



GLOBAL FORUM ON RESPONSIBLE BUSINESS CONDUCT

Stakeholder Engagement Due Diligence in Extractive Industries: Overview of Draft User Guide

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This paper serves as reference material for the session on Stakeholder Engagement and Due Diligence in the Extractives Sector of the Global Forum on Responsible Business Conduct taking place in Paris on 26-27 June 2014.

It was prepared by a team from the Investment Division of the OECD Directorate for Financial and Enterprise Affairs on the basis of work undertaken by the Centre for Social Responsibility in Mining, to provide an overview of stakeholder engagement and due diligence in extractive industries which involves the drafting of a user guide on this theme.

This paper does not reflect consensus or formal approval by other actors who are contributing to the development and drafting of this user guide including members of the Advisory group on stakeholder engagement in extractive industries, National Chairs, or contractor to the project.

STAKEHOLDER ENGAGEMENT AND DUE DILIGENCE IN EXTRACTIVE INDUSTRIES: OVERVIEW OF DRAFT USER GUIDE

I. INTRODUCTION

The 2011 update of the OECD Guidelines for Multinational Enterprises (“Guidelines”) included a new provision that enterprises should, “[e]ngage with stakeholders in order to provide meaningful opportunities for their decisions to be taken into account in relation to planning and decision making for projects or other activities that may significantly impact local communities.” This update reflects a growing international consensus that stakeholder engagement enables companies to more meaningfully identify, address and account for the impacts of their activities, and contribute to positive social and economic development in the areas they operate. This is particularly true 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.

While highly valuable, stakeholder engagement processes can also be highly challenging. For example engaging with vulnerable groups such as indigenous peoples, working in institutionally weak environments, and identifying credible community representatives for engagement are often risky and complex undertakings. The challenges and cost of stakeholder engagement have been widely documented and discussed, but practical steps and best practices to addressing these challenges have received less attention. Additional guidance on how to ensure stakeholder engagement processes are implemented effectively is also lacking.

In response to this need and consistent with the new principles of stakeholder engagement of the Guidelines the Working Party on Responsible Business Conduct agreed to constitute an OECD-hosted multi-stakeholder Advisory Group to provide substantive input on the development of a User Guide on stakeholder engagement due diligence. The User Guide is intended to provide practical, site level, guidance for managers and personnel from mining, oil and gas enterprises, on how to undertake due diligence in engaging with stakeholders in order to prevent and mitigate adverse impacts of extractive industries. It will also provide guidance on monitoring and evaluating stakeholder engagement processes themselves to assure they have been correctly and effectively implemented and achieve their intended objectives.

II. NATURE OF THE USER GUIDE

The User Guide is intended to help industry practitioners apply the due diligence and stakeholder engagement elements outlined in the OECD Guidelines for Multinational Enterprises, specifically General Policies 10-12 and 14, and related commentary paragraphs 14, 15, 25 and 26.

- **Practical Site-Level Tool:** The User Guide is intended to provide practical guidance on stakeholder engagement due diligence in the extractive industries. As such it provides action-orientated recommendations and guidance rather than general rationales and analysis.
- **Multi-stakeholder product:** The User Guide will be the result of a collaborative development process of a Multi-Stakeholder Advisory Group, co-chaired by the governments of Canada and Norway. The Advisory Group was assembled in March of 2013 and represents a diverse body of membership including OECD and non-OECD countries (e.g. Canada, Norway, Colombia, the Netherlands, and Tanzania), industry participants from the oil, gas, mining and metals sectors (e.g. BIAC, CAPP, ICMM, PDAC, World Gold Council, AngloAmerican, Chevron, CCCMC) and civil society organisations and other initiatives (e.g. TUAC, OECD Watch, Oxfam Australia, Partnership Africa Canada, International Work Group for Indigenous Affairs).

III. PROGRESS

In November of 2013 a request for proposals to support the drafting of the User Guide was distributed to contractors with expertise on stakeholder engagement in the extractives sector. Relying on feedback from the Advisory Group on the submitted proposals, the Center for Social Responsibility in Mining (CSRMI) was awarded the contract for the project.

The Advisory Group, Chairs, CSRMI and the OECD Secretariat have convened two formal conference calls in 2014 to discuss development of the guide. Discussion has largely focused on the identifying the overall structure and approach of the guide and key issues and challenges in stakeholder engagement due diligence. These meetings have been supplemented through provision of written commentary and exchanges amongst the Advisory Group via email. Issues of ongoing debate and discussion amongst the Advisory Group include but are not limited to the exact scope and relationship of due diligence to stakeholder engagement as well as the role of Free Prior and Informed Consent in the context of stakeholder engagement and national regulatory regimes.

Drafting of the guide is ongoing and a first draft will be circulated to the Advisory Group summer 2014. The Advisory Group will be given the opportunity to provide feedback on drafts of the guide both through written commentary and orally in future meetings. Upon integration of the feedback of the Advisory Group, the User Guide will be available for public consultation online and through National Contact Points (NCPs). Anyone interested in being kept informed of the work, and included on distribution lists for notice of public consultation, should notify the Secretariat (Barbara Bijelic, email: barbara.bijelic@oecd.org).

IV. SCOPE

1. Users: Who should use this Guide?

A. Extractive Sector Industries

Extractive industries are considered to include enterprises conducting exploration, construction, extraction, and/or processing of oil, gas and minerals, and transport, storage and/or marketing of oil, gas and their by-products. The User Guide is intended for industrial operations and does not extend to artisanal or informal extractive activity, although it will offer insights on stakeholder engagement with artisanal and small-scale miners. It is meant to be useful to large, and to small and medium enterprises (SMEs). It is specifically targeted towards use at the site level of operations.

B. Other stakeholder groups

The User Guide also provides a useful reference for other stakeholder groups, such as affected communities and their representatives, NCPs from adhering countries, or stakeholders who seek to understand expectations of responsible business conduct on this issue.

2. STAKEHOLDER ENGAGEMENT DUE DILIGENCE: What is the scope of stakeholder engagement in this User Guide?

A. Engagement: What type of engagement is covered in the User Guide?

The scope of the User Guide is targeted and does not cover all aspects of stakeholder engagement. It focuses on effective due diligence processes in the context of meaningful stakeholder engagement, in order to maximise opportunities and minimise adverse impacts of extractive industries.

Two-way engagement means expressing opinions, sharing perspectives and listening to alternative viewpoints to reach mutual understanding. Meaningful stakeholder engagement occurs when stakeholder and rights holder views are taken into account in decision-making processes. Some sharing or transfer of decision-making power from the enterprise as a primary decision-maker to a more mutual process of decision-making between interested and affected parties is important to providing 'meaningful' opportunities for stakeholder engagement.

'Good faith' engagement means both sides (the enterprise and the stakeholder) should participate actively in engagement with the intention of finding common ground, and be prepared to alter their initial positions to reach agreement on appropriate pathways forward.

B. Due diligence

Due diligence is an integral part of business decision-making and risk management systems. In the context of the OECD Guidelines for MNEs it is understood as the process through which enterprises can identify risks to **avoid causing or contributing to adverse impacts** through their own activities; **and seek to prevent or mitigate adverse impacts** where they have not contributed to that impact, when the impact is nevertheless directly linked to their operations, products or services by a business relationship.¹

As understood in the OECD Guidelines for Multinational Enterprises, the risks identified in a due diligence process include not only business risks, but also the risks to stakeholders of adverse impacts. These impacts include the range of issues covered by the Guidelines (Disclosure, Human

¹ OECD Guidelines for Multinational Enterprises, Chapter II, paragraph A11 and A12

Rights, Employment and Industrial Relations, Environment, Combating Bribery, Bribe Solicitation and Extortion, Consumer Interests) unless explicitly excluded (Technology, Competition and Taxation). This applies to both real and perceived impacts, as the latter may still create risks for the enterprise.

C. An ongoing process

Due diligence is an ongoing, proactive and reactive process; it is to be carried out throughout the entire life-cycle of operations. Figure 1 below shows that the four part due diligence process is iterative rather than a once-off series of steps.

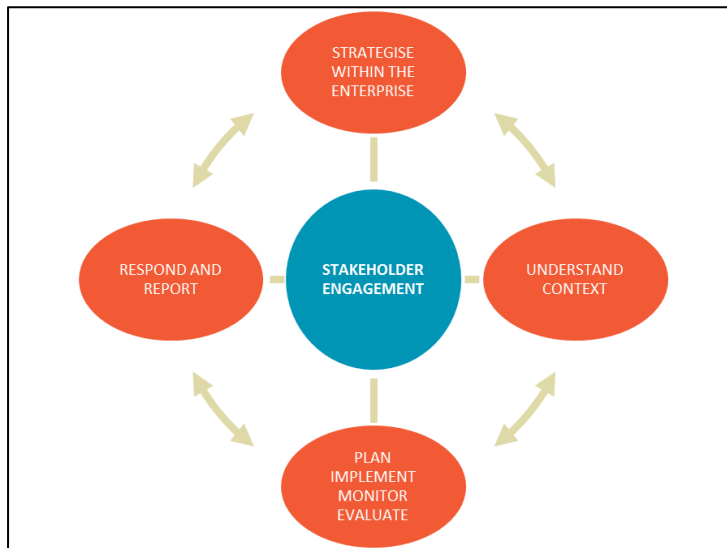


Figure 1: Four part due diligence process with stakeholder engagement at the center

3. STAKEHOLDERS: Who should be considered a stakeholder?

A. Stakeholders

A stakeholder may be an individual or group that has an interest in or is affected by decisions relating to an extractive industry project. For the purposes of this User Guide, 'relevant stakeholders' to be engaged include, but are not limited to:

- local and affected communities (e.g. nomadic communities, communities living downstream from a river near the site, or along a transport route)
- Indigenous peoples
- workers (including local and migrant workers)
- civil society organizations
- host governments (local, regional and national)
- entities related through a business relationship (suppliers, contractors, shareholders)

V. DUE DILIGENCE STRUCTURE

This guide proposes a four part due diligence process.

1) Positioning engagement strategically within the enterprise

Stakeholder engagement should be embedded centrally as part of corporate and operational-level strategy.

It is important that these processes, and the relationship between them, are understood at the highest levels of the enterprise, and within each arm of the business from the outset.

To be positioned centrally, stakeholder engagement needs to be adequately resourced, and there need to be internal policies and mechanisms that support meaningful stakeholder engagement.

This module explains steps enterprises can take to ensure that stakeholder engagement is positioned strategically.

2) Understanding the context for stakeholder engagement due diligence

Stakeholder engagement due diligence in the extractive industries should be built on a comprehensive understanding of the context in which projects are located. When entering an area or region for the first time, enterprises should be aware of the pre-existing socio-economic, political, historical, environmental and cultural context. This context will shape the processes and outcomes of any company-initiated stakeholder engagement process and provide a baseline from which to measure impacts of the project.

This module explains how enterprises can ensure that they build and maintain a useful knowledge base of the context in a particular area.

3) Planning, implementing, monitoring and evaluating an engagement strategy

Planning and implementing an engagement strategy involves identifying and prioritizing stakeholders for engagement, identifying and addressing barriers and challenges to stakeholder engagement and selecting and utilizing appropriate means of engagement and revising approaches as necessary.

This is not a linear but rather an iterative process which involves building on experience, feedback and contextual changes throughout the stakeholder engagement process. It involves co-design of engagement strategies with stakeholders themselves to maximize effectiveness.

Monitoring and evaluation allows enterprises to assess and evaluate the effectiveness of their stakeholder engagement due diligence processes. Monitoring and evaluation is also an opportunity to consider whether the objectives themselves are appropriate and contribute to the aims of the engagement strategy.

Leading practice encourages the active participation of stakeholders in monitoring activities through 'participatory monitoring'. Participatory monitoring can strengthen trust and can give stakeholders a greater sense of empowerment and ownership in a project.

This model provides due diligence guidance on development of effective engagement plans and strategies for how to overcome common challenges and barriers in this field as well on conducting effective monitoring and evaluation to evaluate and improve stakeholder engagement activities.

4) Responding to stakeholders

Due diligence requires enterprises to go beyond impact identification and take action to prevent and mitigate *potential* and *actual* adverse impacts on stakeholders as well as to provide remedies when adverse impacts have taken place.

Reporting is one of the most crucial elements of an effective stakeholder engagement process. Adequate reporting allows stakeholders to understand potential risks and collaborate on how to respond to them.

Sometimes not all adverse impacts will be foreseen and dealt with proactively. For that reason there should be clear and functional channels for stakeholders to raise issues or provide feedback to the enterprise. This can be organized formally through soliciting feedback and evaluation from stakeholders and through having a well-functioning grievance mechanism. The nature of the appropriate remedy to an issue will depend on the nature of the issue.

This model provides guidance on how to ensure that stakeholders are adequately and effectively responded to.

VI. THEMATIC GUIDANCE ON SPECIFIC STAKEHOLDER GROUPS

Part two of the User Guide, provides additional thematic guidance on conducting stakeholder engagement due diligence with specific stakeholder groups. While Part one pertains to engagement with all of the stakeholder groups listed above, the focus is on community engagement. Part two elaborates on specific considerations for engaging with Indigenous peoples, workers, civil society, host governments, business partners and on the gender dimensions of stakeholder engagement. This will also include approaches for monitoring and evaluating stakeholder engagement due diligence processes with regard to issues specific to each group. The below chart identifies some of the salient issues that will be covered within each of the thematic modules.

I. Engaging inclusively with women and men	
Enterprises need to consider gender dimensions and dynamics as they relate to the context of a project, as well as the impacts and opportunities that stem from extractive sector activities.	
<p>Principles:</p> <ul style="list-style-type: none"> • Recognition of the importance of gender in all aspects of stakeholder engagement due diligence and intersection of gender with other factors (i.e. culture, ethnicity, caste, age, disability, economic status etc.) • Commitment to ‘meaningful’ engagement as engagement inclusive of women and men 	<p>Practice:</p> <ul style="list-style-type: none"> • Human resourcing for gender-sensitive stakeholder engagement • Understanding gender roles, responsibilities and relations • Identifying gender-based risks e.g. sexual & gender-based violence, post-conflict zones etc. and overcoming barriers to engagement such as addressing mis-alignment between international and domestic law • Enabling gender inclusion in the engagement process • Collecting sex disaggregated data for baseline studies & impact assessment and monitoring and evaluation of gender in engagement processes

II. Engaging with indigenous peoples

Indigenous peoples' reliance on land and natural resources makes them particularly vulnerable to the environmental impacts of extractive activities, while their socio-economic and legal status may limit their ability to defend their rights to land and cultural heritage. As a result, they are more likely to experience adverse impacts, and less likely realise the benefits and opportunities projects provide, than non-indigenous communities.

Principles:

- Recognition of connection of indigenous peoples to land as well as their structural disadvantages and historical exclusion
- Respect for rights and aspirations of indigenous peoples, avoiding negative impacts and sharing benefits
- Good faith negotiation in permitting and agreement processes

Practice:

- Building engagement capacity, in enterprises and communities, including genuine cross-cultural induction processes
- Building a knowledge base that is inclusive of indigenous people, and takes into account preferences for use of information
- Understanding indigenous systems of governance and how decisions are made related to the management of natural resources in indigenous communities
- Overcoming engagement challenges, e.g. intra-group and inter-group conflict in the context of indigenous peoples
- Managing the issue of free prior and informed consent (FPIC) in environments where there is a legal or institutional obligation, as well as respecting and effectively utilizing alternate consultation models in environments mandating different approaches
- Practicing effective agreement making with indigenous peoples
- Including indigenous peoples in monitoring and evaluation

III. Engaging with workers and trade unions

Enterprises should recognise the status of local workers as members of impacted (in some cases indigenous) communities. As workers, they have particular opportunities and face risks that are not shared by other members of their communities. Engaging with local workers should be an integrated part of the broader stakeholder engagement due diligence plan.

Principles:

- Maintenance of safe working conditions
- Promotion of local employment
- Respect for freedom of association and collective bargaining
- Prevention of Human Rights abuses and adherence to ILO conventions, as referred to in the UN Guiding Principles

Practice:

- Identifying workers in the community, migrant and expatriate workers and understanding the nature of 'employment relationships'
- Effectively engaging with and identifying credible workers' representatives, i.e. unions
- Enabling dialogue through provision of information on company performance, promoting consultation and cooperation among employers and workers and recognising workplace agreements

IV. Engaging with host governments

While the starting point for engagement with government should be ensuring that all legal and regulatory obligations are met, it is important for enterprises to think beyond legal compliance, to engaging with the government as a stakeholder. Enterprises should seek to partner with governments wherever possible, to maximize the opportunities arising from their investment. A collaborative approach to the prevention and management of risks of adverse impacts should also be prioritized.

Principles:

- Recognition of the role of government as regulator as well as a stakeholder
- Recognition of the duty of government to protect human rights and accountability to its citizens

Practice:

- Recognising different levels and roles of government
- Engaging with government as partner in stakeholder engagement and on the appropriate company role in development, especially in weak government context
- Overcoming barriers to engagement such as engagement in an unaccountable or repressive governance context and manoeuvring subnational tensions and inter-agency rivalries

V. Engaging with civil society

The independent, organised nature of civil society gives it a central role in contributing to stakeholder engagement due diligence in the extractive industries. The participation of civil society groups in multi-stakeholder engagement by enterprises increases opportunities to share the benefits of extractive projects widely, and strengthens the process of due diligence.

Principles:

- Recognition of the valid role of civil society in stakeholder engagement in certain contexts

Practice:

- Identifying credible and valid civil society representatives
- Creating synergies through collaboration with civil society

VI – Engaging with business partners

Due diligence under the OECD guidelines has a far-reaching scope, which includes addressing impacts that may have been caused by the enterprise itself or caused by other entities that are linked to the enterprise.

Enterprises should seek to identify, prevent or mitigate both the impacts it has caused or contributed to *and* the impacts which the enterprise has not caused or contributed to, but are directly linked to its operations, products or services by a business relationship.

Principles

- Responsibility to prevent or mitigate negative impacts linked to an enterprise's operations, products or services cannot be outsourced
- Enterprises should conduct due diligence on their business partners to prevent or mitigate adverse impacts

Practice:

- Identifying high risk business relationships
- Appropriately engaging with business partners to prevent and respond to adverse impacts

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