Global Compact
Network France

PRACTICAL GUIDE

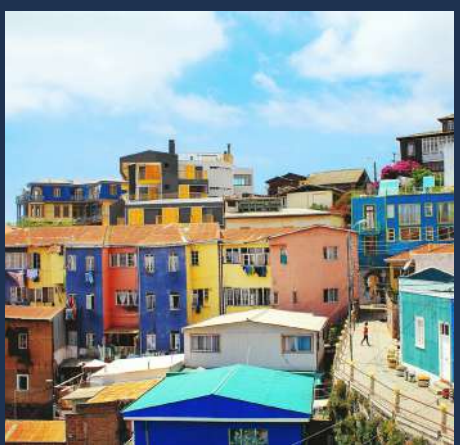
BUSINESSES - AFFECTED COMMUNITIES

Adopting a Human Rights-based Approach for Meaningful Engagement and Effective Impact Management









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Foreword

Prof Surya Deva
UN Special Rapporteur
on the right to development

The UN Guiding Principles on Business and Human Rights have firmly established human rights due diligence (HRDD) as the new mantra for companies to manage actual or potential risks posed to people and/or the planet. Meaningful consultation with all relevant stakeholders is at the heart of the HRDD process.

This Guide, **Businesses – Affected Communities, Adopting a Human Rights-based Approach for Meaningful Engagement and Effective Impact Management**, published by the UN Global Compact Network France, provides a practical pathway to ensure that consultations with relevant stakeholders that companies are expected to conduct under soft international standards or binding regulations are truly meaningful.

In addition to drawing from relevant international standards, the Guide is informed by insights from interviews with various stakeholders, including communities. It not only provides a practical toolkit for companies to meaningfully engage affected communities but also highlights some good practices for inspiration.

Consultations will not be meaningful, for example, if in principle decisions have already been made, the focus is mostly on risks to companies, the entire consultation process is outsourced, an intersectional approach is not applied to understand and address risks, or proactive steps are not taken to address power imbalances between companies and communities.

While the HRDD is a process, it is intended to achieve certain outcomes. Companies must not lose sight of the fact that HRDD is merely a means to achieve an end, that is, prevention or mitigation of adverse impacts on human rights or the environment. If this end is not achieved, HRDD will hardly serve any purpose, either for companies or communities.

A shift is therefore required in the mindset of companies to keep rights and rightsholders at the centre of HRDD. Companies should resist the temptation of conducting symbolic consultations. Rather, they should embrace a mindset of co-creating solutions with communities. This could be achieved only if companies ensure active, free and meaningful participation of rightsholders in decisions affecting them. If these rightsholders include Indigenous Peoples, such participation should be aimed at obtaining free, prior and informed consent.

The right to development, as articulated in the 1986 Declaration on the Right to Development, provides a blueprint of how participation should look like. Companies play a vital role in realising the right to development, including by contributing to the achievement of the Sustainable Development Goals. However, the current development model is leaving behind too many people and destroying the planetary ecosystem. A course correction is needed. How companies operate in society and engage their stakeholders must be part of such a course correction.

I hope that companies will make use of this Guide and communities as well as civil society organisations will demand companies to engage them in line with expectations set out therein.

Editorial

Dominique Potier

French Deputy of Meurthe-et-Moselle's 5th constituency. As a French MP, he served as the rapporteur for the French Duty of Vigilance law adopted in March 2017, the first comprehensive law of its kind in the world.

"It is the banks that give the river its strength. Without them, it would be a swamp"

I strongly believe that the same applies to the economy: entrepreneurship is at its best when it respects humanist guidelines.

What can the law do? For Mireille Delmas-Marty, its primary mission is to express the irreducible nature of human dignity and the unity of our "common home". Secondly, it is the responsibility of the law to hold those who wield power — governments and major corporations, accountable in order to prevent the risks that would arise from their impunity. By setting international standards that inspire the law and go beyond its requirements, initiatives such as the United Nations Global Compact play an essential role in supporting businesses in their drive towards greater social and environmental responsibility

Driven by organised civil society, NGOs, trade unions, academics but also businesses, we have been witnessing the birth of a new generation of laws over the last decade. Rooted in the concrete experience of globalisation, these long-term legislative developments, which are based on international standards, were adopted during the singular political moment of the European Green Pact: the fight against imported deforestation, extra-financial accounting, financial taxonomy and due diligence.

On this last point, I was rapporteur for the French Duty of Vigilance Law, which was a pioneer in 2017 before setting an example within the European Union. This law breaks new ground on three fronts. Firstly, because of the scope it covers: due diligence incorporates all the UN Guiding Principles on Business and Human Rights, from child labour to the risks to natural ecosystems. Secondly, it acts as a "firewall" by lifting the legal veil between principals and their subcontractors, thereby enabling a principle of responsibility based on universal values to be established beyond national borders. The final innovation is preventive: each business is required to draw up and conduct a risk mapping, based on the sector concerned and the geography of its production chain, in order to effectively implement measures to prevent serious human rights and environmental abuses. This French "vigilance plan" is intended to be developed in association with the company's stakeholders.

In this spirit, this risk mapping is in fact essentially that of affected communities. They must be considered in their entirety. The right compass is vulnerability: without it, the whole of society is lost. Paying attention to what makes a community fragile implies an authentic dialogue on the social relationships, culture, economy and ecological balances that underpin it. This requires a shift in focus, to ensure compliance with international standards and a fair sharing of value, and an awareness that some things are priceless.

The recent trend has been to focus on the “purpose" (“raison d'être”) of businesses. The urgency of the present invites us to change our ways. Respect for human rights is not just a flag at the top of a mast, it must be the rudder of our businesses.

May this guide contribute to that.

Nils Pedersen
Executive Director
UN Global Compact - France Network

In a changing world where environmental, social and economic challenges are multiplying and accelerating, businesses are playing an increasingly central role. Their activities take place in areas with complex realities, directly or indirectly influencing the communities of people who live and work there and depend on its natural resources. We are seeing positive and virtuous approaches. At the same time, we are also seeing approaches that have significant adverse impacts on communities and their environments. In the absence of meaningful engagement with affected communities, economic actors can undermine human rights, whether through expropriation, pollution, destruction of livelihoods or forced relocation. It is not simply a matter of compliance, although regulations are becoming more stringent in this area, but a strategic lever for anticipating risks, strengthening the resilience of projects, promoting their social acceptability and creating shared value.

While the first two principles of the UN Global Compact are based on human rights:"Businesses should support and respect the protection of internationally proclaimed human rights" and "Make sure that they are not complicit in human rights abuses", the French UN Global Compact Network launched a dedicated working group in 2023, drawing on the expertise of the member businesses of our network, to publish this guide “Businesses - Affected Communities: Adopting a Human Rights-Based Approach to Meaningful Engagement for Effective Impact Management We would like to extend our warmest thanks to the businesses and all those who contributed to drafting this practical guide, which reflects a multi-stakeholder approach (human rights experts, NGOs, international organisations, affected communities themselves and/or their representatives, etc.) at the heart of our methods of action.

This guide is fully in line with the 2030 strategic plan, which aims to strengthen the role of the UN Global Compact - France Network as a resource centre on sustainable development and related challenges, in order to provide effective support to the private sector. It aims to provide guidelines and practical tools to help businesses integrate respect for the rights of affected communities into their risk management mechanisms, and to ensure that their actions are sustainable and responsible. Five functional scope sheets, tailored to the different areas of responsibility (head office managers, managers at local levels, head of human rights/vigilance/ESG lead, community liaison officers and engineers/service providers), round off the guide, making it accessible to all business professionals, whether novices or experts in the field.

Far from a top-down or purely regulatory approach, this publication invites us to establish a genuine culture of dialogue and cooperation, recognising the diversity of cultural and social contexts. UNESCO reminds us that culture encompasses not only the arts and traditions, but also lifestyles, value systems and beliefs. What is at stake here is our relationship with others: understanding, respecting and articulating different cultures so that together we can build a fairer, more sustainable future.

Introduction

Why Focusing on "Meaningful Engagement" with Affected Communities?

Anticipation and Proactive Risk Management

Affected communities are in the best position to warn of the risks of potential and actual adverse impacts associated with a project or the business' activities, such as the risks of human trafficking, child labor within the local ecosystem, the pollution that may result from the activities, the impacts on natural resources or the social disruption linked, for example, to the influx of workers from other regions or countries into certain communities to work on a project (infrastructure, for example). Meaningful engagement with these communities not only enables these risks to be identified at an early stage, but also to be anticipated and mitigated effectively.

Preserving Legitimacy and Reducing Operational Risks

Meaningful engagement with affected communities enables businesses to establish a legitimate presence within a territory or ecosystem, without disrupting the existing social and environmental balance, while guaranteeing the social acceptability of the project or operations. By working with affected communities, businesses can anticipate and reduce the operational risks associated with potential community pushback or local tensions, thereby avoiding delays, interruptions, suspensions or even project cancellations, which could result in significant costs. Meaningful engagement with affected communities also provides an opportunity to co-develop and improve projects and to make informed strategic decisions, including whether or not to proceed with a project, ensuring that it is viable for the communities, the environment and the business' objectives and values.

Reducing Legal Risks and Protecting Reputation

Lack of meaningful engagement with affected communities exposes businesses to significant risks, including direct human rights abuses or accusations of complicity, with serious legal and reputational consequences. This may result in litigation before national courts, for instance in France under the Duty of Vigilance Law, as well as referrals to National Contact Points (NCPs) under the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct (hereinafter the OECD Guidelines)[1]. At the same time, businesses risk being the target of media campaigns, which would seriously damage their reputation and compromise their relations with strategic partners, investors and consumers.

Preventing the Escalation of Tensions and Potential Conflicts

When the concerns of affected communities are not heard, they can turn into tensions, which can then escalate into open conflict or even legal disputes. These situations can lead to high costs, divert internal resources and disrupt business operations. By engaging in respectful and rights-based dialogue with affected communities, companies can address concerns, prevent the spread of rumors, and reduce the risk of potential conflict.

Why this Guide?

1. A More Demanding Regulatory Framework: Moving Towards Enhanced Corporate Responsibility Regarding Affected Communities

Today, international businesses have to operate within an increasingly demanding legal framework in terms of respect for human rights and environmental protection, with, following the entry into force of the French Duty of Vigilance Law[2], the emergence of new European regulations, such as the Corporate Sustainability Reporting Directive (CSRD)[3] the Corporate Sustainability Due Diligence Directive (CSDDD)[4] and the Regulation on Deforestation-free Products (EUDR).[5]

As part of the social component of the CSRD, the ESRS S3[6] introduces, for the first time, a requirement for communication and transparency and asks businesses to report on their impacts on affected communities by explaining how they influence these communities in regions where their activities have a significant impact, whether positive or negative, actual or potential. They must also detail the actions implemented to prevent, mitigate or remedy adverse impacts, as well as the processes for interacting with communities about these impacts. In addition, companies must disclose how material risks and opportunities linked to these impacts and to their dependencies on affected communities could affect the company's financial performance in the short, medium, and long term.

Businesses are required to interact meaningfully with stakeholders, including affected communities, at various stages of the due diligence process. Failure to comply with these standards may lead to financial, legal, and reputational consequences.

(See Appendix 1 for a summary of the normative framework and applicable standards)

2. Increased Stakeholder Scrutiny of Corporate Practices and Rise in Litigation

Today, business leaders face heightened public awareness and growing scrutiny from civil society. Thanks to modern technologies and connected networks and media, affected communities and civil society can quickly expose the potential and actual social and environmental adverse impacts of businesses in the media, encouraging them to adopt more responsible practices.

Added to this are the growing demands of certification bodies (e.g. Rainforest Alliance, Fairtrade, IRMA), investors who are more aware of sustainable finance and international development finance institutions such as the International Finance Corporation (IFC), as well as those of many insurance companies and private investment firms. These actors are now more engaged in assessing the impacts of their activities, either by conducting direct evaluations or by requiring guarantees from companies involved in their projects. Access to public or private funding for large-scale projects is now often conditional on respect for the rights of affected communities and the implementation of a meaningful engagement strategy.

Litigation related to the impacts of businesses on affected communities has increased in recent years, especially under the French Duty of Vigilance Law, involving French companies operating abroad. For example, in Brazil, for cases of deforestation and land grabbing affecting Indigenous Peoples; in Mexico, concerning respect for the rights of Indigenous Peoples and in particular regarding Free, Prior and Informed Consent (FPIC); in Uganda, related to land expropriations and threats to biodiversity; and in Chile, concerning communities' right to water[7]. These cases highlight the importance of businesses responding to growing expectations regarding respect for the rights of affected communities and align their engagement practices with internationally recognized human rights standards[8].

3. A Complex Issue, with Businesses Showing Uneven Levels of Maturity

The relationship between businesses and affected communities is a strategic issue that concerns all sectors, even those that, at first glance, seem remote from the realities on the ground. All businesses, whatever their activity, have a real or potential risk of impacting communities, whether upstream or downstream of their value chain.

Corporate engagement with communities is still too often seen as the "poor relation", treated as secondary in stakeholder dialogue. The company-community relationship is frequently misunderstood, for instance, when it is solely framed around the company's own priorities. The maturity of businesses, whether multinationals or large SMEs, remains uneven on this subject. Many of them do not currently have the teams, tools or methodologies needed to adopt a structured, proactive approach of community engagement that respects human rights.

4. An Operating Context Made More Complex in a Time of Polycrisis[9]

The operational context for businesses is now marked by polycrisis, an interaction of environmental, economic and social crises. Climate change, the collapse of biodiversity, national and international armed conflicts and socio-economic inequalities are exacerbating local challenges, generating or accentuating already existing tensions in relations between businesses and affected communities. In this context, businesses must not only address their immediate impacts, but also integrate these simultaneous and interconnected crises, which can aggravate or trigger new tensions.

5. The Energy Transition, Demographic Pressure and the Intensification of Resource-Related Conflicts

The energy transition, driven by the development of technologies such as renewable energies and electric vehicles, is generating strong demand for rare-earth elements and critical minerals. The extraction of these resources can generate growing tensions with the communities occupying these territories due to its environmental and social adverse impacts. These conflicts are particularly marked in regions where resources are limited and the rights of Indigenous and Tribal Peoples are under threat.

At the same time, population growth and the expansion of urban areas are intensifying pressure on access to land. Development projects are multiplying, reducing coastlines, forests and areas dedicated to agriculture, and changing the use of the land and the way of life of affected communities. These development projects expose affected communities to an increased risk of relocation, sometimes forced, in order to free up the land necessary for their implementation. The businesses involved also risk being associated with violations of the rights of affected communities.

6. The Rollback of Sustainability Ambitions: a Challenge for Committed Businesses

Businesses are evolving in a world where two opposing trends are currently coexisting. On the one hand, some companies are taking proactive, responsible positions by investing in ambitious sustainability strategies that incorporate practices that respect human rights, affected communities and the environment. On the other hand, some businesses, under pressure from shareholders or influenced by policies that do not favour combating climate change and social inequalities, are shifting toward less responsible strategies.

This phenomenon, in which some businesses are abandoning certain ambitions and moving away from the 17 Sustainable Development Goals, represents a major challenge for committed businesses. In an increasingly complex competitive economic environment, they may be at a disadvantage against competitors who favour short-term strategies that are less costly but more damaging in the long term. However, upholding a responsible approach in this context offers major advantages for the business: strengthening resilience in the face of crises, differentiating itself in demanding markets, building customer and investor loyalty, establishing long-term trust with affected communities and ensuring the social acceptability of projects over time.

Who Is This Guide For?

Businesses within the Scope of This Guide

This guide is aimed at businesses in all sectors, whether they interact directly or indirectly with communities that may be affected by their activities, products, services, or those of their business partners. All businesses, to varying degrees, can have an impact on these communities. Although it is aimed primarily at large businesses and abroad, SMEs will also find it useful for understanding and managing their impacts on these communities.

However, this guide, with its strong operational ambitions, is aimed **primarily at businesses that interact directly with communities**. These businesses, often active in sectors such as extractives, energy, agro-industry or construction, conducting on-the-ground projects where their operations and those of their business partners can generate significant social, economic or environmental impacts. In this context, affected communities are key stakeholders, as rights-holders, in the context of human rights due diligence. **Part 3 of this guide is specially designed to help these businesses manage their interactions with affected communities**.

However, **this guide is also relevant for businesses that operate at a distance from the field due to the nature of their operations, which are primarily centered around commercial transactions**. These businesses, which operate in sectors such as retail, consultancy, automation, digital, e-commerce, fashion and luxury goods, do not interact directly with affected communities. However, they remain responsible, as part of their due diligence, for identifying significant positive and adverse impacts on affected communities linked to their value chain and accountable to take actions to prevent, mitigate or remedy actual or potential adverse impacts.

In this guide, they will find essential resources for understanding the fundamental concepts, the applicable legal framework and international standards. The guide also provides practical guidelines for structuring their discussions and negotiations on this issue with partners, suppliers, service providers or customers in their value chain, and for implementing appropriate impact management measures. It is recommended that they pay particular attention to the following sections of the guide, although all sections may be of interest to them:

Part 3: Steps Towards Meaningful Engagement With Affected Communities

1. A Differentiated Approach According to the Business Profile
2. Companies Mainly Engaged in Commercial Transactions and Distant from On-the-Ground Operations, in particular:
   - Identifying affected communities: addressing the challenge of distance from the field and value chain complexity (page 47)
   - And after mapping? Which measures are appropriate for managing impacts on affected communities? (page 48)

Functions Covered within Businesses

This guide is particularly aimed at all those within the business, and at all levels, who play a key role in managing relationships with affected communities, as well as those responsible for ensuring that human rights are integrated into operational practices. Most of these functions are covered in a summary sheet at the end of this guide. The roles covered are as follows:

- **the heads of human rights/ESGs/vigilance leads** at head office and in the subsidiaries (human rights, CSR, compliance teams, etc.), who play a key role in assessing human rights and environmental risks and in disseminating this knowledge to the operational teams in the various countries where the business operates;

- **operational staff** responsible for implementing environmental and social management measures at local level, particularly at sites and within operations. This includes, for example, engineers and service providers responsible for carrying out social and environmental impact assessments;

- **procurement managers,** whose decisions can have a significant impacts on the rights of communities, are also encouraged to integrate these principles into their global procurement processes;

- **community liaison officers,** who are at the heart of interactions with affected communities, and who can benefit from clarification of concepts, resources and inspirational practices to support meaningful engagement**;**
- **top executives,** such as CEOs and members of executive committees, who, by virtue of their strategic influence, play a crucial role in defining the business' direction and mobilising the entire organisation to prevent human rights abuses;
- **managers in the field**, such as subsidiary directors, who ensure that the business' engagements are translated into concrete action, respecting the rights of affected communities and the ecosystems in the regions where they oversee operations.

What Methodology?

This guide is based on a multi-stakeholder approach designed to explore in depth the relationships between businesses and affected communities, by integrating a wide range of stakeholders and points of view. This analysis and collection of the views of the businesses and affected communities, including Indigenous and Tribal Peoples, took place over nearly two years, starting in May 2023.

This guide draws on the field experience of consultant **Céline da Graça Pires**, who has led and conducted several human rights impact assessments and contributed to the implementation of engagement strategies with affected communities and Indigenous and Tribal Peoples in various regions of the world, including high-risk contexts and conflict zones.

1. Documentary Review

An in-depth review of the existing literature was carried out, including reports by international organisations, academic studies and articles, and publications by NGOs specialising in the upholding of human rights and the protection of the rights of Indigenous and Tribal Peoples.

The review is also based on applicable international human rights standards, as well as sector-specific standards. References specific to sectors such as extractives, energy or agriculture have been included, to take into account the challenges specific features and requirements of each industry.

2. Multi-Stakeholder Interviews

In order to capture the views of affected communities as well as the operational challenges faced by the businesses, interviews were conducted with various stakeholders:

- **Businesses from different sectors:** confidential interviews were conducted with French multinationals, the majority of which have international operations. A variety of people were involved within the businesses to provide a comprehensive view of the practices and challenges encountered: human rights, ESG, and vigilance leads, operational teams at site level, community liaison officers in direct contact with communities and Indigenous Peoples in the field, those responsible for collecting and investigating grievances, and members of the business' legal department involved in compensation negotiations or litigation with affected communities. These interviews took place in France and abroad to understand the adaptation to local cultural and regulatory frameworks;
- **Group sessions organised by the UN Global Compact - France Network** as part of the affected business-community working group, launched in May 2023, to facilitate the sharing of experiences between member businesses under Chatham House Rules;
- **French and international NGOs:** confidential interviews were conducted with organisations involved in the protection of human rights and the rights of Indigenous and Tribal Peoples in France and abroad;
- **Expert members from civil society:** including with international and local experts (notably from Chile and Côte d'Ivoire), researchers, lawyers specialising in the defence of the rights of affected communities and Indigenous and Tribal Peoples, human rights consultants and advisers to businesses, mediators, sociologists, anthropologists and ethnologists.

3. Field Visits and Direct Consultations with Affected Communities

- A field study was organised in Chile, particularly in the north of the country, providing an opportunity for direct consultations with representatives and members of Indigenous Peoples, rural communities and non-indigenous fishing communities living in coastal areas. These visits also allowed for assessment of the operations of certain French companies, members of the working group, based in the region. They provided an opportunity to accompany the community liaison officers in their engagement activities, while closely observing the day-to-day interactions between these officers and affected communities.
- In addition, virtual consultations were held with traditional representatives, in particular traditional chieftaincies in Côte d'Ivoire, as well as with rural communities and agricultural cooperatives.
- The consultant also conducted individual interviews with members of indigenous and non-indigenous communities, drawing on her experience of human rights impact assessments carried out in a number of countries in South America, Central America and Africa.

4. Reading Committee

The guide was reviewed, corrected and submitted for criticism by a review committee made up of 4 French multinationals, a mid-sized business, two civil society organisations and a university professor.

Photo: diegograndi / envato

What Is the Aim of This Guide?

No One-Size-Fits-All Solution: a Necessary Contextual Approach is required

The relationship between businesses and affected communities is complex and cannot be resolved by a "turnkey" solution applicable to all situations.

This guide is not intended to provide an exhaustive list of scenarios or universal solutions. Instead, it aims to clarify key concepts and propose practical approaches, taking into account the views of affected communities on the ground and business case studies, to help meet the day-to-day operational challenges in these relationships.

The aim is to provide businesses with the tools they need to adopt responsible practices, that integrate human rights into their interactions with affected communities. It also aims to promote effective knowledge-sharing within the company, so that all teams, wherever they may be, are equipped to engage meaningfully with affected communities.

Beyond Compliance: An Approach Aligned with Human Rights Standards

This guide is not limited to an approach of strict "compliance" with legal obligations, set out in duty of vigilance laws (e.g. in France or Germany) or the CSRD. It encourages businesses to align their risk identification, assessment, and engagement practices with affected communities with international human rights standards, including the UN Guiding Principles on Business and Human Rights **(the UN Guiding Principles)**[10] and the OECD Guidelines.

A Necessary Paradigm Shift for a Long-Term, Trust-Based, and Mutually Beneficial Relationship

This guide is an invitation to move beyond purely transactional approaches to the relationship between businesses and affected communities, which are often marked by mutual distrust or the perception of communities as a "risk to be managed" or simply as passive beneficiaries of philanthropic initiatives.

To move away from a still-too-reactive model of company–community engagement, this guide promotes viewing communities as active, long-term partners. By incorporating a human rights-based approach, it proposes engagement practices based on recognition and respect for the rights and interests of potentially or actually affected communities and their environment, in order to build a model based on mutual trust.

KEYS

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Focus: from documentary research and interviews with businesses, communities and their representatives, experts and NGOs

BUSINESS CASE STUDIES

Business case studies: based on interviews with member businesses of the UNGC working group and the field study carried out in Chile.

Guidelines/tools: All the recommendations and methods shared throughout the guide are the result of documentary research, interviews (with businesses, communities and their representatives, experts and NGOs), a field study in Chile, and the consultant's expertise.

Photo: Céline da Graça Pires

Photo: Céline da Graça Pires

I. AFFECTED COMMUNITIES: KEY STAKEHOLDERS TO BE BROUGHT BACK TO THE CORE OF DUE DILIGENCE

Overview of the Applicable Framework

The relationship between businesses and affected communities is governed by a complex framework that includes hard law obligations as well as international soft law standards.

This framework is based on three levels:

1. **Hard law, which imposes binding legal obligations**, including the French Duty of Vigilance Law, the Corporate Sustainability Reporting Directive (CSRD)[11] the Regulation on Deforestation-free Products (EUDR)[12] and the Corporate Sustainability Due Diligence Directive (CSDDD)[13];
2. **Business and human rights standards (*soft law*),** that have been authoritative since 2011, have largely inspired the emerging binding legal frameworks. They clarify what is expected from businesses in their practices for identifying and assessing the risks of adverse human rights and environmental impacts and in developing engagement strategies with stakeholders, including affected communities, in particular through the UN Guiding Principles and the OECD Guidelines (see box below);
3. **Sector-specific standards,** which specify particular requirements in various sectors, such as the extraction industry, agriculture or finance.

An overview of the applicable legal framework and human rights standards is provided in Appendix 1 of this guide.

PRINCIPLES

UN GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS: IMPLEMENTATION OF THE UNITED NATIONS "PROTECT, RESPECT AND REMEDY" FRAMEWORK (UN GUIDING PRINCIPLES)

The UN Guiding Principles were unanimously endorsed by the Human Rights Council in 2011. Internationally recognised, they set out the complementary roles of government and businesses in protecting and respecting human rights within the context of economic activity.

These **31 principles** are structured around three fundamental pillars:

- **The State duty to protect human rights;**
- **The corporate responsibility to respect human rights; and**
- **Access to remedy for victims of business-related abuses.**

Businesses are required to respect human rights by implementing a human rights due diligence process designed to avoid harm, to prevent and mitigate potential and actual adverse impacts, and to remedy any adverse impacts they have caused or contributed to. This responsibility extends to all internationally recognised human rights.

THE OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES ON RESPONSIBLE BUSINESS CONDUCT (OECD GUIDELINES)

The OECD Guidelines are recommendations issued by OECD member countries to multinational enterprises. Their aim is to promote the positive contribution of business to sustainable economic, social and environmental development, while reducing the potential and actual adverse impacts of their activities, products and services. They are **one of the most important international soft law instruments on responsible business conduct**. First adopted in 1976, they were **updated in 2011 and again in 2023**.

The OECD Guidelines are structured in two parts: the first contains recommendations on the implementation of due diligence; the second sets out the procedures governing the functioning of National Contact Points (NCPs) and the mandate of the OECD Investment Committee in this area.

The OECD Guidelines apply to the activities of multinational enterprises operating both in and from adhering countries. As such, they have an extra-territorial dimension.

I.1. AFFECTED COMMUNITIES: KEY STAKEHOLDERS TO ENGAGE

Meaningful engagement with stakeholders, in particular, and as a priority, with those affected by a business' operations and its value chain, **is a central pillar of human rights due diligence,** as defined by the UN Guiding Principles and the OECD Guidelines. This principle is now reinforced by European legislation, in particular the CSDDD and CSRD directives.

In line with the UN Guiding Principles, due diligence "**should cover adverse human rights impacts that the business enterprise may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships;**" and **"should be ongoing, recognizing that the human rights risks may change over time as the business enterprise's operations and operating context evolve[14]".**

In line with these Principles, **the fundamental objective of stakeholder engagement is to identify potential or actual adverse impacts of the activities of the business and its business partners along the value chain, including through its products, services or business relationships.**

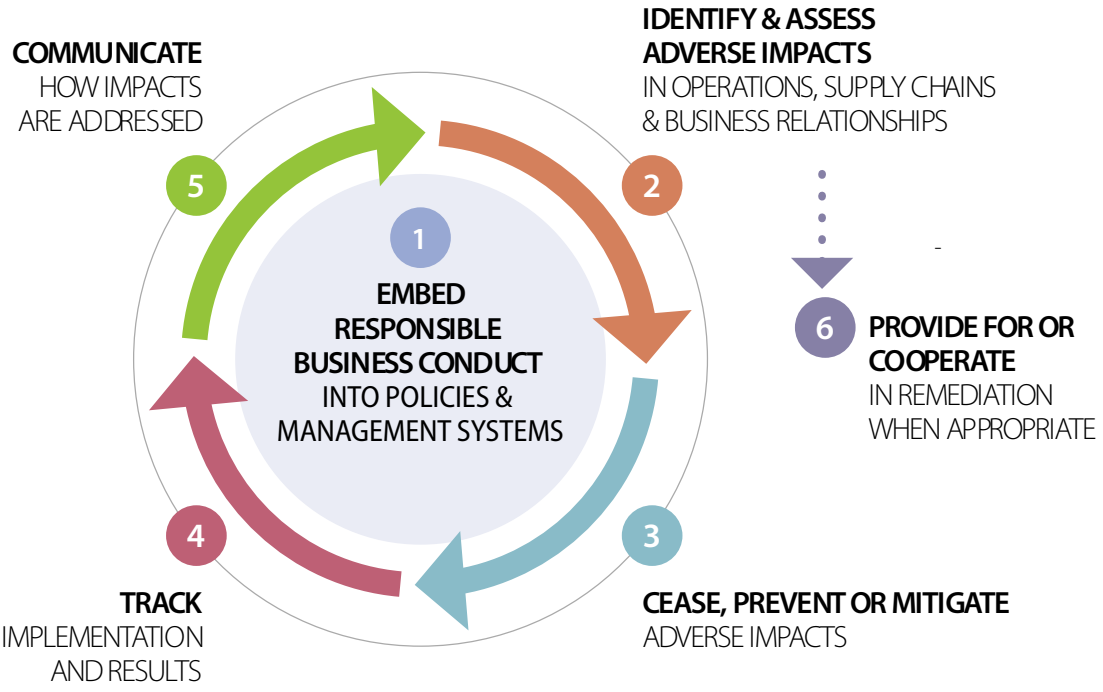
Among these stakeholders, **affected communities hold a central place as rights-holders, whose enjoyment of human rights may be directly and adversely affected by business activities.**

Source: diagram inspired by *Stakeholder Engagement in Human Rights Due Diligence – A Business Guide* published by the Global Compact Network Germany and Twentyfifty Ltd. (2014).

The perspectives of affected communities, when it is established that a business' operations or those within its value chain may have an adverse impacts on their rights, should be fully integrated to inform and guide each step of the due diligence process (**see Part 3, Step 1 | Who to Engage? Identify Affected Communities**. **For practical guidance on how to integrate the perspectives of affected communities at every stage of this process, refer to Appendix 2 of this guide.**

> **"We are not against what businesses call "progress". We are not against their presence near our communities. What we ask is to be recognized for our true worth. We are the primary stakeholders concerned."**
>
> *Chairman of the fishermen's association of a non-indigenous coastal community*

MEASURES TO BE TAKEN AS PART OF THE DUE DILIGENCE PROCESS



Source: OECD (2018), OECD Due Diligence Guidance for Responsible Business Conduct.

I.2. A NECESSARY PARADIGM SHIFT FOR A LONG-TERM, TRUST-BASED, AND MUTUALLY BENEFICIAL RELATIONSHIP

To move beyond **an approach to community engagement that is still too often reactive** – limited to responding to crises as they arise – **or purely transactional**, this guide encourages **a paradigm shift in which communities are recognised as active, long term partners**. By taking into account their rights, concerns and interests, this model of engagement fosters more equitable dialogue, enabling businesses and communities to co-create sustainable and mutually beneficial solutions for all.

RELATIONS BETWEEN BUSINESSES AND AFFECTED COMMUNITIES: A NECESSARY PARADIGM SHIFT FOR A LONG-TERM, TRUST-BASED, AND MUTUALLY BENEFICIAL RELATIONSHIP

Preconceived Assumptions	Example of a Reactive Approach to Engagement	Risks	Paradigm Shift	Shared Benefits
Businesses often perceive communities as a "risk to be managed." This initial preconceived assumption reflects a fear that more frequent interaction and transparent information-sharing could lead to increased demands and a higher risk of conflict.	Providing little or strictly necessary information to communities and limiting contact to that which is legally required, in the event of a specific need for the business or in the event of a crisis.	**Communities perceive businesses as reactive and non-proactive**. The absence of regular and ongoing dialogue also prevents companies from anticipating and preventing potential adverse impacts, while fostering the emergence of rumours and community concerns. Such rumours and concerns may intensify, turn into mistrust, tensions, and sometimes even escalate into conflict.	Consider communities as active, long-term partners contributing to the success of the project and its operations. Establish an engagement strategy based on respect for human rights, transparency and proactive information-sharing.	**For businesses**: anticipating expectations, identifying the risks of adverse impacts, reducing the risk of tensions and/or crises, and strengthening local reputation. **For affected communities**: providing two-way information and communication about the project, taking their voices into account, and taking measures to mitigate adverse impacts.
The business has the necessary legal authorisations to set up and operate, legitimising its presence in the area: "That is enough."	Businesses often rely primarily on legal and regulatory approvals to justify their operations, without necessarily considering the perspectives of potentially affected communities.	**Compliance with national legislation and holding the required legal permits do not guarantee a project's social acceptance (social licence to operate), nor, where applicable, the free, prior and informed consent of Indigenous and Tribal Peoples.** The absence of such consent can lead to tension, opposition and even conflict, with legal, financial and reputational consequences for the business.	Depending on the operational context, and particularly where legislation does not guarantee sufficient protection of the rights of communities and the environment, it is essential to go beyond regulatory requirements and build engagement practices guided by the most protective international human rights standards.	**For businesses**: ensuring social legitimacy of their presence through dialogue, reducing risk of conflict, improving reputation and enhancing the sustainability of operations. **For affected communities**: ensuring respect for their rights and their environment, and taking their interests and potential adverse impacts into account.
"The community is only interested in immediate benefits and the transactional part of the relationship."	The emphasis is on short-term projects decided unilaterally by businesses, which do not always ensure that the social investments or benefits granted fully meet the real needs of communities. Priority is given to the implementation of social initiatives, but there is frequently a lack of ongoing identification, assessment and addressing of potential adverse impacts arising from the company's own operations and those of its partners.	**Risk of the relationship becoming purely transactional.** The real needs and concerns of communities are not addressed, and potentially adverse impacts persist because they are neither properly identified nor addressed. The risk of economic dependency among communities is also exacerbated, increasing their vulnerability to fluctuations in the business support. Communities benefiting differently from the business's social investments may become jealous and tensions may arise.	Beyond social investments, businesses have a primary responsibility to prevent and mitigate potential adverse impacts and to remedy actual impacts. **Social investments should be designed in a participatory manner with beneficiary communities** ("bottom-up") and not decided unilaterally ("top-down") by the business, to meet their actual needs.	**For businesses**: strengthening legitimacy and trust, as the business remains aware of its responsibility to prevent, mitigate and remedy adverse impacts. Increased long-term impact through close collaboration with communities. **For affected communities**: identifying and mitigating risks of adverse impacts, actively participating in decisions on resource allocation, fostering a sense of ownership and considerations of local priorities, improving living conditions and reducing economic dependency.

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II. KEY CONCEPTS: AFFECTED COMMUNITIES, IMPACTS AND MEANINGFUL ENGAGEMENT – WHAT ARE WE TALKING ABOUT?

II.1. WHO ARE AFFECTED COMMUNITIES?

In the context of the CSRD and the ESRS S3 thematic standard, affected communities include:

"**i. Communities living or working around the undertaking's operating sites, factories, facilities or other physical operations, or more remote communities affected by activities at those sites** (for example by downstream water pollution);

ii. Communities along the undertaking's value chain (for example, those affected by the operations of suppliers' facilities or by the activities of logistics or distribution providers)

iii. Communities **at one or both endpoints of the value chain** (for example, at the point of extraction of metals or minerals or harvesting of commodities, or communities around waste or recycling sites);

iv. Communities of Indigenous Peoples[15]."

A. TERMINOLOGY USED IN THIS GUIDE

In this guide, we use the term *affected* as used in the English version of the CSRD ESRS S3, the UN Guiding Principles (English version[16]) and the English version of the OECD Guidelines[17]. The Performance Standards of the International Finance Corporation (IFC), a member of the World Bank Group[18] and the Equator Principles[19] also make explicit reference to "affected communities".

The term "affected" reflects the primary responsibility of businesses, namely, to do no harm to human rights and the environment as enshrined in international human rights standards.

By using the term "affected", this guide underscores the **priority and essential obligation**, in accordance with applicable standards, to **identify and engage with individuals or groups whose rights are affected or likely to be affected by business' activities, products, services, or value chain**. As the Interpretative Guide to the UN Guiding Principles recalls: "the key to human rights due diligence is the need to understand the perspective of potentially affected individuals and groups[20]".

The objective of this guide is to help businesses better identify and understand the potential or actual impacts on affected communities.

Recommendations on the Terminology for Business-Community Relations

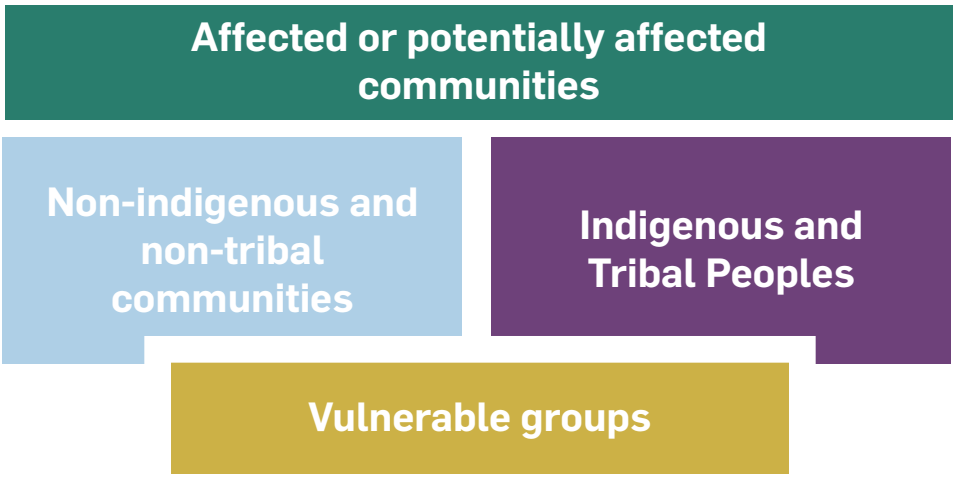
Local communities: a term to be used with caution to avoid vague or imprecise generalisations

The use of generic expressions such as "local communities" should be used carefully, as **this terminology lacks a clear legal definition and international consensus**. It is a broad and often imprecise term, often used in practice with a "positive" connotation to refer to groups of people livin geographical proximity to a business's operations, sharing local interactions and who may, in some cases, benefit from nearby economic activity.

In practice, the term "local community" also tends to refer mainly to sedentary communities, excluding groups such as nomadic peoples.

In addition, the use of this term can lead to **inappropriate assimilation of distinct groups, such as Indigenous and Tribal Peoples.** Some businesses group their impacts and actions under the broad category "local communities" in their external communications, including Indigenous and Tribal Peoples within this general classification. AT international level, other businesses use the acronym IPLC (*Indigenous Peoples and Local Communities*) to collectively refer to Indigenous and Tribal Peoples and local communities. This single categorisation fails to take into account the distinct collective rights recognised at the international level for Indigenous and Tribal Peoples. Indigenous and Tribal Peoples must receive special attention and be clearly distinguished from non-indigenous communities in vigilance plans (under the French Duty of Vigilance law), sustainability reports and other internal or external communications. The United Nations mechanisms on Indigenous and Tribal Peoples have stressed the need to avoid confusing, conflating or assimilating indigenous and Tribal Peoples with "local communities", which do not enjoy the same protection at international level[21].

The following diagram illustrates the need to make a clear distinction between non-indigenous and non-tribal communities, and Indigenous and Tribal Peoples. In addition, it is important to note that vulnerable groups may exist within these two groups and that both the identification of the risks of adverse impacts and the engagement strategies will need to be adapted to the cultural specificities of each.



B. DIVERSITY OF AFFECTED COMMUNITY PROFILES

It is important to recognise the diversity of affected community profiles, each characterised by unique territorial, cultural and social specificities.

They should not be seen as a homogenous whole, because **there is no such thing as one affected community**, **but many affected communities with their own socio-economic and territorial needs and realities**, whether urban, rural, coastal or of other types. Taking this diversity into account helps businesses to better identify potential adverse impacts, adapt mitigation and/or remediation measures, and ensure their effectiveness, while also maximising positive impacts for the business **(see What Impacts Are We Talking About?).**

An indicative, non-exhaustive list highlighting this diversity is available in Appendix 6.

C. INDIGENOUS AND TRIBAL PEOPLES

■ No Universal Definition but Identification Criteria

Neither the United Nations Declaration on the Rights of Indigenous Peoples[22] nor Convention No. 169 of the International Labour Organisation (ILO Convention No. 169)[23] provides a precise definition of what constitutes an Indigenous People[24] or a Tribal People. However, both Indigenous and Tribal Peoples enjoy the same level of protection of their rights under the Convention.

Given the great diversity of Indigenous and Tribal Peoples worldwide, any attempt to establish a strict definition risked being either too inclusive or not inclusive enough. Furthermore, imposing an overly rigorous definition in international texts was seen as counterproductive, as it could undermine respect for their human rights and cultural specificities.

Despite the absence of an authoritative definition, Article 1 of ILO Convention No. 169 distinguishes between two categories of beneficiaries, and sets out **subjective and objective criteria for identifying Indigenous and Tribal Peoples**, inspired by the conclusions of the study carried out by José Martínez Cobo, former UN Special Rapporteur, who developed a working definition intended to clarify the concept of “indigenous communities, peoples, and nations” based on a set of "criteria":

"Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing on those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal system.[25]**"**

INDIGENOUS PEOPLES

The criteria under ILO Convention No. 169 are as follows:

1. **Fundamental subjective criterion in determining indigenous identity and belonging:** This notion underscores that the self-identification of individuals and groups as indigenous is a determining factor for recognition (group consciousness),enabling peoples to determine for themselves their own identity and collective belonging .

2. **Objective criteria[26]:**

   - Their situation is part of **a historical continuity with pre-colonial societies or those existing prior to colonisation**, or to "the establishment of current State boundaries"[27] "(anteriority in a given territory)[28];
   - The **difference with the rest of the national population due to their social, cultural and economic conditions** (the fact that they identify themselves and are recognised by others as a distinct community);
   - They are governed, totally or partially, by **their own customs and traditions**, or by special legislation (they constitute non-dominant sectors of society with a voluntary maintenance of cultural specificities that differ from those of the dominant society);
   - They express a **determination to preserve, develop and transmit to future generations their identity, culture and ancestral territories**, in accordance with their own political and social institutions and system of justice (present and future identity claims)[29].

The United Nations Permanent Forum on Indigenous Issues has also identified the following characteristics, in addition to those listed above:

- "A strong link to territories and surrounding natural resources";
- "Distinct social, economic or political systems"; and
- "Distinct language, culture and beliefs[30] ".

TRIBAL PEOPLES

The International Labour Organisation (ILO) uses the term “tribal” to refer to so-called ethnic communities in Asia and Africa, whose ways of life differ from those of the national society.

The identification criteria are as follows:

1. **Fundamental subjective criterion in determining tribal identity and belonging (self-identification).**
2. **Objective criteria:**
   - Their **social, cultural and economic conditions** set them apart from the rest of the national population;
   - They are " **regulated wholly or partially by their own customs or traditions** or by special laws or regulations[31]".

In its report adopted by the African Commission on Human Rights, the Working Group on Indigenous Peoples/Communities and Minorities in Africa stresses the difficulty of applying the above-mentioned criteria for identifying Indigenous Peoples in an African context.

He explains that "limiting the definition of Indigenous Peoples to those local peoples still subject to the political domination of the descendants of colonial settlers as in the Americas and in Australia makes it very difficult to meaningfully use the concept in Africa [32] ".

He therefore recommends that the focus in Africa should be on:

- **Self-identification** as Indigenous and distinctly different from other groups within a State;
- **Their special attachment to and use of their traditional land whereby their ancestral land and territory has a fundamental importance for their collective physical and cultural survival as peoples** . The preservation of their specific ways of life depends on access to their traditional lands and rights to the natural resources found there;
- **An experience of subjugation, marginalisation, dispossession, exclusion or discrimination**, because these peoples have different cultures, ways of life or modes of production than the national hegemonic and dominant model.

- **Human rights-based approach to terminology for naming and engaging with Indigenous and Tribal Peoples by businesses**

The use of unsuitable or inappropriate terms can harm the quality of relationships and, in some cases, lead to misunderstandings or unintended offence. Here are some recommendations for adopting the right terminology:

→ **Use the term "peoples" rather than "populations":** recognises their status as distinct collective entities with internationally recognised rights. In contrast, using "populations" could reduce these groups to mere demographic categories;

→ **The translation of the term 'indigenous' into certain languages (such as 'indigènes' in French) can carry offensive or colonial connotations in certain contexts and therefore requires careful and sensitive use;**

→ **Finally, it is essential to use the names by which Indigenous and Tribal Peoples identify themselves**, taking into account their specific preferences. This ensures full respect for their self-determination and strengthens a relationship based on mutual respect.

BUSINESS CASE STUDIES

One business interviewed explained that it uses a three-step approach to identify Indigenous and Tribal Peoples:

- Firstly, **it frequently works with local experts** (ethnologists, anthropologists, sociologists), interviewing them about the presence Indigenous or Tribal Peoples and providing them with internationally recognised criteria to guide their analysis;
- Secondly, it **relies on reliable sources,** such as the latest publications from the IWGIA (*International Work Group for Indigenous Affairs*) to check whether Indigenous and Tribal Peoples are officially identified in the country and to assess the status of their rights;
- Finally, **it raises this question during consultations with social services or ministries responsible for social affairs**, in order to confirm the possible presence of Indigenous and Tribal Peoples in the project's direct and indirect area of influence.

Photo: Céline da Graça Pires

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Focus on the Link Between Indigenous and Tribal Peoples and the Land, Sea and Natural Ecosystems

Understanding the worldviews of Indigenous and Tribal Peoples and their unique relationship with their territories and natural ecosystems makes it possible to respect their ways of life without imposing external frameworks of thought or projecting stereotypical patterns onto them. This helps to avoid the prejudice that may arise from a lack of understanding of others.

A Worldview Rooted in a Close and Spiritual Relationship with the Land, the Earth and Natural Elements

Indigenous and Tribal Peoples maintain a deep and unique bond with their territories and the natural resources that surround them. This close relationship is central to their collective and spiritual identity. **In the cosmovision[33] of many indigenous cultures, the land is seen as a nurturing mother, a living entity that provides for the survival of humans and other living beings**. In the Andean region of Latin America, this concept is embodied in "**Pachamama**[34] "symbolising the unity and interdependence of all forms of life. This worldview directly influences daily life and the relationship with the land, structuring community organisation, ceremonies and livelihoods.

The spiritual bond with the land, natural elements and all living beings within the ecosystem in which Indigenous and Tribal Peoples live or move is a key element of their identity, though it should not be confused with religion. Rather, it reflects a holistic relationship, that encompasses both material and spiritual dimensions, integrated into their way of life. Humans and ecosystems thus form an interdependent community in which each plays an essential role.

A Symbiotic Relationship with the Sea

Some Indigenous Peoples also have a spiritual and intimate connection with the sea or the ocean. This is the case, for instance, of the Diaguitas[35] and Changos[36] Peoples in Chile. For these peoples, the sea constitutes an essential resource, not only for their economic subsistence (fishing or seaweed harvesting), but also as a central element of their cultural rites, ceremonies, and spiritual traditions.

D. VULNERABLE GROUPS

The term vulnerable groups refers to individuals, communities or peoples who are exposed to heightened risk of rights violation, due either to **intrinsic factors** (linked to personal characteristics such as age, gender or state of health) or to **extrinsic** factors (resulting from difficult living conditions or a hostile environment).

Although there is no strict legal definition of a "vulnerable person", a commonly accepted definition describe it as "**an individual/or group whose weakness and/or particular situation predisposes them to the occurrence of a serious risk**."[38] International standards[39] provide guidelines for identifying and protecting these groups. According to the UN Guiding Principles, businesses must pay particular attention to the specific impacts on the human rights of individuals belonging to groups or communities that are more exposed than others to vulnerability or marginalisation, while integrating a gender perspective. The IFC[40] specifies that an individual or group may be disadvantaged or vulnerable for reasons such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status. Other factors need to be taken into account, including gender, age, ethnicity, culture, literacy, health status, disability, poverty and exclusive dependence on natural resources.

When several factors combine and reinforce each other, **we speak of "multiple vulnerabilities" or an intersectional approach to vulnerability** (for example, a woman who is a single mother, from an ethnic minority and living in conditions of economic insecurity). Such individuals are exposed to increased risks of serious violations of their fundamental rights.

In this respect, a table is provided to offer practical guidance and ideas for engaging with vulnerable groups (see dedicated table in Special considerations for engagement with vulnerable groups).

II.2. WHAT IMPACTS ARE WE TALKING ABOUT?

A. POSITIVE IMPACTS

Businesses can generate positive impacts through their operations and throughout their value chain. The ESRS S3 standard requires businesses to report on the positive impacts created for communities, addressing to their needs and demonstrating the progress made in implementing related initiatives or procedures.

Concrete actions taken by businesses include supporting access to skilled employment and vocational training, financing local socio-economic development projects, providing access to energy, drinking water and healthcare, and implementing waste collection and recycling systems.

(see in particular Benefit-Sharing and Community Collaboration Agreements).

B. POTENTIAL AND ACTUAL ADVERSE IMPACTS

Human rights due diligence is based on a people-centred approach. It aims to understand and analyse potential violations of the fundamental rights of individuals and communities, rather than viewing them solely through the lens of risks to the business and its operations.

Taking up this founding approach, the CSRD's ESRS S3 standard covers **three main categories of community rights that may be affected by a business's activities and value chain**[41]. It also includes those relating to its products or services and its business relationships, as well as examples of potential and actual abuses.

CSRD - ESRS S3 Affected communities		
	Communities' economic, social and cultural rights	- Adequate housing - Adequate food - Water and sanitation - Land-related impacts - Safety-related impacts
	Civil and political rights of communities	- Freedom of expression - Freedom of assembly - Impact on human rights defenders
	Rights of Indigenous Peoples	- Free, Prior and Informed Consent (FPIC) - Self-determination - Cultural rights

The rights listed under each category are illustrative and not exhaustive[42]. All rights protected under the International Bill of Human Rights (Universal Declaration of Human Rights, International Covenants on Civil, Political, Economic, Social and Cultural Rights) must be taken into account. In addition, the rights of Indigenous Peoples, in their entirety, as protected by ILO Convention No. 169 and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), must be integrated into the assessment of corporate impacts.

The ESRS S3 under the CSRD also highlights that environmental harm can have direct and significant impacts on communities. The CSRD therefore calls for **an integrated approach that simultaneously considers environmental protection and the preservation of the human rights of affected communities**. This is the case for the examples opposite[43].

"**(a) ESRS E1 Climate Change:** The implementation of climate change mitigation plans may require the undertaking to invest in renewable energy projects that may affect the lands, territories and natural resources of Indigenous Peoples. If the undertaking does not consult with the affected Indigenous Peoples , it could negatively impact the affected communities' right to free, prior and informed consent;

(b) ESRS E2 Pollution: The undertaking may negatively impact affected communities by failing to protect them from pollution from a particular production facility that causes them health-related issues;

(c) ESRS E3 Water and marine resources: The undertaking may negatively impact the access to clean drinking water of communities when withdrawing water in water stressed areas;

(d) ESRS E4 Biodiversity and ecosystems: The undertaking may negatively affect the livelihood of local farmers through operations that contaminate soil. Additional examples include the sealing of land through building new infrastructure, which can eradicate plant species that are critical for, for example, local biodiversity or to filter water for communities; or the introduction of invasive species (whether plants or animals) that can impact ecosystems and cause subsequent harm;

(e) ESRS E5 Resources use and circular economy: The undertaking may negatively impact the lives of communities by affecting their health through the mismanagement of hazardous waste."

Photo: Antonio Garcia / unsplash

The diagram below summarises the adverse impacts most frequently identified by affected communities and their representatives, and by the businesses consulted during the preparation of this guide.

Threats to the physical integrity and safety of community members through the actions of private and/or public security forces *(particularly in conflict-affected or high-risk areas)*

Violation of freedom of opinion and expression *(limits to protests against a project, for example)*

Threats, intimidation and reprisals, including physical violence, against community representatives and human rights defenders

Lack of meaningful community engagement

Failure to respect Free, Prior and Informed Consent (FPIC) of Indigenous and Tribal Peoples.

Loss of culture and traditions, and impacts on community cohesion and identity

Adverse impacts on right to transparent information regarding the project's socio-environmental impacts

Violation of the right of land ownership, customary possession or traditional occupation of land and forced displacement

Damage to tangible and intangible heritage (archaeological, cultural and/or religious, etc.)

Violation of the right to a healthy environment and destruction or degradation of natural resources (soil degradation, damage to marine environment, freshwater depletion and deforestation)

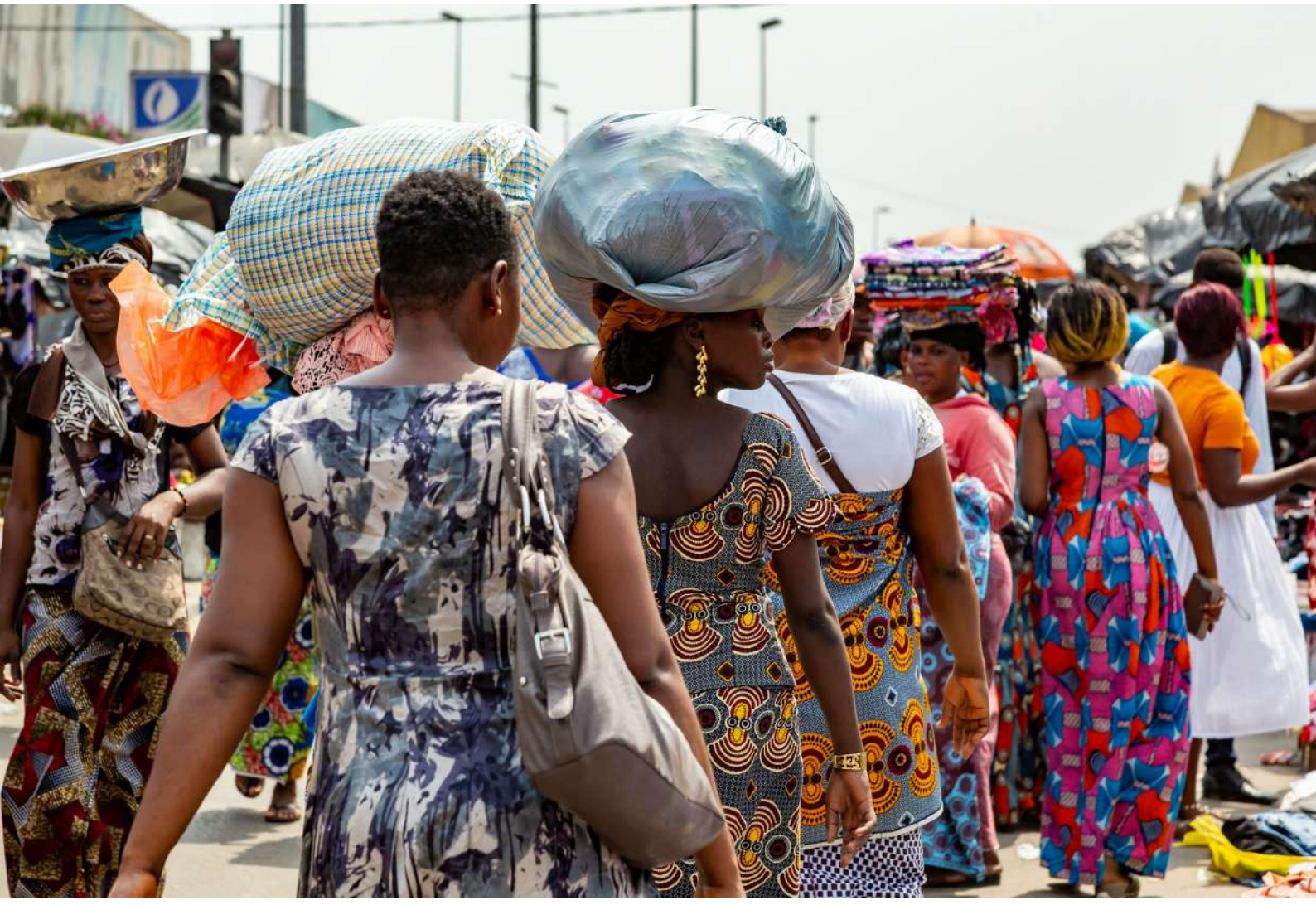
Adverse impacts on the livelihoods of affected communities

Non-existent or ineffective grievance mechanisms and rights of remedy

Inequality of opportunities and discrimination in employment

The severity of impacts varies according to the operational context and the type of project

Photo: Eva Blue / unsplash



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Cumulative Impacts Affecting the Environment and the Rights of Affected Communities

What Are Cumulative Impacts?

Cumulative impacts refer to **successive and combined effects of several projects or business activities, whether in the same or different sectors, located in the same region or affecting the same resources**. They may result from different business activities or different phases of the same project, which add to the impacts of other existing, planned or future initiatives, leading to an accumulation of adverse impacts on the environment and the human rights of communities in the area of operations.

The IFC (International Finance Corporation) defines cumulative impacts[i] as "those that result from the successive, incremental, and/or combined effects of an action, project, or activity when added to other existing, planned and/or reasonably anticipated future ones".

As human rights are interconnected, an adverse impacts on one fundamental right can affect others. For example, several businesses operating in the same region may each draw their quota of water from the same source in compliance with regulations and without their individual use causing a major impact. However, the combined effect of these withdrawals can have a significant impact on available water resources, compromising the right to water of affected communities. This is particularly true in certain operational contexts where no studies are conducted by national or regional authorities and where there are no mechanisms for regular monitoring or inspection of extraction quotas. This phenomenon can then threaten other fundamental rights, such as the right to life, the right to a decent standard of living and access to food, due to the impossibility of irrigating the land.

Added to this are the effects of climate change, increasing competition for water and biodiversity loss, all of which further exacerbate the situation and the pressure on water resources in the affected areas. **In certain situations, these impacts can even be irreversible, permanently compromising the living conditions and livelihoods of affected communities.**

Growth and "Sacrifice Zones"

With the expansion of large-scale industrial projects and the increase in cumulative impacts, certain areas have been described as "sacrifice zones"[44].

These areas are under sustained pressure on natural resources, leading to lasting degradation of ecosystems and long-term impacts on the living conditions and livelihoods of affected communities.

Learn More:

- **United Nations Global Compact. (2014). A Guide to Traceability: A Practical Approach to Advance Sustainability in Global Supply Chains.**
- **International Finance Corporation. (2019). Cumulative Impact Assessment Resource Page.**
- **International Finance Corporation. (2013). IFC Good Practice Handbook on Cumulative Impact Assessment and Management: Guidance for the Private Sector in Emerging Markets.**

[i] International Finance Corporation (IFC), Good Practice Handbook: Cumulative Impact Assessment and Management – Guidance for the Private Sector in Emerging Markets, 2013, p. 19

Challenges for Businesses

In the context of cumulative impacts, businesses face two major challenges: identifying their individual responsibility and ensuring the effective management of cumulative impacts.

■ Identify and Determine Any Individual Responsibility for Cumulative Impacts on Human Rights and the Environment

The UN Guiding Principles emphasise the responsibility of businesses to identify the adverse impacts they may cause or contribute to, and to implement appropriate measures to prevent, mitigate or remedy them, regardless of the involvement or inaction of other players. In practice, businesses often face difficulties in identifying and distinguishing their share of responsibility from that of other contributors. This is mainly because traditional Environmental and Social Impact Assessment (ESIA) often do not include, or do not sufficiently, include an assessment of cumulative impacts.

■ Addressing Cumulative Impacts: Providing Appropriate Responses

The UN Guiding Principles[45] and the CSDDD[46] specify that the measures implemented to neutralise or reduce the extent of adverse impacts must be proportionate to the severity of the impact and to the involvement of the business. This remediation process can prove complex and limited when a business is faced with stakeholders involved in the issue but unwilling to participate. This lack of coordination hinders collective efforts and reduces the effectiveness of individual initiatives to mitigate cumulative effects.

Recommendations

1. **Strengthening impact and risk assessments:** businesses should ensure that impact assessment methodologies include potential cumulative impacts, particularly within Environmental and Social Impact Assessments (ESIA);
2. **Engage communities early in the process to assess the risks of cumulative impacts:** Before any project is implemented, it is essential to engage potentially affected communities to identify together the risks of cumulative impacts, and also to determine whether the area is perceived or officially designated at national level as a "sacrifice zone" or whether the presence of other industries has already caused cumulative adverse impacts. When entering a new country, launching a project or expanding operations, this prior engagement can inform go/no-go decisions to avoid creating unsustainable conditions for affected communities;
3. **Encourage collective efforts between businesses, government and local stakeholders to provide an appropriate response to cumulative impacts:** in areas of shared operations, an active collaborative approach among businesses, government and local administrative authorities may include sharing data within the limits of legal confidentiality, exchanging best practice, and coordinating actions to address effectively common challenges;
4. **Work together to establish appropriate grievance mechanisms:** when a business contributes partially to a cumulative impact, it may find itself receiving grievances for impacts that it cannot remedy alone. This difficulty is exacerbated when other contributors do not themselves have grievance mechanisms. To address this, it is recommended that businesses consider joining multi-stakeholder initiatives aimed, for example, at developing and implementing a joint grievance mechanism among actors operating in the same area.

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Land Issues and Engagement Between Businesses and Affected Communities

Land issues can lead to complex negotiations between businesses and landowners, whether legal or customary, as well as lasting tensions within affected communities, which can result in protests or violence. **A strictly legal approach to land due diligence has demonstrated its limitations, as it does not always effectively prevent human rights risks**.

For their part, businesses are exposed to delays in the implementation of projects, suspensions, additional costs or even cancellations. They also risk losing trust and damaging their reputation with stakeholders, including the authorities and investors, which could lead to the suspension of funding. These situations can also lead to legal action and international sanctions.

Adverse Impacts Related to Land Issues for Affected Communities (Non-Exhaustive List)

- **Risk of forced eviction**[47] **including disproportionate use of public or private force;**
- **Loss of essential resources:**
  - In rural areas: deprivation of forests (medicinal plants used by the community, wood, etc.), agricultural land, access to water and other means of subsistence;
  - In urban areas: distance from places of residence, places of access to healthcare, loss of access to workplaces exacerbating economic difficulties.
  - In fishing areas: loss of access to a river or the sea, depriving communities of their ability to fish for food and sell their catch, which can seriously affect their livelihoods.
- **Non-recognition of customary land rights;**
- **Adverse impacts on the right to fair compensation;**
- **Lack of transparent information,** lack of consultation or inadequate consultation;
- **Social and community disruption**: risk of fragmentation of communities, destroying mutual aid links and/or traditional structures (village councils, cooperatives);
- **Lack of an effective grievance mechanism;**
- **Additional impacts for Indigenous and Tribal Peoples in particular:** violation of Free, Prior and Informed Consent (FPIC), non-recognition of their collective rights to the land they occupy, use or consider to be of spiritual or cultural value, deprivation of access to sacred places, cultural sites or elements of their archaeological heritage.

Recommendations for Addressing Land Issues Using a Human Rights-Based Approach

- **Forced evictions constitute gross violations of internationally recognised human rights**[48]. Forced evictions should only be carried out under exceptional circumstances, according to the United Nations Committee on Economic, Social and Cultural Rights (CESCR)[49]. Evictions and other compulsory procedures may only be carried out in accordance with the law and international practice[50];
- **Avoid, and where avoidance is not possible, limit involuntary resettlement**[51] **by considering alternative project designs:** from the planning stage, consider alternative solutions (including project routes) to reduce land acquisition and minimise access restrictions;
- **Where resettlement is unavoidable, minimise the adverse impacts on affected communities by relocation,** host communities (communities receiving displaced persons and groups) and neighbouring communities;
- **Provide fair compensation to those affected and adopt a socio-culturally appropriate compensation approach**: design relocation and financial compensation plans taking into account the socio-cultural specificities of affected communities. Offer housing adapted to family structures and cultural habits in consultation with affected communities (for example, avoid imposing European-style housing on communities used to shared living spaces).
- **Take into account the impacts of climate change** (such as increased drought, soil erosion, and flooding) to ensure that the land allocated as compensation can withstand current and future challenges;
- **Target vulnerable groups:** for example, establish specific measures to protect women, who are often deprived of land rights or marginalised, and particularly exposed to the risk of their financial compensation being confiscated by family members or, in certain circumstances, community leaders. Also identify migrants, often socially isolated and excluded from local decision-making bodies, to ensure that they receive fair and adequate compensation;
- **Ensure meaningful and culturally appropriate engagement** with affected and host communities at every stage of the project, including dialogue on possible alternatives to the original project route;
- **Maintain clear and transparent communication**, ensuring ongoing participation of communities throughout the implementation and monitoring of resettlement plans;
- **Ensure respect for the rights of Indigenous and Tribal Peoples**: guaranteeing respect of Free, Prior and Informed Consent (FPIC) and the preservation of their means of subsistence as well as their cultural and spiritual connections with the area.
- **If the implementation of land and resettlement policies is entrusted to third parties** (such as the State or a public client), ensure that they comply with the relevant applicable international norms and standards (e.g. IFC standards);
- **Ensure effective grievance mechanisms are implemented** (see **Step 5 | Setting Up Effective Grievance Mechanisms Tailored to Affected Communities**)
- **Respect the right of affected communities to have access to justice, without obstruction or reprisals, to uphold their rights or challenge decisions related to compensation or relocation.**

Learn More:

- International Finance Corporation. (2012). Performance Standard 5: Land Acquisition and Involuntary Resettlement. Retrieved from https://www.ifc.org/en/insights-reports/2012/ifc-performance-standard-5 and Guidance Note 5: Land Acquisition and Involuntary Resettlement. Retrieved from https://www.ifc.org/content/dam/ifc/doc/2010/2012-ifc-ps-guidance-note-5-en.pdf
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- Office of the United Nations High Commissioner for Human Rights. (2007). Basic Principles and Guidelines on Development-Based Evictions and Displacement. Annex 1 of the Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living A/HRC/4/18, p. 13. Retrieved from https://docs.un.org/en/A/HRC/4/18
- UN Committee on Economic, Social and Cultural Rights (CESCR). (1997). General Comment No. 7: The Right to Adequate Housing (Art.11.1): Forced Evictions (Art.11.1). Retrieved from https://www.refworld.org/legal/general/cescr/1997/en/53063
- Office of the United Nations High Commissioner for Human Rights. (2014). Fact Sheet No. 25: Forced Evictions and Human Rights. Retrieved from https://www.ohchr.org/en/publications/fact-sheets/fact-sheet-no-25-rev-1-forced-evictions-and-human-rights

Photo: bradford zak / unsplash

II.3. WHAT IS MEANT BY MEANINGFUL ENGAGEMENT WITH AFFECTED COMMUNITIES?

The OECD Guidelines, as well as relevant OECD sector guides, including the OECD Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector (2017)[52], use the wording “meaningful stakeholder engagement”. Article 13 of the CSDDD[53] uses the term “meaningful engagement with stakeholders".

Meaningful engagement is at the core of the due diligence process.

A. THE ANATOMY OF A CONCEPT

The table below highlights the scope and implications of each term (all of which also have a dedicated section in this Guide).

"Engagement"	"Meaningful"	"Affected Communities"
Goes beyond the mere transmission of information or **consultation or a one-off consultation** [OECD Due Diligence Guidance for Responsible Business Conduct [54]] **Ongoing process of interaction and dialogue** [The Corporate Responsibility to Respect Human Rights: An Interpretive Guide[55]] **Adaptable depending on the severity of the impact of activities and operations** [OECD criteria] In some cases, **stakeholder engagement may also be a right in and of itself.** [OECD Criteria]	■ **Based on the provision of relevant and comprehensive information** for effective and transparent consultations [CSDDD, article 13 (2)] ■ **Reciprocal/Two-way** (bilateral collaboration) [OECD criteria] ■ **Conducted in good faith by all participants** [OECD criteria] ■ **Considers stakeholders' opinions (receptive)** [OECD criteria] ■ **Responsive to stakeholders views** [OECD criteria] ■ **Accessible** [OECD criteria] ■ **Appropriate** [OECD criteria] ■ **Safe for participating stakeholders**, with adequate measures against possible retaliation by participants, including by ensuring confidentiality or anonymity where necessary[OECD Criteria and CSDDD, Article 13 (5) and Recital 65] ■ **Inclusive**, identifying and removing any potential barriers to the participation of marginalised or vulnerable stakeholders [OECD Criteria and CSDDD, Article 13 (5) and Recital 65] ■ **At the appropriate level** [CSDDD, recital 65] ■ **With appropriate periodicity** [CSDDD, recital 65]	According to the terms defined in the ESRS standards[56] these are People or group(s) living or working in the same area that have been or may be affected by a business operations or through its upstream and downstream value chain. An affected community may be a community living adjacent to the business' operations (local community) or living some distance away. Affected communities include actually and potentially affected Indigenous Peoples.

B. ENGAGEMENT: OBJECTIVE AND PRIORITISATION APPROACH

The Interpretative Guide to the UN Guiding Principles defines “stakeholder engagement or consultation" as "an ongoing process of interaction and dialogue between an enterprise and its potentially affected stakeholders that enables the enterprise to hear, understand and respond to their interests and concerns, including through collaborative approaches"[57].

Purpose of engagement

The objective of engagement is to:

- **Provide transparent information** to communities about the risks that may affect them;
- **Identify, in collaboration with them, the actual and potential impacts** linked to the business' activities;
- **Establish accessible mechanisms** enabling communities to express their concerns and report grievances;
- **Jointly develop appropriate measures** to prevent, mitigate or remedy the impacts identified;
- **Track performance and the measures taken** to ensure that all adverse impacts are effectively addressed
- **Maximise the business' positive impacts** by focusing on the real needs and aspirations of local communities.

Prioritisation approach

Given the diversity of contexts, and the sometimes limited resources available, businesses are not expected to engage uniformly with all the communities present in the areas where they operate. **A flexible, tailored approach that is proportionate to the risks faced by affected individuals and groups**, as recommended by the UN Guiding Principles and the OECD Guidelines, enables businesses to allocate resources effectively while ensuring respect for human rights and the environment.

According to these standards, **businesses may prioritise engagement with stakeholders who are most severely impacted, or who face the greatest risk of being adversely and severely affected**[58].

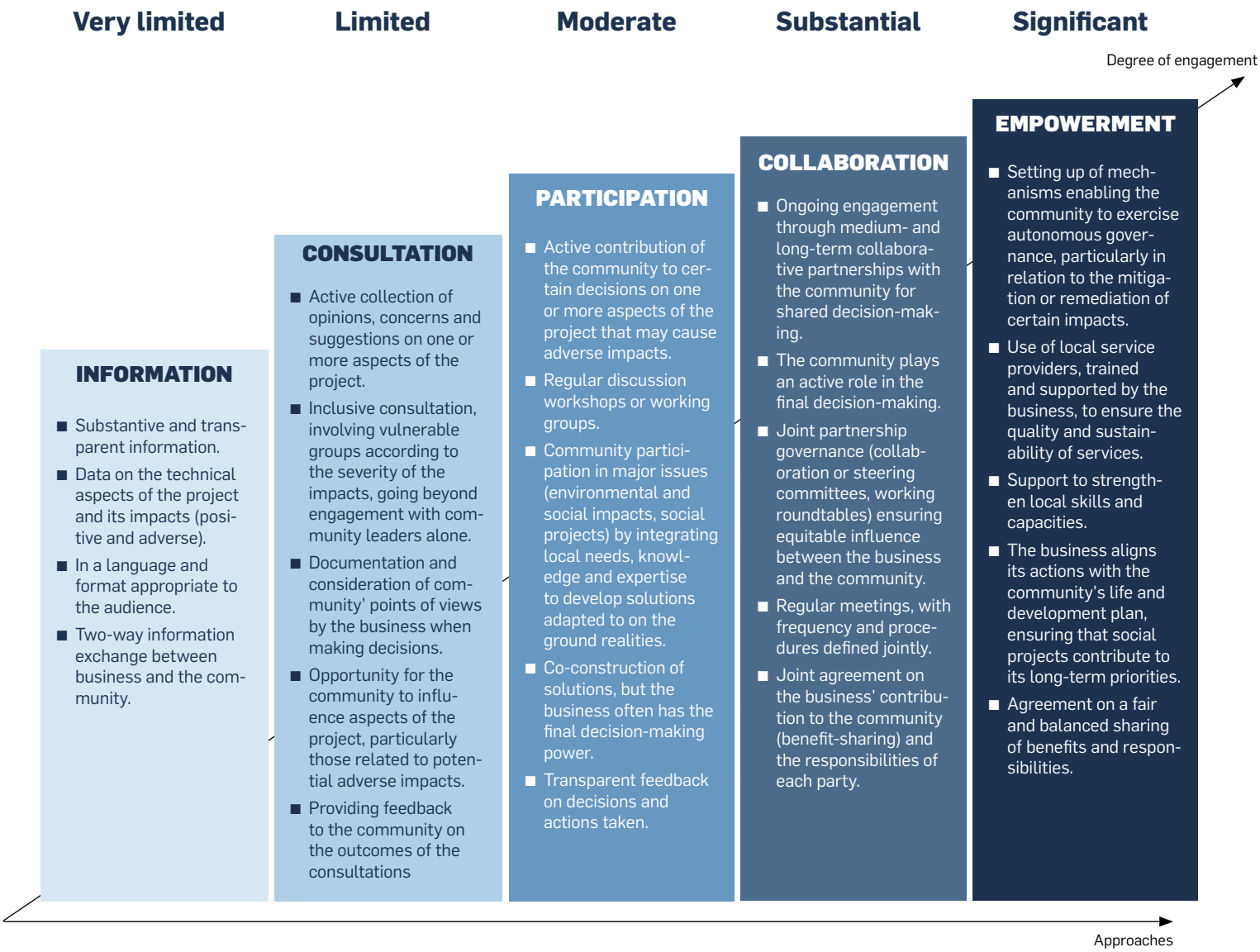
The degree of engagement may be determined according to:

- the **severity of adverse impacts, whether potential or actual** [59];
- **their likelihood**;
- the **vulnerability of affected individuals** and groups.

Engagement encompasses a wide range of methods of interaction (see Appendix 7), ensuring it goes beyond practices that are limited to one-off consultations restricted to selected representatives, or to the mere collection or disclosure of selective information.

Photo: Vinícius Henrique Photography / unsplash

The diagram below shows different engagement methods, what they should include (in the blue columns) and the current limits observed in practice (grey columns):



Limit
Often one-way information, focused on the technical aspects of the project, with a lack of transparency on actual or potential adverse impacts on the part of the business.

Lack of information shared by the communities about their profile and internal dynamics, often due to a relationship of mistrust with the business.

Limit
One-off , late and non-inclusive (often limited to the opinions of community leaders).

Community opinions not taken into account in the business' final decisions.

Limit
Engagement efforts often center on promoting community benefits while ignoring potential adverse impacts, with discussions typically confined to community leaders and excluding meaningful participation from vulnerable groups (such as young people or senior citizens).

Lack of transparency in how community contributions are taken into account.

Limit
The business' influence may remain substantial in governance and decision-making, and benefit sharing agreements can follow a top-down approach, defined according to the business' priorities and resources.

C. CRITERIA FOR QUALIFYING ENGAGEMENT AS "MEANINGFUL"

Engagement with affected communities can only be considered meaningful if it meets **the requirements of reciprocity, inclusiveness, safety for participants and continuity (OECD and CSDDD criteria).**

This process goes beyond mere administrative compliance, information disclosure or one-off consultations, by establishing a ongoing dialogue based on trust.

Elements	Scope	Examples of Practical Questions for Companies to Consider
Reciprocal/ Two-Way (bilateral collaboration)	All parties freely express their opinions, share their perspectives and listen openly to differing views. This exchange seeks to share decision-making power and implies that communities contribute to defining and implementing dialogue activities.	■ Are exchanges genuinely bilateral? ■ Do the engagement methods allow for the free exchange of opinions, without constraint or coercion? ■ Do communities have the opportunity to contribute to the design of engagement activities? ■ Are differing opinions heard and incorporated into the final decision-making process?
Conducted in Good Faith by All Participants	Commitment of all parties to engage in open and honest dialogue, with no hidden agenda. The business seeks to understand how its activities affect the rights and interests of communities and is willing to address the adverse impacts it causes or contributes to. Communities openly present their interests, intentions and concerns.	■ Are all parties transparent in their intentions and actions? ■ Are discussions conducted in an atmosphere of trust?
Considering Stakeholders' Opinions (Receptive)	The opinions and suggestions collected directly influence decisions. If they are not integrated, the reasons for their non-inclusion are provided.	■ How is feedback from engaged communities integrated into decision-making? ■ Do communities clearly understand how their views have been reflected in the final decision? **(See dedicated box "Focus | Project Adaptability and Consideration of Affected Communities' Perspectives)**
Responsive to Stakeholders' Views	Ability to follow-through on outcomes of stakeholder engagement activities and to respond promptly and effectively to concerns and needs raised by affected communities. This includes the timely provision of information to communities to assess whether their rights and interests are affected, as well as the monitoring of agreements to ensure that adverse impacts risks are addressed and that businesses remedy harm they have caused or contributed to.	■ Does the business have effective and responsive communication channels for responding quickly to community concerns and grievances? ■ Are there mechanisms implemented to prioritise and deal with urgent issues, based on the severity of the impact? ■ Does the business carry out rigorous monitoring to ensure that the risks of adverse impacts are identified and dealt with appropriately?

Elements	Scope	Examples of Practical Questions for Companies to Consider
Accessible	Engagement activities should take place in locations that are physically accessible to all, considering distance, lack of transport and local infrastructure. Where necessary, the business should facilitate access to designated venues for affected communities, particularly for vulnerable groups.	■ Are the venues selected for the meetings easily accessible to all parties? ■ Does the business consider geographical factors such as distance or lack of transport? ■ Have measures been taken to help communities access the locations in question (transport, adapted opening times, services offered such as childcare)? ■ Does the business provide appropriate tools and materials (translations, adapted format) to encourage the participation of different groups in the community, including the most vulnerable?
Appriopriate/ Tailored	Dialogue and exchange processes should be tailored according to the severity of potential impacts. The more potentially severe the impact, the more frequent, inclusive and in-depth the engagement should be. It is important to ensure that legitimate decision-making levels are appropriately involved.	■ Does the business adapt the frequency and inclusiveness of its interactions according to the severity of the adverse impacts identified? ■ Are vulnerable groups and relevant decision-making levels included in the dialogue processes, depending on the scale of the impact?
Safe for Stakeholders	Engagement activities should take place in a respectful environment, free from intimidation and coercion. Ensure that participants are not threatened or pressured when expressing their opinions. It is essential to protect community members from reprisals or sanctions, in particular by guaranteeing the confidentiality of their information when requested or necessary.	■ Does the business ensure that community members or their representatives can voice their opinions freely, without fear of reprisals? ■ Are differing opinion respected and dealt with in an open and respectful dialogue? ■ Is confidentiality ensured when information is requested or necessary? ■ Are there mechanisms in place to protect against reprisals?
Inclusive	Engagement should include all components of affected communities, ensuring that different groups, including vulnerable groups, are represented and can participate fully.	■ What obstacles might prevent marginalised or vulnerable groups from participating? ■ What measures have been put in place to remove these obstacles? ■ Are the different groups within affected communities (including the most vulnerable) represented and involved in the engagement? ■ Does the business have a clear understanding of gender issues? ■ Are formal and informal local institutions involved in the engagement process?

Elements	Scope	Examples of Practical Questions for Companies to Consider
At the Appropriate Level	Engagement should take place at the legitimate decision-making level within affected communities. This means that discussions and decisions must include the legitimate bodies and leaders recognised within the community, whether formal, informal or traditional. Depending on the nature and severity of the impacts, it is essential to include specific representatives of vulnerable groups (e.g. women's committees, queens, youth committees) and the appropppriate people and institutions at different levels (local, regional).	■ Are discussions taking place at a decision-making level that is relevant to the communities? ■ Are the community representatives engaged perceived as legitimate by all affected groups concerned, including vulnerable ones? ■ Where representative bodies of vulnerable groups exist, are they effectively included in the dialogue structures? ■ Are the appropriate local and regional decision-making levels duly considered in the discussions?
Appropriate Frequency	Engagement should be maintained at an appropriate and sufficient frequency, jointly determined with affected communities. The frequency of consultations should be adjusted according to project changes, evolving risks and the concerns of affected communities.	■ Is the frequency of consultations agreed jointly with affected communities? ■ Is this frequency adapted to the evolving potential impacts and changes in the project? **(See dedicated box "A Paradigm Shift in the Perception of Engagement Time")**

BUSINESS CASE STUDIES

Project Adaptability and Consideration of Affected Communities' Perspectives

(Construction, Energy and Transport Sectors)

A few concrete examples of businesses interviewed that made necessary adjustments in response to affected communities' concerns and requests, helping to prevent or minimise adverse impacts:

1. Relocation of a Project at a Certain Distance

- **Adjusting a project's route** to respect traditional local customs, in particular an essential transhumance corridor used by herders and their livestock, which had not been mapped by the authorities;
- **A metro station,** originally planned in the heart of a minority neighbourhood was **moved to the outskirts** to avoid the displacement of community members.

2. Adjustment of Project Routes and Construction Methods

- **Changing the routes used by contractor trucks** to avoid school zones and ensure the safety of children;
- **Adjustment of the routes taken by the business' trucks and those of its service providers** to ease congestion on the main roads used by local residents and reduce air pollution;
- **Construction of a metro line using a tunnel-boring machine rather than surface-level work**, in order to minimise the relocation of people and community businesses affected by the project, despite the higher costs associated with carrying out the work by this method.

Photo: Chris Chow / unsplash

III. STEPS TOWARDS MEANINGFUL ENGAGEMENT WITH AFFECTED COMMUNITIES

A Differentiated Approach According to the Business Profile

Unlike businesses operating in project mode (such as those in the extraction, energy, construction or agricultural sectors, for instance) which interact directly with affected communities on the ground, others (for example, those in the retail, e-commerce, luxury goods and fashion, digital, defence, finance or consulting) operate under a model primarily based on commercial transactions.

This operating model relies on decentralised activities and particularly complex value chains, which distance them from the locations where their products — from the extraction of the raw materials they contain to their end use — as well as their commercial services, may have impacts on communities.

For such businesses, their distance from the field, combined with the multiplicity of actors involved, limits visibility over actual or potential adverse impacts upstream or downstream of their value chain. This also makes it more difficult to identify affected communities and implement appropriate measures.

III.1. COMPANIES MAINLY ENGAGED IN COMMERCIAL TRANSACTIONS AND DISTANT FROM ON-THE-GROUND OPERATIONS

Identifying Affected Communities: Addressing the Challenge of Field Distance and Value Chain Complexity

For such businesses, **risks of adverse impacts on community rights arise primarily through their value chain,** both upstream and downstream. Under the ESRS S3 standard, this entails the need to identify:

- **Communities situated along the value chain**, particularly those affected by the operations of suppliers' facilities or by the activities of logistics and distribution service providers;
- **Communities at one of both endpoints of the value chain,** such as those upstream, near raw material extraction or harvesting sites, and those downstream, near storage and warehousing facilities (a particular issue being soil artificialisation due to the expansion of mega-warehouses or mega-data centres), waste management, or recycling sites;
- In both cases, special attention should be paid **to Indigenous and Tribal Peoples.**

Within the CSRD framework, **the value chain encompasses actors located upstream** (including suppliers of raw materials, parts, and components at different supply chain levels or service providers) and **downstream of the business** (such as distributors, customers, and service providers engaged in logistics, waste management, or recycling activities).

Mapping affected communities must, for such businesses, take both dimensions into account to identify impacts at each end of the value chain. As this may concern hundreds of communities, and in line with international human rights standards, such businesses may prioritise, within their mapping exercise, **those communities most severely affected or at highest risk of severe adverse impact**.

Photo: David Vives / unsplash

Guidelines* for Mapping Affected Communities
Key Questions to Consider (Non-Exhaustive List)

Determining and Prioritising "Critical Areas":

- Where in the value chain are the risks to communities highest (risk of severe social and environmental impact)?
- Which segments of the value chain - supply of resources and raw materials (extraction, processing, treatment, packaging/storage, distribution, waste management, etc.) - and/or which geographical areas present particularly sensitive contexts (including conflict or high-risk areas)?
- What activities of suppliers or service providers have the most significant impact on affected communities? Who are the most vulnerable groups?
- What criteria can be used to determine critical areas, based on the UN Guiding Principles **(severity of adverse impacts**, taking into account their scale, scope and whether or not the impacts are irremediable, and **likelihood**)?

Stakeholder Engagement

- What mechanisms does the business have, or can it implement, to gather the perspectives of affected communities, including Indigenous and Tribal Peoples, where applicable?
- If it is not reasonably possible to obtain the perspectives of affected communities directly, how can the views of local and/or regional experts, NGOs or other relevant stakeholders be integrated into the mapping process to ensure an inclusive approach grounded in local realities?
- If it is not reasonably possible to obtain the views of affected communities directly, how can the business engage with relevant multi-stakeholder or sectoral initiatives to identify critical areas and affected communities?

** These guidelines were developed on the basis of discussions within the UN Global Compact Network France's Working Group on Business and Affected Communities and individual interviews conducted with French multinationals, experts and NGOs.*

After Mapping, What Appropriate Measures Should Be Implemented to Address Impacts on Affected Communities?

Once the mapping has been carried out, businesses are expected to implement a set of appropriate measures[60] to prevent, mitigate or remediate potential and actual adverse impacts, and to communicate on the actions taken.

For businesses that are often distant from affected communities and have limited direct interaction, it is essential to rely on competent intermediaries or relevant partnerships to gather community's perspectives and take appropriate action. Such intermediaries may include recognised human rights experts, civil society organisations or multi-stakeholder initiatives.

Photo: EJ Yao / unsplash

Possible Guidelines* for Managing Impacts on Affected Communities as Part of the Corporate Value Chain: Key Questions

(non-exhaustive list)

Policies and Engagement:

- Does the business have a global policy, in line with international standards (UN Guiding Principles on Business and Human Rights, OECD standards), that includes respect for the rights of affected communities, including the collective rights of Indigenous and Tribal Peoples?
- Is an anti-retaliation policy in place to protect human rights defenders or community members who raise concerns?
- Has the business defined a clear policy for engagement with affected communities, specifying the objectives, modalities and principles of collaboration that it expects from its business partners and suppliers?
- How does the business communicate its policies and engagements to the categories of people or entities concerned, in particular its contractors and suppliers, to ensure that they understand the objectives and requirements?

Stakeholder Engagement

- Does the business consult experts who can provide credible information on the measures to be implemented to address the adverse impacts on affected communities, or civil society organisations with in-depth knowledge of the local context?
- Does the business participate in multi-stakeholder or sectoral initiatives aimed at addressing complex human rights and environmental issues in areas identified as "critical" or linked to the supply of strategic raw materials, to identify collective solutions where appropriate?

Training and Awareness-Raising

- Do suppliers receive appropriate training on the risks and issues related to human rights and affected communities?
- Where relevant to the operational context, do these training programmes include specific modules on the rights of Indigenous and Tribal Peoples, particularly on Free, Prior and Informed Consent (FPIC), and associated good practices?

Contractual Relationships and Levers of Influence:

- Do contracts with suppliers, distributors and other partners include specific clauses on respect for human rights especially the rights of affected communities?
- Are purchasing practices aligned with responsible procurement principles, avoiding the transfer of risks and responsibilities exclusively to suppliers?
- What leverage can the business use to encourage the implementation of corrective measures in cases of non-compliance by suppliers or business partners? How does the business strengthen its leverage over its partners (suppliers, service providers, distributors) to prevent or mitigate adverse impacts on affected communities?
- How does the business take into account the potential adverse impacts on affected communities when deciding to terminate a business relationships?
- If a contract is terminated, what mechanisms are in place to prevent and mitigate the consequences of this decision, in order to minimise impacts on affected communities?

** These guidelines were developed on the basis of discussions within the UN Global Compact Network France's Working Group on Business and Affected Communities and individual interviews conducted with French multinationals, experts and NGOs.*

III.2. BUSINESSES WITH A PROJECT-BASED BUSINESS MODEL ROOTED IN OPERATIONAL REALITY

The following steps provide practical guidance to help businesses plan meaningful engagement with affected communities. They apply both to businesses that interact directly with these communities, due to the nature of their activities and value chains – including extraction sites, factories, facilities, or other places of activity, from raw material sourcing to waste management – and to those whose business relationships (suppliers, service providers) may have adverse impacts on them.

STEP 1

WHO TO ENGAGE? IDENTIFYING AFFECTED COMMUNITIES

To effectively identify affected communities, these businesses must **first identify and delimit the geographical perimeter in which a project they are developing or their activities may have direct or indirect adverse effects on people and the environment**, and then **identify who may be affected in this geographical sphere and in what way.**

Whether it's:

- → **The development of a project**, particularly on a large scale, in its various phases **(see When to Engage? Engaging With Communities at Every Step of the Project Life Cycle)** or;
- → **Activities already underway**;
- → **The extension or modification of existing activities** likely to generate new impacts or amplify the effects of existing activities.

A. MAPPING AFFECTED COMMUNITIES: A RISK-BASED APPROACH TO ADVERSE IMPACTS

- **Area of influence in the context of project development**

Certain standards, in particular the IFC Performance Standards or the IRMA standards[61], use **the concept of the "project's area of influence," which is not limited to immediate geographical proximity, but can extend more widely** (hereafter referred to as the "area of influence"). According to the IFC's Performance Standard 1, when the project includes "physical elements, aspects, and facilities that are likely to generate impacts", "environmental and social risks and impacts will be identified in the context of the project's area of influence[62]".

According to IFC standards, the "area of influence" covers the area likely to be affected by:

- → **The project itself**[63] (the physical footprint of the project site), as well as the "**activities and facilities** that are directly owned, operated or managed (including by contractors)" and **are a component of the project** (e.g. power lines, pipelines, canals, tunnels, access and travel roads, borrow and dump areas, construction sites);
- → The "**impacts from unplanned but predictable developments** caused by the project that may occur later or at a different location";
- → **The "indirect project impacts"**[64] on biodiversity or on ecosystem services upon which affected communities' livelihoods are dependent;
- → **Associated facilities:** facilities that would not have been constructed or expanded if the project did not exist and without which the project would not be viable;[65]
- → **Areas potentially affected by cumulative impacts** **(see Cumulative Environmental Impacts and the Rights of Affected Communities).**

In this area of influence, the IFC standards also require consideration of the impacts resulting from the actions of third parties.

■ A human rights-based approach to defining the area at risk of adverse environmental and social impacts

There is sometimes a discrepancy between the delimitation of the area at risk of adverse environmental and social impacts (hereafter "impact zone"), defined by the business through assessments and studies, such as the Environmental and Social Impact Assessment (ESIA), and the perception of communities, which may feel adverse effects beyond the officially established geographical limits. For affected communities, the zone corresponds to the areas where they may suffer adverse impacts related to a project under development or to the current activities of the business and its partners, **without being limited to the immediate vicinity of the site,** its assets and its facilities, including related facilities. For example:

- → **Noise, visual or olfactory pollution;**
- → **Toxic emissions**, particles (e.g. dust that can travel a certain distance) or any other perceptible or experienced environmental effect;
- → **Pollution generated by the passage of trucks belonging to the business or its suppliers,** subcontractors or service providers, including in villages and towns located near or at a certain distance from the operations (e.g. gas emissions, particle discharge, dust, vibrations);
- → **Impacts linked to installations associated with the project** (e.g. land and/or sea transport routes used by the business or its service providers passing through villages, toxic material storage areas located at a certain distance);
- → **Impacts on land** that is traditionally owned or used on a seasonal or cyclical basis (nomadic communities) for their subsistence, their culture or their spiritual rites (sacred forests or rocks, for example);
- → **Impacts linked to the extraction of natural resources can be felt at a distance from the operations: for example, when the extraction of resources such as water is necessary for the functioning of the operations (irrigation for agriculture, water supply for a mine), intensive exploitation can lead to a drop in water levels, affecting communities far from the operations.** It can also cause disruption to aquatic ecosystems and to flora and fauna, which can be felt at a distance from the operations;
- → **For large-scale projects,** it is essential to identify the different communities affected by the various aspects of the project. For example, in the case of a hydropower project, the impacts on affected communities may vary: those affected by transmission lines or access roads will not suffer the same effects as those whose land will be flooded by the reservoir, or those living downstream and dependent on the river for fishing or irrigating agricultural land.

Once the impact zone (s) have been defined, it will then be possible to determine which communities are potentially or actually affected and how, as well as the priority to be given to the most severely affected communities.

Although, in most contexts, well-conducted ESIAs identify impacted groups and sub-groups, good practice recommends consulting affected and potentially affected communities on the delineation of the impact zone(s). This consultation enables to compare this delimitation with their perception in order to confirm, refine or adjust it if necessary, while facilitating the identification of any additional groups or sub-groups that may not have been identified.

■ Adopting a dynamic approach to mapping affected communities

The delimitation of the impact zone(s) must be regularly updated taking into account the different development phases of a project, possible changes or expansion scenarios (e.g. extraction, hydropower and logistics terminal projects), and the dynamic nature of certain activities (e.g. such as those in the mineral sands industry). **The mapping of communities potentially or actually affected therefore also evolves with the impact zone**.

In addition, due to constantly evolving territorial dynamics (wars, conflicts, economic migration), new communities may emerge in the business' impact zone(s), such as ethnic groups from other territories, newly settled Roma communities, or groups displaced by conflicts.

■ What about interested stakeholders?

Interested entities, organisations and individuals are not directly or adversely affected by the business' activities or by a project. However, they may include any person, group or organisation that has an interest in the project, or that exerts a positive (supportive) or negative (opposing) influence on it. Such interests justify their inclusion as relevant stakeholders, who must be taken into account in the stakeholder mapping and associated engagement strategy.

For example, this could include the local or regional administration, non-governmental organisations (NGOs) active in the area and working with affected communities or local associations. The IFC stresses the importance of identifying these interested stakeholders and **incorporating their expectations into an engagement strategy**. Performance Standard 1 mentions, for example, "stakeholders who may be able to influence the outcome of the project because of their knowledge about the Affected Communities or political influence over them."[66]

Adopting a New Paradigm in Engagement Strategy

The risk-based approach to mapping affected communities encourages us to look beyond **the prism of the business' own objectives and interests**.

One of the pitfalls that is still all too common is giving priority to **communities, and within them to representatives who can positively influence the business' activities, or to those who are in favour of the project, to the detriment of those who are affected or potentially affected, and possibly opposed to the project.**

B. ENGAGING WITH THE RIGHT PEOPLE: IDENTIFYING THE LEGITIMATE REPRESENTATIVES OF AFFECTED COMMUNITIES

■ Affected communities: heterogeneous groups at risk of single representation

Communities do not constitute homogeneous groups. They are often made up of various sub-groups with distinct or even divergent interests, whether between families, ethnic groups or even within a representative body elected by the community. Each sub-group can claim specific social, cultural or territorial characteristics and distinct opinions.

A single leader, whether elected or traditionally influential, may not represent all the voices within a community. Depending on the context, the identification of a single person as the point of contact between the company and the community, or of a single leader, may entail a **risk of token representation**, where only the priorities of the leader or the community elite are taken into account, to the detriment of the diversity of opinions. This risk is known as "elite capture"[67]. A leader may exploit his position to promote his own economic, political or social interests, rather than those of the community as a whole. This can occur particularly in contexts where communities are less structured, economically fragile or disorganised, and where intra-community inequalities are pronounced.

Businesses need to be particularly careful in the face of this type of drift, as it can not only undermine the credibility of the engagement process, but also cause internal tensions within the community.

- **Checking the legitimacy of representatives: using the community's perspective as a guiding compass**

Businesses must ensure that representatives genuinely defend the interests of their constituents and are **perceived as legitimate by those they are supposed to represent**.

For the business, this means **adopting a plural approach**, that goes beyond formal or legally elected leaders, and **identifying and consulting multiple and diverse representatives**, who are recognized as trusted, knowledgeable and able to reflect the different voices of the community. These legitimate representatives are not always formally elected leaders or influential traditional or customary authorities within the community.

Their legitimacy is generally based on their knowledge of the community's history, culture and traditions, the recognition of this knowledge by the community itself, and their ability to defend collective interests and resolve conflicts fairly.

Here is a non-exhaustive list of representatives and representative bodies identified by the communities consulted during the preparation of this guide, to support a pluralistic approach to community engagement. Added to this indicative list are the representatives of vulnerable groups in the dedicated table later in this guide **(see Special Considerations for Engagement With Vulnerable Groups).**

Examples of Representatives or Representative Bodies

(identified by the communities interviewed during the preparation of this guide, non-exhaustive list)

At local level:

- **Formally elected bodies** (e.g. mayors, formal administrative bodies, elected village chiefs, local councils, community steering committees (*Junta Directiva* in Chile, for example) and neighbourhood committees (*Junta de Vecinos* in Chile, for example);
- **Traditional or customary leaders**, who play an important historical and cultural role in the community (kings and queens, councils of notables in traditional chiefdoms, council of elders, senior citizens' club) but also their legal and spiritual advisers;
- **Religious leaders,** influential in certain communities due to their spiritual role;
- **Respected community figures**: who play a key role in serving the community (chairmen of community associations, school governors, heads of community care centres and local health professionals, chairmen of traders' or entrepreneurs' associations).

At regional and national level:

- Departmental council, regional council, prefecture;
- President and board members of intercommunal unions or local government associations;
- National Chamber of Kings and Traditional Leaders (e.g. Côte d'Ivoire).

- **Today's legitimacy is no guarantee of tomorrow's legitimacy**

It is also recommended that businesses regularly re-assess community representatives as groups evolve, as **legitimacy is a dynamic concept.** A representative deemed legitimate today may no longer be so tomorrow, depending on internal changes within communities or new challenges and intra-community tensions that may emerge.

- **Possible dissonance between local, regional and national representation of community interests: perception of legitimacy by community members**

When a business sets up in a new territory, it is common for it to first engage with bodies or representatives at regional or even national level, sometimes recommended by prefectures or even chambers of commerce (regional or national chambers, councils or committees), considering them to reflect the totality of local voices.

However, in certain contexts, there may be a risk that **members of a community do not feel fully represented by these institutions or bodies**, believing that their local concerns and specific socio-economic or territorial characteristics are not sufficiently taken into account within them.

In addition to dialogue with regional bodies, it **is therefore essential that businesses do not overlook the importance of establishing more direct contacts at local level.**

- **Respect for institutions representing Indigenous and Tribal Peoples**

Indigenous and Tribal Peoples have the right "to promote, develop and maintain their institutional structures" (article 34 of the United Nations Declaration on the Rights of Indigenous Peoples) and to be consulted "through appropriate procedures and in particular through their representative institutions" (article 6 of ILO Convention No. 169).

The business must not interfere in the process of appointing their representatives and must ensure that the representatives with whom they interact have been legitimately appointed in accordance with local practices and customs.

C. THE ROLE OF EXPERTS, SECTORAL OR MULTI-STAKEHOLDER INITIATIVES AND NGOs

In certain contexts (for example, isolated regions subject to extreme weather events and natural disasters) it can be difficult to engage in direct dialogue with affected communities and their representatives. In other contexts, this can even be dangerous for their safety (e.g. armed conflict zones). In these circumstances, Article 13 of the CSDDD[68] provides that businesses may consult experts who can provide "credible insights into actual or potential adverse impacts"[68] and relay the views of affected communities. In addition, they may rely on sectoral or multi-stakeholder initiatives, while ensuring that the use of experts or these initiatives does not unduly replace direct dialogue with communities, where this is possible.

In addition, it is important to identify NGOs not only those working directly with communities, but also those which, by virtue of their mission, have a detailed knowledge of the context, the territory and local dynamics. **As trusted intermediaries, these players, whether development NGOs, human rights institutions or civil society organisations, play a key role in conveying the views of communities and effectively raising the risks of adverse impacts and their concerns** when they cannot be engaged directly or as a complement to direct engagement.

BUSINESS CASE STUDIES

CASE 1 Election of Community Contact Points (Côte d'Ivoire – Agricultural Sector)

In this case, the business adopted a collaborative approach to ensure that the community contact points are chosen legitimately by the community itself. The business first organised a meeting with the chiefdom and the governing bodies, in particular the Chief's Council and local authorities such as the prefect. An interpreter was on hand, if necessary, to ensure that communication takes place in the local language.

At this meeting, the business set out the objectives of community engagement, stressing the importance of having legitimate intermediaries capable of effectively representing the interests of the community, including the most vulnerable. Clear criteria were provided to traditional and legal leaders, translated into the local language, on the qualities expected of community contact points: these include knowing how to read and write (minimum secondary school level), residing permanently in the community, knowing how to use a telephone, and being listened to and respected in the village.

It was then up to the community to independently organise the elections to appoint these community contact points. The business stressed the importance of inclusive participation in these elections, ensuring that the voices of all members of the community, including the most vulnerable, are heard and represented.

CASE 2 Checking the Legitimacy of Representatives by Sampling (Chile - Energy and Construction Sectors)

From the outset of its relations with the community, the business chose to verify the legitimacy of the representatives in place through a sampling process.

The community liaison officer organised focus groups made up of members with a recognised role in the community (including school headmasters, religious and spiritual leaders, the head of the local clinic, chairmen of local associations, shopkeepers). The aim was to gather direct feedback on how the current elected representatives were perceived and on their ability to represent the interests of sub-groups within the community, including the most vulnerable.

Photo: EJ Yao / unsplash

STEP 2

SETTING A GOVERNANCE FRAMEWORK FOR MEANINGFUL COMMUNITY ENGAGEMENT - WHO ENGAGES ON BEHALF OF THE BUSINESS?

A. THE BENEFITS OF STRUCTURED GOVERNANCE OF COMMUNITY ENGAGEMENT

A **systematic and organised approach to corporate engagement** with affected communities not only helps to **anticipate and manage the risks of adverse impacts and facilitate the social acceptability of activities or projects, but also achieves better results in terms of resource management**:

- **Local roots and greater legitimacy:** good governance of community engagement ensures greater cooperation with local stakeholders (local and regional authorities, community representatives and members, local associations and NGOs, etc.);
- **Gaining visibility and anticipating risks:** thanks to rigorous governance, the business benefits from a clear vision of the dynamics and possible tensions, and detects at an early stage through dialogue any adverse impacts on the rights of communities;
- **Improving reporting and transparency:** Finally, good governance of community engagement means that the business' reporting can be enriched by accurate, contextualised data gathered on the ground. This reinforces the credibility and robustness of the business' public documents, while improving compliance with legal obligations and transparency towards external stakeholders.

B. DEFINING INTERNAL RESPONSIBILITIES: WHO REPRESENTS THE BUSINESS ON THE GROUND?

A clear allocation of responsibilities within the business is required to centralise the management of community relations, while ensuring that initiatives are aligned with the business' human rights strategy.

■ A dedicated, structured team: the importance of community liaison officers

Effective governance of community engagement is based on implementing a **team of dedicated professionals on the ground,** known in some contexts as **community liaison officers** who have an in-depth understanding of the specific dynamics of the area. Such an understanding of local issues is difficult for CSR or human rights managers based at headquarters to fully grasp. It is a **function in its own right in corporate due diligence** **(see Functional Scope Sheets).**

As intermediaries between the business and affected communities, they play a crucial role: they facilitate and drive community engagement, can identify adverse impacts at the front line, convey local expectations and concerns to decision-makers, and communicate the business' position to the communities in an appropriate manner and monitor the measures taken to prevent or mitigate adverse impacts on their rights.

It is essential to **recognise the strategic importance of this function**, because when community relations are not seen as a key competence for the business' operations, the value placed on the people in charge of this mission is often underestimated **(see box The Ideal Profile for a Community Liaison Officer)**.

Some sectors, such as the extractive industries, have had community liaison officers for decades to manage relations with potentially or actually affected communities. This model has gradually been adopted by other industries (energy, construction, agri-food, wood, etc.), but businesses still display varying degrees of maturity in this area, some of which have not yet fully grasped the challenges and organisational needs associated with this key function in local contexts.

- **Coordination between head office (vigilance governance) and the field**

Appropriate channels of communication must be set up between teams on the ground and ESG leads at head office, so that major emerging problems and risks of human rights abuses in affected communities can be reported before they become crises.

- **Secure adequate resources to support long-term community engagement**

Too often, community relations programmes are perceived as peripheral initiatives, which limits their overall effectiveness. It is essential that **adequate resources, i.e. aligned with real needs on the ground**, are made available, be they human, financial or material. From a material and financial point of view, this may include company cars, a business mobile phone, teaching and communication materials, ongoing training, and a budget dedicated to social and environmental initiatives in favour of communities.

In terms of human resources, the community engagement team may consist of one or more people, depending on the size and impact of the business' operations in a given area. **Many companies have few agents on the ground, which increases vulnerability in the event of departure or turnover. A poorly managed change of personnel can lead to a loss of community confidence.**

On the other hand, a small team increases individual workloads, creating an increased risk of burnout for staff **(see box The Ideal Profile for a Community Liaison Officer)**.

The Right Questions to Ask About the Governance of Community Engagement

(non-exhaustive list)

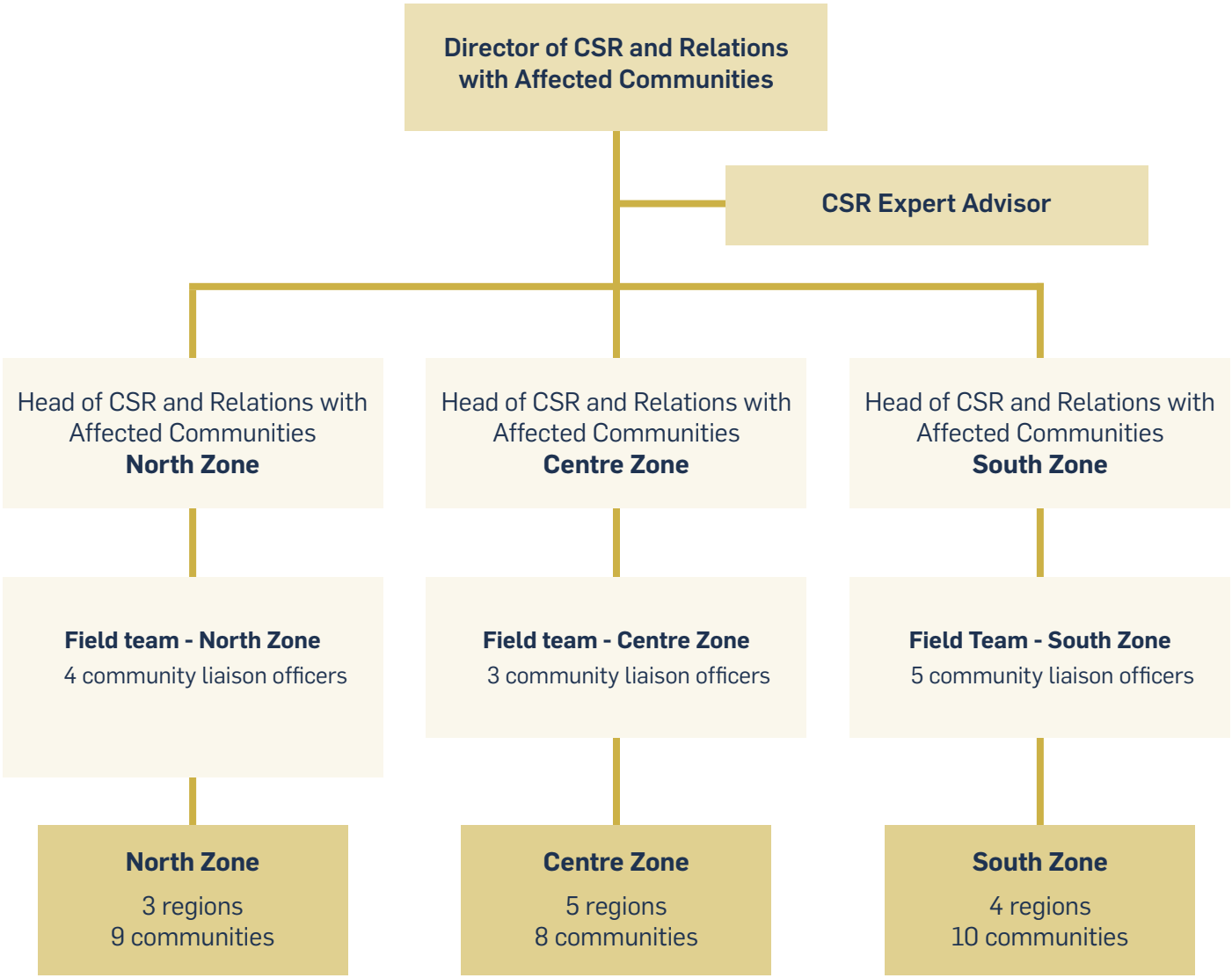
Questions for the headquarters/strategic level:

- → **Who defines the strategy for engagement** with non-indigenous communities/Indigenous and Tribal Peoples at group and subsidiary level?
- → **What resources are allocated** to the engagement strategy and its organisational structure?
- → **What local focal points are in place to deal with reports of potential and actual adverse impacts** to ESG leads/heads of human rights?
- → **At what level are impact mitigation processes** and remedial actions for affected communities validated?

Questions for the operational/field level:

- → **Who is responsible for engagement** with affected communities at operational/project level?
- → **What would be the most appropriate institutional structure** for guaranteeing the long-term mission of the community liaison officers?
- → **Who is responsible for monitoring environmental and social audits?**
- → **Who oversees the responsible acquisition of land** and the monitoring of obligations relating to applications for authorisations and permits?
- → **Who is the contact person for receiving community complaints or concerns** at operational/project level?
- → **Do the liaison officers have the necessary resources** (equipment, finance, logistics, skills) to carry out their tasks?
- → **Do liaison officers have the necessary specific skills** to tackle gender issues and deal with sensitive problems such as harassment or human trafficking? If not, what training strategies can be implemented to prepare them effectively?

Example of a structure at national level, inspired by the "Community Relations" team of a subsidiary of a French multinational with a significant presence in a given region



In the diagram above, the business, which has a significant presence in the country, has chosen to organise its dedicated team around three key geographical areas.

! Points to bear in mind

- This model is just one example and does not constitute **a single solution to be replicated**. **Each operational context**, depending on the business' activities, the size of the project and the severity of the impacts, **may require a different type of governance.**
- **In certain sensitive contexts** (conflict zones, for example), **engagement with affected communities is sometimes entrusted to independent experts or NGOs** to ensure the safety of communities and business staff **(see Engaging Affected Communities in Conflict and High-Risk Areas).**
- **In some complex projects,** during the study phase, **liaison officers are not always recruited directly by the business**. They may be hired by an independent consultancy, come from the local administration or be from NGOs. When a project involves local authority administrative staff, their involvement may be influenced by the amount of time they can devote to this task alongside their other responsibilities, as well as by the local institutional and political context.

When a liaison officer is recruited directly by the design engineer, they are first and foremost accountable to their contractor, and their engagement depends on the resources allocated by the latter. A liaison officer from a local NGO has the advantage of remaining present after the mission, which can limit conflicts of interest and strengthen the impact on communities. Its local roots and knowledge of the field also facilitate the continuity of the actions implemented.

The Ideal Profile for a Community Liaison Officer

1. Relational and strategic skills

- Fluency in the local language and dialect, excellent oral and written communication skills
- Ability to listen actively and adapt tone according to stakeholders, empathy
- Negotiation, conflict management and compromise skills
- Ability to work collaboratively with various internal departments and stakeholders
- Ability to analyse and understand local community dynamics, rites and traditions, concerns and needs

2. Sense of ethics and a keen interest in social engagement

- Strong sense of ethics and integrity in community relations
- Motivation to create a positive social impact

3. Experience and training

- This is essentially a field position, requiring practical skills that cannot be fully imparted by university training alone. However, a background in the social sciences (ethnology, anthropology, sociology), human rights, community development, CSR or a related field would be a plus
- Experience in a community decision-making body or committee, Tribal council or Indigenous political organization is an asset

4. Adaptability and agility

- Flexibility and ability to adapt to changing community needs and resilience (engagement often takes place outside normal working hours, very early in the morning, late at night or at weekends)
- Flexibility of movement

! Points to bear in mind regarding the community liaison officer function

→ **Physical nature of the work:** frequent travel that requires complex organisation and can be physically demanding.

→ **Management of overwork and the right to take time off:** with the role imposing flexible working hours (evenings, weekends), it is essential to keep a close eye on staff schedules and workloads to avoid overwork. Respect for rest periods and the right to disconnect are crucial, as staff may be called on outside normal working hours, particularly by telephone. Training on stress management and burnout risks is essential.

→ **Psychological support adapted to the context**: appropriate psychological support may be required for community liaison officers, who are on the front line in identifying impacts and managing grievances. When dealing with sometimes, serious cases, this support can help them to better manage the emotional burden associated with their role.

STEP 3

PLANNING THE ENGAGEMENT: DEVELOPING A PARTICIPATIVE, INCLUSIVE AND TAILORED ENGAGEMENT PLAN

A. FORMALISE AN ENGAGEMENT PLAN WITH AFFECTED COMMUNITIES

Once the mapping exercise has been completed, and **if it has been identified that a project or one of its phases, or the business' ongoing activities are likely to affect community resources and/or rights, it is recommended that an engagement plan be developed and formalised**. This plan will serve as a **structuring framework for the relationship with the communities** and will define the terms of engagement. It will be an essential vehicle for dialogue, transparency and respect for the affected communities. It provides for exchanges on the business' activities, the progress of the project in progress and the potential and actual adverse impacts, as well as the appropriate measures for managing them. **Its formalisation avoids any risk of misunderstanding and potential tension or conflict.**

There is no need to develop a new engagement plan if one already exists at project level. These approaches should be incorporated into the Stakeholder Engagement Plan (SEP), particularly in the context of IFC-financed projects, which should, if necessary, be improved to strengthen the section on engagement with affected communities using the elements below.

- **An engagement plan tailored to the impacts identified and co-designed with the communities**
  - → The content and terms of the plan **must be proportionate to the nature and severity of the potential or actual adverse impacts** associated with the project;
  - → The design and implementation of the plan must be entrusted to competent professionals, independent if necessary, with in-depth expertise in **local social dynamics and the specific characteristics of affected communities**;
  - → It must be designed in **collaboration with the legitimate representatives of affected communities** and in consultation with the members of affected communities (via round tables or working groups).

- **Ongoing evolution and updating of the engagement plan**

An engagement plan must be reviewed regularly[69] to ensure its effectiveness. This update is based on an assessment of the previous year's processes, feedback from stakeholders through regular consultations and any changes in the mapping of affected communities.

- **Some key elements of the engagement plan[70]**
  - → ***Principles of engagement and references to local and international standards***

The principles of engagement must include **good faith, transparency and inclusiveness**. The objectives of the engagement are to protect the rights of communities, mitigate adverse impacts and promote sustainable benefits. The plan must also include references to local and international standards, particularly those relating to human rights.

For Indigenous and Tribal Peoples, international conventions such as ILO Convention No. 169 and UNDRIP must be taken into account.

  - → ***Description of the project, activities and their potential and actual positive and adverse impacts***
  - → ***Reference to the quality of information transmitted and communication***

This includes **providing relevant and complete information[71] advance of engagement processes and in a transparent way**, to enable affected communities to participate in an informed way **(see Appendix 7 for more details on the information to be provided).** The plan must also specify how, when and in what formats information will be communicated to communities.

→ ***Engagement timeline and objectives***

An estimated schedule of engagement activities and their frequency for the year is essential for effective planning. The dates and locations are to be determined by mutual agreement with the communities covered by the engagement plan. Arrangements for monitoring and proving interactions, such as minutes of meetings or consultation reports, must also be provided for.

→ ***Taking into account the diversity of stakeholders***

The plan must ensure that the engagement includes the **diversity of the community or communities for which the plan is intended, taking into account potentially vulnerable groups.**

→ ***Engagement modalities***

The plan must specify the forms of engagement, which may include: regular meetings with the business' legitimate representatives and community liaison officers, or even business managers in certain cases; the organisation of discussion groups (focus groups) to gather specific views, or other formats such as working round tables with community representatives[72] dedicated committees for the potentially severe impacts identified (water management committee, environmental impact monitoring committee, women's rights committee) or, in certain contexts, the creation of an annual community forum to inform the community of the project's progress and the management of its impacts **(see Appendix 7 for more details)**.

→ ***Managing potential conflicts***

In order to identify and anticipate potential conflicts, it is necessary to include grievance mechanisms in the plan.

→ ***Budget and responsibilities***

Finally, the engagement plan should clearly define the division of responsibilities between the business and the communities (for example, the role of community liaison officers, representatives identified as legitimate, advisors to legitimate representatives depending on the context and independent experts) and include a clear reference to the resources needed to finance engagement activities.

Learn More:

- **IFC guidance notes (updated in 2021)**
- **IFC, Stakeholder Engagement: A Good Practice Handbook for Companies Doing Business in Emerging Markets (2007)**. Appendix 3 proposes a model engagement or dialogue plan that can be adapted for affected communities: **https://www.ifc.org/en/insights-reports/2000/publications-handbook-stakeholderengagement--wci--1319577185063**

B. KEY ELEMENTS TO CONSIDER WHEN DRAWING UP THE ENGAGEMENT PLAN

- **Understanding communities and adapting engagement methods: profiling affected communities to be engaged**

In this context, community profiling means analysing their socio-economic, cultural and organisational characteristics. This analysis makes it possible to adapt the terms of engagement, taking into account the specific characteristics of each affected community.

→ **Understanding past and present power dynamics within communities**: this enables actions to be tailored to specific expectations and to navigate effectively through existing and pre-existing dynamics of power and influence, taking into account alliances and conflicts to prevent potential tensions.

→ **Understanding the dynamics between men and women and the distribution of roles**: this helps to respect local power structures. For example, some communities are matri-centric societies[73] meaning that women occupy a valued and influential socio-economic position. Others are traditionally based on a patriarchal model. These dynamics must be taken into account to ensure an inclusive approach.

BUSINESS CASE STUDIES

An Agricultural Business in Côte d'Ivoire

A business profiles the communities identified as priorities for engagement. Elected community contact points are responsible for carrying out socio-economic studies in communities organised into small producer cooperatives, with a particular focus on women.

The questionnaires carried out by these relays with community members aim to collect essential data on the composition, structural, socio-economic and power dynamics of the community, in particular to adapt the methods of engagement, such as:

1. **The composition of the community:** male/female breakdown, household size, number of children, etc;
2. **Families' main and secondary sources of income;**
3. **The level of education of members of the community**, particularly women;
4. **Assessing the potential risks of child labour**, so that preventive actions can be implemented.

Photo: United Nations Environment Program (UN Environment) / Flickr

FOCUS

A Paradigm Shift in the Perception of Engagement Time

To be considered "meaningful", an engagement process must not only respect the time of the participants, but also adapt to the lifestyles and cultures of the communities involved.

Rethinking the Time of Engagement:

Reaching agreement with communities in advance on engagement modalities: this includes defining dialogue structures, the frequency of interactions, identification of key participants, and safeguards to ensure confidentiality and participant safety.

Allocating Sufficient Time for Community Engagement

- **Meeting times and frequency should be adapted to community lifestyles:** a flexible approach to planning meeting times and frequency should be favoured. It is advisable to adapt to the daily routines of affected communities (for example, farmers who start their day early or fishermen who are available in the afternoon). We also need to take into account the responsibilities of community leaders, who are often involved at regional level or asked by several businesses to consult. Finally, adopting a gender-sensitive perspective means recognizing that, in some cultures, women often bear responsibilities related to childcare and household management, which may limit their availability, which may restrict their availability.
- **Sustained and genuine engagement with communities:** establishing informal interactions with affected communities can strenghten mutual trust. For example, community liaison officers can take part in local events, such as community celebrations or festivals, or meetings organised by local associations (sports events/tournaments). By building solid relationships over time, free from immediate profit or self-interest, it becomes much easier to respond quickly and collaborate effectively in challenging situations.

Giving Time to Time:

Respect for community cultures: it is essential to adapt the duration and nature of interactions. In some cultures, oral interactions and ceremonial rituals with discussions play a central role. Imposing strict schedules or time-limited dialogues may be seen as a lack of respect.

> "With all these imposed meetings, when do I have time to be Indigenous?"
>
> **Indigenous leader**

■ The weight of past relationship legacies in collective memories: a challenge for a newcomer business

In regions marked by decades of industrial activity and an accumulation of negative experiences, the collective memory of communities often retains deep traces of these experiences, fuelling a climate of mistrust towards businesses wishing to relocate.

This context, exacerbated by the perceived lack of engagement on the part of certain businesses, reinforces mistrust of any new player. To overcome this legacy, it is important for a business to listen to past experience, learn from it and demonstrate a clear desire to distinguish itself from previous approaches, in particular through concrete engagement and measures for adaptation, prevention and remediation.

■ The right support for a balanced relationship

Not all communities have the same organisational capacity. Depending on the context, **some communities may be particularly vulnerable and marginalised, geographically isolated, poorly structured, or have limited access to the resources they need to defend their interests effectively**.

In some cases, they may be subject to **complex internal dynamics**, including the influence of unrepresentative leaders, or divisions within the community, which **make it difficult to express a collective voice** **(see Affected communities: heterogeneous entities facing the risk of single representation).**

In these situations, it is recommended that businesses suggest providing appropriate support, without undue interference. This includes, for example, training and access to independent experts, as well as logistical support.

Photo: Eva Blue/ unsplash

BUSINESS CASE STUDIES

Examples of Support Practices Implemented

1. **Provision of vehicles and car-sharing systems** to enable legitimate representatives to travel to consultation sites in regions where transport resources are limited.

2. **Support for the construction or maintenance of a community headquarters**, a covered meeting place large enough to accommodate meetings between the business and community members.

3. **Participation in the payment of the fees of an independent expert** to carry out, if necessary, a counter-expertise of the impact assessments. This approach allows communities to have an impartial analysis and to challenge the conclusions presented by the business.

4. **Training by an independent expert and/or a specialist local NGO** to help the community reflect on and strengthen its own organisational and decision-making structure in preparation for engagement with the business.

5. **Funding for a local NGO to develop a life or development plan for the community**, enabling it to formalise its social and environmental priorities. This document becomes a key tool for guiding negotiations with the business.

6. **Training by an independent expert financed by the business to enable the acquisition of negotiation skills** and participation in complex decision-making processes.

7. **Creation of a corporate foundation to promote the region and implement local cultural initiatives.**

8. **Organisation of an annual seminar by the teams** responsible for community engagement, financed by the business, to which all community leaders in the region who interact with the company, are invited. The business covers travel costs and on-site logistics. The aim of this seminar is to:

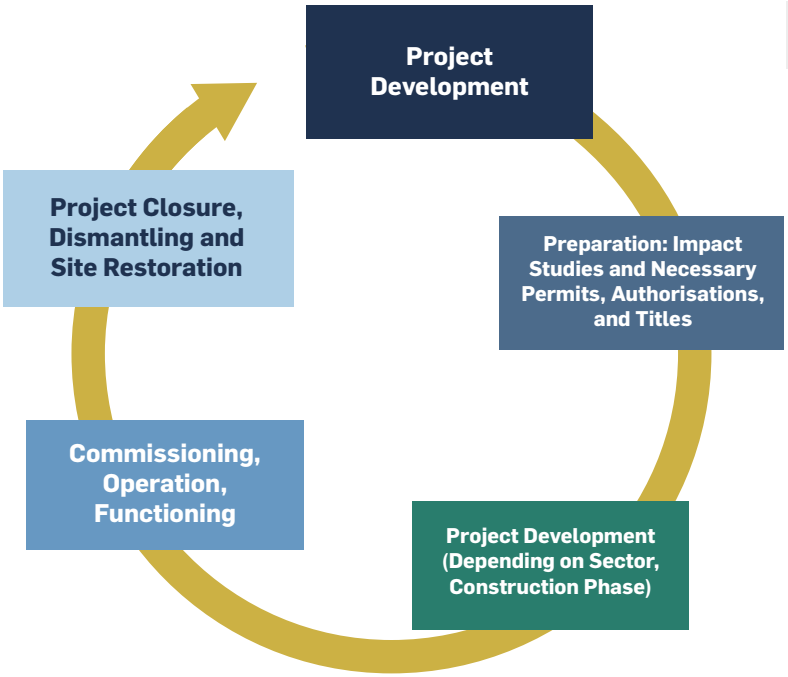
   - Present the business' policies and systems relating to community engagement;
   - Discuss issues relating to social projects and current initiatives;
   - Gather feedback from community leaders on current projects and their experiences of the relationship with the business;
   - Offer community leaders a dedicated space for peer dialogue, allowing them to exchange experiences regarding the relationship with the business.

STEP 4
ENGAGING IN THE RIGHT WAY

A. WHEN TO ENGAGE? ENGAGING WITH COMMUNITIES AT EVERY STEP OF THE PROJECT LIFE CYCLE

In any large-scale project (infrastructure construction, renewable energies, hydroelectric dams, rail projects, motorways), each phase – from initial planning to post-closure – presents specific challenges and opportunities for community engagement.

A human rights-based approach requires engagement that is adapted to each step of the project (from initial planning to post-closure), **planned in advance and ongoing, taking into account changes during the life of the project and the severity of the risks identified** (see diagram below).



1. Project Development

Description

At this stage, the project promoter carries out various studies using internal human resources or external service providers, in order to collect preliminary data on the location areas (e.g. preliminary economic assessments, pre-feasibility studies). In the case of extraction projects, for example, the exploration phase aims to confirm the presence and quality of the necessary resources by means of geophysical, geochemical and geological surveys, sampling and drilling, and drilling tests. On the basis of the results of these studies, the project sponsor and its partners will assess the relevance of continuing to develop the project in terms of its viability.

! Points to bear in mind

- **Multi-dimensional viability assessment:** although economic viability is generally the priority at this stage, it is essential to include an in-depth analysis of the project's social viability. This includes the potential risk of social non-acceptance by communities potentially affected by the project. Resistance may be due to saturation of the area by the presence of other businesses or projects already generating cumulative impacts **(see Focus on cumulative impacts affecting the environment and the rights of affected communities)** or to a history of conflict or trauma linked to previous industries or projects that have caused significant environmental or social damage.

  If the project is planned in an area about which the project promoter knows little, **an assessment of these risks is essential, through a review of any existing public reports** (in particular reports from international development agencies, reports from international and/or local NGOs, newspapers).

- **Assessing the alignment and reputation of potential partners (particularly in the case of joint ventures):** assess the degree of maturity and capacity of the partner(s) to address human rights issues and environmental impacts associated with the project, and to engage with potentially affected communities. An analysis of the reputation of potential partners is essential to identify any social or environmental liabilities, including possible historical conflicts with certain communities that could affect the viability of the project.

- **Presence on the ground and local perception:** at this early stage of the project, intervention on the ground aims to be non-invasive and must be carried out in such a way as not to disturb neighbouring ecosystems or communities. The presence of project teams in potential development areas (e.g. reconnaissance visits, geological surveys, sampling tests) can raise concerns or spark rumors In the absence of clear communication from the project promoter, these exploratory activities may be perceived as a decision already taken to locate the project, which may fuel expectations in terms of job creation or infrastructure development or, in some cases, lead to premature opposition.

Objectives of the Engagement During this Phase

- **Consultations with experts:** despite the limited resources available to businesses at this stage, it may be advisable to consult people with in-depth knowledge of the social, environmental or historical aspects of the area (e.g. sociologists, ethnologists or NGOs) who can provide essential information, such as the possible presence of Indigenous and Tribal Peoples around the proposed site or along the project route.

- **Dialogue with the government at the appropriate level:** wherever possible, it is strongly recommended that dialogue with the government be initiated at the strategic planning stage of the project[74]. This approach will enable the project to be aligned with national and regional priorities, to gain a better understanding of the application of the regulatory frameworks in force and to assess their compatibility with international human rights and environmental protection standards. The dialogue will also be able to point out the potential existence of participatory mapping known to the authorities, already drawn up by the communities themselves as part of previous projects, and help identify the legitimate representatives of affected communities.

- **Early and appropriate dialogue with affected communities:** it is vital to explain to affected communities at this stage the objectives of the land surveys and other analyses, which do not guarantee the implementation of the project, in order to manage expectations. This dialogue must also address potential adverse impacts in order to prevent and limit them (e.g. noise pollution due to reconnaissance overflights, identification of available routes for access to test areas by engineers or external service providers in order to avoid the use of undeveloped alternative routes, obtaining the necessary authorisations from the legitimate representative institutions of Indigenous and Tribal Peoples before accessing their territories). Particular care must be taken to avoid intrusions into sacred spaces or places of great cultural importance. In France, in certain cases, the participation of potentially affected communities, from the earliest stages of a project, can be facilitated by third-party bodies or independent authorities, such as the Commission Nationale du Débat Public (CNDP), an independent administrative authority that guarantees the right to public information and participation, particularly in the preparation of public projects with an impact on the environment, through public debate or prior consultation[75].

- **Implementing a grievance mechanism for potentially affected communities:** implementing a grievance mechanism at this stage may seem premature. However, it does provide an opportunity for initial concerns to be voiced and for any problems linked to exploration activities to be reported (for example, unauthorised entry into indigenous territory or into a site with a cultural or sacred dimension).

The Importance of First Contacts

During exploration activities, **engineers, whether employed by the business or external contractors, are often the first point of contact between the project and potentially affected communities**. As such, they become the business first public face and play a crucial role in securing its social acceptability.

Their actions, behaviour and communication play a decisive role in how the business and the project are perceived. These initial interactions can lay the foundations for mutual trust or, on the contrary, fuel mistrust. It is therefore essential that they are respectful, transparent and sensitive to local concerns.

Staff need to be well trained to provide information on the purpose of exploratory activities and to avoid creating false expectations within communities at this stage.

> "Why don't they come and say hello if they're on my land?"
>
> **Indigenous Woman Leader**
>
> regarding the presence of engineers carrying out geological surveys in the vicinity of her home

2. Preparation: Impact Studies[76] Required Permits, Licenses, and Authorizations

Description

This phase involves in-depth ESIA (Environmental and Social Impact Assessment) studies, often carried out by qualified service providers, as well as obtaining the rights, permits and authorisations required for exploration, construction and operation of the project. The aim of these studies is to identify the risks of negative impacts and to propose mitigation measures. This phase is therefore more demanding in terms of dialogue with potentially affected communities and can generate conflict. Concerning land issues related to the acquisition of land and restrictions on its use by projects **(see box Focus on Land Issues and Engagement Between Businesses and Affected Communities)**.

! Points to bear in mind

- **Identifying affected communities**: map non-indigenous communities and potential Indigenous or Tribal Peoples, in particular with the help of local experts if the context so requires (e.g. ethnologist, anthropologist, sociologist);
- **Strengthening engagement processes as part of ESIA studies, where contextually appropriate, to ensure more meaningful participation of affected communities:** ESIA processes are coming under increasing criticism for their ability to ensure meaningful engagement with affected communities. They are sometimes perceived as too formal or limited in their ability to offer genuine dialogue. These perceptions highlight a gap between minimum legal requirements, which vary from jurisdiction to jurisdiction, and community expectations. To meet these challenges, it may be beneficial to go beyond the minimum legal requirements by enhancing the quality, inclusiveness, format and frequency of consultations to transform them into a two-way relationship;
- **Ensuring fairness and preventing bias in community consultations:** at this stage, it is vital to avoid unrealistic promises or benefits that may be perceived as conditional, to ensure that no group or individual is favoured, which could compromise the fairness of the process and affect trust in the project.

Objectives of the Engagement During this Phase

- **Providing clear information and collecting data from the communities to feed into the ESIA studies:** this includes a general description of the objectives, location and timing of the main steps in the project life cycle (construction, operation, closure), as well as an overview of the anticipated social and environmental impacts and the mitigation or compensation measures envisaged. At the same time, the service providers responsible for the studies must collect data from the communities, respecting representative bodies, local practices and cultural rules.

- **Adapting the level of engagement to the severity of the impacts and the vulnerability of the groups concerned:** ensure that the level and intensity of engagement is proportional to the severity of the impacts, paying particular attention to vulnerable groups whose situation could be exacerbated by the project's activities.

- **Managing potential conflicts:** anticipating and managing conflicts related to land acquisition, compensation or relocation **(see Focus on Land Issues and Engagement Between Businesses and Affected Communities)**. During this phase, tensions may also arise due to a lack of information or effective participation by potentially affected communities, or the absence or inadequacy of procedures for obtaining the Free, Prior and Informed Consent (FPIC) of Indigenous and Tribal Peoples.

- **Tailoring consultations to local specificities:** this includes choosing the most appropriate information formats (written, visual, oral), as well as defining consultation schedules, frequencies and venues that best meet local challenges and specificities to overcome potential barriers to engagement (e.g. geographical isolation, lack of logistical resources, transport difficulties).

- **Documenting and informing throughout the process:** monitor and record interactions and decisions taken to maintain a level of transparency with communities. Keep records of consultations carried out. The service provider responsible for the studies should liaise with the dedicated teams, if any, in charge of community engagement to ensure consistent follow-up after the Environmental and Social Impact Assessment (ESIA).

- **Deploy an accessible and appropriate grievance mechanism:** the objective is to prevent escalation of tensions by raising grievances concerning the consultation process carried out by service providers (e.g. if existing representative bodies or protocols have not been respected or if certain concerns have not been taken into account).

3. Project Development (depending on the sector, construction phase)

Description

The construction phase may extend over several years and involve intensive activities that may generate significant social and environmental impacts (e.g. installation of infrastructure, buildings, transport of materials, use of national and potentially international labour). This phase marks a major transition, often associated with high expectations, but also with the risk of increased tensions.

! Points to bear in mind

- **Identifying the communities affected by the construction work:** various communities may be affected, not just those adjacent to the construction site. For example, those located along material transport routes, exposed to noise, road deterioration and increased risk of accidents, and those where the majority of migrant workers reside, facing additional pressure on local infrastructures and the risk of social tensions.

- **Defining responsibilities and applicable standards for engagement with affected communities:** The responsibilities and behavioural expectations of each player involved in the construction work need to be defined, in particular between the project business, the person commissioning the work, the main contractor carrying out the work, and the other professionals involved (technical design office, subcontractors, etc.). The business carrying out the project should maintain close supervision over the implementation of the engagement with affected communities to ensure compliance with the applicable standards.

Objectives of the Engagement During this Phase

- **Preventing and managing potential and current adverse impacts:** the massive influx of national and international workers and the destabilisation of socio-economic balances can lead to tensions within communities, particularly between those who support the project and those who oppose it. In addition, the adverse impacts of construction work (such as environmental pollution, potential nuisance from noise, dust and increased road traffic, increased pressure on local natural resources and social infrastructure, the possible increase in delinquency and violence within communities and the emergence of prostitution and drug trafficking networks) require a greater engagement to mitigate them and prevent the escalation of tensions. In this phase, the engagement modalities must be adjusted to take account of the severity of the impacts and the specific needs of those affected, particularly vulnerable groups (organisation of participatory working groups with a gender perspective, for example, see Appendix 7) and incorporate their feedback into the implementation and adjustment of prevention, mitigation and remediation measures.

- **Maintaining transparent communication:** provide regular information on the progress of the works, the impacts identified and the measures implemented to mitigate them.

- **Strengthening monitoring mechanisms:** depending on the context, it may be appropriate to set up a community monitoring committee including representatives chosen by affected communities and business representatives to monitor impacts and ensure that social and environmental management mechanisms are implemented.

- **Anticipating conflicts and manage grievances:** implementing a grievance mechanism **(see Step 5 | Setting Up Effective Grievance Mechanisms Tailored to Affected Communities)**, while providing opportunities for participatory dialogue. At the same time, the business can deploy and strengthen community liaison teams **(see A dedicated, structured team: the importance of community liaison officers).**

- **Prioritising local employment and community development**: prioritise local recruitment and training of the local workforce helps to minimise tensions and strengthen the ability of communities to benefit from the economic opportunities generated. In addition to these immediate benefits, it is recommended that the business initiate a dialogue on other forms of benefits sharing **(see The Concept of "Benefit-Sharing").**

4. Commissioning/Operation/ Functioning

Description

The commissioning phase marks the transition from project to operation. It involves inspecting, documenting and checking that the infrastructure and systems meet the initial requirements and specifications. This step includes preparatory work, pre-commissioning on site, start-up of operations, initial operation, maintenance and training of local teams. Depending on the business sector, this phase can be the longest in the life cycle, lasting several decades and subject to successive extensions.

! Points to bear in mind

- **Relative stability, but requiring ongoing engagement:** although the operational phase is often perceived as a period of relative stability, it should not lead to a minimisation of efforts in terms of community engagement. These must be actively and continuously pursued by dedicated teams **(see A dedicated, structured team: the importance of community liaison officers)**, in order to prevent, mitigate and remedy adverse impacts, while anticipating tensions linked to extensions, infrastructure improvements or social and environmental incidents.

- **Emergency preparedness and management:** ensure continuous awareness-raising among affected communities on emergency response plans (e.g. toxic tailings dam failure, etc.)[77] risks of fire or explosion in operations/ infrastructure), in particular by organising simulations so that they understand their roles and responsibilities.

Objectives of the Engagement During this Phase

- **Ensuring the ongoing management of the social and environmental impacts identified during the ESIAs:** implement, monitor and adjust the mitigation and compensation measures planned, while ensuring regular and transparent communication on social and environmental performance with affected communities. Given the length of the operating phase, periodic audits carried out by the business may not be enough to identify all the potential risks. It may therefore be appropriate to consider independent field assessments, such as human rights impact studies, depending on the complexity of the project and the severity of the impacts identified in phase 2. Affected communities should therefore continue to be involved in participative monitoring bodies such as round tables or dedicated committees (see Appendix 7).

- **Continuing engagement activities to identify emerging risks:** pursue community engagement activities carried out by dedicated professionals, the operational phase may reveal risks that were not obvious to detect during the initial studies, such as cumulative impacts or the long-term consequences of operating activities. At the same time, regularly update data on the composition, legitimate representatives and internal dynamics of the communities (e.g. demographic growth, impact of climate change, new elections of representatives, intra-community tensions).

- **Seizing the opportunity for sustainable partnerships:** develop long-term cooperation agreements with affected communities if these have not been established in previous phases (phase 2 in particular), such as joint development agreements (see Benefit-Sharing and Community Collaboration Agreements), to share the benefits of the project and ensure sustainable economic and social spin-offs.

- **Ensuring the effectiveness of grievance management mechanisms** (see Step 5 | Setting Up Effective Grievance Mechanisms Tailored to Affected Communities).

5. Site Closure/Project Closure, Dismantling of Infrastructure and Site Restoration

Description

Closure is a sensitive phase in the life cycle of a project. It includes the dismantling of infrastructure, the restoration of impacted sites, and sometimes the reuse or conversion of certain infrastructures. The aim of this phase is to manage the residual impacts while helping affected communities to adapt to the post-project period.

! Points to bear in mind

- **Integrated upstream planning from the ESIA study phases:** in certain regulatory contexts, the closure plan and the management of social and environmental impacts must be integrated right from the ESIA studies. If the legal framework of the project does not require it, it is advisable to think ahead, because proactive planning guarantees a more controlled transition and avoids a reactive approach to the challenges associated with closure.

- **Economic dependency created by the project, site, or operations:** when the project or site has been a major employer or local economic pillar, its closure can cause severe socio-economic disruption for affected communities. These impacts are often accentuated in rural areas, where economic alternatives are limited. Without viable economic alternatives, affected communities risk becoming economically vulnerable, exacerbating social inequalities.

- **Preventing tensions:** the transition to closure may generate tensions linked to job losses, changes in the local economic dynamic and fears of a possible negative environmental legacy.

Objectives of the Engagement

- **Managing environmental impacts associated with site closure and dismantling:** an open dialogue should be maintained on the timeline and work involved in the closure and dismantling of infrastructures that could lead to adverse impacts (e.g. blasting, environmental pollution) and the necessary measures taken to mitigate and remedy them.

- **Involving communities in the transition:** communicate the closure and dismantling plan and key dates in advance, providing reassurance about the post-project period, taking account of local expectations and the needs of the most vulnerable groups. It may be a good idea to set up a dedicated body, such as a multi-stakeholder steering committee (bringing together local authorities, legitimate representatives of affected communities, or other relevant stakeholders depending on the context – NGOs, independent third-party observers). Transition strategies towards alternative economic activities are often necessary to support the economic and social resilience of affected communities.

- **Restoring the site in a sustainable manner:** implement ecological and environmental rehabilitation plans in collaboration with the local authorities and affected communities.

- **Preserving essential community services during closure and dismantling:** the sudden or poorly planned disruption of certain essential services or infrastructure provided by the business for the benefit of communities (e.g. healthcare, access to energy, schools, water supply, road maintenance) must be prevented, in particular by working with communities to organise an effective transfer or to ensure their continuity under agreed time and conditions.

- **Maintaining an effective and appropriate grievance management mechanism:** in this sensitive phase, this mechanism can help to ease tensions and facilitate the transition.

- **Thinking about the long-term legacy of the project for future generations:** the division of responsibilities with the various partners and local authorities for monitoring and managing adverse post-closure impacts, as well as for any necessary remediation, must be defined in order to ensure fair, appropriate long-term care. It is essential to ensure that the environmental legacy of the project does not become a burden on future generations, or a source of degradation of landscapes and ecosystems, by ensuring that the management of waste from closed sites, such as mine tailings, meets the highest international standards. Finally, work with communities to optimise the re-use of infrastructure and establish long-term agreements to support local initiatives such as rehabilitation[78].

Photo: wirestock/ envato

BUSINESS CASE STUDIES

Just Transition Approach As Part of Site Closure and Impact Management

(Chile – Energy Sector)

By just transition, we mean the transition to a climate-neutral economy that benefits the entire population, citizens and workers, in a fair and just manner.

A business in the energy sector has undertaken the closure of two of its sites and implement a just transition plan based on three essential pillars. The business' departure has a direct impact on the entire local ecosystem, including residents, employees and shopkeepers. **The first pillar focuses on supporting employees, while the next two are dedicated to supporting the communities affected by the closure.** The plan is broken down into a number of priorities, with concrete actions tailored to each group. Some of these measures are described below:

1. Support for Employment and Community Skills Development

Actions to strengthen skills and preserve employment opportunities, while reducing the community's economic dependence:

- **Training and integration programs**: specific initiatives, such as entrepreneurial training and support programs for under-represented groups, particularly women, improve their employability and facilitate their integration into new professional fields.
- **Career transition support:** the business' employees, many of whom live in the community, benefit from retraining programmes to acquire new technical skills.
- **Creating sustainable jobs:** the transition to renewable energies is generating new jobs and a host of career opportunities. Employees, as well as some members of the community, have been trained for these jobs, such as those related to the installation and maintenance of photovoltaic panels, thereby enhancing their employability.

2. Revitalisation of the Local Socio-Economic Fabric

Initiatives to strengthen the economic and social resilience of the community and the region, by supporting both local businesses and community projects:

- **Supporting local entrepreneurship:** a specific support fund is dedicated to local entrepreneurs in order to stimulate the creation of economic opportunities in the region.
- **Developing regional value chains:** special partnerships are developed with local entrepreneurs to support the creation of new projects by the business, the organisation of events and the launch of social programs.
- **Promoting renewable energies**: by encouraging the development of clean energy sources in the region, the business is helping to attract new investment opportunities, revitalising the local economic fabric, which was previously largely focused on extraction activities.

BUSINESS CASE STUDIES

3. Management of the Impact of Dismantling Production Sites and Ongoing Communication With Community Representatives

The emphasis is on reducing the environmental impact of dismantling activities and communicating with legitimate community representatives, involving local stakeholders:

- **Technical and environmental monitoring:** dismantling is entrusted to a service provider chosen for its expertise in low environmental impact methods. For example, instead of using invasive techniques such as blasting, more environmentally-friendly processes are used to dismantle heavy infrastructure on sites. Each step of dismantling is communicated in advance to community representatives and relevant stakeholders.

  In addition, the dismantling of heavy infrastructure is carefully planned to limit disruption (dust, noise), avoiding school hours and periods of heavy traffic.

Photo: Céline da Graça Pires

B. SPECIAL CONSIDERATIONS FOR ENGAGEMENT WITH INDIGENOUS AND TRIBAL PEOPLES

Are the International Rights of Indigenous and Tribal Peoples "Special" or "New"?

The provisions of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and ILO Convention No. 169, including those referring to free, prior and informed consent, "do not create new rights for Indigenous Peoples, but rather provide a contextualized elaboration of general human rights principles and rights as they relate to the specific historical, cultural and social circumstances of Indigenous Peoples[79]".

Therefore, "this does not mean that Indigenous Peoples have special rights[80] but that given their situation" and in particular to the "collective nature of Indigenous Peoples' rights" and "the need to safeguard their cultures and livelihoods", "special measures for their consultation and participation in decision-making[81]".

The aim of these rights is not to grant special privileges, but to guarantee real equality for Indigenous and Tribal Peoples, who are often marginalised and face historical injustices.

(See Appendix 3 for a summary of the internationally recognised rights of Indigenous and Tribal Peoples)

Do Businesses Have a General Obligation to Respect the Rights of Indigenous Peoples?

Although not directly covered by the UNDRIP and ILO Convention No. 169, businesses **must nevertheless comply with international human rights standards, which include respect for the rights of Indigenous and Tribal Peoples** as part of their responsability to respect human rights and to conduct human rights due diligence.

The collective rights of Indigenous and Tribal Peoples are protected in a number of international standards applicable to businesses:

- **The UN Guiding Principles on Business and Human Rights**, which expect businesses to "respect the human rights of individuals belonging to specific groups or populations that require particular attention, where they may have adverse human rights impacts on them", including the rights of Indigenous[82] and Tribal Peoples;
- **The OECD Guidelines, in their amended 2023 version**, make explicit reference to the UNDRIP and specify that businesses "should pay special attention to any particular adverse impacts on individuals [...] who may be at heightened risk due to marginalisation, vulnerability or other circumstances, individually or as members of certain groups or populations, including Indigenous Peoples[83]";
- **The CSRD, in the context of the ESRS S3 thematic standard**, refers to Indigenous Peoples as a group within communities whose rights (in particular, Free, Prior and Informed consent, self-determination and cultural rights) are likely to be affected[84];
- **The CSDDD** explicitly refers to the UNDRIP and states that "businesses should pay special attention to any particular adverse impacts on individuals who may be at heightened risk due to marginalisation, vulnerability or other circumstances, individually or as members of certain groupings or communities, including Indigenous Peoples" and "in relation to Free, Prior and Informed consent (FPIC)[85]".

As part of their responsibility to respect human rights, as defined by the above standards, businesses are called upon to:

- **Adopt a clear human rights policy**, and if necessary a specific ad hoc policy (see box on Business case studies), **reaffirming their engagement to respect the rights of Indigenous and Tribal Peoples**, with particular emphasis on Free, Prior and Informed Consent (FPIC).
- **Identify the Indigenous and Tribal Peoples affected as part of their activities or value chain and as part of project development** (see Indigenous and Tribal Peoples section).
- **Conduct human rights due diligence:** this includes impact assessments aligned with human rights standards to identify and assess adverse actual and potential impacts, and engagement that meets the criteria for "meaningful" engagement (see Criteria for Qualifying Engagement as "Meaningful") to understand, mitigate and remediate potential adverse impacts on Indigenous and Tribal Peoples' lands, natural resources, identity, heritage, culture and livelihoods. Particular attention must be paid to the needs and rights of individuals or groups within Indigenous and Tribal Peoples who are more vulnerable or marginalised (see Special Considerations for Engagement With Vulnerable Groups). Businesses must then implement a culturally appropriate action plan that is proportionate to the severity and likelihood of the risks involved.
- **Implement accessible and culturally appropriate grievance mechanisms** (see Step 5 | Setting Up Effective Grievance Mechanisms Tailored to Affected Communities).
- **Provide appropriate remediation proportionate to the severity of the adverse impacts they have caused or to which they have contributed.**
- **Assess the effectiveness of the measures implemented to address human rights adverse impacts in order to ensure continuous improvement in their practices.**

Rights of Consultation, Participation and Free, Prior and Informed Consent

The right of Indigenous and Tribal Peoples to be consulted and to participate in decision-making is recognised in both the UNDRIP and ILO Convention No. 169. These texts emphasise the need for specific consultations via appropriate procedures and through their representative institutions.

Free, Prior and Informed Consent

The principle of Free, Prior and Informed Consent (FPIC)[86] is **based on the fundamental right of Indigenous and Tribal Peoples to self-determination,** guaranteed by the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights[87] and the UNDRIP, but also in **the right not to be a victim of racial discrimination**[88] which is protected by the International Convention on the Elimination of All Forms of Racial Discrimination[89].

FPIC (Free, Prior and Informed Consent) and the right to self-determination are closely linked: not only does FPIC derive from the right to self-determination, but the latter must also be at the heart of the consultation process aimed at obtaining FPIC. FPIC is one of the guarantees of the right to self-determination and of the collective rights of Indigenous and Tribal Peoples, particularly with regard to exercise control over their lands, territories and resources as nations or peoples[90].

UNDRIP and ILO Convention No. 169 specify the cases in which governments must obtain FPIC:

UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES	
Article 10	Prior to the relocation or resettlement of Indigenous Peoples.
Article 11	No seizure or appropriation of Indigenous Peoples' cultural, intellectual, religious or spiritual property may occur without their FPIC.
Article 19	Prior to the adoption and implementation of legislative or administrative measures that may affect their rights.
Article 28	Prior to any confiscation, seizure, use, occupation or other interference with the lands or territories of Indigenous Peoples.
Article 29	Prior to the storage or disposal of hazardous materials on the lands or territories of Indigenous Peoples.
Article 32	Prior to the approval of any projects affecting the lands, territories and other resources of Indigenous Peoples, particularly in relation to the development, use or exploitation of mineral, water or other resources.
INTERNATIONAL LABOUR ORGANIZATION CONVENTION No. 169	
Article 6 (2)	States have a duty to consult Indigenous Peoples before adopting legislative or administrative measures that may affect them directly, with the aim of achieving agreement or consent to the proposed measures.
Article 16 (2)	Any displacement or relocation of Indigenous Peoples from their lands which they occupy shall take place only with their FPIC and only when considered necessary as an exceptional measure.

Essential Features of FPIC (Free, Prior and Informed Consent)

- **PRIOR:** consent must be obtained prior to any administrative action that could affect Indigenous Peoples' rights, (in particular before the granting of permits for a project) or at the start of the activities. This requires timely and adequate engagement to enable Indigenous and Tribal Peoples to understand the information, participate actively, and formulate their positions before decisions are finalised[91].
- **FREE:** consent must be given voluntarily, without coercion, intimidation, or manipulation. The process should be led by the Indigenous or Tribal community, without external pressure or the imposition of deadlines or expectations from external actors. This means that the Indigenous or Tribal community concerned must have the freedom to conduct the process at its own pace, in accordance to its own internal dynamics and customary protocols.
- **INFORMED:** the information provided to Indigenous People must be clear, consistent, transparent, and accurate. They should include details on the area potentially affected by the project, its intended purpose, nature and scale, the potential social and environmental impacts identified, the benefits for the Indigenous Peoples concerned **(see Benefit-Sharing and Community Collaboration Agreements)** and the duration of the project. Information must be presented in an accessible and culturally appropriate format throughout the process, ensuring continuous communication.
- **CONSENT:** consent is a collective decision taken by the indigenous or tribal community as a whole, not by a few individuals within it.[92] Through this decision, Indigenous or Tribal Peoples exercise their right to self-determination via their representative institutions and customary decision-making processes specific to each group. It reflects the right to give, withhold, or grant consent subject to conditions. This process, which reflects the collective will of Indigenous and Tribal Peoples, cannot be reduced to the acceptance of a formal agreement developed unilaterally in advance and merely presented for validation **(see Q.1 below)**.

Photo: Sergey Pesterev / unsplash

Frequently Asked Questions from Businesses About FPIC

Q1. What is the connection between consultation and consent under FPIC?

ANSWER. James Anaya, former United Nations Special Rapporteur on the Rights of Indigenous Peoples from 2008 to 2004, stated in a report that "neither consultation nor consent is an end in itself, nor are consultation and consent stand-alone rights[93]". As the Inter-American Court of Human Rights concluded in Saramaka v. Suriname[94], "principles of consultation and consent together constitute a special standard that safeguards and functions as a means for the exercise of Indigenous Peoples' substantive rights[95]".
While consultation is always a key element of the FPIC process, "pro forma consultations or mere information will not meet the requirements of the Convention[96]". FPIC is both **a specific consultation process meeting certain criteria and an objective in itself**:

- **Specific consultation**: under ILO Convention No. 169, consultations must be "formal, full and exercised in good faith". It constitutes a **"genuine dialogue between governments and Indigenous and Tribal Peoples characterized by communication and understanding, mutual respect, good faith and the sincere wish[97]" to reach a common agreement**. "Appropriate mechanisms for consultation at the national level and that public authorities must undertake consultations, without interference, in a manner appropriate to the circumstances, through indigenous and tribal peoples' representative institutions," with the objective of: "reaching agreement or consent to the proposed measures.[98]" **Without the effective participation in the consultation process, any consent given would not genuinely reflect the right to self-determination**
- **Consent:** deriving from the **right to self-determination, it provides the power of final decision**, enabling Indigenous and Tribal Peoples to choose to authorise a project with or without conditions, to negotiate modifications, or to withhold consent if their rights may be at risk. At the end of the process, the outcome may be a written agreement or an explicit statement of consent, specifying what has and has not been agreed. Where consent is granted, this document sets out the conditions for implementation, monitoring and remedy mechanisms, and other measures ensuring that the business upholds its engagements. In addition, Indigenous and Tribal Peoples have the right to withdraw their consent in the event of non-compliance with the commitments made, or where project circumstances change significantly.

Q2. WHO is responsible for obtaining consent?

ANSWER. According to the UNDRIP and ILO Convention No. 169, governments are responsible for consulting Indigenous Peoples with a view to reaching an agreement or obtaining FPIC. In certain contexts, national law may provide for the possibility for governments to delegate part of the consultation process to the business, or for the process to be conducted jointly by the business and the competent public authorities. However, the State duty to consult with the Indigenous Peoples "is not one that can be avoided through delegation to a private company or other entity[99].

However, depending on the context, governments may not have consulted, or may have carried out inadequate consultations that do not meet the required criteria (see Q.1), nor obtained FPIC prior to granting licenses or concessions to businesses (see Q.4).

Given the persistent shortcomings of States and the independent responsibility of businesses to respect the rights of Indigenous and Tribal Peoples, **some sectoral standards explicitly require companies to obtain FPIC** (see dedicated box).

Frequently Asked Questions from Businesses About FPIC

Q3. What is the role of the business in a consultation process led by the State to obtain FPIC, in line with international human rights standards?

ANSWER. When the State leads the consultation process to obtain FPIC, the business is not passive.

- **Provision of information:** without interfering in seeking to influence the process, the business retains an active role by providing, in a transparent and accessible manner, the information required by relevant public authorities or competent State agencies on the project's potential and actual adverse impacts on land, natural resources, archaeological heritage, the expression of Indigenous and Tribal Peoples' identity, culture, religion and spirituality, as well as the mitigation measures envisaged. This information must be communicated in clear language, free from overly technical terminology, and adapted to the cultural and linguistic context of the peoples concerned. The business must act in good faith by sharing the data necessary for informed decision-making, without influencing community leaders or other influential groups within the community, and without attempting to steer discussions in its favour.
- **Participation in round tables or working groups with relevant public authorities:** in certain contexts, the business may be requested to play a more active role, for example by taking part in a tripartite round table[100] bringing together representatives of the State, representatives of Indigenous and Tribal Peoples, and the business representatives to provide input and contribute to specific discussions.
- **Extension of existing projects or activities:** if the business maintains a long-standing relationship with the community while an FPIC process is ongoing (for instance, in the context of a project or operational expansion likely to generate new impacts), it must under no circumstances make its support for social investment projects conditional upon the granting of consent by the Indigenous or Tribal Peoples concerned.

Q4. What if the State is failing? What are the consequences and what role should the business play?

ANSWER. Non-compliance by the State with its obligations may jeopardise administrative authorisations, licences, permits and concessions, thereby exposing businesses to conflicts with affected Indigenous or Tribal Peoples, legal uncertainty, reputational risks and a legal "grey area,"[101] where they may face legal procedings before "international, regional and national tribunals, as well as other recourse mechanisms (for instance, through the OECD National Contact Points[102] – NCPs).

As the UN Guiding Principles emphasise, the State's duty to protect human rights and the corporate responsibility to respect human rights exist independently of one other. This implies, as recalled by the Working Group on the issue of human rights and transnational corporations and other business enterprises points out, that "companies should respect the rights of local communities and Indigenous Peoples to be consulted and to give or withhold free, prior and informed consent, in all their operations, and should protect these rights in the conduct of due diligence. **This applies irrespective of a national legislative framework.**[103]"

Furthermore, as clarified by James Anaya, the former UN Special Rapporteur on the Rights of Indigenous Peoples, "as part of its required due diligence, each private company operating in proximity to Indigenous Peoples should ensure that, through its behaviour, it does not ratify or contribute to any act or omission on the part of the State that could infringe the human rights of the affected communities, such as a failure on the part of the State to adequately consult with the affected indigenous community before proceeding with a project.[104]"

Frequently Asked Questions from Businesses About FPIC

In this context, businesses often find themselves caught between the State's non-compliance with its obligations and their own responsibility to respect human rights and honour their commitiments, particularly regarding respect for FPIC. Principle 23 of the UN Guiding Principles on Business and Human Rights provides guidance on what is expected of businesses, including the need to "treat the risk of **causing or contributing to gross human rights abuses as a legal compliance issue wherever they operate"** and to **"seek ways to honour the principles of internationally recognized human rights when faced with conflicting requirements"**. Businessess must also be able to demonstrate the concrete efforts undertaken to achieve this.

In this context, "private sector actors have a direct interest in acting in accordance with the principles of the Convention" [No. 169] and the United Nations Declaration on the Rights of Indigenous Peoples, "for issues of legal security, legitimacy, partnerships and sustainability" [105] and should consider the following actions:

- → **ensure that government authorities have carried out appropriate consultations** before granting authorisations, permits or licences[106];
- → **verify the existence of consultation protocols established by the Indigenous and Tribal Peoples themselves**[107] and comply with them;
- → where no such protocol exists, businesses are **encouraged to facilitate the development of such a protocol or an FPIC implementation plan**, in collaboration with qualified independent experts and local NGOs. Such an approach not only guarantees respect for the rights of Indigenous Peoples and to strengthen the legal certainty and legitimacy of projects, but also prevents any undue intervention or influence by the business;
- → **under the CSRD and ESRS S3[108], businesses are required to explain how they take into account and ensure respect for Indigenous Peoples' right** to FPIC, which may "include information about processes to consult with Indigenous Peoples to obtain such consent" and "how the consultation includes a good faith negotiation with affected Indigenous Peoples to obtain their free, prior and informed consent".

Q5. Who must be consulted and who gives consents?

ANSWER. According to ILO Convention No. 169 and the UNDRIP, Indigenous and Tribal Peoples must be **consulted through their own representative and decision-making institutions, in accordance with their organisational and cultural specificities**. A representative institution may exist at national, regional or community level and must represent the collective interests of the People as a whole.

There are cases where governments or businesses obtain the signature of a chief or leader without it being based on a collective decision-making process, which can lead to disputes later on. Where representation is no longer appropriate or contested, or where there are several competing institutions, consultation must go beyond these traditional institutions. The representative and decision-making institutions within the FPIC framework must be identified and determined by the Indigenous and Tribal Peoples themselves through their own process in accordance with their customs and traditions.

Frequently Asked Questions from Businesses About FPIC

Q6. Is it mandatory to reach an agreement or obtain consent?

ANSWER. Although the Committee of Experts on the Application of Conventions and Recommendations (CEACR) has emphasised that "such consultations do not imply a right to veto nor is the result of the consultations necessarily the reaching of agreement or consent[109]", the Special Rapporteur James Anaya regretted that **debates around FPIC were often polarised**, reducing the discussion to the question of "whether or not Indigenous Peoples hold a veto power that they could wield to halt development projects." This way of framing the discussion, he reminded, "is not in line with the spirit or character of the principles of consultation and consent as they have developed in international human rights law[110]" and as enshrined in the UNDRIP.

The Expert Mechanism on the Rights of Indigenous Peoples has stressed that "**States should ensure that consent is always the objective of consultations, bearing in mind that in certain cases consent will be required.** [111]"

The International Labour Office (ILO), in the framework of its Programme to Promote Convention No. 169, has recalled that **"the more severe the potential consequences are for the concerned Indigenous Peoples, the greater is the importance of obtaining agreement or consent.[112]"**

The more severe the potential and actual adverse impacts on the lands, territories, resources and cultural heritage of Indigenous Peoples, the more imperative it becomes to obtain their consent. Consent becomes essential when the consequences of a project are serious and irreversible.

James Anaya summarised it as follows: "A significant, direct impact on Indigenous Peoples' lives or territories establishes a strong presumption that the proposed measure should not go forward without Indigenous Peoples' consent. In certain contexts, that presumption may harden into a prohibition of the measure or project in the absence of indigenous consent[113]". This principle is also recognised in the case law of the Inter-American Court of Human Rights, notably in Saramaka People v. Suriname[114].

Ignoring the absence of FPIC exposes businesses to legal and reputational risks and contravenes their responsibility to avoid causing or contributing to adverse human rights impacts. It is therefore essential that businessess assess their capacity to use or strengthen their leverage to promote positive change, particularly by advocating for better consideration of Indigenous and Tribal Peoples' rights by the competent authorities within the regulatory and consultation processes aimed at obtaining FPIC.

Businesses are also **encouraged to explore viable alternatives, particularly in the context of projects where the State intends to proceed despite the absence of consent.** Depending on the context and issues at stake, this may include altering the project's route, deciding not to proceed with its development, or responsibly withdrawing from the partnership.

Frequently Asked Questions from Businesses About FPIC

Q7. How can businesses ensure that the consent obtained is genuinely free, prior and informed?

ANSWER. There is no universal monitoring mechanism enabling businesses to guarantee that FPIC has been respected. However, several good practices can be put in place. The United Nations Global Compact's Business Reference Guide to the United Nations Declaration on the Rights of Indigenous Peoples [115] highlights the following good practices:

- First, it is essential to **document in detail the negotiation process undertaken with the Indigenous Peoples concerned**, as well as the outcomes achieved. Such documentation helps ensure transparency of the process forIndigenous People concerned and, where appropriate, for other stakeholders (e.g. investors, civil society). It also demonstrates that consent is the result of a genuinely participatory consultation, conducted in accordance with representative institutions, traditional practices and customs of the Peoples concerned. Good practice also recommends publishing the agreement reached on the enterprise's official website to ensure accessibility and enhance transparency of the process.
- Second, businesses may **engage an independent and culturally aware facilitator, selected or approved by the Indigenous Peoples**, to support negotiations and ensure fair dialogue.
- Finally, businesses can support the affected Peoples in **strengthening their decision-making capacity**, for instance by providing specific support (logistics, access to training or experts) to consolidate their governance structures and decision-making mechanisms. However, such support must never exert undue pressure or otherwise influence their decision.

Q8. Does consent, once obtained, remain valid indefinitely?

ANSWER. FPIC is not static or fixed in time. Consent may be withdrawn or modified at any time if project conditions or circumstances change, if associated adverse impacts evolve, or if the business fails to meet its commitments.

FPIC forms part of a continuous process that requires regular communication, monitoring and evaluation of the project or its activities and their impacts, in collaboration with the Indigenous and Tribal Peoples concerned. Mechanisms should be established from the outset to set out the conditions under which consent may be reassessed or renegotiated.

Furthermore, **obtaining consent does not exempt the business from its independent responsibility to maintain meaningfull engagement with affected Peoples**. Even after Indigenous Peoples have expressed consent to a project, the business enterprise must maintain an ongoing dialogue to ensure that commitments are upheld and that project impacts do not infringe their rights.

Q9. What about the consent of Indigenous Peoples in voluntary isolation?

ANSWER. Particular caution must be exercised regarding Indigenous Peoples living in voluntary isolation or who have only recently entered into contact with the rest of society. It is essential to avoid any attempt at forced contact.

The Expert Mechanism on the Rights of Indigenous Peoples has stressed that "**In the case of Indigenous Peoples in voluntary isolation, the decision and expression not to be in contact or not to have constant interaction with other societies and the Government can be an expression of non-consent.**[116]" and should be respected.

Some Standards Referring to FPIC
(Non-Exhaustive List)

- **International Finance Corporation (IFC) – Performance Standard 7 (2012)** and corresponding Guidance Note require clients to obtain the FPIC of affected Indigenous Peoples to be eligible for financing when the project: affects lands and natural resources subject to traditional ownership or under customary use; requires the relocation of Indigenous Peoples from their lands; or may significantly impact critical cultural heritage that is essential to the identity and/or cultural, ceremonial or spiritual aspects of Indigenous Peoples' lives, including Indigenous Peoples' knowledge, innovations and practices for commercial purposes.
- **IRMA Standards (Initiative for Responsible Mining Assurance) V. 1.0 (2018) –** Chapter 2.2. Any new mine likely to affect the interests or rights of Indigenous Peoples cannot be certified by IRMA if the operating business has not obtained FPIC. In line with IFC Performance Standard 7, FPIC needs to be obtained where mining activities may impact on lands, territories and resources; where Indigenous Peoples are relocated; where traditional livelihoods are disrupted; where critical cultural heritage may be impacted; or where cultural heritage is used for commercial purposes. For both new and existing mines, the operator must obtain FPIC, including when proposed changes to mining activities may result in new or worsened adverse impacts on rights or interests.
- **Equator Principles, Version EP4** (2020) refer to IFC Performance Standard 7, which sets out the specific circumstances requiring FPIC from affected Indigenous Peoples (see above).
- **Rainforest Alliance –** 2020 Sustainable Agriculture Standard, version 1.3 (7 April 2023) requires obtaining FPIC for any activity that may restrict resource or land-use rights or collective interests of Indigenous Peoples. Likewise, where Indigenous Peoples, current or former local residents, or other stakeholders legitimately contest land-use rights. The FPIC steps are detailed in Chapter 5 (Appendix 'Social') and in Guidance Document T: Free, Prior and Informed Consent.

Other organisations addressing FPIC include:

- **ICMM** (International Council on Mining and Metals) – Indigenous Peoples and Mining, Position Statement (August 2024). According to some indigenous rights NGOs, despite progress in the 2024 version (the first version dated 2013), the ICMM Position Statement remains insufficient in relation to FPIC. See in particular *Open Letter on the adoption of the International Council on Mining and Metals (ICMM) Indigenous Peoples and Mining Position Statement (August 2024)*
- **Roundtable on Sustainable Palm Oil (RSPO) standards** (2024 amended version)
- **European Bank for Reconstruction and Development (EBRD)** – EBRD Performance Requirement 7 (May 2023)
- **Forest Stewardship Council (FSC)** - *FSC Guidelines for the Implementation of the Right to Free, Prior, and Informed Consent* (2021)
- **IPIECA** (World Association of the Oil and Gas Industry) - *Free, prior and informed consent* (FPIC) toolbox (2018)

BUSINESS CASE STUDIES

Engagement Policy

Increasingly, businesses are adopting specific policies (sometimes referred to as charters or guidelines) that go beyond their human rights policies, with the aim of providing a clear framework for their engagement with Indigenous Peoples. These policies include an explicit commitment to respect Indigenous Peoples' collective rights and set out standards governing engagement with Indigenous and Tribal Peoples that go beyond national requirements, in line with the UN Guiding Principles on Business and Human Rights.

The policy is communicated in a language appropriate to the Indigenous and Tribal Peoples potentially affected by the project. Some businesses work with local experts and other relevant partners (such as NGOs or local associations) to carry out tailored community awareness initiatives on this policy.

Specific Assessment of the Impact on the Tangible Cultural Heritage of Indigenous and Tribal Peoples

Following the Rio Tinto case, where blasting to expand an iron ore mine in the remote Pilbara region of Australia caused irreversible harm to 46,000 years old Aboriginal heritage caves, some businesses have introduced specific, detailed impact assessments on both tangible and intangible cultural heritage, in addition to social and environmental impact assessments required under current legislation.

These assessments are sometimes carried out in connection with the implementation of sector-specific standards[117] or the Operational Guidelines for the Implementation of the World Heritage Convention[118]. Good practice calls for these assessments to be conducted by independent experts, with the active participation of the Indigenous Peoples concerned.

Consent Agreements ("FPIC Agreement")

Some extractive-sector businesses, together with provincial authorities, have conducted consultations with one or more Indigenous Peoples and signed consent agreements referred as "FPIC agreements." In Argentina, for instance, an agreement was concluded between a mining company and an Indigenous community after the necessary and relevant information had been communicated, including on the project's environmental and social implications and the environmental impact assessment.

This process took place over several years through dedicated roundtables and quarterly community meetings, allowing the community to ask questions, express concerns and request additional information. Finally, the FPIC agreement was signed at a community assembly attended by representatives of the company and the public authorities. An official record of the community assembly was co-signed by the company and the community representatives.

Some Operational Challenges Identified and Case Studies

> **One of the fundamental difficulties facing companies that operate in indigenous territories, or whose operations affect those territories, is the absence of formal recognition of Indigenous Peoples by the State in which they live, or recognition limited solely to certain groups. Nevertheless, a generally accepted principle of international human rights law holds that the existence of distinct ethnic, linguistic or religious groups, including Indigenous Peoples, can be established by objective criteria and cannot depend on a unilateral decision by a State.**
>
> **Businesses cannot use limited recognition, or absence of explicit recognition, of Indigenous Peoples in the countries in which they operate as an excuse not to apply the minimum international standards applicable to indigenous rights, including in cases where States are opposed to the application of such standards.**
>
> **Due diligence therefore requires that companies identify in advance the existence of Indigenous Peoples potentially affected by their activities and how they might be affected by such activities.**
>
> **James Anaya,**
> *Former Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples*[119]

According to the International Labour Organisation, around 15% of the world's Indigenous Peoples live in the 24 countries of the world[120] that have ratified ILO Convention No. 169[121]. France has not yet ratified it. This figure highlights a major challenge: despite more than 30 years since its adoption, the vast majority of Indigenous and Tribal Peoples still do not benefit from the protection provided by this international convention. In the absence of, or due to inconsistencies in, national legal frameworks, and in the context of increasing repression of Indigenous Peoples' advocacy efforts, companies are confronted with complex challenges.

Key Questions for Businesses to Consider:[122]

- Do the people concerned self-identify as Indigenous or Tribal Peoples?
- Does national legislation recognise these groups as Indigenous or Tribal Peoples?
- What is the overall situation of this group in relation to mainstream society in terms of discrimination, marginalisation and socio-economic vulnerability?
- Does the law recognise the customary land-ownership rights of Indigenous and Tribal Peoples over the lands and territories they occupy or use, regardless of whether they hold formal land titles?
- Is there a legal framework in the country protecting FPIC in line with international human rights law?
- Does the country have a history of granting permits, licenses or concessions to businesses without respecting the rights of Indigenous and Tribal Peoples, potentially leading to conflict?

The three scenarios (not an exhaustive list) outlined below are intended to guide companies in better understanding and navigating these challenging operational contexts.

SITUATION 1

The law recognises the existence of Indigenous and Tribal Peoples and certain collective rights, but not all groups are legally recognised, despite national-level claims for recognition.

Identified Challenges

- Discrimination between groups recognised as Indigenous or Tribal Peoples under national law and those not legally recognised, both in degree and modalities of engagement, and in the scope of the business' social projects. Heightened vulnerability risks for unrecognised groups.
- Uncertainty within the business regarding the appropriate engagement modalities to implement.
- Where certain nonrecognised groups persue national level action to gain formal recognition of their rights, this can lead to tensions at operational level for the business, particularly due to differing expectations between non-recognised groups, local authorities, and the business regarding the respect of their rights and appropriate forms of engagement.

Human Rights-Based Approach

- The way a business decides to consider and engage with Indigenous and Tribal Peoples, whether or not they are legally recognised, will leave a lasting imprint on the collective memory of affected communities. A purely legalistic or restrictive approach risks generating tensions and damaging the business' reputation. Furthermore, as legal frameworks continue to evolve, a group not recognised today may obtain legal recognition as an Indigenous group in the future[123].
- Given the national recognition claims of some unrecognized groups and the potential tensions this may cause between communities, the business may choose to rely on independent experts (such as ethnologists, anthropologists or sociologists) and apply the relevant identification criteria (**see Indigenous and Tribal Peoples**) adopting a proactive human rights-based approach that goes beyond existing legal obligations. Where non-recognised groups meet these identification criteria, the business should engage with them in accordance with their internationally recognised collective Indigenous rights.

SITUATION 2

No existing legal framework. The law does not recognise the existence or rights of Indigenous and Tribal Peoples, despite national-level efforts to obtain formal recognition

Identified Challenges

- Legal uncertainty for businesses seeking to operate in, or already operating within, territories where the collective rights of Indigenous and Tribal Peoples lack national protection. This can create a gap between the absence of a legal framework and stakeholders expectations grounded in the business's own commitments (such as human rights policies and codes of conduct) in line with international standards.
- Groups not recognised by the State as Indigenous and Tribal Peoples are particularly vulnerable to forced relocation, which can create operational tensions and legal and reputational risks for the business.

Human Rights-Based Approach

- The business is encouraged to adopt a proactive approach guided by human rights standards and the relevant international instruments (UNDRIP and ILO Convention No. 169). As stated in UN Principle 23 (b) of the UN Guiding Principles, business should "seek ways to honour the principles of internationally recognized human rights when faced with conflicting [national legal] requirements". This means respecting "internationally recognized human rights to the greatest extent possible in the circumstances, and to be being able to demonstrate their efforts in this regard[124]".

- The business must also apply its own internal human rights standards. This ensures coherence between operational practices and externally communicated policies and commitments.
- The business may rely on documented assessment by independent experts, such as ethnologists and anthropologists, to support the recognition of certain groups **(see Indigenous and Tribal Peoples section).** In some cases, participatory maps have been produced by the Indigenous and Tribal Peoples themselves to identify the lands they occupy or use, and the natural resources they depend on.
- Where possible, the business should consider engaging in multi-stakeholder platforms, alliances or peer initiatives, and explore collaboration with government authorities to examine options for recognition and protection of their collective rights, while ensuring that such efforts do not worsen the situation of Indigenous and Tribal Peoples or create additional risks to them or the safeguard of their rights.

SITUATION 3

Persecution of Human Rights Defenders and Indigenous Leaders at National Level by Government Authorities[125]

Identified Challenges

- Threats, harassment, unlawful surveillance, violence, enforced disappearances, and arbitrary detention targeting Indigenous or tribal rights defenders, community leaders, and other individuals, along with other forms of violence and discrimination, may be perpetrated by national authorities or even by members of the community who support, for example, the implementation of the project.
- The risk of forced displacement is increased in such contexts.
- Increased risk of disproportionate use of force by public or private security forces.
- Risk of the business being perceived as complicit in human rights violations carried out by public officials.

Human Rights-Based Approach

- In situations where Indigenous or Tribal Peoples and their defenders are subject to persecution, commonly referred to as high-risk contexts, business enterprises must reinforce their due diligence efforts through a human rights-based approach, not only to avoid causing, contributing to, or being directly linked to severe human rights abuses, but also to ensure that their operations do not worsen existing dynamics of oppression. If, after conducting a thorough assessment, serious human rights risks are identified and cannot be adequately prevented or mitigated, the company should consider a strategic no-go decision in order to avoid becoming involved in human rights violations.
- Actively commit to respecting both the individual and collective rights of Indigenous and Tribal Peoples, as well as the rights of human rights defenders, through clear public commitments.
- Implement enhanced human rights due diligence, including with regard to the disproportionate use of force by public or private security forces.
- Develop and implement a safe and accessible grievance mechanism, with effective anti-retaliation procedures.
- Businesses must ensure they do not exacerbate existing tensions and conflicts and ensure that they do not themselves cause or contribute, through their business partners, to threats, reprisals or violence against Indigenous rights defenders and leaders.
- Ensure that the business neither contributes to nor is directly linked with forced displacement and that any resettlement complies with international standards and is undertaken with the FPIC of the affected people.
- Wherever possible, leverage its influence with State and local authorities, in particular by engaging in multi-stakeholder initiatives and forming partnerships or coalitions with other actors, to apply stronger collective pressure aimed at promoting dialogue respect for Indigenous People's rights, and the safety of human rights defenders.
- If, despite these efforts, the business is unable to exercise or increase its leverage to improve the situation or bring about the desired change in practices, it should consider a responsible disengagement, ensuring that adverse impacts on affected Indigenous Peoples are minimized to the greatest extent possible.

C. SPECIAL CONSIDERATIONS FOR ENGAGEMENT WITH VULNERABLE GROUPS

Depending on the business' sector, activities and products or services, **the vulnerable groups likely to suffer adverse impacts may vary.** These include, among others, women, children, migrant workers and their families, persons with disabilities, religious or ethnic minorities, and older persons (non-exhaustive list). However, when multiple vulnerability factors intersect **(see Part II. Clarification of Key Concepts – Vulnerable Groups)** the likelihood of severe human rights impacts increases, requiring the business to adapt its community engagement methods towards more inclusive mechanisms to identify and consult these groups.

It is essential to identify, within communities, who can genuinely represent those whose voices are often silenced or rendered invisible. This process is complex in practice, as it requires identifying representatives who can genuinely reflect the interests of vulnerable groups, sometimes beyond legally, formally or traditionally recognised figures.

In some cases, engagement with such groups may require **the involvement of external professionals,** such as sociologists, anthropologists, ethnologists, academic researchers, or local community organisations. These experts can assist in identifying the individuals or entities or intermediaries most representative of these vulnerable groups and facilitate contact where it is safe and appropriate. Their expertise and understanding of languages, traditions and power dynamics are essential for an in-depth understanding of local contexts. The following table provides indicative guidance for engaging with vulnerable groups (non-exhaustive list).

! Points to bear in mind

Following consultation with indigenous leaders and NGOs, it was decided not to include Indigenous and Tribal Peoples in the table below. While there is a broad consensus among international organisations regarding their vulnerability in many respects, addressing them solely as "vulnerable groups" would be reductive and obscure their status as subjects of international law and collective rights-holders **(see Special considerations for engagement with Indigenous and Tribal Peoples)**. However, it is important to note that within Indigenous and Tribal Peoples, some groups are particularly vulnerable and should be given special attention.

Photo: Céline da Graça Pires

Vulnerable Group Identified	Vulnerability Factors	Potential Local Representatives or Trusted Intermediaries Within the Community[126]
Women	Women can face discrimination and find themselves in vulnerable situations in all countries due to socio-cultural norms and structures that perpetuate discriminatory systems. In some countries, national legislation and the patriarchal organisational and decision-making structures of their communities prevent their voices from being heard. They may face heightened economic insecurity, particularly where existing legal frameworks or cultural norms restrict their access to employment. They are also more likely to experience violence, harassment, or other forms of abuse.	Official and traditional women's representatives within the community (where they exist). Examples from practice: Local or regional delegates for women's rights and gender equality (if existing), women's Chairperson (in certain chiefdoms, e.g. Côte d'Ivoire); "Queens" in certain communities, Women's Advisory Committee, Women's Circle, advisors or councillors selected within villages (e.g. Badienou Gokh in Senegal)[127]; local women's associations (e.g. women entrepreneurs' groups); or women's sections of neighbourhood committees. Also local NGOs advocating for women's rights or combating gender-based violence, as well as local branches of international organisations promoting gender equality.
Minorities (national, ethnic, linguistic, religious or political minorities)	These minorities may face systemic discrimination, sometimes enshrined in law, in terms of access to employment, public services, education or participation in decision-making processes, as well as unconscious bias and stereotyping. They may be socially, economically or politically marginalised and, in some cases, subject to prejudice, exclusion or persecution because of their identity or beliefs.	Local religious leaders, cultural or ethnic associations at local and regional level. Also specialised researchers, ethnologists, sociologists, local NGOs, and branches of international organisations (e.g. Minority Rights Group International, UN Special Rapporteur on Minority Issues).
Migrants, Refugees and Displaced Persons	The situation of migrants is often precarious and may expose them to increased risks of discrimination and/or violence, within host communities. Their access to public services may be hindered.	Local associations supporting refugees and migrants, social and professional reintegration groups, and local branches of international organisations (e.g. UNHCR, International Organisation for Migration (IOM), International Committee of the Red Cross (ICRC), branches of the UN Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW)). Migrants' Committees existing in certain communities (notably in certain chiefdoms in Côte d'Ivoire).
LGBTIQ+ People	LGBTIQ+ people may be subjected to discrimination and violence on the basis of their sexual orientation or gender identity. Depending on the prevailing tradition, culture, history, and sometimes even the applicable legal framework, they may face threats of death or imprisonment and, in some contexts, must hide to ensure their safety. They also face stigma, marginalisation, and exclusion from essential services such as health, employment and housing.	Local or regional associations supporting and defending the LGBTIQ+ rights, local LGBTIQ+ leaders and human rights defenders, health and protection centres for survivors of violence, and local branches of international organisations and NGOs (e.g. International Lesbian, Gay, Bisexual, Trans and Intersex Association – ILGA).
Groups Occupying Land Without Legal Title	These groups, often living in precarious conditions, occupy land without legal title, sometimes for generations[128] where they have established informal settlements characterised by a lack of basic sanitation and limited access to essential services such as water and electricity. These groups are at risk of forced eviction due to their informal status, violence and unstable living conditions. They may also be marginalised by certain members of the community.	Community representatives of occupants, local organisations defending the right to housing, local branches of international organisations and NGOs, and local lawyers specialising in land rights.

Children and Adolescents	Because of their stage of physical and mental development, children and adolescents are particularly vulnerable to psychological, physical and sexual abuse, including exploitation such as child labour or trafficking, especially in conflict zones and occupied territories. They may be more affected than adults by precarious living conditions, particularly in relation to nutrition, health and access to education. Their voices are often under-represented in decisions that directly concern them. Girls face specific risks of gender-based violence, including sexual assault, early and forced marriage, and may be denied access to education. They are also disproportionately exposed to discrimination and invisibility in decision-making processes.	Youth organisations or committees, neighbourhood or municipal/regional youth associations; parents' associations; school principals and teachers; local health professionals (particularly on early pregnancy issues); sports associations for adolescents; organisations supporting young people in difficulty or out of school; child protection and education at local or national level; and local branches of international organisations such as UNICEF or Save the Children. In some African chiefdoms, notably in Côte d'Ivoire, there is a "Youth President" who represents the voice of the community's younger members and adolescents.
People Living With HIV/AIDS or Other Physical or Mental Health Conditions	They may face social stigma and discrimination in access to employment, health care and social services. They are often marginalised and may face prejudice or even risks of violence.	Local patient groups and self-help groups, political representatives responsible for health, local health associations and professionals, hospital focal points or clinic directors, nurses, local branches of international NGOs (e.g. Médecins Sans Frontières, Red Cross) or international organisations (e.g. WHO, UNAIDS).
Human Rights Defenders	Human rights defenders, particularly in conflict zones or under repressive regimes, face death threats, violence, intimidation and, targeted reprisals by local actors, authorities, or certain groups within the community (often those supportive of the project). They are sometimes excluded from decision-making processes and face restrictions on their freedom of expression.	Local and national human rights organisations, local NGOs, local branches of international NGOs (e.g. Global Witness, Amnesty International).
Persons With Disabilities	Persons with disabilities may face major barriers to employment, exposing them to increased economic insecurity. They also face barriers to accessing education, particularly due to distance or inaccessible infrastructure. They are often excluded from decision-making processes and frequently face prejudice or stigma. Their participation in social life is often limited.	Local representatives of organisations of persons with disabilities, managers of specialised centres, family caregivers, and local branches of international organisations and NGOs.
Older Persons	Older persons can be vulnerable to social isolation, economic exclusion and limited access to health services. Their physical and mental conditions can make it difficult for them to participate in community engagement with the business. In some cultures and communities, they play a leading role as advisors, while in others their voice is overlooked.	Local pensioners' associations, representatives elderly care centres, community or charities organisations dedicated to older people. In other contexts, traditional representative bodies such as the Council of Elders or Council of Wise Persons, Council of Notables, or Spiritual Advisors.

* This table is based on the work of Global Compact Germany and Twentyfifty Ltd, Stakeholder Engagement in Human Rights Due Diligence, A business Guide, See Appendix, Overview of Potentially affected / vulnerable groups (2014).

BUSINESS CASE STUDIES

Engagement with Vulnerable Groups

CASE 1

Engaging Young People and Gathering Their Views (South America – Construction and Energy Sectors)

As part of a large infrastructure project, a business implemented two initiatives to raise awareness among young people of the risks associated with the project and to gather their ideas on community priority social projects:

- **Communication through a comic strip in the local language:** The aim of this comic strip was to inform young people about the different phases of the project, potential risks linked to its implementation, and existing grievances channels. This engaging and educative format helped simplify complex information, making it easier to understand and generating young people's interest, thereby strengthening their participation.
- **Organisation of a sports and arts day for young people:** the business worked with local associations to organise a day combining sports (football tournament, running relay) and artistic activities. During this event, a participatory workshop enabled young people to express their views on the relationship between the business and the community, share concerns, and suggest priority social projects.

CASE 2

Identifying Context-Appropriate Ways to Engage With Women in a Community (South America, Sub-Saharan Africa and Asia – Agricultural, Mining and Beauty Sectors)

- **Analysis of community dynamics with a local expert:** several businesses reported collaborating with independent local experts, local NGOs or local contact points of international NGOs to better understand community social and cultural dynamics, power relations, the place and role of women, and the places and times where they traditionally gather;
- **Identifying suitable venues for secure and confidential consultations:** In some contexts, prior approval from the village chief or traditional authorities is required before any direct involvement with women can take place, which can be sensitive given the need to respect local social structures and identify safe and confidential spaces for consultations. With support from local experts who facilitated the discussions, traditional gathering places such as wash areas, water collection points or tea houses were identified by a business as suitable spaces for safe and confidential dialogue with women, particularly when the project is located in an area of inter-community tension or in a conflict zone.

D. ENGAGING AFFECTED COMMUNITIES IN CONFLICT AND HIGH-RISK AREAS

Engaging affected communities in conflict and high-risk areas requires a tailored approach to ensure the safety of both the communities and the personnel involved. The elements below provide an overview of the points to bear in mind and make some recommendations in this respect. This is by no means an exhaustive list, and we encourage readers to consult the resources below for more in-depth information.

The OECD defines conflict and high-risk areas (or CAHRAs) as follows[129]:

"Conflict-affected and high-risk areas are identified by the presence of armed conflict, widespread violence or other risks of harm to people. Armed conflict may take a variety of forms, such as a conflict of international or non-international character, which may involve two or more states, or may consist of wars of liberation, or insurgencies, civil wars, etc. High-risk areas may include areas of political instability or repression, institutional weakness, insecurity, collapse of civil infrastructure and widespread violence. Such areas are often characterised by widespread human rights abuses and violations of national or international law."

In conflict-affected or high-risk areas, direct engagement by businesses with affected communities and their legitimate representatives, and even with vulnerable groups within them, may sometimes be impossible or may endanger them.

In such cases, it is essential to draw on local expertise (e.g. sociologists, anthropologists and ethnologists, academic researchers, NGOs or local human rights institutions) to understand the root causes of the conflict, the actors, the forces and dynamics at play, and to capture the voices and interests of the most vulnerable while ensuring the safety of those involved.

Similarly, the suspension or cessation of commercial activities may have major consequences for affected communities in these areas, which often depend on them for their livelihoods.

> **In certain contexts, particularly in high-risk areas, it is important to surround oneself with the best possible local experts to avoid making mistakes such as exacerbating a local intra-community or territorial conflict, failing to take gender into account, or doing so in a culturally inappropriate manner [...]. It would indeed be ironic to hear their voices only to put them at risk!**
> **We leave, but they stay.**
>
> **Head of Human Rights in a multinational company**

A Few Recommendations and Points to Bear in Mind

1. Analysing Conflict and Vulnerability

- **Analysing the root causes of the conflict:** this analysis, carried out in collaboration with local experts, provides a better understanding of existing tensions, the actors involved, the risk factors, and helps devise engagement strategies tailored to the reality on the ground;
- **Maintaining impartiality:** in contexts marked by armed conflict, and in particular ethnic conflict(s), it is essential for businesses to preserve impartiality and not exacerbate existing tensions. This means not being perceived as supporting one party to the detriment of another, be it a government, a group, or a specific community;
- **Identifying the most vulnerable groups:** the conflict may have a disproportionate impact on certain groups within affected communities. A vulnerability analysis, carried out with the support of local partners, identifies the communities most at risk and their most vulnerable members (for example, ethnic minorities in inter-tribal conflict, or women and young girls whose vulnerability is exacerbated in conflict situations).

2. Identifying Potential Trusted Intermediaries and Creating Alliances

- **Identifying trusted local partners:** when direct engagement with communities is not possible, businesses should consider close collaboration with local actors, such as local or regional NGOs, associations, national human rights institutions, or experts in the area/region – who can become trusted partners on the ground. Their understanding of local dynamics helps identify safe and reliable channels for secure interaction with legitimate community representatives and certain vulnerable groups. When engagement is not possible, NGOs, associations, or locally rooted institutions can act as intermediaries to convey communities' voices without putting them at risk.
- **Pooling efforts through sectoral, inter-business or multi-stakeholder alliances:** businesses operating in the same region can form coalitions to pool efforts on safety, risk management and human rights. This approach is especially relevant when several businesses share the same sphere of influence and communities. By joining forces, businesses can share knowledge about risk factors and existing tensions/conflicts, deepen their understanding of local community dynamics, and avoid duplicating initiatives that are often costly and ineffective.

3. Securing Communication Channels and Grievance Mechanisms

- **Confidentiality and security of communications:** it is important to ensure that information gathered via NGOs or local associations is processed safely to protect the people concerned. The confidentiality of exchanges is essential in conflict and high-risk areas, to avoid exposing individuals and groups to harm;
- **Early-warning and grievance management systems:** context-sensitive and risk-adapted grievance systems must be implemented or reinforced. Ensuring that these systems are accessible to all affected stakeholders, including vulnerable groups such as women, remains an operational challenge for many businesses. Businesses may, thus, rely on trusted local actors, such as community organisations, NGOs or independent experts, to collect and transmit concerns safely through appropriate channels.

4. Managing Community Impacts and Responsible Disengagement

When deciding to suspend or end operations, businesses should **adopt a proactive, planned approach** to minimise adverse impacts on affected communities and prevent escalating existing tensions.

- **Risk assessment:** before withdrawal, businesses should evaluate whether suspending or exiting could worsen local tensions or cause greater harm than potential benefits.
- **Planning, anticipation and mitigation:** a clear exit strategy should anticipate short- and long-term risks and include mitigation measures to reduce the adverse impacts on communities (for example, giving reasonable notice to the affected communities, maintaining workers' income during temporary suspension, or offering training to build skills and mitigate job loss. These actions also help support the economic resilience of communities from which the workforce is drawn.
- **Respecting human rights and the continuity of community initiatives**: to ensure the continuity of social or development programmes, businesses should consider transferring or transitioning responsibility to capable local partners. This may include local authorities, NGOs (local, regional or international), or community-based associations. In sale or transfer negotiations, businesses should use their leverage to include specific human rights clauses with the buyer. Such clauses should also provide for the continuation or resumption of ongoing community projects.

This list of recommendations has been developed from the following resources, which can be consulted for further information:

- United Nations Development Program (UNDP), Strengthening Corporate Human Rights Due Diligence in Conflict-Affected Contexts: A Guide. (2022).
- Report of the Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises - Business, Human Right and Conflict-affected Regions: Towards Heightened Action United Nations document A/75/212 (2020).
- Gender dimensions of the Guiding Principles on Business and Human Rights - Report of the Working Group On the Issue of Human Rights and Transnational Corporations and Other Business Enterprises United Nations document A/HRC/41/43 (2019).
- OECD Due Diligence Guidance for Minerals May Be Used by Any Company Potentially Sourcing Any Minerals or Metals From Conflict-Affected and High-Risk Areas (2016).
- Geneva Centre for the Democratic Control of Armed Forces (DCAF) and International Committee of the Red Cross (ICRC): Rising the Challenges of Safety and Human Rights in Complex Environments, The Good Practice Guide, Third Edition (2016). See in particular Chapter IV. Working with communities.
- Gender Action for Peace and Security (GAPS), Women for Women International, Amnesty International, Womankind and Saferworld, "Beyond Consultations: A Tool for Meaningfully Engaging with Women in Fragile and Conflict-Affected States" (2020).
- UN Women, Guidance Note: Gender-Responsive Conflict Analysis, (2022).

STEP 5

SETTING UP EFFECTIVE GRIEVANCE MECHANISMS TAILORED TO AFFECTED COMMUNITIES

A. IMPORTANCE OF GRIEVANCE MECHANISMS

- **Improving human rights practices:** setting up grievance mechanisms enables businesses to better identify and address adverse human rights impacts in a timely and appropriate way;
- **Preventing conflict:** a well-structured grievance mechanism enables affected communities and their legitimate representatives to raise concerns and report potential harms before they escalate into major disputes, thereby supporting constructive dialogue and long-term peaceful resolution;
- **Access to remedy:** such mechanisms provide affected communities with a direct and accessible avenue to seek redress and remediation for harm suffered.

B. KEY CONSIDERATIONS AND OPERATIONAL CHALLENGES

■ Adapting grievance mechanisms

Some businesses seek to adapt, expand, or in some cases replicate their their internal grievance mechanisms (e.g. ethics hotlines, online platforms or e-mails) for use with affected communities. Mechanisms originally designed for workers, often in structured work environment avant le and equipped with access to digital technologies, are not always suited to the local realities of communities.

Although such tools may be effective within the workplace and inside the walls of the business, their adaptability to affected communities may face significant operational barriers, particularly in remote settings or among groups less familiar with such technologies (e.g. ethics hotlines).

Standardised grievance mechanisms often fail to take account of the cultural, linguistic and social dynamics of affected communities, which can limit their uptake and effectiveness. In societies with oral traditions, written tools (suggestion boxes, emails, digital platforms for filing complaints) may generate mistrust or misunderstanding, reducing their effectiveness.

In addition, the grievance mechanisms should be proportionate to the nature, scale and complexity of the project.

■ Community engagement in the development of grievance mechanisms

Standardised mechanisms are often developed unilaterally by businesses, without the participation of affected communities. However, **international standards advocate a collaborative approach**, in which businesses and communities work together to design the mechanism, ensuring its adaptability to local realities, effective implementation, and continuous monitoring **(see table below).**

For instance, some businesses that contributed to this guide **reported that they had consulted community representatives to determine the most appropriate locations for "suggestion or grievance boxes."** In particularly sensitive contexts, a gender-sensitive approach was prioritised. Consultations with women's groups helped identify the most appropriate mechanism and define measures to prevent potential reprisals.

Community-centred alternatives have also emerged, promoting ownership and sustainability of the mechanism. One example is the Community-Driven Operational Grievance Mechanism (CD-OGM), a community-based and participatory model developed by a coalition of NGOs led by EarthRights International[130].

■ Role of business coalitions and sectoral initiatives or multi-stakeholder platforms in the development of grievance mechanisms

Business coalitions, sectoral initiatives and multi-stakeholder platforms can play a key role in the design and implementation of shared grievance mechanisms, particularly where multiple businesses operate within the same territory or in similar supply chains with common suppliers.

Faced with similar challenges, businesses may choose to adopt collective approaches, notably by overcoming competition-related concerns. **Such collaboration helps avoid the duplication of systems and prevents the same community from facing multiple grievances mechanisms**, often in the form of ethical hotlines or complaints boxes,implemented by different businesses.

A collective approach also helps enhance the effectiveness and consistency of grievance mechanisms implemented by businesses. Businesses can rely on international or regional organisations[131] that encourage and facilitate field assessments on the adaptability of grievance mechanisms and carry out multilateral pilot projects to design standardised systems adapted to local contexts and built on shared corporate efforts.

C. EFFECTIVENESS CRITERIA FOR NON-JUDICIAL GRIEVANCE MECHANISMS (Principle 31 of the UN Guiding Principles)

Effectiveness Criteria	Scope	Practical Questions to Consider (non-exhaustive list)
Legitimacy	The legitimacy of a grievance mechanism means that it is perceived as **credible, impartial and transparent** by affected communities. In practice, this involves: ■ Compliance with **legal and international standards** ■ **Consultation with affected communities during the design phase of the mechanism** ■ **Independence** in investigations, with the involvement of independent experts to investigate complex grievances ■ **Transparency** in communicating procedures to complainants and in handling grievances ■ **Responsiveness** in handling grievances ■ Proportionate and adequate **corrective measures**	■ Was the mechanism designed in consultation with affected communities, including vulnerable groups? ■ How is transparency and communication with complainants ensured, particularly regarding progress and decisions? ■ Does the mechanism guarantee timely and responsive handling of grievances? ■ What processes are in place to incorporate feedback from communities on the effectiveness of the mechanism over time?
Accessibility	The mechanism is **communicated to all relevant stakeholder groups** within affected communities. The business provides **appropriate assistance** to those facing specific barriers to access. In practice, this involves: ■ **Multiple access channels:** offering different means (online platforms, e-mail, phone lines, or in person via community liaison officers or through business representation offices in host communities) to ensure accessibility for all. Adaptability to the local context, especially in remote areas or where digital connectivity is limited (notably no reliable access to the Internet or mobile network);	■ Is the mechanism accessible in the language(s) of affected communities, and are procedures adapted to local cultural realities? ■ Is the mechanism adapted to the local context, taking into account community dynamics, including potential conflicts? ■ Is the language used to explain the mechanism and procedures simple, clear and understandable for all categories of complainant? ■ Is the mechanism effectively communicated to all affected communities (e.g. through awareness campaign)? ■ Are grievance collection tools adapted to local technological realities, and are alternatives available for people without digital access?

Effectiveness Criteria	Scope	Practical Questions to Consider (non-exhaustive list)
	■ **Adapting to language and culture:** provide the mechanism in the local languages and dialects of affected communities and consider cultural specificities (e.g. dominant oral culture). ■ **Ensuring simplicity of use:** make sure the process is clear and easy to understand, without complex jargon or technicalities (for example, categorising grievances by "severity level 1, 2, or 3" may not be easily understood by communities). ■ **Take into account individuals facing specific barriers** (reduced mobility, illiteracy or limited educational background to complete online complaint questionnaires, etc.).	■ Is the mechanism available continuously (24/7)? If there is a physical office within the communities, are its hours and locations accessible to all?
Predictability	The mechanism includes **a clearly defined procedure**, with an indicative timeline for each step. This allows communities to know what to expect and to easily monitor the **progress of their grievance**. In practice, this involves: ■ **Defined timelines** for each step (initial response, investigation, decision). ■ **Clear procedural steps for grievance handling**, with regular updates to complainants on case status. ■ **Transparent and predictable** decision-making criteria.	■ Is the complainant informed of the expected timeframe for handling the grievance? ■ Does the mechanisms provide clear timelines for grievance handling while accommodating urgent cases? ■ How to manage urgent or critical situations that require rapid action? ■ Does a systematic monitoring process exist, including periodic audits and input from affected communities, to verify that grievances are addressed within the established timelines?
Equitability	The mechanism guarantees parties fair access to the information, advice and **necessary resources** to pursue their grievances in **fair and transparent** conditions. It also ensures that grievances are handled impartially, giving all parties an equal opportunity to participate effectively in the process. In practice, this involves: ■ **Impartiality** in grievance handling. ■ **Equal access** for all parties to information and the process. ■ **Protection against reprisals**, particularly for at-risk groups (e.g. women, where there may be an heightened risk of reprisals).	■ Do complainants have the information needed to understand their rights and follow the process? ■ How does the mechanism protect complainants from retaliation? ■ Are vulnerable groups (women, children, migrants, elders) adequately represented? ■ Are the people responsible for receiving and handling grievances trained and genuinely independent?
Transparency	The mechanism has procedures to keep users informed of **the progress of the grievance.** Does it provide **sufficient information** on the capacity of the mechanism to inspire confidence in its **effectiveness**. The transparency of the mechanism strengthens confidence in the system. In practice, this ensures: ■ **Availability of information** on process steps and decision criteria. ■ **Regular communication** with complainants on the progress of grievance handling. ■ **Publication of measures taken,** respecting confidentiality.	■ Are complainants regularly informed of the progress and outcomes, in a clear and understandable format? ■ Are decision-making criteria and confidentiality guarantees clearly defined and respected? ■ Are public reports published to strengthen transparency and confidence in the mechanism?

Effectiveness Criteria	Scope	Practical Questions to Consider (non-exhaustive list)
Rights-compatibility	The mechanism ensures that the outcomes of grievance processes and remediation measures are consisten with **internationally recognised human rights**. In practice, this involves: ■ **Protection of human rights** and stakeholder rights. ■ **Respect for the confidentiality of** information and privacy. ■ **Access to remedy** for all affected person	■ Is personal data protection guaranteed, and are measures in place to limit access to sensitive information and monitor who can access it internally? ■ What measures exist to prevent, address, and sanction reprisals against complainants? ■ Does the mechanism allow recourse to an independent mediator in cases of unresolved conflict? ■ Are complainants informed of available avenues of appeal if they are not satisfied with the handling of their grievance?
A Source of Continuous Learning	The mechanism is intended to support continuous improvement. It aims to prevent **future grievances human rights violations**. In practice, this involves: ■ **Analysis of grievances** to identify recurring patterns and trends. ■ **Improving practices based on lessons learned and on users' own assessment** of the mechanism's effectiveness. ■ **Ongoing capacity-building and training** for the teams involved.	■ Do communities and responsible teams receive appropriate training to use the mechanism and handle sensitive grievances (e.g. gender violence, security, human rights)? ■ Is the mechanism regularly updated, incorporating lessons learned and feedback from affected communities? ■ How is feedback from affected communities used to improve the mechanism over time?
Based on Engagement and Dialogue	The mechanism is based on **the active participation of affected community members** in its design and promotes open dialogue to resolve grievances. In practice, this involves: ■ **Regular consultation with complainants** and other relevant stakeholders. ■ **Exchange of information and feedback** to enhance mutual understanding and improve the mechanism. ■ **Co-creation of solutions,** taking into account the perspectives of all parties involved.	■ Were affected communities consulted during the design of the grievance mechanism? ■ Do communities participate in resolving their grievances, including choosing an appropriate remediation? ■ Are working groups, mediation committees or regular forums established to address major or recurring problems relating to the mechanism for handling grievances? ■ Are independent mediators or facilitators involved to ensure constructive and impartial dialogue? ■ What avenues of recourse are available to complainants if their grievance is not satisfactorily addressed?

BUSINESS CASE STUDIES

Accessibility and Adaptability of Grievance Mechanisms

CASE 1

Use of Social Networks and Instant Messaging to Strengthen the Accessibility of the Mechanism (South America, Energy and Extractive Sectors)

In South America, the WhatsApp messaging application has become the most widely used communication platform across generations. It has become an essential tool for daily information exchanging, even in regions with limited access to other digital technologies.

Through a dedicated number, complainants from affected communities can directly contact a community liaison officer, who uses it as a channel to send grievance forms or links to confidential and secure online systems. No complaints are collected directly via WhatsApp.

The WhatsApp application is also used to explain the steps of the grievance process and, where necessary, to assistindividuals in articulating the reasons for their complaint.

While this approach is highly effective in fostering smooth and inclusive dialogue, it raises challenges related to confidentiality of personal data. Businesses must therefore ensure that appropriate safeguards are in place to prevent the collection of sensitive data through the platform and to ensure that all data is handled confidentially throughout the process.

CASE 2

Raising Grievances Through Legitimate Representatives in Dedicated Roundtables (Chile – Energy Sector and Extractive Sectors)

Some businesses have established dedicated roundtables for the escalation of grievances, in collaboration with legitimate representatives holding a legal or traditional mandate of representation. These representatives, with a solid educational background and extensive experience in advocating for local interests before regional institutions, can effectively represent community members and play a key role in bringing grievances forward. This structured and interactive framework enables constructive dialogue between the business and the communities, addressing the root causes of the grievances and identifying context-appropriate avenues for resolution.

Photo: Bruna Fiscuk / unsplash

CASE 3

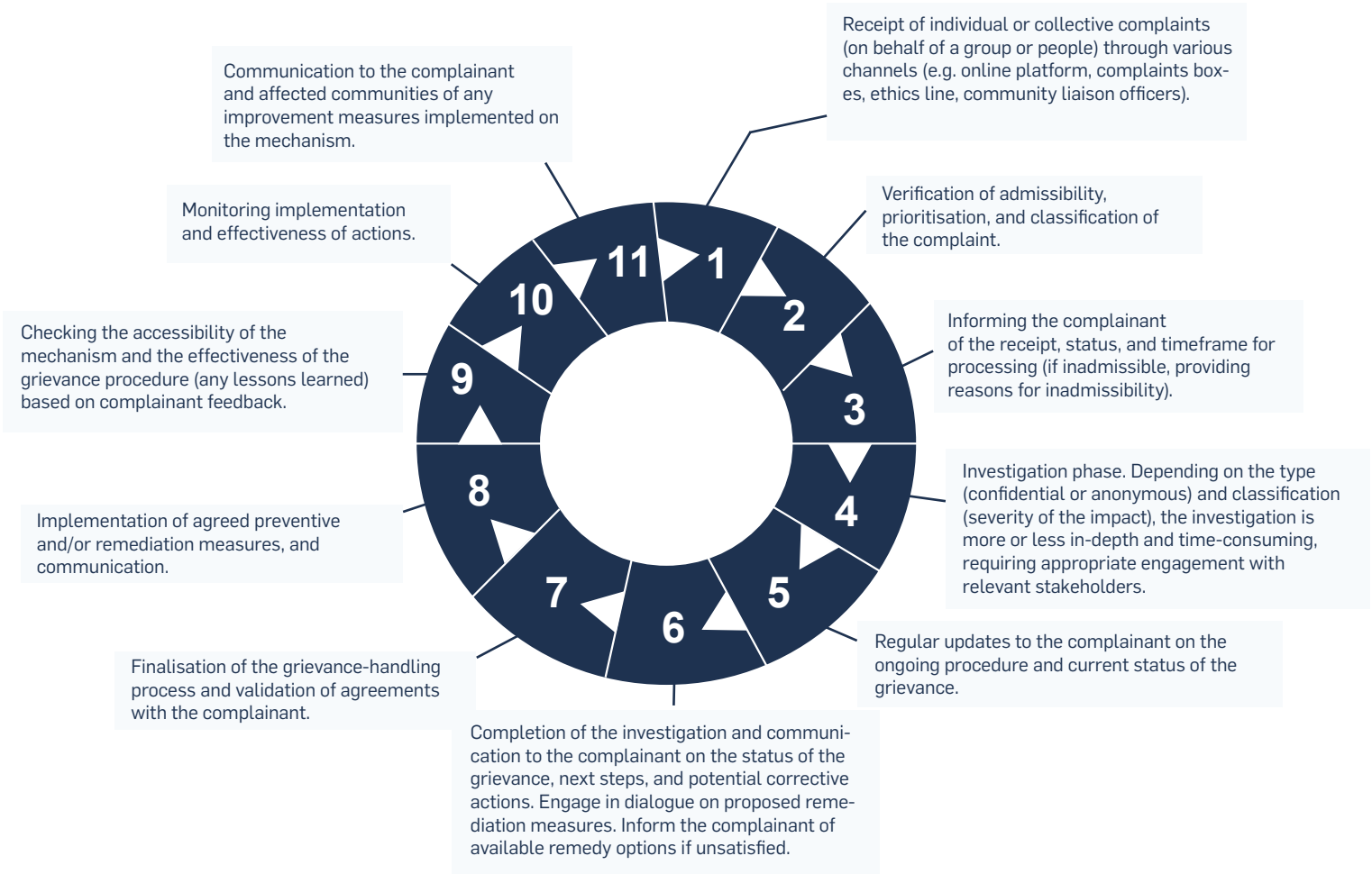
Pilot Project for the Implementation of Grievance Committees in Selected Priority Communities (Côte d'Ivoire - Agricultural Sector)

As part of a pilot project aimed at strengthening monitoring and grievance management mechanisms related to child labour and forced labour, an agricultural business established 18 grievance committees, one in each of the communities participating in the pilot project:

- **Composition and representativeness:** each grievance committee is designed to reflect the diversity of the community it serves. Chaired by the village chief, these committees include representatives from each social and ethnic group in the community, as well as religious representatives, thereby ensuring that all local perspectives are taken into account and generating greater confidence in the mechanism;
- **Role and functioning of the grievances committee:**
  - → To collecting grievances and ensure appropriate follow-up by the business. These committees address all human rights concerns, with a particular focus on child and forced labour.
  - → To raise community awareness on the importance of reporting grievances, regardless of their nature. The business then assesses each grievance to determine whether it falls under its own responsibility or that of another competent entity.
- **Reporting grievances:** committee members, appointed by the community, can receive grievances directly and confidentially, including through individual interviews. Anonymous reporting is also possible: complainants may submit grievances anonymously by completing forms available within the community, allowing them to describe the facts without revealing their identity. These forms are then collected by the committee members and forwarded to the business for processing. However, this form of anonymity has certain limitations, as it may complicate the collection of evidence and additional information essential for the effective resolution of grievances;
- **Training and awareness-raising:** committee members have received specific training, including awareness sessions to clarify the data collection process, information sharing, and data confidentiality, taking into account the vulnerabilities of certain groups;
- **Collaboration with relevant local and national authorities:** for grievances deemed outside the business' responsibility, collaboration was established with public authorities and relevant local (social services) and national services (justice, health, women's rights). Once this has been done, the business informs the Grievances Committee of the nature of each complaint and how it has been dealt with, including the action taken in the case of complaints referred to social services or other competent authorities.

D. MONITORING AND HANDLING OF COMMUNITY GRIEVANCES

The Virtuous Circle of Monitoring and Handling Grievances with Affected Communities[132]



! Points to bear in mind

- ***Respond systematically to grievances received***

To build and maintain trust in the grievance mechanism, it is essential that the business ensures **a systematic response** to all registered grievances, even when a complaint is considered minor or can be resolved quickly. The business should inform complainants when they can expect to be contacted and explain the grievance handling process.

- ***Reasonable response timeframe***

It is recommended that the business make a public commitment to communities by establishing clear response timelines, communicated through awareness raising campaigns and, where appropriate, visible displays. For instance, some businesses interviewed commit to responding within 48 hours for simple grievances, and up to 15 or 30 days for those requiring a more in-depth investigation. However, grievances that are urgent due to the severity of the impact must be handled as a priority and within a short timeframe.

Complainants should always be reminded of this timeframe, even if awareness-raising has already been carried out at the collective community level. It is also crucial that the staff responsible for receiving grievances have the authority to address routine matters and can promptly refer more complex cases to higher management levels, ensuring efficient and streamlined handling of all situations.

STEP 6

ESTABLISHING PROCESSES TO ENABLE EFFECTIVE REMEDIATION

Ensuring access to effective remedies for affected communities remains a complex challenge, particularly outside the legal system. The internal mechanisms implemented by businesses are often insufficient in practice to meet the expectations of affected communities, who are seeking justice and appropriate remediation for the adverse impacts they have suffered. In addition, businesses are often reluctant to go public with their remediation actions or to acknowledge their responsibility for the harm they have caused or contributed to, fearing reputational repercussions, financial costs, the setting of precedents, or potential legal action.

As the UN Guiding Principles on Business and Human Rights state, "access to effective remedy has both procedural and substantive aspects.[133]". Accordingly, "when a business enterprise provides remediation in cases in which it identifies that it has caused or contributed to adverse impacts, such remediation should be effective in terms of both process and outcome[134]". **Thus, an operational-level grievance mechanism, even if well designed, does not in itself guarantee the right to an effective remedyfor human rights or environmental abuses committed by businesses**.

It is essential that the **grievance mechanism procedure can lead to concrete results**, when a complaint is found to be legitimate, **to effective remediation** for affected communities, one that restores the individual or group harmed **to their situation prior to the violation, or to an equivalent state deemed acceptable by them.**

Grievance mechanisms and remedial mechanisms are therefore complementary in guaranteeing a right to effective remediation.

Discussions during the development of this guide highlighted the need for an open and transparent dialogue, which is still too rare, between businesses and affected communities, to identify effective remediation practices and obstacles, and to explore the reasons why certain approaches fail.

A. ENGAGING WITH AFFECTED COMMUNITIES TO IDENTIFY AND IMPLEMENT REMEDIATION MEASURES

> "Those who know how to soothe the pain are those who have suffered the harm."
>
> **Leader of a coastal community of non-indigenous fishermen (Chile)**

Access to justice and the right to an effective remedy is a fundamental principle universally recognised by international law and guaranteed by the main international human rights instruments[135].

The UN Guiding Principles on Business and Human Rights and the OECD Guidelines clarify that **businesses that have caused or contributed to adverse impacts on human rights or the environment have a responsibility to provide for or co-operate in their remediation** by joining forces with other players (for example, other businesses involved, via sectoral or multi-stakeholder initiatives or in collaboration with the government). These requirements have been incorporated into the provisions of the CSDDD **(see Appendix 5 | Focus on Standards and Norms Applicable to the Remediation of Adverse Impacts).**

When a human rights or environmental abuse has occurred that the business enterprise has not caused or contributed to but which is directly linked to its operations, products or services by a business relationship, **the responsability for providing or co-operating in remediation lies with the entity that caused or contributed to the violation**. However, the business enterprise has a responsibility to use its leverage to influence the entity that caused or contributed to the adverse impact to mitigate or remediate that impact it[136] **(see Part VI, 1., Using Leverage)**.

The proposed remediation measures must be consulted with affected communities, adapted to the local context and the vulnerability of the individuals or groups affected, effective and delivered within a reasonable timeframe. Remediation can be individual or collective. In some cases, collaboration with state mechanisms, whether judicial or non-judicial, is essential.

B. EFFECTIVENESS CRITERIA FOR THE OUTCOMES OF REMEDIATION PROCESSES

In accordance with the international standards and guidelines of the United Nations Working Group on the issue of human rights and Transnational Corporations and Other Business Enterprises[137] remedies to qualify as "effective" need to meet some criteria[138]:

- **Adequacy**: remedies must be proportional and appropriate, taking into account the severity and scale of the human rights and environmental harm suffered, as well as the potential long-term impacts. A certain amount of flexibility must be envisaged to remedy any future harm-harm not identified at the time of the agreement on remediation (see box on next page). In addition, remedies must be tailored to the specific expectations of the various groups affected, in particular those in vulnerable or marginalised situations, who may experience the harm in an exacerbated way and have particular needs in terms of the forms and methods of redress;
- **Effectiveness/Capacity to restore**: remediation measures must be able to put an end to the actions and other factors that caused the harm, and restore the individual or affected groups to their original position before the harm occurred, or as close as possible to that position;
- **Timeliness**: timely remediation is essential to prevent excessive delays from amounting to a denial of justice. Timeliness depends on a number of factors, including the complexity of the case, the operational context (for example, in a conflict zone or high-risk area), as well as the severity of the abuse and the specific situation of the person or group affected. Individuals and groups who have been severely affected while also being in a situation of heightened vulnerability (for example, those exposed to toxic substances, to environmental pollution presenting serious short- or medium-term dangers to health or life, or those whose livelihoods are seriously threatened) therefore require an accelerated response.

C. NOT A SINGLE FORM OF REMEDIATION, BUT MULTIPLE FORMS OF REMEDIATION

In practice, **financial compensation often tends to be the preferred** form of remediation by businesses, even though it cannot, on its own, fully address the needs of affected communities, depending on the context. In practice, there is **a range of remedies that are far more adapted to the local realities of communities and the specific needs of vulnerable groups** within them, and these remedies must be the subject of meaningful dialogue.

A nuanced approach to remediation is required: remedies must be varied and complementary in order to provide a truly appropriate response, taking into account the diversity of abuses suffered and the expectations of rights-holders.

A nuanced approach to remediation is required: remedies must be varied and complementary in order to provide a truly appropriate response, taking into account the diversity of abuses suffered and the expectations of rights-holders. Remediation measures can also be combined.

Restitution: measures aimed at restoring affected individuals or groups to the situation they were in before the rights infringement occurred (for example, enabling rights-holders to recover their land or return to their place of residence from which they had been displaced, or the return of cultural property that was removed from the community).

Financial compensation: compensatory measures for economically assessable harm such as loss of income, material harm or physical or psychological harm, depending on its severity. Financial compensation must "be fair and proportionate to the gravity of the harm suffered and never offered in lieu of potential criminal liability.[139]" Nor should it create or exacerbate existing intra-community conflicts. Compensation may also cover the costs associated with legal assistance, medical care, psychological services and other services needed to support affected communities in the negotiation process with the business on the form of remediation.

Rehabilitation: actions designed to promote the rehabilitation of rights-holders, including, for example, the provision of goods comparable to those that have been infringed. For example, when communities have been "displaced from their land because of an infrastructure project or the construction of a dam [or agri-food projects], only a provision for a suitable alternative piece of land may offer an effective remedy [140]". Examples may also include vocational and entrepreneurial training, medical care, psychological support and legal and social services.

Satisfaction: this type of remediation, often symbolic or corrective, is essential to compensate for what cannot be monetised and to restore the dignity of the individuals, groups affected and sometimes the community as a whole, particularly in the case of Indigenous and Tribal Peoples. So-called "satisfaction" includes measures such as a formal apology accompanied by an "acknowledgement of the facts[141]" **(see focus on next page)** and the business' acceptance of responsibility, as well as commemorations or tribute ceremonies in honour of the victims. These measures are particularly important when it comes to remedying harm inherited from the past, which can have an impact on several generations.

Guarantees of non-repetition: measures designed to prevent the recurrence of similar abuses in the future, in particular by modifying internal policies, improving management systems or changing business practices. These safeguards may include training in human rights (including the rights of Indigenous and Tribal Peoples, where applicable) for employees, to increase their awareness and ability to prevent such abuses. In some cases, this may also involve replacing on-the-ground staff, such as community liaison officers or security personnel, when abuses are identified.

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The Need for Socio-Culturally Appropriate Forms of Remedy

Applying a Gender Lens to Remediation to Avoid Worsening Inequalities and Power Imbalances

In many cultures, community power structures are dominated by men, which can hinder women's access to effective remediation. The payment of financial compensation in the form of cash exposes women more to the risk of these funds being confiscated by male members of their family or within the management bodies. Alternative forms of remedies, such as access to healthcare, psychological support and economic development and entrepreneurship programmes, may be more relevant and tailored to women's needs. The women members of the communities involved in drawing up this guide also expressed the wish to pay particular attention to the inclusion of the younger generations by granting school bursaries for their children as a potential means of additional compensation.

Indigenous and Tribal Peoples and Collective Versus Individual Remedy

In the case of Indigenous and Tribal Peoples, their unique relationship with land and other resources means that conventional forms of remediation (material or monetary) are often unsuitable, particularly in resettlement situations. In this context, a collaborative, collective and culturally appropriate approach to remedy is needed. Indeed, every harm inflicted on one member has repercussions for the whole community. It is important to ensure that each measure taken genuinely benefits the whole community.

Environmental Harm and the Importance of Traditional Knowledge in Remedy

Environmental harm often has a disproportionate impact on communities, particularly for Indigenous and Tribal Peoples, rural communities and small-scale fishermen, whose way of life is deeply rooted in the balance of ecosystems. These communities possess unique traditional knowledge and a detailed understanding of local ecosystems, passed down through generations, which can be invaluable in guiding businesses in their efforts to effective remediation of adverse impacts and restore natural resources.

Photo: Eva Blue / unsplash

BUSINESS CASE STUDIES

CASE 1

Formal Apology to the Community's Traditional Chiefs (Côte d'Ivoire – Agricultural Sector)

Initially, certain crucial steps in community engagement had been neglected by one business, notably the holding of a prior meeting with the community chief, which was nevertheless required by the established community relations processes. Instead of directly consulting the community's traditional leaders, the company unilaterally appointed individuals it considered resource persons to implement community development initiatives, without consulting or informing the village chief. This omission led to tensions and made it difficult to implement social programs, such as the installation of a water point and the launch of community development initiatives, which the chief opposed due to its lack of involvement in the initial process and in the choice of social projects.

To ease tensions and remedy its mistake, the business issued a formal apology, adapted to local cultural specificities and fully acknowledging its fault and the infringement on the community leadership's right to be adequately consulted.

In this context, it was essential that the apology was expressed by a line manager of the community liaison officer concerned, in recognition of the importance of hierarchy in the local culture and to reinforce the credibility of the apology. The severity of the breach means that an appropriately senior representative must take responsibility. As a result, the business' management was able to restore relations with the chiefdom and re-establish a respectful dialogue so that the projects could continue.

CASE 2

Adapting Financial Compensation and Integrating Climate Impacts Agricultural Land Compensation Processes (West Africa – Construction Sector)

As part of an infrastructure project involving the acquisition of agricultural land, one business was faced with the challenge of providing insufficient monetary compensation to guarantee a sustainable source of livelihood for the members of the communities who were essentially farmers.

Farmers have voiced their concerns, explaining that the monetary compensation envisaged to enable them to buy land in another area would only allow them to purchase land several hundred kilometres from their original location, in a more arid region that is particularly exposed to the effects of climate change, especially droughts caused by falling water levels. This situation posed an increased risk to food security and the economic viability of farmers.

In response to these concerns, the business reviewed its approach, incorporating an in-depth analysis of long-term environmental and climate impacts into its compensation process. The business opted for an adaptive compensation approach, taking into account not only the immediate needs of farmers, but also the future risks associated with climate change and environmental pressures in the areas under consideration.

The business also initiated a consultation process with the members of the community concerned, focusing on technical support and training programs in climate-resilient agriculture. These initiatives aim to enable farmers to adapt to the new conditions, diversify their crops and adopt farming practices adapted to periods of drought, thereby helping to secure their livelihoods in the long term.

D. NOT ONE PATHWAY, BUT MULTIPLE PATHWAYS TO ACCESS EFFECTIVE REMEDY FOR AFFECTED COMMUNITIES

Alongside company-led dialogue processes aimed at identifying adequate forms of remedy, or if these fail to deliver, affected communities and their representatives may pursue other avenues and engage with alternative remediation mechanisms.

Among the available options are submitting a complaint to National Contact Points (NCPs), engaging in alternative dispute resolution processes (mediation or arbitration) or initiating legal proceedings before national [142] and international courts.

National Contact Points (NCPs)

The National Contact Points (NCPs) are responsible for supporting the implementation of the OECD Guidelines for Multinational Enterprises and Responsible Business Conduct.

The NCPs, may be called upon to examine cases of alleged non-compliance with the OECD Guidelines. NCPs act as a non-judicial grievance mechanism for alleged breaches and offer a voluntary, non-judicial dispute resolution They serve as a platform through which parties can engage in dialogue to address and resolve disputes regarding the observance of the OECD Guidelines. In the context of the relationship between businesses and affected communities, two cases brought before the French NCP deserve to be highlighted:

- In particular, on 12 February 2018, the French NCP was seized by a Mexican non-governmental organisation ProDESC and by two rights defenders representing the Union Hidalgo agrarian and indigenous sub-community of Unión Hidalgo of a specific circumstance concerning the EDF Group, and EDF Renewables,(formerly EDF EN) regarding a project to build a wind farm, "Gunaa Sicaru" located in the territory of two municipalities, Unión Hidalgo and La Ventosa, in the municipality of Juchitan de Zaragoza in the state of Oaxaca in Mexico;
- The French NCP was seized on 23 November 2020 by a group of Cameroonian associations made up of the Centre d'Actions pour la Vie et la Terre (CAVT) and 14 Comités Riverains de Veille (CRV) from the sugar-producing area of the Haute-Sanaga department in the Central region of Cameroon, created in 2014, a specific case against the French groups COPAGEF and SOMDIAA, the Société d'Organisation, de Management et de Développement des Industries Alimentaires et Agricoles, concerning the agro-industrial activities of the Société Sucrière du Cameroun, SOSUCAM.

These situations highlight the need for meaningful engagement by businesses with affected communities and their representatives, in line with the OECD Guidelines, and the importance of legitimate representation of affected communities and Indigenous Peoples.

Learn More:

- https://www.tresor.economie.gouv.fr/Institutionnel/Niveau2/Pages/3838332c-55ec-481f-886b-85159bada391/files/d4739e80-2822-4a37-b7c8-b135ab966f69
- https://www.tresor.economie.gouv.fr/Institutionnel/Niveau3/Pages/8fd9ecb1-2cb5-4e35-95b7-587b6793f341/files/f28dc42f-543f-46c1-8f32-b1d029b363d5
- https://www.tresor.economie.gouv.fr/Articles/de4a9c2b-20b5-4b9c-a6f1-b688e2742c9e/files/8e4aa461-14c2-4735-af8d-c66469f763c2

1. Combating Fear of Reprisals

Individuals within communities, whether they are groups, their representatives or, in particular, human rights defenders, may fear various forms of pressure, such as intimidation, defamation lawsuits, physical violence or even serious acts such as arbitrary detention or enforced disappearance. These risks exist both in the context of a dialogue with the business to obtain remediation and when individuals choose to resort to other means, particularly legal.

To overcome these obstacles, businesses can commit at the highest level to adopting and effectively implementing a clear and firm policy against retaliation, whether it originates from their own staff or from other local actors, including government authorities. A public policy of this kind, clearly defined and disseminated in an accessible format and language, helps to create a climate of trust and ensures that everyone can exercise their right to effective remedy without fear of repercussions.

In addition, any measure to suspend or withdraw contributions to the community or social initiatives of the business for the benefit of the community or communities, in response to legal action taken by community members must be strictly avoided. It is essential to preserve trust by respecting the right of communities to take legal action without jeopardizing business' support, to avoid further exacerbating their vulnerability.

2. Avoiding Restrictive Clauses in Cooperation or Partnership Agreements With Affected Communities

To avoid any unjustified limitation of the rights of affected communities to access effective remedy, existing cooperation or partnership agreements should not include restrictive clauses. For example, in the clauses relating to the "dispute resolution", care should be taken to avoid requiring resolution exclusively through alternative mechanisms such as conciliation, prior mediation or arbitration, **without clearly stating that communities and their representatives retain the right to bring the matter before a court if necessary**.

In practice, some collaboration agreements signed between the business and one or more communities stipulate that access to the courts is only permitted after exhausting the designated dispute resolution mechanisms (such as prior conciliation, direct negotiation, mediation). However, the timeframes for each stage of amicable resolution can be long; **it is therefore essential to ensure that these timelines remain reasonable so as not to impede access to justice**, especially in cases where delayed action could lead to irreversible harm.

3. Ensuring There Are No Barriers to Accessing Judicial Mechanisms to Provide Remedy

Businesses have a responsibility to ensure unhindered access to effective judicial remedies, for individuals and communities seeking remediation. This principle is based on respect for the fundamental right of every individual to seek justice, without fear of reprisals or dissuasive obstacles.

Businesses are urged to refrain from any strategy that might unduly slow down or delay legal proceedings. This includes avoiding delaying tactics, such as protracted procedural negotiations or the strategic postponement of hearings in sensitive cases, which not only lengthen the duration of proceedings but also increase their costs, thereby risking draining the resources of complainants.

Affected communities and their representatives seeking remedy may also face SLAPPs (Strategic Lawsuits Against Public Participation) and other forms of judicial harassment. These practices are sometimes aimed at silencing critical voices by making processes more onerous and time-consuming, thereby exhausting the resources of opposing parties.

FOCUS

Mediation As a Potential Alternative

Provided it is not imposed on affected communities and is based on an on-the-ground analysis and needs assessment carried out by independent mediators and local experts, mediation can offer an effective and pragmatic alternative for resolving conflicts, whether they relate to environmental or human rights abuses by affected communities or to the associated remediation measures.

Confidential, faster and less costly than judicial proceedings, it fosters a safe space for dialogue in which the parties co-design appropriate solutions and forms of remedy, with no proposals or decisions imposed by the mediator. This participatory process makes it possible to develop a variety of tailor-made solutions, going beyond simple financial compensation.

To ensure equitable participation of affected communities, businesses should consider, depending on the context, accompanying measures to remove linguistic, logistical or financial barriers that could prevent their participation in mediation meetings.

Finally, the communities taking part in mediation "must also be able to lodge effective complaints and be offered recourse to mediation to encourage dialogue in parallel, outside and via litigation" (see reference below).

Reference

Linda Benraïs, Mediation in the Field of Corporate Social Responsibility (CSR) Business-Human Rights – An educational tool and a remedy in the service of corporate duty of care, in Ecology, Environment, Artificial Intelligence and Mediation, Beatrice Brenneur, (2024), Chapter VI, p. 90-103.

STEP 7

COMMUNICATING ABOUT RESPECT FOR THE RIGHTS OF AFFECTED COMMUNITIES AND THE EFFECTIVENESS OF ENGAGEMENT PRACTICES

Monitoring a business' performance in respecting the rights of affected communities and engaging with them is a key expectation under the human rights standards (UN Guiding Principles and OECD Guidelines) that inspired the CSRD ESRS S3. To reinforce this approach, other international standards such as the Global Reporting Initiative (GRI) and the UN Guiding Principles on Business and Human Rights offer complementary tools.

To assess the effectiveness of their actions in addressing the adverse impacts identified and maximising the positive impacts on affected communities, businesses need to implement Key Performance Indicators (KPIs). In the context of engagement with affected communities, **KPIs can assess both the appropriateness and relevance of the engagement methods used and the results achieved during the engagement processes**.

A. TARGETS AND METRICS

The ESRS S3 standard, as part of the S3-5 publication requirements, asks businesses to adopt "time-bound and outcome-oriented" indicators and targets to "drive and measure its progress in addressing material negative impacts, and/or advancing positive impacts on affected communities, and/or in managing material risks and opportunities" related to affected communities. The targets concern:

- reducing negative impacts on affected communities; and/or
- advancing positive impacts on affected communities; and/or
- managing material risks and opportunities related to affected communities.

In addition, the ESRS S3 standard specifies that, as part of the information on targets, the business may indicate[143]:

- the "the intended outcomes to be achieved in the lives of affected communities";
- "the stability of the targets over time in terms of definitions and methodologies to enable comparability over time";
- "the standards or commitments on which the targets are based on (for instance codes of conduct, sourcing policies, global frameworks or industry codes)".

When a business joins a sectoral or multi-stakeholder initiative to help remedy adverse impacts on communities, it can explain how this participation contributes to remedying the adverse impacts identified. As part of the S3-5 ESRS, it can also share the targets set by the initiative and the progress made towards achieving them.

B. INCLUDING THE PERSPECTIVES OF AFFECTED COMMUNITIES

For businesses, and as part of the application of human rights standards, **it is essential to involve affected communities in defining the targets and indicators used to assess the effectiveness of measures to address negative impacts, as well as the relevance and adequacy of community engagement approaches**.

In addition, the S3-5 publication requirement under the S3 ESRS also stipulates that the business must indicate "including whether and how the undertaking engaged directly with affected communities, their legitimate representatives, or with credible proxies that have insight into their situation, in order to:

(a) setting any such targets;

(b) tracking the undertaking's performance against them; and

(c) identifying any lessons or improvements as a result of the undertaking's performance.

Here are a few steps to consider:

- Participatory sessions led by community liaison officers or independent experts where communities discuss the targets and indicators to be adopted and the priority impacts to be monitored;
- Co-creation of evaluation mechanisms to ensure that the targets and indicators reflect the reality on the ground and the state of relations between the business and affected communities;
- Regular surveys and feedback to adjust targets and indicators in line with developments on the ground.

However, some of the businesses interviewed highlighted a challenge: although the involvement of communities on the ground is essential for defining appropriate targets and indicators, the responsibility for taking them into account in reporting, particularly in the context of CSRD, lies with head office. It is therefore crucial to **set up effective internal channels to ensure that these targets and indicators and the results of consultations are properly transmitted from local teams to the head office teams responsible for reporting**.

C. EXAMPLES OF QUANTITATIVE KEY PERFORMANCE INDICATORS (KPIs) RELATED TO AFFECTED COMMUNITIES (NON-EXHAUSTIVE LIST)

Here is a list of indicative quantitative indicators that businesses can consider. They must be selected for their relevance and adapted to the operational context of each business.

Overseeing Engagement with Affected Communities:

- ☐ # of community liaison officers on site
- ☐ # of representative offices in affected communities

Managing Adverse Impacts and Promoting Positive Ones:

- ☐ # of human rights impact assessments carried out involving affected communities
- ☐ # of independent assessments carried out to identify the needs of affected communities (community needs assessments)
- ☐ # of men recruited from affected communities each year and # of women recruited from affected communities each year
- ☐ % of men trained in X skilled trades and % of women trained in X skilled trades
- ☐ # of local entrepreneurs from affected communities providing services on behalf of the business
- ☐ # of community projects implemented in collaboration with affected communities
- ☐ % of women consulted in setting up the women's entrepreneurship project

Approach to Engagement with Affected Communities:

- ☐ # of engagement activities carried out at operational level with legitimate representatives of affected communities
- ☐ # of engagement events/activities organised with vulnerable groups. In particular, # of engagement activities carried out at operational level with women members of affected communities (focus groups if relevant and safe according to the operational context)
- ☐ Frequency of engagement with affected communities and their representatives
- ☐ % of community members satisfied with the schedule of engagement activities and type of engagement
- ☐ Average response time to requests for information from community members or their representatives

Grievance Mechanisms and Remedial Procedures:

- ☐ # of grievances received per site per year relating to the rights of affected communities (macro)
- ☐ # of grievances received per year, from X affected community(ies) (micro)
- ☐ # of grievances resolved within the agreed timeframe per site per year
- ☐ Average resolution time for grievances received relating to affected communities
- ☐ Average time deviation from agreed grievance resolution times
- ☐ % of community members who feel that the channels for submitting grievances/problems are appropriate
- ☐ % of remediation measures contested by the complainant(s)

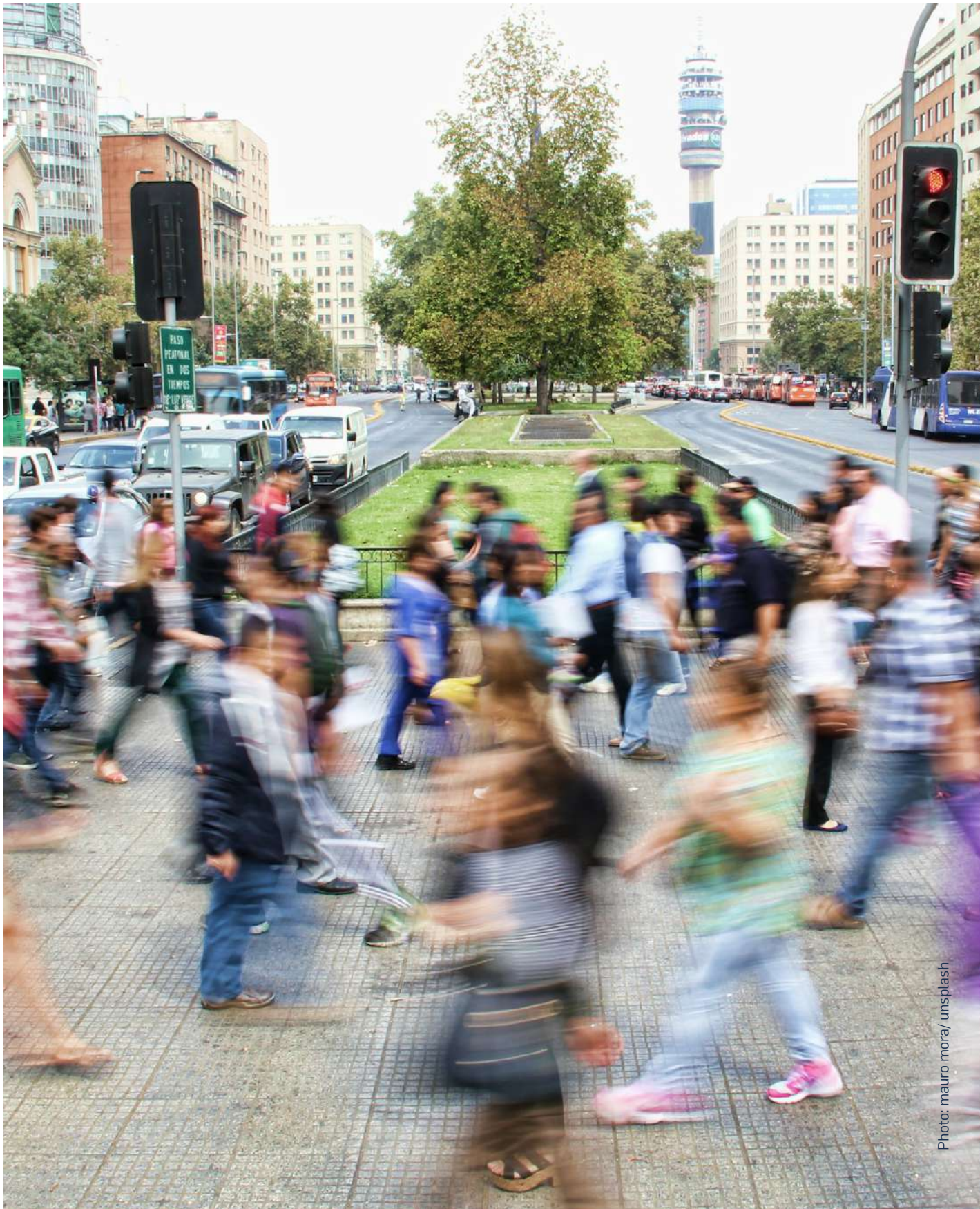


Photo: mauro mora/unsplash

Photo: diegograndi / envato

IV. FOCUS ON CERTAIN OPERATIONAL CHALLENGES

IV.1. USING "LEVERAGE"

A. REMINDER OF THE CONCEPT OF "LEVERAGE" AND ITS ROLE IN ADDRESSING ADVERSE IMPACTS ON HUMAN RIGHTS

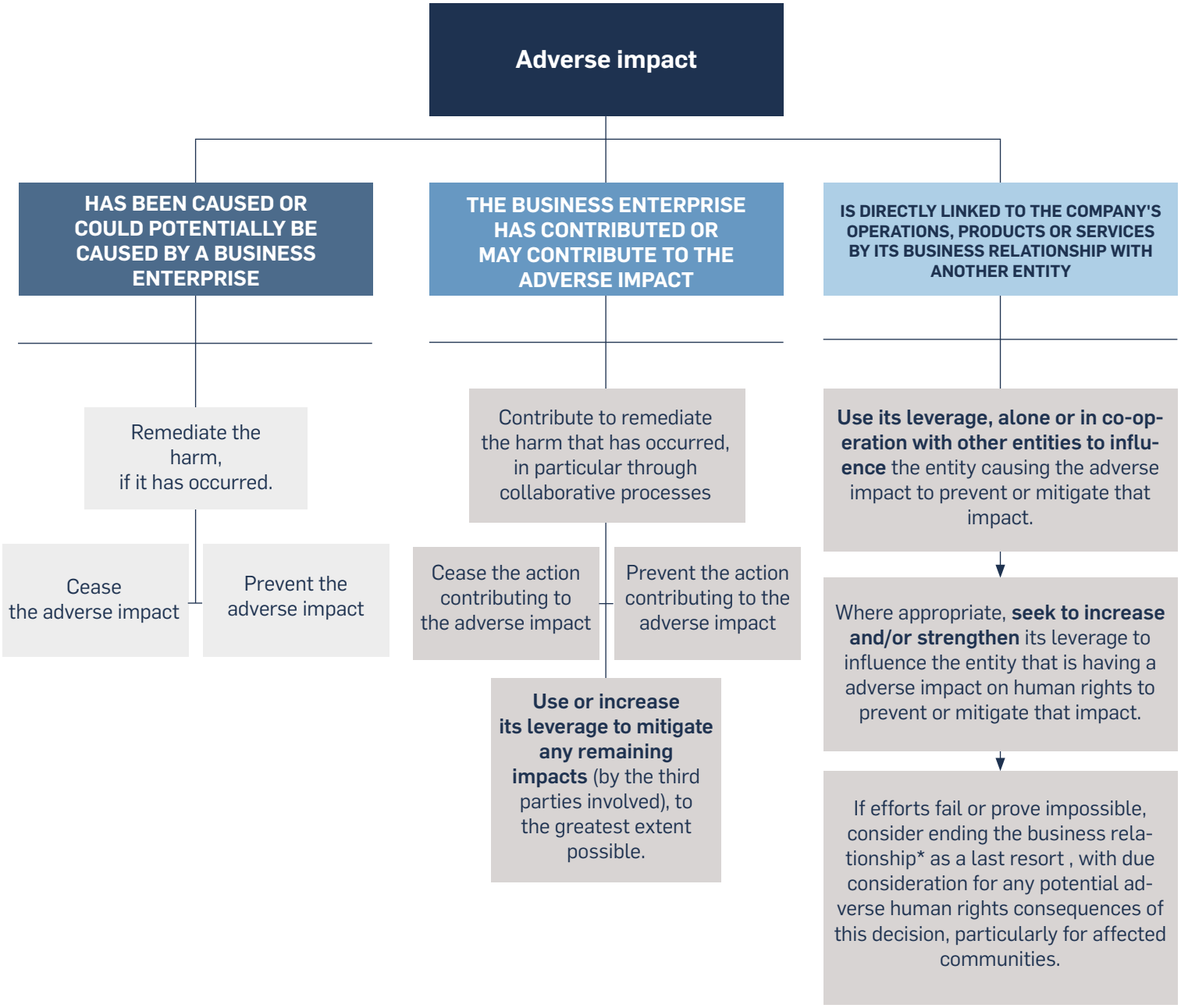
The way in which a business is involved with an adverse human rights impact, i.e. whether it causes it, contributes to it or is directly linked to it, determines the way in which it must take actions in accordance with the UN Guidelines and the OECD Guidelines. Where a business enterprise contributes or may contribute to an adverse impact or is directly linked to the impact, it should use its leverage.

The commentary to Guiding Principle 19 refers directly to this, stating that leverage exists **"where the enterprise has the ability to bring about change in the wrongful practices of an entity that causes a harm".**

The concept of "leverage" applies when a business enterprise is involved with adverse human rights impacts as a result of its business relationships with other parties. According to the UN Guiding Principles[144] "business relationships" are understood as "relationships with business partners, entities in its value chain, and any other non-State or State entity directly linked to its business operations, products or services".

Although sometimes difficult to exercise, **a business' leverage is often greater than initially perceived** and can play a crucial role in preventing, mitigating and remedying adverse impacts suffered by communities and Indigenous and Tribal Peoples if used proactively and appropriately by business enterprises.

The diagram below summarises the three ways a business enterprise can be involved with adverse human rights impacts and the **appropriate actions to be taken in line with human rights standards, particularly regarding the exercise of leverage.**



** The Corporate Responsibility to Respect Human Rights: An Interpretive Guide distinguishes between crucial and non-crucial business relationships. See Q. 46, p. 50*

B. INFLUENCING THE VALUE CHAIN: A CRITICAL LEVER FOR RESPECTING THE RIGHTS OF AFFECTED COMMUNITIES

Although the existence of leverage is not always obvious or easy to identify and implement, this should not dissuade the business from taking action.
The following questions should be considered:

- **Over which entity or entities does the business seek to use leverage?**
- **How can the business use this leverage? Should it be developed or increased?**
- **What outcomes could the different forms of leverage available to the business realistically achieve?**

This leverage can be used **directly** (contracts, partnerships) or **indirectly** (commercial or interpersonal relationships, reputation), and can manifest itself through tangible means such as contractual agreements or peer, sectoral and multi-stakeholder initiatives, or intangible means such as reputation and interpersonal relationships. The business can also use its leverage by engaging in dialogue with the authorities to encourage appropriate regulations.

Particularly in the context of projects involving a multiplicity of players, governments, partner businesses, subcontractors and customers, it is particularly important to know where and how to use this leverage, and for what purpose. Each stakeholder plays a specific role in managing the social and environmental impacts that can affect communities, which **requires a differentiated approach tailored to each stakeholder's responsibilities and levers for action**.

The table opposite sets out **the different stakeholders on whom a business can potentially exert leverage to help ensure respect for the rights of affected communities**. It presents a non-exhaustive list of possible leverage actions, along with the intended objectives for each type of relationship.

Entities	How the Business Enterprise Should Use Leverage?	Objectives Aimed at Respecting the Rights of Affected Communities
States (government authority issuing administrative authorisations/ licences, or the business' customer or business partner)	**Contract negotiation and terms of contract**	
	■ **Negotiation and inclusion of human rights clauses** in government contracts; ■ **Clarification of the responsibilities of each party,** particularly regarding managing relations with affected communities; ■ **Negotiation and inclusion of criteria concerning the forms of engagement with affected communities** in contracts with the government (criteria of quality, reciprocity, inclusiveness and security of engagement) and, depending on the context, respect for the rights of Indigenous and Tribal Peoples, particularly regarding FPIC; ■ **Include the need to implement grievance mechanisms** aligned with the effectiveness criteria of the UN Guiding Principles.	■ Ensure compliance with government obligations in terms of consultation and land management (acquisition, relocation and resettlement of affected communities) in accordance with international standards and prevent conflicts ■ Avoid forced evictions and involuntary resettlement ■ Ensure fair and inclusive compensation for all affected community members, including those with formal or customary land rights ■ Raise awareness among state authorities and encourage a structured dialogue on best practice for engagement with affected communities
	Raising awareness, bilateral dialogue and monitoring government consultation processes	
	■ **Creation of regular channels of dialogue with the authorities** to monitor government consultation processes in certain key phases of the project (impact assessment, permits and licences) and as part of a consultation aimed at obtaining the FPIC of Indigenous and Tribal Peoples; ■ **Government authorities are generally responsible for land acquisition, procedures for relocating or resettling affected communities**, and setting compensation. As the owner of the project, for example as concessionaire or general contractor, the business must ensure that these processes respect human rights, both individual and collective. If the public authorities do not fulfil their obligations, the business enterprise, depending on its position, can use its leverage to encourage them (particularly when the State is the client) to improve their processes through bilateral discussions involving the business' top management; ■ **Raising awareness of the economic benefits** of better protection of human rights through better regulation; ■ **Participation in** multi-stakeholder governance bodies involving public authorities.	

Multi-stakeholder bodies or sectoral or inter-business initiatives or other initiatives to promote human rights

- **Identify and participate in peer-to-peer or multi-stakeholder initiatives or platforms** to address specific human rights challenges in a collaborative framework and increase leverage through collective voice ("combined leverage"[145]);
- In addition, **the business enterprise may organise or actively contribute to the organisation of public events to raise awareness of human rights risks**, in partnership with multi-stakeholder bodies, in order to draw the attention of public authorities in particular (for example, on the subject of "security and human rights" affecting communities through the Voluntary Principles Initiative on Security and Human Rights[146]).

Suppliers of goods and services and subcontractors

Contract negotiation and terms of contract

- **Prequalification**: depending on its position in the project, use its leverage to select suppliers and subcontractors on the basis of ESG criteria and respect for human rights, particularly in relation to affected communities. Analyse the background of suppliers to detect possible past violations of the rights of Indigenous and Tribal Communities and Peoples;
- **Negotiation and inclusion of human rights clauses** in contracts;
- **Implementation of mechanisms to monitor and evaluate** compliance with contractual engagements (audits, independent human rights assessments, regular controls and Key Performance Indicators);
- **Clarification of responsibilities** to ensure that all stakeholders are aware of and comply with their obligations in terms of managing impacts and engaging with communities. The client, whether the concessionaire or the operator, is responsible for managing the social and environmental impacts and for community engagement. However, it is important to clarify the responsible behaviour expected of suppliers and subcontractors who are sometimes in direct contact with communities, without generating an undue transfer of risk.

- Avoid the risks associated with non-compliant suppliers through rigorous selection based on ESG and human rights criteria
- Ensure that the practices of suppliers and subcontractors are in line with international standards
- Create an effective incentive framework by encouraging suppliers to adopt responsible practices
- Create a culture of shared responsibility by encouraging practices that respect the rights of affected communities and by clarifying the roles of each stakeholder

Training, support and capacity building

- **Organise awareness-raising and capacity-building sessions** (practical tools) for suppliers and subcontractors on the human rights of affected communities;
- **Encourage suppliers to participate in sector or multi-stakeholder initiatives** and to take part in inter-business networks on responsible conduct.

Commercial incentives

- **Offer suppliers commercial advantages** such as long-term contracts or price adjustments to encourage responsible practices;
- Depending on the level of maturity of suppliers, some may **need logistical, technical or other support** in this area.

Business Partners (joint ventures and other partnerships)

Contract negotiation and terms of contract

- **Include specific human rights clauses** in joint venture agreements or commercial partnership agreements;
- **Clarify the role of each partner** regarding human rights issues and community engagement;
- **Push for the creation of a common social and environmental audit framework** aligned with standards, to ensure alignment between the practices of the various players and maximise the effectiveness of corrective actions;
- **Include the need to set up grievance mechanisms** aligned with the effectiveness criteria of the UN Guiding Principles.

- Ensure a robust contractual framework for leveraging respect for human rights in business partnerships
- Avoid unilateral decisions by a partner that are contrary to the rights of communities by strengthening governance mechanisms
- Ensure a coherent and concerted approach between partners in terms of community engagement and prevention of adverse impacts

Governance mechanisms

- Urge the partners to agree that an **enhanced majority vote of the Board of Directors** should be required for any decision having a potential impact on human rights and affected communities;
- **Encourage the creation of cross-functional governance committees focusing on ESG issues** and involving all project partners and government, where applicable. These committees should be dedicated to informing project partners about ESG issues (for example, sharing the results of audits carried out by a partner), coordinating appropriate actions and overseeing engagement with affected communities;
- **Encourage the creation of a committee of independent experts/scientific advisors** who can be called upon by the project partners and also the State in the event of a risk of severe adverse impacts or where the partners disagree on the prevention and mitigation mechanisms to be implemented. This committee would provide scientific expertise of excellence, drawing on specialists in a variety of fields: for example, the environment (fauna, flora, biodiversity) and human rights (in particular the rights of Indigenous Peoples)

Business Customers/ Clients (private actors)	**Contract negotiation and terms of contract**	
	■ **Negotiation and inclusion of human rights clauses** in contracts; ■ Depending on the sector, **integration of contractual clauses** aimed at using products/services responsibly and avoiding adverse impacts on communities (e.g. strategic advice, monitoring technologies).	■ Increase customer awareness of the risks and impacts of their business decisions on affected communities ■ Create a structured dialogue to anticipate and mitigate risks to the rights of affected communities
	Bilateral dialogue and awareness-raising	
	■ **Creation of communication channels to encourage exchange and cooperation on human rights issues**, share best practice and collaborate on responsible solutions.	
	Multi-stakeholder bodies or sectoral or inter-business initiatives	
	■ **Encourage clients to participate in sector or multi-stakeholder initiatives** aimed at building a common understanding and strengthening practices related to respect for the rights of affected communities.	

This table was inspired by the document "Using Leverage in Business Relationships to Reduce Human Rights Risks", published by Shift (2013) and enhanced by feedback from businesses and stakeholders interviewed as part of the development of this guide.

IV.2. BENEFIT-SHARING AND COMMUNITY COLLABORATION AGREEMENTS

A. THE CONCEPT OF "BENEFIT-SHARING"

Benefit sharing (in all its forms) is an approach **aimed at ensuring that revenues derived from the exploitation of land and natural resources are distributed equitably with affected communities**. This distribution recognises the importance of these resources for communities who rely on them directly for their livelihoods and well-being.

As we move towards a more sustainable economy, where ensuring a just transition is essential, benefit sharing takes on increased significance in order to ensure that the outcomes of development projects and business operations directly benefit affected communities.

In practice, the benefit-sharing approach in favour of affected communities tends to take two main forms:

1. the **process of dialogue and fair negotiation leading to an agreement**[147] **negotiated and signed** between the business and the community or communities (known in practice by various names, such as "collaboration and benefit sharing agreement" or "cooperation and benefit sharing agreement") and;
2. the **outcome of this process, which is the granting of benefits in various forms** beyond mere financial reward, tailored to the needs, priorities and aspirations of the communities concerned.

Process of Dialogue and Fair Negotiation Leading to an Agreement: the Challenge of Asymmetry

When communities lack strong local governance or established institutional structures, the dialogue process can become more complex, increasing the risk of asymmetry in negotiations between businesses and affected communities.

This potential imbalance can also be exacerbated by other factors, such as limited negotiation expertise among community representatives or the technical (especially legal) complexity of the proposed agreements.

BUSINESS CASE STUDIES

Energy, Agriculture and Extraction Industries

To offset these imbalances, a number of practices have been identified to create a more equitable framework for dialogue and negotiation of these agreements between businesses and affected communities:

- **Establishing a dialogue protocol:** setting up a dialogue protocol including a clear roadmap helps to structure negotiations and ensure that they are conducted with respect for human rights. This protocol can set out the fundamental principles of transparency of the information provided, respect and good faith, which will guide each step of the negotiations.
- **Community investment policies and engagement values:** some of the businesses involved in drawing up this guide have adopted a "community investment policy" formalising the values that apply to engagements and negotiations with communities regarding benefits, in particular:
  - → **Equal opportunities and treatment:** guaranteeing access and fair conditions for all.
  - → **Ethical conduct:** promoting irreproachable integrity in interactions between the business and communities.
  - → **Compliance with legal and internal regulations:** ensuring that all procedures comply with current legislation and the business' internal rules.
- **Community capacity support and institutional strengthening:** financial and material support to strengthen skills can be provided to the community so that it can call on independent experts, particularly lawyers, to clarify the contractual terms and issues of the agreement, which are often too technical.

B. WHAT BENEFITS FOR AFFECTED COMMUNITIES ARE INCLUDED IN THE AGREEMENT?

During the process of dialogue and negotiation between the business and the community or affected communities, it is essential **to identify community benefits based on real local needs, historical and environmental factors, and the priorities and aspirations of the communities**[148].

These benefits must be **defined and expressed directly by the community itself** in order to avoid a unilateral, top-down approach by the business.

These can take **a variety of forms**.

The table below gives a few examples drawn from practice, over and above the mere allocation of monetary funds or usual infrastructure projects (schools, health centres, football pitches, for example). Indeed, while these contributions may be relevant in certain contexts, they also carry the risk of reinforcing paternalistic or charity-based approaches, which may not align with the actual needs or aspirations of the communities.

FOCUS

Shared Prosperity: Participation and Distribution of Capital

The concept of "shared prosperity" aims to involve communities in projects as **business partners, enabling them to directly benefit from the economic returns generated by projects implemented on their territories**.

This approach is based on inclusive models, incorporating financial and shared governance mechanisms (seats on the Steering Committee), preferential shares, direct equity participation by affected communities in project companies and in some cases, equal profit-sharing models (50/50) or even majority ownership (51%) by the communities. In several countries, such as Canada, South Africa, Australia and the United States, for example, Indigenous Peoples hold direct equity stakes in infrastructure or renewable energy projects developed on their territories.

Reference

See for example in Australia, **ABC News. September 2024. Nari Nari Tribal Council hopes stake in Wilan Wind Farm will help restore culture and country.**
For more examples, **see Indigenous Peoples Rights International (IPRI) and the Business & Human Rights Resource Centre "Exploring Shared Prosperity: Indigenous leadership and partnerships for a just transition" (2024)** and **BSR (Business for Social Responsibility) Stakeholder Engagement in the Transition Context: Guidance for Practitioners (2024).**

Possible Benefits for Communities Reflected in Agreements (non-exhaustive list)	
Type of Benefits	**Examples**
Local Employment, Vocational Training and Access to Skilled Jobs	■ **Skilled jobs and technical training:** the aim is to go beyond the low-skilled jobs often on offer, by creating skilled jobs that can be accessed through training. ■ **Priority to youth employment:** to encourage the sustainable integration of young people into projects by offering long-term skilled jobs, internships and higher education grants. Organise job fairs dedicated to young people, enabling them to meet and talk to businesses, and offering calls for projects for young entrepreneurs. ■ **Access to employment in isolated areas:** in rural and under-serviced regions, some businesses have taken it upon themselves to compensate for the absence of government employment support mechanisms by setting up, with other local partners in the region (public services, NGOs, local associations) or other businesses, recruitment platforms or stands or job fairs within the communities themselves.
Support for Local Entrepreneurship	■ **Promoting entrepreneurship:** promoting local entrepreneurship to diversify economic opportunities and strengthen the local economy, in particular by applying a gender-sensitive approach to encourage female entrepreneurship. ■ **Market access for local entrepreneurs:** facilitating market access for local entrepreneurs. Some businesses offer tailored training, or even support funds, so that local entrepreneurs can align themselves with the business' quality standards and requirements, thereby increasing their chances of becoming the business' service providers. Some businesses also help finance the necessary equipment (trucks, materials, etc.).
Financial, Material and Infrastructure Contributions	■ **Community funds:** some businesses allocate community funds to finance projects of collective interest, often the construction of infrastructure essential to the community (schools, first aid clinic, community headquarters, for example) voted for by the community itself. In some cases, and if the community so wishes, resource management support can be offered to help administer these funds, such as financial management training and coaching programs. ■ **Infrastructure and direct material contributions:** certain businesses are involved in the construction or renovation of community buildings or the supply of equipment, in consultation with the legitimate representatives of the community and other relevant members. These initiatives include, for example, the renovation of existing infrastructure, the creation of community centres and community meeting places, or the provision of equipment for activities based on real local needs (e.g. fishing boats and equipment to support local artisanal fishing, leisure areas for children and teenagers, adapted centres for senior citizens, public squares). ■ **Access to energy:** in some regions, businesses are facilitating access to energy services, for example by installing photovoltaic panels on the roof of the community headquarters or providing public lighting in the main square or community meeting places. Some are studying the possibility of setting up pilot projects in conjunction with local authorities to introduce preferential tariffs for access to energy.
Environmental Engagement and Sustainable Development	■ **In addition to simply mitigating or compensating for impacts,** some businesses are taking concrete action to **protect and restore ecosystems**, such as creating natural habitats or conservation programs. ■ **Some businesses also support waste management initiatives**, such as the installation of sorting centres, waste separation bins and recycling awareness programs in communities. ■ Some businesses have developed **pilot projects aimed at reintroducing crops and medicinal plants that** were once present but have disappeared due to the effects of climate change and other factors, in collaboration with Indigenous Peoples and traditional knowledge.

! Points to bear in mind

- **The business' responsibility for potential adverse impacts:** while these collaboration and benefit sharing agreements seal a vision of a project bringing shared benefits, **they do not remove the business' primary responsibility not to cause or contribute to adverse impacts, or the expectation to exercise due diligence** in identifying, assessing and implementing appropriate measures to manage the risks of adverse impacts. Community benefits or contributions aim to create added value for communities and do not substitute for the business's responsibility to provide remedy in cases of actual adverse impacts.
- **Participation in the benefits arising from the business' activities for Indigenous and Tribal Peoples:** Article 15 of ILO Convention No. 169 specifies that the peoples concerned "*shall, whenever possible, participate in the benefits of such activities* [in particular the exploitation of resources on their lands, including where the State retains ownership of minerals or sub-surface resources] *and shall receive fair compensation for any damages which they may sustain as a result of such activities*".
- **Managing community funds and preventing tensions:** the payment of large sums of money to the community can generate or exacerbate internal tensions, particularly if the community governance structure is not sufficiently robust to manage these funds. A joint assessment of the community's capacity to manage these resources should be carried out and support provided if necessary and desired by the community.
- **Non-conditionality of payments:** community benefits payments must not be contingent upon the community relinquishing its right to pursue legal remedies.
- **Socio-economic vulnerability:** community benefits provided by businesses, particularly in economically fragile regions, can increase the dependence of communities on one or more company, posing a significant risk if contributions are reduced or stopped. A multi-stakeholder approach can reduce this vulnerability (for example, by developing projects with other businesses, local authorities, international organisations and local development associations) or by diversifying resources and support, thereby reducing the risk of the community becoming over-dependent on a single player.

Governance of the Agreement to Ensure that Engagements Are Followed Through

The governance of the agreement is a key element in ensuring that the engagements made regarding the benefits granted are respected and implemented. As early as the negotiation phase, it is essential to agree on the procedures and mechanisms for monitoring community benefits.

- **Governance of the agreement:** in Chile, for example, but also in certain South American countries, a recognised practice in this area consists of setting up *mesas de trabajo* (working groups or roundtables), which illustrate a model of collaborative governance of the agreement, provided **that both parties' voices are equitably taken into account**. They are made up of representatives from the community and the business, and provide a forum for ongoing dialogue and monitoring of the engagements made.
- **Monitoring indicators:** to ensure a transparent assessment of the implementation of the benefits granted, the parties must jointly agree **on a timetable for the activities or delivery of community benefits**, setting out each step (in the case of a community infrastructure maintenance or construction project, for example) as well as **monitoring indicators**. These indicators serve as a shared reference for measuring and reporting progress on a regular basis, and should include not only business-related metrics (e.g. percentage of funds allocated, number of jobs created locally, contracts awarded to local contractors, number and content of training courses provided, or project progress), but also community-related indicators. For example, it must report transparently on the use of allocated funds or materials.

- **Form of control and co-vigilance with the community:** some more advanced businesses have set up joint control, or co-vigilance, to ensure that the implementation of the agreed benefits is carried out in accordance with the expectations of the parties. This mechanism enables communities to exercise direct control over the implementation of projects and to contribute to identifying any necessary adjustments. This can be done through regular community audits, joint business-community site visits, progress reports presented and discussed at round tables, working groups or due diligence committees, or an official letter, signed and sealed by community representatives, confirming the completion of the project, accompanied by photographs as proof of implementation.

- **Importance of shared responsibility in reporting:** reporting is intended to be two-way and proactive. It must be seen as a shared responsibility between the business and the community, implying total transparency on both sides as to the progress of the engagements made:
  - → The community must inform the business of any difficulties encountered on the ground that could slow down community infrastructure projects, such as internal conflicts linked to community governance, social tensions or issues in the use of funds;
  - → The business must communicate on factors that could affect the implementation of projects (for example, changes in the business' internal governance that could delay decision-making, economic difficulties affecting planned financing, or constraints linked to third-party partners).

Photo: Paula Porto / unsplash

AFTERWORD

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Putting the Businesses–Affected Communities Practical Guide Into Its Global Context

This Businesses - Affected Communities practical guide is an essential tool for professionals seeking clarity and practical advice, in a context of growing expectations in terms of sustainability and respect for human rights and the environment.

Over the last fifteen years, the standards applicable to businesses and relating to human rights and the environment have evolved considerably. We have seen the development of a regulatory framework around the issue of business and human rights. This legal framework, initially based on soft law in particular the 2011 UN Guiding Principles on Business and Human Rights, has been consolidated in France first, with the French Duty of Vigilance Law (2017) and then at the EU level with the European Corporate Sustainability Due Diligence Directive (CSDDD, 2024).

As a lawyer and academic specialising in business and human rights issues, my work primarily involves understanding and then explaining these developments to my students, to my peers, but also to practitioners, particularly from the corporate world, through conferences, publications and specialized training courses.

I am convinced that the education of professionals and future professionals is an essential element in meeting the formidable challenge of implementing these new standards and preserving our ecosystems in the light of the crises we are facing.

Explaining, asking and answering questions, guiding, contextualising, convincing and listening are all necessary if we are to move forward together on the road to good environmental and human rights practice within businesses. **This practical guide Businesses-Affected communities** paves the way, by focusing on a particularly sensitive issue: **respect for the rights of and engagement with affected communities**. It also contains specific information according to readers' professional profile, organised in summary “functional scope” sheets.

If you have just finished reading this guide, you will now have a solid understanding of this timely issue, which continues to raise many questions among practitioners, particularly those responsible for human rights issues and corporate due diligence. **In concrete terms, this guide explains what to do, how to do it and why to do it, in clear language and without avoiding complexity. It encourages us to take action.**

What vocabulary should we use, what are the right questions to ask, what are the different forms of engagement and how can we avoid the many pitfalls when engaging with affected communities?

All these questions, and many more, are dealt with straightforwardly in this guide, which is full of practical advice and enlightening examples to guide the reader towards establishing good relations with the communities affected by the business' activities, using a human rights-based approach.

Enjoy your reading and rereading.

Functional Scope Sheets

Top Management (Head Office)

Importance of the Subject for This Functional Scope

Business top executives (Chairman, Chief Executive Officer, members of the Executive Committee, etc.) play a strategic role in defining and integrating the business' social and environmental commitments. When the responsibility to respect human rights is held at the highest level, it can influence, it can leverage strategic decisions and support transformation.

There are several reasons why top executives should proactively take into account affected communities as key stakeholders in human rights due diligence.

- **A lever for global performance and differentiation:** a business that integrates respect for human rights and engagement with affected communities into its strategy strengthens its image, secures its supply chain and attracts talent that cares about ethical values.
- **Increased demands from investors and financial institutions:** key players in the financing sector, such as the International Finance Corporation (IFC), investors and many insurance companies, are increasingly making their financing conditional on respect for the rights of communities and the implementation of engagement practices that comply with international human rights standards.
- **Risk management is essential to the long-term viability and resilience of the business' activities:** conflicts between the business and affected communities can lead to the cancellation or suspension of a project, delays, additional costs and even interruptions to ongoing activities, compromising their economic viability. Any neglect or mismanagement of community relations can therefore damage the business' image and reputation locally and affect the confidence of stakeholders globally (e.g. shareholders, customers, business partners, investors, civil society).
- **Beyond compliance, a leadership imperative in a rapidly changing world:** In a world marked by armed conflict, geopolitical instability, climate change and increasingly violent natural disasters, **businesses should act as agents of change, guided by strong leadership at the highest level**. Businesses cannot survive, grow, or thrive in an environment marked by the effects of climate change and tensions with communities. By integrating respect for human rights and affected communities' rights at the heart of their strategy, they not only reduce risks but also contribute to sustainable economic and social development in line with the Sustainable Development Goals (SDGs), strengthen their resilience, protect their reputation and create shared value for communities.

! Points to Bear in Mind Regarding this Functional Scope

- **Adopting a strong and unequivocal commitment at the highest level:** commit on the importance of human rights and respect for the rights of affected communities, including Indigenous and Tribal Peoples. This commitment must be translated into explicit policies that include specific provisions for preventing, mitigating and remedying the impacts suffered by affected communities. In addition, they must include guarantees against any form of reprisal against users of grievance mechanisms and human rights defenders. Commitments may take the form of a stand-alone document or be integrated into a broader framework such as an overall human rights policy.
- **Demonstrate leadership:** speaking publicly at dedicated forums, sharing challenges encountered and innovative solutions, and ensuring these issues are reflected in the company's governance structures.

- **Driving change:** show the way to less advanced businesses by sharing best practice and initiating collaboration with other businesses, governments, institutions and civil society. Encourage business partners to follow this approach by defining clear and measurable expectations.
- **Being actively involved in sectoral and multi-stakeholder initiatives:** enable the business to participate in **international coalitions, multi-stakeholder forums, sectoral initiatives or alliances between businesses** to contribute to the development of reference frameworks, share the human rights challenges encountered and promote a collective approach to addressing them.
- **Empowering teams:** providing appropriate incentives and resources at both strategic and operational levels, enabling employees to effectively address issues related to affected communities throughout the value chain.
- **Do not fear crises, but turn them into drivers of improvement:** openly communicating about the challenges encountered and the actions taken to address them strengthens stakeholder trust and reinforces the credibility of the company's commitment. When approached with respect and transparency toward communities, crises become opportunities for learning and continuous improvement.

Sections of the Guide Recommended for This Functional Scope

Part I: Affected Communities, Key Stakeholders to Be Brought Back to the Core of Due Diligence - p.16

- → Affected Communities: Key Stakeholders to Engage - p.18
- → A Necessary Paradigm Shift For a Long-Term, Trust-Based, and Mutually Beneficial Relationship - p.19

Part II: Key Concepts: Affected Communities, Impacts and Meaningful Engagement – What Are We Talking About? - p.22

Part III: Steps Towards Meaningful Engagement With Affected Communities - p.46

- → 1. Companies Mainly Engaged in Commercial Transactions and Distant From On-the-Ground Operations - p.47
- → 2. Businesses With a Project-Based Business Model Rooted in Operational Reality - p.50

Step 2 | Setting a Governance Framework for Meaningful Community Engagement – Who Engages on Behalf of the Business? - p.56

Step 7 | Communicating About Respect for the Rights of Affected Communities and the Effectiveness of Engagement Practices - p.110

Appendix 1 | Summary of the Normative Framework and Applicable Standards - p.138

Appendix 6 | Diversity of Affected Community Profiles (Indicative, Non-Exhaustive List) - p.148

Useful Resources

- United Nations Global Compact. (2023). **Business leadership in times of crisis**.
- World Business Council for Sustainable Development. (2020). **CEO guide to human rights**.

Managers (At Local Level)

Importance of the Subject for This Functional Scope

Local managers (subsidiary directors, operations directors, or even regional or country directors in some cases) are close to the ground and directly facing the realities of affected communities and the potential crises linked to the non-respect of their rights. As guardians of the Group's reputation and the business' local acceptability, their management of community relations can have a direct impact on the continuity of the business' activities locally and on the image and credibility of the business as a whole, both nationally and internationally. Their role is therefore decisive in ensuring the effective implementation of business or group policies, preventing, mitigating and remedying impacts, avoiding tensions and building a lasting relationship based on trust with affected communities.

! Points to Bear in Mind Regarding this Functional Scope

- **Acting as the local intermediary for the Group's commitments:** adapting global commitments, policies and procedures, to local realities, ensuring that they are understood and respected on the ground by all employees.
- **Acting as a trusted local actor and committed leader:** being present on the ground, reaching out to communities even outside crisis situations. Taking part in community and institutional events reinforces the business' credibility and creates a climate of trust. It must also encourage collaboration with other businesses operating in the same area (whether in the same sector or not), the government and local authorities, and civil society to provide a collective and appropriate response to potential systemic issues linked to affected communities that no single player can resolve alone.
- **Ensuring meaningful engagement with affected communities by providing teams with the means to act**: the local manager must ensure that the necessary ESG expertise is integrated into the local structure, including through the appointment of community liaison officers, who must be provided with the resources needed to fulfil their roles, whether financial, logistical, or human.
- **Supporting local initiatives that are jointly designed to have a lasting impact:** going beyond a top-down approach consisting of granting one-off support to affected communities or financing projects decided solely by the business. Adopting a participatory approach and supporting local initiatives developed jointly with affected communities helps to ensure a response that is better adapted to the realities on the ground.
- **Anticipating and managing crises with respect and transparency:** overseeing and coordinating the business' response, ensuring that conflicts with affected communities are handled with respect and transparency. This role involves ensuring open communication, avoiding any defensive stance, and making sure the company acknowledges proven issues without retaliation. The local manager is responsible for proposing appropriate solutions, supported by local ESG teams and community liaison officers, and, where necessary, local experts, while keeping communities informed of the measures taken.

Sections of the Guide Recommended for This Functional Scope

Part I: Affected Communities, Key Stakeholders to Be Brought Back to the Core of Due Diligence - p.16 , in particular:

- → A Necessary Paradigm Shift For a Long-Term, Trust-Based, and Mutually Beneficial Relationship - p.19

Part II: Key Concepts: Affected Communities, Impacts and Meaningful Engagement – What Are We Talking About?

Who Are Affected Communities? - p.22

- → Diversity of Affected Community Profiles - p.24
- → Indigenous and Tribal Peoples - p.24
- → Vulnerable Groups - p.29

What Impact Are We Talking About? - p.29

What Is Meant by Meaningful Engagement with Affected Communities?

- → Criteria for qualifying engagement as "meaningful" - p.42

Part III: Steps Towards Meaningful Engagement With Affected Communities

Step 1 | Who to Engage? Identify Affected Communities - p.50

Step 2 | Setting a Governance Framework for Meaningful Community Engagement – Who Engages on Behalf of the Business? - p.56

Step 3 | Planning the Engagement: Developing a Participative, Inclusive and Tailored Engagement Plan - p.60

Step 4 | Engaging in the Right Way

- → When to Engage? Engaging With Communities at Every Step of the Project Life Cycle - p.66
- → Special Considerations for Engagement With Indigenous and Tribal Peoples - p.75
- → Special Considerations for Engagement With Vulnerable Groups - p.89
- → Engaging Affected Communities in Conflict and High-Risk Areas - p.93

Step 5 | Setting Up Effective Grievance Mechanisms Tailored to Affected Communities - p.96

Step 6 | Establishing Processes to Enable Effective Remediation - p.103

Part IV: Focus on Certain Operational Challenges

- → Benefit-Sharing and Community Collaboration Agreements - p.120

Appendix 6 | Diversity of Affected Community Profiles (Indicative, Non-Exhaustive List) - p.148

Head of Human Rights / Vigilance / ESG Lead

Importance of the Subject for This Functional Scope

Head of Human Rights / Vigilance / ESG Lead play a strategic and cross-functional role in defining, implementing and monitoring the Group's commitments to respect human rights, particularly the rights of affected communities.

They ensure that the business' practices are aligned with regulatory frameworks and international standards, ensuring consistent application across subsidiaries, operational sites and value chains. Their mission is based on a human rights risk mapping, regularly updated as part of the vigilance plan (for companies under the scope of the French Corporate Duty of Vigilance Law), and on the implementation of appropriate prevention, mitigation and remediation action plans. This mapping and the resulting action plans also cover the management of impacts on affected communities. They also ensure coordination with relevant external stakeholders, such as NGOs, public institutions and multi-stakeholder and/or sectoral initiatives that can bring valuable perspectives from these actors.

! Points to Bear in Mind Regarding this Functional Scope

- **Ensuring that the Group's commitments are implemented:** developing the Group's human rights policies and commitments and structuring the company's approach by ensuring that they are effectively applied at all levels, including at subsidiaries level and for ongoing projects. These policies and procedures must cover the impacts on affected communities, including Indigenous and Tribal Peoples where applicable, ensuring that their rights are taken into account, in particular Free, Prior and Informed Consent. These commitments must be aligned with the International Bill of Human Rights, the ILO Fundamental Conventions, the UN Guiding Principles on Business and Human Rights and the OECD Guidelines, and take into account other instruments as appropriate to the operational context, in particular ILO Convention No. 169 and the UN Declaration on the Rights of Indigenous Peoples.
- **Ensuring that human rights risk mapping includes affected communities:** identifying, analysing and prioritising potential and actual human rights impacts (including cumulative impacts), taking into account the local specificities and contexts of affected communities, particularly Indigenous and Tribal Peoples. The risk mapping must be regularly updated to reflect changes in local issues and regulations.
- **Ensuring meaningful dialogue with stakeholders and integrating the views of affected communities and the most vulnerable:** maintaining meaningful dialogue with relevant external stakeholders, such as NGOs, multi-stakeholder and sectoral initiatives and civil society organisations, to anticipate emerging risks linked to the challenges faced by affected communities, and to promote appropriate collective solutions. This involves dedicated mechanisms, such as ad hoc or more permanent stakeholder committees, consultations with experts or taking into account feedback from consultations carried out in the field by community liaison officers and operational teams.
- **Providing training and raising awareness among employees and partners:** coordinating the "human rights due diligence" network within the company in order to raise awareness, training and mobilising all employees involved in the implementation of the human rights risk mapping and resulting actions plans. These training and awareness-raising initiatives should focus on issues relating to affected communities and, depending on the operational context, to Indigenous and Tribal Peoples.

- **Supporting operational teams in the design and implementation of action plans:** establish a framework and develop tools and methodologies to support operational teams in drawing up and implementing action plans aimed at preventing, mitigating and remedying adverse impacts on the human rights of affected communities. Aligned with international standards and adapted to local realities, their implementation are based on cross-functional coordination involving the Procurement, CSR, Legal, Risk and HR departments, as well as the operational teams responsible for applying and monitoring actions plans on the ground.
- **Incorporating actions into reporting and target monitoring:** include actions in reporting, external communication and internal audit systems, to ensure monitoring and continuous improvement. Key Performance Indicators (KPIs), whether qualitative or quantitative, must reflect local realities and effectively measure the impact of implemented measures to prevent, mitigate and remediate adverse impacts, as well as the appropriateness of such measures and the engagement practices. It is essential that they are defined from a community perspective, which requires effective feedback channels between the field team and head office.

Sections of the Guide Recommended for this Functional Scope

Part I: Affected Communities, Key Stakeholders to Be Brought Back to the Core of Due Diligence - p.16

Part II: Key Concepts: Affected Communities, Impacts and Meaningful Engagement – What Are We Talking About? - p.22

Part III: Steps Towards Meaningful Engagement With Affected Communities

Companies Mainly Engaged in Commercial Transactions and Distant From On-the-Ground Operations - p.47

Businesses With a Project-Based Business Model Rooted in Operational Reality - p.50

Step 1 | Who to Engage? Identify Affected Communities - p.50

Step 2 | Setting a Governance Framework for Meaningful Community Engagement – Who Engages on Behalf of the Business? and in particular **"Coordination Between Head Office (Due Diligence Governance) and the Field" p.56**

Step 5 | Setting Up Effective Grievance Mechanisms Tailored to Affected Communities - p.96

Step 6 | Establishing Processes to Enable Effective Remediation - p.103

Step 7 | Communicating About Respect for the Rights of Affected Communities and the Effectiveness of Engagement Practices - p.110

Appendix 1 | Summary of the Normative Framework and Applicable Standards - p.138

Appendix 2 | Integrating the Views of Affected Communities Into All Steps of Due Diligence p.140

Appendix 6 | Diversity of Affected Community Profiles (Indicative, Non-Exhaustive List) - p.148

Community Liaison Officers

Importance of the Subject for This Functional Scope

Community liaison officers play an essential role in implementing the business' commitments related to human rights, engagement with affected communities, and management of local impacts. As the direct interface between the company and affected communities, they foster meaningful engagement, ensuring that local concerns are acknowledged and integrated into corporate decision-making and actions..

With their in-depth knowledge of the territory and community dynamics, they contribute to securing social acceptance of the company's operations and current projects, while managing expectations to prevent tensions from turning into conflict. Their ongoing presence and engagement strengthen long-term trust between the company and affected communities. They also play a key role in the management of grievance mechanisms,ensuring their accessibility, transparency, and the effective handling of concerns and alerts raised.

! Points to Bear in Mind Regarding this Functional Scope

- **Establishing meaningful engagement with affected communities:** providing clear, accessible and transparent information on the impacts, both positive and adverse, associated with the business' activities or ongoing projects, and the measures taken to prevent, mitigate or remedy them. They offer affected communities a direct and respectful channel for expressing their needs and concerns, while taking into account local traditions, languages and customs.
- **Contribute to identifying negative impacts and anticipating emerging risks:** through their direct contact with affected communities, community liaison officers are able to identify actual or potential negative impacts of the company's activities and business relationships, as well as detect emerging risks.
- **Oversee the local implementation of the company's commitments in the field:** particularly regarding engagement with affected communities, mitigation or remediation of negative impacts, and maximisation of positive outcomes.
- **Respect the rights, territories and governance structures of Indigenous and Tribal Peoples:** this includes informing them of any visits, respecting defined access routes, and avoiding any intrusion into sacred sites. It also involves adhering to existing engagement protocols established by Indigenous and Tribal Peoples and recognising their legitimate representative bodies.
- **Prevent tensions and potential conflicts:** identifying weak signals that could indicate emerging tensions or risks of conflict escalation. These signals are reported to internal teams to enable the implementation of appropriate preventive measures, strengthening the company's ability to respond proactively. The community liaison officer also plays a key role in managing community expectations, particularly regarding employment, recruitment, and social benefits. They ensure clear and transparent communication about opportunities, selection processes, and allocation criteria, in order to avoid frustration or misunderstandings that could lead to tensions.
- **Encouraging initiatives and solutions that are context-specific and co-constructed with affected communities:** co-developing local initiatives that are aligned with the real needs of the communities and grounded in local realities, and facilitating collaboration with local authorities, NGOs and associations to jointly design solutions that are appropriate to the severity of the impacts. Community liaison officers also play a role in identifying and monitoring social and environmental investment projects, ensuring their relevance to the local context and their lasting impact.

- **Facilitate access to grievance mechanisms and ensure their proper functioning:** raising awareness among communities about the available grievance mechanisms, ensure that they are well understood and effectively used, guarantee accessibility, and collect feedback from communities on the effectiveness of the existing mechanisms, while ensuring that no retaliation is taken against those who speak up.

Sections of the Guide Recommended for This Functional Scope

Although all sections of this guide are relevant to this profile, we particularly recommend the following sections:

Engineers / Service Providers and Consultants Carrying Out Preliminary Feasibility Studies and Impact Assessments

Importance of the Subject for This Functional Scope

Engineers, whether working within the project-leading company or as consultants or expert contractors involved in exploration and social and environmental impact assessment phases, play a key role in managing relationships with potentially affected communities. As the first "public face" of the company, their behaviour, actions, and communication have a direct impact on how the company and the project are perceived.

! Points to Bear in Mind Regarding this Functional Scope

Exploration phase

In extractive, energy, and infrastructure sectors in particular, the first potential contacts made during pre-feasibility and feasibility studies, as well as exploratory work, can shape how the company and the project are perceived by communities and may compromise the trust that is essential for the smooth implementation of the project. A few key points should be taken into account:

- **Ensuring a respectful, transparent approach that is sensitive to local concerns;**
- **Facilitating access to a community liaison officer from the project-leading company:** to enable communities to ask questions and voice concerns;
- **Providing information on potential grievance mechanisms** during this early phase;
- **Adopting environmentally-friendly behaviour:** minimising our ecological footprint during the testing, field reconnaissance and sampling phases;
- **Strictly respecting the lands and territories of Indigenous and Tribal Peoples**: obtaining any necessary authorisations from the legitimate representative institutions of Indigenous and Tribal Peoples to access their territories and avoiding intrusions into sacred areas;
- **Managing expectations:** by clearly explaining the exploratory nature of the tests to avoid any confusion with an ongoing operations, particularly when communities directly inquire about the presence of engineers or expert consultants in areas under feasibility study or exploration. This clarification helps to prevent the spread of misinformation and reduces premature expectations.

Environmental and Social Impact Assessment (ESIA) Study Phase

This phase involves increased interactions and direct consultations with communities potentially impacted by the project. There are a few points to bear in mind:

- **Rigorously assessing impacts by integrating the views of communities and scientific data:** analysing the potential, current and cumulative impacts on communities and their environment by integrating both scientific data and feedback from engagement with affected communities;
- **Ensuring that legitimate representatives or representative bodies are identified as points of contact, and organise inclusive consultations that are culturally adapted to local contexts** to ensure that all voices, particularly those of vulnerable groups, are heard;
- **Relaying information on existing grievance management mechanisms**;

- **Respecting the rights of Indigenous and Tribal Peoples:** complying with potentially existing consultation protocols and involve legitimate representative institutions;
- **Managing expectations:** remembering that the purpose of impact studies, and in particular ESIAs, are intended to inform the business about the feasibility of the project and, where appropriate, to decide whether or not to go ahead with it. Proactive and transparent communication about the purpose of these studies is essential to avoid misunderstandings and possible tensions with affected communities.

Sections of the Guide Recommended for This Functional Scope

Who Are Affected Communities? - p.22

What Impact Are We Talking About?

→ Focus on the cumulative impacts affecting the environment and the rights of affected communities - p.34

Step 1 | Who to Engage? Identify Affected Communities - p.50

Step 4 | Engaging in the Right Way:

→ When to Engage? Engaging With Communities at Every Step of the Project Life Cycle - p.66
→ The Importance of First Contacts - p.68
→ Strengthening engagement processes as part of ESIA studies, where contextually appropriate, to ensure more meaningful participation of affected communities - p.68
→ Special Considerations for Engagement With Indigenous and Tribal Peoples - p.75
→ Special Considerations for Engagement With Vulnerable Groups - p.89

Step 5 | Setting Up Effective Grievance Mechanisms Tailored to Affected Communities:

→ Effectiveness Criteria for Non-Judicial Grievance Mechanisms (Principle 31 of the UN Guiding Principles), "Accessibility" section - p.97

Appendix 3 | Summary Table of the Collective Rights of Indigenous and Tribal Peoples Recognised by the UNDRIP and ILO Convention No. 169 p.142

Appendix 6 | Diversity of Affected Community Profiles (Indicative, Non-Exhaustive List) - p.148

Appendix 7 | Information, Communication of Information and Terms of Engagement - Summary p.149

APPENDICES

Appendix 1 | Summary of the Normative Framework and Applicable Standards

Normative Framework

- **At International Level**
  - → Universal Declaration of Human Rights (UDHR)
  - → International Covenant on Civil and Political Rights (ICCPR)
  - → International Covenant on Economic, Social and Cultural Rights (ICESCR)
  - → International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)
  - → Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
  - → Convention on the Rights of the Child (CRC/UNCRC)
  - → American Convention on Human Rights ("Pact of San José, Costa Rica").
  - → United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)
  - → Indigenous and Tribal Peoples Convention (No. 169)
  - → American Declaration on the Rights of Indigenous Peoples
  - → African Charter on Human and Peoples' Rights
  - → Convention on Biological Diversity (CBD)
  - → Rio Declaration on Environment and Development
  - → Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention)
  - → Regional Agreement on Access to Information, Public Participation and Access to Justice in Environmental Matters in Latin America and the Caribbean, known as the "Escazú Agreement"
  - → Paris Agreement adopted under the United Nations Framework Convention on Climate Change

- **At French National Level and European Level**
  - → French Corporate Duty of Vigilance Law (Loi n° 2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre)
  - → Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting (CSRD) *Corporate Sustainability Reporting Directive* and Commission Delegated Regulation (EU) 2023/2772 of 31 July 2023 supplementing Directive 2013/34/EU of the European Parliament and of the Council as regards sustainability reporting standards, including the thematic standard ESRS S3 specifically dedicated to affected communities, including Indigenous and Tribal Peoples. See also Corrigendum 2024/90408 to Delegated Regulation (EU) 2023/2772 (for French version)
  - → Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence (CSDDD) – referred to as the CSDDD or *Corporate Sustainability Due Diligence Directive*
  - → Regulation (EU) 2024/1252 of the European Parliament and of the Council of 11 April 2024 establishing a framework for ensuring a secure and sustainable supply of critical raw materials – known as the CRMA for Critical Raw Materials Act
  - → Regulation (EU) 2023/1115 of the European Parliament and of the Council of 31 May 2023 on the making on: the Union market and the export from the Union of certain commodities and products associated with deforestation and forest degradation (EUDR)[149]

Human Rights Standards (Soft Law)

- → UN Guiding Principles on Business and Human Rights (UN Guiding Principles) – (2011) and The Corporate Responsibility to Respect Human Rights: An Interpretive Guide
- → OECD Guidelines for Multinational Enterprises on Responsible Business Conduct (2023 updated edition)
- → OECD Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector (2017)
- → G20/OECD Principles of Corporate Governance 2023
- → The Ten Principles of the United Nations Global Compact (2000)

Other Relevant Standards, Particularly Sector-Specific (Non-Exhaustive List)

- → International Finance Corporation (IFC), Environmental and Social Sustainability Performance Standards and Guidance Notes (updated in 2021)
- → The Equator Principles – Version EP4 (updated in July 2020)
- → ISO 26000 standard – Social responsibility
- → Initiative for Responsible Mining Assurance (IRMA) - IRMA Standard for Responsible Mining v1.0 (2018, with Version 2.0 under development)
- → EITI Standard (Extractive Industries Transparency Initiative Standard)
- → Voluntary Principles on Security and Human Rights
- → Responsible Jewellery Council (RJC), Code of Practices Standard
- → International Council on Mining and Metals (ICMM) – Guidance, in particular the Company-Community Relations Toolkit and the Community Development Toolkit
- → The International Petroleum Industry Environmental Conservation Association (Ipieca) *Meaningful Engagement: practitioner guidance, Community development agreements Guidance, and Community Grievance Mechanisms in the Oil and Gas Industry*
- → Kimberley Process Certification Scheme (KPCS)
- → OECD-FAO Guidance for Responsible Agricultural Supply Chains
- → Forest Stewardship Council (FSC) – *The 10 FSC Principles and Certification standards*

Appendix 2 | Integrating the Views of Affected Communities Into All Steps of Due Diligence

Steps of Due Diligence	Guidelines for Integrating the Views of Affected Communities – Some Identified Practices
Commitments on Human Rights and Other Relevant Issues	■ Ensure that the potential and actual impacts on affected communities, particularly vulnerable groups, are covered in the commitments made by the company. The business aligns its human rights policies with the UN Guiding Principles, taking into account the International Bill of Human Rights and fundamental conventions. It also commits to respecting the rights of communities potentially or actually affected by its activities and specifies its commitment (or adopts a specific policy) regarding Indigenous and Tribal Peoples, according to its operational context, integrating the principle of Free, Prior and Informed Consent, in accordance with the United Nations Declaration on the Rights of Indigenous Peoples and ILO Convention No. 169. ■ The perspectives of affected communities must not only be heard but must also be able to directly influence the commitments made by the company, so that they are firmly grounded in the company's operational reality: → Setting up a **stakeholder committee including at least one external member capable of representing the interests of affected communities in the development and updating of the business' commitments**; → Consulting with **credible experts** familiar with the operational contexts or with **civil society organisations that can represent the voice of affected communities**, including **Indigenous and Tribal Peoples**, if applicable.
Assessing Actual and Potential Adverse Impacts	■ Communities must be actively involved in identifying risks, considering the specificities of their context: → **Engagement strategies should be designed to identify actual and potential adverse impacts, ensuring the active participation of affected communities**, their representatives, and vulnerable groups throughout the process. This includes regular consultations and direct access to relevant information. → **Include affected communities and groups in human rights and environmental impacts assessments, as well as in independent audits** of the company's operations and those of its business partners. This can include direct interviews with communities or, in contexts where direct engagement is difficult or impossible, consultation with human rights experts or local NGOs, as well as feedback of information and risks via multi-stakeholder initiatives. → **Long-term partnerships with local NGOs specialising** in the rights of communities, Indigenous and Tribal Peoples or vulnerable groups in order to gather information on the risks on the ground that could affect these communities. These partnerships provide continuous feedback and enable us to anticipate emerging risks. → **Develop practical guidance tools for field teams and suppliers**, prepared by those responsible for human rights and vigilance. These tools outline good practices for minimising negative impacts on community rights and include real-life case studies. → **Practical training for suppliers on integrating the rights of affected communities into their risk assessments,** using concrete cases to raise awareness and guide their actions. → **Feedback and grievance mechanisms accessible to affected communities** to enable them to report unidentified risks or emerging impacts. These platforms may include digital reporting tools or local monitoring committees in certain contexts.
Integrating and Implementing Appropriate Actions	■ Creating mechanisms to ensure that affected communities are actively involved in the integration of risk assessment results and the implementation of prevention, mitigation and remediation actions: → For example, **setting up regular round-table discussions in the field** between the business and affected communities **(see sections on the modalities of engagement)**. → **Join multi-stakeholder initiatives involving businesses, NGOs and governments** to prevent, mitigate and remediate adverse impacts in supply chains and address systemic issues.

Ensuring Traceability and Communication	■ Include the perspectives of affected communities in determining key reporting indicators and measures in assessing the effectiveness of actions to prevent, mitigate and remediate adverse impacts. → **Co-develop indicators with communities through participatory consultations or consultations with credible experts or relevant NGOs, to ensure that qualitative or quantitative Key Performance Indicators (KPIs) are adapted to local realities** (see **Part 3, Step 7 | Communicating About Respect for the Rights of Affected Communities and the Effectiveness of Engagement Practices**. ■ **Appropriate communication mechanisms must be put in place to ensure transparent and continuous information on the measures taken and their effectiveness.**
Accessing Grievance and Remediation Mechanisms	■ Affected communities must be involved in the design, review and monitoring of operational grievance mechanisms to ensure their effectiveness. ■ **See section on "Adapting grievance mechanisms"**

Appendix 3 | Summary Table of the Collective Rights of Indigenous and Tribal Peoples Recognised by the UNDRIP and ILO Convention No. 169

Main Recognised Collective Rights (non-exhaustive list)	Standards	
	UNDRIP	**ILO Convention No. 169**
Right to self-determination and self-government The right to freely determine their political status and their economic, social and cultural development. The right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.	Articles 3 and 4	"UNDRIP expressly affirms Indigenous Peoples' right to self-determination, while Convention No. 169 does not include such a provision.[151]"
Right to their land and territories The right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired. This includes the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired. Consultation of Indigenous Peoples concerned and cooperation through their own representative institutions, in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources. Protection against arbitrary dispossession, forced displacement and relocation and the right to remediation. Also, the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to futures generations in this regard.	Articles 10, 25, 26, 27, 28, 32	Articles 13, 14, 15, 16, 17, 18, 19
Right to development The right to determine and develop their own economic, social, cultural and environmental development strategies, in accordance with their traditional institutions, knowledge and ways of life.	Article 23	Article 7
Right to education The right to preserve, develop and pass on their language, history, traditions and cultural identity. The right to establish and manage their own education systems, guaranteeing teaching in their own language and in accordance with their cultural methods of learning.	Article 14, 17 and 21	Articles 26, 27, 28, 29, 30, 31

Right to health and social security The right to improved economic and social conditions, including health and social security, with equitable access to essential services and support programs adapted to their cultural needs.	Articles 21, 23	Articles 24, 25
Traditional activities, workers' rights and vocational training The right to enjoy fully all rights established under applicable international and domestic labour law, while preserving their traditional activities and gaining access to culturally appropriate vocational training.	Article 17	Articles 20, 21, 22, 23
Customary law, criminal justice systems and access to justice The right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, judicial systems or customs, in accordance with international human rights standards.	Articles 3, 34 and 35	Articles 8, 9, 10, 12
Right to equality and non-discrimination The right to be free and equal to all other peoples and individuals, and free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity. Non-discrimination in access to employment, particularly skilled employment. The right not to be subjected to any discriminatory working conditions of labour and, inter alia, employment or salary.	Articles 1, 2 and 17	Articles 3 and 4, 20
Right to participation and consultation The right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.	Articles 5, 18, 19, 23	Articles 6,7, 5 and 17

Rights to natural resources and the preservation of their environment The right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. The right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources. Consultation of Indigenous Peoples through their own representative institutions, with a view to obtaining their free and informed consent prior to the approval of any project affecting their resources, in particular regarding the development, use or exploitation of mineral, water or other resources. Participation in the benefits arising from these activities.	Articles 29 and 32	Article 15
Right to Free, Prior and Informed Consent (FPIC) The principle of Free, Prior and Informed Consent (FPIC) is based on the fundamental right of Indigenous and Tribal Peoples to self-determination. FPIC is one of the guarantees of the right to self-determination and the collective rights of Indigenous and Tribal Peoples to exercise control over their own lands, territories and resources as a people **(see section on Special considerations for engagement with Indigenous and Tribal Peoples).**	Articles 10, 11, 19, 28, 29, 32	Articles 6(2) and 16(2)

Appendix 4 | Focus on Standards and Norms applicable to Grievance Mechanisms

Standards	Key Provisions
UN Guiding Principles (2011)	■ **Principle 29 and its commentary:** "To make it possible for grievances to be addressed early and remediated directly, business enterprises should establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted". ■ **See also The Corporate Responsibility to Respect Human Rights: An Interpretive Guide, Questions 69 to 77.** ■ **Principle 31 and its commentary – Effectiveness criteria for non-judicial grievance mechanisms** ■ **See also The Corporate Responsibility to Respect Human Rights: An Interpretive Guide, Questions 78 to 80.**
OECD Guidelines (2023 revision)	■ **Chapter IV. Human rights, 6:** Businesses should "provide for or co-operate through legitimate processes in the remediation of adverse human rights impacts where they identify that they have caused or contributed to these impacts". ■ **Commentary on Chapter IV, 51:** "[...] operational-level grievance mechanisms for those potentially impacted by enterprises' activities can be an effective means of providing for such processes when they meet the core criteria of: legitimacy, accessibility, predictability, equitability, compatibility with the *Guidelines*, transparency, rights-compatibility, being a source of continuous learning, and are based on dialogue and engagement with a view to seeking agreed solutions. Such mechanisms can be administered by an enterprise alone or in collaboration with other stakeholders and can be a source of continuous learning. Operational-level grievance mechanisms should not be used to undermine the role of trade unions in addressing labour-related disputes, nor should such mechanisms preclude access to judicial or non-judicial grievance mechanisms, including the National Contact Points under the Guidelines". ■ **Part II, Procedures, I. National Contact Points for Responsible Business Conduct, C. Specific Instances:** "The NCP will, serving as a non-judicial grievance mechanism, contribute to the resolution of issues that arise relating to the implementation of the Guidelines in specific instances in a manner that is consistent with the core effectiveness criteria listed in Section I.A. [...]".
French Duty of Vigilance Law (2017)	■ **Article 1 (creating Article L.225-102-4 of the French Commercial Code):** "The plan [...] shall include the following measures: "[...] 4° An alert mechanism that collects reporting of existing or actual risks, developed in working partnership with the trade union organizations representatives of the company concerned"
CSRD Directive (2023) and ESRS S3 standards	■ **ESRS S3 - Publication requirement S3-3:** **25.** " The undertaking shall describe the processes it has in place to provide for or cooperate in the remediation of negative impacts on affected communities that the undertaking is connected with, as well as channels available to affected communities to raise concerns and have them addressed".
CSDDD Directive (2024)	■ **Article 14 Notification mechanism and complaints procedure** (1): "Member States shall ensure that companies enable persons and entities listed in paragraph 2 to submit complaints to them where those persons or entities have legitimate concerns regarding actual or potential adverse impacts with respect to the companies' own operations, the operations of their subsidiaries or the operations of their business partners in the chains of activities of the companies."

Appendix 5 | Focus on Standards and Norms Applicable to the Remediation of Adverse Impacts

Standards	Key Provisions
UN Guiding Principles (2011)	■ **Principle 22 and its commentary:** "When business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes". ■ **The Corporate Responsibility to Respect Human Rights: An Interpretive Guide, Question 11:** "(a) If an enterprise is at risk of causing or contributing to an adverse human rights impact through its own activities, it should cease or change the activity that is responsible, in order to prevent or mitigate the chance of the impact occurring or recurring. If an impact nevertheless takes place, the enterprise should engage actively in its remediation either directly or in cooperation with others (be it the courts, the Government, other enterprises involved or other third parties); b) If an enterprise is at risk of involvement in an adverse impact solely because the impact is linked to its operations, products or services by a business relationship, it does not have responsibility for the impact itself: that responsibility lies with the entity that caused or contributed to it. The enterprise therefore does not have to provide remediation (although it may choose to do so to protect its reputation or for other reasons). However, it has a responsibility to use its leverage to encourage the entity that caused or contributed to the impact to prevent or mitigate its recurrence. This may involve working with the entity and/or with others who can help." ■ **See also The Corporate Responsibility to Respect Human Rights: An Interpretive Guide, Questions 64 to 68.**
OECD Guidelines (2023 revision)	■ **Chapter IV. Human rights, 6:** Businesses should "provide for or co-operate through legitimate processes in the remediation of adverse human rights impacts where they identify that they have caused or contributed to these impacts". ■ **Chapter IV. Human Rights, 23:** [...] "responsibility should not be shifted from an entity causing an adverse impact to the enterprise with which it has a business relationship. In this respect where an enterprise is directly linked to an adverse impact through a business relationship, but does not cause or contribute to it, it is not responsible for providing remediation, though it may take a role in doing so, but rather for using leverage alone or in co-operation with other entities, to influence the entity causing the adverse impact to prevent, mitigate or remediate that impact. Where an enterprise does not have sufficient leverage, it should consider ways to enhance its leverage". ■ **Chapter IV. Human Rights, 48.** where a business has not caused or contributed to an adverse human rights impact, "but that impact is nevertheless directly linked to its operations, products or services by its business relationship with another entity" [...] "acting alone or in co-operation with other entities", [...] the business "use and where needed enhance its leverage to influence the entity causing the adverse human rights impact to prevent or mitigate that impact". ■ **Chapter IV. Human rights, 51:** "When enterprises identify through their human rights due diligence process or other means that they have caused or contributed to an adverse impact, the *Guidelines* recommend that enterprises provide for or co-operate in their remediation through legitimate processes. Enterprises should establish or participate in processes to enable remediation. Some situations require co-operation with judicial or State-based non-judicial mechanisms". ■ **Chapter VI. Environment, 1. e):** in relation to enterprises: "providing for, or co-operating in, remediation as necessary to address adverse environmental impacts the enterprise has caused or contributed to, and using leverage to influence other entities causing or contributing to adverse environmental impacts to remediate them".
French Duty of Vigilance Law (2017)	■ **Article 2 (which creates Article L.225-102-5 of the French Commercial Code) 1st paragraph:** " According to the conditions laid down in Articles 1240 and 1241 of the Civil Code, the author of any failure to comply with the duties specified in Article L. 225-102-4 of this code shall be liable and obliged to compensate for the harm that due diligence would have permitted to avoid ".

CSRD Directive (2022) and ESRS S3 standards	■ **ESRS S3 - Publication requirement S3-3:** **25.** " The undertaking shall describe the processes it has in place to provide for or cooperate in the remediation of negative impacts on affected communities that the undertaking is connected with, as well as channels available to affected communities to raise concerns and have them addressed".
CSDDD Directive (2024)	■ **Article 12 Remediation of actual adverse impacts** 1. "Member States shall ensure that, where a company has caused or jointly caused an actual adverse impact, the company provides remediation. 2. Where the actual adverse impact is caused only by the business' business partner, voluntary remediation may be provided by the company. The company may also use its ability to influence the business partner that is causing the adverse impact to provide remediation" ■ **Article 13 Meaningful engagement with stakeholders** (3) "Consultation of stakeholders shall take place at the following stages of the due diligence process: [...] d) when adopting appropriate measures to remediate adverse impacts pursuant to Article 12"

Appendix 6 | Diversity of Affected Community Profiles (Indicative, Non-Exhaustive List)

The examples below highlight the diversity of profiles among communities potentially or actually affected by business activities, whether upstream or downstream in the value chain. This list is indicative, non-exhaustive, and must be adapted to the specificities of the local context.

1. **Urban communities:** inhabitants of large cities and metropolitan areas, but also those of urban suburbs and peri-urban areas. These communities may include vulnerable groups, such as migrants flocking to the city or to the outskirts of the city (sometimes in shantytowns) who have been attracted by the opportunity to work on the project site or for third parties linked to the project.
2. **Sedentary rural communities:** farmers, livestock breeders in agricultural or livestock farming areas, but also small producers or livestock breeders living in more remote or even isolated regions, or forest dwellers. The members of these communities often depend directly on their land and natural resources for their subsistence. Once again, these communities may include vulnerable groups (e.g. migrants seeking work, whether from other regions or other countries, internally displaced persons fleeing violence or natural disasters).
3. **Coastal communities dependent on fishing:** certain communities depend mainly on aquatic resources for their livelihood, whether marine, river or lake ecosystems. These communities include coastal and freshwater fishermen, as well as fish farmers who raise fish in ponds or in the wild, those involved in marine shellfish aquaculture, seaweed collectors, traditional pearl fishermen and pearl farmers. Finally, there are the fishmongers and traders who depend on the processing and sale of fish products.
4. **Transhumant and nomadic communities:** Transhumant and nomadic communities include individuals or groups whose way of life is based on mobility and adaptation to natural cycles (e.g. Tuaregs, Masai, Saharan nomads who practise mobile livestock rearing following the seasons). This group also includes travelling communities such as the Roma, and non-Indigenous hunter-gatherers.
5. **Indigenous and Tribal Peoples**
   - → No legal definition of Indigenous and tribal peoples has been universally agreed under international law. (**See No Universal Definition but Identification Criteria).**
   - → Note: the Quilombola communities, of Afro-descendant origin, are distinguished by their traditional way of life and their ancestral ties to their territories. Born of resistance to slavery and racism, they have developed their own cultural identity. They can be found in Brazil, Colombia, Ecuador, Suriname, Honduras, Belize and Nicaragua. In 2008, they were assimilated to Tribal Peoples benefiting from the protection of ILO Convention No. 169, following a complaint to the ILO by the Quilombolas of Alcântara (Brazil)[152]. In Brazil, the collective right of Quilombola communities to their traditional lands is recognised by law.
   - → **There are also Indigenous and Tribal Peoples in voluntary isolation:** groups living in voluntary isolation, with no interaction with modern society, often located in remote areas (e.g. remote regions of Amazonia, Papua, forests of South-East Asia, Andaman Islands in the Indian Ocean). Extremely vulnerable to disease and to the destruction of their habitat and way of life.

Please note: some Indigenous and Tribal Peoples may practise nomadism and seasonal transhumance, depending on the context, or may be identified as indigenous coastal or indigenous rural communities.

Appendix 7 | Information, Communication of Information and Engagement Modalities - Summary

■ Key Questions to Ask

- → What information is essential to ensure that affected communities fully understand the environmental, social and cultural impacts?
- → How can the message be structured so that it is clear and understandable to everyone, including vulnerable groups?
- → What communication methods and channels should be used to reach affected communities more easily and effectively?
- → What engagement tools and formats are most appropriate based on the characteristics of the community and the operational context?

■ Type of Information to Be Sent to Affected Communities (Non-Exhaustive List)

The "relevant and complete information[153]" to be provided must address the potential and actual environmental, social and cultural impacts associated with the products, services and operations of the business, its subsidiaries and its business partners.

1. General Information About the Project

- → **Size and nature of project:** type of infrastructure or activity planned, estimated duration, project phase;
- → **Impacted area:** location, geographical extent of potential effects, access to land and natural resources used;
- → **Involved parties:** identification of the company responsible for the project and any relevant commercial partners.

2. Human Rights and Environmental Impacts

- → **Actual and potential adverse impacts on land and natural resources:** information on the adverse impacts of operations, projects and possible expansion plans on land and natural resources, including the potential for cumulative impacts over time. Transparency on the impact of the business' activities on the land rights of affected communities, particularly regarding land acquisition and the risks of relocation. Presentation of the measures put in place to preserve land and natural resources, avoid or mitigate any degradation, and ensure respect for property rights and traditional uses linked to land and natural resources;
- → **Tangible and intangible cultural heritage:** information on the project's potential impact on archaeological sites, historical monuments, sacred or religious sites, oral traditions, rituals, craft skills and local cultural practices;
- → **Impacts on biodiversity:** information on the risks of deforestation, destruction of habitats or fragmentation of ecosystems linked to the business' operations, the risks for threatened species and the proposed measures or restoration plans to prevent and combat biodiversity loss;
- → **Water use and conservation:** information on local water availability, potential impacts of water withdrawals on communities and ecosystems, and any risks of water pollution. It should also include the measures taken to prevent and mitigate such risks and to protect water access for local communities. For example, this may involve sharing the results of studies on water resource capacity or water stress levels;
- → **Climate-related risks:** explanation of the business' role in reducing the effects of climate change. If the information is in the business' possession, how climate change may affect local ecosystems and livelihoods;
- → **Waste management:** information on the types of waste produced (hazardous and non-hazardous), their volume, treatment and disposal methods, and the risks of soil, air and groundwater contamination;
- → **Air quality and toxic substances:** data on industrial emissions and chemicals used in operations that may affect community health (e.g. pesticides in agriculture, industrial air emissions). Explanation of monitoring measures and corrective actions implemented.

■ **Information Communication Media to Be Adapted According to the Operational Context and the Characteristics of Affected Communities:**

1. Written and Visual Aids:

- → **Newsletters and brochures:** documents summarising the project's activities and impact;
- → **Posters and billboards:** key information placed in strategic locations accessible to communities;
- → **Interactive maps and infographics:** visual presentation of the impacted area and the environmental and social impacts identified.

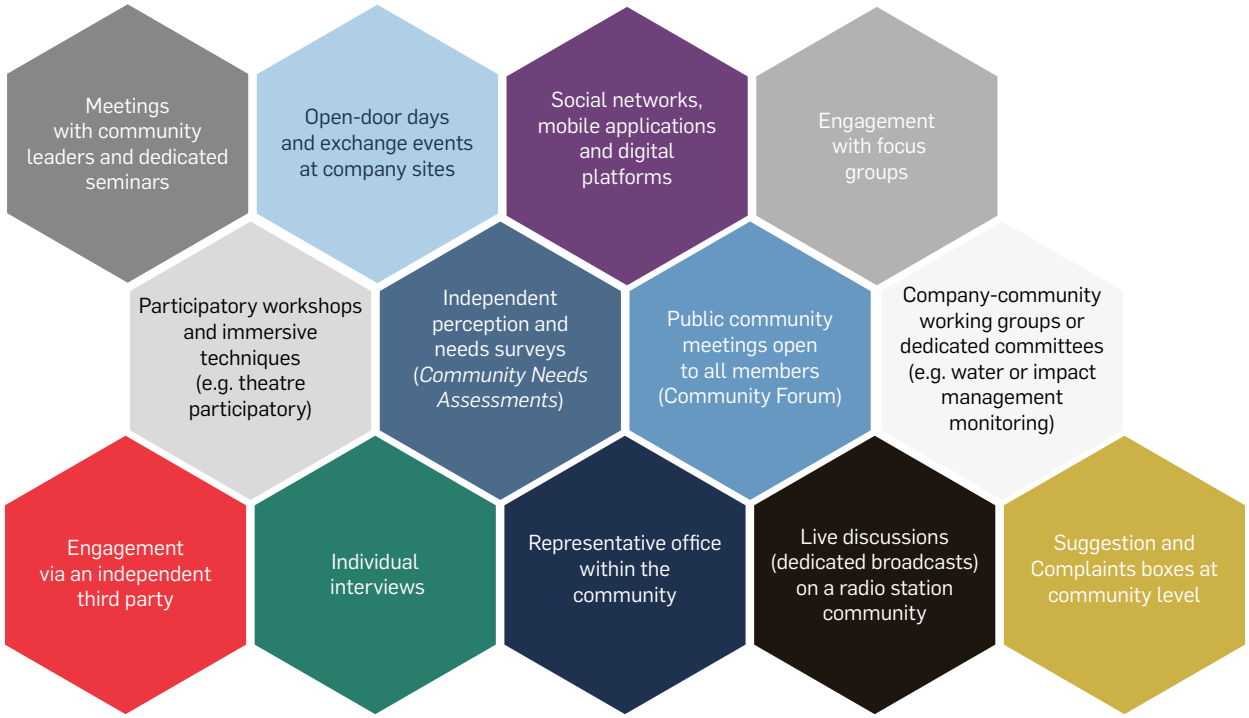
2. Oral Communication and Face-to-Face Events (Face-to-Face Information and Discussion Sessions):

- → **Public information meetings;**
- → **Individual meetings with legitimate community representatives;**
- → **Open day and tour of operations.**

3. Digital Media and Tools (Depending on the Context, Network Permitting):

- → **Social networks** (e.g. Facebook, Twitter, Instagram): more interactive channels for disseminating information and communicating with communities;
- → **Websites dedicated to the project:** platforms containing detailed resources, documents and contacts;
- → **Mobile applications** (e.g. WhatsApp, Messenger, Signal): sending information and notifications of meetings or urgent information, for example to community leaders;
- → **Explanatory videos and webinars:** project presentations and interactive online sessions (depending on the context, network permitting).

A variety of ways to engage (some examples – non-exhaustive list)



Additional Useful Resources

Assessment of Adverse Impacts and Appropriate Measures

- United Nations Development Program (UNDP). (2023). Practical Tool for Business on Human Rights Due Diligence and the Environment (HRDD+E). Available here: https://www.undp.org/rolhr/publications/practical-tool-business-human-rights-due-diligence-and-environment-hrdde
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- Business for Social Responsibility (BSR). (2021). Human Rights Assessments: Identifying Risks, Informing Strategy. Available here: https://www.bsr.org/en/reports/human-rights-assessments-identifying-risks-informing-strategy
- Van Ho, T. (2021). Defining Relationships: "Cause, Contribute, and Directly Linked to" in the UN Guiding Principles on Business and Human Rights. Human Rights Quarterly 43(4), p. 625-658. https://dx.doi.org/10.1353/hrq.2021.0053
- Danish Institute for Human Rights. (2020). Human rights impact assessment guidance and toolbox. Available here: https://www.humanrights.dk/tools/human-rights-impact-assessment-guidance-toolbox
- SOMO. (2016). Should I stay or should I go? Exploring the role of disengagement in human rights due diligence. Available here: https://www.somo.nl/should-i-stay-or-should-i-go-2/
- International Finance Corporation (IFC). (2013). Good Practice Handbook on Cumulative Impact Assessment and Management: Guidance for the Private Sector in Emerging Markets. Available here: https://www.ifc.org/en/insights-reports/2013/publications-handbook-cumulativeimpactassessment

Rights of Indigenous and Tribal Peoples

Guides

- International Work Group for Indigenous Affairs (IWGIA). (2025). The Indigenous World 2025. Available here: https://iwgia.org/en/resources/publications/5773-the-indigenous-world-2025.html
- Sirén Gualinga, E. (2024). Briefing Note: The EU Corporate Sustainability Due Diligence Directive and Indigenous Peoples' Rights. Available here: https://www.business-humanrights.org/documents/40390/CSDDD_Indigenous_Peoples_Rights.pdf
- Cultural Survival, First Peoples Worldwide. (2023). Securing Indigenous Peoples' Rights in the Green Economy Coalition. (2023). Securing Indigenous Peoples' Right to Self-Determination: A Guide on Free, Prior and Informed Consent. Available here: https://www.rachaelsydneyknight.org/publications/securing-indigenous-peoples-right-to-self-determination-a-guide-on-free-prior-and-informed-consent
- Shift Project. (2023). Indigenous Rights and Financial Institutions: Free, Prior and Informed Consent, Just Transition and Emerging Practice. Available here: https://shiftproject.org/resource/indigenous-rights-and-financial-institutions/

Case law of the Inter-American Court of Human Rights (non-exhaustive list)

- Inter-American Court of Human Rights. (2023). Case Olivera Fuentes v. Peru. Available here: https://www.corteidh.or.cr/docs/casos/articulos/seriec_484_ing.pdf
- Inter-American Court of Human Rights. (2021). Case Miskito Divers v. Honduras. Available here: https://www.corteidh.or.cr/docs/casos/articulos/seriec_432_ing.pdf
- Inter-American Court of Human Rights. (2015). Case of the Kaliña and Lokono Peoples v. Suriname. Available here: https://www.corteidh.or.cr/docs/casos/articulos/seriec_309_ing.pdf
- Inter-American Court of Human Rights. (2012). Kichwa Indigenous People of Sarayaku v. Ecuador. Available here: https://www.corteidh.or.cr/docs/casos/articulos/seriec_245_ing.pdf
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Stakeholder Engagement

- Buhmann, K., Fonseca, A., Andrews, N., & Amatulli, G. (2024). The Routledge Handbook on Meaningful Stakeholder Engagement. Available here: https://www.taylorfrancis.com/books/oa-edit/10.4324/9781003388227/routledge-handbook-meaningful-stakeholder-engagement-karin-buhmann-alberto-fonseca-nathan-andrews-giuseppe-amatulli
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- International Finance Corporation (IFC). (2007). Dialogue with Stakeholders: Stakeholder Engagement: A Good Practice Handbook for Companies Doing Business in Emerging Markets Available here: https://www.ifc.org/en/insights-reports/2000/publications-handbook-stakeholderengagement--wci--1319577185063
- Zandvliet L., Anderson M. (2009), Getting it Right: Making Corporate-Community Relations Work, Routledge, 1st edition. Available here: https://www.routledge.com/Getting-it-Right-Making-Corporate-Community-Relations-Work/Zandvliet-Anderson/p/book/9781906093198?srsltid=AfmBOoqnezzsn4i0lDLA-H0tsnfoSKrXiBa8lBpCOO43z3GLPfSB1uSD8

Grievance Mechanisms and Access to Remediation

- United Nations Office of the High Commissioner for Human Rights (OHCHR). (2024). Access to Remedy in Cases of Business-Related Human Rights Abuse: An Interpretive Guide (Advanced Version). Available here: https://media.business-humanrights.org/media/documents/access-to-remedy-bhr-interpretive-guide-advance-version.pdf
- EarthRights International & SOMO. (2022). Community-Driven Operational Grievance Mechanism Discussion Paper. Available here: https://earthrights.org/publication/community-driven-operational-grievance-mechanism-discussion-paper/
- Ethical Trading Initiative. (2019). Access to Remedy: Practical guidance for companies. Link available here: https://www.ethicaltrade.org/sites/default/files/shared_resources/Access%20to%20remedy_0.pdf

Just Transition

- Business for Social Responsibility (BSR). (2024). Stakeholder Engagement in the Transition Context: Guidance for Practitioners. Available here: https://www.bsr.org/en/reports/stakeholder-engagement-in-the-transition-context-guidance-for-practitioners
- Business for Social Responsibility (BSR). (2023). The Just Transition Planning Process for Business: A Toolkit to Drive Social Dialogue and Stakeholder Engagement Toward a Just, Equitable, and Inclusive Transition. Available here: https://www.bsr.org/reports/BSR-Just-Transition-Planning-Toolkit.pdf
- We Mean Business Coalition. Just Transition Resource Platform. Available here: https://www.wemeanbusinesscoalition.org/just-transition-resource-platform/
- Human Level. (2024). Navigating the Just Transition: Practical Steps for Business Leaders. Accessible via: https://www.wearehumanlevel.com/content-hub/navigating-the-just-transition-practical-steps-for-business-leaders
- Business & Human Rights Resource Centre. (2020). Renewable Energy & Human Rights Benchmark. Available here: https://www.business-humanrights.org/en/from-us/briefings/renewable-energy-human-rights-benchmark/

Practical Tools (Non-Exhaustive List)

- EJAtlas: Global Atlas of Environmental Justice. Available here: https://ejatlas.org/
- OECD Watch: database of grievances about possible breaches of the OECD Guidelines for Multinational Enterprises filed with National Contact Points (NCPs). Available here: https://www.oecdwatch.org/complaints-database/
- LandMark: a global interactive map that provides information on the land rights and complaints of Indigenous Peoples and non-Indigenous communities, making it possible to view information on land rights and complaints around the world. Available here: https://www.landmarkmap.org/map
- Land Portal Geoportal: an online platform for exploring, visualising and analysing spatial data related to land governance around the world (interactive maps, geospatial data and resources, including on Indigenous territories and lands). It centralises information from a variety of sources – governments, international organisations and civil society – to improve transparency and access to land data. Available here: https://geoportal.landportal.org/
- Land Matrix: global database that tracks and analyses large-scale land acquisitions and investments around the world. Available here: https://landmatrix.org/
- Trase Earth: traceability platform for agricultural supply chains. It links agricultural supply chains to environmental impacts, particularly deforestation. Available here: https://www.trase.earth/
- Observatorio Latinoamericano de Conflictos Ambientales (OLCA): to increase visibility and monitor environmental conflicts in Latin America. Available here: https://olca.cl/oca/index.php. For the mining sector, see in particular El Observatorio de Conflictos Mineros de América Latina (OCMAL): https://www.ocmal.org/
- Transition Minerals Tracker: tracks the social and environmental impact of over a hundred businesses involved in the extraction of minerals critical to the energy transition. Available here: https://www.business-humanrights.org/en/from-us/transition-minerals-tracker/
- Forest IQ: a monitoring and analysis platform that provides detailed data on deforestation, the conversion of natural ecosystems and the adverse impacts on human rights associated with the businesses involved in these processes. Available here: https://forestiq.org/

ACRONYMS

CAHRA – Conflict-Affected and High-Risk Areas
CESCR – United Nations Committee on Economic, Social and Cultural Rights
ICRC – International Committee of the Red Cross
CMW – Committee on the Protection of the Rights of All Migrant Workers and Members of their Families
FPIC – Free, Prior and Informed Consent
CRMA – Critical Raw Materials Act
CSRD – Corporate Sustainability Reporting Directive
CSDDD – Corporate Sustainability Due Diligence Directive
UNDRIP – United Nations Declaration on the Rights of Indigenous Peoples
SEIA – Social and Environmental Impact Assessment
EITI – Extractive Industries Transparency Initiative
ESRS – European Sustainability Reporting Standards
FAO –- Food and Agriculture Organization of the United Nations
FSC – Forest Stewardship Council
GRI – Global Reporting Initiative
ICMM – International Council on Mining and Metals
IRMA – Initiative for Responsible Mining Assurance
IWGIA – International Work Group for Indigenous Affairs
KPIs – Key Performance Indicators
ILO – International Labour Organization
IOM – International Organisation for Migration
OECD – Organisation for Economic Co-operation and Development
NGO – Non-governmental organisation
UN – United Nations
NCP – National Contact Point (of the OECD)
CEO – Chairman and Chief Executive Officer
SEP – Stakeholder Engagement Plan
PS7 – IFC Performance Standard 7 on Indigenous Peoples
EUDR – Regulation on Deforestation-Free Products
RJC – Responsible Jewellery Council
CSR – Corporate Social Responsibility (also known as corporate sustainability or corporate responsibility)
SEDESE – State Secretariat for Social Development
IFC – International Finance Corporation
UNICEF – United Nations Children's Emergency Fund

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[2] Law No. 2017-399 of 27 March 2017 on the due diligence of parent businesses and ordering businesses, also known as the “French Duty of Vigilance Law".

[3] Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014 and Directives 2004/109/EC, 2006/43/EC and 2013/34/EU as regards publication of sustainability information by businesses. CSRD stands for Corporate Sustainability Reporting Directive. Available here: https://eur-lex.europa.eu/eli/dir/2022/2464/oj/eng.

[4] Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859. CSDDD stands for Corporate Sustainability Due Diligence Directive. Available here: https://eur-lex.europa.eu/eli/dir/2024/1760/oj/eng.

[5] Regulation (EU) 2023/1115 of the European Parliament and of the Council of 31 May 2023 on the placing on the market in the Union and the export from the Union of certain raw materials and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010. The provisions were due to apply from 30 December 2024, but the Council approved the Commission's proposal to postpone the date of application of the regulation by one year. The regulation is due to come into force on 30 December 2025. Available here: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32023R1115

[6] Commission Delegated Regulation (EU) 2023/2772 of 31 July 2023 supplementing Directive 2013/34/EU of the European Parliament and of the Council as regards sustainability reporting standards designed to help businesses better understand and communicate their environmental, social and governance (ESG) impacts. They include general standards as well as thematic standards, in particular ESRS S3, which deals with the impacts of businesses on the communities affected/impacted by their activities and their value chain as part of the social pillar. Available here: https://eur-lex.europa.eu/eli/reg_del/2023/2772/oj/eng. See also Corrigendum 2024/90408 to Delegated Regulation (EU) 2023/2772, Available here: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L_202302772 .

Learn more: https://portail-rse.beta.gouv.fr/csrd/esrs-comprendre-les-standards-csrd-de-durabilite/#:~:text=Les%20European%20Sustainability%20Reporting%20Standards,et%20de%20gouvernance%20(ESG).

[7] See in particular: The due diligence radar, Cases in progress – Legal proceedings: https://plan-vigilance.org/les-affaires-en-cours-actions-en-justice/. And on the latest decisions of Chamber 5-12 of the Paris Court of Appeal: https://www.dalloz-actualite.fr/flash/devoir-de-vigilance-decryptage-des-premieres-decisions-de-chambre-5-12-de-cour-d-appel-de-pari

[8] See Appendix 1 – Summary of the Normative Framework and Applicable Standards.

[9] See Edgar Morin and Anne-Brigitte Kern. (1993). Terre-Patrie. The term 'polycrisis' is used for the first time in this essay to refer to the simultaneous existence of multiple interconnected crises at different levels – social, economic, environmental and political – such as climate crises, wars and geopolitical conflicts, social and economic inequalities, and health crises.

[10] United Nations. Office of the United Nations High Commissioner for Human Rights (OHCHR). Guiding Principles on Business and Human Rights: Implementing the "Protect, Respect and Remedy" Framework (Report of the Special Rapporteur John Ruggie concerning Human Rights, Transnational Corporations and Other Business Enterprises, A/HRC/17/31, 21 March 2011). Known by its acronym UNGPs (United Nations Guiding Principles on Business and Human Rights). The Human Rights Council approved the UN Guiding Principles in its resolution 17/4 of 16 June 2011. Available here: https://www.ohchr.org/sites/default/files/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

[11] Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 known as the "CSRD" See footnote 3.

[12] Regulation (EU) 2023/1115 of the European Parliament and of the Council of 31 May 2023, known as the "EUDR". See footnote 5.

[13] Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024, known as the "CSDDD". See footnote 4.

[14] See UN Guiding Principle 17 a) and c).

[15] See ESRS S3, Disclosure Requirement related to ESRS 2 SBM-3 - Material impacts, risks and opportunities and their interaction with strategy and business model, p. 225. Available here: https://eur-lex.europa.eu/eli/reg_del/2023/2772/oj/eng

[16] See, for example, UN Guiding Principles, "General Principles", p. 1: "These Guiding Principles should be understood as a coherent whole and should be read, individually and collectively, in terms of their objective of enhancing standards and practices with regard to business and human rights so as to achieve tangible results for affected individuals and communities, and thereby also contributing to a socially sustainable globalization."

[17] See in particular OECD Guidelines (2023 updated version), Chapter II. General principles, A. "Enterprises should: 2. Respect the internationally recognised human rights of those affected by their activities", p. 14, and Chapter VI. Environment "In particular, enterprises should: 2. Conduct meaningful engagement with relevant stakeholders affected by adverse environmental impacts associated with an enterprise's operations, products or services.", p. 34.

[18] International Finance Corporation (IFC). Environmental and Social Sustainability Performance Standards. (2012); and Guidance Notes updated 2021. Available here: https://www.ifc.org/en/insights-reports/2012/ifc-performance-standards.

[19] Equator Principles, a reference framework for environmental and social risk management in project finance, adopted by international financial institutions. The fourth iteration of the Equator Principles – EP4 – came into force on 1 October 2020. Learn more: https://equator-principles.com/app/uploads/The-Equator-Principles_EP4_July2020.pdf

[20] United Nations, Office of the High Commissioner for Human Rights (OHCHR). The Business Responsibility to Respect Human Rights, Interpretative Guidance, (2012). see Q 30. "What is the role of stakeholder engagement?" p. 33. Available here: https://www.ohchr.org/fr/publications/special-issue-publications/corporate-responsibility-respect-human-rights-interpretive

[21] See Joint Statement by the United Nations Permanent Forum on Indigenous Issues, Special Rapporteur on the Rights of Indigenous Peoples, and the Expert Mechanism on the Rights of Indigenous Peoples, July 2023. Available here: https://www.ohchr.org/sites/default/files/documents/issues/indigenouspeoples/emrip/Statement_EMRIP_July_2023.pdf

[22] United Nations. Office of the United Nations High Commissioner for Human Rights, United Nations Declaration on the Rights of Indigenous Peoples, Resolution adopted by the General Assembly, A/RES/61/295, (2007). Available here: http://www.un-documents.net/a61r295.htm

[23] International Labour Organization (ILO). Convention No. 169 concerning Indigenous and Tribal Peoples (1989). Available here: https://normlex.ilo.org/dyn/nrmlx_en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169

[24] Note that ILO Convention No. 169 uses the term "indigènes" in its French translation.

[25] J. Martinez Cobo, Study of the problem of discrimination against indigenous populations, Conclusions, proposals and recommendations, Geneva, United Nations, (1986). E/CN.4/Sub.2/1986/7 Add.1-4. The study is commonly referred to as the "Martinez Cobo Study" and comprises five volumes.

[26] International Labour Organization (ILO). Understanding ILO Convention No. 169 concerning Indigenous and Tribal Peoples, 1989: A Tool for Judges and Legal Practitioners, (2021). Available here: https://www.ilo.org/publications/understanding-ilo-indigenous-and-tribal-peoples-convention-1989-no-169-tool

[27] See Article 1. b) of ILO Convention No. 169.

[28] According to the ILO, "In the case of Indigenous Peoples, they have to be descended from the populations which inhabited the country, or a geographical region to which the country belongs, prior to conquest or colonization or the establishment of the present state boundaries, as well as retaining some or all of their own social, economic, cultural and political institutions.", see Understanding the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169): A Tool for Judges and Legal Practitioners, 1.2 Criteria for identification, p. 16. Available here: https://www.ilo.org/publications/understanding-ilo-indigenous-and-tribal-peoples-convention-1989-no-169-tool

[29] Office of the United Nations High Commissioner for Human Rights. Indigenous Peoples and the United Nations Human Rights System, Fact Sheet No. 9, Rev. 2, (2013), p. 2-3. Available here: https://www.ohchr.org/sites/default/files/Documents/Publications/fs9Rev.2.pdf

[30] Ibid.

[31] See Article 1. a) of ILO Convention No. 169.

[32] ACHPR & IWGIA, Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities, adopted by the African Commission on Human and Peoples' Rights at its 28th Ordinary Session, (2005), p. 92-93. Available here: https://iwgia.org/en/resources/publications/305-books/2546-report-of-the-african-commissions-working-group-of-experts-on-indigenous-populations-communities.html

[33] Cosmovision is a notion that encompasses the way in which an individual or a culture perceives, conceives and interprets the universe and its place within it. In the cosmovision of the Indigenous Andean peoples, there is a sacred link between human beings and the cosmos, the sky, the earth and the sea. Nature is no longer a separate reality from human beings; it is within them, and human beings are an integral part of Nature.

[34] The term Pachamama can be translated as "Mother Earth", "pacha" meaning earth, cosmos, time and space in Aymara and Quechua, and "mama", mother.

[35] The Diaguitas are an Indigenous People of northern Chile, mainly settled in the Atacama and Coquimbo regions. Although their culture was partly assimilated after the Spanish colonisation, the Diaguitas gained legal recognition as an Indigenous ethnic group in 2006 through Law 20.117. Until its enactment in 2006, the Diaguita people were not recognised in Chilean law 19.253 of 1993 on the protection, promotion and development of Indigenous Peoples. This recognition is part of a contemporary process of (re)building their Indigenousness, marked by the reaffirmation of their cultural identity and territorial rights. See in particular: Biblioteca del Congreso Nacional de Chile. Los pueblos Indígenas y sus Comunidades en Chile. Reconocimiento y distribución geográfica. Available here: https://www.bcn.cl/asesoriasparlamentarias/detalle_documento.html?id=83236 ; and Fundación de Comunicaciones, Capacitación y Cultura del Agro (FUCOA), Diaguitas Chilenos, Serie Introducción Histórica y Relatos de los Pueblos Originarios de Chile. Available here: https://www.fucoa.cl/publicaciones/pueblos_originarios/diaguitas.pdf ; and Mauricio Lorca. (2007). Un Enfoque Pragmático a la Etnicidad. El Caso de los Diaguitas Chilenos, VI Congreso Chileno de Antropología. Colegio de Antropólogos de Chile A. G, Valdivia. Available here: https://www.aacademica.org/vi.congreso.chileno.de.antropologia/41.pdf.

[36] The Changos are an Indigenous People of northern Chile, historically present on the coast of the Antofagasta, Atacama Coquimbo and Valparaiso regions. They were nomadic fishermen and marine hunters, using sea bass leather boats to navigate and exploit maritime resources. Although their existence has long been marginalised in official history, the Changos were legally recognised as an Indigenous People in 2020 by Law N° 21.273. Prior to this recognition, they were not included in Chilean law 19.253 of 1993. See Cornejo, L. (Ed.). (2008). Pescadores de la Niebla: Los Changos y sus ancestros, Museo Chileno de Arte Precolombino, Santiago (2008). Available here: https://museo.precolombino.cl/wp-content/uploads/2020/10/Pescadores-de-la-niebla.-Los-changos-y-sus-ancestros.pdf ; and Museo Nacional de Historia Natural de Chile (MNHN). Guía educativa: Los Changos. Available here: https://www.mnhn.gob.cl/sites/www.mnhn.gob.cl/files/images/articles-5037_archivo_05.pdf.

[37] In the United States, the term "Native American" is commonly used to refer to Indigenous Peoples. In North America, the term "Tribe" is common, as is "Native". Depending on the context, other terms are used, such as "Aboriginal" in Australia, or "First Nations", the term used to designate Indigenous Peoples who are neither Métis nor Inuit in Canada. "Root Peoples" or "First Peoples" are also used and preferred in certain operational contexts, but there is no global consensus.

[38] See the classification adopted in Blondel, M. (2015). La personne vulnérable en droit international, PhD thesis, University of Burgundy, p. 56 and following. Available here: https://tel.archives-ouvertes.fr/tel-01424139/document. See also Malgeri, G. (2023). “Who is the Vulnerable Individual?”, Vulnerability and Data Protection Law, Oxford Data Protection & Privacy Law. Available here: https://academic.oup.com/book/46055/chapter-abstract/404533553.

[39] See the UN Guidelines, Commentary on Principle 18, p. 19-20; and the OECD Guidelines, Commentary on Chapter IV: Human Rights, 45. p. 26.

[40] International Finance Corporation (IFC), Guidance Note 1 – Assessment and Management of Environmental and Social Risks and Impacts, 2021. Available here: https://www.ifc.org/content/dam/ifc/doc/2021/20210614-ifc-ps-guidance-note-1-en.pdf

[41] See Appendix II, Table 2 - Terms defined in the ESRS, definition of the value chain: "The full range of activities, resources and relationships related to the undertaking's business model and the external environment in which it operates. A value chain encompasses the activities, resources and relationships the undertaking uses and relies on to create its products or services from conception to delivery, consumption and end-of-life [...]. Value chain includes actors upstream and downstream from the undertaking [...]", p. 281-282. Available here: https://eur-lex.europa.eu/eli/reg_del/2023/2772/oj/eng

[42] See ESRS S3 – Objective 2, in particular (a), (b) and (c), p. 218. Available here: https://eur-lex.europa.eu/eli/reg_del/2023/2772/oj/eng

[43] See ESRS S3 - Appendix A, Application Requirements, S3-4, AR 28, p. 229. Available here: https://eur-lex.europa.eu/eli/reg_del/2023/2772/oj/eng

[44] See definition of sacrifice zones in UNDP, Practical Tool for Business on Human Rights Due Diligence and the Environment (HRDD+E), (2024), p. 113: extremely contaminated areas where vulnerable and marginalised rights holders bear a disproportionate burden of human rights, including the right to a healthy environment, consequences of exposure to land pollution and hazardous substances. Available here: https://www.undp.org/rolhr/publications/practical-tool-business-human-rights-due-diligence-and-environment-hrdde See also, for example, Chile: https://www.bcn.cl/boletines/temas.html?id_boletin=35&nro_boletin=4&mat=Zonas%20de%20Sacrificio

[45] See in particular UN Guiding Principle 24, p. 26, and The Corporate Responsibility to Respect Human Rights: An Interpretive Guide, Q.12., 13 and 88, p. 19 and 83.

[46] Article 11 (3)(a) of the CSDDD.

[47] See Basic principles and guidelines on development-based evictions and relocation, contained in Appendix I of the Report of the Special Rapporteur, A/HRC/4/18, which provides the following definition: "Coerced or involuntary displacement of individuals, groups and communities from homes and/or lands and common property resources that were occupied or depended upon, thus eliminating or limiting the ability of an individual, group or community to reside or work in a particular dwelling, residence or location, without the provision of, and access to, appropriate forms of legal or other protection." p. 14. Available here: https://docs.un.org/en/A/HRC/4/18

[48] These include the right to adequate housing, food, water, health, education, work, security of the person and security of the home, not to be subjected to cruel, inhuman or degrading treatment or punishment, and freedom of movement.

[49] United Nations Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 7: The right to adequate housing (article 11.1): forced evictions. (1997), see in particular paragraphs 4 and 15.

[50] Ibid. "The prohibition on forced evictions does not, however, apply to evictions carried out by force in accordance with the law and in conformity with the provisions of the International Covenants on Human Rights", 3., p. 2. See also, Office of the United Nations High Commissioner for Human Rights, Forced Evictions, Fact Sheet No. 25/Rev.1, p. 5. Available here: https://www.ohchr.org/sites/default/files/Documents/Publications/FS25.Rev.1.pdf

[51] According to IFC Performance Standard 5 "Involuntary resettlement refers both to physical displacement (relocation or loss of shelter) and to economic displacement (loss of assets or access to assets that leads to loss of income sources or other means of livelihood as a result of project-related land acquisition and/or restrictions on land use. Resettlement is considered involuntary when affected persons or communities do not have the right to refuse land acquisition or restrictions on land use that result in physical or economic displacement. This occurs in cases of (i) lawful expropriation or temporary or permanent restrictions on land use and (ii) negotiated settlements in which the buyer can resort to expropriation or impose legal restrictions on land use if negotiations with the seller fail", p. 1. Available here: https://www.ifc.org/content/dam/ifc/doc/2010/2012-ifc-performance-standard-5-en.pdf"https://www.ifc.org/content/dam/ifc/doc/2010/2012-ifc-performance-standard-5-en.pdf

[52] Organisation for Economic Co-operation and Development (OECD), OECD Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector, (2017). Available here: https://www.oecd.org/en/publications/oecd-due-diligence-guidance-for-meaningful-stakeholder-engagement-in-the-extractive-sector_9789264252462-en.html

[53] See Article 13 of the CSDDD.

[54] Organisation for Economic Co-operation and Development (OECD), OECD Due Diligence Guidance for Responsible Business Conduct, (2018), Q9. What is “meaningful stakeholder engagement”?, p. 49. Available here: https://www.oecd.org/content/dam/oecd/en/publications/reports/2018/02/oecd-due-diligence-guidance-for-responsible-business-conduct_c669bd57/15f5f4b3-en.pdf

[55] United Nations. The Corporate Responsibility to Respect Human Rights: An Interpretive Guide, (2012), p. 7. See footnote 20. Available here: https://www.ohchr.org/en/publications/special-issue-publications/corporate-responsibility-respect-human-rights-interpretive

[56] See definition of "affected community", Commission Delegated Regulation (EU) 2023/2772 of 31 July 2023 supplementing Directive 2013/34/EU of the European Parliament and of the Council as regards sustainability reporting standards Appendix II, Table 2 – Terms defined in the ESRS, p. 259. Available here: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L_202302772

[57] United Nations. The Corporate Responsibility to Respect Human Rights: An Interpretive Guide, (2012), p. 6-8. Available here: https://www.ohchr.org/en/publications/special-issue-publications/corporate-responsibility-respect-human-rights-interpretive

[58] See OECD Guidelines (2023 updated version), Commentary on Chapter II: General principles, para. 28, p. 20 and UN Guiding Principle 24, p. 26.

[59] See OECD Guidelines (2023 updated version), Commentary on Chapter II: General principles, para. 28, p.20.

[60] See Article 3 (o) of the CSDDD. These measures are defined as follows: "measures that are capable of achieving the objectives of due diligence by effectively addressing adverse impacts in a manner commensurate to the degree of severity and the likelihood of the adverse impact, and reasonably available to the company, taking into account the circumstances of the specific case, including the nature and extent of the adverse impact and relevant risk factors."

[61] See IRMA Standards (Initiative for Responsible Mining Assurance) v.1.0, (2018). Available here: https://responsiblemining.net/what-we-do/standard/irma-mining-standard/. See also International Finance Corporation (IFC), Performance Standards, (2012). Available here: https://www.ifc.org/content/dam/ifc/doc/2010/2012-ifc-performance-standards-en.pdf

[62] See International Finance Corporation (IFC), Performance Standard 1 – Assessment and Management of Environmental and Social Risks and Impacts, and associated Guidance Notes, p. 3. Available here: https://www.ifc.org/content/dam/ifc/doc/2010/2012-ifc-performance-standards-en.pdf

[63] According to the International Finance Corporation (IFC), for example, "project work sites, air and water catchment areas in the immediate vicinity of project sites, or transport corridors". See Performance Standard 1 – Assessment and Management of Environmental and Social Risks and Impacts, p. 4, footnote. Available here: https://www.ifc.org/content/dam/ifc/doc/2010/2012-ifc-performance-standard-1-en.pdf

[64] According to the IRMA standard, v.1.0. (2018), the area of leverage of a mining project also covers "the area of direct impacts caused by mining-related activities includes the physical mine site footprint, areas adjacent to the project site that are affected by emissions and effluents", p. 182.

[65] See International Finance Corporation (IFC), Performance Standard 1 – Assessment and Management of Environmental and Social Risks and Impacts, which provides examples of related facilities, including "railways, roads, captive power plants or transmission lines, pipelines, utilities, warehouses, and logistics terminals", p. 4, footnote. Available here: https://www.ifc.org/content/dam/ifc/doc/2010/2012-ifc-performance-standard-1-en.pdf

[66] See International Finance Corporation (IFC), Guidance Note of the Performance Standard 1, GN95. p. 5-6 and IFC, Dialogue with Stakeholders: A Good Practice Handbook for Businesses Doing Business in Developing Markets (2007). Available here: https://www.ifc.org/content/dam/ifc/doc/2010/2012-ifc-performance-standard-1-en.pdf and https://www.ifc.org/content/dam/ifc/doc/mgrt/ifc-stakeholderengagement1.pdf

[67] Elite capture refers to a situation where an individual or small influential group within a community (community elite) takes control of the processes of engagement with the business for their own benefit, leaving the priorities and needs of other members of the community with little or no representation.

[68] See Articles 13.4 and 13.6 of the CSDDD.

[69] Some standards, such as IRMA, v.1.0. (2018), requires an annual update.

[70] See in particular, for more details: IFC Guidance Notes (updated in 2021), available here: https://www.ifc.org/content/dam/ifc/doc/2021/20210614-ifc-ps-guidance-note-1-en.pdf; and IFC, Dialogue with Stakeholders: A Good Practice Handbook for Businesses Doing Business in Developing Markets (2007). Appendix 3 (p. 164-169) proposes a model engagement plan including communication strategies, grievance management mechanisms and project monitoring that can be adapted for affected communities. Available here: https://www.ifc.org/content/dam/ifc/doc/mgrt/ifc-stakeholderengagement1.pdf

[71] See article 13.2 CSDDD.

[72] See, for example, the practice of *mesas de trabajo* in Chile.

[73] For example, among the Makhuwa in northern Mozambique, land belongs to women and is passed down through the maternal line.

[74] International Finance Corporation (IFC), Dialogue with Stakeholders: A Good Practice Handbook for Businesses Doing Business in Developing Markets (2007). See footnote 70.

[75] Learn more about the Commission Nationale du Débat Public (CNDP): https://www.debatpublic.fr/cndp-une-entite-independante-671

[76] For more details on key actions and good practice in SEIA (Social and Environmental Impact Assessment) studies, see in particular: International Finance Corporation (IFC), Dialogue with Stakeholders: A Good Practice Handbook for Businesses Doing Business in Developing Markets (2007). See footnote 70.

[77] In 2015, the rupture of a mining waste dam in Brazil released millions of cubic metres of toxic sludge, causing a major ecological disaster. In 2019, a similar incident occurred in another part of the country, where the collapse of a tailings dam resulted in significant loss of life and extensive environmental damage. These disasters have raised questions about the regulation and risk management of mining infrastructure. For more information, see https://iucn.org/story/202212/fundao-dam-failure and https://www.ohchr.org/en/press-releases/2019/01/brazil-un-experts-call-probe-deadly-dam-collapse?LangID=E&NewsID=24128.

[78] See for example Regeneration Enterprises, an international social enterprise that converts mining waste into responsible minerals and transforms degraded land into ecological and community assets. It works with communities and Indigenous Peoples, governments, sustainable brands and strategic partners in the mining, technology, rehabilitation and restoration sectors. For more information, visit https://www.regeneration.enterprises/.

[79] See "Free, prior and informed consent: a human rights-based approach", Study by the Expert Mechanism on the Rights of Indigenous Peoples, A/HRC/39/62, II. Human rights basis of free, prior and informed consent, para. 3, p. 2 (2018). Available here: https://docs.un.org/en/A/HRC/39/62

[80] See International Labour Office, Geneva (2013). Program for the Promotion of Convention No. 169, "Handbook: Understanding the Indigenous and Tribal Peoples Convention, 1989 (No. 169)", and in particular the section entitled " WHY DOES CONSULTATION WITH Indigenous Peoples REQUIRE SPECIAL ATTENTION? ", p.13. Available here: https://www.ilo.org/sites/default/files/wcmsp5/groups/public/%40ed_norm/%40normes/documents/publication/wcms_205225.pdf

[81] Ibid.

[82] See Commentary on Principle 12 of the UN Guiding Principles, p. 13-14.

[83] See OECD Guidelines, (2023 updated version), Commentary on Chapter IV: Human rights, 45., p. 26.

[84] See footnote 56.

[85] See in particular Directive CSDDD, Recitals (33) and (65).

[86] See in particular https://www.ohchr.org/en/indigenous-peoples/consultation-and-free-prior-and-informed-consent-fpic

[87] International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights, Article 1, adopted by the General Assembly of the United Nations on 16 December 1966 (Resolution 2200A (XXI)). Available here: https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights and https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights

[88] See United Nations Human Rights Council, Thirty-ninth session (2018), “Free, prior and informed consent: a human rights-based approach”, Study by the Expert Mechanism on the Rights of Indigenous Peoples, A/HRC/39/62, II. Human rights basis of free, prior and informed consent, a human rights-based concept, para. 3., p. 2. Available here: https://docs.un.org/en/A/HRC/39/62

[89] International Convention on the Elimination of All Forms of Racial Discrimination, adopted on 21 December 1965 by General Assembly resolution 2106 A(XX). Available here: https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-elimination-all-forms-racial

[90] See “Free, prior and informed consent: a human rights-based approach”, Study of the Expert Mechanism on the Rights of Indigenous Peoples, A/HRC/39/62 (2018), A. Self-determination, 7. p. 3.

[91] The former Special Rapporteur on the Rights of Indigenous Peoples, James Anaya, pointed out that "the Declaration suggests a heightened emphasis on consultations that are in the nature of negotiations towards mutually acceptable arrangements prior to decisions on proposed measures, rather than mechanisms for providing Indigenous Peoples with information about decisions already made or in the making, without allowing them genuinely to influence the decision-making process". See "Free, Prior and Informed consent: a human rights-based approach", Study by the Expert Mechanism on the Rights of Indigenous Peoples, A/HRC/39/62, para. 16. p. 5, (2018). Available here: https://docs.un.org/en/A/HRC/39/62

[92] Ibid. para. 13: "Free, prior and informed consent operates fundamentally as a safeguard for the collective rights of Indigenous Peoples. Therefore, it cannot be held or exercised by individual members of an Indigenous community", p. 4-5.

[93] See the Report of the Special Rapporteur on the Rights of Indigenous Peoples, Mr James Anaya, (2012). A/HRC/21/47, para. 49, p. 13. Available here: https://docs.un.org/en/A/HRC/21/47

[94] Inter-American Court of Human Rights, Saramaka v. Suriname, judgment of 28 November 2007, para. 129-137. Available here: https://www.corteidh.or.cr/docs/casos/articulos/seriec_172_ing.pdf

[95] See the Report of the Special Rapporteur on the Rights of Indigenous Peoples, Mr James Anaya, (2012). A/HRC/21/47, para. 49, p. 13. Available here: https://docs.un.org/en/A/HRC/21/47

[96] International Labour Office, Geneva (2013). Program for the Promotion of Convention No. 169, "Handbook: Understanding the Indigenous and Tribal Peoples Convention, 1989 (No. 169)", see box p. 13. Available here: https://www.ilo.org/sites/default/files/wcmsp5/groups/public/%40ed_norm/%40normes/documents/publication/wcms_205225.pdf

[97] International Labour Organization, Understanding the Indigenous and Tribal Peoples Convention, 1989 (No. 169): Handbook for ILO Tripartite Constituents (ILO, Geneva, 2013) see box p13, https://www.ilo.org/sites/default/files/wcmsp5/groups/public/%40ed_norm/%40normes/documents/publication/wcms_205225.pdf

[98] ILO Convention No. 169, Article 6.2. See also General Observation (CEACR) - adopted 2018, published 108th ILC session (2019) Indigenous and Tribal Peoples Convention, 1989 (No. 169).

[99] Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, Mr James Anaya, (2009). A/HRC/12/34, E. The duty to consult and private company responsibility, para. 54. p.19. Available here: https://docs.un.org/en/A/HRC/12/34

[100] This is the case, for example, in certain South American countries, notably Chile.

[101] See Respecting Indigenous Rights: An Actionable Due Diligence Toolkit for Institutional Investors (2023), written by Emil Sirén Gualinga, a member of the Kichwa people of Sarayaku. Available here: https://respectingindigenousrights.org/respecting-indigenous-rights.pdf

[102] Learn more about National Contact Points for Responsible Business Conduct: https://www.oecd.org/en/networks/national-contact-points-for-responsible-business-conduct.html

[103] Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises, (2016). A/71/291, para. 72. p. 19. Available here: https://docs.un.org/en/A/71/291

[104] Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, Mr James Anaya, (2009). A/HRC/12/34, para. 57., p. 20. Available here: https://docs.un.org/en/A/HRC/12/34

[105] International Labour Office, Geneva (2013). Program for the Promotion of Convention No. 169, "Handbook: Understanding the Indigenous and Tribal Peoples Convention (No. 169), 1989, p. 25. Available here: https://www.ilo.org/sites/default/files/wcmsp5/groups/public/%40ed_norm/%40normes/documents/publication/wcms_205225.pdf

[106] International Labour Office, Geneva (2013). Program for the Promotion of Convention No. 169, "Handbook: Understanding the Indigenous and Tribal Peoples Convention (No. 169), 1989 p. 27-28. Available here: https://www.ilo.org/sites/default/files/wcmsp5/groups/public/%40ed_norm/%40normes/documents/publication/wcms_205225.pdf

[107] See for example the Protocol developed with the support of IWGIA and approved by the Wayúu authorities of the Resguardo Indígena de la Alta y Media Guajira sector, Cabo de la Vela, in Colombia. This Protocol clarifies Free, Prior and Informed Consent for the Wayúu people and the procedures for consulting them: Protocolo autonómico de Consulta y Consentimiento previo, libre e informado (2022). Available here: https://iwgia.org/es/recursos/publicaciones/4833-protocolo-auton%C3%B3mico-de-consulta-previa-y-consentimiento-previo,-libre-e-informado-del-pueblo-way%C3%BAu,-cabo-de-la-vela.html

[108] See ESRS S3 – Appendix A: Application requirements, Disclosure requirement S3-2, AR 13, p. 226. Available here: https://eur-lex.europa.eu/eli/reg_del/2023/2772/oj/eng

[109] International Labour Office, Geneva (2013). Program for the Promotion of Convention No. 169, "Handbook: Understanding the Indigenous and Tribal Peoples Convention, 1989 (No. 169), see box p. 13. Available here: https://www.ilo.org/sites/default/files/wcmsp5/groups/public/%40ed_norm/%40normes/documents/publication/wcms_205225.pdf

[110] See the Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, Mr James Anaya, A/HRC/12/34, para. 48, (2009). Available here: https://docs.un.org/en/A/HRC/12/34. See also, "Free, Prior and Informed Consent: a human rights-based approach", Study by the Expert Mechanism on the Rights of Indigenous Peoples, A/HRC/39/62, para. 26, a). Available here: https://docs.un.org/en/A/HRC/39/62

[111] See Free, Prior and Informed Consent: A Human Rights-Based Approach, study by the Expert Mechanism on the Rights of Indigenous Peoples, A/HRC/39/62, para. 6., p. 3. (2018).

[112] International Labour Office, Geneva (2013). Program for the Promotion of Convention No. 169, "Handbook: Understanding the Indigenous and Tribal Peoples Convention (No. 169), 1989, p. 16. Available here: https://www.ilo.org/sites/default/files/wcmsp5/groups/public/%40ed_norm/%40normes/documents/publication/wcms_205225.pdf

[113] See Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, Mr James Anaya, A/HRC/12/34, para. 47, p. 16. (2009). Available here: https://docs.un.org/en/A/HRC/12/34

[114] See Inter-American Court of Human Rights, Case of the Saramaka People v. Suriname. Decision of 12 August 2008 Series C No. 185: "[...] when large-scale development or investment projects could affect the integrity of the Saramaka people's lands and natural resources, the State has a duty not only to consult with the Saramakas, but also to obtain their Free, Prior, and Informed Consent in accordance with their customs and traditions". Available here: https://www.corteidh.or.cr/docs/casos/articulos/seriec_185_ing.pdf

[115] United Nations Global Compact, The Business Reference Guide to the UN Declaration on the Rights of Indigenous Peoples (2013). Available here: https://unglobalcompact.org/library/541.

[116] See "Free, Prior and Informed Consent: a human rights-based approach", Study by the Expert Mechanism on the Rights of Indigenous Peoples, A/HRC/39/62, para. 29, p. 9, (2018). Available here: https://docs.un.org/en/A/HRC/39/62

[117] International Finance Corporation (IFC), Performance Standard 8, Cultural Heritage (2012). Available here: https://www.ifc.org/content/dam/ifc/doc/2010/2012-ifc-performance-standard-8-en.pdf ; or IRMA Standard (Initiative for Responsible Mining Assurance) v.1.0. (2018). Available here: https://responsiblemining.net/what-we-do/standard/irma-mining-standard

[118] Intergovernmental Committee for the Protection of the World Cultural and Natural Heritage, Operational Guidelines for the Implementation of the World Heritage Convention, WHC.24/01, UNESCO, 31 July 2024, Available here: line: https://whc.unesco.org/en/guidelines/

[119] See Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, Mr James Anaya (2010). A/HRC/15/37, paras. 49 and 50, p. 12. Available here: https://docs.un.org/en/A/HRC/15/37

[120] Ratifications of Convention No. 169 of the International Labour Organisation (ILO) concerning Indigenous and Tribal Peoples, adopted on 27 June 1989. Available here: https://normlex.ilo.org/dyn/nrmlx_en/f?p=NORMLEXPUB:11300:0::NO::P11300_INSTRUMENT_ID:312314

[121] International Labour Organization (ILO), (2020). Application of Convention No. 169 concerning Indigenous and Tribal Peoples: For an inclusive, sustainable and just future. Available here: https://www.ilo.org/publications/implementing-ilo-indigenous-and-tribal-peoples-convention-no-169-towards

[122] Other questions from an "investor" point of view to guide businesses can be found in Respecting Indigenous Right: An Actionable Due Diligence Toolkit for Institutional Investors, written by Emil Siren, (2023). Available here: https://respectingindigenousrights.org/respecting-indigenous-rights.pdf

[123] For example, the Chango people in Chile, who were initially not recognised, obtained official recognition in 2020 as the country's tenth Indigenous People. On 17 October 2020, Law No. 21.273 amended Law No. 19.253, granting the Chango People the status of Indigenous People under Chilean law.

[124] See UN Guiding Principle 23 and its commentary, p. 25.

[125] For example, in Eritrea, Indigenous Peoples, in particular the Afar and Kunama, face serious forms of systematic persecution, which have been widely documented by international bodies. These groups are subject to state policies aimed at eradicating their cultural identity and traditional livelihoods. For example, the Afar people have been displaced from their ancestral territory of Dankalia, preventing them from practising their traditional activity of fishing, and are subject to structural violence that is destabilising their way of life. For more information, see IWGIA, The Indigenous World 2024. Available here: https://iwgia.org/doclink/iwgia-book-the-indigenous-world-2024-eng/eyJ0eXAiOiJKV1QiLCJhbGciOiJIUzI1NiJ9.eyJzdWIiOiJpd2dpYS1ib29rLXRoZS1pbmRpZ2Vub3VzLXdvcmxkLTIwMjQtZW5nIiwiaWF0IjoxNzEzMjkyNTQ5LCJleHAiOjE3MTMzNzg5NDl9.NYMwEJvs58zk7jBq3TuAqMDlv2FV7DOrpW1SSrwzzig

[126] For other examples, see Global Compact Network Germany & twentyfifty (2014), Stakeholder Engagement in Human Rights Due Diligence. A Business Guide. Available here: https://www.globalcompact.de/migrated_files/wAssets/docs/Menschenrechte/stakeholder_engagement_in_humanrights_due_diligence.pdf

[127] Trusted women who provide advice and guidance on sexual matters, chosen from neighbourhoods or villages. Learn more: https://www.rfi.fr/fr/afrique/20191216-senegal-badienou-gokh-marraines-sexuelles-proximite

[128] This is the case of "tomas" in some South American countries, defined as "the act of illegally occupying and living on land without possessing it".

[129] Organisation for Economic Co-operation and Development (OECD). (2016), OECD Due Diligence Guidance for minerals may be used by any company potentially sourcing any minerals or metals from conflict-affected and high-risk areas, p. 13. Available here: https://www.oecd.org/en/publications/oecd-due-diligence-guidance-for-responsible-supply-chains-ofminerals-from-conflict-affected-and-high-risk-areas_9789264252479-en.html

[130] Learn more about this mechanism: https://earthrights.org/what-we-do/corporate-accountability/cdogm/

[131] See in particular the Fair Labor Association (FLA), the Workers Rights Consortium (WRC), the International Council of Toy Industries (ICTI), the Voluntary Principles for Security and Human Rights (VPs), the Ethical Trading Initiative (ETI), the International Cocoa Initiative and Amfori.

[132] Diagram inspired by the Guide to handling grievance mechanisms and responding to communities at site level. Mining Association of Canada, (2015). Available here: https://mining.ca/resources/guides-manuals/site-level-grievance-and-community-response-mechanisms-guide/

[133] See commentary on UN Guiding Principle 25, p. 27-28.

[134] See Report of the UN Working Group on Transnational Corporations and Other Business Enterprises, Human Rights and Transnational Corporations and Other Business Enterprises, Report A/72/162, (July 2017), and more specifically II. Conceptual clarifications with regard to remedy, justice and accountability, para 15, p. 7. Available here: https://docs.un.org/en/A/72/162

[135] See in particular Article 8 of the Universal Declaration of Human Rights, Article 2(3) of the International Covenant on Civil and Political Rights, Article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination, Article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and Article 39 of the Convention on the Rights of the Child, as well as Articles 68 and 75 of the Rome Statute of the International Criminal Court, and article 9(3) of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters. See also United Nations General Assembly, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, Resolution 60/147, (2005). Available here: https://www.un.org/ruleoflaw/blog/document/basic-principles-and-guidelines-on-the-right-to-a-remedy-and-reparation-for-victims-of-gross-violations-of-international-human-rights-law-and-serious-violations-of-international-humanitarian-law/; and the Report of the United Nations Working Group on Transnational Corporations and Other Business Enterprises, Human Rights and Transnational Corporations and Other Business Enterprises, Report A/72/162, (2017). Available here: https://docs.un.org/en/A/72/162. See also, 'Access to Remedy in Cases of Business-related Human Rights Abuse: An Interpretive Guide (Advance Version)', published by the Office of the United Nations High Commissioner for Human Rights (2024): the purpose of the guide is to provide additional explanations on the principles of the third pillar of access to remedy of the UN Guiding Principles, available here: https://www.ohchr.org/sites/default/files/documents/issues/business/access-to-remedy-bhr-interpretive-guide-advance-version.pdf

[136] OECD Guidelines for Multinational Enterprises on Responsible Business Conduct (2023 updated version), Commentary on Chapter II: General Policies, 23., p. 19 and Chapter VI. Environment, 1. e), p. 34.

[137] See in particular Report A/72/162 of the United Nations Working Group on Transnational Corporations and Other Business Enterprises cited above and the Report 'Access to Remedy in Cases of Business-related Human Rights Abuse: An Interpretive Guide (Advance Version)', published by the Office of the United Nations High Commissioner for Human Rights (2024), cited above.

[138] The criteria of accessibility and affordability were addressed in the grievance mechanisms at step 4.

[139] Report A/72/162 of the United Nations Working Group on Transnational Corporations and Other Business Enterprises, cited above. See specifically D. Bouquet of remedies, p. 12.

[140] Ibid.

[141] See the Report 'Access to Remedy in Cases of Business-related Human Rights Abuse: An Interpretive Guide (Advance Version)', published by the Office of the United Nations High Commissioner for Human Rights (2024), p.20, cited above.

[142] On 2 September 2024, the Paris Court of First Instance opened a 34th Chamber, devoted to social, economic and environmental regulation, which has jurisdiction to deal with all disputes based on the due diligence of parent businesses and contractors, as well as all related disputes in social, economic and environmental matters. Learn more: https://www.gazette-du-palais.fr/actualites-professionnelles/devoir-de-vigilance-creation-dune-chambre-dediee-au-tj-de-paris/

[143] See ESRS S3 – Appendix A: Application requirements, Disclosure requirement S3-5, AR 44, p. 245. Available here: https://eur-lex.europa.eu/eli/reg_del/2023/2772/oj/eng

[144] See Commentary on UN Guiding Principle 13, p. 14-15.

[145] See OECD Guidelines, para 23, p. 19.

[146] Learn more: https://www.voluntaryprinciples.org/

[147] Benefit sharing agreements are currently used mainly in the extractive industry, the energy industry, forestry and, in some cases, the construction sector.

[148] In several countries, particularly in Latin America, Canada and Australia, some Indigenous and non-Indigenous communities have drawn up life plans or community development plans ("plan de vida" or "plan de desarrollo"), which serve as roadmaps for their self-determination and sustainable development. These plans integrate the cultural, social and economic priorities of the communities and can serve as a framework for managing natural resources, preserving culture and improving living conditions. In Canada, for example, the Indigenous Community Development National Strategy supports Indigenous Peoples according to the priorities they themselves have defined. Similarly, in Latin America and Australia, several communities have developed similar initiatives to promote economic and social development in line with their values and aspirations.

[149] The application of the regulation has been postponed until December 2025, see in particular: https://trade.ec.europa.eu/access-to-markets/en/news/application-eudr-regulation-deforestation-free-products-delayed-until-december-2025

[150] Office of the United Nations High Commissioner for Human Rights (OHCHR). Guiding Principles on Business and Human Rights: Implementation of the United Nations “Protect, Respect and Remedy” Framework. Interpretative Guide, (2012). Available at: https://www.ohchr.org/sites/default/files/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

[151] See International Labour Office, Geneva (2013). Program for the Promotion of Convention No. 169, "Handbook: Understanding the Indigenous and Tribal Peoples Convention, 1989 (No. 169)", p. 10. Available here: https://www.ilo.org/sites/default/files/wcmsp5/groups/public/%40ed_norm/%40normes/documents/publication/wcms_205225.pdf

[152] See in particular, International Labour Organisation (ILO), Monitoring Indigenous and Tribal Peoples' Rights through ILO Conventions, Committee of Experts on the Application of Conventions and Recommendations (CEACR), (2009), p. 41. Available here: https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@ed_norm/@normes/documents/publication/wcms_126028.pdf

[153] Terminology used in the CSDDD, article 13 (2).

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