

**This document should be read in conjunction with the proposed World Bank Policy to understand the proposed responsibilities of the World Bank (in the Policy) and the Borrowing Country (in the Standards).**

***DRAFT FOR CONSULTATION JULY 30, 2014***

## **Environmental and Social Standard 7. Indigenous Peoples**

### **Introduction**

1. ESS7 contributes to poverty reduction and sustainable development by ensuring that projects supported by the Bank enhance opportunities for Indigenous Peoples to participate in, and benefit from, the development process in ways that do not threaten their unique cultural identities and well-being.<sup>1</sup>
2. This ESS recognizes that Indigenous Peoples have identities and aspirations that are distinct from mainstream groups in national societies and often are disadvantaged by traditional models of development. In many instances, they are among the most economically marginalized and vulnerable segments of the population. Their economic, social, and legal status frequently limits their capacity to defend their rights to, and interests in, land, territories and natural and cultural resources, and may restrict their ability to participate in and benefit from development projects. In many cases, they do not receive equitable access to project benefits, or benefits are not devised or delivered in a form that is culturally appropriate, and they may not always be adequately consulted about the design or implementation of projects that would profoundly affect their lives or communities. This ESS recognizes that the roles of men and women in indigenous cultures are often different from those in the mainstream groups, and that women and children have frequently been marginalized both within their own communities and as a result of external developments, and may have specific needs.
3. Indigenous Peoples are inextricably linked to the land on which they live and the natural resources on which they depend. They are therefore particularly vulnerable if their land and resources are transformed, encroached upon, or significantly degraded. Projects may also undermine language use, cultural practices, institutional arrangements, and religious or spiritual beliefs that Indigenous Peoples view as essential to their identity or well-being. However, projects may also create important opportunities for Indigenous Peoples to improve their quality of life and well-being. A project may create improved access to markets, schools, clinics and other services they seek to improve living conditions. Projects can create opportunities for Indigenous Peoples to participate in, and benefit from project-related activities that may help them fulfill an aspiration to play an active and meaningful role as citizens and partners in development. Furthermore, this ESS recognizes that Indigenous Peoples play a vital role in sustainable development.

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<sup>1</sup> This ESS recognizes that Indigenous Peoples have their own understanding and vision of their well-being and that, broadly, this is a holistic concept that relates to their intrinsic relationship to lands and traditional practices and is reflective of their way of life. This captures their core principles and aspirations of reaching harmony with their surroundings, and achieving solidarity, complementarity and communal living.

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### **Objectives**

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- To ensure that the development process fosters full respect for the human rights, dignity, aspirations, identity, culture, and natural resource-based livelihoods of Indigenous Peoples.
- To avoid adverse impacts of projects on Indigenous Peoples, or when avoidance is not possible, to minimize, mitigate and/or compensate for such impacts.
- To promote sustainable development benefits and opportunities for Indigenous Peoples in a manner that is accessible, culturally appropriate and inclusive.
- To improve project design and promote local support by establishing and maintaining an ongoing relationship based on meaningful consultation with the Indigenous Peoples affected by a project throughout the project's life-cycle.
- To ensure the Free, Prior, and Informed Consent (FPIC) of affected Indigenous Peoples in the three circumstances described in this ESS.
- To recognize, respect and preserve the culture, knowledge, and practices of Indigenous Peoples, and to provide them with an opportunity to adapt to changing conditions in a manner and in a timeframe acceptable to them.

### **Scope of Application**

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4. This ESS applies whenever Indigenous Peoples are present in, or have collective attachment to a proposed project area, as determined during the environmental and social assessment. This ESS applies regardless of whether Indigenous Peoples are affected positively or negatively, and regardless of the significance of any such impacts<sup>2</sup>. This ESS also applies irrespective of the presence or absence of discernible economic, political or social vulnerabilities, although the nature and extent of vulnerability will be a key variable in designing plans to promote equitable access to benefits or to mitigate adverse impacts.

5. There is no universally accepted definition of Indigenous Peoples. Indigenous Peoples may be referred to in different countries by such terms as "indigenous ethnic minorities," "aboriginals," "hill tribes," "minority nationalities," "scheduled tribes," "first nations," or "tribal groups." As the applicability of such terminology varies widely from country to country, the Borrower may agree with the Bank on an alternative terminology for the Indigenous Peoples as appropriate to the circumstances of the Borrower.

6. In this ESS, the term "Indigenous Peoples" is used in a generic sense to refer to a distinct, social and cultural group possessing the following characteristics in varying degrees:

- (a) Self-identification as members of a distinct indigenous social and cultural group and recognition of this identity by others; and

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<sup>2</sup> The scope and scale of consultation, as well as subsequent project planning and documentation processes, will be commensurate with the scope and scale of potential project risks and impacts as they may affect Indigenous Peoples. See paragraph 10.

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- (b) Collective attachment<sup>3</sup> to geographically distinct habitats, ancestral territories, or areas of seasonal use or occupation, as well as to the natural resources in these areas; and
- (c) Customary cultural, economic, social, or political institutions that are distinct or separate from those of the mainstream society or culture; and
- (d) A distinct language or dialect, often different from the official language or languages of the country or region in which they reside.

7. This ESS applies to communities or groups of Indigenous Peoples who, during the lifetime of members of the community or group, 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 land, natural disasters, or incorporation of such territories into an urban area.<sup>4</sup> This ESS also applies to forest dwellers, hunter-gatherers, pastoralists or other nomadic groups, subject to satisfaction of the criteria in paragraph 6.

8. Following a determination by the World Bank that Indigenous Peoples are present in, or have collective attachment to the project area, the Borrower may be required to seek inputs from appropriate specialists to meet the consultation, planning, or other requirements of this ESS.

9. Where the Borrower is concerned that the process of identifying groups for purposes of applying this ESS would create a serious risk of exacerbating ethnic tension or civil strife, or where the identification of culturally-distinct groups as envisioned in this ESS is inconsistent with the provisions of the national constitution, the Borrower may request the Bank to agree on an alternative approach, in which risks and impacts of the project on Indigenous Peoples will be addressed through the application of the ESSs other than ESS7. The Borrower will initiate the request for such an alternative approach through written communication with the Bank, setting out a detailed rationale for the request. In doing so, the Borrower will also provide detailed information confirming how the alternative approach will address risks and impacts of the project on Indigenous Peoples. The alternative approach will be structured so that relevant project-affected communities (of Indigenous Peoples) will be treated at least as well as other project-affected people. The agreement between the Bank and the Borrower regarding this approach will be set out in the ESCP.

## **Requirements**

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### **A. General**

10. A key purpose of this ESS is to ensure that Indigenous Peoples present in, or with collective attachment to, the project area are fully consulted about, and have opportunities to actively participate

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<sup>3</sup> "Collective attachment" means that for generations there has been a physical presence in and economic ties to land and territories traditionally owned, or customarily used or occupied, by the group concerned, including areas that hold special significance for it, such as sacred sites.

<sup>4</sup> Care must be taken in application of this ESS in urban areas. Generally, it does not apply to individuals or small groups migrating to urban areas in search of economic opportunity. It may apply, however, where Indigenous Peoples have established distinct communities in or near urban areas but still possess the characteristics stated in paragraph 6.

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in, project design and the determination of project implementation arrangements. The scope and scale of consultation, as well as subsequent project planning and documentation processes, will be commensurate with the scope and scale of potential project risks and impacts as they may affect Indigenous Peoples.

11. The Borrower will assess the nature and degree of the expected direct and indirect economic, social, cultural (including cultural heritage),<sup>5</sup> and environmental impacts on Indigenous Peoples who are present in, or have collective attachment to, the project area. The Borrower will prepare a consultation strategy and identify the means by which affected Indigenous Peoples will participate in project design and implementation. Subsequently, effective project design and documentation will be developed as set out below.

### ***Projects Designed Specifically to Benefit Indigenous Peoples***

12. For projects designed specifically to provide benefits directly to Indigenous Peoples, the Borrower will proactively engage with the relevant Indigenous Peoples to ensure their ownership and participation in project design, implementation, monitoring and evaluation. The Borrower will also consult with them as to the cultural appropriateness of proposed services or facilities, and will seek to identify and address any economic or social constraints (including those relating to gender) that may limit opportunities to benefit from, or participate in, the project.

13. When Indigenous Peoples are the sole, or the overwhelming majority of, direct project beneficiaries, the elements of an action plan may be included in the overall project design and preparation of a stand-alone plan is not necessary.

### ***Providing Equitable Access to Project Benefits***

14. When Indigenous Peoples are not the sole project beneficiaries, planning requirements will vary with circumstances. The Borrower will design and implement the project in a manner that provides affected Indigenous Peoples with equitable access to project benefits. The concerns or preferences of Indigenous Peoples will be addressed through meaningful consultation and project design, and documentation will summarize the consultation results and describe how Indigenous Peoples' issues have been addressed in project design. Arrangements for ongoing consultations during implementation and monitoring will also be described.

15. If specific actions relating to providing equitable access to project benefits will occur during the implementation phase, the Borrower will prepare a time-bound action plan, such as an Indigenous Peoples plan. Alternatively, a broader integrated community development plan incorporating necessary information relating to the affected Indigenous Peoples may be prepared where appropriate.<sup>6</sup>

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<sup>5</sup> Additional requirements on protection of cultural heritage are set out in ESS8.

<sup>6</sup> The format and title of the plan may be adjusted to fit the project or country context. The scope of the plan should be commensurate with risks and impacts. The determination of the appropriate planning scope, as well as determination of appropriate mitigation measures, may require the input of competent professionals. A community development plan may be appropriate in circumstances where others, as well as Indigenous Peoples, will be affected by adverse impacts or project risks, where more than one Indigenous Peoples group is to be included, or where the regional or national scope of a programmatic project incorporates other population groups.

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### ***Avoidance or Mitigation of Adverse Impacts***

16. Adverse impacts on Indigenous Peoples will be avoided where possible. Where alternatives have been explored and adverse impacts are unavoidable, the Borrower will minimize and/or compensate for these impacts in a culturally appropriate manner commensurate with the nature and scale of such impacts and the form and degree of vulnerability of the affected Indigenous Peoples. The Borrower's proposed actions will be developed in consultation with the affected Indigenous Peoples and contained in a time-bound plan, such as an Indigenous Peoples plan. Where appropriate, an integrated community development plan incorporating necessary information relating to the affected Indigenous Peoples may be prepared.<sup>7</sup>

17. There may be situations involving the exceptional vulnerability of remote groups with limited external contact, also known as peoples "in voluntary isolation" or "in initial contact." Projects that may have potential impacts on these peoples require appropriate measures to recognize, respect and protect their land and territories, environment, health and culture, as well as measures to avoid all undesired contact with them as a consequence of the project.

### ***Meaningful Consultation Tailored to Indigenous Peoples***

18. To promote effective project design, to build local project support or ownership, and to reduce the risk of project-related delays or controversies, the Borrower will undertake an engagement process with affected Indigenous Peoples, as required in ESS10. This engagement process will include stakeholder analysis and engagement planning, disclosure of information, and meaningful consultation, in a culturally appropriate and gender and inter-generationally inclusive manner. In addition, this process will:

- (a) Involve Indigenous Peoples' representative bodies and organizations<sup>8</sup> (e.g., councils of elders or village councils, or chieftains) and, where appropriate, other community members;
- (b) Provide sufficient time for Indigenous Peoples' decision-making processes;<sup>9</sup> and
- (c) Where applicable, allow for Indigenous Peoples' effective participation in the design of project activities or mitigation measures that could potentially affect them either positively or negatively.

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When all necessary information cannot be made available because project design or siting is not finalized, preparation of a planning framework is appropriate.

<sup>7</sup> See footnote 6.

<sup>8</sup> For projects that have a regional or national scope, the meaningful consultation may be carried out with Indigenous organizations or representatives at the relevant national or regional levels. These organizations or representatives will be identified in the stakeholder engagement process described in ESS10.

<sup>9</sup> 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 that are considered legitimate by the majority of the concerned participants.

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### **B. Circumstances Requiring Free, Prior and Informed Consent (FPIC)**

19. Indigenous Peoples may be particularly vulnerable to the loss of, alienation from or exploitation of their land and access to natural and cultural resources. In recognition of this vulnerability, in addition to the General Requirements of this ESS (Section A) and those set forth in ESSs 1 and 10, the Borrower will obtain the FPIC of the affected Indigenous Peoples when the project will: (a) have impacts on land and natural resources subject to traditional ownership or under customary use or occupation; (b) cause relocation of Indigenous Peoples from land and natural resources subject to traditional ownership or under customary occupation or use; or (c) have significant impacts on Indigenous Peoples' cultural heritage. In these circumstances, the Borrower will engage independent specialists to assist in the identification of the project risks and impacts.

20. There is no universally accepted definition of FPIC. For the purposes of this ESS, FPIC is established as follows:

- (a) The scope of FPIC applies to project design, implementation arrangements and expected outcomes related to risks and impacts on the affected Indigenous Peoples;
- (b) FPIC builds on and expands the process of meaningful consultation described in paragraph 18 above and ESS10, and will be established through good faith negotiation between the Borrower and affected Indigenous Peoples;
- (c) The Borrower will document: (i) the mutually accepted process between the Borrower and Indigenous Peoples; and (ii) evidence of agreement between the parties on the outcome of the negotiations; and
- (d) FPIC does not require unanimity and may be achieved even when individuals or groups within or among affected Indigenous Peoples explicitly disagree.

21. When the FPIC of the affected Indigenous Peoples cannot be ascertained by the Bank, the aspects of the project relevant to those Indigenous Peoples will not be processed further. In such cases, the Borrower will ensure that the project will not cause adverse impacts on such Indigenous Peoples.

22. Agreements reached between the Borrower and affected Indigenous Peoples will be described, and actions necessary to accomplish agreements will be included, in the ESCP. During implementation, the Borrower will ensure that necessary actions are taken, and agreed benefits or improvements to services are delivered, so as to maintain Indigenous Peoples' support for the project.

### ***Impacts on Lands and Natural Resources Subject to Traditional Ownership or Under Customary Use or Occupation***

23. Indigenous Peoples are often closely tied to their land and related natural resources.<sup>10</sup> Frequently, land is traditionally owned or under customary use or occupation. While Indigenous Peoples may not possess legal title to land as defined by national law, their use of the land, including seasonal or cyclical use, for their livelihoods, or for cultural, ceremonial, and spiritual purposes that define their

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<sup>10</sup> Examples include marine and aquatic resources, timber and non-timber forest products, medicinal plants, hunting and gathering grounds, and grazing and cropping areas.

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identity and community, can often be substantiated and documented. Where projects are likely to have significant impacts on land that is traditionally owned or under customary use or occupation by Indigenous Peoples,<sup>11</sup> the Borrower will prepare a plan for legal recognition of their perpetual or long-term renewable custodial or use rights.

24. If the Borrower proposes to locate a project, or commercially develop natural resources, on land traditionally owned by, or under the customary use or occupation of, Indigenous Peoples, and adverse impacts<sup>12</sup> can be expected, the Borrower will take the following steps and obtain their FPIC:

- (a) Document efforts to avoid and otherwise minimize the area of land proposed for the project;
- (b) Document efforts to avoid and otherwise minimize impacts on natural resources subject to traditional ownership or customary use or occupation;
- (c) Identify and review all property interests, tenurial arrangements, and traditional resource usage prior to purchasing, leasing or, as a last resort, undertaking land acquisition;
- (d) Assess and document Indigenous Peoples' resource use without prejudicing any Indigenous Peoples' land claim. The assessment of land and natural resource use will be gender inclusive and specifically consider women's role in the management and use of these resources;
- (e) Ensure that affected Indigenous Peoples are informed of: (i) their land rights under national law, including any national law recognizing customary use rights; (ii) the scope and nature of the project; and (iii) the potential impacts of the project; and
- (f) Where a project promotes commercial development of their land or resources, afford due process, and offer compensation together with culturally appropriate sustainable development opportunities to Indigenous Peoples, at least equivalent to that to which any landowner with full legal title to the land would be entitled, including:
  - (i) Providing fair lease arrangements or, where land acquisition is necessary, providing land-based compensation or compensation in kind in lieu of cash compensation where feasible;<sup>13</sup>
  - (ii) 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

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<sup>11</sup> For example, extractive industries, creation of conservation areas, agro-development schemes, greenfield infrastructure development, land management or titling programs.

<sup>12</sup> Such adverse impacts may include impacts from loss of access to assets or resources or restrictions on land use resulting from project activities.

<sup>13</sup> 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 affected Indigenous Peoples.

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access to and the loss of natural resources independent of project land acquisition;

- (iii) 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 and livelihood of affected Indigenous Peoples and their usage thereof exacerbates livelihood risk; and
- (iv) Providing affected Indigenous Peoples with access, usage, and transit on land the Borrower is developing subject to overriding health, safety, and security considerations.

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

25. The Borrower will consider feasible alternative project designs to avoid the relocation of Indigenous Peoples from communally held<sup>14</sup> or attached land and natural resources subject to traditional ownership or customary use or occupation. If such relocation is unavoidable the Borrower will not proceed with the project unless FPIC has been obtained as described above; the Borrower will not resort to forced eviction,<sup>15</sup> and any relocation of Indigenous Peoples will be consistent with the requirements of ESS5. Where feasible, the relocated Indigenous Peoples will be able to return to their traditional or customary land, should the cause of their relocation cease to exist.

#### ***Cultural Heritage***

26. Where a project may significantly impact cultural heritage<sup>16</sup> that is relevant 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 are unavoidable, the Borrower will obtain the FPIC of affected Indigenous Peoples.

27. 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 affected Indigenous Peoples of: (a) their rights under national law; (b) the scope and nature of the proposed commercial development; and (c) the potential consequences of such development; and obtain their FPIC. The Borrower will also ensure fair and equitable sharing of benefits from commercialization of such knowledge, innovation, or practice, consistent with the customs and traditions of the Indigenous Peoples.

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<sup>14</sup> 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 Indigenous Peoples individually hold legal title, or where the relevant national law recognizes customary rights for individuals, the requirements of ESS5 will apply, rather than the requirements under paragraph 25 of this ESS.

<sup>15</sup> See footnote 5 of ESS5.

<sup>16</sup> Includes natural areas with cultural and/or spiritual value such as sacred groves, sacred bodies of water and waterways, sacred trees, and sacred rocks.

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### **C. Mitigation and Development Benefits**

28. The Borrower and affected Indigenous Peoples will identify mitigation measures in alignment with the mitigation hierarchy described in ESS1 as well as opportunities for culturally appropriate and sustainable development benefits. The scope of assessment and mitigation will include cultural impacts<sup>17</sup> as well as physical impacts. The Borrower will ensure the timely delivery of agreed measures to affected Indigenous Peoples.

29. The determination, delivery, and distribution of compensation and shared benefits to affected Indigenous Peoples will take account of the laws, institutions, and customs of these Indigenous Peoples as well as their level of interaction with mainstream society. Eligibility for compensation can either be individually or collectively-based, or be a combination of both.<sup>18</sup> Where compensation occurs on a collective basis, mechanisms that promote the effective distribution of compensation to all eligible members, or collective use of compensation in a manner that benefits all members of the group, will be defined and implemented.

30. Various factors including, but not limited to, the nature of the project, the project context and the vulnerability of affected Indigenous Peoples will determine how these Indigenous Peoples will benefit from the project. Identified opportunities will 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.

### **D. Grievance Mechanism**

31. The Borrower will ensure that a grievance mechanism is established for the project, as described in ESS10, which is culturally appropriate and accessible to affected Indigenous Peoples, and takes into account the availability of judicial recourse and customary dispute settlement mechanisms among Indigenous Peoples.

### **E. Indigenous Peoples and Broader Development Planning**

32. The Borrower may request Bank technical or financial support, in the context of a specific project or as a separate activity, for preparation of plans, strategies or other activities intended to strengthen consideration and participation of Indigenous Peoples in the development process. This may include a variety of initiatives designed, for example, to: (a) strengthen local legislation to establish recognition of customary or traditional land tenure arrangements; (b) address the gender and intergenerational issues that exist among Indigenous Peoples; (c) protect indigenous knowledge including intellectual property rights; (d) strengthen the capacity of Indigenous Peoples to participate in development planning or programs; and (e) strengthen the capacity of government agencies providing services to Indigenous Peoples.

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<sup>17</sup> Considerations relating to cultural impacts may include, for example, the language of instruction and curriculum content in education projects, culturally sensitive or gender-sensitive procedures in health projects, and others.

<sup>18</sup> 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.

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33. Affected Indigenous Peoples may themselves seek support for various initiatives and these should be taken into consideration by the Borrower and the Bank. They include: (a) support for the development priorities of Indigenous Peoples through programs (such as community-driven development programs and locally managed social funds) developed by governments in cooperation with Indigenous Peoples; (b) preparation of participatory profiles of Indigenous Peoples to document their culture, demographic structure, gender and intergenerational relations and social organization, institutions, production systems, religious beliefs, and resource use patterns; (c) facilitating partnerships among the government, Indigenous Peoples Organizations (IPOs), CSOs, and the private sector to promote Indigenous Peoples' development programs.