**Revised Draft Measurement Themes and Indicators for the 2016 Corporate Human Rights Benchmark Pilot Benchmark (February 2016 Consultation)**

**BHP Billiton comments: 26 February 2016**

**GENERAL COMMENTS**

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| We note the decision not to include ‘positive impacts’ as part of the 2016 Pilot (and appreciate that a company’s commitments or activities to support and promote human rights do not offset a failure to respect human rights throughout its operations).  However, we suggest it would be useful to acknowledge in the CHRB commentary that business enterprises can contribute to the enjoyment of rights and that positive impacts need to be taken into account when determining how best to address adverse impacts (e.g. withdrawal from a region or termination of a business relationship may not ultimately be the most beneficial response). |
| The Indicators refer in a number of instances to a requirement that the Company “indicates”, “describes”, “shows” or “provides an example” in order to meet the Score. It would be helpful to clarify that this can include information provided to the CHRB disclosure platform in the course of the CHRB assessment and does not require the Company previously to have made that information public, unless the Score expressly refers to a “public” disclosure (e.g. in the case of public policy commitments). |
| Wherever one of the ‘EX’ Industry Locks for an Indicator refers to “on-site contractors”, make it clear: (a) that it applies only to a major on-site contractor responsible for providing all or a significant proportion of the on-site activities (e.g. a contract miner); and (b) that the Company’s required policy/action/expectation for that contractor is to be commensurate with the nature of the services being provided (i.e. a Company would not be expected to monitor in relation to a human rights issue that was irrelevant to the purpose for which the contractor has been engaged). |
| Wherever one of the ‘EX’ Industry Locks for an Indicator refers to “operating partners”, make it clear that the Company’s required policy/action/expectation for a non-controlled joint venture or minority interest is to state its expectations of/encourage/use leverage for the adoption of similar principles, standards, behaviours etc. (not something more prescriptive or absolute as is indicated in a number of the Scores). This is consistent with the UNGPs commentary about leverage in the context of a business relationship entity. |
| Wherever one of the Scores for an Indicator has a requirement to provide an example or describe a specific instance, add the caveat: “while respecting any legitimate commercial confidentiality requirements” (as currently contained in Score 1 for Indicator A.2.2.). |

**SPECIFIC COMMENTS**

*Note: The ‘Suggested amendment’ column below extracts the relevant text from the Methodology and shows the proposed new (or deleted) text in red, with an explanatory comment in the first column.*

| **Section** | **Comment** | **Suggested amendment** |
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| **A. Governance and Policies** | | |
| **A.1. Policy Commitments** | | |
| A.1.1. | Score 2: Given the UNGPs are guiding principles, we suggest modifying the language in this section to ensure a company that makes policy commitments to relevant international instruments and has processes which have been designed to be consistent with the UNGPs is able to meet this score, even if it does not expressly “commit” to the UNGPs. | Score 2 The Company’s publicly available statement of policy also commits it to operate consistently with: the UN Guiding Principles on Business and Human Rights **OR** the OECD Guidelines for Multinational Enterprises. |
| A.1.3. | Score 1: It should be clear that the publicly available statement of policy only has to reference the specific groups or populations noted in the Industry Lock. Current wording may imply it has to include the Industry Lock group but also be broader (which would require a subjective assessment of groups “requiring particular attention” and be an unrealistic level of detail/specificity for inclusion in a company’s public policy).  Score 2: A company may demonstrate commitment to respecting the rights of specific groups or populations by referencing an appropriate global or industry-specific initiative or standard rather than the international instrument that applies to States (unless adopted into national legislation).  EX (Score 2): We note and support the comment previously made in the ICMM’s submission (September 2015) with respect to using the definition of FPIC in the ICMM’s Position Statement on Indigenous Peoples and Mining. | Score 1 The Company has a publicly available statement of policy committing it to respect the internationally recognised human rights of individuals belonging to specific groups or populations that require particular attention (see the industry locks below ~~for example, women, children, indigenous peoples, minorities, persons with disabilities, and/or migrant workers and their families~~)**.**  Score 2 The Company’s publicly available statement of policy also explicitly references one or more key international human rights instruments applying to these groups or populations (see Box 2) **OR** explicitly references a global or industry-specific initiative or standard which recognises such instrument(s).  EX For Score 1, this ~~includes~~ requires a commitment to respect indigenous peoples’ rights (and/or to respecting ILO Convention 169 or UNDRIP). |
| A.1.4. | Score 1: It should be clear that the publicly available statement of policy only has to commit to the right(s) noted in the Industry Lock. By repeating the “such as…” examples, it suggests multiple rights may be required to gain Score 1. | Score 1 The Company has a publicly available statement of policy committing it to respecting human rights particularly relevant to local communities’ livelihoods (see the industry locks below)~~, such as the right to health, water, safety, security and ownership/use of land and natural resources~~.  EX For Score 1, this ~~includes~~ requires a commitment to respecting human rights in maintaining the safety and security of operations (based on relevant UN instruments or ~~is a~~ ~~member~~ participation by the Company in ~~of~~ the Voluntary Principles on Security and Human Rights (VPs) or to using security providers who commit to ~~are members of~~ the International Code of Conduct of Private Security Providers (ICoC)). |
| A.1.5. | Score 1: This should include the alternative (consistently with Score 1 for Indicator A.1.2) of a commitment to the UN Global Compact principles. Have also suggested reordering the language for better clarity.  EX: For Score 2, the stipulation is too broad for an on-site contractor if not contracted to do work for which the requirements would be relevant. Suggest including the broader range of land related options (per Score 2 for A.1.4.). The water use reduction requirement is too specific and would be an unrealistic requirement for all contractors and operating partners. | Score 1 The Company’s policy commitment(s) ~~applies to relevant business relationships (see industry locks below~~, (which includes a commitment to respecting all ILO core labour standards (including an explicit reference to both freedom of association and collective bargaining) **OR** a commitment to respecting the ten principles of the UN Global Compact (principles 3 to 6 refer to the ILO core labour standards)), applies to its relevant business relationships (see the industry locks below).  EX For Score 2, the Company stipulates it expects its on-site contractors (if applicable to the work performed by the contractor for the Company) or operating partners to respect~~ing~~ indigenous peoples’ rights, legitimate tenure rights related to the ownership and use of land as set out in the Voluntary Guidelines on Responsible Governance of Tenure or the IFC Performance Standards or to obtain the free prior and informed consent (FPIC) of Indigenous Peoples and local communities for transactions involving land or natural resources or to a zero tolerance for land grabbing~~, and water use reduction~~. |
| A.1.7. | Score 2: Given the breadth of the definition of ‘business relationships’ (including products and services, which are excluded from the Pilot Benchmark), modification is needed to limit this Score to the relevant Industry Lock business relationships.  EX: Typo. | Score 2 The commitment also includes working with the Company’s relevant business relationships (see the industry locks below) to remedy adverse impacts which are directly linked to its operations, through the business relationship’s own mechanisms or through collaborating on the development of third party non-judicial remedies.  EX For Score 2, the commitment also ~~includes~~ requires working with operating partners and on-site contractors. |
| A.1.8. | Score 1: Suggest making this clarifying amendment to be completely clear that this does not preclude legitimate legal action where a Company has a genuine interest to protect. Also make the change to the Indicator text itself.  EX: It is not realistic to require the Company to set an expectation for what its operating partners and contractors do in their own public commitments (provided the Company can otherwise be assured that they do not act in the offending manner). | Score 1 The Company has a publicly available statement of policy committing it to zero tolerance for threats, intimidation, or retaliatory attacks, whether physical or legal ~~attacks~~ against human rights defenders **OR** the Company indicates that it has not been involved in these types of actions.  EX For Score 2, the Company also stipulates that it expects its ~~co~~operating partners and on-site contractors to make the same public commitment **OR** to indicate that they not been involved in these types of actions. |
| **A.2. Board Level Accountability** | | |
| A.2.1. | Proposed wording to better reflect the distinction between management responsibility for addressing issues and governance oversight responsibilities. | The Company’s human rights policy commitments are approved by the  Board or the CEO by name **AND** a Board member or Board committee is tasked with specific governance oversight of one or more areas of respect for human rights. |
| A.2.2. | In both the Indicator and Score 1, reference to the Board should include a Board committee (as is the case in Indicator A.2.1). | The Company has processes in place to discuss and address human rights issues at Board level and / or the Board or a Board committee regularly reviews the Company’s salient human rights issues and provides examples of what was discussed. *(Sources: UN Guiding Principle 19 and UNGPRF A2.2)*  Score 1 The Company describes the process it has in place to discuss and address human rights issues at Board level and / or the how the Board or a Board committee regularly reviews the Company’s salient human rights issues **OR** it provides examples of specific human rights issues discussed and/or examples of trends in types if human rights issues discussed at Board level during the Company’s last reporting period (while respecting any legitimate commercial confidentiality requirements). |
| A.2.3. | It would be highly unusual in major companies (and potentially inconsistent with corporate governance guidelines seeking to ensure the independence of the Board) for non-executive Board members to have an incentive component to their remuneration.  Suggested amendments are to clarify that the incentive scheme requirement applies only to non-executive members of the Board (if applicable) or to the Company’s most senior management body. | The Company provides incentives to ~~the Board~~ its most senior executives linked to the implementation of its human rights policy commitments. *(Sources: UN Guiding Principle 1, UNGPRF A2.3 and GRI G4 51)*  Score 1 The Company indicates that at least one non-executive Board member, CEO or other member of its most senior executive body has an incentive scheme linked to an aspect of the Company’s human rights policy commitment(s). If the Company has linked its incentive scheme to only one aspect of its human rights policy commitment(s), this aspect is one of the Company’s key industry risks (see the industry locks below).  Score 2 The criteria linking ~~the Board~~ senior executive remuneration to human rights performance is also made public. |
| **B. EMBEDDING RESPECT AND HUMAN RIGHTS DUE DILIGENCE** | | |
| **B.1. Embedding respect for human rights in culture and management systems** | | |
| B.1.1. | Score 1: Additions to be clear that it is not necessary for there to be a single ‘human rights’ accountability, but rather allocation of the relevant human rights issues to specific senior manager roles. The reference to allocation of responsibility for the ILO core labour standards is too specific and unlikely to reflect the reality of the way responsibilities are allocated to management.  EX: Reference to the Company “assigning” responsibility may be inapplicable for certain operating partners (e.g. non-operated joint ventures; minority interests). | Score 1 The Company indicates the senior ~~manager(s)~~ roles responsible for human rights within the Company (i.e. responsibility for relevant human rights issues has been assigned to a senior manager(s) ~~and this includes the ILO core labour standards as a minimum~~).  EX For Score 2, the Company has also outlined ~~and assigned~~ day-to-day responsibility for managing human rights issues with its on-site contractors and operating partners. |
| B.1.3. | While the main text of this Indicator suggests it is relevant to incentive schemes for senior management, the Industry Locks apply to a much lower level.  It would be unusual and impracticable to apply these types of incentives at lower levels of management in many instances (given the limited authority in these roles) and it certainly would not be usual publicly to disclose the remuneration arrangements of this level of management.  Suggested amendments are to apply only to senior executives (but note then the overlap with Indicator A.2.3., as amended above, so perhaps this Indicator should be deleted). | The Company provides incentives to senior managers linked to implementation of the Company’s human rights policy commitments and/or targets. *(Sources: UN Guiding Principle 19, UNGPRF A2.3 and GRI G4 51)*  Score 1 The Company indicates that it has an incentive or performance management scheme linked to aspects of its human rights policy commitment(s) for at least one senior manager.  Score 2 The criteria linking the senior manager’s~~’~~ remuneration to the Company’s human rights performance is also made public.  EX For Score 1, this ~~includes managers (site managers, local community managers on-site and /or procurement managers) and~~ covers at least one of the following: access to water and sanitation, health and safety, indigenous peoples rights, land rights. |
| B.1.4.a. | Additional wording for consistency with Indicator A.1.2. and deletion of text in Score 2 as no Industry Locks are given (and the ones for B.1.4.b. are not applicable). | The Company communicates its human rights policy commitment(s) to employees and other workers as well as to external stakeholders, in particular potentially affected stakeholders. (Note: In order to get any Score under this indicator, the human rights policy communicated must include the ILO core labour standards at a minimum **OR** commit the Company to respecting the ten principles of the UN Global Compact (principles 3 to 6 refer to the ILO core labour standards)). *(Sources: UN Guiding Principles 12 and 16 d and UNGPRF A.1.3)*  Score 2 The Company also describes how it communicates its policy commitments to stakeholders ~~(see the industry locks below)~~, including local communities and potentially affected stakeholders. |
| B.1.4.b. | As above in relation to the ILO core labour standards.  Scores 1 & 2: Modified to link the compulsory business relationships to the Industry Locks, given the breadth of the definition and clarified that only those human rights commitments relevant to the particular relationship need to be communicated or required (as some business relationships may be for a very specific and limited purpose).  Score 2: Clarified that is not necessary to bind the business relationship to the Company’s own human rights policy commitments, but rather ensure they are reflected i.e. a business relationship may have its own equivalent commitments. | The Company communicates its human rights policy commitment(s) to its business relationships. In addition, it reflects its human rights commitments within the terms of its contracts (or other equivalent, binding arrangements) with business relationships. *(Note: In order to get any Score under this indicator, the human rights policy communicated must include the ILO core labour standards at a minimum* ***OR*** *commit the Company to respecting the ten principles of the UN Global Compact (principles 3 to 6 refer to the ILO core labour standards*)*.)*  *(Sources: UN Guiding Principle 12 and UNGPRF A1.3.)*  Score 1 The Company describes the steps it has taken to communicate its human rights policy commitment(s) to its business relationships (see the industry locks below) (to the extent relevant to that relationship).  Score 2 The Company describes how its human rights ~~policy~~ commitments are ~~included~~ reflected within contractual or other binding arrangements with its relevant business relationships (see the industry locks below) (to the extent relevant to that relationship).  EX For Score 1 and 2, this ~~must include~~ requires security and other on-site contractors and operating partners. |
| B.1.5. | The reference to training covering the ILO core labour standards is too specific given the reference to industry specific workers (Score 1).  It is not feasible for a Company to train all workers in its business relationships in all of its human rights policy commitments (see additional words “of its” to make this clear) and the modification in EX in relation to workers of contractors. | Score 1 The Company describes how it trains (or requires the training of) all relevant managers and workers (see the industry locks below) on the Company’s human rights policy commitment(s) (or equivalent). ~~The training covers at least the ILO core labour standards.~~  Score 2 The Company also indicates that all of its workers are trained on its human rights policy commitment(s) (which includes a commitment to respecting all ILO core labour standards **OR** a commitment to respecting the ten principles of the UN Global Compact (principles 3 to 6 refer to the ILO core labour standards)). ~~The training covers at least the ILO core labour standards.~~  EX For Score 1, relevant managers and workers ~~include~~ are all of the Company’s security personnel ~~(employed or contracted, public or private)~~ and community relations personnel and the training must cover all security-related human rights issues. For Score 1, the Company must also describe how it requires any of its security contractors (public or private) to train its personnel with respect to security-related human rights issues. |
| B.1.6. | Change as above, in relation to the option of referring to the UN Global Compact for the references to the ILO core labour standards.  EX: Changed “uses” to “responds to” for the reference to external monitors (given the way external monitors, such as the National Contact Points, are structured to operate). Changed “all” to “its” before “on-site contractors” (see comment in “General” section above about appropriate scope for relevant on-site contractors). | The Company monitors the implementation of its human rights policy commitment(s) across its operations and business relationships and follows up on corrective actions and necessary changes to policy or processes. *(Note: In order to get any Score under this indicator, the human rights policy commitment must include the ILO core labour standards at a minimum* **OR** a commitment to respecting the ten principles of the UN Global Compact (principles 3 to 6 refer to the ILO core labour standards)*.) (Sources: GRI G4-HR11, GRI G4-LA15, SASB CN0501-05, SASB CN0501-06 and SASB CN0103-21)*  Score 1 The Company describes how it monitors its implementation of its human rights policy commitment(s)~~,~~ (which include the ILO core labour standards at a minimum **OR** a commitment to respecting the ten principles of the UN Global Compact (principles 3 to 6 refer to the ILO core labour standards)), which covers the Company globally and relevant business relationships (see the industry locks below).  EX For Score 1, the description includes how it monitors ~~all~~  its on-site contractors and operating partners.  For Score 2, the Company also describes how it ~~uses~~ responds (or would respond) to external monitors. |
| B.1.7. | As above, changes to link the relevant business relationships to the Industry Locks, given the breadth of the definition. | Score 1 The Company describes how human rights performance is taken into account in the *identification* of relevant potential business relationships (see the industry locks below) and how it can affect decisions to enter into or select business relationships.  Score 2 The Company also describes how the human rights *performance* of relevant business relationships (see the industry locks below) interacts with decisions to renew, expand or terminate business relationships.  EX For Score 1, the description ~~includes~~ is of how this applies to the identification of on-site contractors and operating partners and the human rights issues considered. |
| **B.2. Human Rights Due Diligence** | | |
| B.2.1. | Minor redrafting/reordering to clarify. | Score 2 The Company also describes the global systems in place to identify human rights risks and impacts on a regular basis across its activities, in consultation with affected ~~of~~ or potentially affected stakeholders and internal or independent external human rights experts. These systems are also triggered by new country operations, new relevant business relationships (i.e. impacts to which it may be directly linked) (see the industry locks below) or changes in the human rights context in particular locations ~~and also includes risks and impacts to which the Company may be directly linked (see the industry locks below).~~  EX For Scores 1 and 2, relevant business relationships ~~include~~ are on-site contractors and operating partners. |
| B.2.2. | Public reporting of individual project based Human Rights Risk Assessments may have a real unintended consequence of exacerbating human rights risks for particular groups. HRIA’s often address a range of politically and socially sensitive issues facing particular groups, for which disclosure may exacerbate risk.  In this light we suggest that the public reporting does not have to be done on a project by project basis. | Score 2 The Company publicly discloses the results of the assessment, which may be aggregated across its operations and locations. If the Company’s salient human rights issues do not include any of the key industry risks (see the industry locks below), it describes why these were not considered salient for its activities. |
| B.2.5. | Modifications to link the relevant business relationships to the Industry Locks, given the breadth of the definition and to clarify (consistently with the first paragraph of the Indicator), that disclosure is subject to legitimate confidentiality restrictions. | Score 1 The Company describes its process(es) to communicate externally with its intended audiences on how it addresses the human rights impacts of its own activities (i.e. impacts to which it has caused or contributed) as well as via its relevant business relationships (i.e. impacts to which it has been directly linked) (see the industry locks below), with particular attention on communicating with affected stakeholders who have raised concerns.  EX For Score 1, the description ~~includes~~ is of communications covering human rights impacts involving operating partners and on-site contractors, subject to legitimate requirements of commercial confidentiality. |
| **C. REMEDIES AND GRIEVANCE MECHANISMS** | | |
| C.1. | Amendments to be clear that the Company’s responsibility is in relation to its own workers.  Score 2: Clarifying that only the data about the practical operation of its grievance mechanisms needs to be made public in the ordinary course (i.e. outside of the process to respond to the CHRB review), with the location specific example to be provided to the CHRB disclosure platform if the Company elects to meet Score 2.  EX: Have deleted “supports” as this could be misinterpreted to imply e.g. financial support (and would otherwise be covered by “encourages”) and clarified that the obligation extends to the work directly connected to the Company. | The Company has one or more channel(s) or mechanism(s) (its own, third party or shared) through which its workers can raise complaints or concerns, including in relation to human rights issues. The channel/mechanism(s) is not used to undermine the role of legitimate trade unions in addressing labour-related disputes. *(Sources: UN Guiding Principles 28, 29 & 30 and UNGPRF C6.1 & C6.2)*  Score 1 The Company indicates that it has one or more channels/mechanisms, or participates in a shared mechanism, accessible to all of its workers to raise complaints/concerns, including about human rights issues related to the Company **AND** the Company describes how it ensures the channel(s)/ mechanism(s) is/are accessible to relevant stakeholders, including in local languages.  Score 2 The Company also ~~publicly~~ discloses publicly data about the practical operation of the channel(s)/mechanism(s) and provides an example from at least one location.  EX For Score 2, the Company also encourages ~~and supports~~ their operating partners and on-site contractors to establish their own channel(s) / mechanism(s) for their workers to raise complaints / concerns~~, including~~ about human rights related to the work of the operating partners or on-site contractors on behalf of the Company **OR** describes the practical operation of the channel(s)/mechanism(s) used by these business relationships. |
| C.2. | See comments for C.1. | EX For Score 1, the Company indicates that its channel(s)/mechanism(s) is (are) accessible to all external individuals and communities. For Score 2, the Company also encourages ~~and supports~~ their operating partners and on-site contractors to establish their own channel(s) / mechanism(s) for complaints / concerns from local communities~~, including~~ about human rights issues related to these business relationships with the Company. |
| C.3. | Clarification of the direct linkage to the Company’s operations. | EX For Score 2, the Company also describes how it monitors that its on-site contractors and operating partners have means of involving potential users in the initial design or the review of the design or performance of their channel(s)/mechanism(s) relevant to its business relationships with the Company. |
| C.5. | Clarification that the “credible allegation” qualification also applies to defamation actions. | Score 2 The Company indicates that it has never brought a retaliatory suit against persons or fired any workers who have brought or tried to bring a case against it involving a credible allegation of human rights impacts or against the lawyers representing them and has never brought a case for defamation or similar actions against claimants or their lawyers in relation to a credible allegation of human rights impacts. |
| C.6. | Changes to:   * allow formal judicial processes to be temporarily suspended, by agreement, while an alternative dispute resolution mechanism is pursued (e.g. where large numbers of claimants would make concurrent judicial and non-judicial processes inefficient and ineffective), provided judicial mechanisms can subsequently be accessed if preferred; * recognise that a Company may not have had occasion to participate in a state-based non-judicial grievance mechanism. | The Company does not impede access to state-based judicial or non-judicial mechanisms for persons who make allegations of adverse human rights impacts and it operates on the presumption that it will not require individuals permanently to waive their legal rights to bring a claim through a judicial process as a condition of participation in a grievance / mediation process. It also does not impede access by competent authorities investigating and adjudicating credible allegations of human rights impacts. It participates in non-judicial grievance mechanisms provided by the state where these are available to resolve grievances (and have been brought against the Company). *(Sources: UN Guiding Principle 27)*  Score 1 The Company publicly commits to not impeding access to state-based judicial or non-judicial mechanisms for persons who make allegations of adverse human rights impacts and indicates that it has not required affected individuals or communities participating in a grievance / mediation process permanently to waive their legal rights to bring a claim through a judicial process as a condition of participating in the grievance / mediation process.  Score 2 The Company also sets out the process by which it will co-operate with state-based non-judicial grievance mechanism complaints brought against it **AND** provides an example of issues resolved (if applicable). |
| C.7. | Changes to:   * be clear that third party information needs to have been validated; * clarify the linkage in Scores 1 & 2 to the Industry Lock. | The Company provides for or cooperates in remediation where it has identified that it has caused or contributed to adverse human rights impacts (or others have brought such information to the Company’s attention, such as through its grievance channel/mechanism, and the information has been validated). It also incorporates the lessons learned from remediation approaches into its channel(s)/mechanism(s) and processes. (*Sources: UN Guiding Principles 19, 22 and 31 and UNGPRF C6, C6.4 and C6.5 and GRI G4-LA16, GRI G4-HR12 and GRI G4-SO2 )*  Score 1 The Company describes the approach it has taken to provide or enable remedy for any relevant negative impacts (see the industry locks below) which it has identified (by category or by example) and which it has caused or contributed to **OR,** if it has not identified any, the approach it would take if such impacts were to be identified.  Score 2 As well as describing the immediate remediation, the Company is able to describe changes to systems and procedures or new processes and practices adopted which are designed to prevent the relevant potential impact(s) (see the industry locks below) identified to which it has caused or contributed, **OR** (if it has not yet identified any impacts) the Company is able to describe the approach it would take to remediation and learning from a key industry risk(s) should it(they) arise in the future  EX For Scores 1 and 2, key industry risks: indigenous peoples rights, land rights (including resettlement), health and safety, security forces, livelihoods (may include access to water and sanitation and natural resource use). |
| **D. PERFORMANCE: COMPANY HUMAN RIGHTS PRACTICES** | | |
| **D.1 Extractives** | | |
| EX D.1.1. | Changes for consistency with head Indicator text. | The Company pays all its workers a living wage, which is regularly reviewed and negotiated with relevant trade unions or worker councils where they are operating. There are numerous definitions of living wage but the core concept is to provide a decent standard of living for a worker and his or her family. A living wage is sufficient to cover food, water, (clothing, transport, education, health care and other essential needs) for workers and their entitled official dependents and provide some discretionary income. Workers receive equal pay for equal work.  Score 1 The Company indicates its target timeframe for paying all workers a living wage **AND** the Company describes how it determines a living wage for the regions where it operates, which includes involvement of relevant trade unions or worker councils where they are operating.  Score 2 The Company also indicates that it either has met the targets or provides an explanation of why these were not met and its progress toward meeting the target~~.~~ **AND** the target is regularly reviewed and negotiated with relevant trade unions or worker councils where they are operating **OR** the Company demonstrates progress towards determining a living wage for the regions where it operates, which includes involvement of relevant trade unions or worker councils where they are operating. |
| EX D.1.3. | Changes to be clear that the requirement applies (as indicated by the last sentence) to the reporting period, not to describing arrangements for an indefinite historical period.  Deletion of “original” for consistency and to match the defined term “legitimate tenure rights holders” which encompasses original/customary owners. | Score 2 The Company also describes how it seeks to provide compensation or other alternatives, including its valuation methods and how legitimate tenure rights holders ~~were~~ are involved in ~~the~~ determining the valuation. Alternatively, where a state is ~~or has been~~ involved in the transaction, the Company follows IFC Performance Standard 5 on Land Acquisition and Involuntary Resettlement and describes the steps it ~~has taken~~ takes to meet ~~the~~ that Standard~~s~~ with respect to ~~original~~ legitimate tenure rights holders. If the Company has not engaged in any land transactions during the reporting period, it describes its approach generally. |
| EX D.1.4. | Score 2: Clarifying that the example is only required if available from the reporting period. | Score 2 The Company also indicates it is committed to free prior and informed consent (FPIC) **AND** provides an example, if applicable during the reporting period, where it has obtained free prior and informed consent (FPIC) or where it decided not to pursue the land or resources. |
| EX D.1.5. | Changes to remove:   * references to “safety” which could be confused with “health and safety” rather than security/protection measures; * the reference to “international humanitarian law” which is too non-specific and should be covered by the later reference to “applicable international standards” amplified in Score 1; * the Score 2 mandatory requirement to provide protection measures for local communities as this may be inappropriate in the local context (or there may not be any need for such measures to be provided). | The Company maintains the ~~safety and~~ security of its operations within an operating framework that ensures respect for relevant human rights ~~and international humanitarian law~~, and acts in a manner consistent with applicable international standards, particularly with regard to the use of force.  Score 1 The Company describes how it implements its security policy (including commitments to the Voluntary Principles on Security and Human Rights or the International Code of Conduct for Private Security Service Providers) and provides an example of how it ensures respect for human rights in the course of maintaining security of operations, including, if applicable, when working with contracted private or public security providers.  Score 2 The Company also provides evidence that it extends its security assessment(s) ~~and protection measures~~ to cover ~~safety and security of~~ local communities around its operations, if applicable, and works with community members to improve security and prevent or address any tensions. |
| EX D.1.6. | It is only realistic to expect companies to be authorised to disclose, and so make public, data in relation to its employees or workers within its operated sites. Reference to “its employees” will cover employees where the company manages/operates on behalf of a joint venture. | The Company discloses a set of quantitative information on health and safety related to its direct employees~~,~~ and on-site contractors ~~and joint venture and / or operating partners~~, namely: injury rate, fatality rate, lost days (or near miss frequency rate).  Score 2 The Company also provides an explanation of the figures provided or describes the resulting corrective actions or action plans **OR** sets targets related to rates of injury, lost days and fatalities **AND**, if the Company had already set targets related to the reporting period, it either has met the targets or provides an explanation of why these were not met. |
| EX D.1.7. | Score 1: Should only apply to operations which the Company operates (and so has the capability to implement a preventative or corrective plan).  Score 2: Changes to link to the reporting period (consistently with this approach in the other Indicators). | Score 1 The Company describes how it implements preventive and corrective action plans for identified specific risks to water use and quality in its own operations and operations which it manages/operates for a joint venture~~s or operating partners~~.  Score 2 The Company also sets specific targets on water stewardship going forward **AND** has met or reported on any targets set in the reporting period ~~past~~ **AND** provides an analysis of trends in the progress made (if targets have been set in the reporting period). |
| EX D.1.8. | Query whether this Indicator should be included at all for this Extractives section (it is not one of the Key Industry Risks included in the table on p. 38 of the Methodology).  If it is included, see suggested change to Score 2, to remove the requirement for an example in practice as it would be impracticable to provide an example of the absence of something if a company prohibits/does not practice it. | Score 2 The Company also indicates it prohibits intimidation, harassment, retaliation and violence against union members and union representatives **~~AND~~** ~~provides an example of how its processes and procedures to implement this commitment in practice~~. |
| **E. PERFORMANCE: SERIOUS ALLEGATIONS** | | |
| **E.1 Indicators for assessing a company’s response to Level 1 Allegations** | | |
| E.1.2. | Changes to reflect the limitations on applying a company’s own policy commitments to business relationships (given the breadth of the definition). | Score 1 The Company has a publicly available statement of policy committing it to respecting the human rights in question relevant to the human rights impacts covered by the allegation(s) **AND** ~~the commitment is applicable to~~ if the Company is directly linked to the allegation by a business relationship~~s~~ ~~which may have~~ ~~has contributed to or been linked to the alleged impact~~, the Company had encouraged the business relationship to comply with equivalent commitments. |
| E.1.3. | Changes to vary the appropriate response to reflect the different potential ‘level of involvement’ of the Company (as described in the preamble to this Indicator). | Score 1 The Company has indicated it has provided an appropriate response depending on its ‘level of involvement’ (which may include ~~other~~ remedy(ies) to the affected people if the Company caused or contributed to the impact) **AND** has engaged in a dialogue with the stakeholders reportedly affected in the allegations (or, if the Company is directly linked to but did not cause or contribute to the impact, has encouraged its business relationship to do so).  If the Company does not acknowledge the impacts (but the allegation is credible), it has engaged in a dialogue with the stakeholders reportedly affected in the allegations or, if the Company is directly linked to but did not cause or contribute to the impact, has encouraged its business relationship to do so. |
| **E.2. Indicators for assessing a company’s response to Level 2 Allegations** | | |
| E.2.1. | Changes, as above, to vary the appropriate response to reflect the different potential ‘level of involvement’ of the Company. | Score 1 The Company has publicly responded to each aspect of the allegation or, if the Company is directly linked to but did not cause or contribute to the impact, has encouraged its business relationship to do so.  Score 2 The Company has publicly responded in detail~~s~~ to ~~the~~ each aspect of adverse impact **AND** it has committed to entering into dialogue with affected people or organisations representing them **OR** if the Company is directly linked to but did not cause or contribute to the impact, has encouraged its business relationship to do both. |
| **GLOSSARY** | Not clear what the last words are intended to cover – delete? | **Business activities** - Everything that a company does in the course of fulfilling the strategy, purpose, objectives and decisions of the business. This may include activities such as mergers and acquisitions, research and development, design, construction, production, distribution, purchasing, sales, provision of security, contracting, human resource activities, marketing, conduct of external/government relations including lobbying, engagement with stakeholders, relocation of communities, [and] social investment [and the activities] [*delete*?]. |