Business and Biodiversity Offsets Programme (BBOP)

Biodiversity Offsets and Stakeholder Participation

A BBOP Resource Paper






BBOP
Business and Biodiversity Offsets Programme

Forest Trends, Conservation International and the Wildlife Conservation Society provided the Secretariat for BBOP during the first phase of the programme's work (2004 – 2008).

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About this document

The Principles on Biodiversity Offsets and accompanying supporting materials[1] such as this Resource Paper on Biodiversity Offsets and Stakeholder Participation[2] have been prepared by the Business and Biodiversity Offsets Programme (BBOP) to help developers, conservation groups, communities, governments and financial institutions that wish to consider and develop best practice related to biodiversity offsets. They were developed by members of the BBOP Secretariat and Advisory Committee[3] during the first phase of the programme's work (2004 – 2008), and have benefited from contributions and suggestions from many of the 200 people who registered on the BBOP consultation website and numerous others who have joined us for discussions in meetings.

The Advisory Committee members support the Principles and commend the other working documents to readers as a source of interim guidance on which to draw when considering, designing and implementing biodiversity offsets. Best practice in biodiversity offsets is still in its infancy, and the concepts and methodologies presented here need to be further discussed, developed, tested and refined based on more practical experience and broad debate within society.

All those involved in BBOP are grateful to the companies who volunteered pilot projects in this first phase of our work and for the support of the donors listed overleaf, who have enabled the Secretariat and Advisory Committee to prepare these documents.

BBOP is embarking on the next phase of its work, during which we hope to collaborate with more individuals and organisations around the world, to test and develop these and other approaches to biodiversity offsets more widely geographically and in more industry sectors. BBOP is a collaborative programme, and we welcome your involvement. To learn more about the programme and how to get involved please:

See: **www.forest-trends.org/biodiversityoffsetprogram/**

Contact: **bbop@forest-trends.org**

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1 The BBOP Principles, interim guidance and resource documents, including a glossary, can be found at **www.forest-trends.org/biodiversityoffsetprogram/guidelines/**. To assist readers, a selection of terms with an entry in the BBOP Glossary has been highlighted thus: BIODIVERSITY OFFSETS. Users of the Web or CD-ROM version of this document can move their cursors over a glossary term to see the definition.

2 This document was prepared by Emma Wilson with input from Preston Hardison, Kerry ten Kate, Marta Miranda and other members of the BBOP Advisory Committee and reflecting comments received during the consultation period.

3 The BBOP Advisory Committee currently comprises representatives from: Anglo American; Biodiversity Neutral Initiative; BirdLife International; Botanical Society of South Africa; Brazilian Biodiversity Fund (FUNBIO); Centre for Research-Information-Action for Development in Africa; City of Bainbridge Island, Washington; Conservation International; Department of Conservation New Zealand; Department of Sustainability & Environment, Government of Victoria, Australia; Ecoagriculture Partners; Fauna and Flora International; Forest Trends; Insight Investment; International Finance Corporation; International Institute of Environment and Development; IUCN, The International Union for the Conservation of Nature; KfW Bankengruppe; Ministry of Ecology, Energy, Sustainable Development, and Spatial Planning, France; Ministry of Housing, Spatial Planning and the Environment, The Netherlands; National Ecology Institute, Mexico; National Environmental Management Authority, Uganda; Newmont Mining Corporation; Private Agencies Collaborating Together (Pact); Rio Tinto; Royal Botanic Gardens, Kew; Shell International; Sherritt International Corporation; Sierra Gorda Biosphere Reserve, Mexico; Solid Energy, New Zealand; South African National Biodiversity Institute; Southern Rift Landowners Association, Kenya; The Nature Conservancy; Tulalip Tribes; United Nations Development Programme (Footprint Neutral Initiative); United States Fish and Wildlife Service; Wildlife Conservation Society; Wildlands, Inc.; WWF; Zoological Society of London; and the following independent consultants: Susie Brownlie; Jonathan Ekstrom; David Richards; Marc Stalmans; and Jo Treweek.

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4 Endorsement of some or all of the BBOP documents is not implied by financial support for BBOP's work.

5 This document is made possible in part by the generous support of the American people through the United States Agency for International Development (USAID). The contents are the responsibility of Forest Trends, Conservation International and the Wildlife Conservation Society and do not necessarily reflect the views of USAID or the United States Government.

Contents

This Resource Paper provides information on stakeholder identification, engagement and participation in the design and implementation of biodiversity offsets, considering both the benefits and challenges inherent in an inclusive and participatory approach. It offers a discussion of the principles behind an inclusive and participative approach to the design and implementation of biodiversity offsets, the benefits that such an approach can bring, and the challenges that must be addressed by the project proponent. Issues that are still under debate are reviewed, and suggestions and source material are provided to help guide offset planners. The paper introduces the BBOP Principles on Biodiversity Offsets and the three BBOP Handbooks (on Biodiversity Offset Design, Cost-Benefit and Implementation). It covers some of the key issues that a participation process should address, including identifying and involving stakeholders, understanding land rights and resource use practices, introducing sustainable use practices, promoting equity and handling conflict, and ensuring long-term sustainability of the offset.

The paper offers some basic, initial advice on a number of topics, and includes appendices of source materials on tools, methodologies, international conventions and processes, and the human rights aspects of offset implementation.

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Executive Summary

The aim of this Resource Paper is to provide information on stakeholder identification, engagement and PARTICIPATION in the design and implementation of biodiversity offsets. It discusses the benefits and challenges involved in adopting a participatory approach, and identifies relevant tools and methods to help those designing and implementing biodiversity offsets do so according to good practice.

Effective participation is critical to both the success and fairness of biodiversity offsets. This is reflected by the Business and Biodiversity Offsets Programme (BBOP) Principles for Biodiversity Offsets and the optional interim guidance in the supporting 'Handbooks' and associated materials designed to help OFFSET PLANNERS apply the Principles. According to the Principles, biodiversity offsets should comply with all relevant national and international law, and be planned and implemented in accordance with the Convention on Biological Diversity and its ECOSYSTEM APPROACH. In addition to a principle on stakeholder participation, there are principles on equity, long term success, transparency and science and traditional knowledge, all of which rest on some form of stakeholder participation.

This paper covers some of the key concepts that a participatory process for the design and implementation of a biodiversity offset needs to address, including: identifying stakeholders and their rights and interests in relation to the biodiversity offset; identifying resource use practices; capacity building and awareness raising; effective communication; participatory design and planning; the ethics of eliciting sensitive information; equity and benefit sharing; conflict resolution; ensuring long-term sustainability of an offset; and monitoring and evaluation.

One major contribution to the success of biodiversity offset projects is accommodating the concerns of indigenous peoples and local communities in development decisions by companies and governments. This requires meaningful engagement from an early stage of planning, and taking an ADAPTIVE MANAGEMENT approach where outcomes are evaluated and appropriate change made in response to feedback. The recent Declaration on the Rights of Indigenous Peoples (2007) contains some high-level principles that could be taken into account in designing offsets, in particular the right to FREE, PRIOR AND INFORMED CONSENT (FPIC) (p. 24). While these are not universally accepted, they have been endorsed by the United Nations General Assembly, and several states have started using them for drafting laws, policies, and court decisions. They serve as one context in which biodiversity offsets can be designed.

This Resource Paper offers guidance by highlighting key issues and providing references to sources of good practice relating to stakeholder participation, including public and private financing institutions; extractive industries associations and companies; community-based resource management practitioners; and conservation and indigenous rights organisations and working groups. The Appendices contain *inter alia* tables of tools and methods, with references to and brief summaries of key publications.

1. Introduction to BBOP and Purpose of this Paper

Biodiversity offsets are measurable CONSERVATION OUTCOMES resulting from actions designed to compensate for significant residual adverse biodiversity impacts arising from project development and persisting after appropriate prevention and mitigation measures have been implemented. The goal of biodiversity offsets is to achieve NO NET LOSS, or preferably a NET GAIN, of biodiversity on the ground with respect to species composition, HABITAT STRUCTURE and ECOSYSTEM SERVICES, including LIVELIHOOD aspects. The Business and Biodiversity Offsets Programme (BBOP) was established to explore when biodiversity offsets are appropriate, and to identify and develop best practice for their design and implementation.

BBOP is an exploratory, multi-stakeholder group. The BBOP Secretariat is currently managed jointly by Forest Trends, Conservation International and the Wildlife Conservation Society. The approximately forty international Advisory Committee members, from companies, government agencies, and non-governmental and intergovernmental organisations, are listed on the inside front cover of this document. BBOP coordinates a portfolio of biodiversity offset pilot projects around the world. The role of the Advisory Committee has been to guide the Secretariat as it develops principles, methodologies and guidelines for biodiversity offset design and implementation and to provide advice on the design of pilot projects. In addition, a global 'BBOP Learning Network' of over 800 individuals and organisations interested in biodiversity offsets participates in BBOP events held around the world and shares information and ideas. The programme's current sponsors can be found at **www.forest-trends.org/biodiversityoffsetprogram/index.php**. Anyone is welcome to join the BBOP Learning Network. (To do so, please send an email request to **bbop@forest-trends.org**)
For more introductory information on BBOP, please see **www.forest-trends.org/biodiversityoffsetprogram/guidelines/overview.pdf**.

In its first phase, BBOP has produced:

- A set of Principles on Biodiversity Offsets which appear in a short 'Overview' document that also provides an introduction to BBOP, its work to date, the challenges of offset development, and the programme's vision for the future;
- A toolkit comprising three Handbooks on Biodiversity Offset Design, Cost-Benefit Assessment and Offset Implementation. These offer optional interim guidance for anyone planning a biodiversity offset in line with the Principles;
- This Resource Paper on Biodiversity Offsets and Stakeholder Participation and another one on Biodiversity Offsets and Impact assessment;
- Case studies of BBOP PILOT PROJECTS and some other biodiversity offset and compensatory conservation projects; and
- A Glossary.

This Resource Paper focuses on stakeholder participation in the design and implementation of biodiversity offsets and is intended to support the Biodiversity Offset Design, Cost-Benefit and Implementation Handbooks and help offset planners apply the Principles on Biodiversity Offsets.

The purpose of this Resource Paper is:

- To explain why, when and how stakeholder identification, engagement and participation can contribute to the effectiveness of biodiversity offset design and implementation;
- To note the challenges that project proponents will face in developing an inclusive and participatory approach to offset design and implementation;
- To offer guidance on good practice methods of involving stakeholders in offset design and implementation by reference to current publications, tools and processes; and
- To offer some suggestions on how to select appropriate methods for different stages in the process of designing and implementing an offset.

This paper complements the BBOP Principles on Biodiversity Offsets and provides supplementary guidance for users of the following BBOP tools[6]:

- Biodiversity Offset Design Handbook[7];
- Biodiversity Offset Cost-Benefit Handbook[8]; and
- Biodiversity Offset Implementation Handbook[9].

6 The related BBOP Resource Paper on "The Relationship between Biodiversity Offsets and Impact Assessment" makes reference to the public consultation process involved in impact assessment. Please see **www.forest-trends.org/biodiversityoffsetprogram/guidelines/eia.pdf**.

7 See **www.forest-trends.org/biodiversityoffsetprogram/guidelines/odh.pdf**.

8 See **www.forest-trends.org/biodiversityoffsetprogram/guidelines/cbh.pdf**.

9 See **www.forest-trends.org/biodiversityoffsetprogram/guidelines/oih.pdf**.

2. Key Terms and Definitions

The definitions of some key terms used in this document and other BBOP documents are listed in Table A below.

Table 1: Key terms and definitions

Term	Definition
Biodiversity offsets	Biodiversity offsets are measurable conservation outcomes resulting from actions designed to compensate for significant residual adverse biodiversity impacts arising from project development[10] after appropriate prevention and mitigation measures have been taken. The goal of biodiversity offsets is to achieve no net loss and preferably a net gain of biodiversity on the ground with respect to species composition, habitat structure, ECOSYSTEM FUNCTION and people's use and cultural values associated with biodiversity.
Project	In this document, the term 'project' refers to the development project whose significant residual biodiversity impact is being addressed by the biodiversity offset.
Stakeholder	Stakeholders include persons or groups who are directly or indirectly affected by a project and / or offset, as well as those who are interested in a project and / or offset and / or have the ability to influence its outcome, either positively or negatively. They will also include persons or groups with use rights and / or TENURE over land and resources.
Participation	The *World Bank Participation Sourcebook* defines **participation** as: *'a process through which stakeholders influence and share control over development initiatives and the decisions and resources which affect them'.* Other terms are sometimes used interchangeably or for similar purposes, including: **Consultation**[11]: a process through which stakeholders are informed about proposals by a planner or developer and invited to submit comments on them; a two way flow of information and opinion exchange. **Engagement**[12]: a process of 'integrating and understanding stakeholders in guiding better decision-making and accountability'. The IFC argues that stakeholder engagement is evolving beyond consultation (public meetings) to a 'broader, more inclusive and continuous process between a company and those potentially impacted that encompasses a range of activities and approaches, and spans the entire life of a project'. The IFC good practice handbook on Stakeholder Engagement covers consultation, negotiation and partnerships and grievance management (see Appendices 2 and 3)[13]. **Involvement**[14]: Like participation, stakeholder involvement can take place at different levels and may entail information sharing, consultation, dialogue or deliberating on decisions.

10 While biodiversity offsets are defined here in terms of specific development projects (such as a road or a mine), they could also be used to compensate for the broader effects of programmes and plans.

11 This definition has been devised with reference to the following websites: **http://www.brighton-hove.gov.uk/index.cfm?request=c1147025; http://en.wikipedia.org/wiki/Public_consultation**.

12 This definition is taken from the AccountAbility 'Stakeholder Engagement Manual' (Vol.1, p.3) at: **http://www.accountability21.net/publications.aspx?id=904&terms=stakeholder+engagement**.

13 International Finance Corporation. 2007. Stakeholder Engagement: A Good Practice Handbook for Companies Doing Business in Emerging Markets, IFC: Washington.

14 Taken from OECD and Nuclear Energy Agency. 2004. Stakeholder Involvement Techniques: Short Guide and Annotated Bibliography, OECD: Paris, p.7.

Term	Definition
Community	The term community is used loosely to refer to a group of people living in one area. In a stakeholder identification process, local stakeholders from a community need to be disaggregated into interest groups or user groups, *e.g.* teachers; fishermen; traditional healers; ECOTOURISM businesses. Certain values may cut across user groups (e.g. spiritual values / sacred sites) and may be important to the community as a whole.
Indigenous peoples	The Secretariat of the UN Permanent Forum on Indigenous Issues (UN Doc PFII/2004/WS.1/3, 2004) states that 'the prevailing view today is that no formal universal definition of the term [indigenous peoples] is necessary. For practical purposes, the understanding of the term commonly accepted is the one provided in' the 'Study on the Problem of Discrimination against Indigenous Populations' (UN Doc. E/CN.4/Sub.2/1986/7 and Add. 1-4) by Jose R. Martinez Cobo, the Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities: '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. 'This historical continuity may consist of the continuation, for an extended period reaching into the present of one or more of the following factors: a) Occupation of ancestral lands, or at least of part of them; b) Common ancestry with the original occupants of these lands; c) Culture in general, or in specific manifestations (such as religion, living under a tribal system, membership of an indigenous community, dress, means of livelihood, lifestyle, etc.); d) Language (whether used as the only language, as mother-tongue, as the habitual means of communication at home or in the family, or as the main, preferred, habitual, general or normal language); e) Residence on certain parts of the country, or in certain regions of the world; f) Other relevant factors.' 'On an individual basis, an indigenous person is one who belongs to these indigenous populations through self-identification as indigenous (group consciousness) and is recognized and accepted by these populations as one of its members (acceptance by the group).' 'This preserves for these communities the sovereign right and power to decide who belongs to them, without external interference.'

3. Stakeholder Participation in the BBOP Documents: Key Principles

The principle and importance of effective stakeholder participation is reflected in the BBOP Principles for Biodiversity Offsets, from which all the other documents, such as the Handbooks, flow (see Appendix 7 for the complete BBOP Principles). Five out of the ten BBOP principles[15] have a particularly close relationship with stakeholder participation:

Box 1: BBOP principles that relate to stakeholder participation (for the full set of 10 principles, please see Appendix 7)

6. **Stakeholder participation:** In areas affected by the project and by the biodiversity offset, the effective participation of stakeholders should be ensured in decision-making about biodiversity offsets, including their evaluation, selection, design, implementation and monitoring.
7. **Equity:** A biodiversity offset should be designed and implemented in an equitable manner, which means the sharing among stakeholders of the rights and responsibilities, risks and rewards associated with a project and offset in a fair and balanced way, respecting legal and customary arrangements. Special consideration should be given to respecting both internationally and nationally recognised rights of indigenous peoples and local communities.
8. **Long-term outcomes:** The design and implementation of a biodiversity offset should be based on an adaptive management approach, incorporating monitoring and evaluation, with the objective of securing outcomes that last at least as long as the project's impacts and preferably in perpetuity.
9. **Transparency:** The design and implementation of a biodiversity offset, and communication of its results to the public, should be undertaken in a transparent and timely manner.
10. **Science and traditional knowledge:** The design and implementation of a biodiversity offset should be a documented process informed by sound science, including an appropriate consideration of traditional knowledge.

In accordance with Principle 6 stakeholder participation should offer a procedural basis for arriving at a fair and equitable outcome.

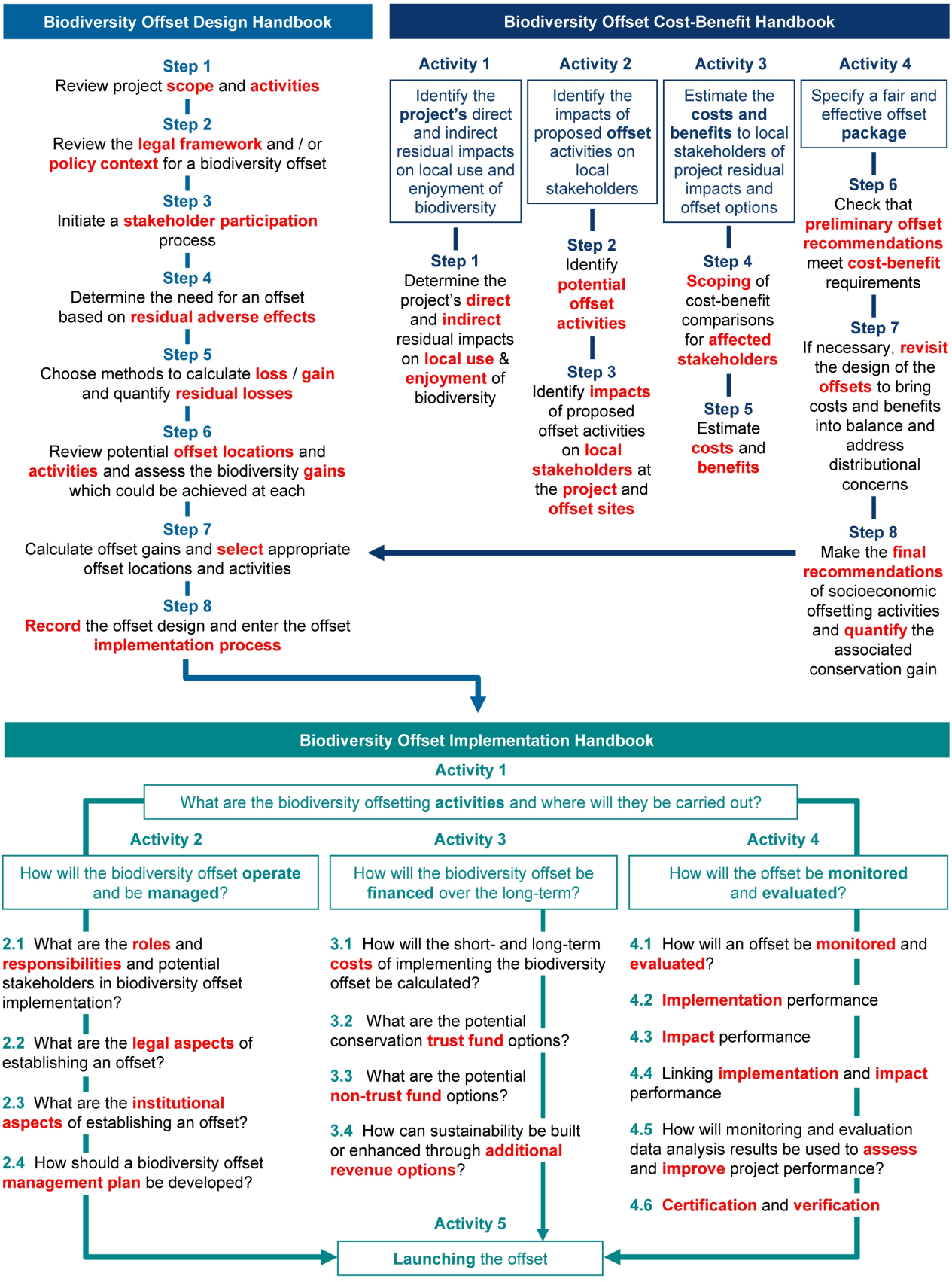
The long-term success of any biodiversity offset initiative (Principle 8) will require an adaptive management approach that is owned by all those involved in OFFSET IMPLEMENTATION, including communities. A well planned biodiversity offset will involve affected indigenous people and local communities in monitoring and evaluation of the offset.

Transparency (Principle 9) is a fundamental requirement for biodiversity offset processes, including provision of information to all interested parties on the design and implementation of the offset. Indigenous peoples and local communities potentially affected by the project and / or offset should be provided with information on and opportunities to participate in GOVERNANCE, consultation processes, decision making, design and implementation. Effective decision making is facilitated by the open provision of information on potential and actual impacts, and the inclusion of stakeholder values in decision making processes.

Principle 10 acknowledges that traditional knowledge held by indigenous peoples and local communities, as well as 'Western' science, may well be relevant to the design and implementation of a biodiversity offset.

15 The full set of BBOP Principles is listed in Appendix 7.

Figure 1: The scope of the Biodiversity Offset Design, Cost-Benefit and Implementation Handbooks



4. BBOP Handbooks and Stakeholder Participation

The necessity of stakeholder participation from start to finish of the process is asserted in each of the Handbooks. Discussion with stakeholders and experts familiar with the full range of stakeholder participation processes can guide the selection of the most appropriate methods and approaches to use, for stakeholder participation in offset design and implementation, in particular circumstances. The outcomes of such discussion cannot be predicted in general publications such as the BBOP Handbooks. However, these Handbooks offer a range of ideas, options and sources of information that may guide and help offset planners, and their stakeholders. The scope and content of the Handbooks are outlined in Figure 1 above and summarised in Appendix 1.

5. The Foundation and Business Case for Stakeholder Participation in Biodiversity Offsets

The term 'stakeholder' can cover a range of groups, including local communities, authorities and interest groups, as well as international NGOs and scientific institutes. Engagement with local stakeholders is particularly critical to the successful design and implementation of a biodiversity offset. However, it is important not to overlook the importance of also engaging meaningfully with the broader range of stakeholders.

The BBOP Cost-Benefit Handbook highlights three main reasons why local community consultation and participation are important in the design and implementation of a biodiversity offset:

1. A project may have a negative impact on the biodiversity based LIVELIHOODS and amenities (*i.e.* recreational, aesthetic and spiritual values) of local populations. This needs to be compensated and restored in order to achieve the goal of biodiversity offsets: no net loss, or a net gain, of biodiversity.
2. The offset will need to address the underlying causes of BIODIVERSITY LOSS at the offset site, which may be linked to unsustainable resource use practices by local stakeholders. Offering local stakeholders a viable and attractive sustainable use alternative will be key to ensure their willing involvement and to achieve successful long-term conservation outcomes.
3. An important motivation for companies to undertake voluntary biodiversity offsets is to secure a 'social license to operate' and good relations with stakeholders, avoiding conflict or resentment in communities. For this, it is important that local livelihoods and AMENITY are not negatively impacted, and preferably are enhanced, by the biodiversity offset.

From the company perspective, stakeholder engagement requires careful planning and preparation because (a) it costs time and money, and (b) companies need to be careful not to raise expectations that cannot be met, while still providing adequate information to communities about proposals for any initiative in their local area.

Participation in the design and implementation of biodiversity offsets can allow indigenous peoples and local communities to reach agreement with developers on a set of activities and benefits that will support their livelihoods, particularly where these are associated with biodiversity. Well-designed and implemented biodiversity offsets will ensure that communities are no worse off, and preferably better off than they were before the project took place, in regard to their use and enjoyment of biodiversity.

Meaningful participation helps to increase the acceptance, 'buy-in' and thus sustainability of a project by building on local peoples' creativity and enthusiasm and supporting their preferred activities. Drawing on local knowledge helps to ensure that the offset design is feasible, realistic and sustainable. Local people can also be involved in the implementation of the offset, undertaking the conservation and sustainable use activities involved. Effective stakeholder participation should be ensured in all phases of decision-making.

With regard to the broader range of stakeholder groups, participatory processes also allow for engagement in advocacy and policy dialogue with local and national policy makers. They allow expert input in the offset design from local / national and international scientists and NGOs. Early engagement with stakeholder groups can help to avoid later conflict or opposition, and subsequent costs or damage to a company's reputation.

If biodiversity offsets are poorly conceived and implemented, and especially if participation is inadequate, the offsets are likely to fail to deliver results for stakeholders. This may result in increasing levels of conflict between stakeholder groups or between the project and stakeholders. Additionally, it may result in a breach of human rights. For instance, indigenous peoples and local communities may find that they cannot use their biodiversity resources as they did before. Poorly designed and implemented projects and offsets could have impacts on the territorial right or self-determination rights of indigenous peoples.

Project proponents must carefully consider human rights which may be affected by the project throughout its design and implementation. For any major project involving land and resources, impacts on human rights may include, among others, the following issues:

- Access to housing.
- Livelihood security.
- Access to water and other natural resources necessary for life and livelihood.
- The protection of culture and spiritual life, including land, sacred sites and cultural practices associated with the natural resources affected by the offset.
- Self-determination, including the disposition of land and resources.

At the project level, these rights may pertain to individuals or to communities. They may also hold special meaning for key stakeholder groups such as Indigenous peoples, whose rights are distinguished from non-Indigenous communities in many jurisdictions and in international law (see Box 2 and Box 4). The principles of stakeholder participation, engagement and timely information are also central to several international conventions and declarations and their associated working groups and negotiation processes (see Appendix 5), including:

- ILO Convention 169 on Indigenous Peoples (1989).
- Rio Declaration and Agenda 21 (1992).
- The Convention on Biological Diversity (1992).
- The Aarhus Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters (1998).
- Declaration on the Rights of Indigenous Peoples (2007).

Stakeholder participation may be a legal or regulatory requirement in the country where the project and offset are being implemented, but regardless of the regulatory requirements, project proponents will be held responsible for impacts on human rights[16]. International, national and customary law that defines the distinctions between stakeholders and rights holders, indigenous peoples and local communities is evolving, as discussed in Box 2 (and in more detail in Appendix 5).

16 The discussion of the responsibility of business in respecting human rights has achieved some greater clarity through the work of the UN Special Representative on Business and Human Rights, Professor John Ruggie. For more information, refer to **http://www.business-humanrights.org/Gettingstarted/UNSpecialRepresentative**.

Box 2: The rights of indigenous peoples

There has been a growing endorsement by states around the world, and in conventions and declarations of the United Nations, that indigenous peoples are a distinct object of law and rights that are different from those of local communities.

The United Nations and member countries are increasingly recognising the rights for indigenous peoples and local communities for several reasons, including: 1. They occur as minorities and are often the poorest of the poor within their nations; 2. They have distinctive cultures, beliefs, languages and practices than majority populations; and 3. They possess collective identity and collective forms of ownership such that individually-based human rights are inadequate to allow them to freely pursue their ways of life.

In addition, differences between indigenous peoples and local communities are being recognised through aspirational statements, policy and law. Some countries, like the United States, Canada and New Zealand, signed treaties with aboriginal leaders who retain native title to and self-determination over their lands, waters and resources. Some national governments in their constitutions and statutes recognise the inalienable rights of indigenous peoples to their lands, waters and resources. The United Nations passed the Declaration on the Rights of Indigenous Peoples (DECRIPS) on September 14, 2007, which affirms support for the collective human rights of indigenous peoples.

While local communities may be recognised as one stakeholder group among many sharing equal status, indigenous peoples may possess significant degrees of autonomy, self-determination or sovereignty. In other words, countries may recognise they are not mere stakeholders, but sovereign or inalienable rights holders.

In regards to biodiversity offsets, it is necessary to not only understand and comply with national law and policy regarding indigenous peoples' rights, but also to assess and apply broadly accepted global principles, where appropriate. There are two key areas where these issues might arise within a proposed biodiversity offset:

1. Where offset activities occur on lands or affect resources traditionally owned, occupied and used by indigenous peoples, which may still contain and might affect sacred sites or recognised rights to harvesting, gathering, hunting, trapping, herding, fishing and similar activities (usufruct rights) (DECRIPS, Article 28); and
2. Where there are spill over effects from an offset site onto lands or other resources currently possessed or used by indigenous peoples (DECRIPS, Article 32). DECRIPS promotes the standard of FREE, PRIOR AND INFORMED CONSENT (FPIC) for these cases, and managers should be prepared to set up procedures for acquiring FPIC where they are required (Appendix 6: Background to Free, Prior and Informed Consent).

6. Relationship between Project and Offset

As illustrated in the Cost-Benefit Handbook, the biodiversity offset may be located in the zone of direct project impact or may be located at some distance from the project site. Thus the offset may have an impact on communities already affected by the project (and already involved in project-related participation processes) or it may affect entirely different communities.

In the BBOP Handbooks, a clear distinction is made between stakeholders relating to the *development project* (the original project that has an impact on biodiversity) and the *biodiversity offset* itself (which may have its own negative as well as positive impacts on stakeholders). It is important to coordinate the stakeholder participation processes relating to both the project and the offset. A state-of-the-art stakeholder engagement process for a biodiversity offset needs to be nested within a similarly state-of-the-art stakeholder engagement process for the overall project. Effective and meaningful stakeholder participation will take place throughout the project cycle (beginning with appropriate consultation at the earliest stages of project design).

The Handbooks point out that the designers of offsets may benefit from involving a small group of stakeholders and experts from a variety of disciplines in ecological and social science to work alongside them and advise upon offset design. Ideally, *project-related* and *offset-related* stakeholder engagement processes will be carried out by the same group of experts. If the processes are being managed by separate teams, then these teams should collaborate, share information and communicate effectively with one another, and agree on fundamental principles and approaches from the start. From a practical perspective, they will need to co-ordinate their consultation efforts to minimise cost and stakeholder fatigue.

7. Mitigation versus Offset of Community Loss of Biodiversity

A key aspect of the definition of biodiversity offsets is that they are designed to address RESIDUAL IMPACTS of project development, persisting after earlier steps in the MITIGATION HIERARCHY have been followed (i.e. after activities first to avoid and minimise impacts, then to restore biodiversity values lost through the impact, for example, through resettlement of communities and restoration of biodiversity).

In the case of community loss of biodiversity related to livelihoods, recreation or spiritual values, mitigation measures may include biodiversity related activities. Such activities – particularly in the case of resettlement – may take place in a different location from the original biodiversity impact, but they will not strictly be a biodiversity offset, because their aim is to mitigate the project's broader social impacts, not just focus on biodiversity.

In the past, biodiversity concerns have not necessarily been central to social mitigation activities. However, increasingly, developers are becoming aware of the need to address biodiversity values as part of these activities. Where this is the case, the stakeholder participation approaches explored in this paper will apply. An example from Newmont Mining in Ghana illustrates this point:

Box 3: Newmont Mining – resettlement and community biodiversity concerns

In Ghana, Newmont Mining, in partnership with Conservation International, has carried out biodiversity related mitigation activities with directly affected communities that are to be resettled from one of their mining sites. As part of the resettlement process, community concerns relating to biodiversity were taken into consideration. For example, efforts have been made to ensure that species with biodiversity use and cultural values can be found in the new settlement location or planted there to make up for the loss of access. Although this is not a biodiversity offset, some of the same community participation tools have been employed as would be employed for an offset.

The point that is being made here is that stakeholder participation is vital, whether the biodiversity related activities are part of a social mitigation activity or part of a biodiversity offset (see Appendix 2 for a selection of tools and approaches).

8. Practical Guidance for Effective Stakeholder Participation

This section aims to provide practical guidance for more effective stakeholder participation by highlighting important areas to consider in the offset design, planning and implementation processes, and providing references to useful tools, approaches and publications. Stakeholder participation literature and practice to date have yielded many lessons on what to remember and what to avoid in planning a stakeholder participation process. However, it is also clear that any approaches need to be developed with a good understanding of the context.

Some projects and publications have developed tools and methods for stakeholder engagement. For example:

- The *Socio-Economic Assessment Toolbox* (SEAT) developed by AngloAmerican is now publicly available, providing practical tools for project proponents (or their consultants) to use in the assessment, planning, and engagement processes of project development[17].
- The International Council on Mining and Metals *Community Development Toolkit* provides guidance for community participation and engagement in all phases of project development, along with references to complementary guidance materials on assessment, planning, building and maintaining relationships, programme management, and MONITORING AND EVALUATION[18].
- The Calabash Project, led by the South African Institute for Environmental Assessment and supported by the World Bank and the Canadian International Development Agency (CIDA), was a two year project that developed and explored tools and approaches for participatory decision-making in the context of environmental impact assessment (EIA) in the Southern African Development Community (SADC). The project produced *inter alia*: a *Guide to Public Participation Opportunities in EIA processes in SADC*, including international, national, customary and 'soft' law instruments; and generic public participation Terms of Reference for an EIA[19].
- The 2007 International Finance Corporation (IFC) publication Stakeholder Engagement: A Good Practice Handbook for Companies doing Business in Emerging Markets has become a benchmark publication for good practice in stakeholder engagement[20].
- The Centre for Science in Public Participation and the World Wildlife Fund co-ordinated the Framework for Responsible Mining: A Guide to Evolving Standards, which explores a range of community-related issues in Chapter 3, including free, prior and informed consent (see below), participation, access to information, gender issues, and compensation agreements. The related website provides links to further relevant documents[21].

17 **http://www.angloamerican.co.uk/aa/development/society/engagement/seat/.**

18 **http://www.icmm.com/page/629/community-development-toolkit-**.

19 **http://www.saiea.com/calabash/**.

20 **http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/p_StakeholderEngagement_Full/$FILE/IFC_StakeholderEngagement.pdf**.

21 See **http://www.frameworkforresponsiblemining.org/index.html**.

- The International Institute for Environment and Development (IIED) publishes a regular journal PARTICIPATORY LEARNING AND ACTION, which explores diverse participatory techniques used in development projects[22].

These and other resources are summarised in the Key Resources table in Appendix 3, while specific tools are discussed in this section below and in the Tools and Approaches table in Appendix 2.

Stakeholder identification and analysis

Identification of stakeholder groups – including communities, NGOs, government representatives, and others – is a critical stage in the biodiversity offset process. The Cost-Benefit Handbook differentiates between two types of community that are involved in an offset. These are: (i) the 'IMPACT SITE COMMUNITIES' – those that are affected by residual biodiversity related impacts of the project as well as the offset; and (ii) the 'offset site communities', which are not affected by the residual biodiversity related impacts of the project, but are affected by and involved in the offset (see Cost-Benefit Handbook, Step 1).

The Biodiversity Offset Implementation Handbook identifies certain stakeholder groups that are most likely to be involved in the governance of a biodiversity offset for the long term, including: (i) government; (ii) developer; (iii) NGOs and scientific institutions; (iv) community groups or associations; (v) donors; and (vi) multi-stakeholder groups, which could combine these and other stakeholder interests. These groupings provide a basis for identifying a range of stakeholders at different levels and can be used to draw any further significant groups into the process. For example, urban dwellers some distance from the offset may have an interest in the intrinsic biodiversity values affected by the project and found at the offset site(s). Tour operators may have been operating in the project and / or offset area, or may benefit from a sustainable tourism opportunity arising from the offset activities.

The range of regional, national and international stakeholders should have been identified in the course of project development, through a standardised process of stakeholder identification and analysis, which may involve matching interested parties to particular issues using a risk assessment matrix; discussion with key NGOs and government representatives; media tracking of key issues; tracking visits to the company website; etc.). However, it is helpful if this stakeholder identification process is revisited or repeated during the planning and design of the offset.

A stakeholder participation process will need to deliberately involve vulnerable groups (e.g. the poorest; the disabled; those without land or access rights; in some cases women, young people or the elderly). These are sub-groups of stakeholders that typically may be left out of participatory processes. If deliberate steps to identify and include these groups are not taken, project proponents risk a loss of effectiveness of the project to meet stakeholder needs; accompanying increase in costs to re-build or re-do project components; allegations of wrong-doing or human rights abuse from advocacy groups; and associated loss in reputation. Techniques from gender impact assessment and gender audit may help with addressing the needs of women and other vulnerable groups[23]. Vulnerable groups may include indigenous peoples with specific land and resource use rights and practices (see below).

22 See **http://www.iied.org/natural-resources/key-issues/empowerment-and-land-rights/participatory-learning-and-action**.

23 See for example Chapter 11 of the International Handbook for Social Impact Assessment (pp.161 – 178); an overview of gender audit techniques at: **http://www.brookings.edu/papers/2005/05globaleconomics_moser.aspx**; see also the World Bank pages on gender and development at: **http://go.worldbank.org/GZXJ0EXNI0**; further discussion and references to gender issues can be found in the Framework for Responsible Mining (see reference above), pp.76 – 78.

Non-local stakeholders might include government representatives, national and international NGOs, and scientific institutes, among others. Care should be taken to balance international and local agendas, so that international issues do not 'trump' the needs of local communities, but are considered carefully alongside them.

Box 4: Identifying indigenous peoples, their practices and their rights

It is very important to identify clearly the indigenous peoples resident or with interests in or near to the project and offset areas, along with their historical, customary and legal rights to land and resources. Sources of such information include:

- National legislation (via the Ministry of the Environment or Indigenous Affairs or other appropriate organ): N.B. national legislation may not always recognise all indigenous or ethnic minority groups.
- Experts living in the local area (local state authorities and community leaders).
- International experts, such as those at various UN agencies (e.g., Office of the High Commissioner for Human Rights, or UNDP).
- National (and regional / local) associations of indigenous peoples and national / local NGOs.
- International NGOs such as Forest Peoples, the International Working Group on Indigenous Affairs, and Survival International.
- Anthropologists and other social scientists working in the area.
- Community representatives.

Participatory processes involving indigenous peoples can be very different from those with other stakeholder groups, including local non-indigenous communities. The worldview of Indigenous Peoples may be different from that of developers, authorities and other local populations. It is important to consider, for example, how an indigenous community views their cultural / cosmological landscape, beyond their biodiversity use practices and how these relate to livelihoods. A company may have property or resource rights in an area, but indigenous communities' ancestors and cultural history is likely to be deeply rooted in the same local landscape. Indigenous peoples may be affected by commercial activities within a cultural / cosmological landscape (e.g. sacred sites located on land that is 'private' in the Western sense). In this worldview, no landscape is isolated; impacts can spill over to neighbouring lands even if there is no direct, physical impact on those lands. It can greatly help relationships with indigenous peoples to recognise historical inequities and seek to have these addressed by the appropriate local, regional and national bodies (e.g. an Indigenous Affairs Ministry or Committee; or a local department of land use management), or address them within projects themselves. Corporations can, for example, use their influence to negotiate governmental concessions related to projects that support the aspirations of indigenous peoples and local communities. Projects could, for example, develop community conserved areas.

An effective stakeholder participation process will accommodate these issues. As with all stakeholder groups, the participatory process needs to genuinely involve indigenous peoples in decision-making.

An important aspect of the stakeholder identification process is identifying local mechanisms for decision making. It is helpful to identify existing processes, as those typically have higher levels of trust and respect from local community members. It also helps to identify potential local 'gatekeepers' who may seek to control the participation process and who may deliberately or inadvertently exclude stakeholders from participating. Gatekeepers may gain their influence through position in local society, literacy, knowledge of the language of the developers, technical skills and access to communication equipment.

Impact assessment

Environmental, Socioeconomic, and Health Impact Assessment is a well-established business practice that forms the foundation for many aspects of overall environmental management by companies, including management of projects interacting with human livelihoods and biodiversity. Stakeholder participation can be beneficially integrated into this over-arching process as well as other social and environmental management processes in cases where there is no requirement for impact assessment, or once the impact assessment stage has concluded. One purpose of an impact assessment is to determine potential positive and negative effects that a project might have on local stakeholders and provide the basis for effective project planning to ensure that local expectations are understood and managed, local interests and rights are addressed, and money is spent wisely. An effective assessment process yields effective mitigation and development plans, satisfies expectations, enhances communication with local communities and indigenous peoples, and avoids conflict. An effective impact assessment process relies on comprehensive and well-planned local participation processes[24].

Ideally, project-related impact assessment processes will identify:

(a) Key biodiversity issues of concern to all the stakeholder communities (global / national / local), relating to INTRINSIC VALUES[25]; and

(b) Local community biodiversity USE VALUES and cultural values.

Project-related social impact assessments should provide an analysis of socioeconomic impact, human rights concerns, and land / resource use practices in the area directly or indirectly affected by the project. Additionally, the impact assessment process should spell out how the residual impact of the project (to both biodiversity and to human well-being) can be offset, so there will be NO NET LOSS of biodiversity, or a NET GAIN. In assessment-related public consultation processes, local communities affected by the project may thus be able to express preferences for suitable biodiversity offsets. However, this may not always be possible. The environmental and social impact statements / assessments do in any case provide an opportunity for related information to be gathered. (For more information, see the BBOP Resource Paper 'The Relationship between biodiversity offsets and impact assessment'. For an industry example, also see *An IPIECA Guide to Social Impact Assessment in the Oil and Gas Industry*[26]).

In some cases, companies may need to address a situation whereby affected communities conclude that after the mitigation hierarchy[27] has been followed for the project, the residual ecological, socioeconomic and

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24 For more information on the impact assessment process and good practice principles, please refer to the International Association for Impact Assessment, **http://www.iaia.org/modx/index.php?id=74**.

25 It is worth noting here that there is considerable debate over whether self-proclaimed global stakeholders should be able to have a say in decisions relating to local land uses, especially where their claims 'trump' those of local stakeholders. Care should be taken to preserve rights of landowners, land and resource users.

26 **http://www.ipieca.org/activities/social/downloads/publications/sia_guide.pdf**.

27 The mitigation hierarchy is defined in the BBOP Glossary as:

(i) Avoidance: measures taken to avoid creating impacts from the outset, such as careful spatial or temporal placement of elements of infrastructure, in order to completely avoid impacts on certain components of biodiversity. This results in a change to a 'business as usual' approach.

(ii) Minimisation: measures taken to reduce the duration, intensity and/or extent of impacts that cannot be completely avoided, as far as is practically feasible.

(iii) Rehabilitation / restoration: measures taken to rehabilitate degraded ecosystems or restore cleared ecosystems following exposure to impacts that cannot be completely avoided and/or minimised.

(iv) Offset: measures taken to compensate for any residual significant, adverse impacts that cannot be avoided, minimised and/or rehabilitated or restored, in order to achieve no net loss or a net gain of biodiversity. Offsets can take the form of positive management interventions such as restoration of degraded habitat, ARRESTED DEGRADATION or AVERTED RISK, protecting areas where there is imminent or projected loss of biodiversity.

cultural aspects of biodiversity cannot be compensated by a biodiversity offset. In some cases the affected communities may prefer another form of compensation that is not a biodiversity offset. In such cases, in depth consultation between the company and the communities will be necessary in order to find a mutually beneficial solution. Mediation of these talks by a third party may be helpful.

Supplementary surveys

In some cases, the appropriateness and need for a biodiversity offset may not have been established in the impact assessment, or the nature, scale and location of the most suitable biodiversity offset will be unknown. In this case, supplementary studies may be needed as part of the offset design and planning process. Existing project documentation should also be reviewed before designing and planning a biodiversity offset, and any identified gaps addressed through supplementary studies.

This may range from a short, supplementary information gathering exercise using a tool such as Rapid Rural Appraisal, or a more in depth social or cultural impact assessment.

Before designing and implementing a project or offset, planners need to have a full understanding of the local land use history and practice, including local and indigenous (legal and customary) land rights and resource use practices. Regulatory regimes may not work effectively due to weak enforcement, and de facto practices may be quite different. Even if legitimate local rights are not recognised officially, they should nonetheless be recognised in the context of a project or offset.

It is also important to understand and recognise other aspects of local practice and ways that biodiversity may be valued, in order to design and implement an offset that allows these values to be preserved. Local plants may be used for medicinal purposes; the location of sacred sites is important. The significance of biodiversity for religious and spiritual values can be regarded as a category of ECOSYSTEM SERVICE. Understanding the complexity of local land rights and resource use practices will only come as a result of an in depth, sensitive and appropriate consultation process with local land and resource users. It may also be necessary to consult local regulators and independent land and resource tenure experts, particularly in cases where there is conflict over tenure and rights issues.

There are significant limitations to some conventional approaches to community-level engagement when seeking out such detailed information. OFFSET PLANNERS will need to determine on a case by case basis the most appropriate tools and approaches for the local conditions and the capabilities of local communities. Some local people may be illiterate and / or unable to read reports, plans and modern maps. It may be more useful to use tools such as tenure mapping, participatory land use mapping and participatory mapping with icons. Some people may find Participatory Geographic Information Systems useful; for others, participatory 3-D modelling, using 3-D landscape representations may be more appropriate. Some people may be able to communicate best when walking through the actual landscape, and they may find Participatory Rural Appraisal tools such as communicating with pictures, sticks and stones to be more useful than flip-charts and marker pens.

Building capacity, awareness and support

Biodiversity offsets will be more successful if communities and other relevant stakeholders are involved in the design and planning stages. Local communities will want the opportunity to choose from different options including the option of not locating an offset in their community. If an offset is not desired by a significant number of local community members, it will not be sustainable in the long-term. Involving stakeholders in the design and planning will also ensure that the planners incorporate a package of benefits that will compensate communities for residual impacts and provide them with an incentive for involvement in the offset.

The long-term sustainability of an offset depends on the level of local support and 'buy-in' for the initiative and the local capacities and commitment to govern and manage the offset in the long term. Local leaders and administrators need to be involved. Whoever is managing the process should enjoy the respect and trust of the community as a whole. Participation involves devolution of decision-making. Local politicians and administrators may not welcome this, and this may require sensitive awareness-raising activities.

Local communities and administrators will need to be prepared in advance with information and possibly also capacity building in order to play a fully informed and equal role in the participation process, especially in the following areas:

- Rights of local communities and indigenous peoples (e.g., right to information, participation, and land and resource use).
- Implementing new technologies and processes (e.g., conservation and sustainable use practices if a new land use or technology is being introduced), as well as training in new participation techniques.
- Methodologies for land use planners, including building skills for ADAPTIVE MANAGEMENT and making links between these methods and existing formal planning systems. Tools for community participation in design and planning include: community-based planning, Participatory Rural Appraisal and SARAR (a community-based collaborative decision-making tool). Capacity building tools might include: participatory technology development, capacity building through financial management or community financial training. Awareness-raising tools include use of the local mass media, particularly radio, as well as community theatre and participatory video (see Appendix 2).

Engaging and communicating effectively

People need to feel that they can take part freely in the engagement process and feel comfortable doing so. To achieve this, organisers will find it useful to consider the appropriateness of venues; timing; formal vs. informal processes; and provision of support for participation (e.g. child care; transportation to meetings). Different stakeholder groups may have different requirements. Some people may feel uncomfortable speaking in front of other, more authoritative members of the community, so separate smaller focus groups may be appropriate (e.g. for women, young people, disadvantaged groups, etc.). Above all, the processes chosen must meet the needs of the different stakeholder groups. At the local level, this may require cross-cultural training for those involved in the engagement processes, the development of multiple forms of communication to reach those with different literacy levels and language needs, and financial support for groups to be active participants and attend discussions.

A significant burden with engagement activity rests with local stakeholders and their decision-making structures. The stakeholder identification and impact assessment processes should provide project proponents with an analysis of the local decision-making structures that already exist. However, the scope, scale, and subject of the offset project may require different decision-making processes, for example involving communities that historically have not interacted in this way before, or who may have been in conflict. To avoid confusion and conflict, project proponents will need to work with local stakeholders to understand the situation and possibly to find agreed communication paths and approaches to taking decisions.

In some cases local social structures are not inclusive and sometimes even corrupt. Mechanisms need to be in place for ensuring that participation of local institutions in participation processes is representative and inclusive. Those taking part need to be accountable to the rest of the community. These issues can be addressed through transparent reporting of activities to local communities (e.g. on a flip chart in a local community centre; or through regular meetings). Local participants also need channels for voicing their grievances about any cases of exclusion or corruption (see below).

Effective stakeholder engagement on project impacts and biodiversity offsets is likely to result in certain stakeholders (particularly local communities) identifying needs and expectations that place a greater priority on livelihoods than on BIODIVERSITY CONSERVATION. Communities that are directly impacted by both the project and a potential offset may support trading off biodiversity conservation for other environmental, economic or social benefits, even where negative impacts to their own biodiversity use needs are being addressed. Where stakeholder engagement is carried out according to good practice standards, it should recognise the potential conflict between a biodiversity offset and broader socioeconomic benefits, as well as potential conflicting preferences between stakeholder groups. The stakeholder participation process should help developers resolve these kinds of issue. See the discussion on conflict resolution below for more information.

Stakeholder engagement is not an end in itself. It is the outcomes that matter. The litmus test is being able to demonstrate that stakeholders' concerns have been addressed and fed into offset planning and company practice. The results should be reported back to the stakeholders concerned. The literature on stakeholder engagement provides guidance on a range of tools and approaches for engaging and communicating effectively. If the project has a Public Consultation and Disclosure Plan, ideally this plan will be expanded to also include any related biodiversity offsets.

The ethics of eliciting sensitive information

Participation processes relating to biodiversity offset design and implementation may entail eliciting sensitive information from people. This may include detail about their income generating activities, usage of medicinal plants, resource-use practices that may be illegal but tacitly accepted locally, or details of cultural practices that may be sensitive.

Release of sensitive information may be an issue. Planners need to respect confidentiality and secure agreement from local people before releasing any information. Incorporation of local knowledge is an important aspect of participatory processes, but intellectual property rights also need to be respected.

Gathering such sensitive information raises ethical issues, for which guidance exists on accepted good practice, including Guidance on implementing the Convention on Biological Diversity (particularly Articles 8(j) and 15) and Ethical guidelines for research in social anthropology (see Appendix 2).

Free, prior and informed consent[28]

The issue of free, prior and informed consent (or FPIC) may arise in the course of designing and implementing a biodiversity offset. It is a subject of ongoing and significant debate at the national level and internationally, and has been applied to local communities, indigenous peoples, or sometimes to both, depending on the individual advocate. At its most fundamental, the concept is defined as:

- **[Free]** Indigenous peoples are not coerced, pressured or intimidated in their choices of development;
- **[Prior]** Their consent is sought and freely given prior to the start of development activities;
- **[Informed]** Indigenous peoples have full information about the scope and impacts of the proposed development activities on their lands, resources and well-being;

28 Sources for the discussion on FPIC include: UN Permanent Forum on Indigenous Issues, Report from the International Workshop on Methodologies regarding FPIC and Indigenous Peoples, New York, 17-19 January 2005; Forest Peoples Programme website at **http://www.forestpeoples.org/**; Report on the Extractive Industries Review at **http://www.ifc.org/eir**; WWF Statement of Principles on Indigenous Peoples and Conservation; Bice, S. and Ensor, J. 2005. Oxfam *Australia: The Rights Based Approach and the Mining Industry* at **http://www.oxfam.org.au/campaigns/mining/docs/minerals_council.pdf** ; with additional commentary by Preston Hardison.

- **[Consent]** Their choice to give or withhold consent over developments affecting them is respected and upheld[29].

That definition applies the concept solely to indigenous peoples. In another formulation, it is applied to both local communities and indigenous peoples:

'*Free prior and informed consent should not be understood as a one-off, yes-no vote or as a veto power for a single person or group. Rather, it is a process by which indigenous peoples, local communities, government, and companies may come to mutual agreements in a forum that gives affected communities enough leverage to negotiate conditions under which they may proceed and an outcome leaving the community clearly better off. Companies have to make the offer attractive enough for host communities to prefer that the project happen and negotiate agreements on how the project can take place and therefore give the company a 'social license' to operate.*'[30]

This latter formulation indicates the kinds of issues that may arise for project proponents in their efforts to build local support for their projects, in particular the likelihood that there will be more than one group seeking decision-making authority in the project, that groups may come into conflict over exercising that authority (and in some cases exert arguments that highlight competing rights), and that the groups involved may not be without internal conflict.

This complexity and the idea that indigenous and / or local communities might have the power to veto a development is a cause of anxiety to both governments and project proponents. Some indigenous rights experts argue that FPIC is not a 'trump right' but it does require that everything be done to accommodate people's concerns. Governments in particular have often been vocally against the concept of FPIC, as it can be viewed as a threat to national sovereignty and their ability to govern on behalf of all citizens.

Individuals consulted during the development of this paper highlighted a number of key issues that would need to be addressed with stakeholders, including the following:

- How is collective consent achieved?
- Who gives the consent and how do you know when you have acquired it?
- How does a process of eliciting FPIC need to be designed so as not to harm or interfere with local social dynamics and decision-making processes?
- How do you address conflicting local opinions about consent, e.g. where indigenous peoples form a minority in a mixed local community whose voices also need to be heard, or where there are differences of opinion between members of an indigenous community?
- How should FPIC be monitored and measured?
- What is the consent for? Does it relate to a whole project or to a specific part of a project (e.g. a biodiversity offset) taking place on a specific geographical territory? Does it relate to traditional knowledge (as in the Convention on Biological Diversity)?

29 Motoc, Antonella-Iulia and Tebtebba Foundation, 2004. Preliminary Working Paper on the Principle of Free, Prior and Informed Consent of Indigenous Peoples in Relation to Development Affecting Their Lands and Natural Resources. UN document E/CN.4/Sub.2/AC.4/2004/4.

30 Salim, E. 2003. Striking a Better Balance: The Final Report of the Extractive Industries Review. Jakarta and Washington, DC: Extractive Industries Review.

- How should one balance consideration of legal rights and customary rights, as well as local indigenous peoples' understanding and perception of their own situation (e.g. their visualisation of their cultural-cosmological landscape)?
- Who has the ultimate responsibility for determining whether FPIC takes place? Determining rights is the responsibility of government, not of business; it is the duty of business to respect rights, not to declare them unilaterally. Nonetheless, others argue that while companies are responsible for respecting national and international law, including the rights of indigenous peoples, as articulated in UN agreements and the International Labour Organisation Convention No.169.

Even where the distinctions between stakeholders and rights holders, indigenous peoples and local communities are accepted in principle and in law, there are still many challenges in implementing FPIC in practice on the ground. Companies will need to make an informed decision about the application of FPIC. At a minimum, they should stay abreast of developments on the distinctions between rights and privileges, be aware that expectations of FPIC are set by national and institutional frameworks, and implement measures that reflect the highest and utmost good faith, diligence, care, respect and transparency in developing projects.

Appendix 2 provides references to case studies, guidance and examples of regulatory and voluntary standards relating to free, prior and informed consent.

Equity and conflict resolution

An effective participation process will help to reduce the potential for conflict in the design and implementation of an offset. Issues of access and exclusion are critical. Access to land and resources or sacred sites may be limited by the initial project or by the offset. Conflicts may arise out of disputes over land and access to resources, or over management of the offset process, including benefit sharing and financial management.

Such issues need to be addressed sensitively to ensure that local communities are not made any worse off after the implementation of either. Similarly, mechanisms are needed for equitable distribution of and access to benefits relating to land, resources and financial benefits during offset design and implementation, and linked to who assumes the responsibility for implementing the offset. Such mechanisms are discussed in the Biodiversity Offsets Implementation Handbook.

Ideally, there will be equitable access to the decision-making process for all local stakeholders. Techniques developed to support the implementation of gender impact assessments and gender audits may also help to ensure people are not excluded and have equitable access to decision-making, with diverse community representation on any decision-making bodies (including consideration of gender, age and vulnerability).

Financial aspects of an intervention are frequently the source of community conflicts and disharmony. The nature of financial arrangements can influence the equity of offset benefits, so decisions on financial arrangements need to be made transparently with the involvement of all relevant stakeholders. Participatory revenue distribution is a technique that involves organising the community with membership lists and constitutions; clarifying the source and amount of revenue; and choosing in a participatory way to allocate the money (see Appendix 2).

A network of 'community liaison officers' may already have been appointed for a project to engage with local communities on a regular basis and there may be a corporate grievance mechanism for addressing the concerns of local communities. If such mechanisms exist for the development site, then they could be extended to the offset site. If they do not already exist, they could usefully be considered. Some international

finance institutions, such as the European Bank for Reconstruction and Development (EBRD) and the International Finance Corporation (IFC) have established independent recourse mechanisms or ombudsmen to address local grievances related to projects financed by them in a way that is independent of their financing operations.

Alternative Conflict Management methods aim for collaborative conflict resolution through constructive dialogue and jointly developed solutions. Impact Benefit Agreements (IBAs), Community Benefits Agreements (CBAs) or Good Neighbour Agreements (GNAs) are different forms of agreement negotiated between companies and communities so as to ensure environmental protection and equitable benefit sharing. These agreements might be legally binding or non-legally binding, and could cover offset design. Companies as well as communities may find it helpful to have an agreement containing a clear statement of responsibilities and benefits from the outset of the development. Other useful reference models might include conservation agreements, which involve various groups of stakeholders in exchanging an agreed set of benefits for the responsibility to carry out certain actions to fulfil conservation goals (see Appendix 2).

Participatory monitoring and evaluation

Local communities that are affected by the project and / or the offset can contribute to the MONITORING AND EVALUATION of the offset. This could offer the dual benefit of providing local capacity that is permanently based at the offset site and presenting a cost effective way of monitoring and evaluating an offset. Up-front investment in training in monitoring and evaluation for community members may be invaluable, and it may be necessary to manage potential conflicts of interest, so selection of community representatives to carry out monitoring and evaluation activities is important. Techniques include participatory monitoring and evaluation (PM&E) tools and the event book system – a technique whereby the community dictates what needs to be monitored, collects the data and carries out the analysis, while external experts facilitate the design of the process and provide advice as required (see Appendix 2).

Appendix 1: Activities and Steps in the BBOP Handbooks

The **Biodiversity Offset Design Handbook** describes a typical set of steps in the offset design process:

- **Step 1:** Review project scope and activities: understand the purpose and scope of the development project and the main activities likely to take place throughout the different stages of its life cycle. Identify key decision 'windows' and suitable 'entry points' for integration of biodiversity offsets with project planning.
- **Step 2:** Review the legal framework and / or policy context for a biodiversity offset: clarify any legal requirement to undertake an offset and understand the policy context within which a biodiversity offset would be designed and implemented. The policy context would cover government policies, financial or lending institutions' policies, as well as internal company policies.
- **Step 3:** Initiate a stakeholder participation process: identify relevant stakeholders at an early stage and establish a process for their effective involvement in the design and implementation of any biodiversity offset.
- **Step 4:** Determine the need for an offset based on residual adverse effects: confirm whether there are residual adverse effects on biodiversity remaining after appropriate application of the MITIGATION HIERARCHY, for which an offset is required and appropriate.
- **Step 5:** Choose methods to calculate loss / gain and quantify residual losses: decide which methods and METRICS will be used to demonstrate that 'NO NET LOSS' will be achieved through the biodiversity offset and to quantify the residual loss using these metrics.
- **Step 6:** Review potential offset locations and activities and assess the biodiversity gains which could be achieved at each: identify potential offset locations and activities using appropriate biophysical and socioeconomic criteria, compare them, and to preferred options for more detailed offset planning.
- **Step 7:** Calculate offset gains and select appropriate offset locations and activities: finalise the selection of offset locations and activities that should result in no net loss of biodiversity. Apply the same metrics and methods that were used to quantify losses due to the project, calculate the biodiversity gains that could be achieved by the shortlist of preferred offset options, check they offer adequate compensation to any communities affected so they benefit from both the project and the offset, and select final offset location(s) and activities.
- **Step 8:** Record the offset design and enter the OFFSET IMPLEMENTATION process: record a description of the offset activities and location(s), including the final 'loss / gain' account which demonstrates how no net loss of biodiversity will be achieved, how stakeholders will be satisfied and how the offset will contribute to any national requirements and policies.

The **Community Biodiversity Offset Cost-Benefit Handbook** is designed to be used in parallel with the Biodiversity Offset Design Handbook. It covers the identification and involvement in biodiversity offset design of communities affected by the development project and the biodiversity offset:

- **Activity (and Step) 1:** This part of the Handbook starts with an identification of the project's direct and indirect RESIDUAL IMPACTS on local use and enjoyment of biodiversity.
- **Activity 2:** Identify the impacts of proposed offset activities on local stakeholders. This part of the Handbook explores how conservation activities that may impact indigenous and local communities at the offset site (e.g. reduced livestock levels) can be compensated. Socioeconomic activities that result in CONSERVATION GAINS should also be identified and included, where appropriate, as potential components of the biodiversity offset. It discusses how offset planners can work with communities to identify and assess the package of benefits (delivered through mechanisms such as conservation agreements and payment schemes) that have the potential to secure the agreed conservation activities by the communities.

  Step 2: Identify potential offset activities: identify the full range of offset activities under consideration, including those needed to address the project's residual impacts on local stakeholders' use and enjoyment of biodiversity and those identified in Step 6 of the Biodiversity Offset Design Handbook.

  Step 3: Identify impacts of proposed offset activities on local stakeholders at the project and offset sites: identify any socioeconomic and cultural implications of the offset activities for the various communities and other stakeholders concerned.
- **Activity 3:** Estimate the costs and benefits to local stakeholders of project residual impacts and offset options. This Activity involves assessment of the value to the community of project impacts and of offset costs, in terms that can be compared with the benefits of biodiversity offsets. In some cases, physical units, components of biodiversity will suffice as the CURRENCY for these comparisons. In others, the complex range of impacts from the project and offset activities may require the use of valuation techniques to convert to monetary terms.

  Step 4: Scoping of cost-benefit comparisons for affected stakeholders: draw together the cost-benefit comparisons for each affected community and local stakeholder group making decisions about the sub-groups within local stakeholder groups that need special attention, the timeframe over which comparisons will be made and the approach to take in the case of illegal or unsustainable use of biodiversity.

  Step 5: Estimate costs and benefits for an affected community (or other local stakeholder group) of project residual impacts and of offset options in terms that can be compared.
- **Activity 4:** Specify a fair and effective offset package. The final activity is to bring together all the cost and benefit estimates relating to a preliminary set of offset options, to examine the implications for local stakeholder groups, and define a final offset package that leaves local stakeholders no worse off, fully compensates them for any residual project impacts on their use and enjoyment of biodiversity and deliver the required conservation gain.

  Step 6: Check the preliminary set of offset recommendations and associated costs and benefits to ensure they meet the conditions required for acceptability to local stakeholders and long term success.

  Step 7: If necessary, revisit the design of the offset to bring costs and benefits into balance and address distributional issues: adjust the design of the offset if the benefits do not yet fully compensate communities for the project residual impacts or for costs associated with the offsets, or if there are concerns about the distribution of costs and benefits.

Step 8: Make the final recommendations of socioeconomic offsetting activities and quantify the associated conservation gain: pull together the results of the cost-benefit comparisons and make final recommendations on offset options that will satisfy stakeholders and deliver no net loss of biodiversity.

The **Biodiversity Offset Implementation Handbook** helps OFFSET PLANNERS define the detailed roles and responsibilities of the individuals (including communities) and organisations who will be involved in the long-term implementation of the biodiversity offset; ensure that an effective institutional structure is in place; that financial flows are sufficient; and that systems are in place to ensure the implementation, permanence and good GOVERNANCE of the offset. It offers a discussion of the potential roles and responsibilities of potential stakeholders, legal and institutional aspects of establishing an offset, and how a biodiversity offset management plan can be developed. With respect to the issue of how a biodiversity offset can be financed over the long-term, it discusses calculating the short and long-term costs of implementing the biodiversity offset then explores long-term funding mechanisms, such as the establishment of CONSERVATION TRUST FUNDS, and development of non-fund options that explore a diverse array of revenue sources to achieve sustainability. It outlines how a biodiversity offset can be monitored and evaluated, and the final section prepares the planner to launch the implementation of the offset.

Appendix 2: Tools and Approaches Reference Table

Offset activity	Potential tools / approach	References
Supplementary surveys	**Rapid Rural Appraisal (RRA):** This involves conducting semi-structured interviews over a broad area and in a short period of time, using *multidisciplinary research teams* that include as many local partners as possible (government, NGOs, community groups). Usage limited to initial scoping or feasibility stage of project / offset planning; process driven by outsiders and does not empower communities to participate in planning.	International Institute for Environment and Development (IIED)'s Participatory Learning and Action pages: **http://www.iied.org/NR/agbioliv/pla_notes/index.html**. World Bank. 1996. *Participation Sourcebook*, World Bank: Washington, Appendix 1: **http://www.worldbank.org/wbi/sourcebook/sbhome.htm**. Pretty, J., Gujit, I., Thompson, J., and Scoones, I. 1995 *Participatory Learning and Action: A Trainer's Guide*, London: IIED. Russell, D. and Harshbarger, C. 2003. *Groundwork for Community-based Conservation: Strategies for Social Research*, Alta-Mira Press: Walnut Creek, MD. IISD's Community Adaptation and Sustainable Livelihoods (CASL) portal at: **http://www.iisd.org/casl/CASLGuide/RapidRuralAppraisal.htm**.
	Social / cultural impact assessment: These can be undertaken at the mini and micro level.	*Akwé: Kon Guidelines on cultural, environmental and social impact assessment of developments on or affecting sacred sites and lands and waters traditionally occupied or used by indigenous and local communities* (2004) Secretariat for the Convention on Biological Diversity **http://www.cbd.int/doc/publications/akwe-brochure-en.pdf**. Social Impact Assessment. International principles: **http://www.iaia.org/modx/assets/files/SP2.pdf**.
Building capacity, awareness and ownership	**Community-based planning:** This is planning by communities, for their communities. It is not isolated from but rather links itself into local and national government planning systems.	'Decentralised and community-based planning', Special edition of *Participatory Learning and Action,* No.49, April 2004, IIED: London, at: **http://www.iied.org/NR/agbioliv/pla_notes/index.html**. Emery, A. 2000. *Integrating Indigenous Knowledge in Project Planning and Implementation*, ILO, WB, CIDA and KIVU Nature Inc.

Offset activity	Potential tools / approach	References
	Participatory Rural Appraisal: A process facilitated – not driven – by outsiders, involving greater levels of community ownership and participation than RRA. It is a visual process, using various techniques for community members to express their ideas and concerns and to engage in dialogue. Tools are locally and culturally appropriate (e.g. stones or a stick in the sand, rather than pens and paper).	IIED's Participatory Learning and Action pages: **http://www.iied.org/NR/agbioliv/pla_notes/index.html**. World Bank. 1996. *Participation Sourcebook*, World Bank: Washington, Appendix 1, at: **http://www.worldbank.org/wbi/sourcebook/sbhome.htm**. Pretty, J., Gujit, I., Thompson, J., and Scoones, I. 1995 *Participatory Learning and Action: A Trainer's Guide*, London: IIED. Russell, D. and Harshbarger, C. 2003. *Groundwork for Community-based Conservation: Strategies for Social Research*, Alta-Mira Press: Walnut Creek, MD. IISD's Community Adaptation and Sustainable Livelihoods (CASL) portal at: **http://www.iisd.org/casl/CASLGuide/RapidRuralAppraisal.htm**.
	SARAR: Community-based collaborative decision-making. SARAR is an acronym based on the key attributes the approach seeks to promote: self-esteem; associative strength; resourcefulness; action planning; responsibility.	World Bank. 1996. *Participation Sourcebook*, World Bank: Washington, Appendix 1, at: **http://www.worldbank.org/wbi/sourcebook/sbhome.htm**.
	Participatory technology development (PTD): Partnerships between scientists and communities can help to develop the skills for communities to manage their own resources sustainably, empowering communities with knowledge, skills, confidence and information.	Goredema, L., Bond, I. and Taylor, R. 2006. Building capacity for local-level management through participatory technology development, in *Participatory Learning and Action* No.55 December 2006, IIED: London, pp.30-36, at: **http://www.iied.org/NR/agbioliv/pla_notes/index.html**.
	Capacity building through financial management: this is an approach to building up the capacity of civil society organisations through building financial management skills.	Cammack, J. 2007. *Building Capacity through Financial management: A Practical Guide*, Oxfam: Oxford
	Community financial training: This tool was developed for the Communal Areas Management Programme for Indigenous Resources (CAMPFIRE) in Zimbabwe. It was developed to build financial management skills and was particularly effective when used in secondary schools.	Murinye, S., Goredema, L., and Bond, I. 2006. Making financial training fun: the CAMPFIRE game, in *Participatory Learning and Action* No.55 December 2006, IIED: London, pp.56-61, at: **http://www.iied.org/NR/agbioliv/pla_notes/index.html**.
	Community theatre: This is a tool used for promoting community participation in policy development in community-based natural resource management (CBNRM), but can also be used for raising awareness about sustainable resource use.	Guhrs, T., Rihoy, L. and Guhrs, M. 2006. Using theatre in participatory environmental policy making', *Participatory Learning and Action* No.55 December 2006, IIED: London, pp.87-93, at: **http://www.iied.org/NR/agbioliv/pla_notes/index.html**.

Offset activity	Potential tools / approach	References
	Participatory video: People make their own films based on what they consider to be priority issues. This can mobilise people to engage in sustainable practices based on local needs.	Lunch, N. and Lunch, C. 2006. *Insights into Participatory Video: A Handbook for the Field,* Insight: Oxford, UK.
Stakeholder identification and analysis	**Stakeholder identification and analysis:** Tools and techniques assist developers in identifying the full range of stakeholders and their interests, capacities, concerns and potential conflicts. They also assist with identifying potential risks and impacts of a project or offset in order to address them in a timely way, using appropriate methods and levels of engagement.	Macdonald, C. *et al.* 2005. *Community Development Toolkit*, World Bank / ICMM: Washington / London. (Tools No.1 and No.10), at: **http://www.icmm.com/document/2**.
		International Finance Corporation. 2007. *Stakeholder Engagement: A Good Practice Handbook for Companies doing Business in Emerging Markets*, IFC: Washington (p.13), at: **http://www.ifc.org/ifcext/enviro.nsf/Content/Publications_GoodPractice_StakeholderEngagement**.
	Risk assessment matrix: This is a tool used for identifying risks associated with project activities and the stakeholders who might be affected by those risks; it allows for prioritisation of efforts to mitigate the risks, according to their seriousness and likelihood of occurrence. Overall it enhances preparedness to address risks before they become issues.	The Energy Institute / Hearts and Minds risk assessment matrix online guidance and brochure: **http://www.energyinst.org.uk/heartsandminds/ram.cfm** and **http://www.energyinst.org.uk/heartsandminds/docs/ram.pdf**.
		The Health and Safety Executive guidance on risk management including 'five steps to risk assessment': **http://www.hse.gov.uk/risk/faq.htm** and **http://www.hse.gov.uk/risk/fivesteps.htm**.
	Gender impact assessment and gender audit: Approaches for assessing potential gender-related or gender-biased impacts.	Becker, H.A. (ed.) The International Handbook of Social Impact Assessment: Conceptual and Methodological Advances, pp. 161 – 178.
Identifying and recognising rights and resource use practices	**Tenure mapping:** tenure maps are created with the aim of producing legally acceptable evidence of prior land use and occupancy for use in negotiations. This can be done in two ways, either with communities providing information for outsiders to create the maps, or with communities undergoing the technical training to create their own maps.	Poole, P. 2006. Is there life after tenure mapping? In *Participatory Learning and Action,* No.54, April 2006, IIED: London, pp.41-49, at: **http://www.iied.org/NR/agbioliv/pla_notes/index.html**.
	Participatory land use mapping: This is a core aspect of co-management which has been practiced in the Canadian Arctic since the mid-1970s.	Brody, H. 1981. *Maps and Dreams*, Douglas and MacIntyre: Vancouver, British Colombia.
	Participatory mapping with icons: This method requires local community resource users to place icons on maps to identify where their livelihood resources are located.	Robinson, M.P. and Kassam, K.S. 1998. *Sami Potatoes: Living with Reindeer and Perestroika,* Bayeux Arts: Calgary, Canada.

Offset activity	Potential tools / approach	References
	Participatory Geographic Information Systems: PGIS is a merger between Participatory Learning and Action (PLA) methods with Geographic Information Technologies (GIT). PGIS facilitates the representation of local people's spatial knowledge using two or three dimensional maps. These map products can be used to facilitate decision-making processes. PGIS aims at community empowerment.	'Mapping for change; practice, technologies and communication', Special edition of *Participatory Learning and Action,* No.54, April 2006, IIED: London, pp.41 – 49, at: **http://www.iied.org/NR/agbioliv/pla_notes/index.html**.
	Participatory 3-D modelling: This method integrates indigenous spatial knowledge with data on elevation of the land and depth of the sea to produce stand-alone, scaled and geo-referenced relief models. Data depicted on the model are extracted, digitised and plotted. On completion of the exercise the model remains with the community.	Rambaldi, G. and Callosa-Tarr, J. 2002. *Participatory 3-Dimensional Modelling: Guiding Principles and Applications,* ASEAN Regional Centre for Biodiversity Conservation, Los Banos, Philippines.
Engaging and communicating effectively	**Stakeholder engagement:** The range of approaches by which stakeholders are informed about and involved in decision-making and accountability. The IFC argues that stakeholder engagement is evolving beyond public meetings to a 'broader, more inclusive and continuous process between a company and those potentially impacted that encompasses a range of activities and approaches, and spans the entire life of a project'.	International Finance Corporation. 2007. *Stakeholder Engagement: A Good Practice Handbook for Companies doing Business in Emerging Markets*, IFC: Washington, at: **http://www.ifc.org/ifcext/enviro.nsf/Content/Publications_GoodPractice_StakeholderEngagement**.
	Public Consultation and Disclosure Plan: The plan identifies affected people, details how the planner will communicate with them, and how their views will be considered. The planner is required to: (i) Provide a summary of public comments and how they have been taken into account. (ii) Inform the people consulted about final decisions. (iii)Report annually to the public on consultation issues.	European Bank for Reconstruction and Development: *Guidance on developing a Public Consultation and Disclosure Plan*, at: **http://www.ebrd.com/enviro/disclose/disclose.htm**.

Offset activity	Potential tools / approach	References
The ethics of eliciting sensitive information	**Guidance on implementing the Convention on Biological Diversity:** Of particular relevance is the guidance on the implementation of Article 8(j) (Traditional Knowledge, Innovations and Practices) and Article 15 (Access to Genetic Resources).	Guidance on the implementation of Art.15 can be found at: **http://www.cbd.int/abs/**. Guidance on the implementation of Art.8(j) can be found at: **http://www.cbd.int/programmes/socio-eco/traditional/**.
	Ethical guidelines for research in social anthropology	The ethics web page of the Association of Social Anthropologists of the UK and Commonwealth (ASA) can be found at: **http://www.theasa.org/ethics.htm**. The ethics web page of the American Anthropological Association can be found at: **http://www.aaanet.org/committees/ethics/ethics.htm**.
Free, prior and informed consent (FPIC)	**Case studies, guidance and examples of regulatory and voluntary standards relating to free, prior and informed consent**	Martin, S. 2007. *Free, prior and informed consent: the role of mining companies*, Oxfam Australia, at: **http://www.oxfam.org.au/campaigns/mining/ombudsman/consent.html**.
		Bice, S and J. Ensor. 2005. *The Rights Based Approach and the Mining Industry*, Oxfam Australia, at: **http://www.oxfam.org.au/campaigns/mining/docs/minerals_council.pdf**.
		Forest Peoples Programme: series of working papers can be found at: **http://www.forestpeoples.org/documents/law_hr/bases/fpic.shtml** (for list of publications see Appendix 3: Key Resources, below).
		UN Permanent Forum on Indigenous Issues, Report from the International Workshop on Methodologies regarding FPIC and Indigenous Peoples, New York, 17 – 19 January 2005, at: **http://www.international-alliance.org/unpfii.htm**.
		Report on the World Bank/IFC Extractive Industries Review, at: **http://www.ifc.org/eir**.
		WWF Statement of Principles on Indigenous Peoples and Conservation, at: **http://www.worldwildlife.org/what/whowehelp/community/partneringwith/item1355.html**.
		Philippines Indigenous Peoples' Rights Act, at: **http://www.wipo.int/tk/en//laws/pdf/phil_indig.pdf**.

Offset activity	Potential tools / approach	References
		ICMM Indigenous Peoples Issues Review, at: **http://www.icmm.com/page/1161/mining-and-indigenous-peoples-issues-review**. ICMM-IUCN Indigenous Peoples and Mining Dialogue, Workshop Reports, at: **http://www.forest-trends.org/biodiversityoffsetprogram/BBop%20library%202/International/Not%20Printed/Mining%20BioDiv%20Best%20Practice.pdf**. Macintyre, M. *Informed Consent and Mining Projects: Some Problems and a Few Tentative Solutions.* Retrieved from **www.minerals.csiro.au/sd/SD_MCEP.htm**.
		European Bank for Reconstruction and Development revised Environmental and Social Policy, at: **http://www.ebrd.com/about/policies/enviro/policy/index.htm**.
Equity and conflict resolution	**Participatory revenue distribution:** This approach involves organising the community with membership lists and constitutions; clarifying the source and amount of revenue; and choosing how to allocate the money	Child, B. 2006. Revenue distribution for empowerment and democratisation, in *Participatory Learning and Action* No.55 December 2006, IIED: London, pp.20-29, at: **http://www.iied.org/NR/agbioliv/pla_notes/index.html**.
	Alternative Conflict Management (ACM) includes methods that aim for joint conflict resolution by transforming stakeholders into active and responsible decision-makers. ACM enables stakeholders to have constructive dialogue and find collaborative solutions to conflicts between individuals and groups.	UN Food and Agriculture Organisation. 2006. *Land Tenure Alternative Conflict Management*, FAO: Rome, at: **http://www.fao.org/docrep/009/a0557e/a0557e00.htm**.
	Corporate grievance mechanisms: These are processes designed and implemented by companies in order to channel and manage complaints and concerns from local communities. They are frequently implemented with the assistance of a network of 'community liaison officers' based in local communities and providing a direct link between the company and the communities.	International Finance Corporation. 2007. *Stakeholder Engagement: A Good Practice Handbook for Companies doing Business in Emerging Markets*, IFC: Washington (p.70), at: **http://www.ifc.org/ifcext/enviro.nsf/Content/Publications_GoodPractice_StakeholderEngagement**.
		Sakhalin Energy Investment Company Ltd grievance process and public grievance leaflet: **http://www.sakhalinenergy.com/en/ataglance.asp?p=aag_main&s=6** and **http://www.sakhalinenergy.com/en/documents/Grievance_Leaflet_en.pdf**.
	Independent recourse mechanisms and ombudsmen: These provide an independent channel for complaints and grievances about projects and may be established by international financial institutions or governments.	European Bank for Reconstruction and Development Independent Recourse Mechanism, at: **http://www.ebrd.com/about/integrity/irm/index.htm**.
		International Finance Corporation/Multilateral Investment Guarantee Agency compliance advisory ombudsman, at: **http://www.cao-ombudsman.org/html-english/about.htm**.

Offset activity	Potential tools / approach	References
		Oxfam Australia's Mining Ombudsman Project, at: **http://www.oxfam.org.au/campaigns/mining/ombudsman/**.
	Impact Benefit Agreements are signed between mining companies and First Nation communities in Canada as a basis for formal relationships aimed at reducing the negative environmental and social impacts of the mine and securing benefits for the communities.	Sosa, I. and Keenan, K. 2001. *Impact Benefit Agreements Between Aboriginal Communities and Mining Companies: Their Use in Canada*, Canadian Environmental Law Association, at: **http://www.cela.ca/publications/cardfile.shtml?x=1021**.
	Community Benefits Agreements are negotiated between developers and coalitions of community organisations to address a broad range of community needs. They allow community groups to have a voice in shaping a project and ensuring equitable benefit sharing.	Gross, J. 2005. Community Benefits Agreements: Making Development Projects Accountable, Good Jobs First and the California Partnership for Working Families, at: **http://www.goodjobsfirst.org/pdf/cba2005final.pdf**.
		See also: Framework for Responsible Mining, pp.69 – 73, at: **http://www.frameworkforresponsiblemining.org/docs.html**.
	Good Neighbour Agreements are negotiated between a company and a local community in order to establish responsibilities for ensuring environmental protection and social justice in a project context. The agreements are formally negotiated, but may be legally binding or voluntary.	Lewis, S. and Henkels, D. Good Neighbour Agreements: A tool for environmental and social justice, online resource, reprinted from *Social Justice Journal* (Vol.23, No.4), at: **http://www.cpn.org/topics/environment/goodneighbor.html** and **http://www.fna4lm.ca/tech_workshop_FINAL_report2.pdf**.
	Conservation agreements are negotiated formally or informally in order to establish an understanding between two or more parties in which the parties agree to take on responsibility for taking certain actions towards conservation goals in exchange for an agreed exchange of benefits.	Conservation Incentive Agreements: An Introduction and Lessons Learned to Date, at: **http://www.leaseown.org/pdf/Incentive_Agreements_Intro_Lessons_Learned_Guidelines.pdf**.
		Practitioner toolkit for marine conservation agreements, at: **http://www.leaseown.org/index.html** and **http://www.leaseown.org/Resources/PMCA_Workshop.html**.
Participatory monitoring and evaluation	**The event book system:** This is a grassroots natural resource monitoring programme. The community dictates what needs to be monitored, collects the data and carries out the analysis. Scientists facilitate the design process and act as advisors.	Stuart-Hill, G. 2006. *The event-book system: community-based monitoring in Namibia*, in *Participatory Learning and Action* No.55 December 2006, IIED: London, pp.70 – 78, at: **http://www.iied.org/NR/agbioliv/pla_notes/index.html**.

Appendix 3: Key Resources

Document	Notes
International Finance Corporation (1998) *Doing Better Business through Effective Consultation and Disclosure*, IFC: Washington **http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/p_pubconsult/$FILE/PublicConsultation.pdf**	Based on results of external review of IFC's performance. Includes section on management of consultation process (Section B) and planning / implementing consultations (Section C). In general superseded by IFC (2007) *Stakeholder Engagement: A Good Practice Handbook for Companies doing Business in Emerging Markets*.
International Finance Corporation (2007) *Stakeholder Engagement: A Good Practice Handbook for Companies doing Business in Emerging Markets*, IFC: Washington **http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/p_StakeholderEngagement_Full/$FILE/IFC_StakeholderEngagement.pdf**	Comprehensive guide to stakeholder engagement. Includes: – Stakeholder identification and analysis: impact zoning; stakeholder mapping (interests / use of resources, etc.); 'interest-based' mapping for those outside the project area; prioritisation; consider legal requirements. Also: Stakeholder Consultation; Negotiation and Partnerships; Grievance Management; Stakeholder Involvement in Project Monitoring; Reporting to Stakeholders; Management Functions, Integrating Stakeholder Engagement into the Project Cycle.
IFC quick note: *ILO Convention 169 and the Private Sector: Questions and Answers for IFC Clients*, IFC: Washington **http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/p_ILO169/$FILE/ILO_169.pdf**	This provides an overview of ILO Convention 169, the risks it might pose for the private sector and approaches that could be employed to mitigate these risks. It highlights key government responsibilities, and the direct and indirect implications for the private sector. Although the Convention is directed at governments, it is frequently used as a reference by indigenous groups. A company that engages in a project where government action breaches the Convention may itself be held to account.
IFC *Performance Standard 7 on Indigenous Peoples* **http://www.ifc.org/ifcext/sustainability.nsf/Content/PerformanceStandards**	Direct requirements for IFC clients in relation to managing and mitigating project impacts on indigenous peoples.

Document	Notes
***Striking a Better Balance. The World Bank Group and Extractive Industries. The Final Report of the Extractive Industries Review*, Vol. I, December 2003, at 41** **http://siteresources.worldbank.org/INTOGMC/Resources/finaleirmanagementresponse.pdf**	In 2000 the World Bank Group (WBG) launched a review of its performance in the extractive industries sector. The EIR concluded that further efforts are needed in relation to poverty reduction, broader inclusion of stakeholders and transparency of revenue management. As a result, the WBG revised its environmental and social policies and guidance. Notably: the operational policy OP 4.10 'On indigenous peoples', which requires completion of an indigenous peoples' development plan, and OP 4.12 'On involuntary resettlement', whose objective is that involuntary resettlement should be avoided where feasible, or minimised, exploring all viable alternative project designs. OP 4.12 also requires that displaced communities be 'meaningfully consulted' and any resettlement programme should improve living standards or at least restore them in real terms to pre-displacement levels.
World Bank (1998) *Guidelines for Monitoring and Evaluation of Biodiversity Projects* **http://siteresources.worldbank.org/INTBIODIVERSITY/214584-1110959186651/20611829/270310Guidlines0for0monitoring.pdf**	These guidelines are intended primarily to assist World Bank task teams and consultants in the design and implementation of monitoring and evaluation plans for BIODIVERSITY CONSERVATION projects or projects with biodiversity components. They also serve as useful reference materials for government agencies, non-governmental agencies, non-governmental organisations and others involved in the design, implementation or evaluation of biodiversity projects.
World Bank Participatory Sourcebook **http://www.worldbank.org/wbi/sourcebook/sbhome.htm**	Case studies relating to various sectors; guidance notes; pointers for participatory planning and decision-making; methods and tools
European Bank for Reconstruction and Development: *Policy on Public Disclosure and Consultation* **http://www.ebrd.com/enviro/disclose/disclose.htm**	Project implementers are required to meet both national and EBRD requirements for information disclosure and public consultation. As part of the EIA, the project sponsor is required to draft a Public Consultation and Disclosure Plan (guidance provided on the EBRD website).The plan identifies affected people, details how the sponsor will communicate with them, and how their views will be considered. The project sponsor is required to: (i) Provide a summary of public comments and they have been taken into account. (ii) Inform the people consulted about final decisions. (iii)Report annually to the public on consultation issues.
ICMM (2005) *Community Development Toolkit*, ESMAP, World Bank, ICMM **http://www.icmm.com/page/629/community-development-toolkit-**	Tool kit is made up of 17 tools, including (1) stakeholder identification tool and (10) stakeholder analysis tools
ICMM *Indigenous Peoples' Issues Review* **http://www.icmm.com/page/1161/mining-and-indigenous-peoples-issues-review**	In 2005 ICMM published their Indigenous Peoples' Issues Review and issued a draft position statement on indigenous peoples and mining. This includes commitments that cover consultation, dispute resolution, compensation and benefit sharing, and respect for indigenous rights as articulated in national and international law.

Document	Notes
IPIECA *Human Rights Training Toolkit* **http://www.ipieca.org/activities/social/social_hr.php**	This includes guidance on approaching human rights issues in a project context. It provides information on indigenous forums, legal frameworks and 'soft law' instruments such as the Draft Declaration on Indigenous Peoples' Rights.
***Akwe:Kon Guidelines* (2004) Secretariat for the CBD** **http://www.cbd.int/doc/publications/akwe-brochure-en.pdf**	The 'Akwé: Kon Guidelines on cultural, environmental and social impact assessment of developments on or affecting sacred sites and lands and waters traditionally occupied or used by indigenous and local communities' were developed in 2004 by the Parties to the Convention on Biological Diversity (i.e. those who have ratified the Convention. These guidelines are not legally binding; however they have been formally endorsed by the Conference of the Parties and provide comprehensive guidance on key aspects of impact assessment.
IUCN, WCPA, WWF, *Principles and Guidelines on Indigenous and Traditional Peoples and Protected Areas* (Joint Policy Statement) **http://www.wwf.fi/wwf/www/uploads/pdf/indigenous_people_policy.pdf**	Principles include recognising local people as partners, avoiding conflict of goals between PROTECTED AREAS and communities, acknowledgement of rights, transparency and accountability, equitable benefit sharing, etc.
ISO 14001 Standard **http://www.iso14000-iso14001-environmental-management.com/**	Health Safety and Environmental management system (HSE MS) includes component on stakeholder consultation. Companies should have an HSE MS in place.
Participatory Learning and Action (PLA) informal online journal (International Institute for Environment and Development) **http://www.iied.org/NR/agbioliv/pla_notes/about.htm**	Participatory Learning and Action (PLA) is an umbrella term for a range of participatory methodologies and approaches including: Rapid Rural Appraisal (RRA); Participatory Rural Appraisal (PRA); Participatory Learning Methods (PALM); Participatory Action Research (PAR).
UN Food and Agriculture Organisation (2006) 'Land Tenure Alternative Conflict Management' FAO: Rome **http://www.fao.org/docrep/009/a0557e/a0557e00.htm**	This is a training manual for practitioners to facilitate understanding about the key characteristics of a land tenure conflict, the context within which the conflict is being played out, the stakeholders involved and the balance of power relations. It offers options for managing and resolving conflicts. It is designed to be a tool for practitioners who already work in this area and are familiar with the general issues but have had no formal conflict management training. Thus it focuses on integrating the skills that mediators already possess with the tools of modern alternative conflict management. (It also contains a comprehensive glossary.)
DFID / ODI key sheet on land tenure issues **http://www.odi.org.uk/resources/specialist/keysheets/resource-management/1-land-tenure.pdf**	This is a two page information sheet, providing an overview of the land tenure debate; key issues in decision-making and key literature.
Power tools web directory (International Institute for Environment and Development) **http://www.policy-powertools.org/**	'Power Tools' are instruments, approaches, schemes, devices and methods for tackling the differences in power that impede policies and institutions from achieving equitable natural resource management. Tools are transferable from one context to another, e.g. between sectors and countries. IIED's 'Power Tools' web-directory guides the user through 26 web-based tools that provide a wide range of techniques, tactics and tips based on experience in natural resource management around the world. They are available both as two page summaries and as full-length reports. They are intended to offer sets of adaptable ideas rather than finalised blueprints for action.

Document	Notes
Krick, T. *et al.* (2005) *Stakeholder Engagement Manual*, Accountability, UNDP, and Stakeholder Research Associates Canada, Inc.	Aims to provide guidance to corporations on how they can improve their knowledge, abilities and legitimacy by undertaking stakeholder engagement. Helping to find synergies between good corporate performance and contributions to sustainable development.
The Calabash Project **http://www.saiea.com/calabash/**	This two year project was led by the South African Institute for Environmental Assessment and supported by the World Bank and the Canadian International Development Agency (CIDA). The project developed and explored tools and approaches for participatory decision-making in the context of environmental impact assessment (EIA) in the Southern African Development Community (SADC). The project produced *inter alia*: a *Guide to Public Participation Opportunities in EIA processes in SADC*, including international, national, customary and 'soft' law instruments; and generic public participation Terms of Reference for an environmental impact assessment.
Framework for Responsible Mining: A Guide to Evolving Standards **http://www.frameworkforresponsiblemining.org/index.html**	The Centre for Science in Public Participation and the World Resources Institute co-ordinated a collaboration to develop this report, which provides guidance on state-of-the-art social and environmental practices and improvements for the mining industry. The report explores a range of community-related issues in Chapter 3, including free, prior and informed consent, participation, access to information, gender issues, and compensation agreements.
Forest Peoples Programme webpage devoted to free, prior and informed consent **http://www.forestpeoples.org/documents/law_hr/bases/fpic.shtml**	Publications accessible via this site include: *Free, prior and informed consent and the Round Table on Sustainable Palm Oil: a guide for companies* (2008); *Free, prior and informed consent: two cases from Suriname* (2007); *'Can't see the people for the trees': Assessment of the free, prior and informed consent agreement between Sumalindo and the community of Long Bagun, district of Kutai Barat, East Kalimantan province* (2007).
Oxfam Australia's Mining Ombudsman Project **http://www.oxfam.org.au/campaigns/mining/ombudsman/**	This project aims to promote good practice in the mining industry and help local people affected by mining activities to understand their rights under international law. The project also seeks to demonstrate the need for an official industry complaints mechanism for Australia.
UNDP (2003) *Local Business for Global Biodiversity Conservation*, UNDP **http://www.energyandenvironment.undp.org/undp/index.cfm?module=Library&page=Document&DocumentID=5137**	Guidebook to support community development, particularly in buffer zones of protected areas. The guidebook focuses on small business development, proposing that by adopting a focused strategy for small business development, conservation planners can help local communities participate actively in sustainable management of nearby ECOSYSTEMS and biodiversity.
Western, D. and R. Michael Wright (eds) *Natural Connections, Perspectives in Community-based Conservation*, Island Press, 1994	A series of case studies focusing on several important aspects of working with local communities in conservation projects.
Indigenous Peoples and Sustainability, Cases and Actions – IUCN Inter-Commission Task Force on Indigenous Peoples – IUCN 1997	In this publication, case studies illustrate how Indigenous Peoples – through integration of their knowledge with practical strategies for conservation – have historically been and are still successful in attaining sustainability.

Appendix 4: Evolution of Good Practice Relating to Stakeholder Participation

Stakeholder participation is an area that is increasing in importance in relation to both conservation and development planning. Appendix 4 provides a short summary of key international conventions and processes that have influenced this evolution. Four key groups have been leading development of good practice principles, guidance and tools in the field of stakeholder participation:

- Public and private-sector financing institutions.
- Extractive industries associations and companies.
- Community-based conservation and resource management practitioners.
- Conservation and indigenous rights organisations and working groups.

Public and private-sector financing institutions

The World Bank Group (the World Bank and the International Finance Corporation or IFC) have had a major role in setting standards in social performance and stakeholder participation in the projects that they finance. Their standards are frequently used as benchmark standards by other financial institutions and industry. In the early 1990s, opposition to the social impacts of constructing the Sardar Sarowar Dam in India led the World Bank to review its performance and ultimately to pull out of the project. This not only led the Bank to review its social performance, but also led to the work of the World Commission on Dams. This was a major review of dam construction activities and resulted in the publication of the report: *Dams and Development: A new framework for decision-making.*

In 1994, the World Bank issued the report *The World Bank and Participation*, with a working definition of participation and an action plan to integrate participation across Bank activities. In the same year, the Bank also published the report: *Incorporating Social Assessment and Participation into Biodiversity Conservation Projects.* In 1998, the Bank produced a discussion paper: *Participation and the World Bank: Successes, Constraints and Responses*, and a *practical* guide, *Participation and Social Assessments: Tools and Techniques*. In 1996, the Bank published its *Participation Sourcebook* – which includes case studies and tools.

In 2000 the World Bank launched a comprehensive review of its performance in the extractive industries sector. The Extractive Industries Review concluded that further efforts were needed in relation to poverty reduction, broader inclusion of stakeholders and transparency of revenue management. As a result, the World Bank revised its environmental and social policies and guidance, including the operational policy (OP) 4.10 'On indigenous peoples' and OP 4.12 'On involuntary resettlement'. OP4.10 makes a commitment to 'free, prior and informed consultation and participation' (N.B. not *consent*). OP4.12 requires that displaced communities be 'meaningfully consulted' and any resettlement programme should improve living standards or at least restore them in real terms to pre-displacement levels.

In 1998, the IFC – the private sector arm of the World Bank Group – published the guidebook: *Doing Better Business through Effective Consultation and Disclosure*, based on the results of an external review of its performance. This publication has now largely been superseded by the 2007 publication *Stakeholder Engagement: A Good Practice Handbook for Companies doing Business in Emerging Markets,* which is a comprehensive guide to stakeholder engagement. The IFC has also recently revised its Performance Standards, including standards relating to indigenous peoples and resettlement[31]. These standards are now seen as the benchmark for other international finance institutions, notably the European Bank for Reconstruction and Development, which recently updated its Environmental and Social Policy[32]. An increasing number of private banks are signing up to the Equator Principles[33], which require compliance with the IFC Performance Standards.

Extractive industries associations and companies

In 2000, nine of the world's largest mining companies initiated a project to examine the role of the minerals sector in contributing to sustainable development. With the World Business Council for Sustainable Development (WBCSD) and the International Institute for Environment and Development (IIED) they set up the Mining, Minerals and Sustainable Development Project (MMSD). This resulted in the publication of *Breaking New Ground: Mining, Minerals and Sustainable Development*.

The International Council on Mining and Metals (ICMM) – an association of leading mining and metals companies, as well as regional, national and local level associations – has been moving forward with the MMSD agenda. Most pertinent to this paper is the publication of the *Community Development Toolkit* by ICMM, ESMAP and the World Bank. This publication outlines ways that mining companies can work effectively with local populations (see Appendices 2 and 4). In 2003, ICMM published its *Sustainable Development Framework and Principles* and the results of a joint workshop with IUCN (the World Conservation Union) on *Mining and Biodiversity: Towards Best Practice.* In 2005, ICMM published their Indigenous Peoples' Review and issued a draft position statement on indigenous peoples and mining. This includes commitments that cover consultation, dispute resolution, compensation and benefit sharing, and respect for indigenous rights as articulated in national and international law. In 2008, the IUCN-ICMM partnership convened a meeting addressing issues of indigenous peoples and mining.

The International Petroleum Industry Environmental Conservation Association (IPIECA) has also been developing good practice materials, including a *Human Rights Toolkit.* IPIECA and the International Association of Oil and Gas Producers (OGP) set up a biodiversity working group in 2002. The working group organises international workshops and develops tools and guidance. The working group has produced *inter alia* guidance on how to incorporate biodiversity into ENVIRONMENTAL AND SOCIAL IMPACT ASSESSMENTS.

Individual companies have also developed their own materials and approaches based on international standards such as the International Standards Organisation (ISO) family of standards, including ISO 14001 standard on environmental management; and other international principles and guidelines such as the Global Compact[34] and the OECD Guidelines for Multinational Enterprises[35].

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31 See **http://www.ifc.org/ifcext/sustainability.nsf/Content/EnvSocStandards**.

32 See **http://www.ebrd.com/about/policies/enviro/policy/index.htm**.

33 The Equator Principles are an industry framework for financial institutions in determining, assessing and managing environmental & social risk in project financing. The principles are based on an external benchmark – the World Bank and IFC sector-specific pollution abatement guidelines and IFC safeguard policies. Each financial institution that adopts the principles declares that it has or will put in place internal policies and processes that are consistent with the Equator Principles. At least 51 banks, such as Citibank and HSBC, have adopted the principles. See **http://www.equator-principles.com/index.shtml**.

34 **http://www.unglobalcompact.org/**.

35 **http://www.oecd.org/department/0,3355,en_2649_34889_1_1_1_1_1,00.html**.

Community-based conservation and resource management practitioners

Co-management is a participatory resource management approach that has been practiced in the Canadian Arctic since the mid-1970s. Several co-management projects have been carried out in British Colombia and Alberta, involving the Canadian Arctic Institute, the government, industry partners and local communities. A core aspect of this approach is participatory mapping (using geographic information systems where appropriate). A key principle is the respect for and incorporation of indigenous knowledge about natural resource management practices, seasonal cycles and trading practices.

Community-based natural resource management (CBNRM) is an approach to conservation and rural development that has been applied in southern Africa for more than 15 years. Prior to this, the focus on conservation through PROTECTED AREAS ('fines and fences') had resulted in conflict with local communities and had not contributed to local-level sustainable development. The basic premise of CBNRM is that local communities will use their resources sustainably if they have a significant degree of control over the management of those resources. The tools of this approach are developed over a long iterative period between practitioners and communities and involve a large degree of collaborative adaptive management. Examples of the tools range from the event book system developed in Namibia, to the quota-setting methodologies developed in Zimbabwe. Other tools have been developed for project planning; participatory mapping; awareness-raising; and financial management. A special edition of *Participatory Learning and Action* (No55, December 2006, IIED) provides an overview and some informative case studies from the field relating to CBNRM. *PAYMENTS FOR ECOSYSTEM SERVICES* is another emerging approach that has been gaining support among practitioners and is discussed in the Biodiversity Offset Implementation Handbook as a potential mechanism for involving communities in the implementation of biodiversity offsets.

Conservation and indigenous rights organisations and working groups

In 2004, the Parties to the Convention on Biological Diversity endorsed the *Akwe:Kon Guidelines on cultural, environmental and social impact assessment of developments on or affecting sacred sites and lands and waters traditionally occupied or used by indigenous and local communities*. These guidelines are not legally binding; however they provide comprehensive guidance on key aspects of impact assessment that could be incorporated into national legislation and good practice. They include principles for the effective participation of indigenous communities in impact assessment processes.

In response to the World Conservation Congress Resolution of 1996 on Indigenous Peoples and Protected Areas, IUCN, WPCA and WWF issued a joint policy statement: *Principles and Guidelines on Indigenous and Traditional Peoples and Protected Areas*. WWF has issued its own *Statement of Principles on Indigenous Peoples and Conservation*, relating to both protected area creation and industrial development activity.

IUCN has set up a working group on Social and Environmental Accountability of the Private Sector (SEAPRISE) to strengthen the capacity of business to become environmentally and socially accountable. The group aims to reduce the negative impact of industry, especially the extractive industries, on biodiversity and people. A key focus is building local capacity for engagement with industry.

Indigenous groups around the world have been engaging in their own activities. For example, the Tebtebba Foundation (the Indigenous Peoples' International Centre for Policy Research and Education) took an active role in consultations relating to the World Bank Extractive Industries Review, including an independent review and the 2003 Indigenous Peoples' Declaration on Extractive Industries. In 2005, they convened a forum on indigenous peoples and impact assessment alongside the annual conference of the International Association of Impact Assessment together with the Grand Council of the Crees, the World Bank Group and Hydro Quebec.

The negotiation of the UN Declaration on Indigenous Peoples involved indigenous representatives from around the world in a series of meetings and workshops. In 2005, the UN Permanent Forum on Indigenous Issues convened an international workshop on methodologies relating to FREE, PRIOR AND INFORMED CONSENT.

Appendix 5: Key International Conventions and Processes

Convention / process	Short description
International Labour Organisation (ILO) Convention 169 on Indigenous Peoples (1989)	The basic concepts on which ILO 169 is based are *respect* and *participation*. Signatories should consult with indigenous peoples on policies, programmes and projects that are to affect them. The Convention recognises indigenous rights to ownership of traditionally occupied land and the right to participate in the use, management and conservation of these resources (Articles 14 and 15). It requires consultation with land users before exploration or exploitation of the resources (Article 15) and states that resettlement should only be an exceptional measure and take place only with the 'free and informed consent' of the people concerned, who should be fully compensated (Article 16). The International Finance Corporation (the private sector arm of the World Bank) has issued guidance relating to ILO 169 (see below).
UN Declaration on the Rights of Indigenous Peoples (adopted by the UN General Assembly on 13 September 2007)	This Declaration is considered to be the most complete and representative statement of principles for indigenous rights due to its broad consultation with indigenous leaders. Although non-binding to governments, the Declaration can be used to apply pressure to governments to live up to its principles and objectives. The Declaration recognises indigenous peoples' right to remain on their lands: 'No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.' (Article 10) It also address a number of other key issues, including rights to religious and cultural practices and access to religious and cultural sites (Article 12 and 31.1); consultation and free, prior and informed consent in relation to legislative or administrative changes that may affect them (Article 19); the right to determine development priorities (Article 23); right to traditional medicines and practices and conservation of vital medicinal plants, animals and minerals (Article 24 and 31.1); right to maintain spiritual and material relationship with lands and resources they have traditionally owned or used (Article 25); full recognition of indigenous land-tenure systems and resource management institutions (Article 26); conservation of environment (Article 29.1); no storage of hazardous materials without FPIC; and protection of health in regard to such materials (Articles 29.2 and 29.3); rights to appropriate and equitable compensation and redress mechanisms (Articles 11.2, 20, 28.1, 28.2). Article 32 states: (1) Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands, territories and other resources. (2) States shall consult and cooperate in good faith with the indigenous peoples concerned 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, particularly in connection with the development, utilization or exploitation of mineral, water or other resources. (3) States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.'

Convention / process	Short description
Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (1998)	The UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, usually known as the Aarhus Convention, was signed on 25 June 1998. The Convention grants the public rights regarding access to information, public participation and access to justice, in governmental decision-making processes on matters concerning the local, national and transboundary environment. It focuses on interactions between the public and public authorities.
United Nations' Universal Declaration of Human Rights (1948) or UDHR **International Covenants on Economic, Social and Cultural Rights (ICESCR) and Civil and Political Rights (ICCPR) (1966)**	The UDHR is legally non-binding, but is an international instrument of great importance symbolically, politically and in terms of 'soft law'. In addition to other fundamental human rights, it recognises the right to individual and collective ownership of land, and states that 'no one shall arbitrarily be deprived of his property' (Article 17). As part of the UDHR process, the legally binding ICESCR and ICCPR were adopted by the UN General Assembly in 1966. Article 1 of both covenants upholds the right of all peoples to self-determination and states that 'in no case may a people be deprived of its own means of subsistence'.
Rio Declaration (1992)	Statement of voluntary principles from the 1992 UN Conference on Environment and Development (UNCED). Although it is not legally binding, it has weight in the international community. Principle 22 recognises the important role of indigenous peoples in environmental management and sustainable development.
Agenda 21 (1992)	Another major product of UNCED. Recommends that governments and intergovernmental organisations recognise that indigenous peoples' lands should be protected from environmentally unsound and socially or culturally inappropriate development activities. It also recommends strengthening national dispute-resolution arrangements for settling land and resource-management conflicts.
Convention on Biological Diversity (1992)	The 1992 Convention on Biological Diversity (CBD) has the force of international law for signatory countries. In addition to requirements for environmental impact assessment, with public participation, the CBD calls for governments to 'protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements' (Article 10) and to 'respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity ' (Article 8).
UN Global Compact	The UN Global Compact was launched in 2001 to encourage businesses from all sectors and worldwide voluntarily to adopt environmentally and socially responsible policies and to report on them. It acts as a forum for governments, civil society and business. It has ten principles, the first of which is to 'support and respect the protection of internationally proclaimed human rights'.
Voluntary principles on security and human rights	The Voluntary Principles on Security and Human Rights were developed by the governments of the United States, the UK and the Netherlands, together with representatives of the extractive industries, and interested NGOs. The principles guide companies in maintaining the safety and security of their operations, ensuring respect for human rights, and they require companies to carry out a human rights impact assessment.

Convention / process	Short description
The Business Leaders' Initiative on Human Rights (BLIHR)	BLIHR is a programme with thirteen corporate members including Alcan and Statoil representing the extractive industries and Barclays, a private bank that lends to extractive industry projects. BLIHR was set up in May 2003, with the main aim of finding practical ways to apply the Universal Declaration of Human Rights within a business context and inspiring other businesses to do the same. By 2009 they aim to have developed a handbook and they hope businesses will adopt the guidance in their business practice.

Appendix 6: Background to Free, Prior and Informed Consent

According to a working group of the UN Commission on Human Rights, the concept of free, prior and informed consent "recognizes indigenous peoples' inherent and prior rights to their lands and resources and respects their legitimate authority to require that third parties enter into an equal and respectful relationship with them, based on the principle of informed consent."

Article 28 of the UN Declaration on the Rights of Indigenous Peoples (2007) states

1. 'Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.'

Article 32 of the UN Declaration on the Rights of Indigenous Peoples (2007) states:

1. 'Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands, territories and other resources.

2. States shall consult and cooperate in good faith with the indigenous peoples concerned 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, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.'

To date, over 144 countries have adopted the Declaration. States adopting the Declaration agree to respect the principles it sets forth. Some national legislation has already incorporated the concept of FPIC, e.g. the Philippines Indigenous Peoples' Rights Act and mining-related legislation applied in certain Australian states. While FPIC is not yet reflected in national law everywhere around the world, it will increasingly be incorporated into national law, voluntary standards relating to industry practice and civil society's expectations of companies. In the meantime, the declaration represents for many the highest standard and best practice for meaningful participation for indigenous peoples, and will increasingly be regarded as an expectation of companies in their dealings with indigenous peoples and local communities.

For instance, WWF's Statement of Principles on Indigenous Peoples and Conservation states that 'WWF will not promote or support, and may actively oppose, interventions which have not received the free, prior and informed consent of affected indigenous communities, and / or would adversely impact – directly or indirectly – on the environment of indigenous peoples' territories and / or would affect their rights.'

In the Convention on Biological Diversity, the phrase 'prior informed consent' applies to the right of nationally competent authorities to regulate access to genetic resources (Article 15). A Decision of the Parties to the

CBD at their Ninth Meeting in Bonn, 19-30 May 2008, extends the concept to apply to indigenous peoples and local communities in some circumstances. This is also being considered in relation to the current negotiation of an international regime on access and benefit sharing on genetic resources.

The International Finance Corporation (IFC) is one of several development banks to adopt standards which represent the conditions of loans to their clients. The IFC's Environmental and Social Performance Standards were revised in 2006 and are viewed as a benchmark for such standards. They also form the basis for the EQUATOR PRINCIPLES, which are voluntary performance standards adopted by over 50 investment banks. The IFC's Performance Standard 7 requires projects with impacts on indigenous peoples to assure their "free, prior and informed consultation" (rather than consent), and to facilitate their "informed participation" on matters that directly affect them. This formulation has been criticised by proponents of FPIC. As one indigenous rights expert noted: 'Consultation implies that someone asks our opinion, but has no obligation to respond. That is why consent is more important'

More recently, the European Bank for Reconstruction and Development revised its Environmental and Social Policy. Performance Requirement 7 (Indigenous Peoples), Article 4 recognises the 'need for free, prior and informed consent'. The EBRD will now be developing guidance notes to accompany its new Environmental and Social Policy, including guidance on how to implement FPIC.

Finally, in decisions of the Conference of the Parties to the Convention on Biological Diversity at the Ninth Conference of the Parties in 2008, adopted the following resolution regarding guidelines for the documentation and utilisation of traditional knowledge:

"Documentation of traditional knowledge, innovations and practices, is subject to the prior informed consent of indigenous and local communities", which applies to biodiversity offset activity that record or use traditional knowledge. (See UNEP/CBD/COP/9/29/IX.13, p.65: **http://www.cbd.int/decisions/**).

Appendix 7: Principles on Biodiversity Offsets Supported by the BBOP Advisory Committee

Biodiversity offsets are measurable CONSERVATION OUTCOMES resulting from actions designed to compensate for significant residual adverse biodiversity impacts arising from project development[36] after appropriate prevention and mitigation measures have been taken. The goal of biodiversity offsets is to achieve NO NET LOSS and preferably a NET GAIN of biodiversity on the ground with respect to species composition, HABITAT STRUCTURE, ecosystem function and people's use and CULTURAL VALUES associated with biodiversity.

These principles establish a framework for designing and implementing biodiversity offsets and verifying their success. Biodiversity offsets should be designed to comply with all relevant national and international law, and planned and implemented in accordance with the Convention on Biological Diversity and its ECOSYSTEM APPROACH, as articulated in National Biodiversity Strategies and Action Plans.

1. **No net loss:** A biodiversity offset should be designed and implemented to achieve in situ, measurable conservation outcomes that can reasonably be expected to result in no net loss and preferably a net gain of biodiversity.

2. **Additional conservation outcomes:** A biodiversity offset should achieve conservation outcomes above and beyond results that would have occurred if the offset had not taken place. Offset design and implementation should avoid displacing activities harmful to biodiversity to other locations.

3. **Adherence to the mitigation hierarchy:** A biodiversity offset is a commitment to compensate for significant residual adverse impacts on biodiversity identified after appropriate AVOIDANCE, minimisation and on-site rehabilitation measures have been taken according to the mitigation hierarchy.

4. **Limits to what can be offset:** There are situations where RESIDUAL IMPACTS cannot be fully compensated for by a biodiversity offset because of the irreplaceability or vulnerability of the biodiversity affected.

5. **Landscape context:** A biodiversity offset should be designed and implemented in a landscape context to achieve the expected measurable conservation outcomes taking into account available information on the full range of biological, social and cultural values of biodiversity and supporting an ecosystem approach.

6. **Stakeholder participation:** In areas affected by the project and by the biodiversity offset, the effective participation of stakeholders should be ensured in decision-making about biodiversity offsets, including their evaluation, selection, design, implementation and monitoring.

36 While biodiversity offsets are defined here in terms of specific development projects (such as a road or a mine), they could also be used to compensate for the broader effects of programmes and plans.

7. **Equity:** A biodiversity offset should be designed and implemented in an equitable manner, which means the sharing among stakeholders of the rights and responsibilities, risks and rewards associated with a project and offset in a fair and balanced way, respecting legal and customary arrangements. Special consideration should be given to respecting both internationally and nationally recognised rights of indigenous peoples and local communities.

8. **Long-term outcomes:** The design and implementation of a biodiversity offset should be based on an ADAPTIVE MANAGEMENT approach, incorporating monitoring and evaluation, with the objective of securing outcomes that last at least as long as the project's impacts and preferably in perpetuity.

9. **Transparency:** The design and implementation of a biodiversity offset, and communication of its results to the public, should be undertaken in a transparent and timely manner.

10. **Science and traditional knowledge:** The design and implementation of a biodiversity offset should be a documented process informed by sound science, including an appropriate consideration of traditional knowledge.

To learn more about the BBOP principles, guidelines and optional methodologies, go to:

www.forest-trends.org/biodiversityoffsetprogram/guidelines