

# Shift

*Putting Principles into Practice*



## Discussion Paper Stakeholder Engagement and the Extractive Industry Under the OECD Guidelines for Multinational Enterprises

June 2013

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### **Shift**

Shift is an independent, non-profit center for business and human rights practice. It is staffed by a team that was centrally involved in shaping and writing the UN Guiding Principles on Business and Human Rights, and is chaired by the author of the Guiding Principles, Professor John Ruggie.

Shift provides the expert knowledge and guidance for businesses and governments to put the UN Guiding Principles into practice. Based on lessons from this work, Shift develops public guidance materials to support improved practices for the respect and protection of human rights globally.

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# Introduction

The following discussion paper provides an overview of the rationale for, and a suggested approach to, the development of new guidance on stakeholder engagement for the extractive industry in the context of the OECD Guidelines for Multinational Enterprises (the Guidelines).

## Stakeholder engagement in the OECD Guidelines

In 2011, the Guidelines were updated to include new guidance on stakeholder engagement. In the Guidelines' General Policies, it is stated that multinational enterprises 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.<sup>i</sup> (Chapter II.14)

In the Commentary on the General Policies, it is further clarified that:

Stakeholder engagement involves interactive processes of engagement with relevant stakeholders, through, for example, meetings, hearings or consultation proceedings. Effective stakeholder engagement is characterized by two-way communication and depends on the good faith of the participants on both sides. This engagement can be particularly helpful in the planning and decision-making concerning projects or other activities involving, for example, the intensive use of land or water, which could significantly affect local communities.<sup>ii</sup>

These new paragraphs on stakeholder engagement are relevant to and inter-connected with other new provisions in the updated Guidelines, notably on human rights, risk-based due diligence and the avoidance of adverse impacts.<sup>iii</sup>

“Local communities” are the specific focus of these provisions on stakeholder engagement, as groups that are potentially affected by a company’s operations. Workers can also be affected stakeholders. Engagement with workers is the subject of specific guidance under chapter V of the OECD Guidelines. As the commentary to that chapter underlines, “the International Labour Organisation (ILO) is the competent body to set and deal with international labour standards, and to promote fundamental rights at work, as recognized in its 1998 Declaration on Fundamental Principles and Rights at Work”.

Recognizing this primary role of the ILO with regard to workers, and the focus of paragraph II.14 on engagement with local communities, this discussion paper takes as its starting point the assumption that new OECD guidance on stakeholder engagement should focus on potentially affected communities. At the same time, it acknowledges that a considerable proportion of workers at extractive company operations may also be members of local communities. It proposes that this overlap, and the multiple rights and interests that workers from local communities have at stake, should be explicitly recognized in OECD guidance.

It also should be highlighted that there are separate provisions in the OECD Guidelines related to an enterprise’s interactions with other groups such as shareholders, subsidiaries and related entities, business partners, suppliers and sub-contractors. It is understood that these groups are not the ‘stakeholders’ intended under the terms of Chapter II.14 of the Guidelines regarding stakeholder engagement. They are therefore not the subject of this discussion paper.

## Purpose and structure of this Discussion Paper

As part of the implementation of the updated Guidelines, a new provision was included related to cooperation between National Contact Points (NCPs) for a Proactive Agenda on important corporate responsibility issues.<sup>iv</sup> The NCPs of Canada and Norway proposed that, as part of the Proactive Agenda, additional guidance should be developed by the OECD to help implement the new provisions on stakeholder engagement in the extractive industry.

In 2012, Partnership Africa Canada conducted a literature review of existing guidance on stakeholder engagement as an initial contribution to this work. In 2013, Shift – an independent, non-profit centre for business and human rights practice – was requested by the OECD Secretariat to prepare this discussion paper on the potential value-added for new guidance that could address gaps regarding stakeholder engagement in the extractive industry. The discussion paper will be presented during a workshop at the OECD's Global Forum on Responsible Business Conduct (Global Forum) on 26-27 June 2013.

The purpose of this discussion paper is to stimulate reflection, discussion and feedback at the Global Forum on the paper's analysis and recommendations for how OECD guidance could add value to what already exists in the field of stakeholder engagement. The paper is organized as follows:

The first section provides an overview of existing guidance on stakeholder engagement to underline the fact that the proposed OECD guidance need not replicate the numerous existing principles and tools that have been developed for and are used by the extractive industry.

The second section highlights some of the implications for communities and companies of these gaps in the implementation of stakeholder engagement. In sum, a lack of a strategic and comprehensive approach to stakeholder engagement heightens the risk of conflict and adverse impacts at the project level. These conflicts are increasingly framed in terms of human rights: on the one hand, poor stakeholder engagement is directly and indirectly connected to infringements on human rights; and, on the other hand, stakeholder engagement is an integral part of the on-going due diligence that companies should implement both to respect human rights and comply with other provisions of the Guidelines.

The third section explores a number of persistent challenges that are faced by companies in implementing stakeholder engagement on the ground, with regard to: adapting stakeholder engagement to the operational context; identifying the right stakeholders; choosing the right engagement activities; conducting effective stakeholder engagement at early stages of exploration and project development; taking a strategic approach to stakeholder engagement across the project lifecycle; and ensuring capacity and support for effective stakeholder engagement. This section is intended to spark a reflection about the reasons for the gaps that continue to exist between good policy on paper and good practice at the project level.

The final section suggests that the development of new guidance be based upon and convergent with the overall purposes and new provisions in the OECD Guidelines on risk assessment, due diligence and human rights. A number of potential modules are proposed for the guidance. Once again, the purpose is to spark additional reflection and feedback at the Global Forum, so that the OECD and its partners can advance their discussions about the next steps in the development of potential guidance.

# 1. Taking Stock of Existing Guidance on Stakeholder Engagement

The starting point for this review of existing guidance on stakeholder engagement is Partnership Africa Canada’s (PAC) literature review, conducted in 2012.<sup>v</sup>

The PAC review highlights a number of stakeholder engagement guides, and provides a bibliography with other articles and resources in the “Works Reviewed” section. The list of guides upon which PAC bases its best practices for stakeholder engagement includes:

- 1) *Leading Practice Principles of Community Engagement*, New South Wales Government, Australia
- 2) *National Standards for Community Engagement*, Minister for Communities, The Scottish Executive, UK
- 3) *Principles for Stakeholder Engagement*, Business for Social Responsibility, San Francisco, California, USA
- 4) *Community Impact Core Principles*, Business in the Community, London, UK
- 5) *Good Practice Principles for Stakeholder Engagement*, International Finance Corporation, Washington DC, USA
- 6) *Stakeholder Engagement: A Toolkit*, REVIT (2007)
- 7) *Working with Indigenous Communities*, Commonwealth of Australia (2007)
- 8) *E3 Plus: A Framework for Responsible Exploration, Principles and Guidance Notes*, Prospectors and Developers Association of Canada, Toronto, Canada (2009)
- 9) *Words to Action: The Stakeholder Engagement Manual, Volumes 1 & 2*, AccountAbility, UNEP and Stakeholder Research Associates Canada (2005)
- 10) *Corporate Social Responsibility: An Implementation Guide for Business*, International Institute for Sustainable Development (2007)<sup>vi</sup>

From its review of this guidance, PAC summarizes the best practices for stakeholder engagement, based on which it suggests an iterative cycle with four phases, with each phase containing the following actions.<sup>vii</sup>

## Best Practice for Stakeholder Engagement

Plan	<ul style="list-style-type: none"> <li>• Identify and prioritize who to engage with</li> <li>• Understand community concerns and identify pressing issues</li> <li>• Allocate sufficient time, resources, skills, and staff capacity.</li> </ul>
Set Goals	<ul style="list-style-type: none"> <li>• Understanding the purpose of engagement and desired outcomes</li> <li>• Aim to be inclusive</li> <li>• Aim for mutual benefits</li> </ul>
Engage	<ul style="list-style-type: none"> <li>• Use a variety of informal and formal engagement techniques chosen to suit the context</li> <li>• Communicate the purpose of engagement early</li> <li>• Communicate candidly, effectively, openly, honestly</li> <li>• Share evidence-based knowledge and information</li> <li>• Record and document the process</li> </ul>

Reflect / Improve	<ul style="list-style-type: none"> <li>• Report to stakeholders on outcomes of engagement</li> <li>• Report to own organization on process (for learning) and outcomes (for staff engagement)</li> <li>• Make improvements</li> </ul>
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Extractive sector companies are also advised to ensure that stakeholder engagement is a) systematic and ongoing, supported by resource commitments by management, b) includes stakeholders that are influenced by or can influence a project, and whose interests and concerns are assessed and addressed, and c) continues over the life of a project, from exploration to closure, adapting to changes within the company, community and at the project site.

A lifecycle approach to stakeholder engagement is thus emphasized in the PAC report. The following are the stakeholder engagement activities identified for different stages of the project lifecycle:<sup>viii</sup>

### **Stakeholder Engagement and the Project Lifecycle**

Exploration	<ul style="list-style-type: none"> <li>• Discussion and negotiations to access land, identify sites of cultural importance, provide communities with information on the project timelines and activities</li> <li>• Manage expectations and address community concerns</li> <li>• Consider negotiating a formal agreement</li> </ul>
Project Development	<ul style="list-style-type: none"> <li>• Further discussion and negotiation to ensure ongoing permission to access land, include the community in baseline studies, and to convey information about project development</li> <li>• Establish consultative forums and structures</li> <li>• Consider negotiating a formal agreement</li> </ul>
Construction	<ul style="list-style-type: none"> <li>• Understand and address community concerns about large-scale development</li> <li>• Manage community expectations in regards to employment and other opportunities</li> <li>• Liaise with neighbours to manage amenity and access issues</li> </ul>
Operations	<ul style="list-style-type: none"> <li>• Understand and address community concerns</li> <li>• Develop tools to listen and respond to community concerns and to monitor the implementation of any negotiated agreements</li> <li>• Participate in consultative groups and forums</li> </ul>
Planning for Closure	<ul style="list-style-type: none"> <li>• Involve external stakeholders in post-mine land use planning</li> <li>• Communicate a timetable for closure</li> <li>• Liaise with government departments to reduce the impacts of closure</li> <li>• Deal with anxiety and uncertainty in the community regarding closure and possible unemployment</li> </ul>

In addition to the guidance identified in the PAC literature review, guidance on stakeholder engagement continues to be developed by various organizations. Some of this guidance is focused directly on the extractive industry. Moreover, individual extractive industry companies are beginning to develop their own guidance for their projects and operations. This company-level guidance is not analyzed in this discussion paper, but it is another source of practical tools and examples of best practices.

Up until recently, there has been guidance on stakeholder engagement and guidance on due diligence, but scant guidance about implementing the two in an integrated manner. However, there appears to be a trend in new guidance to focus on stakeholder engagement as a component of due diligence processes for identifying and addressing environmental, social and human rights risks and impacts.

A human rights lens can strengthen the integration of stakeholder engagement and due diligence. This relates to another key theme in the emerging guidance: the importance of stakeholder engagement in achieving respect for human rights. In particular, indigenous peoples’ rights are a priority issue for the extractive industry given the location of many operations. Currently, there are several important guidance documents being prepared to address consultation with indigenous peoples, including their rights to free, prior and informed consent.

The following table provides a snapshot of some of the additional and more recent guidance that is relevant to stakeholder engagement and the extractive sector, that was not included in the PAC report:<sup>ix</sup>

**Additional and updated guidance on stakeholder engagement**

<p>Specific stakeholder engagement guidance for the extractive industry</p>	<ul style="list-style-type: none"> <li>• International Council on Mining and Metals, <i>Sustainable Development Framework</i>, Principle 10. Additional guidance on stakeholder engagement is contained in ICMM guidance on community development; engagement with artisanal and small-scale miners; indigenous peoples; human rights; and, grievance mechanisms.</li> <li>• Mining Association of Canada, <i>Towards Sustainable Mining - Guiding Principles</i>, specifically Aboriginal and Community Outreach Framework and Protocol, as well as the “Assessing External Outreach Performance” tool.</li> <li>• Prospectors and Developers Association of Canada, <i>E3 Plus Framework</i>, Principle 5 and Guidance Note on how to engage host communities and other affected and interested parties.</li> <li>• IPIECA (the global oil and gas industry association for environmental and social issues) guidance on community engagement and as part of other guidance on: voluntary and involuntary resettlement; free prior and informed consent; stakeholder engagement; migration; urban encroachment; local content; human rights; and grievance mechanisms.</li> <li>• European Commission, Human Rights Sector Guidance Project, <i>Oil and Gas Sector Guide on Implementing the UN Guiding Principles on Business and Human Rights</i> (forthcoming), including advice on stakeholder engagement as part of the implementation of human rights due diligence.</li> <li>• ICMM, ICRC, IFC, IPIECA, <i>Voluntary Principles on Security and Human Rights: Implementation Guidance Tools</i>, Module 3</li> </ul>
<p>Guidance on stakeholder engagement as part of environmental, social and human rights risk and impact assessment</p>	<ul style="list-style-type: none"> <li>• International Finance Corporation, Performance Standard 1, paragraphs 25-36 and associated Guidance Note 95-113. (See also Performance Standard 2 on Labor and Working Conditions and Performance Standard 7 on Indigenous Peoples.)</li> <li>• International Finance Corporation, <i>Stakeholder Engagement: A Good Practice Handbook for Companies Doing Business in Emerging Markets</i>.</li> <li>• International Finance Corporation and International Business Leaders Forum, <i>Human Rights Impact Assessment and Management</i>, Chapter 3 on engagement with stakeholders to verify human rights risks and impacts.</li> <li>• IAP2 (International Association of Public Participation), <i>Public Participation Toolbox</i>.</li> </ul>

Guidance on consultation with indigenous peoples	<ul style="list-style-type: none"> <li>• International Finance Corporation, Performance Standard 7 on Indigenous Peoples.</li> <li>• UN Global Compact, <i>United Nations Declaration on the Rights of Indigenous Peoples: A Business Reference Guide</i> (Exposure Draft).</li> <li>• UN Expert Mechanism on Indigenous Peoples Rights, <i>Advice No. 4: Indigenous peoples and the right to participate in decision-making, with a focus on extractive industries</i>.</li> <li>• Boreal Leadership Council, <i>Free Prior, and Informed Consent in Canada: Towards Practical Guidance for Developers and Aboriginal Communities</i>.</li> <li>• Cathal Doyle and Jill Carino, <i>Making Free, Prior and Informed Consent a Reality: Indigenous Peoples and the Extractive Industry</i> (2013).</li> </ul>
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Additional information about the guidance on stakeholder engagement and due diligence contained in this table can be found in Appendix A.

As this review of the PAC study and additional or updated guidance on stakeholder engagement demonstrates, there is a great deal of existing guidance on this issue, whether focused on or more broadly applicable to the extractive sector. The proposed OECD guidance will not add value if it simply replicates this body of work. The following sections explore the implications of continued poor practice at the project level, as well as further analysis of where gaps may lie that new guidance could usefully address.

## 2. Implications of poor stakeholder engagement for affected stakeholders and companies

As discussed above, there is a great deal of existing guidance that supports good stakeholder engagement practices, but nonetheless persistent challenges remain on the ground. This discussion paper will highlight the opportunity for companies to adopt a more strategic approach to stakeholder engagement that is integrated into human rights due diligence and requires planning, adequate resources and a long-term commitment to dialogue, including on tough issues. However, why should companies invest in more stakeholder engagement when a more limited approach may suffice for permitting purposes?

This section outlines some of the reasons that companies should be motivated to undertake more effective stakeholder engagement from both an external and internal perspective. On the one hand, poor stakeholder engagement is one of the root causes of the numerous conflicts and complaints that continue to be observed in relation to the extractive industry. On the other hand, good stakeholder engagement is a key component for successful partnerships with local communities and maintaining the social license to operate throughout the project lifecycle.

### Implications for affected stakeholders

From a human rights perspective, ineffective stakeholder engagement leads directly and indirectly to adverse impacts and infringements on human rights. For instance, ineffective stakeholder engagement may infringe directly on the rights of indigenous peoples to consultation and participation in resource development,<sup>x</sup> as well as the right to information of individual community members.<sup>xi</sup> Furthermore, ineffective stakeholder engagement may lead to infringements across the full spectrum of internationally recognized human rights.<sup>xii</sup>

For example, companies may fail to recognize that a project is on land that has been previously expropriated or acquired without adequate compensation or recognition of collective ownership rights. Companies may not be aware that impacts within a community are falling disproportionately on certain groups such as women and the poor. Other companies may not understand how local cultural and religious practices are being affected by reduced access to certain sites.

Consequently, concerns about stakeholder engagement are increasingly expressed in explicit human rights terms and linked to specific human rights allegations. While many human rights impact assessments (HRIAs) of extractive industry projects remain confidential, early experience and case studies demonstrate that issues related to consultation and stakeholder engagement are amongst the recurring themes of HRIA reports.<sup>xiii</sup> Moreover, much of the guidance on implementation of the corporate responsibility to respect human rights emphasizes stakeholder engagement as a key component of on-going human rights due diligence processes.

### **Implications for companies**

Poor stakeholder engagement is cited as an important issue in a large proportion of case studies about the conflicts between local communities and the extractive industry. In a recent study on these conflicts, consultation and communication issues were cited as a proximate or underlying issue for the conflict in 18 out of 25 case studies reviewed.<sup>xiv</sup>

These conflicts are manifested in a variety of manners: submissions by affected communities to governments or directly to the company; administrative proceedings; litigation; publicity campaigns; physical protests; and violence to property or persons.<sup>xv</sup>

To date, the costs of conflicts that are related to ineffective stakeholder engagement may have been overlooked by extractive industry enterprises; and, conversely, effective stakeholder engagement may be undervalued in terms of key performance indicators and the enterprise's bottom line. There is a need for companies to become more aware of these costs, which themselves can demonstrate the business case for better stakeholder engagement.

As mentioned above, the conflicts and concerns related to extractive industry are increasingly framed in human rights terms. At the same time, many extractive industry companies are taking on commitments related to human rights due diligence, which will further reinforce the case for better stakeholder engagement as part of the corporate responsibility to respect human rights.

## Implications of Poor Stakeholder Engagement<sup>xvi</sup>

Implications for affected stakeholders	Implications for companies
<ul style="list-style-type: none"> <li>● Heightened risks of adverse impacts across the full spectrum of human rights, and risks of further marginalization of vulnerable groups.</li> <li>● Some stakeholders are excluded from dialogue with company and do not have meaningful opportunities for expressing their views and concerns about the project.</li> <li>● Diminished timeframe to gain understanding and prepare themselves for a project or for transitions during the project lifecycle.</li> <li>● Limited channels for negative impacts or grievances to be raised, discussed and remediated.</li> <li>● Temptation to use other means (blockages, protests) in order to get a response to concerns.</li> <li>● Diminished opportunity to localize benefits, including jobs and business opportunities.</li> <li>● Limited channels for workers from communities to provide early warning about community concerns. Workers can be in conflict between their role as employees and as community members.</li> </ul>	<ul style="list-style-type: none"> <li>● Lost productivity due to project delays or disruption.</li> <li>● Opportunity costs arising from the inability to pursue future projects and/or opportunities for expansion or for sale.</li> <li>● Cost of additional staff time needed when conflict arises or escalates.</li> <li>● Loss of value to a company in failing to secure the benefits of building sustainable community relationships, a resilient supply chain, or a secure local workforce.*(refer to endnote xvi)</li> <li>● Potential alienation of stakeholders who feel that their concerns are not being heard and/or provocation of opponents.</li> <li>● Creating unrealistic stakeholder expectations about positive impacts and benefits, and lack of understanding of potential negative impacts.</li> <li>● Creating suspicion that the company has ulterior motives and something to hide.</li> <li>● Limited appreciation of the full range of potential social and human rights impacts. Heightened political, social and human rights risks and resulting missed opportunities to mitigate such impacts and risks.</li> <li>● Claims, campaigns or lawsuits regarding alleged infringement of one or more human rights.</li> <li>● Frustration and turnover of staff in stakeholder engagement or community relation functions.</li> <li>● Inability to follow-up effectively on commitments and/or respond to complaints.</li> <li>● Incoherent messages, actions and image in the local community.</li> </ul>

### 3. Persistent Challenges Related to Stakeholder Engagement

In this section, the discussion paper will delve deeper into some of the persistent challenges related to stakeholder engagement at the project level despite the existence of the various guidance documents discussed above.

The particular challenges highlighted are:

- Failure to adapt stakeholder engagement to the operational context.
- Failure to identify the right stakeholders.

- Failure to choose the right engagement activities.
- Lack of effective stakeholder engagement at early stages of exploration and project development.
- Lack of a strategic approach to stakeholder engagement across the project lifecycle.
- Lack of capacity and support for effective stakeholder engagement.

This non-exhaustive list prioritizes challenges that have been identified from experience in working with companies and communities at the project level, as well as from the recurring themes in complaints and case studies about extractive industry projects. This should not be taken to imply that all extractive companies face these challenges, or do so in all of their operations. However, experience suggests that they arise frequently enough to constitute gaps in good practice that merit particular attention.

Just as the OECD Guidelines are directed towards companies, so the proposed guidance is intended to be for the use of companies. This paper therefore does not address some of the persistent challenges for stakeholder engagement that relate to the lack of adequate national or regional consultation laws, policies and guidelines (or a lack of implementation of the same) at the domestic level.<sup>xvii</sup> The absence of a broadly accepted legal and policy framework for consultation about resource extraction projects at the national or sub-national levels can make it more difficult for an enterprise's own stakeholder engagement processes to succeed. The lack of an established legal framework for consultation is a particularly important impediment in the context of indigenous peoples' rights.<sup>xviii</sup> Conversely, where there are well-established procedures and guidelines for consultation and stakeholder engagement, there are improved chances that workers, communities and indigenous peoples are active partners and supporters of projects. While the discussion paper does not go into this aspect in more detail, nothing prevents the proposed OECD guidance from addressing this issue, should the OECD consider that to be helpful.

#### a. Failure to adapt stakeholder engagement to the operational context

Particular challenges arise where companies do not sufficiently adapt their stakeholder engagement strategies and approaches to their specific operational contexts. The best policies, procedures and intentions may fail to connect with local expectations, customs and traditions. Therefore, guidance on stakeholder engagement should not promote a “cookie-cutter” or “tick-box” approach, but rather should support the development of customized and context-specific engagement plans.

### **Why are some companies getting this wrong?**

Among the reasons that some companies are getting this wrong are inadequate risk assessments prior to investment that result in limited understanding of political dynamics, local culture, customs and decision-making processes. As so many of the potential risks that a project faces are related to the project's interaction with people, it is crucial to have a deeper understanding of the lives, interests and perspectives of those people as soon as possible.

Furthermore, some companies do not involve stakeholders in designing or validating the processes and mechanisms for stakeholder engagement. If the objective of stakeholder engagement is to foster two-way communication, it is important that engagement strategies be customized to the needs and expectations of affected stakeholders.

Another potential pitfall for some companies is a limited understanding of legacy issues related to their specific project or to the extractive industry in the local area. Where there are historical issues and unresolved grievances, a company will need to adapt the mode and intensity of their stakeholder engagement in order to build trust. In addition, if there have been historical and unresolved adverse human rights impacts related to the specific project, a company will often need to engage with stakeholders on remediation strategies.

These problems may be more frequent at earlier stages of project exploration and development, where there may be a tendency to focus more on technical, financial and legal requirements and less on the broader social and environmental concerns of stakeholders. At earlier stages, stakeholder engagement may be seen as a pro forma undertaking and not as a key building block for the relationships that will sustain a project. In this regard, some companies can be misled through over-reliance on the advice of those promoting investment in the sector or region and who may dismiss the need for substantial engagement with affected stakeholders. Further discussion about the need for earlier stakeholder engagement in the project lifecycle is included below.

### **What can be done to adapt stakeholder engagement to the local context?**

Early due diligence and risk assessment on an operation's country and local context is needed to begin to adapt stakeholder engagement to local needs. This can involve integrating national and local personnel into the project team from the start, as well as engaging social and anthropological expertise.

Most importantly, it is necessary to speak to the affected stakeholders and their representatives. They are a critical source of information about the local context, as well as about any legacy issues and future expectations for the project. The need for improved stakeholder identification and mapping is discussed further below.

As is emphasized in some of the existing guidance, it is a good practice to obtain an agreement on the process of engagement with affected stakeholders from the outset of a project. This may be a requirement when engaging with indigenous peoples within the context of free, prior and informed consent. Preliminary "engagement about engagement" is a key strategy for respecting local customs, building trust and enabling meaningful input into a project.

### **Proposed Guidance**

Therefore, it is suggested that a module of the proposed guidance should address the following questions:

- How do you link stakeholder engagement to initial project risk assessment?
- How do you include affected stakeholders in the design and validation of your stakeholder engagement plans?
- How do you gain understanding of legacy issues and engage with affected stakeholders to resolve them?

#### **b. Failure to engage with the right stakeholders**

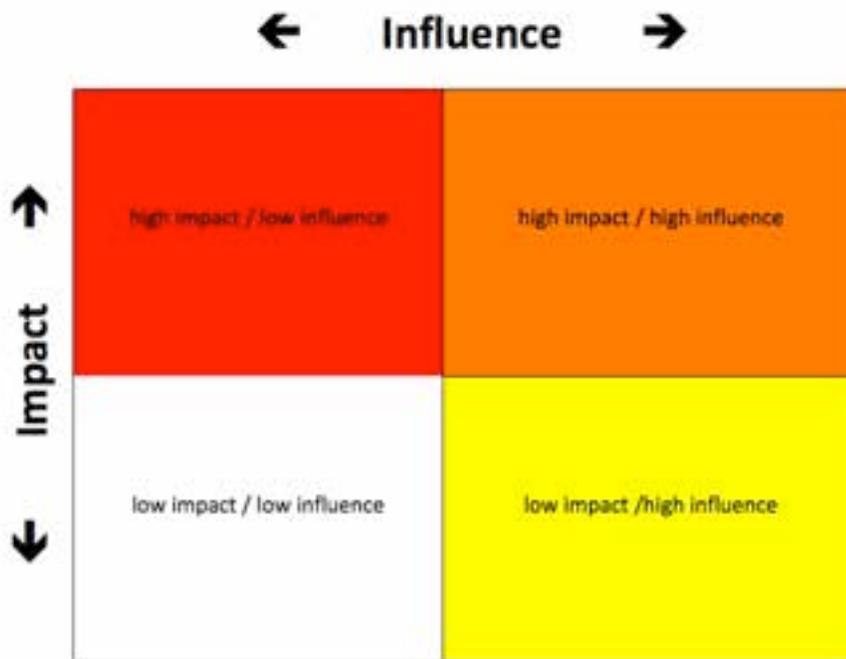
There is sometimes confusion about who are relevant stakeholders for the purpose of "stakeholder engagement". Some companies may have a tendency to have a very inclusive definition of everyone with an interest in the company's operations. There also may be a tendency to prioritize those with the most influence over a project.

As noted earlier, for the purposes of stakeholder engagement under the OECD Guidelines, the priority is *affected stakeholders*, which also requires attention to their legitimate representatives. In other words, the most important stakeholders are those who are at risk of adverse impacts from the company's operations over the project lifecycle—namely members of local communities, including workers and groups or populations that may be particularly vulnerable and therefore require specific attention, such as indigenous peoples, women or children. Many potentially vulnerable groups are also the subject of specific international human rights instruments, focused on the protection of their human rights.<sup>xix</sup>

### **Why are some companies getting this wrong?**

As suggested above, there is an important distinction between those who have influence over a multinational enterprise and those who experience the impacts of the enterprise's activities.

A typical stakeholder-mapping tool is divided into four quadrants with the horizontal axis representing influence and the vertical axis representing impact. When engaging in stakeholder mapping from a company-centered perspective, the prioritization is often on the high influence / high impact quadrant followed by the high influence / low impact quadrant. The focus of stakeholder engagement therefore tends to be on formal representatives and powerful community members, as well as government officials and investors.



Community members, workers, indigenous peoples and other potentially vulnerable groups may be overlooked in stakeholder mapping exercises that are based on influence, or else they may be identified, but not acted upon, because of their lack of influence. However, a rights-based perspective requires that priority be placed on those most at risk of negative impact. In other words, the quadrant that represents high impact / low influence requires particular attention. However, from experience, this often receives little, if any, attention.

This shift in focus from “risk to company” to “risk to people” therefore implies greater attention to vulnerable groups. However, assessing vulnerability is difficult, as vulnerable individuals and groups tend to be less visible in a community and are less likely to have an organized voice. Vulnerable groups are therefore less likely to participate in formal stakeholder engagement processes, and companies are less likely to identify them and

include their perspectives. Without specific skills and strategies to assess vulnerability, companies may have little engagement with those who are most at risk of adverse impacts.

Community members, workers, indigenous peoples and other potentially vulnerable groups may have their concerns and issues raised by informal representatives or non-governmental organizations with whom some companies may be reluctant to engage. There are complex questions about how to determine the legitimate representatives of affected stakeholder groups. Engagement with formal representatives such as traditional or elected community leaders may need to be guided by specific rules and protocols. However, this should not preclude other forms of engagement with informal representatives who can demonstrate a legitimate role in representing affected stakeholder views.

Some companies may also be reluctant to engage with “opponents” or “critics” of a project, who purport to represent the concerns of certain directly affected groups, for fear of confrontation or difficult debates. There is perhaps a tendency to see these groups as less relevant or lacking legitimacy; or to consider that engaging with them gives them a legitimacy that they don’t deserve. While specific engagement strategies may be required to deal with such critics, it is nonetheless important to recognize when they are often important proxies for affected stakeholders and vulnerable groups.

The underlying issue at this point is that some companies may not be engaging directly with certain kinds of affected stakeholders and that there may be risks and impacts that result from these blind spots. Furthermore, it is nearly impossible to communicate and build trust with individuals and groups with whom you do not have a relationship.

### **What is needed to improve stakeholder identification?**

Companies should invest in stakeholder mapping exercises as early as possible; and, as will be discussed below, additional mapping exercises should be undertaken on a periodic basis to identify new stakeholders that may be affected by different aspects and phases of a project. These stakeholder mapping exercises need a greater focus and follow-up on those who are at risk of impact, and especially on vulnerable groups. Focusing on impacts and vulnerability implies that companies use multiple channels and sources of information to identify affected stakeholders and their legitimate representatives.

In addition, stakeholder mapping typically involves the community relations specialists in the company. Such experts are, however, often much less aware how company design or operations might inadvertently pose a risk to people. Integrating the perspectives of a broader group of company staff, including technical experts, can provide a more accurate assessment of which stakeholder groups are vulnerable to human rights risk.

Identifying the full range of affected stakeholders may require greater acknowledgment of and engagement with informal representatives of communities, or of groups within communities, as well as with proxies for the perspectives of different vulnerable groups. In this regard, it could be helpful for companies to have a better understanding of how to identify effective proxies, as well as to have effective strategies for engaging with informal representatives and “critics”.

### **Proposed Guidance**

Therefore, it is suggested that a module of the proposed guidance should address the following questions:

- How do you conduct a rights-based stakeholder mapping exercise that focuses on potential impacts?

- How do you identify vulnerable groups that may not be visible?
- How do you engage with informal representatives and other proxies for vulnerable groups?
- How do you assess the extent to which critical voices are raising broader concerns?

### c. Failure to choose the right engagement activities and mechanisms

Under the Guidelines, “engagement” is meant to be an on-going process of two-way communication that implies the good faith of all participants. It should serve to foster a relationship of confidence and mutual trust between enterprises and the societies in which they operate.<sup>xx</sup> Therefore, not only do companies need to engage with the right stakeholders, it is also important for them to choose the engagement activities and mechanisms that will provide stakeholders with meaningful opportunities for input and two-way communication about the project. There are a wide variety of potential mechanisms for companies to share information, elicit feedback and explore issues of concern with affected stakeholders; however, there is often dissatisfaction about the manner in which stakeholder engagement takes place.

## Why are some companies getting this wrong?

### Different modes of stakeholder engagement

Pitch	Disclose	Consult	Collaborate	Agree
<ul style="list-style-type: none"> <li>• One-way</li> <li>• Communicate benefits of project</li> </ul>	<ul style="list-style-type: none"> <li>• One-way</li> <li>• Inform about risks and adverse impacts</li> </ul>	<ul style="list-style-type: none"> <li>• Two-way</li> <li>• Focused on sharing information</li> </ul>	<ul style="list-style-type: none"> <li>• Two-way</li> <li>• Focused on sharing actions</li> </ul>	<ul style="list-style-type: none"> <li>• Two-way</li> <li>• Focused on sharing decisions</li> </ul>

Within these different modes of engagement activities, there can be a tendency for companies to focus disproportionately on “pitch” activities, characterized by the one-way communication of information selected, presented and controlled by the company. Affected stakeholders may feel that they are being “sold” on the purported benefits of a project. It is often perceived that companies naturally emphasize potential positive impacts while glossing over risks and dismissing potential adverse impacts. Particularly in contexts where there are legacy issues related to the extractive industry, information provided by companies may be viewed with suspicion unless it is independently verified.

Even where companies move towards “disclose” activities, where they share some or all of the potential negative impacts that the company will be seeking to mitigate, communities may still feel they lack the opportunity to have a real dialogue about their questions or priority issues.

Companies may be more comfortable in a “pitch” mode, particularly at early project phases when they want to explain the project details to the affected stakeholders. Moreover, initiating an open dialogue about adverse impacts and community concerns may be seen as “opening up Pandora’s box” by framing issues in a negative manner and/or giving credence to project opponents. Furthermore, the other modes of engagement (consultation, collaboration and agreement) are more intensive, time-consuming and stray into broader social, environmental or political issues that are beyond the company’s control.

Regardless of the mode of engagement selected, companies are also sometimes criticized for not communicating effectively and respectfully. This can result from a failure to adapt engagement activities to local

customs and traditions. For instance, the use of local languages is extremely important—both as a sign of respect and to ensure that information provided can be understood. Technical information needs to be summarized and illustrated in a manner that is comprehensible to the local community. The timing of stakeholder engagement activities needs to be chosen carefully so as not to conflict with traditional activities.

One of the main underlying issues is attaching the wrong level or type of engagement to a stakeholder group. For example, information disclosure is going to be unsatisfactory to stakeholders who insist on being consulted.

### **What is needed to improve stakeholder engagement activities?**

The Guidelines focus on two-way communication in their definition of stakeholder engagement; therefore, there is an immediate need to prioritize consultation, collaboration and agreement as important modes of engagement. While the “pitch” and “disclosure” modes of engagement are perfectly valid, and disclosure in particular is a prerequisite for other modes of engagement to be meaningful, they are not sufficient to build relationships, partnerships and trust around a project. From a due diligence perspective, they also do not provide opportunities for affected stakeholders to provide feedback and input about concerns or adverse impacts. They therefore need to be supplemented with the other modes of engagement that move towards consultation, collaboration and agreement. They need to be supported by credible information about the topics of local concern and in an appropriate form for local consumption.

For affected stakeholders, it is important to believe that the company is listening to them and involving them in meaningful dialogue and decision-making. As discussed above, involving affected stakeholders in the design and selection of engagement activities and mechanisms is an important factor for success. Also, given the need to focus on impacts and vulnerability, it is necessary to have multiple modes of engagement that can be used, evaluated and revised at different points in the project lifecycle. This is discussed further below in terms of a strategic approach to stakeholder engagement.

### **Proposed Guidance**

Therefore, it is suggested that a module of the proposed guidance should address the following questions:

- When different modes of engagement are appropriate, and at which different moments at the project level?
- What different modes of engagement are necessary to align with the expectations and needs of different stakeholders and their representatives?
- How do you ensure that all modes of engagement are respectful and effective?

#### **d. Lack of effective stakeholder engagement at early stages of exploration and project development**

A related and recurrent theme is that stakeholder engagement often does not begin early enough in the project lifecycle. Affected stakeholders sometimes perceive that they are only consulted as “rubber stamps” when the project is a “done deal” and agreement has been obtained with the formal and influential actors.

This is problematic because it deprives stakeholders of the opportunity for meaningful input on a project at the early stages where adjustments are possible and local or traditional knowledge can be effectively integrated into project design. Late engagement can also erode the foundation of good faith and trust at the project level.

## **Why are some companies getting this wrong?**

The reasons why some companies are not doing effective stakeholder engagement at the earlier project stages include the tendency towards secrecy during exploration activities as a result of competition for scarce resources. Furthermore, there is often an attitude of caution about not raising expectations and potential demands of affected stakeholders before it is confirmed that an exploration project will become a viable operation. Hence, maintaining confidentiality over outcomes is compounded by also being discrete about process.

In addition, there are more limited financial and human resources within the small and medium enterprises often involved in exploration and development, and limited budgets ascribed to these phases when conducted by larger enterprises. Especially in difficult economic times, those conducting exploration may be under significant pressures to deliver results on timelines that may squeeze out the time required for early stakeholder mapping and engagement.

## **What is needed to improve stakeholder engagement at early project phases?**

The key to improved stakeholder engagement at early project phases is reinforcing the business case, as well as the due diligence requirements, so that companies, not least small and medium exploration and development companies, dedicate the necessary resources to this as a strategic business objective. The business case would be greatly reinforced if an economic value or premium were to be placed on strong stakeholder engagement by eventual purchasers of projects, recognizing its value in reducing risks of later disruptions or delays to operations. More generally, a better understanding within the extractive industry of the importance and benefits of stakeholder engagement across the entire project lifecycle should also reinforce the case for early stakeholder engagement. This is discussed further below.

It would also be useful if there were additional tools and technical assistance for small and medium enterprises in designing and implementing stakeholder engagement plans and activities that are appropriate to the size, scope and context of their operations.

## **Proposed Guidance**

Therefore, it is suggested that a module of the proposed guidance should address the following questions:

- How do you design stakeholder engagement strategies for the earliest project stages?
- What sort of information do you need to give to affected stakeholders before you have a proven project?
- How can stakeholder engagement and due diligence be adapted for small and medium enterprises?
- How should companies that acquire rights or projects conduct due diligence about prior stakeholder engagement at earlier project stages?

### **e. Lack of a strategic approach to stakeholder engagement across the project lifecycle**

One of the key challenges for extractive industry companies is to develop a strategic approach to stakeholder engagement across the lifecycle of a project, due to the long timeframes, lifecycle transitions (from exploration to development to construction to operation and closure) and potential changes in ownership. While some of the existing guidance and literature suggests that a lifecycle approach to stakeholder engagement is a good practice, local communities still witness significant ebbs and flows in the practices on the ground.

## **Why are some companies getting this wrong?**

Far too often, stakeholder engagement plans are designed for the minimum requirements for initial permitting or formal impact review processes. If longer-term stakeholder engagement plans are required (e.g. by regulation, financing requirements, etc.), they sometimes are not implemented, evaluated and updated in a systematic manner once the project has been permitted. As a result, stakeholder engagement may be seen as a one-time event that serves a specific business purpose (i.e. obtaining a permit) rather than an on-going process that supports a relationship with local communities.

Furthermore, as a project progresses beyond the initial stages, companies may not have mechanisms that allow “new” affected stakeholders to identify themselves and raise concerns about adverse impacts they are experiencing. This may result from becoming habituated to engaging with a limited set of stakeholders that were identified at an earlier stage of the project. It also may reflect a lack of open communication channels and responsive grievance mechanisms at the project level. This sort of “closed circle” of engagement may lead to important blind spots with respect to a company’s risks and impacts.

Furthermore, if approached as a one-time event for permitting, companies may not conduct adequate stakeholder engagement around major changes or transitions in subsequent project phases. These are important points in the project lifecycle when new concerns often surface and different stakeholders may be affected; and, therefore, these are important moments during which to be proactive and engage affected stakeholders using various modes and techniques. These are also logical times to revise and update stakeholder-mapping exercises and engagement plans.

Other concerns about a non-strategic approach to stakeholder engagement include limited on-going disclosure of impacts and benefits and monitoring of results, and limited recording and follow-up on commitments. These kinds of gaps in company practice consistently undermine trust and lead to perceptions of bad faith.

In addition, stakeholder engagement is not always supported by an effective project-level grievance mechanism. This is another sensitive area where companies may fear that they are opening a “Pandora’s box” by creating a grievance mechanism and therefore may be reluctant to do so. This may result in affected stakeholders having no way to raise their concerns and grievances, either informally or formally. Furthermore, there may be a tendency to deal with grievances in an adversarial manner (through a company’s legal department), with less potential for convergence with stakeholder engagement than through dispute resolution techniques that emphasize early dialogue and dispute resolution.

## **What is needed to make stakeholder engagement more strategic?**

This discussion points towards the need to develop a comprehensive and strategic stakeholder engagement plan for the lifecycle of a project as part of on-going due diligence. A comprehensive and strategic plan would be deployed in an integrated manner across departments and would be linked to various monitoring and management systems, as well as communications and reporting functions, and ideally to a credible and accessible grievance mechanism.

As stakeholders may be affected by a project in different ways at different stages of its lifecycle, it is important for stakeholder mapping to be undertaken on an on-going basis. For instance, stakeholder mapping can be part of on-going human rights impact assessments. Having open channels of communication and accessible grievance mechanisms can permit affected stakeholders to self-identify and bring their concerns forward to the company.

Such a plan would identify key transition points in the project lifecycle where new adverse impacts may arise and where the company will need to engage proactively to inform and prepare workers and communities to benefit as much as possible, and to consult on potential measures to avoid or remediate adverse impacts. A strategic engagement plan would also be supported by periodic evaluation and revisions of stakeholder engagement strategies at different points within the project lifecycle, particularly at the key transition between project phases or between different owners.

As discussed above, it would be strategic for companies to engage with affected stakeholders about their proposed stakeholder engagement plans in order to ensure that they are responsive to local needs and expectations. The biggest strategic shift required is to put the affected stakeholders at the center of engagement efforts rather than the company.

Grievance mechanisms are also part of an ongoing human rights due diligence process and can provide information about stakeholder concerns—including with respect to stakeholder engagement activities (or lack thereof). Individual grievances and emerging patterns of grievances can be analyzed to identify vulnerable individuals, beyond the level of groups, and to suggest issues on which stakeholder engagement and impact mitigation efforts should be focused in a proactive manner. The reverse is often true, whereby effective stakeholder engagement can help identify and remediate grievances and contribute to greater respect for human rights. Together, effective stakeholder engagement and grievance mechanisms are mutually-supporting pillars for improved respect for human rights and community welfare by companies.

A broader understanding of the purposes of stakeholder engagement is required if companies are going to make these additional efforts. More strategic stakeholder engagement is not about sending community relations staff out to do more of the same. It is a comprehensive effort that should be focused on building relationships, identifying the risks and impacts, and integrating that knowledge into the decision-making and actions of all relevant departments and functions as well as the company leadership.

## **Proposed Guidance**

Therefore, it is suggested that a module of the proposed guidance should address the following questions:

- How do you design a stakeholder engagement plan beyond permitting?
- How do you identify and integrate new stakeholders into your engagement plan on an on-going basis?
- How do you review and recalibrate your stakeholder engagement plans and activities on an on-going basis?
- How do you follow-up with affected stakeholders about risks, impacts, commitments and remediation efforts?
- How do you link stakeholder engagement with an operational-level grievance mechanism?

### **f. Lack of capacity and support for effective stakeholder engagement**

Stakeholder engagement is a complex activity and requires special skills that are quite different from the technical skills needed to design, construct and operate an extractive industry project. Stakeholder engagement is not just about conveying information or holding a town hall meeting, and should be understood and valued as a key success factor for corporate and broader societal objectives for the extractive industry.

Stakeholder engagement therefore requires internal support in terms of coherent policies, operational procedures and management systems—including alignment between the objectives and performance incentives of different internal departments. It also requires an investment of time and resources and a recognition of the discrete skill-sets and training required.

### **Why are some companies getting this wrong?**

Some extractive industry companies may have a tendency to focus narrowly on technical objectives and production targets, prioritizing internal resources to support the “core business” and marginalizing stakeholder engagement functions within the organizational hierarchy. Stakeholder engagement functions may be placed within departments with limited decision-making authority and internal influence within the company. This may result in stakeholder engagement personnel being disconnected from key decision-making points or ‘gateways’ in a project’s development. It may also result in the need for time and other resources for effective stakeholder engagement – including proper disclosure as well as two-way modes of consultation, collaboration and even agreement with communities – being consistently discounted and subordinated to other business drivers of a more short-term and immediately tangible nature.

Furthermore, stakeholder engagement personnel may be contradicted and undermined by the actions of other departments. For instance, the communications department may launch a national advertising campaign that is perceived to be insensitive to local concerns; an exploration or construction team may undertake activities on areas that are sensitive to local stakeholders without adequate forewarning and agreement; or company staff from outside the project area may act in local communities in ways that are perceived to be arrogant and dismissive of local traditions.

Currently, there also may be a tendency to delegate stakeholder engagement and related tasks to outside consultants that are not integrated into the company’s operations. The outside support of third parties may be useful and necessary in some situations (e.g. when dealing with a legacy issue or a conflict), but the overall purpose should be to embed stakeholder engagement within a company’s business objectives, operations and staff capacity.

### **What is needed to improve internal capacity and support for external engagement?**

A strategic stakeholder engagement plan should be supported by a company’s overall policy framework that articulates it as an integral part of due diligence and corporate responsibility objectives. It is important to ensure that these objectives are increasingly aligned and not contradicted by other operational requirements and performance incentives. A lifecycle approach to stakeholder engagement also points towards the need for better management systems at the corporate level, including tools for tracking, analysis and follow-up of information gathered and indicators for measuring performance and progress.

In addition to their place in the organizational hierarchy, stakeholder engagement personnel need adequate skills and training, and opportunities to develop their capacity—both to address the external engagement challenges discussed above, and to engage internally to translate and integrate stakeholder feedback into company decision-making and implementation. It would also be helpful to further define the circumstances in which external support for stakeholder engagement – for example through the engagement of a neutral facilitator – may be appropriate and beneficial.

### **Proposed Guidance**

Therefore, it is suggested that a module of the proposed guidance should address the following questions:

- How do you build the internal capacity for stakeholder engagement?
- How do you embed and empower the stakeholder engagement function?
- How do you ensure other departments are aligned with your stakeholder engagement?
- When and how do you involve neutral and outside parties in your stakeholder engagement?

#### g. Summary of persistent challenges for stakeholder engagement at the project level

This overview of the persistent challenges for stakeholder engagement at the project level highlights some of the gaps between existing guidance on the one hand, and the frequent reality of current practice on the other.

There are some recurrent themes in this analysis of what is needed to advance good practice on the ground: first, the need to strengthen the life-cycle approach to stakeholder engagement, so that it becomes an embedded and on-going part of business operations; and, second, the need for a rights-based approach to stakeholder engagement that focuses attention on the affected communities, including workers and vulnerable groups, and expands their participation in the design, implementation and evaluation of stakeholder engagement plans.

A comprehensive rights-based approach to stakeholder engagement across the project life-cycle should be understood as strengthening good practice in terms of international standards, as well as meeting the expectations and respecting the rights of affected stakeholders. Strengthening this approach is one of the main opportunities for the proposed guidance under the Guidelines.

Using a human rights lens can have a transformative effect on the purpose, timing and modes of stakeholder engagement and can contribute to more effective due diligence and consensus-building at the project level. Arguably, a rights-based approach to stakeholder engagement represents best practice and can help fulfill the extractive industry's commitments to international human rights standards, including the new chapter on human rights in the Guidelines and the UN Guiding Principles on Business and Human Rights.

## 4. Recommended approaches and “value-added” of new guidance by the OECD

From the discussion above, it is recommended that the overall approach of new guidance by the OECD should be to help enterprises move from “good guidance on paper” to “successful implementation in practice.” In particular, it is recommended that such guidance should:

- Summarize existing good practice guidance with specific reference to the objectives, policies and provisions of the OECD Guidelines.
- Build on this through a series of modules that provide tools and resources to address the persistent challenges identified above.
- Be presented in a manner that reinforces a lifecycle approach to stakeholder engagement that begins earlier in project development and is maintained consistently through all subsequent project phases.
- Allow for further modules to be developed over time to address other challenges or themes.

## **Proposed modules**

It is suggested that, in order to be as operational as possible and effectively address gaps between existing guidance and current practice, OECD guidance might primarily take the form of a series of modules that the user could draw on based on need.

### *Introductory Module*

An introductory module could reinforce the purpose of stakeholder engagement, including:

- Articulating the business case for stakeholder engagement.
- Highlighting the importance of stakeholder engagement as part of due diligence from a risk, impact and human rights perspective.
- Highlighting the importance of stakeholder engagement for building trust, fostering social acceptance and avoiding conflict around extractive industry projects.
- Highlighting the importance of on-going stakeholder engagement across the project lifecycle.

Subsequent modules could focus on specific challenges and ways to address them. These could be presented across a typical project lifecycle that links to different modules at the relevant points in time.

### *Module One: Adapting stakeholder engagement to the operational context*

- How do you link stakeholder engagement to initial project risk assessment?
- How do you include affected stakeholders in the design and validation of your stakeholder engagement plans?
- How do you gain understanding of legacy issues and engage with affected stakeholders to resolve them?

### *Module Two: Engaging with the right stakeholders*

- How do you conduct a rights-based stakeholder mapping exercise that focuses on potential impacts?
- How do you identify vulnerable groups that may not be visible?
- How do you engage with informal representatives and other proxies for vulnerable groups?
- How do you assess the extent to which critical voices are raising broader concerns?

### *Module Three: Using the right modes of engagement for different stakeholders.*

- When are different modes of engagement appropriate and at which different moments at the project level?
- What different modes of engagement are necessary to align with the expectations and needs of different stakeholders and their representatives?
- How do you ensure that all modes of engagement are respectful and effective?

### *Module Four: Supporting stakeholder engagement at early stages of exploration and project development*

- How do you design stakeholder engagement strategies for the earliest project stages?
- What sort of information do you need to give to affected stakeholders before you have a proven project?
- How can adapt stakeholder engagement and due diligence be adapted for small and medium enterprises?
- How should companies that acquire rights or projects conduct due diligence about prior stakeholder engagement at earlier project stages?

*Module Five: Supporting a more strategic approach to stakeholder engagement across the project lifecycle*

- How do you design a stakeholder engagement plan beyond permitting?
- How do you identify and integrate new stakeholders into your engagement plan on an on-going basis?
- How do you review and recalibrate your stakeholder engagement plans and activities on an on-going basis?
- How do you follow-up with affected stakeholders about risks, impacts, commitments and remediation efforts?
- How do you link stakeholder engagement with an operational-level grievance mechanism?

*Module Six: Enhancing capacity and support for effective stakeholder engagement*

- How do you build the internal capacity for stakeholder engagement?
- How do you embed and empower the stakeholder engagement function?
- How do you ensure other departments are aligned with your stakeholder engagement?
- When and how do you involve neutral and outside parties in your stakeholder engagement?

As appropriate and as required, each of these modules could contain additional resources and tools (checklists, templates, case studies, etc.) to help companies enhance their stakeholder engagement strategies and practices in line with the Guidelines.

## **Potential format**

A key consideration for potential guidance is to ensure that practitioners use it. Therefore, it is important for the guidance to be widely available through an easy-to-navigate electronic format, but also to be in a format that can be referenced as a tool in the field.

An electronic format (e.g. i-Pad version) would facilitate navigation between the different modules along the project timeline, as well as referencing of additional resources and tools, which can be provided as electronic links.

Downloadable versions of specific modules would facilitate their use by practitioners in the field. Modules could also be compiled into a PDF-version manual, made navigable through the use of tabs and appendices with specific tools.

## 5. Further questions for discussion

Combining a focus on affected stakeholders with a lifecycle approach to engagement, stakeholder engagement becomes a fundamental part of the due diligence processes that identify and address risks and adverse impacts—including those related to human rights.<sup>xxi</sup> Human rights principles such as participation, access to information and accountability reinforce the requirement for more effective stakeholder engagement, including the need for project-level grievance mechanisms.<sup>xxii</sup> Stakeholder engagement is also a critical element for any business enterprise to know and show that they are respecting human rights. More broadly speaking, effective stakeholder engagement at the project level is a key component for multinational enterprises to implement the full range of provisions in the OECD Guidelines.

The approach to the development of OECD guidance suggested in this discussion paper seeks to recognize these distinct, but mutually-supporting facets of effective stakeholder engagement. For the purposes of further reflection and discussion at the upcoming Global Forum, we propose the following questions:

- Do participants agree with the proposition that OECD guidance could add greatest value by focusing on the most typical gaps between existing guidance and current practice, and that it could usefully summarize the former while supplementing it with targeted, operational guidance, resources and tools to improve implementation?
- Are there other gaps or persistent challenges with regard to companies' engagement with affected stakeholders beyond those identified in this paper? What are the underlying causes of these challenges and how might they be addressed?
- Are there additional practical issues or questions that the guidance should address?
- What sorts of tools and resources will help stakeholder engagement practitioners in their work? What is the best format for embedding new guidance into practice at the project level?
- What are the key considerations for reinforcing the business case for better stakeholder engagement across the project lifecycle?

## Appendix A: Overview of existing guidance on stakeholder engagement relevant to the extractive sector

<p>International Finance Corporation, Performance Standard 1 (as revised in 2012)</p>	<ul style="list-style-type: none"> <li>• “Stakeholder engagement is the basis for building strong, constructive, and responsive relationships that are essential for the successful management of a project’s environmental and social impacts. Stakeholder engagement is an ongoing process that may involve, in varying degrees, the following elements: stakeholder analysis and planning, disclosure and dissemination of information, consultation and participation, grievance mechanism, and ongoing reporting to Affected Communities. The nature, frequency, and level of effort of stakeholder engagement may vary considerably and will be commensurate with the project’s risks and adverse impacts, and the project’s phase of development.” (Paragraph 25)</li> <li>• Detailed guidance on different components of stakeholder engagement is provided in paragraphs 26 to 36 and Guidance Note 95 to 113</li> <li>• See also Performance Standard 2 on Labor and Working Conditions and Performance Standard 7 on Indigenous Peoples</li> </ul>
<p>International Finance Corporation, <i>Stakeholder Engagement: A Good Practice Handbook for Companies Doing Business in Emerging Markets</i> (2007)</p>	<ul style="list-style-type: none"> <li>• “When consultation activities are primarily driven by rules and requirements, they tend to become a one-time set of public meetings, typically around the environmental and social assessment process. This type of consultation rarely extends in any meaningful way beyond the project planning phase, and is seldom integrated into core business activities or measured in terms of its effectiveness in building constructive working relationships. Today, the term “stakeholder engagement” is emerging as a means of describing a broader, more inclusive, and continuous process between a company and those potentially impacted that encompasses a range of activities and approaches, and spans the entire life of a project.”</li> <li>• Part One of the Handbook includes key concepts and principles of stakeholder engagement</li> <li>• Part Two of the Handbook addresses integrating stakeholder engagement with the project cycle.</li> <li>• The Appendices contain useful tools and resources for practitioners</li> </ul>
<p>IAP2, <i>Public Participation Toolbox</i> (referenced in IFC Performance Standards)</p>	<ul style="list-style-type: none"> <li>• Overview of a variety of information disclosure and consultation techniques, including tips (“think it through”) and advantages (“what can go right?”) and disadvantages (“what can go wrong?”) for each technique.</li> <li>• Techniques to Share Information</li> <li>• Techniques to Compile and Provide Feedback</li> <li>• Techniques to Bring People Together</li> </ul>
<p>ICMM, <i>Sustainable Development Framework</i></p>	<ul style="list-style-type: none"> <li>• Principle 10: Implement effective and transparent engagement, communication and independently verified reporting arrangements with our stakeholders:</li> <li>• Report on our economic, social and environmental performance and contribution to sustainable development</li> <li>• Provide information that is timely, accurate and relevant</li> <li>• Engage with and respond to stakeholders through open consultation processes.</li> <li>• Additional stakeholder engagement guidance as part of ICMM guidance on: community development; engagement with artisanal and small-scale miners; indigenous peoples; human rights; and, grievance mechanisms.</li> </ul>

<p>Prospectors and Developers Association of Canada, <i>E3 Plus Framework</i></p>	<ul style="list-style-type: none"> <li>• Principle 5: “Engage with Host Communities and other Affected and Interested Parties” – To interact with communities, indigenous peoples, organizations, groups and individuals on the basis of respect, inclusion and meaningful participation.</li> <li>• The related Guidance Notes provide advice about preparing for engagement, implementing engagement, disclosure of information, issues management and grievance mechanisms, monitoring and reporting, and exploration-specific issues.</li> </ul>
<p>Mining Association of Canada, <i>Towards Sustainable Mining - Guiding Principles</i></p>	<ul style="list-style-type: none"> <li>• Aboriginal and Community Outreach Framework (2008) and Protocol (2012)</li> <li>• This protocol provides an indicator of the level of outreach and TSM implementation within Aboriginal and community stakeholders in accordance with TSM principles.</li> <li>• The protocol comprises four performance indicators: community of interest (COI) identification; effective COI engagement and dialogue; COI response mechanism; and reporting.</li> <li>• See also the “Assessing External Outreach Performance” tool.</li> </ul>
<p>IPIECA, <i>Improving Environmental and Social Performance: Good Practice Guidance for the Oil and Gas Industry</i></p>	<ul style="list-style-type: none"> <li>• Includes guidance on community engagement: The success of a business can depend on its ability to communicate with the local community, both before operations begin and throughout the project. Companies that interact with local people should be able to respond to their concerns and needs and manage their expectations.</li> <li>• See also additional guidance on: voluntary and involuntary resettlement; free prior and informed consent; stakeholder engagement; migration; urban encroachment; local content; human rights; and grievance mechanisms.</li> </ul>
<p>European Commission, Human Rights Sector Guidance Project, <i>Oil and Gas Sector Guide on Implementing the UN Guiding Principles on Business and Human Rights</i> (forthcoming)</p>	<ul style="list-style-type: none"> <li>• The forthcoming guidance provides advice about stakeholder engagement within the broader human rights due diligence framework.</li> <li>• Stakeholder engagement is part of developing a policy commitment (p. 11)</li> <li>• Stakeholder engagement is part of assessing human rights impact (section II.E)</li> <li>• Incorporating stakeholder perspectives is part of tracking performance on a company’s due diligence (section IV.C)</li> <li>• Identifying stakeholders is part of communicating performance on a company’s due diligence (section V.B.)</li> </ul>

<p>International Finance Corporation, Performance Standard 7 on Indigenous Peoples</p>	<ul style="list-style-type: none"> <li>• Paragraph 11: Affected Communities of Indigenous Peoples may be particularly vulnerable to the loss of, alienation from or exploitation of their land and access to natural and cultural resources. In recognition of this vulnerability, in addition to the General Requirements of this Performance Standard, the client will obtain the FPIC of the Affected Communities of Indigenous Peoples in the circumstances described in paragraphs 13–17 of this Performance Standard. FPIC applies to project design, implementation, and expected outcomes related to impacts affecting the communities of Indigenous Peoples. When any of these circumstances apply, the client will engage external experts to assist in the identification of the project risks and impacts.</li> <li>• Paragraph 12: FPIC builds on and expands the process of ICP described in Performance Standard 1 and will be established through good faith negotiation between the client and the Affected Communities of Indigenous Peoples. The client will document: (i) the mutually accepted process between the client and Affected Communities of Indigenous Peoples, and (ii) evidence of agreement between the parties as the outcome of the negotiations. FPIC does not necessarily require unanimity and may be achieved even when individuals or groups within the community explicitly disagree.</li> <li>• Definition of FPIC: Guidance Note, paragraphs 24-26.</li> <li>• Application of FPIC: Guidance Note, paragraphs 28-24.</li> <li>• Process of Achieving FPIC: Guidance Note, paragraphs 35-41.</li> </ul>
<p>UN Global Compact, United Nations <i>Declaration on the Rights of Indigenous Peoples: A Business Reference Guide</i> (Exposure Draft)</p>	<ul style="list-style-type: none"> <li>• There are points in time at which a business may need to demonstrate that it has received FPIC (for example, as part of a regulatory process, and before starting relevant activities), however FPIC is not a ‘one off’ exercise. In some circumstances, an indigenous community may be entitled to withdraw the consent that they have previously given, and businesses must ensure that they maintain FPIC throughout the life of a project. This will involve regular engagement with relevant indigenous communities.</li> <li>• The Guide provides an overview of consultation, consent and the project development process.</li> <li>• The Guide also describes what is needed to implement each element of FPIC (free, prior and informed, consent).</li> </ul>
<p>UN Expert Mechanism on Indigenous Peoples Rights, <i>Advice No. 4: Indigenous peoples and the right to participate in decision-making, with a focus on extractive industries</i></p>	<ul style="list-style-type: none"> <li>• Depending on the indigenous peoples’ decision-making processes concerned and the nature of the activity concerned, consent may not always require indigenous peoples to reach a unanimous consensus agreement to the extractive activity for it to proceed. On the other hand, and again dependent on the particular decision-making processes of the indigenous peoples concerned, majority support may also not be adequate. There may be traditional mechanisms that set out other requirements. At the start of a consultation process indigenous peoples should make clear, and agree on, how they will make a collective decision on the extractive activity, including the threshold to indicate there is consent.</li> <li>• The Advice sets out when there are mandatory requirements to obtain indigenous peoples’ consent, when there are contextual requirements to obtain indigenous peoples’ consent, and when there is a requirement of mutual consent, as set out in treaties.</li> <li>• The Advice provides practical advice to States, extractive industry companies and indigenous peoples on how to meet their responsibilities with respect to FPIC.</li> </ul>

<p>Boreal Leadership Council, <i>Free Prior, and Informed Consent in Canada: Towards Practical Guidance for Developers and Aboriginal Communities</i></p>	<ul style="list-style-type: none"> <li>• Triggering FPIC early protects developer and communities from potential liabilities. Triggers will vary by scale of project and extent of community impacts.</li> <li>• FPIC is not only attained, but must also be maintained over the life cycle of the project. This may mean that FPIC is negotiated in stages and renegotiated when there are changes.</li> <li>• The BLC discussion paper highlights the requirements for each of the elements of FPIC: free, prior, informed and consent.</li> <li>• It provides advice to developers and communities to contribute to implementing each element of FPIC.</li> </ul>
<p>Cathal Doyle and Jill Carino, <i>Making Free, Prior and Informed Consent a Reality: Indigenous Peoples and the Extractive Industry</i> (2013)</p>	<ul style="list-style-type: none"> <li>• The [extractive] industry is also taking some initial steps towards seriously tackling the requirement for FPIC. However it has serious legacy issues, has been slow to incorporate the requirement into policy, and has struggled with how to comply with it in practice. Multinational [extractive] corporations continue to engage with indigenous communities in an inconsistent manner and rarely comply with the standards necessary to respect indigenous peoples' rights, interests and well-being. This has resulted in a range of negative social, environmental, cultural, spiritual and economic consequences for indigenous peoples, including threats to the physical and cultural survival of indigenous communities around the world.</li> <li>• Chapter 8 contains general guiding principles and recommendations to mining companies, indigenous peoples, states, the financial sector, civil society organizations and the international community.</li> </ul>

<sup>i</sup> OECD Guidelines, Chapter II, paragraph 14.

<sup>ii</sup> OECD Guidelines, Chapter II, Commentary, paragraph 25.

<sup>iii</sup> New provisions on human rights are included in Chapter II, paragraph A.2 and Chapter IV; provisions on risk-based due diligence are included in Chapter II, paragraph A.10 and its Commentary; and, provisions on avoidance of adverse impacts are included in Chapter II, paragraph A.11 and its Commentary.

<sup>iv</sup> See Commentary on the Implementation Procedures of the Guidelines, paragraph 18, where it states that “NCPs should maintain regular contact, including meetings, with social partners and other stakeholders in order to: a) consider new developments and emerging practices concerning responsible business conduct; b) support the positive contributions enterprises can make to economic, social and environmental progress; c) participate where appropriate in collaborative initiatives to identify and respond to risks of adverse impacts associated with particular products, regions, sectors or industries.”

<sup>v</sup> Partnership Africa Canada, “Stakeholder Engagement and Due Diligence,” (DAF/INV/NCP/RD(2012)11) 29 March 2012.

<sup>vi</sup> PAC Report, Appendix A.

<sup>vii</sup> PAC Report, Figure 1 (Stakeholder Engagement Best Practices) on p. 15. PAC also notes that the IFC’s guidance highlights eight similar key components for stakeholder engagement: information disclosure; stakeholder identification and analysis; stakeholder consultation mechanisms; management functions; negotiation and partnerships; reporting to stakeholders; grievance management; stakeholder engagement in project monitoring. PAC Report, pp. 15-16.

<sup>viii</sup> PAC Report, Figure 2 (Stakeholder Engagement and the Project Lifecycle), p. 17.

<sup>ix</sup> It should be noted that this review of existing guidance is focused on the voluntary guidance prepared by international organizations and that is aimed at influencing the stakeholder engagement practices of multinational enterprises. It has not considered national laws, regulations or guidelines that dictate how stakeholder engagement is conducted in specific jurisdictions. Strengthening the domestic legal framework for stakeholder engagement should be one of the main drivers for improved practice by enterprises. As set out in the Guidelines, Chapter 1, paragraphs 1 and 2, while the Guidelines are not a substitute for domestic law and regulation, they may extend beyond the law and provide principles and standards of good practice.

<sup>x</sup> See, inter alia, UN Declaration on the Rights of Indigenous Peoples, article 32; ILO Convention 169, article 15.

<sup>xi</sup> The individual right to access to information is interpreted as being part of the right to freedom of expression protected by the International Covenant on Civil and Political Rights, article 19.

<sup>xii</sup> For instance, the Danish Institute for Human Rights’ Human Rights Compliance Assessment tool contains indicators related to consent and stakeholder engagement for the following rights: right to self-determination; right to food (which includes the right to water); right to housing; right to education; right to health; right to an adequate standard of living; right to own property; and right to freedom of movement.

<sup>xiii</sup> Furthermore, stakeholder engagement is an important part of rights-based impact assessment methodologies, once again reinforcing the connection between stakeholder engagement and on-going due diligence for human rights.

<sup>xiv</sup> Rachel Davis and Daniel M. Franks, “The cost of conflict with local communities in the extractive industry,” (SRMining Proceedings, 2011), Chapter 6, p. 6.

<sup>xv</sup> Davis and Franks, pp. 6-7.

<sup>xvi</sup> Davis and Franks, pp. 3-4 and 8.

<sup>xvii</sup> Although the OECD Guidelines are focused on the responsibilities of enterprises to undertake stakeholder engagement, the non-existence of a broadly accepted legal and policy framework for consultation about resource extraction projects at the national or sub-national levels can make it more difficult for an enterprise’s stakeholder engagement to succeed. The lack of an established legal framework for consultation is a particularly important impediment in the context of indigenous peoples rights. Conversely, where there are well-developed procedures and guidelines for consultation and stakeholder engagement, there are improved chances that workers, communities and indigenous peoples are active partners and supports of projects.

<sup>xviii</sup> See, for example, the cases of the ILO's CEACR or the Inter-American Court of Human Rights that emphasize the role of the State establishing a legal and regulatory framework for consultation in order to fulfill indigenous peoples rights to consultation and participation.

<sup>xix</sup> The scope of the human rights responsibilities of enterprises to these groups is explained in OECD Guidelines, Chapter IV, Commentary, paragraph 39 and 40.

<sup>xx</sup> In this regard, stakeholder engagement should be part of the effective self-regulatory practices and management systems that are called for in paragraph 7 of the General Policies of the Guidelines.

<sup>xxi</sup> As stated in the Guidelines, “[h]uman rights due diligence can be included within broader enterprise risk management systems provided that it goes beyond simply identifying and managing material risks to the enterprise itself to include risks to rights-holders.” OECD Guidelines, Chapter IV, Commentary, paragraph 45.

<sup>xxii</sup> General human rights principles such as participation, transparency, access to information and accountability all reinforce the need for more effective stakeholder engagement. There are also specific human rights provisions that support greater access to information, such as in article 19 of the International Covenant on Civil and Political Rights. Furthermore, additional requirements exist for engagement with specific groups, notably in terms of the consultation and participation rights (including free, prior and informed consent) of indigenous peoples.