

GUIDELINES FOR ENVIRONMENTAL
AND SOCIAL PERFORMANCE

STANDARD 7: INDIGENOUS PEOPLES



7

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STANDARD 7: INDIGENOUS PEOPLES

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INTRODUCTION

The following Guidelines correspond to Environmental and Social Performance Standard 7 which, together with the other nine Environmental and Social Performance Standards (ESPS) and the Policy Statement, make up the IDB's *Environmental and Social Policy Framework* (ESPF). The ESPSs are:



Assessment and Management of Environment and Social Risks and Impacts



Community Health, Safety, and Security



Land Acquisition and Involuntary Resettlement



Indigenous People



Biodiversity Conservation and Sustainable Management of Living Natural Resources



Stakeholder Engagement and Information Disclosure



Labor and Working Conditions



Resource Efficiency and Pollution Prevention



Cultural Heritage



Gender Equality

These Guidelines provide guidance to Borrowers on the requirements of Environmental and Social Performance Standard 7: Indigenous Peoples, with the overall purpose of improving project performance and environmental and social outcomes. The relevance of each ESPS and its Guideline depends on the nature, scale, and complexity of an operation and is proportionate to its level of environmental and social risks and impacts. It is important to note that ESPS 1 and 10 are likely to be relevant to all projects.

To facilitate reading:

1. All text belonging to the ESPF is formatted with a light blue background. The ESPF's text, including its footnotes, has kept its original paragraph and footnote numbering.
2. All Guideline paragraphs begin with the acronym "GL."
3. All footnotes are ESPF footnotes.

The Guidelines and other reference material will be publicly available on a dedicated website (<https://www.iadb.org/en/mpas/guidelines>). The IDB will periodically update the material on the website to reflect best practices and evolving needs.

DISCLAIMER

Guidelines are not policy, nor are they mandatory. The information presented in the Guidelines is for informational purposes only. Guidelines do not substitute the need to exercise sound judgment in making project decisions that are consistent with the ESPSs. In case of any inconsistency or conflict between the Guidelines and the ESPSs, the provisions of the ESPSs will prevail. In case of any inconsistency or conflict between the Guidelines and the Policy Statement in the ESPF, the provisions of the Policy Statement will prevail. Guidelines are approved by IDB Management and not by the IDB's Board.



INTRODUCTION

1. Environmental and Social Performance Standard (ESPS) 7 recognizes that Indigenous Peoples¹⁵⁹ as distinct social and cultural peoples, are often among the most marginalized and vulnerable segments of the population. In many cases, their economic, social, and legal status limits their capacity to defend their rights to, and interests in, lands and natural and cultural resources, and may restrict their ability to participate in and benefit from development that is in accordance with their worldview. Indigenous Peoples are particularly vulnerable if their lands and resources are transformed, encroached upon, or significantly degraded. Their languages, cultures, religions, spiritual beliefs, and institutions may also come under threat. Consequently, Indigenous Peoples may be more vulnerable to the adverse impacts associated with project development than non-indigenous peoples. This vulnerability may include loss of identity, culture, and natural resource-based livelihoods, as well as exposure to impoverishment and disease.
2. Projects can also create opportunities for Indigenous Peoples to participate in and benefit from project-related activities that may help them achieve their aspirations for economic and social development with identity. Furthermore, Indigenous Peoples may play a role in sustainable development by often promoting, owning, and managing activities and enterprises as partners in development. The government often plays a central role in the management of Indigenous Peoples' issues. It is therefore important to have collaboration and coordination among responsible and relevant authorities in managing the risks and impacts associated with the project.¹⁶⁰
3. The requirements set out in this ESPS have been guided in part by international conventions and instruments, including those of the International Labour Organization (ILO) and the United Nations (UN).¹⁶¹

¹⁵⁹ For the purpose of this ESPS, traditional peoples, as recognized by national law, are treated as Indigenous Peoples.

¹⁶⁰ Borrowers should comply with this ESPS and relevant national law, including standards/principles set out in treaties that are part of national law and applicable by virtue of their ratification.

¹⁶¹ These instruments are: ILO Convention 169, the United Nations Declaration on the Rights of Indigenous Peoples, and the OAS Declaration on the Rights of Indigenous Peoples and the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (the Escazú Agreement).

OBJECTIVES

- To ensure that the development process fosters full respect for the human rights, collective rights, dignity, aspirations, culture, and natural resource-based livelihoods of Indigenous Peoples.
- To anticipate and avoid adverse impacts of projects on communities of Indigenous Peoples, or when avoidance is not possible, to minimize and/or compensate for such impacts.
- To promote sustainable development benefits and opportunities for Indigenous Peoples in a culturally appropriate manner.
- To establish and maintain an ongoing relationship based on Informed Consultation and Participation (ICP) in a culturally appropriate manner with the Indigenous Peoples affected by a project throughout the project's life cycle.
- To ensure the FPIC of the Project-Affected Communities of Indigenous Peoples when the circumstances described in this ESPS are present.
- To respect and preserve the culture, knowledge, traditional knowledge, and practices of Indigenous Peoples.

GL1. The Bank recognizes that key United Nations (UN) Human Rights Conventions form the core of international instruments that provide the rights framework for members of the world's Indigenous Peoples. In the region, the American Convention on Human Rights of the OAS is a core document. Jurisprudence of the Inter-American Court of Human Rights is of equal importance. Furthermore, some countries in Latin America and the Caribbean have passed legislation (at national and/or subnational level) or ratified other international or regional conventions for the protection of Indigenous Peoples, such as the International Labour Organization (ILO) Convention 169 and the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (known as the Escazú Agreement). Various declarations and resolutions address rights of Indigenous Peoples, including the UN Declaration on the Rights of Indigenous Peoples and the American Declaration on the Rights of Indigenous Peoples. These instruments address the responsibilities of states to uphold these rights. It is in recognition of these obligations that projects are expected to foster full respect for the human rights, collective rights, dignity, aspirations, cultures, and customary livelihoods of Indigenous Peoples.

GL2. In cases where there is country-level legal recognition of communities as Indigenous Peoples (considering that many terms can be used for this recognition, as indicated in GL6), or in cases where other communities or groups are provided the same level of rights and protection as Indigenous Peoples, no assessment is required regarding the four characteristics in paragraph 5 for the application of the ESPS 7 to those groups or communities. Legal recognition is not a requirement for the application of ESPS 7, but if there is such recognition it should be respected.

GL3. Many Indigenous Peoples' cultures and identities are inextricably linked to the lands and territories (including bodies of water and coastal areas) on which they live and the natural resources on which they depend. In many cases, their cultures, identities, beliefs, traditional knowledge, and oral histories are connected to, and maintained through the use of, and relationships with, these lands, territories, and natural resources. These lands, territories, and resources may be sacred or have a spiritual significance. Use of sacred sites and other places of cultural significance may have important functions for the conservation and sustainable use of the natural resources upon which Indigenous Peoples rely for their livelihoods and well-being. Thus, project impacts on lands, forests, water, wildlife, and other natural resources may affect their institutions, livelihoods, economic development, and their ability to maintain and develop their identities and cultures. ESPS 7 sets out specific requirements when projects affect these relationships.

GL4. The objectives of ESPS 7 underscore the need to avoid project risks and adverse impacts on Indigenous Peoples living in the project's area of influence (per paragraph 10 of ESPS 1), or where avoidance is not feasible, to minimize and/or compensate for these impacts in a manner commensurate with the scale of project risks and impacts, the vulnerability of Project-Affected Communities of Indigenous Peoples, and through mechanisms that are tailored to their specific characteristics, expressed needs and in accordance with their worldview. It is important to highlight that referring to the avoidance of negative impacts as first step of the mitigation hierarchy does not intend to generate exclusion of these communities from project benefits and development opportunities. ESPS 7 seeks to promote sustainable development benefits and opportunities for Indigenous Peoples in a culturally appropriate manner, not to disincentivize projects from being implemented in Indigenous Peoples' communities. This objective could entail specific measures to ensure access to project benefits, and at the same time identify development opportunities for the Project-Affected Communities of Indigenous Peoples that include project collaboration with or contributions to existing national or local programs and civil society initiative).

GL5. The Borrower and Project-Affected Communities of Indigenous Peoples should establish an ongoing relationship in a culturally appropriate manner throughout the life of the project. To this end, ESPS 7 requires the Borrower to engage early during project design in a process of informed consultation and participation (ICP) in a culturally appropriate manner. In the special circumstances described in paragraphs 16–21 of ESPS 7, the Borrower's engagement process will ensure the Free, Prior and Informed Consent (FPIC) of the Project-Affected Communities of Indigenous Peoples. FPIC has the meaning described in paragraph 15 of ESPS 7. This meaning is further elaborated in paragraphs GL28–GL29. Taking into account the Indigenous Peoples' understanding of the changes brought about by a project helps to identify project risks and both positive and negative impacts. Similarly, the effectiveness of risk and impact avoidance, mitigation and compensation measures are enhanced if the views of Indigenous Peoples on matters that affect them are taken into consideration and form part of project decision-making processes.

SCOPE OF APPLICATION

4. The applicability of this ESPS is established during the environmental and social risks and impacts identification process. The implementation of the actions necessary to meet the requirements of this ESPS is managed through the Borrower's Environmental and Social Management System, the elements of which are outlined in ESPS 1.
5. There is no universally accepted definition of "Indigenous Peoples". Indigenous Peoples may be referred to in different countries by such terms as "original peoples" (pueblos originarios), "autochthonous peoples" (pueblos autóctonos), residents of indigenous counties (comarcas) or reserves (resguardos), or any other formally recognized indigenous peoples in Latin America and the Caribbean. In the ESPF, the term "Indigenous Peoples" is used in a generic sense to refer to distinct social and cultural peoples possessing some of the following characteristics in varying degrees:
 - Self-identification as members of a distinct indigenous cultural group and recognition of this identity by others
 - Collective attachment to geographically distinct habitats or ancestral territories in the project area and to the natural resources in these habitats and territories
 - Customary cultural, economic, social, or political laws and institutions that are separate from those of the mainstream society or culture
 - A distinct language or dialect, often different from the official language or languages of the country or region in which they reside
6. This ESPS applies to Indigenous Peoples who maintain a collective attachment, that is, whose identity is linked to distinct habitats or ancestral territories and the natural resources therein. It may also apply to communities or groups that have lost collective attachment to distinct habitats or ancestral territories in the project area, because of forced severance, conflict, government resettlement programs, dispossession of their lands, disasters triggered by natural hazards, or incorporation of such territories into an urban area.
7. For the purpose of this ESPS, the Borrower may be required to seek inputs from qualified professionals to support their analysis and dialogue with Indigenous Peoples.

GL6. There is no universally accepted definition of "Indigenous Peoples". Within the Latin American and Caribbean region, various terms such as original peoples, autochthonous peoples, residents of indigenous counties or reserves, and other formally recognized terms may be used to refer to Indigenous Peoples. The applicability of ESPS 7 is determined by meeting some or all of the four characteristics found in paragraph 5 of ESPS 7. Each characteristic is evaluated independently, and no characteristic is more important more than the others. In addition, ESPS

7 applies to groups or communities, rather than individuals. A determination that a group or community is indigenous for the purpose of ESPS 7 does not affect the political or legal status of such a group or community within specific countries or states. Instead, such determination leads the Borrower to meet the requirements of ESPS 7 in terms of avoidance of risks and impacts, promotion of benefits and development opportunities, and the process of engagement and management of potentially high-risk circumstances.

GL7. Borrowers will need to determine whether a group or community meets some or all the characteristics mentioned in paragraph 5 of ESPS 7. The Borrower may choose to retain competent experts to assist in this work. In making this determination as early as possible in project design, the Borrower may undertake several activities, including researching the applicable national laws and regulations (including laws reflecting country obligations under international law), archival research, ethnographic research (including documentation of culture, customs, institutions, customary laws, language and dialects, etc.), and participatory appraisal approaches with the Project-Affected Communities of Indigenous Peoples. As part of the IDB due diligence the Bank will determine the applicability of ESPS 7 to a group or community (para. 3.13 (iii) of Policy Statement).

GL8. ESPS 7 applies to groups or communities of Indigenous Peoples who maintain a collective attachment to distinct habitats or ancestral territories and the natural resources therein. This may include:

- Communities of Indigenous Peoples who are resident upon the lands affected by the project as well as those who are nomadic or who seasonally migrate over the territory, and whose attachment to ancestral territories may be periodic or seasonal in nature;
- Communities of Indigenous Peoples who do not live on the lands affected by the project, but who retain ties to those lands through traditional ownership and/or customary usage, including seasonal or cyclical use. This may include Indigenous Peoples resident in urban areas who retain ties to lands affected by a project;
- Communities of Indigenous Peoples who have lost collective attachment to lands and territories in the project area of influence, as a result of forced severance, conflict, involuntary resettlement programs by governments, dispossession from their lands, natural hazards and disasters or incorporation into an urban area but who retain ties to lands affected by a project;
- Groups of Indigenous Peoples who reside in mixed settlements, such that they form one part of a larger community; or
- Communities of Indigenous Peoples with collective attachment to ancestral lands located in urban areas.

GL9. ESPS 7 is applicable to groups and/or communities of Indigenous Peoples who, by virtue of their economic, social, and legal status and/or their institutions, custom, culture and/or language may be characterized as distinct from mainstream society and who may be disadvantaged in the development process as a result of their identity. ESPS 7 is also applicable where Indigenous

Peoples constitute the majority of the population and/or the state or local government. Projects affecting Indigenous Peoples who are resident within the project-affected area and who are part of a larger regional population of Indigenous Peoples, or who are substantially integrated with mainstream society, are still required to meet the requirements of ESPS 7. However, in these cases the mitigation measures (as described in subsequent sections) should be tailored to the specific circumstances of the Project-Affected Communities of Indigenous Peoples.

GL10. Indigenous Peoples are socially organized through kinship relations, common ancestry or history, shared rituals, reciprocity, and redistribution nets that form their social fabric, governance, and decision-making structure, among other aspects. This may not correspond necessarily with the concept of group or community of mainstream, non-indigenous society. These are some of the criteria that need to be considered to identify Project-Affected Communities of Indigenous Peoples as part of the assessment indicated in GL12.

GL11. ESPS 7 addresses situations of vulnerability specific to Indigenous Peoples. Other groups in vulnerable situations affected economically, socially, environmentally, or in any other manner, by project impacts are addressed through the environmental and social risks and impacts identification process and by the management and mitigation of environmental and social impacts in accordance with the requirements of ESPS 1 and its Guideline.

REQUIREMENTS

General

Indigenous Rights

8. The Borrower will respect and take into account the rights of Indigenous Peoples and individuals as contained in applicable legal obligations and commitments, which include pertinent national legislation, applicable international law, or in indigenous legal systems. Indigenous legal systems are those that are recognized under national laws. In the absence of such laws, indigenous systems will be recognized if they are not inconsistent with applicable national legislation and international laws.

Avoidance of Adverse Impacts

9. The Borrower will identify, through an environmental and social risks and impacts assessment process developed in a culturally appropriate manner, all communities of Indigenous Peoples¹⁶² within the project area of influence who may be affected by the project, as well as the nature and degree of the expected direct, indirect, and cumulative economic, social, cultural (including cultural heritage¹⁶³), and environmental impacts on them.
10. Adverse impacts on Project-Affected Communities of Indigenous Peoples should be avoided wherever possible. Where alternatives have been explored and adverse impacts are unavoidable, the Borrower will minimize, restore, and/or compensate for these impacts in a culturally appropriate manner commensurate with the nature and scale of such impacts and the vulnerability of the Project-Affected Communities of Indigenous Peoples. The Borrower's proposed actions will be developed with the ICP of the Project-Affected Communities of Indigenous Peoples and contained in a time-bound plan, such as an Indigenous Peoples Plan.¹⁶⁴

GL12. The proper application of the requirements of ESPS 7 may require professional advice to ensure acknowledgment of and respect for Indigenous Peoples rights, in accordance with applicable legal obligations and commitments. The rights to land and territory and the access to natural resources therein under their customary law, the right to self-determination and self-governance, and the right to maintain their language and distinctive culture are critical for Indigenous Peoples physical and cultural survival and well-being. Other key rights of Indigenous Peoples relate to participation, prior consultation, communal property, and cultural uses of land.

GL13. The screening phase of the environmental and social risks and impacts identification process should identify the existence of communities of Indigenous Peoples in the project's area of influence (as defined in paragraphs 7 and 8 of ESPS 1) that may be potentially affected by the project. The screening should also consider Indigenous Peoples who migrate (seasonally or otherwise) outside of their traditional territories into the project area of influence and the activities they carry out in that area. A Sociocultural Analysis (SCA) should be carried out to identify risks and potential adverse impacts on Indigenous Peoples. Among other elements, the

¹⁶² They may include indigenous communities who seasonally migrate outside of their territories for economic and social purposes, including hunting and gathering and participating in spiritual ceremonies.

¹⁶³ Additional requirements on protection of cultural heritage are set out in Environmental and Social Performance Standard 8 while additional requirements for stakeholder consultations and information disclosure are set out in Environmental and Social Performance Standard 10.

¹⁶⁴ The determination of the appropriate plan may require the input of competent professionals. A community development plan may be appropriate in circumstances where Indigenous Peoples are part of a larger group of project-affected people.

SCA should include baseline data on affected Indigenous Peoples, covering key environmental (including climate change scenarios, when appropriate), socioeconomic, and cultural aspects that may be impacted by the project. The analysis should also identify positive impacts and potential benefits of the project to Indigenous Peoples and consider ways to enhance them.

GL14. The risks and impacts identification process should be done with the ICP of the Project-Affected Communities of Indigenous Peoples and be proportional to the nature and scale of the project's risks and potential impacts on Indigenous Peoples and the level of their vulnerability. The analysis of vulnerability of Indigenous Peoples will include consideration of: (i) their economic, social, and legal status; (ii) their institutions (governance and customary law), customs, culture, and language; (iii) their dependence on natural resources and cultural uses of the land; (iv) their past and ongoing relationship to dominant groups and the mainstream economy; and (v) their geographical location and relative population size. When used in the context described above, vulnerability refers to group- and/or community-level vulnerability defined by the nature of the relationship between the Project-Affected Communities of Indigenous Peoples and mainstream society rather than household or individual level indicators of vulnerability. Nonetheless, the vulnerability of a specific subset of population (e.g., women, girls, the elderly, youth, persons with disability, people of diverse sexual orientations and gender identities) within the Project-Affected Community of Indigenous Peoples, when appropriate, should be also part of the assessment. The concept of intersectionality, when individuals fall into several social categories that interrelate and affect each other, should also be included, as the situation of vulnerability could emerge from different identities (such as gender, sexual orientation, disability status, age, race). A competent expert should be engaged to carry out a vulnerability analysis in a culturally appropriate manner as part of the project's risks and impacts identification process. Such analysis should use participatory approaches and reflect the views of the Project-Affected Communities of Indigenous Peoples on expected project risks, impacts, and benefits.

GL15. Projects can adversely impact Indigenous Peoples' identity, livelihoods, food security, and social and cultural survival. Good international practice indicates that Borrowers should always attempt to avoid significant impacts such as those mentioned above and instead should explore viable alternative project design in consultation with the Project-Affected Communities of Indigenous Peoples, and with the advice of competent experts, when needed.

GL16. If adverse impacts are unavoidable, the Borrower will minimize and/or compensate for these impacts in a manner commensurate with the nature and scale of the impacts and the vulnerability of the Project-Affected Communities of Indigenous Peoples. Whenever an Indigenous Peoples community is identified within the project area of influence, a SCA should be carried out to determine risks and potential negative and positive impacts on the Project-Affected Community of Indigenous Peoples. If risks and impacts are identified, the Borrower should prepare an Indigenous Peoples Plan (IPP), with the ICP of the Project-Affected Communities of Indigenous Peoples, outlining the actions to minimize and/or compensate for adverse impacts in a culturally appropriate manner. The SCA and IPP can be two parts of the same document. The SCA/IPP should detail actions to minimize and/or compensate for adverse

social and economic impacts in a culturally appropriate manner and identify opportunities and actions to enhance positive impacts of the project on the Indigenous Peoples. Where appropriate, the plan may also include measures to promote conservation and sustainable management of the natural resources on which the Indigenous Peoples depend, in a manner consistent with ESPS 6 or measures by the project to manage land usage by the Project-Affected Communities of Indigenous Peoples. The plan should include a clear statement of roles and responsibilities, funding and resource inputs, a time-bound schedule of activities, a description of the grievance mechanism, and a budget. Depending on local circumstances, a free-standing IPP may be prepared, or it may be a component of a broader Community Development Plan (CDP) where Project-Affected Communities of Indigenous Peoples exist in the same area with other similarly Project-Affected Communities or where the Indigenous Peoples are integrated within a larger affected population. It should also be considered that in some cases, depending on the nature and scale of risks and impacts, a separate IPP or community development plan may not be required and that the project ESMP, with some adjustments in a culturally appropriate manner and with the ICP of the Project-Affected Communities of Indigenous Peoples, may be sufficient to avoid, mitigate and/or compensate the adverse impacts on Project-Affected Communities of Indigenous Peoples. Thus, the SCA/IPP/CDP may be developed as components of the ESIA/ESMP. For additional guidance on the scope and content of a SCA/IPP, see <https://www.iadb.org/en/mpas/guidelines>.

GL17. Development projects bring both risks and opportunities to Indigenous Peoples and their culture. Tangible culture (e.g., physical sites, buildings, artifacts, crops, and plants) may be threatened by construction activities while intangible culture (e.g., ancestral and customary practices, knowledge, beliefs, and values) may be challenged by new economic and social forces. Of particular concern for the potential adverse impacts are practices that promote integration or assimilation, disregarding Indigenous Peoples languages and cultural values. Development can also help protect indigenous tangible and intangible culture by preserving physical cultural heritage, respecting, and protecting traditional practices, and validating local identity. The terms ‘intangible culture’ and ‘living culture’ are both used to refer to the vast range of beliefs, practices, traditions, and knowledge that a group of people possesses. This broad concept encompasses music, dance, language, crafts, belief-systems, agricultural practices, traditional medicine, ritual and religious practices, spiritual wisdom, ceremonies, and other forms of intellectual or practically applied knowledge. For the purpose of this GL, both tangible and intangible aspects of cultural heritage will be considered.

Transborder Indigenous Peoples

- 11.** In regional projects involving two or more countries or in border areas where indigenous peoples are present, the Borrower will adopt measures to address adverse impacts of the project that might affect transborder peoples. Among others, measures will include consultation and good faith negotiation processes, legal security and

territorial control programs, and other culturally appropriate programs related to rights and priorities in health, freedom of movement, dual nationality (within the context of the applicable legal obligations and commitments), and cultural, social, and economic integration between the affected peoples.

Indigenous Peoples in Isolation and Initial Contact

- 12.** Projects will respect the rights of Indigenous Peoples in isolation and initial contact to remain in isolation and to live freely according to their culture. Projects with the potential of directly, indirectly, and/or cumulatively impacting these communities of Indigenous Peoples, their lands and territories, or their way of life, must include appropriate measures to (i) safeguard their collective and individual physical, territorial, and cultural integrity; (ii) recognize, respect and protect their lands and territories, environment, health and culture; and (iii) ensure there is no contact with them as a direct or indirect consequence of the project. The aspects of the project that would result in such undesired contact will not be processed further. To this end, the Borrower will collaborate with responsible governments agencies to regulate the territories of the uncontacted peoples and establish buffer zones, limit access to such territories, and develop the necessary monitoring and emergency response measures, making avoidance of contact a priority, and mitigating any other risks and impacts on Indigenous Peoples in isolation and initial contact.

GL18. If the SCA indicates that Indigenous Peoples live in two or more countries or in their border areas and may be affected by project activities, the Borrower should develop culturally appropriate measures, carry out the ICP, and undertake an FPIC process when applicable. This may include Indigenous Peoples who live in areas in dispute or in the process of consolidation of the territory of nation-states, or in two or more countries due to migration or population growth. An example could be a regional transport project with an area of influence that includes indigenous lands and territories in different countries. In such a situation, benefits should be harmonized to the extent possible among countries that are likely to have different laws, regulatory frameworks, and institutional arrangements. The collaboration of neighboring countries to adopt measures that benefit transborder Indigenous Peoples, without affecting national interests or concerns, should be pursued by the Borrower whenever feasible, including facilitating access to basic services in neighboring countries.

GL19. Contact by outsiders with Indigenous Peoples living in isolation or in initial contact may lead to conflict and pose significant health risks to such communities of Indigenous Peoples as most may not have the immunity to infectious diseases common among non-indigenous populations. When the screening phase of the environmental and social risks and impacts identification process confirms the existence of Indigenous Peoples in isolation or in initial contact in the project area, the components of the project that may result in contact will be

redesigned or cancelled. The stakeholder analysis that is developed as part of the environmental and social risk and impacts identification process is key to avoid such contact. Indigenous Peoples organizations, local government authorities, and civil society organizations with experience in the area should be consulted as they may be able to provide information and tools (e.g., guidelines and protocols) to contribute to that purpose. It is important to include in the Indigenous Peoples Plan appropriate land security and protection measures and protocols to avoid contact and to mitigate potential adverse impacts should contact occur accidentally.

Participation and Consent

13. The Borrower will undertake an engagement process with the Project-Affected Communities of Indigenous Peoples as required in ESPS 1 and ESPS 10. This engagement process includes stakeholder analysis and engagement planning, disclosure of information, consultation, and participation¹⁶⁵ in a culturally appropriate manner. In addition, this process will:

- Involve Indigenous Peoples' representative bodies and organizations (e.g., councils of elders or village councils), as well as members of the Project-Affected Communities of Indigenous Peoples.
- Provide sufficient time for Indigenous Peoples' decision-making processes.¹⁶⁶
- Include indigenous consultation protocols¹⁶⁷ when they exist.

14. Project-Affected Communities of Indigenous Peoples may be particularly vulnerable to the loss of, alienation from or exploitation of their land, territories, and access to natural and cultural resources¹⁶⁸. In recognition of this vulnerability, in addition to the General Requirements of this ESPS, the Borrower will obtain the FPIC of the Project-Affected Communities of Indigenous Peoples in the circumstances described in paragraphs 16–21 of this ESPS. FPIC applies to project design, implementation, and expected outcomes related to impacts affecting the communities of Indigenous Peoples. When any of these circumstances apply, the Borrower will engage external experts to assist in the identification of the project risks and impacts.

¹⁶⁵ Ensuring the participation of Indigenous women and people of diverse sexual orientations and gender identities by providing specific spaces to obtain consent.

¹⁶⁶ Internal decision-making processes are generally but not always collective in nature. There may be internal dissent, and decisions may be challenged by some in the community. The consultation process should be sensitive to such dynamics and allow sufficient time for internal decision-making processes to reach conclusions.

¹⁶⁷ Indigenous consultation protocols are specific instruments and initiatives established by each Indigenous Peoples to ensure the respect for their rights within the framework of consultation processes.

¹⁶⁸ Natural resources and natural areas with cultural value mentioned in this ESPS are equivalent to ecosystem provisioning and cultural services as described in ESPS 6.

- 15.** For the purposes of this ESPS, consent refers to the collective support of affected Indigenous Peoples communities for the project activities that affect them, reached through a culturally appropriate process, respectful of Indigenous Peoples customary decision making, through representatives chosen by themselves or any other form of decision-making process of their own governance structure. FPIC builds on and expands the process of ICP described in ESPS 1 and will be established through good faith negotiation between the Borrower and the Project-Affected Communities of Indigenous Peoples. The Borrower will document (i) the mutually accepted good-faith negotiation process between the Borrower and Project-Affected Communities of Indigenous Peoples and (ii) the outcome of this process, including all agreements reached between the parties as well as dissenting views.

General Principles of Engagement

GL20. The Borrower should engage with the Project-Affected Communities of Indigenous Peoples within the project's area of influence through a process of information disclosure and ICP in a culturally appropriate manner. The general characteristics and requirements of the engagement process should be culturally appropriate and are described in ESPS 1 and ESPS 10 and their respective Guideline, while additional aspects relevant to Indigenous Peoples are further described below.

GL21. The process of ICP entails consultation that occurs freely and voluntarily, without any manipulation, interference, or coercion, and without fear of reprisal. In addition, the Project-Affected Communities of Indigenous Peoples should have access to relevant and understandable project information in their own language in a culturally appropriate manner prior to any decision making that will affect them, adversely or positively, including information on potential risks and adverse environmental and social impacts affecting them at each stage of project implementation (i.e., design, construction, operation, maintenance, and decommissioning). To achieve this objective, the ICP process should include consultations prior to and during project planning as well as during implementation.

GL22. The engagement process will take account of existing socio-cultural, institutional and governance structures, leadership, cultural roles, and decision-making processes as well as social identities, when appropriate, such as gender, gender identity and sexual orientation, and age, and be cognizant of the following considerations:

- The existence of patriarchal and matriarchal traditions and socio-cultural norms and values that may limit women's and men's participation in leadership roles and decision-making processes;
- Indigenous Peoples in the region vary in their acceptance level of people with disabilities and of diverse sexual orientations and gender identities. Regarding the latter, while some communities have traditionally accepted and respected the existence of a third gender, other communities discriminate against them. Therefore, any assessment and ICP process should consider these aspects of the Project-Affected Communities of Indigenous Peoples to identify the situation of vulnerability of people of diverse sexual orientation and gender identities and avoid putting them in danger in an engagement process.
- The need to protect and ensure the legal rights of indigenous women (e.g., rights to compensation measures such as land and housing ownership, access to land and the respect of informal land tenure system such as use rights).
- Groups in marginal or vulnerable situations that have a potentially limited realization of their economic and social rights as a consequence of poverty and limited access to economic resources, social services, or decision-making processes.
- If there is conflict or different views between the customary law or cultural practices (e.g., patrilineal society) and the promotion of women's rights and participation in the engagement process, additional resources to promote internal discussion to reach an agreement would be necessary. Customary law and their own decision-making processes should be respected.

GL23. Borrowers should adopt ICP approaches that build upon existing customary institutions and decision-making processes utilized by the Project-Affected Communities of Indigenous Peoples. Using indigenous consultation protocols fosters that the ICP process is carried out in a culturally appropriate manner, respecting Indigenous Peoples governance, language and their rights. However, Borrowers should assess the capacity of the existing institutions and decision-making processes to deal with the wide array of new issues introduced by the project. In many situations, projects introduce issues that existing institutions and decision-making processes are poorly equipped to address. Inadequate capacity and experience may result in decisions and outcomes that have detrimental consequences for Project-Affected Communities. Specifically, inadequate, and culturally inappropriate processes, decisions, and outcomes, may lead to challenges to existing institutions, decision-making processes, and recognized leadership, and to disputes over agreements between Project-Affected Communities of Indigenous Peoples and the project. Building awareness and capacity to address issues that can reasonably be predicted to occur can strengthen both Project-Affected Communities of Indigenous Peoples and project agreements with them. Such capacity building can be done in a number of ways, including, but not limited to, involving competent local organizations such as civil society organizations (CSOs) or government extension agencies, or Indigenous Peoples governance structures or organizations at the national, regional or local level; contracting with academic

or research organizations undertaking research involving communities; linking up with existing support programs for local communities run by government or other agencies; and providing resources and technical support for local municipal authorities in facilitating community engagement and strengthening.

GL24. Borrowers should keep in mind that the Project-Affected Communities of Indigenous Peoples are not necessarily homogeneous and there can be divergent views and opinions within them. For example, experience demonstrates that: (i) the views of the traditional elders or leaders may differ from those who have received formal education; (ii) the views of the elderly may differ from those of the youth; and (iii) the views of men may differ from women. Nonetheless, in many cases, community elders or leaders, who are not necessarily the elected officials of these communities, play a key role. Furthermore, some segments of the community such as women, youth, people of diverse sexual orientation and gender identities and the elderly, may be more vulnerable to project impacts than others. The consultation should take into account the interests of these segments in the community while being cognizant of traditional cultural approaches that may exclude segments of the community from the decision-making process. The ICP processes should consider ESPS 9 – *Gender Equality* and its Guideline to promote an effective participation of indigenous women, while being respectful of customary law, cultural values, and their own decision-making processes.

GL25. The ICP processes with and within Project-Affected Communities of Indigenous Peoples will frequently span an extended period of time. Providing adequate information in a culturally appropriate manner to the members of the indigenous community about a project's risks and potential adverse impacts and proposed risks and impacts minimization and compensation measures may involve an iterative process with various segments of the project-affected community. Thus (i) consultation should start as early as possible in the risks and impacts identification process; (ii) culturally appropriate stakeholder engagement processes should aim to ensure that the entire population of Project-Affected Communities of Indigenous Peoples is aware of and understands the risks and impacts associated with project development; (iii) disclosure of project documents, per paragraph 3.24 of the Policy Statement; (iv) project information should be made available in an understandable format, using indigenous languages where appropriate; (v) the communities should have sufficient time for consensus building and developing responses to project issues that impact upon their lives and livelihoods; and (vi) Borrowers should allocate sufficient time and resources for the ICP process and to fully consider and address Indigenous Peoples' concerns and suggestions about the project during project design and implementation.

GL26. Assessment of the capacity of the Project-Affected Communities of Indigenous Peoples to engage in a process of a culturally appropriate ICP should inform the engagement process. The Borrower may consider effective communication and capacity building to enhance the effectiveness of the ICP process with Indigenous Peoples and their informed participation in key aspects of the project. For example, the Borrower:

- Should seek the active participation of Project-Affected Communities of Indigenous Peoples throughout the key stages of the risks and impacts identification process (including the SCA/IPP) on matters that pertain to them. The results of this active participation should also inform the design process and be ongoing throughout the project lifecycle.
- May provide members of the Project-Affected Communities of Indigenous Peoples with an opportunity to assess the potential risks and impacts associated with project development by facilitating cross-visits to comparable projects.
- The consultation process should be accessible to all Project-Affected Communities of Indigenous Peoples that wish to participate, and the Borrower should undertake all necessary actions to ensure participation (per ESPS 10), including the provision of transportation to consultation events, when necessary.
- May enable Indigenous Peoples' access to legal advice about their rights and entitlements to compensation, due process, and benefits under national and subnational laws and the requirements of ESPS 7.
- Should ensure that all groups' views within the Project-Affected Community of Indigenous Peoples are adequately represented in decision making. Particular attention should be given to the active participation of different genders, sexual orientations, and intergenerational groups to ensure that their concerns and priorities are given proper consideration.
- Should facilitate a culturally appropriate decision-making process for communities where no established decision-making process or leadership exists.
- May promote capacity building and involvement in areas such as participatory planning, monitoring and evaluation, and community development.



GL27. Project-Affected Communities of Indigenous Peoples should be enabled to raise and receive Borrower responses to grievances and complaints. The Borrower may utilize the general grievance mechanism for the project in accordance with the requirements of ESPS 1 and ESPS 10 or a grievance mechanism specifically dedicated to the Project-Affected Communities of Indigenous Peoples that meets the requirements of those ESPSs. The grievance mechanism should be designed in consultation with the Project-Affected Communities of Indigenous Peoples. The grievance mechanism should be culturally appropriate and should not interfere with any existing processes or institutions within the Project-Affected Communities of Indigenous Peoples to settle differences among them. Whenever possible, it should be based on these existing processes and institutions. The grievance mechanism should provide for fair, transparent, and timely redress of grievances at no cost, and if necessary, provide special provisions for women, people with disabilities, people of diverse sexual orientations and gender identities, the youth, the elderly, and for racial and ethnic minorities. As part of the engagement process, all members of Project-Affected Communities of Indigenous Peoples should be informed of the existence of a grievance mechanism.

GL28. For successful outcomes to be achieved for the mutual benefit of all parties, it is important that the parties have a shared view of the process for achieving ICP and, where applicable, FPIC. These processes should ensure the meaningful participation of Indigenous Peoples in decision-making, leading to agreement. The Borrower and Project-Affected Communities of Indigenous Peoples should agree on appropriate engagement and consultation processes as early as possible, appropriate to the nature and scale of the project and commensurate with the level of impacts, risks, and vulnerability of the communities. This should ideally be done through a framework document or plan that identifies representatives of Project-Affected Communities of Indigenous Peoples, the agreed consultation process and protocols, including consideration of existing indigenous consultation protocols, the reciprocal responsibilities of parties to the engagement process and agreed avenues of recourse in the event of impasses occurring. Where appropriate, it should also define what would constitute consent from Project-Affected Communities of Indigenous Peoples. The Borrower should document support for the agreed good faith negotiation (GFN) process from the affected population.

GL29. Borrowers have a responsibility to work with Project-Affected Communities of Indigenous Peoples to ensure a meaningful engagement process, including achieving FPIC where applicable. Project-Affected Communities of Indigenous Peoples are similarly requested to engage with the Borrower to establish an acceptable engagement process and to participate in this process. It is recognized that differences of opinion may arise, which in some cases may lead to setbacks or delays in reaching agreement. At the outset, the parties should agree, if possible, on reasonable tests or avenues of recourse to be applied in such situations. This might include seeking mediation or advice from mutually acceptable third parties.

Definition of Free, Prior and Informed Consent

GL30. FPIC comprises a process and an outcome. The process builds upon the requirements for ICP in a culturally appropriate manner and additionally requires GFN between the Borrower and Project-Affected Communities of Indigenous Peoples. GFN involves on the part of all parties: (i) willingness to engage in a process and availability to meet at reasonable and appropriate times and frequency; (ii) provision of understandable information necessary for informed negotiation, with sufficient time in advance to develop an informed opinion; (iii) exploration of key issues of importance; (iv) use of mutually acceptable procedures for negotiation; (v) willingness to change initial position and modify offers where possible; and (vi) provision of sufficient time for decision making, including internal deliberation according to their customary law and rules; and (vii) use of an indigenous consultation protocol, if one exists. The outcome of this process, including all agreements and dissenting views of the parties, should be based on the customary law of the Project-Affected Communities of Indigenous Peoples and documented in an agreement in a format that is agreeable to all parties.

GL31. The Borrower may have obligations or commitments under applicable national law, including those laws implementing country obligations under international law, to ensure that Indigenous Peoples provide their free, prior, and informed consent for matters pertaining to the overall development of indigenous territories. The Borrower should review government processes in relation to the requirements of ESPS 7 and address identified gaps.

Requirements for Free, Prior and Informed Consent

GL32. The Borrower is required to facilitate a process of FPIC with the Project-Affected Communities of Indigenous Peoples with regard to project design, implementation and expected outcomes if these are associated with any of the potentially adverse impacts identified below:

- Impacts on lands, territories (including bodies of water and coastal areas), and natural resources subject to traditional ownership or under customary use;
- Relocation of Indigenous Peoples from lands, territories, and natural resources subject to traditional ownership or under customary use;
- Significant impacts on cultural heritage that is essential to the identity and/or cultural, ceremonial, or spiritual aspects of Indigenous Peoples lives, including natural areas with cultural and/or spiritual value such as sacred groves, bodies of water and waterways, trees, and rocks. Natural areas with cultural value are equivalent to priority ecosystem services as defined in Performance Standard 6 in that they may be central to the identity and/or cultural, ceremonial, or spiritual aspects of Indigenous Peoples' lives; or
- Use of cultural heritage (tangible and intangible), including knowledge, innovations, or practices of Indigenous Peoples for commercial purposes.

Application of Free, Prior and Informed Consent

GL33. FPIC applies to those aspects of project design, activities, and outcomes associated with the specific potential adverse impacts and risks, which directly affect communities of Indigenous Peoples. In some cases, the scope of FPIC will be limited and targeted to specific portions of land or aspects of a project. This determination of the scope should be part of the SCA and the meaningful engagement process, that should be agreed as indicated in GL26. Examples of such targeted FPIC include: (i) linear projects that pass through multiple human habitats may only require FPIC for the component that traverses Indigenous Peoples' lands and territories; (ii) projects with multiple facilities and/or comprising multiple sub-projects, some of which are located on Indigenous Peoples' lands and territories, may only require FPIC for the facilities and/or sub-projects located on Indigenous Peoples' lands and territories; (iii) for projects involving an expansion of existing facilities, FPIC should focus on the new project activities.

GL34. In certain cases, it may not be possible to define all aspects of the project and its locations, identify Project-Affected Communities (including Indigenous Peoples) and review project environmental and social risks and impacts identification process and related mitigation plans before decisions are taken about project design aspects. In the absence of these elements, achieving FPIC prior to Bank approval of a project may not be feasible and/or considered meaningful because the determination should be closely related to the defined risks and impacts of a known project on directly Project-Affected Communities. The appropriate sequencing in achieving FPIC is generally to first agree on key principles through an overall stakeholder engagement framework associated with the risks and impacts identification process and with the design and location selection process, and then to consult on specific aspects once designs are further advanced and locations are determined. In such circumstances the Borrower should (i) develop forward-looking stakeholder engagement strategies in a culturally appropriate manner that should be well-documented in every step and that ensure relevant stakeholders are aware of potential development pathways; (ii) ensure that stakeholders have adequate awareness, understanding and timely access to information concerning their resource rights (e.g., lands, forests, tenure systems, government established compensation frameworks, etc.) in their preferred language; and (iii) commit to implementing a process of FPIC for any subsequent project development with the potential to adversely impact Indigenous Peoples, once such risks and potential impacts become known. Documents generated in the process of achieving FPIC are subject to IADB disclosure requirements.

GL35. Circumstances may arise where a project is required to achieve both ICP for communities impacted by the project and FPIC for Indigenous Peoples impacted by the project, such as linear projects that traverse both non-Indigenous and Indigenous Peoples' lands; and projects implemented in areas where both non-Indigenous and Indigenous Peoples reside in proximate but separate communities or in mixed communities. Since the achievement of ICP and FPIC as separate processes with different groups within a community or between proximate communities may be difficult and in some cases be a cause of confusion or division within the community, a single engagement process resulting in one agreement can be carried out. In such cases the process and agreement should reference the higher standard (i.e., GFN and agreement

demonstrating FPIC). Whether the agreement entails different benefits for the differently affected groups will depend on the project context, the Project-Affected Communities and the nature and scale of project impacts. However, having two separate processes may be also recommended under some circumstances. The determination of the best course of action should be based on the results of the SCA and of the environmental and social risks and impacts identification process regarding the non-indigenous communities.

GL36. FPIC should be viewed as a process that both allows and facilitates Project-Affected Communities of Indigenous Peoples to build and agree upon a collective position with regard to the proposed development. Nonetheless, individuals and groups within the Project-Affected Communities of Indigenous Peoples may have differing views on various issues pertaining to the proposed project. Collective “community consent” should derive from the group of Project-Affected Communities of Indigenous Peoples as a whole, representing their view vis-à-vis the proposed project. Thus, an FPIC agreement captures Project-Affected Communities’ broad agreement on the legitimacy of the culturally appropriate engagement process based on customary law and the decisions made. To establish legitimacy, it is key that consent is reached by representatives chosen by Indigenous Peoples, according to their own governance and decision-making process, and that this decision is well-documented. Representatives may form part of their existing governance structures or may be selected through a culturally appropriate process for the sole purpose of engaging with project officials. It is also important to note that a community’s refusal to participate in ICP and/or GFN does not mean that consent has been granted.

GL37. FPIC entails consent for specific project activities, impacts, and mitigation measures as anticipated at the time when consent is given. While the agreement should be valid for the duration of the project, it is possible that the given consent could also be withdrawn. It is good practice to continuously monitor IPPs or similar action plans and be flexible in adapting them as needed if circumstances change, while maintaining the overall principles, commitments, and mutual accountabilities outlined in the agreement, and if necessary Indigenous Peoples’ consent should be sought and obtained for the changed circumstances.

Process of Achieving Free, Prior and Informed Consent

GL38. Achieving FPIC requires that the Borrower address both process (i.e., GFN) and outcome (i.e., evidence of agreement). The Borrower should document (i) the agreed engagement and GFN process between the Borrower and Project-Affected Communities of Indigenous Peoples; and (ii) evidence of the outcome of this process, including all agreements. Impacts and risks on groups in vulnerable situations within the Project-Affected Communities of Indigenous Peoples should be adequately addressed during negotiation and in relevant documentation.

GL39. Designing a process to achieve the FPIC of Project-Affected Communities of Indigenous Peoples should, among other things, take account of the following:

- i. While the project environmental and social risks and impacts identification process typically defines the project area of influence, based on the risks and direct, indirect, and cumulative impacts, and identifies the population of Project-Affected Communities of Indigenous Peoples, in certain circumstances the decision-making bodies and the formal and informal leaders of the Project-Affected Communities of Indigenous Peoples may be located outside this area;
- ii. As with many communities, communities of Indigenous Peoples may be affected by issues related to governance, leadership, and representativeness. An appropriate assessment of these issues early in project design will inform the engagement and GFN process. Where administrative and traditional systems recognize different leaders, and/or where leadership is known to be highly politicized and/or only marginally representative of the affected population and/or where there are multiple groups representing different interests, FPIC should rely on identification, recognition and engagement of greater numbers or representativeness of stakeholder sub-groups;
- iii. The occurrence of conflict and other grievances —whether past or present—within the Project-Affected Communities of Indigenous Peoples or between the Project-Affected Communities of Indigenous Peoples and other stakeholders (e.g., non-Indigenous Peoples, companies, and/or the state) should be assessed in terms of the nature of the conflict, the different interest groups and the Project-Affected Communities' approaches to conflict management and resolution mechanisms;
- iv. The role, responsibilities, and participation of external stakeholders with vested interests in the outcome; and
- v. The possibility of unacceptable practices (e.g., bribery, corruption, harassment, violence, and coercion) by any of the interested stakeholders both within and outside the Project-Affected Communities of Indigenous Peoples.

GL40. The process of achieving the FPIC of Project-Affected Communities of Indigenous Peoples may require investment in building relevant institutions, decision-making processes, and the capacity of Project-Affected Communities of Indigenous Peoples. The investment in these results early in the project design could help establish a long-term partnership with the Project-Affected Communities of Indigenous Peoples. Borrowers should approach the achievement of FPIC from a development perspective that prioritizes the sustainability of development activities implemented with the Project-Affected Communities of Indigenous Peoples and, thus, dedicate sufficient resources (human and financial) and time to do so.

GL41. FPIC will be established through a process of GFN between the Borrower and Project-Affected Communities of Indigenous Peoples. Where the GFN process is successful, an agreement (in a format and content previously agreed) should document the specific commitments and the roles and responsibilities of both parties in meeting them. This may include: (i) agreed engagement and consultation process or use of an existing indigenous consultation protocol (including a grievance

mechanism); (ii) positive or negative environmental, social and cultural impacts (direct, indirect and cumulative) and risk and impact management (including land and resource management); (iii) compensation and disbursement framework or arrangements; (iv) employment and contracting opportunities; (v) governance and institutional arrangements; (vi) other commitments such as those pertaining to continued access to lands, contribution to development, etc.; and (vii) agreed implementation/delivery mechanisms to meet each party's commitments. The agreement between parties should include requirements to develop time-bound implementation plans such as an IPP or CDP. Examples of agreements include a memorandum of understanding, a letter of intent, and a joint statement of principles (also see GL42).

GL42. Agreements should have demonstrable support from the constituency defined through the E&S risks and impacts identification process (specifically the Stakeholder Engagement Plan) and with whom the process of engagement and GFN has occurred. However, to the extent that internal dissent exists despite the process of engagement and GFN, this dissent as well as why it is not an impediment for obtaining FPIC, should be properly documented. Documentation of the agreement should include evidence of support from the Project-Affected Communities of Indigenous Peoples. Where either the appropriate engagement process or agreement cannot be achieved, consideration should be given to third-party advice and mediation as described in GL29.

GL43. As noted in GL37, FPIC is usually provided at a single point in time; however, projects may elect to develop an agreement that involves commitments being delivered through periodic development plans covering defined project planning periods. The evolution of such agreements is project- and context-specific. Nonetheless it may be anticipated that such agreements will typically evolve from a focus on project risk and impact mitigation and development measures towards Indigenous Peoples'-managed development models supported by defined project contributions and/or benefit-sharing mechanisms.

GL44. Different types of documents, plans and agreements will typically be produced during the various phases of a project cycle. The environmental and social risks and impacts identification process as described in ESPS 1 should be seen as an ongoing, iterative process combining analytical and diagnostic work; stakeholder analysis and engagement; and the development and implementation of specific management and action plans with appropriate monitoring mechanisms. The overall guiding principle should be that while these documents may be prepared at any time during the project cycle, implementation action plans such as IPPs should be in place and mitigation measures taken prior to any direct, indirect and cumulative adverse impacts on Project-Affected Communities of Indigenous Peoples occurring. Key documents normally produced are:

- A framework document containing, among other things, the principles and requirements of engagement and GFN process, project design and implementation process as it relates to the Project-Affected Communities of Indigenous Peoples, and principles for obtaining FPIC where required (see below).
- A SCA

- An IPP, CDP or equivalent plan.
- An FPIC agreement reflecting the mutual consent to the process and proposed actions, by the Borrower and the Project-Affected Communities of Indigenous Peoples. This agreement may refer to and endorse a proposed IPP or similar action plan, but it may also establish that an IPP or similar action plan be developed or finalized subsequent to FPIC having been obtained.

CIRCUMSTANCES REQUIRING FREE, PRIOR AND INFORMED CONSENT

Impacts on Lands and Natural Resources Subject to Traditional Ownership or Under Customary Use.

16. Indigenous Peoples are often closely tied to their lands and related natural resources.¹⁶⁹ Frequently, these lands are traditionally owned or under customary use.¹⁷⁰ While Indigenous Peoples may not possess legal title to these lands as defined by national law, their use of these lands, including seasonal or cyclical use, for their livelihoods, or cultural, ceremonial, and spiritual purposes that define their identity and community, can often be substantiated and documented.
17. Where projects involve activities that contribute to or are contingent on establishing legally recognized rights to lands and territories that Indigenous Peoples have traditionally owned or customarily used or occupied, the Borrower will prepare a plan for the legal recognition of such ownership, occupation, or usage, with due respect to the customs, traditions, and land tenure systems of Indigenous Peoples. The objective of such plans will be the full legal recognition of existing customary land tenure systems of Indigenous Peoples. The Borrower will not pursue projects that entail individual titling in indigenous territories.

¹⁶⁹ Examples include marine and aquatic resources, timber, and non-timber forest products, medicinal plants, hunting and gathering grounds, and grazing and cropping areas. Natural resource assets, as referred to in this ESPS, are equivalent to provisioning ecosystem services as described in ESPS 6.

¹⁷⁰ The acquisition and/or leasing of lands with legal title is addressed in ESPS 5 - Land Acquisition and Involuntary Resettlement.

18. If the Borrower proposes to locate a project on, or develop natural resources on, lands traditionally owned by, or under the customary use of, Indigenous Peoples, and adverse impacts¹⁷¹ can be expected, the Borrower will take the following steps:

- Document efforts to avoid and otherwise minimize the area of land proposed for the project.
- Document efforts to avoid and otherwise minimize impacts on natural resources and natural areas of importance¹⁷² to Indigenous Peoples.
- Identify and review all property interests and traditional resource uses prior to purchasing or leasing land.
- Assess and document the Project-Affected Communities of Indigenous Peoples' resource use without prejudicing any Indigenous Peoples' land claim.¹⁷³ The assessment of land and natural resource use should be gender inclusive and specifically consider women's role in the management and use of these resources.
- Ensure that Project-Affected Communities of Indigenous Peoples are informed of their land rights under national law, including any national law recognizing customary use rights.
- Offer Project-Affected Communities of Indigenous Peoples compensation and due process in the case of development of their land, territories, and natural resources, together with culturally appropriate sustainable development opportunities, including:
 - Providing land-based compensation or compensation-in-kind in lieu of cash compensation where feasible.¹⁷⁴
- Ensuring continued access to natural resources, identifying the equivalent replacement resources, or, as a last option, providing compensation and identifying alternative livelihoods if project development results in the loss of access to and the loss of natural resources independent of project land acquisition.
- Ensuring fair and equitable sharing of benefits associated with project usage of the resources where the Borrower intends to utilize natural resources that are central to the identity, culture, and livelihood of Project-Affected Communities of Indigenous Peoples and their use exacerbates livelihood risk.

¹⁷¹ Such adverse impacts may include impacts from loss of access to assets or resources or restrictions on land use resulting from project activities.

¹⁷² "Natural resources and natural areas of importance" as referred to in this ESPS are equivalent to priority ecosystem services as defined in ESPS 6. They refer to those services over which the Borrower has direct management control or significant influence, and those services most likely to be sources of risk in terms of impacts on Project-Affected Communities of Indigenous Peoples.

¹⁷³ This ESPS requires substantiation and documentation of the use of such land. Borrowers should also be aware that the land may already be under alternative use, as designated by the government.

¹⁷⁴ Land compensation should be equivalent in quality, size, and legal status. If circumstances prevent the Borrower from offering suitable replacement land, the Borrower must provide verification that such is the case. Under such circumstances, the Borrower will provide non land-based income-earning opportunities over and above cash compensation to the Project-Affected Communities of Indigenous Peoples.

- Providing Project-Affected Communities of Indigenous Peoples with access, usage, and transit on land it is developing subject to overriding health, safety, and security considerations.

GL45. If issues related to land and territory use are identified in the screening phase, the Borrower may engage competent experts to carry out the outlined assessment indicated in that paragraph with active participation of the Project-Affected Communities of Indigenous Peoples. The assessment should describe the Indigenous Peoples' traditional land, territory, and resource tenure system (both individual and collective or a combination of both) within the project's area of influence. The assessment should also identify and record all customary use of land and resources, including cultural, ceremonial, or spiritual use, and any ad hoc, seasonal or cyclical use of land and natural resources (for example, for hunting, fishing, grazing, or extraction of forest and woodland products), and any potential adverse impacts on such use. The assessment of land and natural resource use should consider climate change scenarios and be gender inclusive to specifically consider women's role in the management and use of these resources. Customary use of land and resources refers to patterns of long-standing community land and resource use in accordance with Indigenous Peoples' customary laws, values, customs, and traditions, including seasonal or cyclical use, rather than formal legal title to land and resources issued by the state. Cultural, ceremonial, and spiritual uses are an integral part of Indigenous Peoples' relationships to their lands and resources, are embedded within their unique knowledge and belief systems, and are key to their cultural integrity. Such uses may be intermittent, may take place in areas distant from settlements, and may not be site-specific. Any potential adverse impacts on such use must be documented and addressed within the context of these systems. Any information from the Borrower's assessment that identifies the existence of critical habitats and cultural resources consistent with ESPS 6 and 8 within the project area of influence will be relevant in the analysis and should be taken into account. Indigenous Peoples' claims to land and resources not legally owned or recognized under national law should also be documented as part of the assessment process. The Borrower should ensure that lack of documentation of land claims, or absence of land claims should not prejudice existing or future legal proceedings of Indigenous Peoples to establish legal title.

GL46. Projects that enhance the land tenure security of Indigenous Peoples can have significant positive impacts on their well-being. Land titling within a culturally appropriate process and an appropriate legal framework helps to protect Indigenous Peoples' land and resources from external encroachment and expropriation, constitutes a means for economic growth or self-subsistence, and legitimizes traditional and cultural ways of handling such territories under customary institutions and rules. Indigenous Peoples' organizations generally advocate collective titling of land because experience has shown that it leads to a higher likelihood of cultural survival and avoids the risk of having individual titled lands ending in the hands of non-indigenous people by voluntary or forced means. The conversion of customary usage rights to individual ownership rights may also disturb the collective nature of Indigenous Peoples' communal ownership. It should also be considered that the process of legal recognition of

Indigenous Peoples' ownership, occupation, or usage of land and natural resources is complex and may carry a number of risks. It may, for instance, lead to conflicts over land and resources among various local communities, or between local communities and outside interests. It may replace customary institutional arrangements with new rules or systems not attuned to the context of Indigenous Peoples' land and natural resource use practice.

GL47. The Borrower will not pursue projects that entail individual titling in indigenous territories. Nonetheless, it must be recognized that individual land titling may be permitted within some Indigenous Peoples territories and this should be included, along with their customary use, laws, and governance decision-making processes, as part of the E&S assessment of the project (particularly the SCA).

GL48. In line with the requirements outlined in paragraphs 25 and 26 of ESPS 7, the Borrower should work with the relevant national, regional and/or local governmental agency to facilitate the legal recognition of lands claimed or used by Project-Affected Communities of Indigenous Peoples in connection with land titling programs of the government. The Borrower can base this work on the customary land tenure information gathered during the assessment process and help the Project-Affected Communities of Indigenous Peoples to pursue land titles if the Indigenous Peoples so request and participate in such programs.

GL49. The priority objective of the assessment process is to identify measures to avoid adverse impacts on these lands and resources, and Indigenous Peoples usage of them. Where avoidance is not feasible, mitigation, and/or compensation measures should be developed to ensure the availability of, and access to, the land and natural resources necessary for the livelihoods and cultural survival of the Project-Affected Communities of Indigenous Peoples. Land-based compensation should be preferred, provided that suitable land is available, and that the overall compensation is equivalent in the quality, size, and legal status of the replacement land. In some cases, land under Indigenous Peoples' claim may already be designated by a government agency for alternate uses, which may include nature reserves, mining concession areas, or as individual parcels by users who have obtained title to the land. The Borrower should seek to involve such government agencies in any consultation and negotiation with the Project-Affected Communities of Indigenous Peoples.

Relocation of Indigenous Peoples from Lands and Natural Resources Subject to Traditional Ownership or Under Customary Use

- 19.** The Borrower will consider feasible alternative project designs to avoid the relocation of Indigenous Peoples from communally held¹⁷⁵ lands and natural resources subject to traditional ownership or under customary use. If such relocation is unavoidable, the Borrower will not proceed with the project unless (i) the resettlement component will result in direct benefits to the affected community relative to their prior situation; (ii) customary rights will be fully recognized and fairly compensated; (iii) compensation options will include land-based resettlement; and (iv) FPIC has been obtained as described above. Any relocation of Indigenous Peoples will meet the requirements of ESPS 5. Where feasible, the relocated Indigenous Peoples should be able to return to their traditional or customary lands, should the cause of their relocation cease to exist.

GL50. Because physical relocation of Indigenous Peoples is particularly complex and may have significant and irreversible adverse impacts on their cultural survival, the Borrower is expected to make every effort to explore feasible alternative project designs to avoid any physical relocation of Project-Affected Communities of Indigenous Peoples from their communally held traditional lands or customary lands under use. The potential relocation may result from the project's acquisition of land, or through restrictions or alterations on land use or resources such as when communally held traditional lands or customary lands under use by Indigenous Peoples are designated by the relevant government agency for another use in conjunction with the proposed project, such as establishment of protected areas for resource conservation purposes. Any physical relocation should only be considered after the Borrower has established that there is no feasible alternative to relocation and the Borrower has secured the FPIC of the Project-Affected Communities of Indigenous Peoples. In addition, the Borrower will not proceed with the project unless the resettlement component will result in direct benefits to Project-Affected Communities of Indigenous Peoples compared to previous situation; customary rights will be fully recognized and compensated; and compensation options will include land-based resettlement.

GL51. In case the Borrower has carried out the resettlement of Indigenous Peoples, the Borrower should demonstrate that it meets all relevant ESPS 7 requirements, including the FPIC process. Borrowers should address gaps in process and outcomes where these are identified, per the information in GL 68-70.

¹⁷⁵ Typically, Indigenous Peoples claim rights and access to and use of land and resources through traditional or customary systems, many of which entail communal property rights. These traditional claims to land and resources may not be recognized under national laws. Where members of the Project-Affected Communities of Indigenous Peoples individually hold legal title, or where the relevant national law recognizes customary rights for individuals, the requirements of ESPS 5 will apply, rather than the requirements under paragraph 17 of this ESPS.

GL52. Upon conclusion of the FPIC process providing for the relocation of Project-Affected Communities of Indigenous Peoples, the Borrower will prepare a Resettlement Action Plan/ Livelihood Restoration Plan consistent with the conclusion of the negotiation and in accordance with paragraphs 19–24 and 25–29 of ESPS 5. The Borrower should be guided by paragraph 9 of ESPS 5 with regards to the level of compensation for land. Such a plan should include a provision to allow the Project-Affected Communities of Indigenous Peoples, where possible and feasible, to return to their lands when the reasons for their relocation cease to exist.

GL53. Requirements under paragraph 19 of ESPS 7 are intended for situations where traditionally owned lands or customary usage of resources are held and used by Indigenous Peoples communally. In these cases, para. 19 establishes requirements (i)–(iv) in addition to those of ESPS 5. When ownership or usage rights are individually recognized (for example, when individual members of the Project-Affected Communities of Indigenous Peoples hold legal title, or when individuals hold customary rights recognized by relevant national law) the requirements of ESPS 5 will also apply, and these communally based requirements will apply to the extent that the community considers the lands to be community/ancestral lands. That is, the Borrower should be aware that the decision of relevant individuals to cede title and to relocate may still be subject to a community-based decision-making process, as these lands may not be considered private property but ancestral lands.

Cultural Heritage

- 20.** Where a project may significantly impact cultural heritage¹⁷⁶ that is essential to the identity and/or cultural, ceremonial, or spiritual aspects of Indigenous Peoples lives, priority will be given to the avoidance of such impacts. Where significant project impacts on cultural heritage are unavoidable, the Borrower will obtain the FPIC of the Project-Affected Communities of Indigenous Peoples.
- 21.** Where a project proposes to use the cultural heritage including knowledge, innovations, or practices of Indigenous Peoples for commercial purposes, the Borrower will inform the Project-Affected Communities of Indigenous Peoples of (i) their rights under national law, (ii) the scope and nature of the proposed project, and (iii) the potential consequences of such development, and will obtain their FPIC. The Borrower will also ensure fair and equitable sharing of benefits from the commercialization of such knowledge, innovation, or practice, consistent with the customs and traditions of the Indigenous Peoples.

¹⁷⁶ Includes natural areas with cultural and/or spiritual value such as sacred groves, sacred bodies of water and waterways, sacred trees, and sacred rocks. Natural areas with cultural value are equivalent to priority ecosystem cultural services as defined in ESPS 6.

GL54. Knowledge, innovations, and practices of Indigenous Peoples are often referred to as traditional knowledge and include traditional cultural expressions. Such knowledge is referred to as intangible cultural heritage. Indigenous languages are key expressions of culture and play an important role in the preservation and transmission of culture. Further, knowledge, beliefs and practices of Indigenous Peoples often remain in use for sacred or ritual purposes and can be held secret by the community or designated members.

GL55. Commercial development of intangible cultural heritage is the subject of current international discussions, with international standards emerging slowly. Examples of commercial development include commercialization of traditional medicinal knowledge or other traditional or sacred techniques for processing plants, fibers, or metals, and the sale of traditional cultural expressions, such as art and music. In addition to obtaining FPIC and following the requirements of this ESPS and ESPS 8, Borrowers are to comply with applicable national laws and international conventions and agreements, if any, regarding their use of knowledge, innovation, or practices of Indigenous Peoples for commercial purposes. In addition to any other agreements reached, the Borrower will enable the relevant communities to continue to use the genetic materials for customary or ceremonial purposes, and food security.

GL56. Where a project proposes to exploit and develop intangible cultural heritage including knowledge, innovations, or practices of Indigenous Peoples, the Borrower should (i) investigate whether the indigenous cultural heritage is held individually or collectively prior to entering into any agreements with local indigenous holder(s) of the cultural heritage; (ii) obtain the informed consent of the indigenous cultural heritage holder(s) for its use; (iii) pursue intellectual property protection for knowledge holders; and (iv) share the benefits accruing from such use as appropriate with the Project-Affected Communities of Indigenous Peoples. The Borrower should use expert and unbiased information in seeking the FPIC of indigenous holders of cultural heritage, even if ownership of the item is in dispute. The Borrower should document the FPIC of the Project-Affected Communities of Indigenous Peoples for the proposed commercial development, in addition to any requirements pursuant to national law and emerging international practice. Where benefit sharing is envisioned, benefits should be determined on mutually agreed terms as part of the process of securing FPIC. Benefits may include, for example, development benefits in the form of employment, vocational training, and benefits pursuant to community development and similar programs as well as revenues from the making, marketing, and licensing of some forms of traditional cultural expression. Borrowers should be mindful of specific consent requirements under the relevant international conventions or national law, and may have to address identified gaps, if any.

GL57. Borrowers should be aware that use of indigenous names, photographs, and other items depicting them and the environment in which they live can be a sensitive issue for Indigenous Peoples. The Borrower should assess local norms and preferences and consult with the Project-Affected Communities of Indigenous Peoples before using such items even for such purposes as naming project sites or pieces of equipment.

GL58. Borrowers should refer to similar requirements and guidance available in ESPS 8 and its Guideline with respect to the cultural heritage of communities other than those of Indigenous Peoples.

MITIGATION AND DEVELOPMENT BENEFITS

- 22.** The Borrower and the Project-Affected Communities of Indigenous Peoples will identify mitigation measures in alignment with the mitigation hierarchy described in ESPS 1 as well as opportunities for culturally appropriate and sustainable development benefits. The Borrower will ensure the timely and equitable delivery of agreed compensation measures to the Project-Affected Communities of Indigenous Peoples.
- 23.** The determination, delivery, and distribution of compensation and other benefit-sharing measures to the Project-Affected Communities of Indigenous Peoples will take account of the laws, institutions, and customs of these communities as well as their level of interaction with mainstream society. Eligibility for compensation can be either individually or collectively based, or a combination of both.¹⁷⁷ Where compensation occurs on a collective basis, mechanisms that promote the effective delivery and distribution of compensation to all eligible members of the group will be defined and implemented.
- 24.** Various factors including, but not limited to, the nature of the project, the project context, and the vulnerability of the Project-Affected Communities of Indigenous Peoples will determine how these communities should benefit from the project. Identified opportunities should aim to address the goals and preferences of the Indigenous Peoples, including improving their standard of living and livelihoods in a culturally appropriate manner, and to foster the long-term sustainability of the natural resources on which they depend.

GL59. Project-Affected Communities of Indigenous Peoples may comprise multiple groups and different social units (e.g., individuals, family/household, clans, tribes, etc.) within these groups. The project may impact upon the social units in different ways. For example, land take may affect all members' access to and use of land and resources while specifically impacting the land claims of only one clan, as well as any current use of resources. The SCA should form the basis of identifying affected groups and understanding the nature of specific risks and impacts (direct, indirect, and cumulative).

¹⁷⁷ Where control of resources, assets, and decision making are predominantly collective in nature, efforts will be made to ensure that, where possible, benefits and compensation are collective and take account of intergenerational differences and needs.

GL60. Compensation may be collective, individual-based or a combination of both. The decision should be made according to Project-Affected Communities of Indigenous Peoples' customary law. For example, with regard to land and natural resources, eligible Indigenous Peoples may include community members with hereditary rights of resource ownership and management, members with use rights, and members currently utilizing the resource. The Borrower should therefore assess gender, other identities and intergenerational aspects, the inheritance practice of the Project-Affected Communities of Indigenous Peoples, including those that could have implications for the situation of vulnerability of a specific group (e.g., such as women in a patrilineal society). If there is conflict or different views between the customary law or cultural practices and the promotion of women's rights, additional resources to promote internal discussion to reach an agreement would be necessary. In any case, Indigenous Peoples' customary law and their own decision-making processes should be respected. Determination of eligibility and the appropriate structure and mechanisms for the delivery and management of compensation should take account of the results of the SCA; applicable local and national laws and international conventions; the laws, institutions, and customs of the Project-Affected Communities of Indigenous Peoples; the direct and indirect changes which the project will bring upon the Project-Affected Communities of Indigenous Peoples including changing relations with mainstream society; and international good practice.

Mitigation and Compensation

GL61. The Borrower, together with the Project-Affected Communities of Indigenous Peoples, will design appropriate mitigation and compensation mechanisms that should include resilient measures, where appropriate, to address project-related adverse impacts. In certain circumstances the delivery of agreed mitigation and compensation may benefit from development of the capacity of the Project-Affected Communities of Indigenous Peoples so as to ensure the protection, sustainable management, and continued delivery of these benefits.

GL62. Where replacement land and resources are provided to the Project-Affected Communities of Indigenous Peoples, legally valid and secure forms of land tenure should be provided. Allocation of land titles should occur on an individual or a collective basis, based on results of the SCA; the laws, institutions, and customs of the Project-Affected Communities of Indigenous Peoples; and the direct, indirect and cumulative impacts that the project will bring upon the Project-Affected Communities of Indigenous Peoples, including changing relations with mainstream society.

GL63. Agreed mitigation and compensation mechanisms (and associated development interventions) should be documented in an agreement and delivered as an integrated program either through an IPP or a CDP. The latter may be more appropriate where Indigenous Peoples live alongside other affected groups who are not indigenous but share similar vulnerabilities and related livelihoods.

Broader Development Opportunities

GL64. Depending on the project and context, the Borrower may catalyze and/or directly support the delivery of development programming to support the development of the Project-Affected Communities of Indigenous Peoples. The Borrower should identify existing development program(s) for Indigenous Peoples and coordinate with the relevant authorities and agencies to assess their suitability for the project context. While addressing project-related risks and adverse impacts is a requirement under ESPS 7, providing broader development opportunities is highly recommended, when appropriate and possible where opportunities exist. In large-scale projects, the Borrower may be able to offer a more comprehensive set of development benefits, as part of local or regional development plans, or effort to stimulate local enterprises and economy in a culturally appropriate manner. The Borrower may also look for opportunities to support existing programs tailored to deliver development benefits to Indigenous Peoples, such as intercultural and bilingual educational programs, intercultural maternal and child health and food security programs, income generation activities, including specific arrangements for indigenous entrepreneurship and micro-credit schemes, ethno-engineering for infrastructure projects, among others. In engaging with the Project-Affected Communities of Indigenous Peoples, it is recommended that the distinction between rights and entitlements related to mitigation of project-related adverse impacts on the one hand, and broader development opportunities on the other hand, be made clear, in order to avoid confusion and unreasonable expectations over what the Borrower is required to do and what may be provided additionally in terms of benefits. These development opportunities ought to articulate with the idea of well-being of each Project-Affected Community of Indigenous Peoples.

GL65. Such development programming may include: (i) supporting the development priorities of Indigenous Peoples through programs (such as community-driven development programs and locally managed social funds) developed by Indigenous Peoples in cooperation with other relevant stakeholders ; (ii) addressing the gender, other identities, and intergenerational issues that exist among many Indigenous Peoples, including the special needs of indigenous women, youth, and children; (iii) preparing participatory profiles of Indigenous Peoples to document their culture, demographic structure, gender identities and intergenerational relations and social organization, governance and institutions, social organization, land tenure and production systems, religious beliefs, and resource and land use patterns; (iv) strengthening the capacity of Indigenous Peoples' governance structure, communities and organizations to prepare, implement, monitor, and evaluate culturally appropriate interventions and well-being programs and interact with mainstream economy; (v) protecting indigenous knowledge, including by strengthening intellectual property rights; and (vi) facilitating partnerships among other government institutions, Indigenous Peoples organizations, CSOs, and the private sector to promote Indigenous Peoples' development programs.

GL66. The nature and scale of appropriate development opportunities will vary. It is important to identify, plan and implement culturally appropriate development programs in close consultation with Project-Affected Communities of Indigenous Peoples and with a highly participatory process that could lead to co-creation of the program's interventions. Broader development interventions may be documented in community or regional development plans, as appropriate.

GOVERNMENT COORDINATION OF INDIGENOUS PEOPLES ISSUES

- 25.** The Borrower will collaborate with all responsible government agencies to achieve outcomes that are consistent with the objectives of this ESPS.
- 26.** The Borrower will consider all documents and plans prepared by responsible government agencies in the process of identifying and implementing the relevant requirements of this ESPS. The Borrower may need to include (i) the plan, implementation, and documentation of the process of ICP and engagement and FPIC where relevant; (ii) a description of the government-provided entitlements of affected Indigenous Peoples; (iii) the measures proposed to bridge any gaps between such entitlements, and the requirements of this ESPS; and (iv) the financial and implementation responsibilities of the government agency and/or the Borrower.

GL67. The country's legislation and regulations may define responsibilities for the management of Indigenous Peoples' issues and, specifically, the management of adverse impacts on Project-Affected Communities of Indigenous Peoples. Some countries may have a designated Ministry of Indigenous Affairs, a government agency in charge of issues related to Indigenous Peoples, or have these functions and responsibilities assigned to several institutions. In addition, some countries may have established an Indigenous Peoples' governance body that coordinates with the government (e.g., "*Consejo Nacional de Desarrollo Integral de los Pueblos Indígenas*" in Panama that represents the 12 indigenous governance structures). It is important to ensure the required ICP or FPIC is embedded in such coordination mechanisms already in place. Aspects of government legislation and regulations (at the national or local level) may be inconsistent with the requirements of ESPS 7 and thereby limit a Borrower's scope to implement the required processes and achieve the intended outcomes of ESPS 7. In such circumstances Borrowers should seek ways to comply with the requirements and to achieve the objectives of ESPS 7, without contravening applicable laws. Borrowers should play an active role during the preparation, implementation and monitoring of the processes and should coordinate with the responsible government agencies those aspects of the processes that can be facilitated more efficiently by other agents, such as consultants or CSOs.



GL68. Under certain circumstances, a government agency or other authority may provide the project unoccupied land that is unencumbered by any current claims. If land clearance or preparation has occurred in anticipation of the project but not immediately preceding project implementation, the Borrower should make a determination as to whether the process of securing the land and any requisite resettlement has occurred in a manner consistent with the requirements the ESPSs and if any corrective action is feasible to address gaps with ESPS requirements. Under such circumstances, the following factors should be considered: (i) the length of the intervening period between land acquisition and project implementation; (ii) the process, laws and actions by which the land acquisition and resettlement was carried out; (iii) the number of people affected and the significance of the impact of land acquisition; (iv) the relationship between the party that initiated the land acquisition and the Borrower; and (v) the current status and location of the people affected.

GL69. Where compensation procedures are not addressed under national or subnational laws or policy and/or do not meet the requirements of the ESPSs, the Borrower should establish methods for determining and delivering adequate compensation to Project-Affected Communities of Indigenous Peoples, considering the requirements of ESPS 7 and ESPS 5 (where applicable). The Borrower should ensure that it has sufficient funds to provide the agreed level of compensations.

GL70. Where the responsible government agency enables the Borrower to participate or lead in the ongoing monitoring of project-affected people, the Borrower should design and carry out a program of monitoring with particular attention to those who are in a vulnerable situation and track their standard of living and effectiveness of compensation, resettlement assistance, and livelihood restoration. The Borrower and the responsible government agency should agree to an appropriate allocation of responsibilities with respect to completion audits and corrective actions.

