

## Contents

Preface .....	1
Chapter I. Concepts and Principles .....	2
Chapter II. General Policies .....	3
Chapter III. Disclosure .....	7
Chapter IV. Human Rights .....	10
Chapter VI. Environment.....	14
Commentary on the Implementation Procedures of the OECD Guidelines for Multinational Enterprises .....	24
ANNEX: Proposed additional para 54 in Human Rights chapter. ....	25

The text of paragraphs where changes are suggested are included in the table below in the right-hand column under each of the chapters with additional text highlighted in **yellow**. An explanation for why that text is required is provided in the left column.

An additional paragraph suggested for inclusion in the human rights chapter is suggested at the end in an Annex with endnotes explaining the logic, guidance and standards underpinning different aspects of the text.

## Preface

Edited text of selected Preface paragraphs	Explanation of why the change is needed
<p><b>9. The adoption of the OECD Guidelines in 1976, and their subsequent updates, reflect increased demand on business to follow principles and standards on responsible business conduct.</b> The <del>start</del><b>beginnings</b> of this <del>process</del><b>development</b> can be dated to the work of the International Labour Organisation in the early twentieth century. The adoption by the United Nations in 1948 of the Universal Declaration of Human Rights was another landmark event. It was followed by the ongoing development of <b>international human rights law standards and jurisprudence and other</b> standards relevant for many areas of responsible business conduct – a process that continues to this day. The OECD has contributed in important ways to this process through the development of standards covering</p>	<p>As explained in the comments on the human rights chapter this is very important to mention in light of the evolving nature of international human rights law and the interpretative guidance provided by the bodies responsible for overseeing the implementation of human rights treaties, in particular with regard to Indigenous Peoples' rights. A clear example of this is the right to a healthy environment which was not envisaged when these instruments were drafted but is now an integral part of the human rights framework and has been deemed by the InterAmerican Court of Human Rights to</p>

<p>such areas as the environment, the fight against corruption, consumer interests, corporate governance, <b>science, technology and innovation</b> and taxation.</p>	<p>have been violated by Argentina in its treatment of Indigenous Peoples</p>
<p>10 <del>The common aim of the governments adhering to the Guidelines is to encourage the positive contributions that multinational enterprises can make to economic, environmental and social progress and to minimise the difficulties to which their various operations may give rise.</del> The Guidelines remain the leading international instrument on responsible business conduct. In working towards this goal governments find themselves <b>The countries governments adhering to the Guidelines are committed to co-operating with each other and with other countries governments to further their implementation</b> in partnership with the many businesses, trade unions and other non-governmental organisations <b>and rights-holders, such as Indigenous Peoples</b>, that are working in their own ways toward the same end. .. <del>Governments can help by providing effective domestic policy frameworks that include stable macroeconomic policy, non-discriminatory treatment of enterprises, appropriate regulation and prudential supervision, an impartial system of courts and law enforcement and efficient and honest public administration. Governments can also help by maintaining and promoting appropriate standards and policies in support of sustainable development and by engaging in ongoing reforms to ensure that public sector activity is efficient and effective. Governments adhering to the Guidelines are committed to continuous improvement of both domestic and international policies with a view to improving the welfare and living standards of all people.</del></p>	<p>It is necessary to differentiate between NGOs and the rights-holders themselves, especially in the case of Indigenous Peoples given that they not only have their own networks at national, regional and international levels but also have their own governments and representative institutions that are distinct from NGOs. Also if the OECD sees itself as partnering with Indigenous Peoples this need to be made explicit here.</p>

## Chapter I. Concepts and Principles

Edited text of selected Chapter 1 paragraphs	Explanation of why the change is needed
<p>2. Obeying domestic laws is the first obligation of enterprises. The <i>Guidelines</i> are not a substitute for nor should they be considered to override domestic law and regulation. <b>Failure</b></p>	<p>The reality is that many states have domestic laws that are not in compliance with their international law obligations, in particular with regards to the rights of Indigenous Peoples, as</p>

<p><i>of governments to uphold the principles and standards consistent with the Guidelines or their associated international commitments does not diminish the expectation that enterprises observe the Guidelines.</i> While the <i>Guidelines</i> extend beyond the law in many cases, they should not and are not intended to place an enterprise in situations where it faces conflicting requirements. However, in countries where domestic laws and regulations conflict with, <i>or set lower expectations than</i> the principles and standards of the <i>Guidelines</i>, enterprises should seek ways to honour such principles and standards to the fullest extent which does not place them in violation of domestic <b>or international</b> law.</p>	<p>repeatedly highlighted by international human rights courts, commissions and expert bodies. By simply ensuring compliance with domestic law, business could find themselves in breach of international law. Therefore the Guidelines should be explicit that this dual standard has to be met.</p>
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## Chapter II. General Policies

Edited text of selected Chapter 2 paragraphs	Explanation of why the change is needed
<p>Enterprises should take fully into account established policies in, <b>and international human rights obligations of</b>, the countries in which they operate, and consider the views of other stakeholders <b>and rights holders (hereafter, collectively referred to as "stakeholders")</b>, in particular directly affected rightsholders such as <b>Indigenous Peoples</b>. In this regard:</p> <p>A. Enterprises should:</p> <ol style="list-style-type: none"> <li>1. Contribute to economic, environmental and social progress with a view to achieving sustainable development.</li> <li>2. Respect the internationally recognised human rights of those affected by their activities.</li> <li>3. Encourage local capacity building through close co-operation with the local community, including business interests <b>and where requested from potentially affected rights holders</b>, as well as developing the enterprise's activities in domestic and foreign markets, consistent with the need for sound commercial practice.</li> <li>4. Encourage human capital formation, in particular by creating employment opportunities and facilitating training opportunities for employees.</li> </ol>	<p>As noted above the policy frameworks of many countries fail to address their human rights obligations and this should be identified by enterprises at the outset as part of HRDD. This addition would also clarify what falls under the scope of human rights in para 5 of this chapter.</p> <p>The use of the generic term stakeholders to refer to a broad spectrum of actors ranging businesses, civil society to those individual and groups whose rights are affected by business activities is problematic and potentially contrary to human rights standards unless a clarification of this nature is added. Otherwise it is a homogenising concept that fails to recognise and reflect the major distinctions between the obligations which businesses and states have towards the groups it encompasses. The term "stakeholder" has been highlighted by Indigenous Peoples as being unacceptable, as it bundles very different groups under a generic category without acknowledging their distinct legal status and rights under international law, and that the term "rightsholders" would more appropriate if referring to such groups. The addition suggested here aims to address the latter concern and is reflective of good practice as in response to this concern by Indigenous Peoples other best practice standards, such as</p>

	<p>the Initiative for Responsible Mining Assurance IRMA, have used the language that has been added here. See <a href="#">IRMA Standard June 2018 (responsiblemining.net)</a> section 2.1.3. scoping</p> <p>Re 3. Where such co-operation around capacity building is desired by the rights holders it should be provided by the enterprise but it must not be imposed as otherwise it could constitute manipulation.</p>
<p>(Originally paragraph A.14) Engage <b>meaningfully</b> with relevant stakeholders <b>or their legitimate representatives</b> in order to provide <b>meaningful</b> opportunities for their views to be taken into account <b>with respect to</b> in relation to planning and decision-making for projects or other <b>with respect to</b> activities that may significantly impact <b>them</b>. In the case of Indigenous Peoples consultations in order to obtain free prior and informed consent (FPIC) are required where activities may directly impact on their rights.</p>	<p>Under international law, meaningful engagement with Indigenous Peoples in relation to such activities goes beyond taking their views into account and requires their FPIC. This needs to be stated explicitly here, as otherwise the Guidelines could be interpreted as a retrogressive standard that is not only at odds with human rights law but also with accepted practice across a range of standards that are relevant to private sector actors, such as the standards and safeguards of financiers like the IFC, GCF, GEF and industry certification standards such as IRMA, FSC, ASI, RSPO... In addition, consultation with the objective of obtaining consent is always required with Indigenous Peoples when their rights are potentially affected (see C169, UNDRIP, human rights law jurisprudence). This applies irrespective of the significance of the impacts</p>
<p>Commentary on General Principles</p>	
<p>2. Enterprises are encouraged to co-operate with governments in the development and implementation of policies and laws. Considering the views of other stakeholders in society, which includes the local community <b>and those whose human rights are affected or potentially affected by their activities</b> as well as business interests, can enrich this process. It is also recognised that governments should be transparent in their dealings with enterprises, and consult with business <b>and rightsholders</b> on these same issues. Enterprises, <b>social partners and other stakeholders such as civil society organisations, Indigenous Peoples, and trade unions</b>, should be viewed as partners with government in the development and use of</p>	<p>As noted above there needs to be greater clarity as to what the term “stakeholder” encompasses. Indigenous peoples have repeatedly rejected being classified as a mere stakeholder in contexts where their fundamental human rights are at stake and where they as peoples have the right to self-determination.</p> <p>Under human rights law states have duties to consult with Indigenous Peoples with developing policies and laws that may affect them. There is no such corresponding duty to consult with businesses and in practice power dynamics are such that business voices dominate over those of rightsholders. Given that the guidelines are aimed at protecting</p>

<p>both voluntary and regulatory approaches (of which the <i>Guidelines</i> are one element) to policies affecting them.</p>	<p>those who are affected by businesses the current wording is inadequate.</p> <p>Indigenous peoples, as peoples with the right to self-determination and legal personality under international law, are distinct from CSOs and should be recognized as such.</p>
<p>7. The <i>Guidelines</i> recommend that enterprises apply good corporate governance practices drawn from the <b>G20/OECD Principles of Corporate Governance [OECD/LEGAL/0413]</b>. The Principles call for the protection and facilitation of the exercise of shareholder rights, including the equitable treatment of shareholders. Enterprise should recognise the rights of stakeholders established by law, including international law, or through mutual agreements and encourage active co-operation with stakeholders in creating wealth, jobs, and the sustainability of financially sound enterprises.</p>	<p>The addition of international law is needed here as, in particular in the case of Indigenous Peoples, rights recognised under international law may not have been transposed into national law, or may be resisted by legal regimes that are structurally racially discriminatory to their colonial or post-colonial origins.</p>
<p>8. The Principles call on the board of the parent entity to ensure the strategic guidance of the enterprise, the effective monitoring of management and to be accountable to the enterprise and to the shareholders, while taking into account the rights and interests of stakeholders. In undertaking these responsibilities, the board needs to ensure the integrity of the enterprise's accounting and financial reporting systems, including independent audit, appropriate control systems, in particular, risk management, and financial and operational control, and compliance with the law and relevant standards.</p>	<p>The addition of "rights" here is needed to a) be consistent with para 7. above and is also important as, as noted above, some "stakeholders" only have interests in certain activities while others have "rights" that are directly and (as is often in the case of Indigenous Peoples) profoundly affected by those activities.</p>
<p>11. Although primary responsibility for improving the legal and institutional regulatory framework lies with governments, there is an internationally recognized responsibility of business actors to respect human rights and a strong business case for enterprises to implement good corporate governance.</p>	<p>While the business case is a financial argument it is also necessary to point to the fact that the responsibility to respect human rights, which is core to good corporate governance, exists independent of financial incentives or regulatory frameworks.</p>



14. *(New paragraph) ~~Business and civil society both depend on a shared civic space that includes freedom of expression, association and assembly, as well as the rule of law, which in turn~~ Enterprises should take steps to create ~~an enabling environment for the implementation of the Guidelines. In this respect, enterprises should refrain~~ a space where concerns about adverse impacts related to their activities can be safely expressed. Refraining from ~~applying undue pressure or~~ and taking steps to prevent the use of reprisals ~~against any persons or~~ are important to protecting civic space and to preventing harm to groups, **such as Indigenous Peoples, and individuals who monitor or report practices of the enterprise that contravene the law or are inconsistent with the Guidelines, including through developing appropriate safeguards. Pressure is undue when it is** seek to or do investigate or raise concerns about the enterprise's activities. Reprisals include retaliatory or discriminatory ~~or based solely on the act or content of reporting or monitoring. This includes~~ actions that are intended to censor, intimidate, harm or silence critics **such as threats, reputational smears, slurs, harassment, intimidation, surveillance, Strategic strategic lawsuits against public participation (SLAPP suits) intended for the sole purpose of censoring, intimidating or silencing critics, criminalisation of), attempts to criminalise lawful activities, physical attacks and death killings.***

A specific reference to Indigenous Peoples would be welcome as: a) they are disproportionately impacted by business activities and related criminalization, attacks and threats and b) threats against, or violence towards, indigenous representatives and leaders has a negative impact on the groups whose exercise of their rights to self-government and self-determination and their way of life are profoundly constrained as a result.

As a result measures that protect both the individuals and the group as a collective from threats may be necessary. See suggested text below in the commentary on the procedures for NCPs under Good faith engagement

"In the case of Indigenous Peoples, threats and violence against their representatives and/or leaders tend to have profound impacts on the peoples' rights to self-government and self-determination and on their way of life. As a result, measures that protect both the individual and group as a collective from such threats and violence may be necessary."

*(Originally paragraph 25) Meaningful stakeholder engagement is a key component of the due diligence process. In some cases, stakeholder engagement may also be a right in and of itself, **as reflected in Indigenous Peoples' right to consultation and free prior and informed consent (FPIC).** Stakeholder engagement involves interactive processes of engagement with relevant stakeholders, through, for example, meetings, hearings or consultation proceedings. **Relevant***

See earlier comment on this point. Saying "stakeholder engagement may be a right" without mentioning Indigenous Peoples' right to FPIC is would leave the Guidelines out of sync with the standards of other international organizations e.g. World Bank, IFC, Green Climate Fund, UNDP, UNEP and a host of private sector initiatives, as well as

*stakeholders are persons or groups, or their legitimate representatives, who have rights or interests related to the matters of the Guidelines that are or could be adversely impacted by the enterprise's operations, activities, products, or services. Enterprises can prioritise the most severely impacted or potentially impacted stakeholders for engagement. The degree of impact on stakeholders may inform the degree of engagement. Meaningful stakeholder engagement refers to ongoing engagement with stakeholders that is two-way, conducted in good faith by the participants on both sides and responsive to stakeholders' views. To ensure stakeholder engagement is meaningful and effective, it is important to ensure that it is timely, accessible, appropriate and safe for stakeholders, and to identify and remove potential barriers to engaging with stakeholders in positions of vulnerability or marginalisation. The OECD Due Diligence Guidance for Responsible Business Conduct and relevant OECD sector specific guidance includes practical support for enterprises on carrying out stakeholder engagement including as part of an enterprise's due diligence process. Effective stakeholder engagement is characterised by two-way communication and depends on the good faith of the participants on both sides. This engagement is can be particularly helpful important in the planning and decision-making concerning projects or other activities impacting on Indigenous Peoples involving, for example, the intensive use of land or water, which could significantly affect local communities, including groups with traditional ties to particular lands and waters.*

international human rights and environmental law.

Indigenous peoples cannot be subsumed under the category local communities. While the latter may have customary land tenure and ties to lands and resources, the concept of local communities is amorphous and not akin to Indigenous Peoples who are recognised under international law as having legal personality and related procedural participatory and substantive decision-making rights that always have clear implications for stakeholder engagement

## Chapter III. Disclosure

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<p>2. Disclosure policies of enterprises should include, but not be limited to, material information on:</p> <p>...</p> <p>g. information on relationships with workers and other stakeholders, <b>including Indigenous Peoples</b></p>	<p>Information on relationships with Indigenous Peoples is a significant material consideration for many enterprises, particularly in the extractive industry sector. The fact that the risk of not obtaining and maintaining Indigenous Peoples' support for extractive industry operations, in particular mining, is recognized, along with climate change risks, as being in the top 3 primary material risks facing companies in the extractive industry see EY's 2022 assessment of <a href="#">ey-final-business-risks-and-opportunities-in-2022.pdf</a></p>
<p>Commentary on Disclosure</p>	
<p>30. The purpose of this Chapter is to <b>help build an environment of transparency and accountability around the operations of multinational enterprises, thereby supporting financial stability, business integrity, and sustainable and inclusive economic growth.</b> encourage improved understanding of the operations of multinational enterprises. <b>In order to help build such an environment,</b> clear and complete information on enterprises is important to a variety of users ranging from shareholders, <b>potential investors</b> and the financial community to other constituencies such as workers, <b>Indigenous Peoples</b>, local communities, special interest groups, governments and society at large. To improve public understanding <b>of the structure and activities</b> of enterprises and their interaction with society and the environment, <b>their corporate policies and performance with respect to environmental, social and governance matters,</b> enterprises should be transparent in their operations and responsive to the public's increasingly sophisticated demands for information.</p>	<p>Indigenous peoples have to be listed as a distinct category from local communities here, as under international law and in reality this is the case. As noted earlier cannot be subsumed within the category "local communities". UN rights bodies that elaborate on the rights of Indigenous Peoples have made this abundantly clear e.g. UN Expert Mechanism on the Rights of Indigenous Peoples to the 48th session of the UN Human Rights Council, in this report "Efforts to Implement the UN Declaration on the Rights of Indigenous Peoples", A/HCR/48/75. Paragraph 34 states: "one of the concerns expressed by some Indigenous Peoples is the tendency to lump Indigenous Peoples together with "local communities" within multiple international conventions and other multilateral agreements. This development may have the impact of undermining Indigenous Peoples' rights under the Declaration, in particular their right to self-determination, a concern shared by some States." See also statements on this matter by the United Nations Permanent Forum on Indigenous Issues in E/2022/43 E/C.19/2022/11 which references the position of the UN Special Rapporteur on the Rights of Indigenous Peoples Francisco Cali Tzay on March 24th, 2022</p>
<p>32. <del>The Guidelines also encourage</del> <b>include a second set of disclosure or communication practices in areas where reporting standards are still evolving such as, for example, social, environmental and risk reporting recommendations on responsible business conduct information including the enterprise's actual or potential adverse impacts on people,</b></p>	<p>See comment above explaining why it is necessary to include Indigenous Peoples as a distinct category.</p>





*the environment and society, and related due diligence processes, which may be material to an investor's decision making and which also may be relevant for a broader set of stakeholders, including, workers, worker representatives, **Indigenous Peoples**, local communities and civil society, among others.*

*This is particularly the case with greenhouse gas emissions, as the scope of their monitoring is expanding to cover direct and indirect, current and future, corporate and product emissions; biodiversity is another example. In the context of disclosure, due diligence processes, as outlined in paragraph 3, can be a useful means by which enterprises can ensure they are effectively identifying and communicating relevant responsible business conduct information in a consistent and credible manner, including information which may be material. In this way due diligence can support enterprises in identifying material risks and impacts, and enhance the relevance, quality and comparability of disclosures under both paragraphs 2 and 3. Furthermore, due diligence processes can be a means of ensuring credible reporting against enterprise goals and commitments for which clearly identifiable or measurable targets may not exist. Several jurisdictions allow or require the consideration of stakeholder interests and many enterprises provide information on a broader set of topics than financial performance, and consider disclosure of such information a method by **through** which they can demonstrate a commitment to **and performance on sustainable responsible business practices more generally.** socially acceptable practices. In some cases, This second type of disclosure – or communication with the public and with other parties directly affected by the enterprise's activities **or business relationships** – may pertain to entities that extend beyond those covered in the enterprise's financial accounts. For example, it may also cover information on the activities of subcontractors ~~and~~, suppliers ~~or of~~, joint venture partners. **or others with whom the enterprise has a business relationship. This is particularly appropriate to monitor the transfer***

<p><i>of environmentally harmful activities to partners.</i></p>	
<p><b>35.36. Users of financial information and market participants need information on reasonably foreseeable material risks that may include: risks that are specific to the industry or the geographical areas in which the company operates; dependence on commodities and valuesupply chains; financial market risks including interest rate or currency risk; risks related to derivatives and off-balance sheet transactions; business conduct risks; digital security risks; compliance risks; and <del>responsible business conductsustainability</del> risks, notably climate-related risks and risks related to obtaining and maintaining Indigenous Peoples' FPIC..</b></p>	<p>The requirement for Indigenous Peoples' FPIC is a core principle which major investors have recognized as relevant information. This is reflected in the fact that FPIC is required under the Equator Principles.</p> <p>Also as noted above, the fact that the risk of not obtaining and maintaining Indigenous Peoples' support for extractive industry operations, in particular mining, is recognized, along with climate change risks, as being in the top 3 primary material risks facing companies in the extractive industry see EY's 2022 assessment of <a href="#">ey-final-business-risks-and-opportunities-in-2022.pdf</a></p>

## Chapter IV. Human Rights

Selected edits to Chapter IV. Human Rights	Explanation for inclusion
<p>States—Countries have the duty to protect human rights. Enterprises should, within the framework of internationally recognised human rights, the international human rights obligations of the countries in which they operate as well as relevant domestic laws and regulations:</p> <p>...</p> <p>4. Have a <b>publicly available</b> policy commitment to respect human rights, <b>including the rights of Indigenous Peoples.</b></p>	<p>This policy commitment must include explicit recognition of Indigenous Peoples' rights. This need has been highlighted by a range of human rights bodies including the Working Group on Business and Human Rights, the UN Special Rapporteur on the rights of Indigenous Peoples, is recognised under all relevant industry good practice standards, and repeatedly affirmed by Indigenous Peoples themselves e.g.</p> <p>"Business enterprises should...commit themselves to respecting the United Nations Declaration on the Rights of Indigenous Peoples and ILO Convention No. 169 in policy commitments, human rights due diligence processes and remediation processes" A/68/279 para 56</p>
<p><b>45-46.</b> In all cases and irrespective of the country or specific context of enterprises' operations, reference should be made at a</p>	<p>This addition recognizes the relevance of human rights law jurisprudence and is essential as human rights law has not been static since 1948 and 1969 when these instruments were</p>



minimum to the internationally recognised human rights expressed in the International Bill of Human Rights, consisting of the Universal Declaration of Human Rights and the main instruments through which it has been codified: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, and the interpretation of their provisions provided by the responsible treaty bodies, and to the principles concerning fundamental rights set out in the 1998 International Labour Organisation Declaration on Fundamental Principles and Rights at Work.

adopted. This interpretation consists of a considerable body of jurisprudence and guidance around the profound impact which business can have on human rights, and how to avoid this, which OECD member states and companies need to take into account in order to respect internationally recognised human rights. This is particularly important in the case of Indigenous Peoples because the jurisprudence of these treaty bodies over the past 15 years has repeatedly affirmed that the UNDRIP is the authoritative guide for the interpretation of the provisions of these treaties as they pertain to Indigenous Peoples, thereby reinforcing the status of UNDRIP and Indigenous Peoples' rights under international law.

This is also the case with regional human rights courts in Africa and Latin America, where for example the InterAmerican Court of Human Rights has affirmed obligations business in relation to respect for Indigenous Peoples' rights. under the Convention which it interprets and enforces, to respect the collective human rights of Indigenous Peoples if they are to comply with the UNGPs and other human rights standards including UNDRIP, the International Covenant on Economic Social and Cultural Rights and the International Covenant on Civil and Political Rights (see for example INTER-AMERICAN COURT OF HUMAN RIGHTS CASE OF THE KALIÑA AND LOKONO PEOPLES V. SURINAME JUDGMENT OF NOVEMBER 25, 2015. Para 264)

Recognising the relevance of body of jurisprudence is also common practice in safeguards and standards of international organizations and of industry certification bodies, see for example UNDP Safeguard Indigenous Peoples Standard 6 [UNDP SES Indigenous Peoples GN Final December 2020.pdf](#) page 11; IRMA [IRMA Standard June 2018 \(responsiblemining.net\)](#) page 49

46.47. Enterprises can have an impact on virtually the entire spectrum of internationally recognised human rights. In practice, some human rights may be at greater risk of *adverse impacts* than others in particular industries or

This reframed language is an improvement. However, as worded it framed Indigenous Peoples' rights as rights of individual people who are members of Indigenous Peoples and is not consistent with international human rights law standards with the Guidelines themselves



contexts, and therefore will be the focus of heightened attention. However, situations may change, so all rights should be the subject of periodic review. Depending on circumstances, enterprises may need to consider additional standards. For instance, enterprises should respect the human rights of individuals belonging to specific groups or populations that require particular attention, where they may have adverse human rights impacts on them.

**As needed, enterprises should take additional steps to assess and address adverse impacts on individuals and groups who may be at heightened risk due to their membership in marginalised marginalisation or vulnerable vulnerability, individually or as members of certain groups or populations, including Indigenous Peoples. This may include people belonging to indigenous groups peoples, in relation to whom international law sets out specific principles and rights in this regard related to self-determination, land, territories, resources, culture and to participation in, and free prior and informed consent (FPIC) for, decisions that may impact on these principles and rights. The OECD Due Diligence Guidance on Meaningful Stakeholder Engagement in the Extractive Sector and other OECD guidance, and the International Finance Corporation performance standards, and Green Climate Fund Indigenous Peoples policy and safeguards, provides further practical guidance in this regard, including in relation to obtaining Free, Prior and Informed Consent (FPIC) through Indigenous Peoples own representative institutions in accordance with their laws, protocols, customs and traditions.** In this regard connection, United Nations instruments have ~~the~~**The United Nations has** elaborated further on the rights of Indigenous Peoples; (**UN Declaration on the Rights of Indigenous Peoples**); persons belonging to national or ethnic, religious and linguistic minorities; women; children; persons with disabilities; and migrant workers and their families. Moreover, in situations of armed conflict enterprises should respect the standards of international humanitarian law, which can help enterprises avoid the risks of causing or contributing to adverse impacts when operating in such difficult environments. **In the context of armed**

say business should respect, which the States in which these companies operate have a duty to protect and which member States of the OECD also have a duty to respect and fulfil. It is simply not possible to frame the rights of Indigenous Peoples as individual rights of persons, as to do so is tantamount to denying their existence and inconsistent with international law on the matter. The OECD would be subject to a major public backlash from Indigenous Peoples and civil society actors that support them, as well as international human rights and development bodies that oversee the implementation of Indigenous Peoples' rights, if it were to do so. This would significantly tarnish the OECD's reputation and undermine the credibility of the standards as good practice in relation to responsible business conduct.

FPIC needs to be explicitly addressed here as given its core role as a self-determination principle governing third party engagement with Indigenous Peoples and its centrality to human rights due diligence, a mere reference to it in the context of the Due Diligence Guidance is not sufficient.

It is important that this points about representative institutions and adherence to Indigenous Peoples protocols and customs be mentioned for FPIC to be sought in a rights compliant manner.

The IFC and GCF safeguards and policy provide internationally accepted guidance on FPIC. The modified text, while being the absolute minimum that could be accepted in relation to Indigenous Peoples' rights, does not provide sufficient guidance to companies, and hence the reference to the IFC and GCF standards are essential.

Further proposed text is provided below in an additional para 54 that would help to address this deficiency.

<p><i>conflict or heightened risk of gross abuses, enterprises should conduct enhanced due diligence to avoid involvement in adverse impacts including violations of international humanitarian law.</i></p>	
<p><b>47-48.</b> In paragraph 1, addressing actual and potential adverse human rights impacts consists of taking adequate measures for their identification, prevention, where possible, and mitigation of potential human rights impacts, remediation of actual impacts, and accounting for how the adverse human rights impacts are addressed. The term ‘infringing’ refers to adverse impacts that an enterprise may have on the human rights of individuals <b>or groups such as Indigenous Peoples.</b></p>	<p>This addition is necessary if the Guidelines are to be consistent with international human rights law and contemporary international standards of international organizations and private sector actors.</p> <p>Either add groups to text or remove individual e.g. The term ‘infringing’ refers to adverse impacts that an enterprise may have on human rights.</p>
<p><b>49-50.</b> Paragraph 3 addresses more complex situations where an enterprise has not 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. Paragraph 3 is not intended to shift responsibility from the entity causing an adverse human rights impact to the enterprise with which it has a business relationship. Meeting the expectation in</p> <p>paragraph 3 would entail an enterprise, acting alone or in co-operation with other entities, as appropriate, to use <b>and where needed enhance</b> its leverage to influence the entity causing the adverse human rights impact to prevent or mitigate that impact. ‘Business relationships’ include relationships with business partners, entities in its supply chain, and any other non-State or State entity directly linked to its business operations, products or services. Among the factors that will enter into the determination of the appropriate action in such situations are the enterprise’s leverage over the entity concerned, how crucial the relationship is to the enterprise, the severity of the impact, <b>the views of the concerned rights holders</b>, and whether terminating the relationship with the</p>	<p>This perspective of the rights holders is absolute essential in the context of Indigenous Peoples, as peoples with the right to self-determination and as the only ones capable of assessing if terminating a relationship is the appropriate action or not in terms of impacts on their social, cultural, economic and spiritual rights, but is also an important consideration that should be relevant to all rights holders,</p>

<p>entity itself would have adverse human rights impacts.</p>	<p>who are in the best position to decide what should be done to protect their rights, and so the text should be added here.</p>
<p><b>50.51.</b> Paragraph 4 recommends that enterprises express their commitment to respect human rights, including Indigenous Peoples’ rights as articulated in the UN Declaration on the Rights of Indigenous Peoples, through a <b>publicly available</b> statement of policy that: (i) is approved at the most senior level of the enterprise; (ii) is informed by relevant internal and/or external expertise; (iii) <del>stipulate</del><i>stipulates</i> the enterprise’s human rights expectations of personnel, business partners and other parties directly linked to its operations, products or services; (iv) is publicly available and communicated internally and externally to all personnel, business partners and other relevant parties; (v) is reflected in operational policies and procedures necessary to embed it throughout the enterprise.</p>	<p>As noted above, the need for such policy commitments to explicitly address Indigenous Peoples’ rights and UNDRIP, has been highlighted by a range of human rights bodies including the Working Group on Business and Human Rights, the UN Special Rapporteur on the rights of Indigenous Peoples, is recognised under all relevant industry good practice standards, and repeatedly affirmed by Indigenous Peoples themselves e.g. “Business enterprises should...commit themselves to respecting the United Nations Declaration on the Rights of Indigenous Peoples and ILO Convention No. 169 in policy commitments, human rights due diligence processes and remediation processes” UN Doc A/68/279 para 56.</p>

## Chapter VI. Environment

<p>Enterprises <del>can</del><i>play a key role in advancing sustainable economies, and they should contribute to delivering an effective and progressive response to global, regional and local environmental challenges. Enterprises should</i> <del>W</del><i>within the framework of laws, regulations and administrative practices in the countries in which they operate, and in consideration of relevant international agreements, principles, objectives, and standards, enterprises should carry out risk-based due diligence as described in Chapter II, to identify, prevent and mitigate the adverse environmental, health and safety impacts of their operations, products and services, while take due account of the need to protect the environment, public health and safety, and generally to enterprises should</i> conduct their activities in a manner <del>contributing</del><i>that takes due account of the need to protect the environment, and in turn workers, communities and society more broadly, avoids</i></p>	<p>The reference to infringements of the right to a health environment would be a logical and welcome addition here as it would help avoid the false dichotomy between environmental and human rights harms particularly in the case of Indigenous Peoples. Given the symbiotic relationship they have with their lands, territories and resources such a distinction</p>
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*and addresses adverse environmental impacts and contributes* to the wider goal of sustainable development. *Such Adverse environmental impacts can include, among others:*

- a) climate change;*
- b) biodiversity loss;*
- c) air, water and soil pollution;*
- d) degradation of land, marine and freshwater ecosystems;*
- e) deforestation;*
- f) overconsumption of material, water, energy and other natural resources;*
- g) harmful generation and mismanagement of waste, including hazardous substances;*
- h) harm to animal welfare.*
- h) infringements on the right to a healthy environment, in particular of Indigenous Peoples*

In particular, enterprises should

1. Establish and maintain a system of environmental management appropriate to the enterprise, including: *associated with the operations, products and services of the enterprise over their full life cycle, including by carrying out risk-based due diligence as described in Chapter II for adverse environmental, health and safety impacts. Such impacts can include, amongst others, including through:*

*2. (Originally part of paragraph 1) As part of their management of identifying and assessing the actual and potential adverse environmental, health and safety impacts, enterprises should:*

- a) associated with an enterprise's operations, products or services, including through collection and evaluation of adequate and timely information regarding the adverse environmental, health, and safety impacts associated with of their operations, products and services activities. and where activities may have significant adverse environmental impacts, or infringe on the right to a healthy environment, preparing an appropriate environmental impact assessment; In the case of Indigenous Peoples impact assessments should ensure their*

significantly increases the risk of human rights violations as it well documented that Indigenous Peoples' human rights are disproportionately impacted by environmental damage. This link between protecting their human rights and protecting their environments is the subject of a sizeable body of human rights jurisprudence, as well as being at the core of much tort and civil litigation, and is recognised in UN General Assembly resolutions. An example of this is the 2017 Advisory Opinion of the InterAmerican Court of Human Rights, which draws extensively on jurisprudence related to Indigenous Peoples' rights when affirming the right to a healthy environment i.e. it is in large part Indigenous Peoples realities and needs that have promoted the development of this justiciable right at the international level. This is again reflected in the 2020 landmark decision of the InterAmerican Court of Human Rights [Indigenous Communities Members of the Lhaka Honhat Association vs. Argentina](#) which affirms Indigenous Peoples right to a health environment and the UN GA resolution A/76/L.75 (2022) "The human right to a clean, healthy and sustainable environment" which recognises that the human rights implications of environmental damage are felt most acutely by Indigenous Peoples.

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As noted in the comment on the human rights due diligence, these guidelines have been repletely involved by a range of human rights bodies including the UN Special Rapporteur on the rights of Indigenous Peoples (A/HRC/15/37 para 73), the InterAmerican Court of Human Rights (Saramaka v Suriname 2007), The Committee on the Elimination of Racial Discrimination (CERD/C/SUR/CO/13-15, para.



participation, give full consideration to indigenous knowledge, and be conducted in accordance with the best practice, such as the Convention on Biological Diversity's "Akwé: Kon Voluntary guidelines for the conduct of cultural, environmental and social impact assessments".

...

**4.2. (Originally paragraph 2)** Taking into account concerns about ~~cost and administrative burdens~~ costs, business confidentiality, and the protection of intellectual property rights: Conduct **meaningful engagement with relevant stakeholders directly affected by adverse environmental impacts associated with an enterprise's operations, products or services**. If Indigenous Peoples are directly affected meaningful engagement implies consultations in order to obtain their FPIC.

26 (2015)), the UN Permanent Forum on Indigenous Issues (E/CN.4/Sub.2/AC.4/2001/2, para. 15), the Expert Mechanism on Indigenous Peoples Rights A/HRC/15/35 (2010), para. 37.

Even prior to the introduction of the Human Rights chapter in the OECD Guidelines the Akew:Kon were used by the Norwegian and UK NCPs to explain how the OECD Guidelines environmental provisions should be interpreted by businesses when carrying out human rights impact assessment in accordance with the UNGPs in the context of impact assessments and consultations seeking Indigenous Peoples FPIC, see Norwegian NCP Final Statement: Complaint from The Future in Our Hands (FIOH) against INTEX Resources ASA and the Mindoro Nickel Project (2011), [http://www.oecd.org/daf/internationalinvestment/guidelinesformultinationalenterprises/Norwegian%20NCP%20intex\\_final.pdf](http://www.oecd.org/daf/internationalinvestment/guidelinesformultinationalenterprises/Norwegian%20NCP%20intex_final.pdf) page 48 (pointing to the Akew:Kon Guidelines as "guidance on how to identify and consult with" Indigenous Peoples, and UK NCP, Final Statement on the Complaint from Survival International against Vedanta Resources plc (2009) [Final Statement by the UK National Contact Point on the complaint from Survival International against Vedanta Resources plc \(oecd.org\)](http://www.oecd.org/daf/internationalinvestment/guidelinesformultinationalenterprises/Norwegian%20NCP%20intex_final.pdf) para 79 (referring to the Akwe: Kon Guidelines "as a point of reference for carrying out indigenous groups' impact assessments")

**68. Governments, business and consumers are jointly responsible for achieving Achieving environmental objectives. requires a whole of society approach. The Guidelines set out expectations on how enterprises should manage avoid and address actual and potential adverse environmental, health and safety impacts. This is based on the Guidelines' overall intention to and contribute to responses to environmental challenges and international environmental commitments and reaching the goals, including in relation to of climate change mitigation and adaptation; the conservation, restoration, and sustainable use of biodiversity including ecosystems biological diversity; the sustainable and, efficient and lawful use of land, resources and energy;**





*sustainable consumption and production including through promotion of circular economy approaches;; and pollution prevention, reduction and control. International commitments, multilateral agreements and other regulatory frameworks represent an important benchmark for understanding environmental issues and expectations.*

*~~The chapeau paragraph of this chapter clarifies the link with Chapter II and specifies a non-exhaustive list of adverse environmental, health and safety impacts that may be associated with business activities. Carrying out risk-based due diligence within the scope of the recommendations in this chapter can help businesses identify and prioritise their most significant adverse environmental impacts and also understand their relationship with other adverse impacts and objectives covered by these Guidelines. Some international agreements contain collective government objectives and may not provide detailed prescriptions regarding the responsibilities of individual enterprises in relation to such objectives. In such cases, relevant regulatory frameworks, national policy and widely recognized standards of environmental management and safeguards, and scientific evidence are important references.~~*

The text of the Environment Chapter broadly reflects the principles and objectives contained in the Rio Declaration on Environment and Development, in Agenda 21 (within the Rio Declaration) **and the United Nations 2030 Agenda for Sustainable Development**. It *is* also takes into account **consistent with the UN Framework Convention on Climate Change (UNFCCC), the Paris Agreement, the Convention on Biological Diversity, Kunming-Montreal Global Biodiversity Framework**, (Aarhus) Convention on Access to Information, Public Participation in Decision-making, and Access to Justice in Environmental Matters, **the IFC Performance Standards and the Green Climate Fund Policies and Standards, the UN Convention to Combat Desertification, relevant regional environmental agreements**, and reflects standards contained in such instruments as the ISO Standard on Environmental Management

These safeguards have the support of the vast majority of States and offer guidance in relation to environment impact assessments, in particular as they relate to Indigenous Peoples' rights. They are accepted by businesses as good practice and establish a baseline below which it would be not acceptable for responsible business conduct to fall. A reference is needed to them somewhere in the standards and has been proposed in a number of possible places.

Systems *and* **OECD Strategic Approach to International Chemicals Management (SAICM).**

**69. In the context of ~~thesethe~~ Guidelines, “environmental management” should be interpreted in its broadest sense, embodying activities aimed at understanding environmental impacts and risks, ~~controlling known~~avoiding and ~~reasonably foreseeable~~addressing environmental impacts related to an enterprise’s operations, products and services ~~as well as~~ taking into consideration the enterprise’s share of cumulative impacts and continually seeking to improve an enterprise’s environmental performance. ~~Sound Environmental~~ management is an important part of sustainable development. ~~Moreover, in the context of these Guidelines, “environmental management” should be interpreted in line with Paragraph 1 and include carrying out risk based due diligence in line with the recommendations articulated in Chapter H.~~Environmental management also involves carrying out risk-based due diligence with respect to adverse environmental impacts. In line with Chapter II, the nature and extent of environmental due diligence will depend on the circumstances of a particular enterprise. Limitations to carrying out environmental due diligence may include lack of availability of environmental data or available technologies. Due diligence will also involve risk-based prioritisation. It will also depend on the extent to which environmental impacts associated with the enterprises operations, products or services are known or reasonably foreseeable. ~~Sound Environmental~~ management is an important part of sustainable development *and may involve reconciling a broad range of priorities, including those set out in national priorities and targets for sustainable development. Environmental management* ~~and~~ is increasingly being seen as *is* both a business responsibility and a business opportunity. Multinational enterprises have a role to play in both respects. Managers of these enterprises should therefore give appropriate attention to**

environmental issues within their business strategies. Improving environmental performance requires a commitment to a systematic approach and to continual improvement of the system. An environmental management system provides the internal framework necessary to integrate environmental considerations into business operations. Having such a system in place should help to assure shareholders, **workers**, employees, **Indigenous Peoples** and **the communitycommunities and other relevant stakeholders** that the enterprise is actively working to protect the environment, ~~communities and society from the impact of its activities. Environmental management can be linked with the responsible governance of tenure of land, forests, and fisheries.~~ from the impact of its activities.

Given the disproportionate impact of business activities on Indigenous Peoples’ environments, the distinct nature of those impacts on their internationally recognised rights, and the specific actions that responding to these impacts implies, Indigenous Peoples need to be mentioned as a distinct category to “communities” here.

*71. Environmental impacts can be collective and interlinked, or isolated; they can be localised or transboundary in nature. While some environmental impacts are well understood, the extent, nature and cause of others may be less well understood, evolving, or even unknown. Therefore, while in some instances it will be possible to assess, based on available science and information, whether an enterprise is contributing to an adverse environmental impact and to what extent such a contribution is substantial, in other instances such an assessment may be challenging. In the context of the latter situation, for the purpose of the Guidelines whether an enterprise is contributing to an adverse impact can be assessed on the basis of whether their activities diverge from widely recognized standards or safeguards regarding good environmental practice, or benchmarks or standards established in: ~~national and sub-national~~ applicable environmental rules and regulatory frameworks; or relevant multilateral agreements; international environmental commitments or goals, such as those listed in paragraph 60 of this commentary; and, where applicable, standards of environmental management such as ISO environmental management standards, and*

These International Finance Corporation (IFC) and the Green Climate Fund (GCF) safeguards



~~further informed by best practice. Adverse environmental impacts may be localised or transboundary in nature. They can also be cumulative and interlinked. Most international environmental agreements generally reflect commitments by States at a whole-of-economy level rather than specific standards for individual or business and sectors. As such, it may be complex to identify and define to what extent an enterprise may be causing, contributing to or directly linked to some adverse environmental impacts. In such situations, whether an enterprise is causing, contributing to or directly linked to an adverse environmental impact may be assessed on the basis of the quality of its environmental management practices, including its due diligence in addition to its compliance with regulatory standards, agreements or internationally recognised environmental safeguards, such as those of the International Finance Corporation (IFC) and the Green Climate Fund (GCF)..~~

set a good practice baseline which the OECD Guidelines should reference as a) they are accepted by the international community and reputable businesses as the baseline standards, and b) they provide more details than the Guidelines as to how to determine the nature of environmental impacts and c) in terms of implementation and are broadly consistent with Indigenous Peoples' rights under international human rights law. The IFC standard has been used by OECD NCPs, e.g. in Norway v Intex FIOH case, when fleshing out the contents of the Guidelines in relation to conduct of impact assessments addressing their rights. The GCF standards, build on those of the IFC, and are applicable in the context of green financing and therefore particularly relevant for future public and private sector investment in Indigenous Peoples lands. By referring to these standards the OECD Guidelines would signal that it is a leader in the area of responsible business conduct and aligned with and complementary to other good practice guidance. Doing this can also be a way to encourage greater alignment across NCPs and seek greater coherence and effectiveness, as currently some NCPs refer to these international standards while others ignore them, creating a growing impression that the OECD Guidelines lack sufficient clarity to guide those responsible for their oversight.

~~70-72. (new paragraph) Adverse environmental impacts, and associated environmental management, can be are often closely interlinked with other matters covered by the Guidelines such as health and safety, impacts to workers, Indigenous Peoples and communities, access to livelihoods or land tenure rights. Furthermore, carrying out environmental due diligence and managing adverse environmental impacts will often involve taking into account multiple environmental, social and developmental priorities. Notably the Paris Agreement preamble takes into account the imperatives of a just transition and of the workforce and the creation of decent work and quality jobs in accordance with nationally defined development priorities, and acknowledges that when taking action to address climate change,~~

The Paris Agreement also makes explicit reference to Indigenous Peoples. Their lands, territories and resources will be disproportionately impacted by climate change mitigation activities undertaken by businesses and therefore the need to be explicitly mentioned along with labour rights. The Green Climate Fund policy on Indigenous Peoples recognizes this reality and requires consultations in order to obtain FPIC in line with the UN Declaration on the Rights of Indigenous Peoples, and safeguards such as the IFC Performance Standard 7, as a result.



*Parties should respect, promote and consider their respective obligations on human rights, including the rights of indigenous people. Enterprises can contribute In this respect it is important for enterprises to a just transition by understanding assess and responding to address social impacts on people associated with-in the context of their environmental management and due diligence activities and objectivesto take action to prevent and mitigate such impacts both in their transition away from environmental harmful practices, as well as towards greener industries or practices, such as the use of renewable energy. Respecting labour rights including engaging in social dialogue and collective bargaining, and Indigenous Peoples' rights including consultation and FPIC, as outlined in Chapter V, meaningfully engaging with relevant stakeholders and, where relevant practicing responsible disengagement as outlined in Chapter II will be important in this respect.*

*72.74. (originally paragraph 65) Information ~~Public disclosure~~ about **Communication regarding** the activities of enterprises and about their relationships, with sub-contractors and their suppliers, ~~and~~ associated environmental, ~~health and safety~~ impacts **associated with an enterprise's operations, products and services as well as meaningful stakeholder engagement can be** is an important vehicle for building confidence with the public. This vehicle is most effective when information is provided in a transparent manner **a component of due diligence** and when it encourages active consultation **may also be required by local law. Furthermore, meaningful engagement** law. Reporting standards such as the Global Reporting Initiative **and other environmental reporting standards** provide useful references. **See also Chapter III on Disclosure. Meaningful engagement and communication** with stakeholders such as employees, customers, investors, suppliers, contractors, local communities, ~~vulnerable individuals or~~ **marginalised groups, in situations of vulnerability or marginalization, persons***

This reference to meaningful engagement and communication with Indigenous Peoples is fine provided the clarifications included above as to

<p><i>possessing special rights or legitimate tenure rights, and Indigenous Peoples, and with the public-at-large is particularly important where they are or may be affected by such impacts. So as to promote a climate of long-term trust and understanding on environmental issues of mutual interest. Reporting and communication are particularly appropriate <del>and</del> where scarce or at-risk environmental assets are at stake either in a regional, national or international context; reporting standards such as the Global Reporting Initiative <del>and other environmental reporting standards</del> provide useful references. [See also Chapter III on Disclosure]. ;</i></p>	<p>what this implies (i.e. consistent with UNDRIP) are included in those paragraphs.</p>
<p><i>79-81. (new paragraph) Achieving climate resilience and adaptation is a critical component of the long-term global response to climate change to protect people and ecosystems and will require the engagement and support all segments of society. Enterprises should avoid activities which undermine climate <del>adaption and</del> resilience and can in turn adversely impact health, rights and livelihoods of Indigenous Peoples, communities, workers and ecosystems or hinder the ability of communities to adapt to climate change.</i></p>	<p>As previously explained Indigenous Peoples constitute a separate category from local communities and need to be explicitly addressed. Also the reference to rights is necessary here, as reflected in the Paris Agreement, Green Climate Fund policies and standards and REDD+ standards.</p>
<p><i>82. (new paragraph) The conservation of <del>biodiversity</del> biological diversity and sustainable management and use of natural resources and ecosystems, including, for example, forests, oceans, peatlands and wetlands, is highly important to human health and livelihoods, to Indigenous Peoples' cultural an physical survival and the realization of their self-determination rights, to species survival as well as managing climate change. Enterprises should contribute to the conservation of biological diversity, <del>habitats and ecosystems,</del> the sustainable use of their components, and the fair and equitable sharing of the benefits arising out of the utilisation of genetic resources. Enterprises should also avoid and address land, marine, and freshwater, <del>land and forest</del> degradation, including deforestation, in line with objectives of UN</i></p>	<p>The Global Biodiversity Framework recognises the interconnection between Indigenous Peoples' rights and the conservation of biological diversity. The World Bank has estimated in the past that up to 80% of the world's remaining biodiversity is found in Indigenous Peoples' lands. Likewise, FAO has documented the disproportionate degree to which this biodiversity is in their lands. That biodiversity which they sustainably manage is central to their survival and its conservation and management must be based on an</p>



*SDGs Sustainable Development Goals, notably 15.2, the UN Strategic Plan for Forests 2017–2030 and the 2021 Glasgow Leaders’ Declaration on Forests and Land Use which seek to halt and reverse forest loss and land degradation by 2030. Efforts should include ~~the avoidance of~~ carrying out heightened due diligence with respect to potential adverse impacts on biodiversity ~~and ecosystems~~ in national parks, reserves and other protected areas, including UNESCO Natural World Heritage sites, areas protected in fulfilment of the Convention on Biological Diversity, and as defined in domestic law, as well as on protected species. Where appropriate, and according to their own capacities and domestic laws where they operate, enterprises should also contribute to sustainable land and forest management, including restoration, afforestation, reforestation and the reduction of land, marine, and freshwater ~~and land~~ degradation, **in a manner consistent with the rights of Indigenous Peoples**. Enterprises’ efforts to prevent or mitigate adverse impacts on biodiversity should be guided by the biodiversity mitigation hierarchy, which recommends first seeking to avoid damage to biodiversity, reducing or minimising it where avoidance is not possible, and using offsets ~~and restoration~~ as a last resort for adverse impacts that cannot be avoided.*

acknowledgement of and respect for their rights.

As noted above this must happen consistent with respect for Indigenous Peoples’ rights given the considerable overlap of biodiversity with their territories and the risk that externally imposed measures can pose for the realization of their rights, including their rights to lands, territories and resources and to self-determination, and to their survival as peoples.

~~80-83.~~ *Adverse environmental impacts, particularly in the context of biodiversity and land, marine and freshwater degradation can be related to the responsible governance of tenure of land, forests, and fisheries ~~and respect for Indigenous Peoples’ rights~~. As noted in the Voluntary Guidelines on the Responsible Governance of Tenure, of Land, Fisheries and Forests in the Context of National Food Security (VGGTs), (2012) the responsible governance of tenure of lands, forests and fisheries can play a role in supporting sustainable use of the environment. In this context, the VGGTs call for investments that do no harm, and safeguard against dispossession of legitimate tenure right holders and environmental damage, ~~mitigated or reduced~~.*

Against given the outsized role Indigenous Peoples play in the protection of biodiversity adverse environmental impact in that context are almost inevitably associated with violation of their rights.

## Commentary on the Implementation Procedures of the OECD Guidelines for Multinational Enterprises

Commentary on the Implementation Procedures of the OECD Guidelines for Multinational Enterprises	Explanation for inclusion
<p><b><i>New sub-heading] Good faith engagement</i></b> <b><i>Faith Engagement</i></b> <b><i>2627. Should an NCP become aware of the threat of or existence of <del>undue pressure or reprisals</del> directed at a person involved in a specific instance, or towards the NCP or one of its members, it should take adequate steps within its capacities, and in consultation with other relevant government entities such as diplomatic missions, as appropriate, with the aim of ensuring that the person or group at risk has adequate protection and that the proceedings can continue in a safe, accessible, equitable and impartial manner. Before undertaking any action in this regard, the NCP will secure the consent of the party at risk. Reprisals or <del>undue pressure</del> may include threats to harm the individual, their family or other relations, inappropriate threats to terminate employment or benefits or inappropriate threats of legal action. Appropriate measures may include, for example, keeping the identity of the person at risk confidential, suggesting that the person at risk be represented by a trusted third party, documenting attempted reprisals in statements or assisting a person at risk in reaching out to relevant authorities. In the case of Indigenous Peoples, threats and violence against their representatives and/or leaders tend to have profound impacts on the peoples' rights to self-government and self-determination and on their way of life. As a result, measures that protect both the individual and group as a collective from such threats and violence may be necessary and should be discussed with the concerned people's representatives.</i></b></p>	<p>The fact that groups can be impacted is recognised in the human rights chapter text.</p> <p>Given the specific nature of the impact on Indigenous Peoples, and the corresponding measures that may be needed, the addition of text on these lines is appropriate.</p>
<p><b>35.4243.</b> If the parties involved fail to reach agreement on <b><i>all or some of</i></b> the issues raised,</p>	



***if one or both of the parties withdraws from the procedure***, or if the NCP finds that one or more of the parties to the specific instance is unwilling to engage or to participate in good faith, the NCP will issue a statement, and make recommendations as appropriate, on the implementation of the *Guidelines in relation to the issues raised*. This procedure makes it clear that an NCP will issue a statement, even when it feels that a specific recommendation is not called for. The statement should identify the parties concerned, the issues involved, the date on which the issues were raised with the NCP, any recommendations by the NCP, and any observations the NCP deems appropriate to include on the reasons why the proceedings did not produce an agreement. **Where there is non-engagement in proposed mediation by the business enterprise, or where no mediation agreement is reached, or there is non-compliance with mediation outcomes, NCPs should, where requested to by the complainants, refer cases to relevant national authorities responsible for oversight of due diligence legislation, where such a possibility exists and provide complainants with information regarding alternative accountability avenues, such as civil litigation.**

As noted in the submission made by Indigenous Peoples the current procedures are ineffective in terms of providing an effective remedy. Given the developments in due diligence legislation in many OECD countries, NCPs should link with second level of implementation where this is available and requested by the complaints in the context of failed mediation.

## ANNEX: Proposed additional para 54 in Human Rights chapter.

The modified text in para 47 of the human rights chapter, while being the minimum that could be accepted in relation to Indigenous Peoples' rights, does not provide sufficient guidance to companies, in particular in relation to identification of Indigenous Peoples, recognition of land rights, seeking and obtaining FPIC, the conduct of indigenous rights impact assessments and the need for benefit sharing agreement. The addition of the following paragraph would help address that deficiency. The endnotes explain the reason for the inclusion the specific points and provide further references to supporting documents.

Additional Paragraph as discussed with indigenous peoples in the consultation sessions

**54 Enterprises should identify any potentially impacted Indigenous Peoples and analyse their rights to own, use, develop and control affected lands, territories and resources, irrespective of whether the people or their rights have been formally recognized under national law. Where Indigenous Peoples' rights may potentially be restricted or denied, enterprises shall ensure Indigenous Peoples' effective**

participation in decision-making, through their own representative institutions in order to obtain their Free, Prior and Informed Consent (FPIC) in accordance with their laws, protocols, customs and traditions. Impact assessments should span all affected rights and be participatory, publicly available, respect indigenous knowledge and address cumulative effects of proposed activities. No relocation can take place, and no cultural, intellectual, or spiritual property can be taken, without Indigenous Peoples' FPIC, and no activities shall take place in the territories of Indigenous Peoples in voluntary isolation. Where granted, FPIC should be formalized in contractual agreements that: recognize territorial, self-governance and cultural rights; address and protect against adverse impacts; ensure compensation for harms caused and guarantee fair and equitable benefit sharing, and recognize the role of Indigenous Peoples' legal systems, customs in dispute resolution. FPIC should be maintained throughout the project or initiative lifecycle, and be subject to independent verification, with evidence provided to investors and other stakeholders that agreements are fully implemented and have continued support from the concerned peoples.