraction often brings with it overland pipelines, whereas other oil and gas products and 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 mining sector than within the oil and gas 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 oil and gas sector take place under Production Sharing Contracts (PSCs), whereby the host government retains ownership of the oil and gas under the ground and the enterprise is entitled to a share of the oil and gas it extracts. PSCs are not prevalent in the mining sector, although Joint Ventures (JVs) with state-owned enterprises feature in both extractive industries. In some jurisdictions, host governments retain ownership of oil and gas in all respects, paying a fee to the enterprise 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 oil and gas licensing to be awarded 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 enterprises 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.

- In addition, exploration enterprises are different from project-based enterprises. The presence of exploration enterprises or prospectors can raise expectations or fears, even if prospecting has a low impact and despite the fact that few prospects result in production.

2. DUE DILIGENCE FRAMEWORK FOR MEANINGFUL STAKEHOLDER ENGAGEMENT IN THE EXTRACTIVE SECTOR

This Guidance 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 Guidance.

In this Guidance, 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 for Corporate Planning or to Management:

1. **Position stakeholder engagement strategically**

   a) Establish and clearly communicate an enterprise policy or commitment on stakeholder engagement.

   b) Integrate stakeholder engagement into core management systems.

   c) Take into account stakeholder engagement issues when forming business relationships.

   d) Establish a feedback loop to integrate stakeholder views into project decision making.

II. Recommendations to On-the-ground Personnel

1. **Take adequate steps so that personnel undertaking stakeholder engagement activities have a strong understanding of the local and operating context**

   a) Consult with technical personnel, local sources and relevant documents.

   > a. Consult technical personnel and where relevant participate in conducting and designing impact assessments.

   > b. Where possible involve stakeholders in designing and conducting impact assessments.

   > c. Conduct preliminary field research.

   b) Vet information for accuracy.

   c) Continuously update understanding.

2. **Ensure that stakeholders and their interlocutors are appropriately identified and prioritised**

   a) Identify and prioritise most severely impacted stakeholders.

   > a. Identify all impacted stakeholders and rights-holders.

   > b. Prioritise vulnerable and most severely impacted stakeholders.

   > c. Verify and update findings.

   b) Verify stakeholder representatives or interlocutors.

   > a. Verify views of constituents are being represented.

b. Re-evaluate representatives as relevant.

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 personnel treat stakeholders with respect.

   c) Provide the support and information necessary for stakeholders to represent their perspectives and interests.

      a. Share material information with stakeholders.

      b. Balance transparency and privacy concerns.

      c. Consult stakeholders to inform information sharing.

      d. Provide the necessary training or resources to stakeholders.

   d) Optimise resources (human and financial) for engagement activities.

      a. Identify and request resources in advance.

      b. Advocate for additional resources and streamline resources in the face of resource constraints.

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 independent external review of stakeholder engagement activities.

   d) Respond to identified shortcomings as relevant.

3. RECOMMENDATIONS FOR CORPORATE PLANNING OR TO MANAGEMET

Positioning Stakeholder Engagement Strategically

Positioning Stakeholder Engagement Strategically: Action Points Summary

- The enterprise and its 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 enterprise.

- Enterprises should integrate stakeholder engagement into regular business operations.

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

- Enterprises should establish systems which provide for integration of stakeholder views into project decision making at a management level.

Due diligence rationale:

Recognising, understanding and adequately communicating the importance of stakeholder engagement at an organisational level mitigates the risks of poor planning or insufficient resourcing of stakeholder engagement activities, lack of consideration of outcomes of stakeholder engagement activities with regard to project decisions, and business relationships being formed which may undermine stakeholder engagement efforts, which can in turn lead to adverse impacts. This is important regardless of the size of the enterprise or the nature of its activities or projects.

The enterprise and its management has a responsibility to ensure that stakeholder engagement is strategically positioned and internalised at all levels of the organisation, while on-the-ground personnel have a responsibility to plan, execute and monitor the implementation of meaningful stakeholder engagement.

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 enterprise.

Commitments should reflect the following:

- Recognition of a long-term view of stakeholder engagement focused on relationship building and avoiding adverse impacts to stakeholders.

- Meaningful stakeholder engagement as a requirement in project or activity planning and execution.

- Alignment with the OECD Guidelines 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.

- The prioritization of most severely impacted and vulnerable groups in stakeholder engagement activities (e.g. woman, children, indigenous peoples).

- Strong policies against the use of force, 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.

- Transparency related to stakeholder engagement, including in public reporting on stakeholder engagement activities, in addition to sharing information and reporting to stakeholders throughout the engagement process.

- Provision of appropriate remedies when the enterprise has caused or contributed to adverse impacts. These could be accessed via grievance mechanisms, mediation or other dispute resolution procedures.[7]

B. Integrating stakeholder engagement into core management systems

➡ Enterprises 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:

- Delegating on-the-ground personnel to lead stakeholder engagement and involving them and stakeholders themselves in conducting transparent social, environmental and human rights impact assessments.

- Integrating stakeholder engagement in central risk assessments and monitoring frameworks.

- Developing secure whistle-blowing procedures and protection so that breaches of policy on stakeholder engagement can be reported safely.

- Developing a process for communicating the importance of stakeholder engagement to all operational levels, including corporate offices, site managers, 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 personnel.

- Including stakeholder engagement in sustainability and social responsibility reporting. [8]

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

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

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[7]   See Recommendations to On-the-ground personnel Step 4(e): *Establishing clear and functional processes to respond to grievances*.

[8]   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).

This is particularly relevant to the selection of contractors and project partners that are anticipated to interact with stakeholders. In this regard the following issues should be considered:

- **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? Are business partners required to agree to adhere to certain codes of conduct or operational standards regarding stakeholder engagement?

- **Anticipating issues:** Has the enterprise discussed with partners or host-governments how instances of misalignment of the enterprise's commitment and approaches to 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 upholding its own policies and values with regard to stakeholder engagement will not be possible?[9]

D. Establishing a feedback loop to integrate stakeholder views into project decision making [10]

Enterprises should establish systems which provide for integration of stakeholder views into project or activity decision making at a management level.

- Establishing direct lines of communication between senior management and on-the-ground personnel involved with stakeholder engagement and a process for communicating potential changes or project decisions under consideration which could impact stakeholders or agreed commitments.

- When relevant, having senior management sign off on additions to the commitments register and report on the fulfilment of commitments or agreements and the provision of remedy. [11]

- When stakeholder perspectives have not been incorporated or commitments and remedies have not been provided as previously agreed to providing an explanation to affected stakeholders of why this is the case.

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

[10]   See Recommendations to On-the-ground Personnel Step 5(a): *Ensuring follow-through*.

[11]   For a description of what should be included in a commitments register see Recommendations to On-the-ground Personnel Step 5(a): *Ensuring follow-through*.

4. RECOMMENDATIONS TO ON-THE-GROUND PERSONNEL

Step 1: Ensuring that personnel leading stakeholder engagement understand the local and operating context

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Step 1: Action Points Summary

- Where relevant personnel leading stakeholder engagement should participate in conducting impact assessments or otherwise consult with technical personnel on anticipated physical impacts of the project.

- If possible there should be participation in designing and conducting impact assessments by personnel leading stakeholder engagement as well as stakeholders themselves.

- Personnel leading stakeholder engagement should also conduct preliminary field research to understand local context and consult other sources as relevant.

- Collected information should be evaluated for accuracy and credibility.

- Information on the local and operating environment should be updated as relevant.

Due diligence rationale:

It is important that personnel leading on-the-ground stakeholder engagement activities understand the scope of impact of the project and the local context in which the project is taking place. If personnel 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. This may mean that adverse impacts may not be addressed or avoided, positive impacts may not be optimised and that avoidable conflict may result.

A. Consulting the right sources[12]

Personnel leading stakeholder engagement activities should understand the local and operating environment. Where relevant they should participate in conducting impact assessments or otherwise consult with technical personnel on anticipated physical impacts of the project. Personnel 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)

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[12] See Table 2 at the end of this section for an overview of information which may be relevant for designing and implementing stakeholder engagement.

or a Human Rights Impact Assessment (HRIA), during the project development phase of a project. [13] HRIAs may also be integrated into SEIAs to streamline assessments.

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 personnel leading stakeholder engagement as well as stakeholders themselves.

Often impact assessments will be subject to regulation of the jurisdiction in which they take place and will have to be conducted in a specified manner. However this does not necessarily preclude stakeholder involvement. For example, financial support can be provided to communities to conduct impact assessments on their own or with experts of their choice to ensure their perspectives align with enterprise findings.[14]

➡ In situations where personnel undertaking 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. during early exploration) consultations with technical personnel 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 research[15]

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 enterprise or with other enterprises operating in the region (e.g. personnel in operations, project planning, exploration, community relations, external affairs, legal counsel, environment, finance, procurement, health and safety).

- Interviews with relevant external parties (e.g. local authorities, 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.

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13   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); IFC's Guide to Human Rights Impact Assessment and Management (2010) and IPECA's Integrating Human Rights into Environmental, Social and Health Impact Assessments December 2013) (p.20). 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).

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

15   For more information on consultation see Recommendations to On-the-ground Personnel: Step 4(c) *Identifying and applying best practices*.

3. Legal sources and other

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

Table 1: Document-based resources for understanding context

Document-based resources
Primary sources:
• Contracts, licenses, relevant regulation and legislation, enterprise policy describing the legal and regulatory regime applicable to the project or activity.
• 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 or activity
• 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
Secondary sources:
• Studies by academics, government agencies and industry bodies
• Documents written by the enterprise trade union or local trade union
• Country risk analysis, often undertaken prior to entering a particular jurisdiction
• 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

As noted, the nature and extent of due diligence will depend on the risks of adverse impacts related to a particular situation.[16] Thus for exploration enterprises, which are likely to cause limited impacts to stakeholders and which do not generally conduct formal impact assessments, understanding the local and operating context may be a more limited exercise. For example, it might focus on understanding the expectations and perspectives of the populations within the area of impact.

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 enterprise, 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 personnel 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

Information on the local and operating environment should be updated over time, as more information becomes available either through additional studies or through stakeholder engagement activities and as project circumstances change.

Project or activity personnel may wish to consult the table below and collect the relevant and necessary information in the context of their own stakeholder engagement activities. Often the majority of this information will be collected through conducting an impact assessment.

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16   OECD Guidelines for Multinational Enterprises, Chapter II, Paragraph A10.

Table 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[1]	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. 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.[2] 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).[3]	**Oil and gas**: Broad area of impact (transport routes, bodies of water); Off-shore includes ocean, seabed, reefs and close-to-shore communities; Unconventional oil and gas extraction is likely to have a wider area of impacts than conventional drilling, e.g. oil sands surface mining over a wide area, multiple well heads for shale gas extraction; Oil or gas pipelines have a large area of impact, sometimes trans-boundary across two or more countries. **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 infrastructure; Railway lines may have trans-boundary impacts in two or more countries if mine is in landlocked country. Areas of impacts for both oil and mining will likely be more limited in the context of exploration, but may intersect with numerous stakeholders.	Identification of impacted stakeholders and rights-holders. Identification of potential cumulative impacts to stakeholders.
Historical events	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.	Same for oil and mining	Identification of potential cumulative impacts on stakeholders. Identification of opposition groups and vulnerable groups. Identification of challenges to engagement (e.g. inherited issues, violence and opposition).

Type of information	Description	Examples for Oil/Gas and Mining	Potential Relevance for Stakeholder Engagement
Regulatory regime and relevant standards	The regulatory regime governing an operation and obligations or commitments around stakeholder engagement activities may include: applicable international standards such as the OECD Guidelines, other instruments related to international human rights (in order to avoid human rights infringements or complicity therein); national laws of the country 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.	**Oil and Gas**: Type of oil and gas contract, e.g. concession, production sharing contract, or service contract. **Mining:** Mining codes, laws, regulations and licensing terms.	Identification of stakeholder groups with special legal status and rights-holders. Identification of legal obligations with regard to stakeholder engagement. Identification of appropriate modes of engagement. Identification of challenges to engagement (e.g. legal requirements and repressive regimes).
Political and governance	National, regional and local political issues that might influence engagement with local communities and other stakeholders such as the presence or the absence of 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; investment regimes and approaches to resource nationalism; dynamics of competing political parties; integrity of the judicial system and rule of law.	**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. **Mining:** Mining in remote areas where political governance and administration is weak, even in developed countries.	Identification of challenges to engagement (e.g. repressive regimes, capacity constraints, bad-faith on the part of stakeholders and other groups). Identification of appropriate modes of engagement.
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.	**Mining:** Dynamics between different levels and agencies of government are important for the point-source mining industry to understand, particularly when mine is remotely located. **Oil and Gas**: Joint ventures with national oil and gas enterprises are prevalent in the oil and gas industry. Government dual roles as regulator and producer may be challenging for engagement.	Identification of challenges to engagement (e.g. capacity constraints, competing interests and expectations amongst stakeholders). Identifying appropriate modes of engagement.

Type of information	Description	Examples for Oil/Gas and Mining	Potential Relevance for Stakeholder Engagement
Demographics and social relations	Characteristics of the population in the local area/region, including: population size, age, and trends; migration patterns; gender relations, relations between different ethnic groups; presence of vulnerable or marginalised groups and indigenous peoples; crime rates and security.	Same for oil and mining	Identification of potentially impacted stakeholders and vulnerable groups. Identification of challenges to engagement (social or cultural norms, local power dynamics, socio-economic constraints. Identification of aims of stakeholder engagement activities (e.g. creating shared value). Identification of appropriate modes of 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. Availability of locally produced goods and services.	The relevant types of available goods and services will differ amongst oil/gas and mining operations as well as during the phases of projects.	Identification of potentially impacted stakeholders and vulnerable groups. Identification of challenges to engagement (social or cultural norms, socio-economic constraints, differences in genders). Identification of aims of stakeholder engagement activities (e.g. creating shared value). Identification of appropriate modes of engagement (e.g. benefit sharing through local procurement, optimising benefits locally).
Human rights	Strength of human rights protections under domestic law; track record of the governments in complying with international human rights obligations; 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	Same for oil and mining	Identification of potentially impacted rights-holders. Identification of appropriate modes of engagement, including remedy processes. Identification of challenges to engagement, e.g. legislative requirements

Type of information	Description	Examples for Oil/Gas and Mining	Potential Relevance for Stakeholder Engagement
	disappearances of human rights defenders); access to remedy for victims of human rights abuse.		and repressive regimes, violence and opposition).
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, education, utilities, transportation and other infrastructure (e.g. roads, rail, air, sea). The vulnerability of subsistence/traditional economic activities to infrastructure/demographics/ ecosystem changes.	Same for oil and mining	Identification of potentially impacted stakeholders and vulnerable groups. Identification of appropriate modes of engagement (e.g. benefit sharing through shared-use infrastructure etc.). Identification of challenges to engagement (social or cultural norms, socio-economic constraints, logistical constraints).
Gender factors	Gender roles, responsibilities and relations within specific contexts and groups; recognition of gender issues by the government. Differences among genders in education levels, skills and employment opportunities.	Same for oil and mining	Identification of potentially impacted stakeholders 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.[4] 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 potentially impacted stakeholders 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).

Type of information	Description	Examples for Oil/Gas and Mining	Potential Relevance for Stakeholder Engagement
Social organisation	Formal and informal characteristics of the established social order; aspects of household and community organisation and capacity that affect participation in decision-making processes and access to services and information.	Same for oil and mining	Identification of potentially impacted stakeholders and vulnerable groups. Identification of appropriate modes of engagement. Identification of challenges to engagement (social or cultural norms, socio-economic constraints, local power dynamics, capacity constraints).
Workers' rights[5]	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, child labour, forced labour and human trafficking. The role of the State in providing labour protection and protecting workers' rights. 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.	**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. **Mine workers** in many countries have a long history of industrial unionism, e.g. in Canada, the US, the UK and South Africa. Workers involved in exploration activities may be short-term and not unionized.	Identification of groups with special legal status (e.g. workers). Identification of appropriate modes of engagement. Identification of challenges to engagement (e.g. local power dynamics, repressive regimes).

1. 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).

2. 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.

3. During the exploration phase of projects areas of impact are likely to be far more limited.

4. For more information see Annex B on *Engaging with Indigenous Peoples*.

5. For more information see Annex D on *Engaging with Workers and Trade Unions.*

Step 2: Identifying priority stakeholders and interlocutors

Step 2: Action Point Summary

- Enterprises should strive to identify all potentially impacted stakeholders and rights-holders.

- Enterprises should consider how certain impacts may vary amongst different stakeholder groups and prioritise the most vulnerable and severely impacted groups for engagement.

- Enterprises should verify findings or assumptions about certain stakeholder groups and update stakeholder maps as relevant.

- Enterprises should verify stakeholder representatives to make sure they are truly communicating the perspectives of their constituents and that the views of vulnerable stakeholders are equally represented.

- Enterprises should re-evaluate representatives as they change or stakeholder groups evolve.

A. Identifying and prioritising most severely 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, stakeholder engagement activities risk prioritising those actors or groups with the most power or influence. If uninfluential yet severally 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.

Enterprises should strive to identify all potentially impacted stakeholders and rights-holders during stakeholder identification exercises.

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 or activity. 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:

Table 3. Stakeholders specific to the oil/gas sector and the mining sector

Stakeholders specific to the offshore oil/gas sector may include:	Stakeholders specific to the mining sector may include:
- Close to shore communities - Commercial and subsistence fishers - Coastal tourism sector	Artisanal miners

Potential rights-holders can be identified on the basis of impact assessments together with an analysis of the local context. See Table 2 and Table 4 below for more guidance.

Table 4. Identifying potential human rights impacts of extractive activities

Issue	Examples of potential human rights impacts	Factors increasing likelihood of human rights impacts if present	Relevant stakeholders and stage of project lifecycle
Resettlement	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 impact**: e.g. right to an adequate standard of living, right to food, right to health.[1]	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 peoples) 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.	Local communities during construction and expansion of operations.
In-migration	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). **Potential Rights impact**: e.g. right to an adequate standard of living including right to food and housing,[2] right to participate in cultural life,[3] right to life, liberty and personal security.[4]	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 is insufficient infrastructure to support a large number of migrants. There are large numbers of people belonging to vulnerable groups in the area (e.g. the aged, those in ill health, youth, and ethnic minorities subject to discrimination). Cultural factors exist requiring that extended family members are housed.	Local communities, specifically vulnerable populations and migrant workers primarily during feasibility studies and construction but also operations.
Access to resources and food security	Offshore gas extraction can restrict people's access to fishing grounds causing negative impacts on health and livelihoods. Open-pit mining can degrade agricultural land. High volumes of water frequently used in extractive activities can deplete local water sources. **Potential Rights impact**: e.g. right to an adequate standard of living, right to food and right to health.[5]	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.	Stakeholders relying on resources within area of impact, during construction and operations.
Security	Private security personnel and/or public security forces may use	Concerns have been raised by human rights groups or others	Local communities,

	excessive force to remove landowners protesting peacefully about an overland pipeline that will cross their land. **Potential Rights impact** right to security of person and right to freedom of expression.[6]	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. There is a lack of training on human rights issues for security forces.	advocacy groups or organisations opposed to the project; prior to concession issuance, during construction and operations.
Cultural heritage	Extractive activity can damage areas of cultural and spiritual importance to local communities, in particular indigenous peoples. **Potential Rights impact**: e.g. right to participate in cultural life.[7]	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.	Stakeholders with cultural heritage or sites located within area of impact; during construction and operations.
Community health	Adverse impacts on local people's health can arise from groundwater contamination or other forms of pollution. In-migration can lead to increased rates of HIV/AIDS and other diseases. **Potential Rights impact**: e.g. right to health.[8]	Local communities rely on natural water sources with area of impact (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. Significant in-migration.	Communities within area of impact or relying on resources within the area of impact during operations and construction.
Gender relations	Men in a community may gain access to employment and economic opportunities and women are excluded, or subject to sexual harassment. An increase in the cash economy can lead to changing power structures within families. **Potential Rights impact** e.g. right to freedom from discrimination.[9]	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. Educational levels and cultural factors.	Women in local communities or migrant populations during construction, operations and closure.
Social change	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 and change the power structure within families. **Potential Rights impact**: e.g. right to health and right to security of person.[10]	Social vices (alcoholism, drug use, prostitution, gambling) have been identified as a significant problem in the area. Significant in-migration. Increased cash economy. Civil society organisations or other groups have expressed concerns over discrimination against women or gender-based violence.	Local communities, particularly women, during operations and closure.
Conflict	The discovery of natural resources can generate local conflict or regional conflict, leading to violence and forced migration. Conflict may also be pre-existing and contributed to by extractive operations. **Potential Rights linkage:** e.g. right to an adequate standard of living, right to	Current or past history of violent conflict between groups in the area.	All local stakeholders during all stages, including exploration.

	life, liberty and personal security.[11]		
Environmental degradation	Extractive industry activities can degrade soil quality and contribute to air and water pollution threatening resources upon which people depend for subsistence and threaten biodiversity. **Potential Rights linkage:** e.g. right to health, right to food.[12]	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.	Stakeholders relying on resources within area of impact, primarily during operations but also construction.

1. See The Universal Declaration of Human Rights, 10 December 1948, Article 25

2. See The Universal Declaration of Human Rights, 10 December 1948, Article 25

3. See The Universal Declaration of Human Rights, 10 December 1948. Article 25, 27

4. See The Universal Declaration of Human Rights, 10 December 1948. Article 3

5. See The Universal Declaration of Human Rights, 10 December 1948. Article 25

6. See The Universal Declaration of Human Rights, 10 December 1948, Article 3, 19

7. See The Universal Declaration of Human Rights, 10 December 1948, Article 27

8. See The Universal Declaration of Human Rights, 10 December 1948, Article 25

9. See The Universal Declaration of Human Rights, 10 December 1948, Article 7

10. See The Universal Declaration of Human Rights, 10 December 1948, Article 3, 25

11. See The Universal Declaration of Human Rights, 10 December 1948, Article 3, 25

12. See The Universal Declaration of Human Rights, 10 December 1948, Article 25

Enterprises should also consider how certain impacts may vary amongst different stakeholder groups and prioritise the most vulnerable and severely impacted groups for engagement.
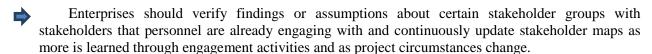
Stakeholder groups are not homogenous and will not be equally affected by the various impacts of an extractive operation. Research consistently shows that it is marginalised groups who often bear the brunt of adverse impacts while having limited opportunities to engage or enjoy the benefits that resource development may bring.

For example:

- Social dislocation and gender imbalance caused by in-migration of a transient male workforce can have severe health and security impacts on women, such as sexual violence, sexually transmitted diseases and increased alcohol abuse in the community. [17]

- 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, particularity in conflict or weak governance zones.

- When access to land or resources is threatened by an extractive operation, children who previously contributed to their family livelihoods through pastoralism, fishing or foraging may be pushed into alternative, dangerous livelihoods such as artisanal mining or prostitution. [18]

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.[19]

It is important that stakeholders and rights-holders are prioritised regardless of their capacity to influence power within their communities. Once identified on the basis of impact, attention should be paid to engaging stakeholders that lack influence, who will often be among the most vulnerable and severely impacted groups (often this may include women, children, and socially stigmatised communities). They will require additional attention through engagement processes.

➡ Enterprises should verify findings or assumptions about certain stakeholder groups with stakeholders that personnel are already engaging with and continuously update stakeholder maps as more is learned through engagement activities and as project circumstances change.

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[17] 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)

[18] For guidance specific to managing impacts to children in the context of mining operations see Unicef, Children's Rights and the Mining Sector: Extractive Pilot, March (2015). United Nations Children's Fund (UNICEF), Geneva.

[19] See generally Recommendations to On-the-ground Personnel Step 4, *Designing appropriate and effective stakeholder engagement activities and* processes.

B. Verifying representatives or interlocutors for stakeholder groups

Due diligence rationale:

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

Enterprises 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.

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

Some questions to consider when verifying whether stakeholder representatives are truly communicating the perspectives of their constituents and that the views of vulnerable stakeholders are included:

- **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. Tokenism should be avoided. For example, while it will be important to identify female leaders who are able to engage effectively, enterprises 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 such as professional negotiators or counsel may serve as proxy representatives for stakeholder groups. This should only be the case where such representation is requested or authorised by the stakeholders 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 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, such as those listed here, have been identified).

- **Are the representatives or interlocutors independent of the enterprise?** Enterprises should allow stakeholders to select their own representatives and should avoid interfering with these selections, for example through using capacity building to favour more enterprise-friendly interlocutors. When red flags have been identified by the enterprise 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

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Step 3: Action Points Summary

- Aims and objectives for meaningful stakeholder engagement should be developed, aligned with corporate policy and endorsed by senior management.

- All personnel that may come into contact with stakeholders should be trained to understand the importance of cultural appropriateness and respectful behaviour.

- Enterprises should share material information with the stakeholders in a timely manner and in a format they can understand and access.

- Enterprises should carefully balance a commitment to transparency with privacy concerns when sharing information.

- Stakeholders themselves should be consulted to help determine what information is most useful to them and in what form.

- Enterprises should provide the support necessary to ensure stakeholders can adequately assess and represent their own perspectives and interests.

- Resources required for stakeholder engagement activities should be identified and requested in advance.

- On-the ground personnel should advocate for additional resources and streamline resources to the extent possible to support stakeholder engagement activities in the event of resource constraints.

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 enterprise, 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.[20]

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.[21]

B. Developing systems to ensure that enterprise personnel treats stakeholders with respect

Due diligence rationale:

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[20]   See Recommendations for Corporate Planning or to Management: *Positioning Engagement Strategically*.

[21]   See Box 4 *Using Stakeholder Engagement to Optimise Shared Value*.

When enterprise personnel 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, stakeholders must be treated with respect and treated like equals in the engagement process.

➡ All personnel that may come into contact with stakeholders should be trained to understand the importance of cultural appropriateness and respectful behaviour.

- **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.[22]

- **Ensuring cultural appropriateness:** Context-specific 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 personnel anticipated to be in contact with stakeholders be made aware of implicit 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 exploration enterprises and 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 enterprise in an informed manner and thus will not 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.

➡ Enterprises should share material information with the stakeholders in a timely manner[23] and in a format they can understand and access in order to ensure that stakeholders are able to engage in an informed manner.

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[22]   See Recommendations for Corporate Planning or to Management (a): *Developing a clear policy framework on stakeholder engagement*.

[23]   For more information see Recommendations to On-the-ground Personnel Step 4(a) *Assigning realistic timelines for engagement activities*.

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.

Box 1: Potential Material Information

Initial information provision:

Information disclosed to stakeholders to ensure informed participation in the context of extractive projects could 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)

- risk of adverse impacts 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.) and safety

- information on stakeholder engagement processes

- information about how complaints and grievances can be conveyed

- where possible 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, in line with Extractive Industries Transparency Initiative (EITI) standard

- 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 engagement 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. This may also include reporting on payments of taxes or royalty payments to host governments and social investment/community development spending 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.

[1] Reporting back should also involve consultation with the stakeholders in question on their satisfaction as to how their inputs have or have not been integrated into the operation planning or not. See Recommendations to On-the-ground Personnel: Step 5 *Ensuring follow-through* for more information.

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

Sometimes a commitment to transparency will have to be balanced with privacy concerns regarding both the enterprise (business risks, commercial confidentiality and proprietary information) and stakeholders (personal privacy, safety or security). Additionally, enterprises 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 different requirements of transparency and privacy concerns should 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:
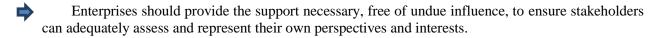
- limit access to sensitive information to those approved by the information provider

- 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 defend their interests. 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.

Enterprises 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 extractive operation, may not have formal experience with negotiations or communicate in the same language as the stakeholder engagement team or 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 enterprise should ensure that interpreters are approved by stakeholders. Furthermore, materials should be provided in the preferred language of stakeholders.

- Provision of training may be necessary for stakeholders to adequately engage, for example when they are involved in complex negotiations or overseeing implementation of commitments. Training 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.

- Engagement activities should be designed to maximize the practicality of participation by a representative group of potentially affected stakeholders and so as not to impose an undue burden on the participating stakeholders. In some circumstances, adequate compensation to cover lost working hours and expenses incurred due to engagement activities should be provided. (See Table 5 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.

Examples of typical resources are included in Table 5 This list is not exhaustive, nor are all listed items applicable to every enterprise.

Table 5. Resources for Stakeholder Engagement

Type of resource	Application (For exploration projects only the bolded provisions will likely be relevant.)
Financial	- **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 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	- personnel with stakeholder engagement experience including experience implementing consultation and conflict resolution processes - **personnel or intermediaries with positive record in terms of previous engagement efforts and a lack of allegations of human rights infringements** - **personnel with language and cultural knowledge of the region (e.g. trained local facilitators, local translators or interpreters)** - personnel with experience in collation of data and analysis and M&E frameworks - legal expertise, including full awareness of regulatory and statutory requirements, policies and procedures of the host country - personnel with communication and presentation skills with different audiences

Logistics	- 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	- mobile and/or satellite phones for remote engagements
Training/Capacity Building	- resources for independent training and capacity building for stakeholders as relevant

➡ In the event of resource constraints for stakeholder engagement activities on-the-ground personnel 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. Specific guidance for SME operations is provided in Box 2.

Increase awareness:

For larger enterprises 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.[24]

- 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.[25]

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 personnel. Resources associated with technology and logistics will generally also be necessary to core operations. Stakeholder engagement personnel should identify what resources exist and how they can be shared for stakeholder engagement activities.

- **Centralize:** Centralising stakeholder engagement within management systems can also help reduce resource burdens for individual engagement efforts.[26] Where relevant, it may also be

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[24] 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.

[25] 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)

[26] See Recommendations for Corporate Planning or to Management: *Integrating stakeholder engagement into core management systems*.

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 ongoing at the same time.

Box 2: Overcoming resource constraints of SME operations[1]

The reputational benefits and contribution to 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. Strong stakeholder engagement practices can increase the value of exploration or small-scale enterprises for investors and potential buyers. Conversely, poor relations with stakeholders may limit opportunities to sell rights to a concession.

Small enterprises tend to have fewer personnel 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 enterprises.

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 enterprises should:

- Encourage all personnel and contractors on site, including those whose jobs are mainly technical, to treat stakeholders with respect and seek to build trust.

- Enroll technical personnel, 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 the most severely impacted 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.

- Maximize integration of consultation processes with regulatory processes such as SEIA development, and government consultation processes.

1. For additional guidance see *A Strategic Approach to Early Stakeholder Engagement: A Good Practice Handbook for Junior Companies in the Extractive Industries*, IFC May 2014.

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

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Step 4: Action Points Summary

- Timelines should be planned for that allow for engagement to begin as early as practicable, provide stakeholders with sufficient time to engage meaningfully and that allow for flexibility.

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

- Engagement activities should be designed in a way that is appropriate to the context and audience and reflects best practices.

- Specific external challenges to stakeholder engagement linked to the local and operating context of an operation and strategies to respond to them should be identified.

- Clear and functional processes to respond to grievances should be established to enable mitigation and provide early and direct remedy.

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

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 extractive 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.
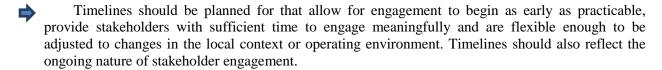
➡ Timelines should be planned for that allow for engagement to begin as early as practicable, provide stakeholders with sufficient time to engage meaningfully and are flexible enough to be adjusted to changes in the local context or operating environment. Timelines should also reflect the ongoing nature 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 enterprises 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 enterprises have an important role to play here (see Box 3: *Exploration activities and first impressions*, for more information). Engagement should ideally occur during the project design or planning stage.

- **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 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 should be flexible to the extent possible taking into consideration timing obligations imposed by governments or outlined in contracts. 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 enterprises should follow 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. At times exploration may be conducted by smaller enterprises and thus it may also be the stage at which human and financial resources are most scarce, however as noted in Box 2, engagement activities do not have to be expensive or time consuming to be meaningful.

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 an enterprise may face liabilities (e.g. if it does not comply with relevant 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.[27]

➡ 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:

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.

Information sharing is appropriate if there is a need to provide information to stakeholders about a project or activity and its expected impacts (positive and negative) and is relevant in all stages of a project. Positive answers to the guiding questions below may indicate that this mode of engagement is needed or required.

- Have stakeholders requested information be shared with them?

- 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:

Consultation/learning may be conducted through surveys, interviews with leaders, group meetings, debates, consultative forums, online dialogues.

Consultation/learning is appropriate when needing to gather information in order to build an understanding of the project context and understand the concerns and expectations of stakeholders and is relevant in all stages of a project. Positive answers to the guiding questions below may indicate that this mode of engagement is needed or required.

- 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:

Negotiation may be conducted through traditional negotiation systems, through collective bargaining agreements with workers, through a mediator, between the enterprise and stakeholder groups or amongst stakeholder groups with competing expectations.

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[27] 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: *Engaging with Indigenous Peoples*.

Negotiation is 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 and is most relevant prior to feasibility studies, project development, prior to operations commencing or prior to major expansions. Positive answers to the guiding questions below may indicate that this mode of engagement is needed or required.

- 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:

Formal consent processes could include majority vote from the community, approval by a traditional decision-making body such as a council of elders, organised regional referendum or other forms determined by regulation or other mechanism defining the requirement for consent, or by agreement between the enterprise and the affected stakeholders themselves.

Consent processes are appropriate when the objective is to obtain consent of impacted communities on whether a project may proceed or regarding mitigation of specific aspects of the project or impacts on specific rights. Government regulatory and licensing processes represent a structured form of consent generally administered by higher levels of government. In addition to regulatory approval, 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.[28] Consent processes are potentially relevant prior to feasibility studies, project exploration and project development or prior to major expansions. Positive answers to the guiding questions below may indicate that this mode of engagement is needed or required.

- Is consent required by law, enterprise policy or financing agreements?

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

Implementing commitments:

Stakeholder involvement in implementation of commitments could include 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.). It is relevant when carrying out previously promised or negotiated commitments such as construction projects, the provision of services, payment into a community fund or commitments required by regulatory permits, as negotiated or as required.

Positive answers to the guiding questions below may indicate that this mode of engagement is needed or 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)?

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[28]   See Annex B *Engaging with Indigenous Peoples*, for more information about seeking consent when engaging with Indigenous Peoples.

Responding to unforeseen adverse impacts:

Responding to unforeseen adverse impacts could involve establishment of grievance mechanisms[29] that enable enterprises to identify and to provide early remedy to impacted stakeholders. Remedy may include apology, restitution, rehabilitation, financial or non-financial compensation, satisfaction and guarantees of non-repetition, modification in procedure, structure or communication.[30]

This will be relevant when needing to respond to stakeholder concerns about a project and address adverse impacts, which may occur during all stages of a project, but particularly during construction, operations and closure. Positive answers to the guiding questions below may indicate that this mode of engagement is needed or required.

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

Benefit sharing:

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; commitments to local procurement; 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).

Benefit sharing is relevant during all stages of a project, but particularly during construction, operations and closure.

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

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 value[1] through aligning the business interests of enterprises with community needs and priorities. In practice, this could mean:

- an enterprise 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-

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[29]   See Recommendations to On-the-ground Personnel: Step 4 (e) *Establishing clear and functional processes to respond to grievances.*

[30]   **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.

win' local procurement strategy.

- building dual-purpose transport infrastructure that benefits both the enterprise and its stakeholders, e.g. deciding to invest in infrastructure that is more accessible to public use.

Shared value initiatives benefit stakeholders but also offer a compelling business case.[2]

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.

1. 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 extractive 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.

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

C. Identifying and applying best practices

Due diligence rationale:

If engagement activities are not tailored to the goals of the enterprise and the characteristics and perspectives of their audience 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.[31]

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 will be helpful to identifying appropriate approaches.

Guiding questions and best practices are provided in Table 6 below.

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[31]   See Recommendations to On-the-ground Personnel: Step 4(d) *Identifying and responding to external challenges to engagement.*

Table 6. Identifying and applying best practices to engagement activities

ISSUES TO CONSIDER	BEST PRACTICES
INFORMATION SHARING	
What are the goals of information sharing? Who is the audience? How can the audience access information? What is the capacity of the audience (language, literacy, technical competence)? Are there privacy issues? Is the information sensitive? What have stakeholders indicated they find important and useful in terms of information content and methods of information sharing? What other modes of engagement should be used in combination with information sharing?	All material information should be shared in a timely manner. The target audience should be able to access information and be able understand it. Material information, particularly with respect to the risk of adverse impacts should be provided in a written form so that community members can share it with experts of their choosing. Information should be accurate and objective with explanation of any uncertainties. Provision of information should not violate privacy or generate risks for stakeholders (such as security risks or risks of retaliation in hostile or repressive contexts). 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. Information sharing should generally be used in combination with other modes of engagement (e.g., consultation).
CONSULTATION/LEARNING	
What is the goal of the consultation? Who should be consulted? Is the source credible? Do they understand the purpose of the consultation? Are they informed about how their information will be used and, if relevant, how their privacy will be protected? Are any risks being posed to the stakeholder through consultation?	The specific purpose of the consultation should be made clear and participation in consultation should be informed and voluntary. Information gathered from consultations should be verified. Use of collected information should be accessible by those that provide it and should not violate privacy or generate risks for stakeholders (such as security risks or risks of retaliation in hostile or repressive contexts).
NEGOTIATION	
What is the goal of the negotiation? Has clarity been established on what is being negotiated and what is not? Who needs to be at the table? Have all parties been provided with the material information? Have the terms of the negotiation been clearly established and agreed to? Specifically is there clarity about what constitutes 'agreement'? Has an agenda and rules of procedure for the meeting been prepared in consultation with stakeholders?	Terms of and structure of negotiation should be mutually agreed to in advance and should conform to all relevant legal obligations. Negotiation should take place under equitable terms. Support should be provided as necessary to allow stakeholders to adequately represent their perspectives and interests. All relevant parties should be party to the negotiation. Negotiation processes, including ideas, questions and concerns raised should be documented to the extent possible. Final agreements and outstanding issues should be recorded and should be verified and validated by those present during the engagement activity.

ISSUES TO CONSIDER	BEST PRACTICES
What are the relevant legal requirements of negotiation, such as obtaining consent from certain groups? What is the physical set up of the negotiation space? What are the respective capacities of parties at the table? Are any risks being posed to stakeholders through negotiation? Are outcomes of the negotiation recorded and is the record approved by relevant stakeholders? Is there a possibility of intimidation or violence between parties with competing interests?	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.
CONSENT	
Is consent a legal, operational or policy requirement of the enterprise? Which activities require consent? Whose consent should be obtained? When should consent be obtained? What does 'consent' mean to the enterprise and to those from whom consent is being asked? What does a clear lack of consent look like? In cases where consent is granted, what are the conditions for the consent or the conditions for withdrawing consent? What are the risks of proceeding without consent to rights-holders or operations?	Clear criteria should be established by the relevant rights-holder as to who should grant consent, what constitutes consent, what constitutes a clear lack of consent. Consent should be given on an informed and voluntary basis and sought in a timely manner. What consent is being given for should be clearly defined and the process of seeking consent should be renewed as necessary. The conditions of consent and for withdrawing consent should be clearly defined. Engagement processes, including ideas, questions and concerns raised should be documented as far as possible. Final agreements and outstanding issues should be recorded and should be verified and validated by those present during the engagement activity.
IMPLEMENTING COMMITMENTS	
What is the basis of commitments? What are the time frames for the implementation of commitments? What are the resources needed? What are the opportunities for synergy (such as local employment opportunities)? What are the communities' expectations regarding commitments? Is there any misalignment between expectations or what has been communicated and actual progress? How are commitments formalised?	As far as possible, timelines and deliverables should correspond to what was agreed to with stakeholders or initially promised. Misalignment in expectations should be addressed as soon as possible. Synergies with regard to community development should be optimised. Engagement processes, including ideas, questions and concerns raised should be documented to the extent possible. Agreements stipulating commitments should be formalised, monitored and reported on.[1]
ADDRESSING ADVERSE IMPACTS	

ISSUES TO CONSIDER	BEST PRACTICES
What are the legal obligations in terms of addressing adverse impacts? What is the enterprise capable of providing? What are the expectations or preferences of stakeholders? Are adverse impacts collective or individual? Is the responsibility to address the impacts shared with another actor (government, a commercial partner?) What is the most appropriate form of response to address adverse impacts? What are the risks associated with the various responses? How can satisfaction with responses be determined?	As far as possible remedies for adverse impacts should adequately address the harm done and underlying causes for the harm in a timely and transparent manner. Any legal obligations regarding mitigation and remedy should likewise be respected and the terms of remediation should, at a minimum, meet international guidelines on remediation where available. Remedies should put stakeholders in a position that leaves them as well off as they were before, or better off than before the impact. Stakeholders should be involved in deciding how adverse impacts are addressed and in assessing the value of damages.[2] Remedy and mitigation should be culturally appropriate and risks and benefits of different forms of remedy should be considered. [3] Engagement processes, including ideas, questions and concerns raised should be documented as far as possible. 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). Satisfaction with how adverse impacts are addressed should be evaluated.
BENEFIT SHARING	
What sort of benefits can the operation provide to stakeholders? How can these benefits be optimised? Which stakeholders will be benefited? Which will be excluded? What are the development priorities and social objectives of the affected government and community? What have the relevant stakeholders identified as priorities with regard to benefits? What are the potential risks with regard to benefits (e.g. benefits are unequitable or lead to adverse social changes)?	Strive to identify opportunities for optimising benefits. Strive to ensure that operations are in line with the development priorities and social objectives of the government and community where operations are located and that differing priorities amongst men and women are considered. Share benefits on the basis of the consultation process and impact assessments, in a way that does not unfairly benefit specific groups, but that fosters equitable and sustainable social development.

1. See Recommendations to On-the-ground Personnel, Step 5: *Ensuring follow-through* for more information.

2. 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 Guidance For additional resources see Martin Beristain, Carlos 'El derecho a la reparación en los conflictos socioambientales : Experiencias, aprendizajes y desafíos prácticos' Bilbao, Hegoa (2010).

3. 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).

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. Strategies to respond to challenges should be developed during the planning phase of an operation and revised according to changing circumstances and feedback from stakeholders.

A list of common challenges and response strategies are listed in Table 7 below.

Table 7. Responding to Common Challenges to Meaningful Stakeholder Engagement

Type of Challenge	Explanation	Strategy
Social or cultural norms	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.	Hold separate meetings with different groups, with the objective of ensuring marginalized or potentially vulnerable people (e.g. ethnic minorities, lower caste groups) have a chance to participate in engagement. Provide, if possible, a separate 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	Local power brokers may dominate meetings with outsiders or create a coercive atmosphere which hinders meaningful and inclusive engagement. Engagement activities may put some stakeholders at risk (e.g. human rights defenders, community or worker representatives and leaders).	Hold face-to-face meetings with people in private so that they are less likely to feel inhibited in expressing their opinions due to 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 makes the stakeholder(s0 feel comfortable).
Logistical constraints	Isolation, rugged terrain, and poor transportation infrastructure may make it difficult for certain stakeholders to participate in engagement activities. Poor communications networks may also hinder participation. The aged/youth and those in poor health or with disabilities may face constraints in participating in engagement processes.	Hold meetings at locations where people normally gather for public meetings or can easily travel to. 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 in poor health or the disabled) at times and in places that suit them. Be flexible and provide extra time for engagement in the event that poor health or other factors require that meetings be rescheduled.
Socio-economic constraints	People may not be able to afford transportation costs or to take time off work to attend meetings and	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.

	consultations. Stakeholders may not be literate or may have low levels of education.	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[1]	In some cases local law or practice may contradict enterprise policy or international standards.	Clearly and widely communicate enterprise commitment to respect internationally-recognised human rights, as expressed in the OECD Guidelines. In cases where local law contradicts enterprise standards and policy, needs and expectations should be clearly communicated and negotiated upfront, prior to the commencement of operations.[2] Encourage governments to comply with their human rights obligations, particularly where there are direct links with enterprise operations. 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 project. Consider not entering or withdrawing from contexts where human rights cannot be respected.
Capacity constraints[3]	Local government authorities or traditional leaders may not have had prior experience in engagement for a major extractive project, and may require 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.	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	Enterprises may favour one group over another in the distribution of benefits from a project during engagement activities, or may be perceived as doing so. The needs, wants or expectations of various stakeholder groups may be competing or diametrically opposed, meaning there is no consensus on issues amongst stakeholders.	Consider the 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.[4] 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.
Bad-faith on the part of stakeholders or other groups	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.	Clarify how good faith engagement is defined in terms of an enterprise's own actions as well as what is expected in return, making sure that 'bad faith' is not equated simply with a lack of support or approval of the enterprise's proposed activities. Consult with the local community and build a solid knowledge base prior to engaging with stakeholders. Share the findings of impact assessment and the process by which impacts will be addressed. Establish a transparent and fair grievance mechanism which can allow for all sides to be heard and issues to be resolved objectively.
Violence and opposition	Stakeholders or civil society are actively campaigning against the enterprise or project. Violence is used by some stakeholders to express dissatisfaction with the enterprise or project.	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 criminalisation 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 regularly. In contexts where the opposition is widespread, not based on misinformation or bias, and ongoing despite attempts to meaningfully engage, an enterprise should consider the risks involved with continuing an operation.
Inherited issues stemming from poor stakeholder engagement	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.	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 enterprise 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 enterprise continues to contribute to (for example discharge from operations that is being released into a community's water supply due to poor location of a catchment area by the predecessor). Make clear what can be done going forward, what issues remain negotiable, whether there is ability to address adverse impacts from past operations, how the management and engagement strategy will differ from that of the 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[5]	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. This is a particularly salient problem for exploration enterprises, which may be understood to be operational mining enterprises although they may lack the same resources and generally do not discover commercially viable deposits.	Throughout engagement encourage stakeholders to share their expectations and likewise share expectations of the enterprise regarding the operation to identify any misalignment and to ensure that all sides understand one another's positions. Transparency regarding the operation and commitments can also be helpful in 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. [6]
Elite capture	Stakeholder representatives act in their own self-interest and do not represent the views or best interests of their constituents.	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 enterprise with regard to representatives selected by stakeholders they should consult more widely with stakeholder groups as to how to proceed. [7]

1 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).

2. See Recommendations for Corporate Planning or to Management: _Considering stakeholder engagement issues when making investments or forming business relationships_.

3. For more information see Recommendations to On-the-ground Personnel, Step 3 C: _Providing the support and information necessary for stakeholders to adequately represent their perspectives and interests_.

4. See Recommendations to On-the-ground Personnel Step 4 E: _Establishing clear and functional processes respond to grievances._

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

6. See Recommendations to On-the-ground Personnel Step 3 C: _Providing the support and information necessary for stakeholders to adequately represent their interests and perspectives._

7. See Recommendations to On-the-ground Personnel, Step 2 B: _Verifying representatives or interlocutors for stakeholder groups._

E. Establishing clear and functional processes to respond to grievances

Due diligence rationale:

Providing stakeholders with a means of raising grievances will assist the enterprise in identifying adverse impacts. Because the purpose of a grievance mechanism is to provide remedy, it is an important means to address adverse impacts. Grievance mechanisms can provide early remedy and thereby prevent escalation of issues and establish trust among stakeholders as the basis for future meaningful engagement.

Many impacts of extractive activities 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 an enterprise 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 enterprise to enable mitigation and provide early and direct remedy.

Enterprise or community established grievance mechanisms should not preclude access to judicial or non-judicial grievance mechanisms, including the National Contact Points of the OECD Guidelines.[32] Nor should they be used to undermine the role of trade unions in addressing labour-related disputes.[33] In particular enterprise grievance mechanisms are not appropriate for dealing with cases of gross human rights violations such as torture, rape, killings and violations of humanitarian law. Such serious crimes should be reported to the appropriate national competent authorities and international human rights bodies. In such cases enterprises should facilitate but not interfere with civil or criminal investigations or human rights examinations and legal waivers that preclude access to judicial recourse for victims of gross human rights violations should not be used in the context of enterprise grievance mechanisms. [34]

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.[35]

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[32] OECD Guidelines for Multinational Enterprises, Chapter XIV, Paragraph 43.

[33] Id.

[34] A recent non-binding letter from the Office of the High Commissioner for Human Rights opined that "[t]he presumption should be that as far as possible, no waiver should be imposed on any claims settled through a non-judicial grievance mechanism. Nonetheless, and as there is no prohibition per se on legal waivers in current international standards and practice, situations may arise where business enterprises wish to ensure that, for reasons of predictability and finality, a legal waiver be required from claimants at the end of a remediation process. In such instances, the legal waiver should be as narrowly construed as possible, and preserve the right of claimants to seek judicial recourse for any criminal claims.'' The OHCHR's opinion on this issue however has been disputed by some stakeholders. For the full document see Office of the High Commissioner for Human Rights, Re: Allegations regarding the Porgera Joint Venture remedy framework. (July, 2013)

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

Table 8. Effectiveness criteria for non-judicial grievance mechanisms

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
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 performance[36]

Source: A Guide to Designing and Implementing Grievance Mechanisms for Development Projects, The Office of the Compliance Advisor/Ombudsman, incorporating the effectiveness criteria for non-judicial grievance mechanisms contained in the UN Guiding Principles on Business and Human Rights.

The form remediation processes should take will vary according to the size and nature of the operation. For example, small operations or exploration enterprises operating on tight budgets should keep the grievance mechanism simple and proportional to the likely small number of grievances to be handled.

F. Engaging with stakeholders to ensure remediation is appropriate

Due diligence rationale:

Enterprises 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.

Enterprises should consult with stakeholders and identify and respond to challenges to providing appropriate remediation.

Under the OECD Guidelines enterprises should address actual impacts caused or contributed to through remediation.[37] However remediation can come in varying forms including restitution, rehabilitation, compensation, satisfaction and guarantees of non-repetition. [38] In addition to various

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[36]   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).

[37]   OCED Guidelines for Multinational Enterprises, Chapter II: Commentary on General Policies, Paragraph 14,

[38]   See the UN 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

forms, responses may also vary in scope and be individual or collective.[39] Not all forms of remediation will be appropriate to every context and furthermore some forms of remediation may create risks.

Table 9. Common challenges and strategies to remediation

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.	Enterprises 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. 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.). Enterprises should ensure that compensation for land, assets or otherwise benefit women as much as men. Enterprises should communicate with compliance officers and accountants on proper protocol for compensation payments to stakeholders, as a tax authority or auditor may interpret such payments to be bribes paid.
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.	Remediation should leave impacted stakeholders as well off as they were before, or better off than before. Stakeholders should be involved choosing how adverse impacts are remediated and in assessing the value of damages. 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. Stakeholders should be followed up with after remediation is provided to evaluate their satisfaction.
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.	The criteria and process for remediation should be made clear and should be equitable and objective. 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.

Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

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

Step 5: Ensuring follow- through

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Step 5: Action Points Summary

- A commitments register should be maintained to track follow-through on outcomes of stakeholder engagement.

- Reports on observance (or lack thereof) of commitments should be communicated to stakeholders and stakeholders should be given an opportunity to express their satisfaction or lack thereof with commitment implementation.

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Due diligence rationale:

Following through and reporting back to stakeholders on how outcomes of stakeholder activities have been taken into account in practice allows stakeholders 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 Guidelines.[40]

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 minutes from all meetings, final agreements reached through negotiation processes, commitments made to stakeholders by the enterprise, and vice versa, responses to complaints and agreements as to how adverse impacts should be addressed.[41]

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 (e.g. if building a road, where it will be located, will local procurement be used in its development etc.)

- 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

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[40]   OECD Guidelines for Multinational Enterprises, Chapter II Paragraph 10(A)

[41]   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™

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 against the commitments register.[42]

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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[42]   See Recommendations for Corporate Planning or to Management: Section D: *Establishing a feedback loop to integrate views into project decision making*.

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

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Step 6: Action Points Summary

- Some measurable indicators to evaluate stakeholder engagement activities should be identified, consulted on with relevant stakeholders, and monitored over time.

- Participatory monitoring and evaluation (M&E) activities should be encouraged and enabled to the extent possible.

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

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

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

Some measurable indicators to evaluate stakeholder engagement activities should be identified, consulted on with relevant stakeholders, and monitored over time.

In general, the best indicator of successful stakeholder engagement activities will be reflected in the quality of relationship between the enterprise 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 stakeholders to submit anonymous feedback on the engagement processes, or distribute 'citizen report cards' that provide a way to assess the quality of relationships between an enterprise and its stakeholders. An annual or semi-annual 'perception' survey can be used to measure the quality of relationships between an enterprise and stakeholders 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 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 Guidance. However, project level indicators can also be developed and tailored to specific activities.

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.[43] It will mean including stakeholders in the process beyond through simply collecting feedback from them. Table 10 below provides a summary of some of the differences between conventional and participatory monitoring and evaluation strategies.

Table 10. Differences between Conventional and Participatory M&E

	Conventional M&E	Participatory M&E
Who plans and manages the process:	Senior managers, or outside experts	Local people, project or activity personnel, 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 an enterprise'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.[44]

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[43]   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)

[44]   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

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?

- **Could more effective procedures resolve the issue raised?** Are there unclear or misunderstood procedures? Have procedures been followed in practice? Do current procedures favour certain groups over others? Is there an issue of perceived direct or indirect discrimination due to procedures?

- **Could more effective structures resolve the issue raised?** Could personnel capacity or resources be improved to address the issue? Could collaboration with other enterprises or partners in government or civil society address the issue?

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 enterprises on the elements that should be considered when conducting M&E of stakeholder engagement processes but are not meant to be prescriptive. Enterprises may reference this framework or adapt it to their own M&E activities

Table 11. Potential indicators and assessment criteria for stakeholder engagement

Objectives	Potential Indicators	Good/Moderate/Poor practices
Understanding context and identifying stakeholders		
Develop an understanding of local and operating context Identify impacted stakeholders and vulnerable groups Identify stakeholder representatives	- 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' perspectives align with perspectives of stakeholders	**Good:** Personnel undertaking stakeholder engagement participates in impact assessments. A diversity of sources is consulted to understand the local and operating context including consultation with technical personnel 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 severely impacted and vulnerable stakeholders is prioritised. A large variety of stakeholder perspectives is accessed. **Moderate:** Some desk research is conducted and identified community leaders are consulted in identifying impacted stakeholders 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 stages of the lifecycle of the operation by each enterprise involved 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 or activity.

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Objectives	Potential Indicators	Good/Moderate/Poor practices
		Poor: Limited sources such as inherited impact assessments are relied on to understand impacts to stakeholders. Stakeholder groups and relevant technical personnel 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.
Establishing the necessary support system for meaningful stakeholder engagement		
Identify appropriate aims and objectives for engagement activities	- 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 Guidance)	**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. **Moderate:** Aims and objectives are vague and not discussed with management. **Poor**: Aims and objectives are not developed or correspond only to commercial objectives.
Ensure that personnel treat stakeholders with respect	- Number of complaints from stakeholders based on inappropriate personnel conduct - Frequency of interaction with stakeholders outside the workplace (through frequenting local restaurants etc.) - Degree of comfort stakeholders feel in interacting with enterprise personnel as displayed through comfort in sharing views and conduct towards engagement personnel	**Good:** No complaints from communities about inappropriate behaviour towards them by enterprise personnel. An effort is made to interact on an informal basis by enterprise personnel on a regular basis (e.g. through shopping at local markets, eating at local restaurants). **Moderate:** Occasional complaints about personnel behaviour from stakeholders. Personnel interact with stakeholders minimally outside their professional capacity. **Poor:** Frequent complaints about personnel by stakeholders. No interaction of personnel with stakeholders beyond their professional capacity.
Ensure stakeholders are informed	- Degree to which information provided to stakeholders corresponds to what they view as material - Degree to which information is presented in formats accessible by the population (e.g. use of local language, use of various media - Ability of a range of stakeholders to explain and communicate material aspects of the project, such as what	**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. **Moderate:** The majority of stakeholders are able to explain and communicate material aspects of

Objectives	Potential Indicators	Good/Moderate/Poor practices
	- the anticipated impacts are, and how the engagement process is structured - Level of comfort of stakeholders with how information concerning them is managed	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 enterprise uses its discretion in deciding which information is sensitive and makes efforts to protect confidential information. No explanation is given in instances where full transparency is not possible. **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.
Provide the support necessary for stakeholders to adequately represent their perspectives and positions	- Quality and relevance of support provided to stakeholders for engagement purposes - Responsiveness to requests from stakeholders for support	**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. **Moderate:** Support is provided to stakeholders by the enterprise to engage external assistance, but stakeholders are not involved in selecting their own experts and resources are not provided for development of skills useful for engagement process to stakeholders. **Poor:** No support is provided to address capacity issues amongst stakeholders.
Appropriately resource activities	- Ratio of resources needed to resources attained for stakeholder engagement	**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. Personnel possess the necessary skills to undertake stakeholder engagement. Requests by personnel for resources for engagement are taken seriously by management and included in financial management systems. **Moderate:** Some resourcing is allocated to stakeholder engagement activities however, resourcing is insufficient. Personnel have communicated to upper management the importance of stakeholder engagement and have integrated it within operations to take advantage of operational synergies with some success. **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.

Objectives	Potential Indicators	Good/Moderate/Poor practices
- **Designing appropriate and effective stakeholder engagement activities and processes**		
Assign realistic and appropriate timelines for engagement	- Ease of process in adapting timeframes in response to contextual issues - Timing of initial contact with stakeholder groups in relation to project plans - Average length of notice stakeholders are given regarding meetings and other engagement activities	**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. **Moderate**: Timelines reflect operational realties but are not discussed with stakeholders ahead of time and thus must be readjusted. **Poor:** Timelines are unrealistic and inflexible. Stakeholders are not consulted when establishing timelines and thus delays are incurred by the enterprise. Stakeholders do not have sufficient notice or time to adequately engage.
Plan appropriate engagement activities	- 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. - Degree to which challenges to engagement are anticipated during the planning stage	**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. **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. **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.
Ensure engagement is efficient and effective	- 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	**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. **Moderate:** Rules of engagement are unilaterally established by the enterprise. During meetings only select representatives are called on to participate. Objectives of meetings are vague or unrealistic. Records of engagement are unclear or incomplete. **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.

Objectives	Potential Indicators	Good/Moderate/Poor practices
Establish a remediation process Appropriately address adverse impacts	- 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	**Good:** Stakeholders are involved in identifying adverse impacts and 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. **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. **Poor:** Adverse impacts are not addressed in a timely fashion and the form responses take are unilaterally provided by the enterprise, 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.
Following through on outcomes of stakeholder engagement activities		
Follow through on outcomes of stakeholder engagement activities	- Percentage of commitments met - Level of stakeholder satisfaction with enterprise performance with regard to its commitments - Length/frequency of delays in meeting commitments	**Good:** A commitments registrar is maintained and is regularly against to relevant stakeholders. The delivery of commitments or provision of remedies is done as efficiently as possible, in a timely manner 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 enterprise adheres to commitments and agreements. **Moderate:** A commitments registrar is kept but does not adequately assign responsibilities for tasks nor keep timelines. The enterprise complies with the majority of its commitments but does not provide sufficient explanation when it does not. **Poor:** No commitments registrar is kept and no timelines are articulated and thus stakeholders do not know when commitments will be fulfilled.

Objectives	Potential Indicators	Good/Moderate/Poor practices
Monitoring and Evaluation		
Develop relevant and effective monitoring and evaluation mechanisms	- Ability to assess strength of relationships with different stakeholders and accomplishment of objectives with regard to stakeholder engagement.	**Good:** Indicators and assessment criteria align with agreed upon objectives and aims and are clear and measurable. Enterprise regularly collects feedback from stakeholders to assess the effectiveness of engagement activities. **Moderate:** Indicators and assessment criteria align with agreed upon aims and objectives but are not sufficiently clear. The enterprise collects feedback from stakeholders to assess the effectiveness of engagement activities in an ad hoc manner. **Poor:** Indicators are not established ahead of time or are vague and impracticable. The enterprise does not collect feedback from stakeholders to assess the effectiveness of engagement activities.
Ensure monitoring and evaluation is objective, effective and participatory	- Degree of participation of stakeholders in the design and execution of M&E activities.	**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). **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. **Poor:** Stakeholders are not consulted throughout M&E activities.
Undertake credible external verification of engagement activities	- Degree of objectivity and thoroughness of monitoring and evaluation	**Good:** Verification is conducted by a third party recognised by all stakeholders as being objective. **Moderate:** Verification is conducted by consultants hired by the enterprise for that purpose. **Poor:** No third party verification is done to evaluate engagement activities.
Shortcomings revealed through M&E are investigated and responded to	- Rate of reoccurring issues related to stakeholder engagement processes - Progress based on assessment criteria of M&E frameworks over time	**Good:** M&E results are carefully analysed and disappointing or unforeseen results are further investigated to understand underlying issues. Once identified, these issues are responded to through modification of systems or addressing adverse impacts as relevant. The same issues rarely reoccur resulting in demonstrated progress according to assessment criteria. **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. **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.

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 certain characteristics of indigenous peoples will require special consideration including: their governance institutions, practices and any associated right to self-determination; their relationship with land; their spiritual and cultural heritage; historical discrimination they have suffered; 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 affect 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 12 for more information).

Table 12. 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 impacts of extractive activities; recognition of the collective rights of indigenous peoples, special legal status of indigenous peoples, recognition (or lack thereof) of indigenous peoples' rights under domestic legal frameworks, and international instruments.
Area of impact	Area of impact, which may be broader in the context of indigenous peoples (e.g. indigenous peoples may be adversely affected by impacts to land which affect migration patterns of animals they rely on for sustenance or damage biodiversity which may be an aspect of their cultural heritage).
Land rights: Customary land tenure	Pre-existing land uses; existence of customary land tenure rights; extent of customary tenure systems (over land, surface, subsoil resources); and whether such customary tenure is formally recognised in the jurisdiction.
Self-governance	Indigenous peoples' governance structures, legal systems, scope of authority and processes for decision making, consultation and giving or withholding consent; and whether such governance structures are formally recognised in the jurisdiction.
Historical marginalisation or discrimination	This 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) or genetic resources or traditional knowledge.

In addition to consultation with technical personnel and local sources, legal expertise should be sought to clarify any legal obligations with regard to engagement with indigenous peoples. Stakeholder facing personnel should also consult with indigenous peoples themselves and experts on the particular indigenous group with due regard for objectivity.[45]

2. Ensuring that indigenous peoples are appropriately identified and prioritised

Enterprises should consider the unique characteristics of indigenous peoples and identify the collective rights claimed by indigenous peoples, as well as the human rights of indigenous individuals who are potentially impacted by activities.

Box 5: Identifying Indigenous Peoples

There is no agreed definition of indigenous peoples and indigenous groups are not homogenous entities. However, the International Labour Organization (ILO), drawing from its Convention No. 169, has characterised 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 that may include traditional customs and/or laws.

Self-identification as indigenous should be regarded as a fundamental criterion for identifying indigenous peoples.

Regardless of the legal framework in which an operation takes place, indigenous people often have customary or traditional rights based on their relationship to the land, their culture and socio-economic status.

- **Land:** Indigenous peoples often have a special connection to and/or customary rights to ancestral lands. This relationship to land is a distinguishing feature of indigenous peoples and therefore impacts related to land such as reduced or loss of access to land, or environmental degradation, may affect indigenous peoples, their livelihoods and culture, more severely than other, non-indigenous stakeholder groups. Furthermore, the customary land rights of indigenous people may not be recognised by national laws. Consultation should also explore intangible value associated with sacred sites or areas of cultural significance.

- **Culture**: Indigenous peoples may have unique cultural values and characteristics which should be considered and respected when conducting engagement with them. For example, issues of privacy can be of particular importance to indigenous peoples (e.g. due to a legacy of social or cultural discrimination and marginalisation, or sensitivity due to a lack of contact with mainstream cultures). In such instances appropriate engagement practice could include seeking consent when recording information about rituals, ceremonies and rites of passage to ensure against disruption of cultural life. This is particularly important when the

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[45] See Recommendations to On-the-ground Personnel, Step 1 B: *Vetting information for accuracy*.

operations result in resettlement and/or displacement. Given that indigenous peoples' traditional way of life is usually intimately linked with a specific territory, resettlement may lead to a loss of social networks, cultural erosion and loss of language and their distinct identity. Employment in large-scale business activities may likewise be seen as a detriment to traditional activities by some indigenous peoples. Likewise the introduction of a cash economy may be incompatible with previously-existing relationships of exchange. Engagement with indigenous peoples can identify ways to mitigate these impacts to reflect the aspirations and priorities of communities.

- **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. Indigenous peoples may speak unique dialects or rely on oral tradition for communicating information which can lead to difficulties in effectively communicating information, and may require innovative methods of consultation and engagement. Additionally it is important to consider that in the context of indigenous peoples, historical grievances may exist which could complicate projects or activities of an extractive operation.

Furthermore it should be recognized that indigenous groups may comprise individuals who experience adverse impacts differently and include more vulnerable groups, such as women and children, to whom special attention during the engagement process would be expected.

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

➡ All personnel 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. Knowledge of an indigenous community's language, even at a courtesy level, will be helpful in demonstrating respect.

➡ Resources to support engagement with indigenous peoples (e.g. technical and legal support, community capacity building, local facilitators as well as compensation for costs to communities of engaging in the process) should be determined in consultation with indigenous peoples and agreed to by them throughout the engagement process.

As many indigenous communities represent marginalised communities who may live in isolation from broader communities they may require additional support– financial or non-financial – to be able to participate meaningfully in enterprise-led consultation or broader engagement activities.

4. Designing appropriate and effective activities and processes for engagement with indigenous peoples

A. Identifying which mode of engagement is needed or required

Selecting modes of engagement with indigenous peoples will involve the same considerations covered in the core of this Guidance.[46] However some international instruments express a State commitment to engage in consultation in order to obtain the FPIC of indigenous peoples prior to the approval of any project affecting their lands or territories and other resources. According to some human rights bodies and indigenous peoples the concept of FPIC is derived from indigenous peoples'

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[46] See generally, Step 4(b) *Identifying which mode of engagement is needed or required*.

self-governance, territorial and cultural rights and is necessary for the realization of those rights. Additionally some countries have national laws consistent with a commitment to consult and cooperate to obtain FPIC.[47] The OECD Guidelines make reference to UN instruments on the rights of Indigenous Peoples in the context of adverse human rights impacts but do not include any language on FPIC.[48]

Enterprises should always obey domestic laws and regulations as well as respect relevant internationally recognised human rights. [49] Irrespective of regulatory or operational requirements, 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.

In countries where FPIC is not mandated, enterprises should consider local expectations, the risks posed to indigenous peoples[50] and to the operations as result of local opposition. They should pursue an engagement strategy that meets the legitimate expectations of indigenous peoples 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 when seeking to implement FPIC:

- Agree with affected indigenous peoples on a consultation **process for working towards seeking indigenous peoples' FPIC.** This should identify the specific current and future activities where consent should be sought.[51] In some cases it might be appropriate **to**

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[47]   FAO, <u>Respecting free, prior and informed consent – practical guidance for governments, companies, NGOs, indigenous peoples and local communities in relation to land acquisition</u> (2014), p. 7

[48]   '[…]'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 […].'' See OECD Guidelines for Multinational Enterprises (2011); Chapter IV, paragraph 40. The key international instruments relating to indigenous peoples are the <u>United Nations Declaration on the Rights of Indigenous Peoples (2007)</u> (UNDRIP) and <u>the International Labour Organization Convention No. 169 (ILO 169) on Indigenous and Tribal Peoples</u>. The UN Declaration on the Rights of Indigenous Peoples provides that States consult and cooperate with indigenous peoples concerned in order to obtain their free, prior and informed consent (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 for countries that have ratified it, requires State Parties to consult with indigenous peoples with the objective of reaching agreement or consent on proposed measures (see Article 6). For guidance on the Convention's provision on consent, see ILO Handbook for ILO Tripartite Constituents – Understanding the Indigenous and Tribal Peoples Convention, 1989 (No. 169) (2013). Other key UN bodies and instruments argue that international standards with regard to FPIC apply equally to non-State actors, such as extractive enterprises. These bodies include the UN Permanent Forum on Indigenous Issues, the UN Working Group on the issue of human rights and transnational corporations and other business enterprises, the UN Special Rapporteur on the rights of indigenous peoples, the UN Experts Mechanism on the Rights of Indigenous Peoples, and several UN Human Rights Treaty Bodies.

[49] OECD Guidelines for Multinational Enterprises Chapter I paragraph 2 and Chapter IV paragraph 1.

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

[51]   Some international instruments specify the circumstances in which FPIC is relevant, for example in cases when resettlement is needed.

commit to this process through a formal or legal agreement.[52] The process should always be based on good faith negotiation free of coercion, intimidation or manipulation;

- Consult on, and agree 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. Indigenous peoples should be able to participate through their own freely chosen representatives and customary or other institutions;

- Engage in the process of seeking consent as soon as possible during project planning, **before activities** for which consent should be sought **commence or are authorized,** including in the context of exploration activities.

- Recognise the process of seeking FPIC as iterative rather than a one-off discussion. Continuous dialogue with the local community will lead to a trust relationship and a balanced agreement that will benefit the enterprise across all phases of the project;

- Provide all information relating to the activity to indigenous communities in a manner that is timely, objective, accurate and understandable to them;

- **Document commitments/agreements** that have been reached, including, as relevant, specification of what activities consent has been granted for or withheld, any conditions attached to consent, and areas of ongoing negotiation, and share them with the indigenous community in a timely manner in form and language they can understand;

- 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).

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[52]   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).

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

When consent is withheld by an indigenous community an enterprise 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 enterprise and adverse impacts to indigenous peoples may be generated. In situations where proceeding with projects will cause adverse impacts to indigenous peoples an enterprise should take the necessary steps to cease or prevent such impacts.

If through its due diligence processes[53] an enterprise concludes that consent is required to proceed with an activity, and the agreed process has not arrived at consent, activities should not proceed unless FPIC is subsequently forthcoming.

For example a project financed by the IFC governed by IFC Performance Standards should not proceed, regardless of any authorization by the State, if relocation of indigenous populations is required and FPIC has not been obtained from them. Conversely it will not be necessary to pursue FPIC in contexts where the rights of indigenous peoples are not being impacted.

B. Identifying and applying best practices

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

➡ Potentially impacted indigenous peoples should be consulted and their full and effective participation, as described in this Guidance, sought in designing engagement activities where projects could adversely impact their rights as well as during impact assessments, and throughout monitoring and evaluation activities.[54] Indigenous peoples should also be consulted during initial project planning.

Indigenous peoples should be involved in the design and implementation of engagement activities. Engagement activities should reflect indigenous decision making institutions developed and maintained by the community, as well as decision making processes prescribed by law or regulations. This promotes mutual respect and trust between enterprises and indigenous peoples and reduces the chance of misunderstandings when important decisions about projects are made.[55]

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;

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

[54]   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)

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

- 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 impacted indigenous people's own procedures.

In instances where there are no prescribed traditional decision making processes or where indigenous peoples elect not to apply their traditional decision making processes the steps highlighted in the core of this Guidance on identifying and applying best practices in engagement should be referenced. [56]

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[56] See Step 4(c) *Identifying and applying best practices*.

ANNEX C: ENGAGING WITH WOMEN

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

1. Understanding context

➡ Personnel undertaking 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 13 may be relevant in the context of engagement with women:

Table 13. Understanding context when engaging with women[57]

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

➡ Stakeholder facing personnel should consider how impacts may vary across stakeholders based on their gender and identify the most at vulnerable stakeholders in this regard.

Some impacts may affect men and women differently.[58] For example:

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

[58]   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 enterprise.

➡ 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 separately with women, or with established women's groups;

- devising invitations to consultations and information products aimed at women and displaying them in areas most 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.

- Total number of women 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.

ANNEX D: ENGAGING WITH WORKERS AND TRADE UNIONS

Workers employed by extractive enterprises have a legal relationship with the enterprise. Recognised employees will be covered by labour law and social protection as well as the national institutional and legal framework for industrial relations, which generally governs relationships and engagement between workers and employers. Social dialogue which includes the recognition of trade unions and collective bargaining is the preferred and most important form of stakeholder engagement where an employment relationship exists. Alternative forms of engagement for employees must not adversely impact the internationally recognized right to form or join a trade union and to bargain collectively.

Workers not directly employed by the enterprise such as service providers and subcontractors must also be considered stakeholders. Enterprise responsibilities in this respect are created by their business relationships to these workers.

1. Understanding context

Legal obligations with regard to workers are important for stakeholder-facing personnel 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, as well as the prevailing working conditions and the leading interests of workers. In contexts where unions are not established, workers themselves can be consulted with to understand the above information in addition to the sources highlighted the *Recommendations to On-the-ground Personnel* of this Guidance.[59]

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

Table 14. Understanding context to engage with workers

Type of information	Description
Regulatory Framework and Relevant Standards	• Workers' rights (e.g. freedom from discrimination, the right to form or join trade unions, 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 Guidelines, Chapter V) or other internationally recognised human rights instruments. • Applicable labour laws and regulations (e.g. wages and other compensation, working time, legally mandated safety standards) and social protection (unemployment compensation, social security, health care etc.) • Provisions for preferential local employment (often included in contracts and or industry agreements, or the national mining or oil and gas code). • National law and practice with respect to grievance mechanisms, social dialogue, collective bargaining procedures, and other mechanisms governing the employment relationship and the labour-management relationship (including provisions in collective bargaining agreements).

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[59] See specifically Recommendations to On-the-ground Personnel Step 1(a): *Consulting the right sources*.

History of Industrial Relations	• History and context of industrial relations (e.g. violence, intimidation, dismissal or discipline against workers attempting to organise; discrimination against trade union activists; inter-union conflicts, whether unions are bona fide organisations, government protection of workers' rights to form trade unions; state interference or domination of workers' organisations; employer interference or domination of workers' organisations).
Employee profiles	• Number of workers employed by an enterprise and their contractual relationships (e.g. regular employees, temporary or part time workers, agency workers working under the control of the enterprise, number of workers performing project-related work for subcontractors and other third party service providers).
Working conditions	• Working conditions in practice (wages and benefits, social protection and social security, occupational health and safety).

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

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

Table 15. Potential adverse impacts to workers of extractive activities

Issue	Examples of adverse impacts	Factors increasing likelihood of adverse impacts
Civil and political rights	Inability of workers to form or join trade unions and to bargain collectively.	• Absence of government protection of workers: e.g., from discrimination or dismissal • Absence of access to the real decision makers for workers of sub-contractors and service providers
Employment relationships	Workers receive little or insufficient protection of labour legislation (such as limits on working hours, overtime, rest periods, minimum wage, etc.). Workers receive little or no social protection such as unemployment benefits, health care, retirement provision etc.). Inability of workers to exercise rights to form or join a trade union and to bargain collectively.	• Precarious work relationships – temporary contracts, agency contracts, causal employment • Indirect use of informal labour arrangements
Health and Safety	Dangerous working conditions can lead to occupational disease, injury and death. Working in isolated environments can pose a risk of mental health issues amongst workers.	• Lack of safety equipment or training • Use of old equipment • Absence of trade union protection • Health and safety systems that do not provide for worker participation • Migrant worker population, living in isolation
Forced Labour	Use of forced labour.	• Remote location of extractive resources and use of migrant workers
Child Labour	Use of child labour.	• Cultural norms • High levels of poverty in the area • Inadequate enforcement of child labour laws • Benefits from informal labour arrangements by sub-contractors and service providers
Security	Union leaders or worker representatives are the targets of threats, harassment and violence.	• There is a history of repression in the region and/or country against people or groups who participate in civil protest. • There is a weak culture of protection of civil and political rights in the region and/or country.

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

Workers are a diverse group of people and 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.

- Women may be adversely impacted by discriminatory practices related to specific jobs or due to cultural factors.

- 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.

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

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

Table 16. Responding to challenges in engaging with workers

Type of Challenge	Explanation	Strategy
Perceptions of inequity in employment practices	Migrant workers may be perceived as having access to employment opportunities and other benefits that local people feel entitled to resulting in tensions. Perceptions of inequity in the way that workers are treated risks a dissatisfied and divided workforce. If expectations regarding employment for local workers are not met relationships with the enterprise may be damaged.	- Be transparent about recruitment criteria and processes. - Where possible try to optimise local employment opportunities. - Manage expectations as far as possible.[60]
Poor industrial relations	In some cases local law or practice may contradict enterprise policy or international standards on industrial relations. In some contexts there may simply not be a developed culture of strong industrial relations.	- Clearly and widely communicate enterprise commitment to respect the internationally recognised right of workers to form or join trade unions and to bargain collectively.[61] - In cases where the law does not adequately protect workers seeking to form or join a trade union or does not provide a conducive framework for collective bargaining, expectations of responsible behaviour with respect to these rights should be clearly communicated and negotiated up front with subcontractors and service providers.[62] - Enterprises may try to facilitate adherence to industrial relations standards by: - establishing enterprise-specific collective bargaining mechanisms - encouraging workers to elect their own representatives through procedures for free and independent elections - establishing a Global Framework agreement with an appropriate international trade union organisation in order to jointly support sound industrial relations).

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[60]   See Table 7 Responding to Common Challenges to Meaningful Engagement for additional guidance on managing expectations.

[61]   As articulated in the OECD 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)

[62]   See Recommendations for Corporate Planning or to Management, *Positioning stakeholder engagement strategically.*

Bona fide unions should be recognized and engaged with. Workers should not be discouraged from exercising their right to form or join a trade union, e.g. through intimidation, discipline or dismissal.

Where there are bona fide trade unions present they will be the right representatives to consult with on behalf of direct employees and should not be by-passed to engage workers individually about issues affecting the group. A bona fide trade union is an entity which the workers control themselves, and is accountable only to those workers. Enterprises should not refuse to recognise bona fide trade unions and should not refuse any genuine opportunity to bargain collectively.

Where there are no trade unions active, the enterprise should inform unrepresented workers that it will fully respect their right to form or join a trade union and that it will not refuse to engage in collective bargaining. 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.

Specifically in the context of engagement with workers the below practices will be important:

- Respecting the recognised right of workers to form or join trade unions and to bargain collectively.

- Providing access to the premises and an opportunity to meet with workers for bona fide trade unions representing workers in the area or sector.

- 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 which enables them to obtain a true and fair view of the performance of the entity or, where appropriate, the enterprise as a whole.

- Providing reasonable notice to representatives of workers when considering changes in their operations which would have major employment effects.

- Negotiating grievance mechanisms with trade unions where they exist and making them accessible to all individuals working at an extractive project site, including direct enterprise employees and contract and agency workers.

- Establishing whistle-blower protection to protect anonymity and providing assurance against reprisals for lodging complaints or reporting violations.

- Cooperating with labour inspectorates.

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 personnel should consult local legal sources about the legal status of artisanal activity as well 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 17. Understanding the landscape to engage with ASM

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?[63] Are there indications of the worst forms of child labour?[64]

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[63]   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).

2. Ensuring that artisanal miners are appropriately identified and prioritised

➡️ Enterprises 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.[65]

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 a not prima facie indication that ASM activity is illegitimate. See Box 7 for more detail.

Box 7: Legitimate artisanal and small-scale mining

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 Guidance, 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.

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

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

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.

- Extractive-site security 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

⇨ Enterprises 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 enterprise, poor engagement with artisanal and small-scale mining communities can lead to conflict and confrontation with the enterprise with ensuing human rights risks 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 Guidance but several external resources provide useful recommendations on these themes.[66]

➡ 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 18. Responding to challenges to engaging with ASM

Distrust, opposition and violence	ASM communities are fearful or distrustful of the enterprise based on the assumption that their activities will be repressed or they will be dislocated. Violence may be used to express dissatisfaction with the enterprise or project.	• 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 occur, to provide better information on the available options for the affected ASM communities). • 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.
Human rights issues	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.	• Clearly and widely communicate enterprise commitment to human rights and fundamental freedoms. • If the enterprise 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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[66] 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).

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

This Guidance is part of the work the OECD undertakes to support practical sectoral applications for the recommendations found in the OECD Guidelines. The Guidance refers to existing standards to help enterprises observe them and undertake risk-based due diligence The Guidance only refers to the parts of the OECD Guidelines and other standards that are most relevant to stakeholder engagement and due diligence and does not aim to substitute them. Enterprises should thus refer directly to each of these standards before making any claims regarding their observance. Not all adherents to the Investment Declaration[endorse the standards considered in this Guidance.

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