

INPUT OF INDIGENOUS PEOPLES ON THE SUSTAINABLE DEVELOPMENT DRAFT TOOL

February, 2024 | SB010

General observations

- **Deficiencies in Human Rights language:** The human rights section remains deficient, the rights of Indigenous Peoples must be specifically mentioned.
- References to International Standards: References to international standards have been removed, which could undermine the protection and enforcement of human rights, rights of Indigenous Peoples and environmental standards.
- Lack of a Human Rights-Based Approach: The draft does not adopt an overall human rights-based approach¹, raising concerns about the prioritization of the right to development over other human rights.
- Failure to Provide Full and Effective Participation of Indigenous Peoples in the Design and Implementation of the Sustainable Development Tool: It is imperative that Indigenous Peoples are able to self-identify as rights holders and have the full and effective participation in the assessment of risks to their rights. Additionally, in the sections addressing risks to Indigenous land rights, for example, there is a lack of clarification regarding the methodology for arriving at answers and the implications of responding with "yes" or "potentially" on the final decision-making process.

¹ https://unsdg.un.org/2030-agenda/universal-values/human-rights-based-approach

Recommendations

Principle 2: Air, Land and Water

Paragraph 22

Proposed activity shall avoid **the release of** pollutants to air, land and water, this includes both hazardous and non-hazardous pollutants across solid, liquid, and gaseous phases. **This principle covers all forms of environmental degradation**, including but not limited to thermal discharges to water bodies, emissions of both short-lived and long-lived climate pollutants, plastics, biomedical waste, nuisance odours, noise, vibration, radiation, electromagnetic energy, excessive water consumption, water discharge, and the creation of potential visual impacts, such as light pollution.

Paragraph 23

P2.1.1: The activity participant is required to rigorously avoid the release of pollutants. In the exceptional circumstance where avoidance is not possible, comprehensive measures must be implemented to minimize and control the intensity and mass flow of their release, going beyond the minimum standards set by host country regulations. This includes adopting the best available techniques and practices that prioritize environmental and public health, especially in Indigenous territories. This applies to the release of pollutants due to routine, non-routine, and accidental circumstances with the potential for local, regional, and transboundary impacts. Indigenous Peoples must have full and effective participation in assessing the adequacy of these measures.

Paragraph 24

P2.1.2: In cases of historical pollution, such as air contamination, the activity participant must conduct a thorough investigation to ascertain responsibility for mitigation measures. Should the activity participant be found legally responsible, resolution of these liabilities must respect the rights of Indigenous Peoples. he process should be governed by the highest standard among national, international and Indigenous standards and conducted with the full and effective participation of Indigenous Peoples,

Principle 4: Human Rights

Paragraph 46

The activity participant developer shall uphold international human rights commitments, emphasizing the rights to sustainable development, poverty alleviation, and the equitable distribution of development opportunities and benefits. Furthermore, it is imperative that the implementation of any activity is conducted with the highest respect for human rights, ensuring that it does not violate the human rights or the rights of Indigenous Peoples under any circumstances. This includes actively preventing any infringement on these rights and promptly addressing any adverse human rights impacts that the activity may cause or contribute to. Special attention must be given to the rights of Indigenous Peoples,

ensuring that activities do not proceed without their free, prior, and informed consent, and that measures adopted with the full and effective participation of Indigenous Peoples are in place to mitigate any potential negative impacts on their communities, traditional territories, or cultural heritage.

Principle 8: Land acquisition and involuntary resettlement

NEW PARAGRAPH

No activity shall result in the removal of Indigenous Peoples from their lands and territories, see paragraph 70. No restriction shall be placed on Indigenous Peoples' rights to their lands, territories and resources without their free, prior and informed consent.

Principle 9: Indigenous Peoples

Paragraph 67:

The activity participant shall respect and take into account the rights of Indigenous Peoples and individuals as outlined in applicable legal obligations, commitments and international standards well as Indigenous customs, traditions, rules and legal systems. Activity participants must recognize Indigenous juridical systems or customs that are in accordance with international standards, regardless of their specific recognition or lack thereof under national laws. Furthermore, activity participants should also acknowledge that Indigenous Peoples often play a pivotal role in promoting, owning and managing activities and enterprises as partners in development.

Note:

This approach underscores the importance of integrating Indigenous perspectives, rights, legal systems, cultural values and customs into development activities, towards fully recognizing their contributions and rights.

Paragraph 68

P9.1: Activity participants shall identify all communities of Indigenous Peoples within the activity area of influence or who may be affected by the activity. Self-identification as Indigenous Peoples is a fundamental criterion. This process must be conducted with respect, sensitivity, and transparency, ensuring that Indigenous Peoples are fully informed and voluntarily participating in the identification process.

Paragraph 69

P9.2: The activity participant, with the full and effective participation of Indigenous Peoples involved, shall carry out an environmental and social analysis of the activities that may affect or involve Indigenous Peoples by completing the A6.4 Environmental and Social Safeguards Risk Assessment Form, and adequate resources for Indigenous Peoples full and effective participation shall be provided. The analysis shall verify whether Indigenous Peoples reside in the proposed activity areas and/or if the activities may affect Indigenous Peoples outside of

activity areas. The assessment shall include the potential impacts on their rights, lands, territories, gender relations and resources.

Paragraph 70

P9.3: The activity shall not result in the forcible removal of Indigenous Peoples from their lands or territories as defined by Indigenous Peoples.

Paragraph 71

P9.4: The activity participant shall recognize and respect the Indigenous Peoples' collective rights to own, use, develop, and control the lands, resources, and territories that they have traditionally owned, occupied, or otherwise rightfully used or acquired, including lands and territories for which they do not yet possess title. No activities can take place on these lands and territories without the free, prior and informed consent of Indigenous Peoples involved.

Paragraph 72

P9.5: The activity participant shall respect the cultural, intellectual, religious, and/or spiritual property of Indigenous Peoples and shall not access or utilize it without their free, prior, and informed consent (FPIC). FPIC must be obtained when there are impacts on (i) the territory; (iii) cultural heritage; or (iv) places containing sacred elements of special value for the community. FPIC is an ongoing process that involves regular and open dialogue, ensuring that Indigenous Peoples have all necessary information and the capacity to participate fully and effectively. This process, along with any agreements reached, must be clearly documented, reflecting a commitment to good faith negotiation and the acknowledgment of Indigenous Peoples' rights and autonomy.

Paragraph 73

The activity participant shall ensure that Indigenous Peoples are provided with the equitable sharing of benefits derived from the utilization and/or commercial development of natural resources on their lands and territories, or the use of their traditional knowledge and practices by the activity. This shall be achieved by engaging in dialogue and negotiations that are conducted in accordance with the principle of free, prior, and informed consent (FPIC). and carried out in a manner that is culturally appropriate, inclusive, and respects the rights of Indigenous Peoples to self-determination. These negotiations should aim not only to avoid impeding land rights or equal access to basic services, including health services, clean water, energy, education, safe and decent working conditions, and housing, but also to proactively support these rights. Negotiation requires transparency, respect for Indigenous Peoples' timeframes, their legal and decision-making structures, cultural values, and customs, and the provision of all necessary information in relevant languages and accessible formats. Furthermore, it necessitates a genuine intent to reach an agreement that honors the contributions and rights of Indigenous Peoples, ensuring their participation in decision-making processes and the realization of development benefits in a manner that they deem beneficial, just, and fair.

Principle 11: Cultural heritage

Paragraph 77

P11.1: The activity shall not involve or be complicit in the alteration, damage, or removal of any sites, objects, structures, or other cultural heritage tangible or intangible including those of significance to Indigenous Peoples as determined by them.

Paragraph 80

P11.3 4: Where an activity proposes to utilize cultural heritage, including the knowledge, innovations, or practices of **Indigenous Peoples or** local communities, **they** shall be informed of their respective rights, the scope and nature of the proposed commercial development, and the potential consequences of such development. Utilization of the cultural heritage, including the knowledge, innovations, or practices of Indigenous Peoples requires their free, prior and informed consent.