

# ABYA YALA INDIGENOUS FORUM

## **Analysis**

**Social and Environmental Framework: Setting Standards for Sustainable  
Development, World Bank, NAS7**  
(Discussion Document, July 30, 2014)

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## 1. Introduction:

The World Bank (WB) is currently engaged in a consultation process with various civil society stakeholders around the world regarding its eight environmental and social safeguards policies, including: PO4.00 the Use of Country Systems; PO4.01 Environmental Assessment; OP4.04 Natural Habitats; PO4.09 Pest Management; PO4.10 Indigenous Peoples; PO4.11 Physical Cultural Resources; PO4.12 Involuntary Resettlement; PO4.36 Forests; and PO4.37 Safety of Dams.

As part of this review process, on July 30, 2014, the World Bank presented its First Draft for Consultation on its new *Environmental and Social Framework: Setting Standards for Sustainable Development*, as a new policy framework for environmental and social safeguards.

In this context, the indigenous peoples of Latin America who make up the Abya Yala Indigenous Forum (FIAY)<sup>1</sup> proposed to the World Bank that this process be taken as a process of “dialogue” to review and analyze the different operational policies that affect indigenous peoples, particularly Operational Policy OP4.10, which in the draft environmental and social framework released on July 30, 2014, has become Environmental and social Standard 7 (ESS7).

The following document is based on an **analysis of the Operational Policy Safeguards of the World Bank**, particularly OP4.10, which was presented to the WB in April 2014. Based on this analysis, we reviewed the *Environmental and Social Framework: Setting Standards for Sustainable Development*, particularly ESS7. This document addresses the standards that guarantee the recognition and practice of the human rights of indigenous peoples, as well as the standardization of those rights within international instruments, without undermining the instruments regarding indigenous peoples enshrined in national legislation. These international instruments include the United Nations Declaration on the Rights of Indigenous Peoples, ILO Convention 169 -- The Convention concerning Indigenous and Tribal Peoples in Independent Countries; the Convention on Biological Diversity (CBD), particularly Article 8 paragraph J, and Article 10 paragraph C, among others, in order to find ways to harmonize standards at the national and international levels.

## 2. The current context of indigenous peoples.

Indigenous peoples, faced with denials of their fundamental rights, both collective and individual, as well as the critical situations they endure in terms of their standards of living, saw a reason for hope when the United Nations Declaration was adopted on September 13, 2007, with the confidence that this political commitment on the part of the United Nations and its Member States would result in greater efforts to protect, respect and promote the rights of indigenous peoples, and to attend to the historic demands of these groups.

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<sup>1</sup> The Abya Yala Indigenous Forum is currently comprised of the Coordinator of Indigenous Organizations of the Amazon Basin (COICA); the Andean Coordinator of Indigenous Organizations (CAOI); the Continental Link of Indigenous Women of the Americas (ECMIA); the Indigenous Council of Central America (CICA); the Indigenous Council of Meso-America (CIMA); and the Network of Indigenous Women on Biodiversity (REMIB).

This was definitely a watershed moment, marking a “before” and “after” in the efforts of indigenous peoples to gain recognition and respect for their rights, which even in the 20<sup>th</sup> century were totally denied, as indigenous people were excluded from the development policies of nation states<sup>2</sup>, until some progress began to be made toward the end of that century, as in 1989 Convention 169 was signed and adopted, and some countries began to acknowledge indigenous peoples in their Political Constitutions.

The demands of indigenous peoples at the international level have basically been concentrated on gaining recognition to be considered as “Indigenous Peoples”, with the right to free self-determination and autonomy, to build up and operate their own institutions and community government, legal recognition and security for their lands and territories, access to natural resources, the right to be consulted and to give free, informed and prior consent to any administrative and/or legislative measure that would directly or indirectly affect them, especially in the administration of justice, the economy and development; recognition of their intangible heritage and traditional knowledge as collective intellectual property, special protective rights for indigenous groups in voluntary isolation and initial contacts within the full exercise of self-determination (also called free and autonomous peoples), among others. It is also important to mention the situation of indigenous women, given their marginalized status in the exercise of their human rights, for instance in the effectiveness of their tenancy of their lands, fair and equitable participation in decision-making, their role as the guardians and intergenerational transmitters of traditional knowledge, and the defense of their identity and culture, in terms of language, cultural practices, knowledge and know-how.

It must be acknowledged that indigenous peoples have struggled to take part in the making of decisions at the national and international levels, in a free, equitable and fair process, which has led to what is now called indigenous diplomacy, which is a fundamental part of our public policy efforts. Therefore, we are pleased to see that the WB is fostering dialogue with indigenous peoples, a process that will be real only when our rights are incorporated into its Operational Policies.

## 2.1 Current context of the rights of Indigenous Peoples

In order for the rights of indigenous peoples to be truly realized, other complementary human rights also need to be respected. More and more, national governments and international organizations are accepting the fact that racism and discrimination exist, and this has led to public policies and standards that include the rights of indigenous peoples, using as a benchmark the international standard adopted in the United Nations Declaration.

From this perspective, the national governments of Latin America have made important strides in the area of collective indigenous rights, especially in their Constitutions, as we have seen in the examples of Mexico, Nicaragua, Colombia, Venezuela, Ecuador, Bolivia, Argentina, Brazil, and

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<sup>2</sup> Worldwide it is estimated that there are 3,500 indigenous peoples, with a population of 500 million people in 70 countries around the world; that is, 4-5% of the global population. In relation to Latin America, there are approximately 50 million indigenous people, with more than 400 culturally distinct groups, located especially in Mexico, Guatemala, Peru, Ecuador, and Bolivia (Baripe Cletus Gregor, Mexico, 2000).

others; some states, like Bolivia and Ecuador, have declared themselves to be Multi-cultural and Pluri-national States, with broad-based guarantees for the rights of indigenous peoples.

These rights are basically aimed at satisfying a set of indigenous demands, such as the eradication of social and economic discrimination, the fight against poverty, recognition and protection of indigenous lands and territories, education, health care, the right to implement their own indigenous forms of justice administration, their own forms of organization and governance, biodiversity, property rights and access to traditional natural resources, the right to prior consultation and recognition as political actors, among others.

Meanwhile, the International Organizations<sup>3</sup> have been progressively recognizing collective indigenous rights, whether in the form of Operational Policies, Guidelines, Intervention Strategies or International Standards. Some of these have expressly recognized Free, Prior and Informed Consent as a fundamental right of indigenous peoples; other key aspects of the rights of indigenous peoples addressed by these international institutions are related to:

- a. Respect for autonomy and free self-determination as indigenous peoples in their internal affairs, within the framework of Nation States.
- b. Legal ownership/tenure, by customary law, of their land and territories.
- c. Respect for access and traditional use of natural resources.
- d. Participation in the fair and equitable distribution of the benefits of the exploitation of natural resources within indigenous territories.
- e. The restoration, conservation, promotion and protection of traditional knowledge.
- f. Prior consultation, and the right to give free, prior, and informed consent.
- g. Environment and conservation in indigenous territories.
- h. The situation facing indigenous women and youth in relation to their participation and role in the recovery of traditional knowledge and culture.

Nevertheless, there are still issues of vital importance related to indigenous rights that must be addressed and incorporated into public policies, both at the national level and on the international stage, such as:

- a. Self-determination and autonomy as indigenous peoples.
- b. The legal security of their lands and territories.
- c. Ownership and access to natural resources, their use and fair and equitable participation in the benefits of such use.
- d. Prior consultation and free, prior and informed consent.
- e. The right to development with identity, and indigenous economics.
- f. The protection of traditional practices and knowledge.
- g. Effective mechanisms to protect, respect and promote human rights and to give priority attention to victims of various adverse situations (natural catastrophes, wars, internal armed conflicts).
- h. Guaranteeing the food security of indigenous peoples.

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<sup>3</sup> Convention on Biodiversity, FAO, ILO, UNDO, WWF, CI, and others.

## 2.2 The Situation of Indigenous Territories

In Abya Yala, indigenous peoples are enduring critical realities, which underscore the need for guaranteeing respect, recognition and promotion of their territorial rights, particularly in terms of what the United Nations Declaration calls for with respect to owning, using, developing and controlling the land and territories that they possess by virtue of traditional occupation, and strengthening their participation, consultation and free, prior and informed consent in decision-making, since it is often the case that policies are implemented within indigenous territories which they are not consulted about and which they have not consented to, resulting in the following situations:

- a. The occupation, extraction and disrespect for the territory of indigenous peoples, due to megaprojects such as hydroelectric dams, highways, roads, ports and heliports, river concessions, river dredging, waterway diversion/channeling, wind farms, and others; in addition, the accelerated processes and policies of extraction and exploitation in indigenous lands, cause a precipitated deterioration of natural resources (forests, hunting grounds, water sources, etc.), putting at risk the sovereignty and food security of indigenous groups.
- b. Oil drilling and production and mining activities have irreversible social and environmental impacts on indigenous territories, as deforestation, the use of chemical substances, atmospheric emissions and acid rain, among other elements radically impact ecosystems, increase the concentration of CO<sub>2</sub> and NO<sub>x</sub> in the air, pollute rivers and reduce the volume of water available for human consumption, alter local demographic patterns, alter cultural values and on many occasions result in the displacement of indigenous people due to the lack of territories appropriate to their way of life.
- c. Climate change is also having a variety of effects, such as increased temperatures, melting ice, rising sea levels, droughts, external meteorological phenomena, emigration, the extinction of species, the loss of natural resources, the spread of illness and epidemics, all with grave consequences for indigenous peoples, as their livelihoods are threatened. Carbon bonds have become a part of this dynamic, creating false expectations among some indigenous groups and leading to cultural alienation and neglect of the environment.
- d. The appropriation of the sacred sites and lands of indigenous peoples, and the commercial exploitation of these sites without the free, prior and informed consent and without the just and equitable distribution of benefits.

## 2.3 Poverty

Poverty<sup>4</sup> is often more severe and more widespread among indigenous peoples. The indigenous are a separate group among the poor, and are often excluded from economic decision-making processes and marginalized by development efforts.

In reality, indigenous people are the poorest of the poor. Of the 1.2 billion people who are estimated to live on less than one dollar per day (that is, those who are the focus of the MDGs), 70% live in rural areas and are very dependent on natural resources. One World Bank study on Indigenous Peoples and Poverty in Latin America concludes that “poverty among the indigenous population in Latin America is widespread and severe.”<sup>5</sup> This study, which documented the socio-economic situation of the approximately 34 million indigenous people in the region (2008), or 8% of the population, showed that in nearly all countries, poverty patterns coincided with populations living in indigenous territories.

In indigenous territories, there are rivers and lakes, forests, mountains, biodiversity, mineral and petroleum resources, which are eyed by society with greed and a voracious appetite. As a result, we have become impoverished. The statistics point to a very serious and sobering situation: 67% of indigenous people live below the poverty line, and in some countries, chronic acute malnutrition rates among indigenous children are over 50%. This means that we could be crossing a threshold of physical and intellectual deprivation that threatens our communities’ physical and cultural reproduction, and the permanence and continuity of our peoples in history. Seeing indigenous people simply as “minorities” leaves us vulnerable and defenseless.

This grave problem obliges indigenous people to break paradigms and to build new models to lift them out of this situation, which will not be created by governments nor international cooperation agencies. We have to embark upon a discussion to build a model that reconciles the preservation of our values and the environment that surrounds us, with the sustainable use of the resources that we still have under our sovereign control.

Therefore, it is essential that policies be adopted to empower indigenous people, so that they can overcome adversities and act as protagonists in the context of economic, social and environmental development policies, programs and projects, at the regional, national and international level. Empowering indigenous peoples, and giving us leading roles, is an important step toward reversing our vulnerability and toward building new models we can put in place that preserve our values, conserve the environment and sustainably take advantage of our natural resources. These models are given names in some regions that loosely translate as “good living”, or “full life”, and they refer to promoting an adequate quality of life within an indigenous worldview, while preserving an ecologically balanced environment for present and future generations.

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<sup>4</sup> Paulo Celso de Oliveira, indigenous person from Brazil. The concept of poverty among indigenous peoples is not merely a question of culture or economics. This is the concept of public order that has to take into account the conditions in which indigenous people live, which demonstrates that poverty is a violation of their fundamental rights.

<sup>5</sup> Geord Psacharopoulos and Harry Anthony Patrinos: Indigenous Peoples and Poverty in Latin American Analysis. Washington D.C. The World Bank.

We indigenous peoples make an urgent call to reconstruct our own community-based economic system, so that it can be a true alternative to the dominant economic system of today. Our well-being has to be grounded in principles such as: sustainability, redistribution, solidarity, collaboration and community.

It appears as though the great dichotomy that we face is that while it is true that indigenous peoples have seen their basic rights enshrined within the United Nations system, and that this could have established the foundations to improve their living conditions, the reality is the opposite, since indigenous people continue to occupy the lowest strata of national societies, with the lowest quality of life, the highest rates of poverty, illiteracy, child and maternal mortality, and insufficient access to education; in summary the most vulnerable sector of society.

There are likely many causes of this, but one cause is surely that national states do not create opportunities for indigenous peoples to “decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development;” thus they are denied the chance to control, to the extent possible, their own economic, social and cultural development in accordance with ILO Convention 169 (Article 7.1). Neither do national governments take into account the provisions of the United Nations Declaration (Article 3), which establishes that “Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”

Indigenous peoples have developed their own life plans in written or oral forms in order to ensure the continuity of their cultures. However, these life plans in many cases, are still lacking formal recognition, financing and implementation.

The activities of indigenous peoples, based on sustainable traditional practices, contribute to the conservation of biodiversity, which in turn provides ecosystemic services to humanity, while preserving nature, providing inputs to countries to sustain their economies (water, timber, flora and fauna, oil, minerals, food, etc.), while public policies do not recognize or value the contribution of indigenous people to national economies.

Community-based economies that reflect the indigenous culture and worldview are alternative experiences that indigenous peoples offer to society in general, which should be taken into account in programs and projects targeted to indigenous communities.

### **3. Fundamental Issues to be addressed by the Environmental and Social Standards, especially ESS7:**

#### **3.1 Land, Territories**

Article 26 of the UN Declaration on the Rights of Indigenous Peoples affirms that “1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired. 2. Indigenous peoples have the right to own, use,

develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.” Colombian legislation, for example, defines **indigenous territories** to be those areas possessed in a regular and permanent manner by an indigenous group and those which, although they are not possessed in this way, constitute the traditional environment for indigenous social, economic and cultural activities, natural resources, biodiversity and the environment, are intimately related and constitute the basis of the daily subsistence of indigenous peoples. The Inter-American Court of Human Rights, through an evolving interpretation of article 21 of the American Convention on Human Rights, recognizes the collective dimension of the right that indigenous people have to own or possess land. In fact, 80% of indigenous people depend directly on the land for their daily survival, and therefore access to land is a necessary guarantee for the food and medicinal security not only of indigenous people, but humanity as a whole.

ESS7 has to be sensitive to this reality of indigenous peoples, and the hope is that the WB, before embarking on any intervention which involves indigenous land and territories, would ask the borrower as a necessary precondition that they respect and recognize the territorial rights of indigenous people, recognize the indigenous way of life, and their legal tenure to indigenous land and territories. The States will establish and follow, together with the indigenous people in question, an equitable, independent, impartial, open and transparent process, in which the laws, traditions, customs, and land tenure systems of indigenous peoples are properly recognized, in order to respect and fulfill the rights of indigenous peoples in relation to their lands, territories and resources, including those which they have traditionally possessed or occupied or used in some way, and will establish better laws and policies that guarantee customary indigenous rights to their land, territories, and the natural resources within them.

ESS7 must establish that no project will be developed that could impact the land, territory or resources of indigenous peoples without their free, prior and informed consent.

ESS7 should also require that when intervening in indigenous territories or lands, if the borrower's actions affect the ecological or socio-cultural environment, according to the United Nations Declaration, it will be obligated to repair whatever damage is done, restoring it to its pre-intervention state, or if that is not possible, providing just, impartial and equitable compensation for the land, territories and resources that they have traditionally owned, occupied or otherwise used. This remediation can be done at any stage of the project, including after it is completed, and therefore the Bank will insist that the borrower have a compliance bond or policy to cover any future damages caused by the project after it has concluded.

ESS7 should use the term land when addressing the issue of territory, since there are many indigenous groups that do not recognize territories.

## 3.2 Natural Resources

The same considerations and analysis that were applied to indigenous territories and land apply here, since that is where the natural resources are located, and taken together, the central aspect of this relationship has to do with the fact that indigenous peoples have pre-existing customary rights to the conservation and protection of the environment and the productive capacity of their lands, territories and resources. Countries must design and carry out programs to aid indigenous people in ensuring this conservation and protection, without discrimination, while ensuring consultation, and free, prior and informed consent, as well as equitable participation in the benefits obtained from said resources, in a fair and equitable manner.

This proposal should guarantee ensure that the free, prior and informed consent is emphasized and respected in ESS7.

ESS7 must guarantee that there is no exploration, exploitation or extraction of natural resources by megaprojects, extractive industries or others without an initial consultation with the indigenous group in question, and without their prior, free and informed consent.

ESS7 should call for the formation of an independent assessment and evaluation team made up of indigenous persons and others of their choosing, with adequate financing from the government, to evaluate the implementation of projects to be carried out within their territories. This assessment would be done as a preventive measure and should not be taken as a sign of acceptance.

It is essential for ESS7 to promote the recognition of the indigenous worldview and traditional systems, with respect to the use, management and conservation of natural resources by indigenous peoples. Indigenous peoples have a centuries-old harmonious relationship with Mother Nature, the environment and their lands, and thus on more than one occasions, they have proposed that these territories be declared as spaces for autonomous conservation<sup>6</sup>.

The ESS7 must recognize indigenous systems of use, management and conservation of natural resources, and establish protocols for Access to Genetic Resources and associated Traditional Knowledge.

ESS7 should guarantee that there be no illegal appropriation of traditional indigenous knowledge, innovations and practices (intellectual piracy) and usurpation of genetic and biological resources (biopiracy) in indigenous territories, nor the improper appropriation of native cultural expressions, such as music, dance, art, designs, signs and symbols, interpretations, ceremonies, architectural forms, crafts, etc. In this respect, the ESS7 must be consistent with the United Nations Declaration (Art. 31), the Convention on Biological Diversity (Arts. 8J and 15.c), the Nagoya Protocol of the CBD (Arts. 7 and 12) and Decision 391 of the CA (Arts. 5 and 7).

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<sup>6</sup> (COICA, 2012),

### 3.3 Free, Prior and Informed Consent

Preliminary consultation and free, prior and informed consent (FPIC) are fundamental human rights for indigenous peoples, which are recognized by international legislation, as noted below.

Article 6 of Convention 169 requires governments to establish means to allow interested peoples to participate in decision-making at all levels within legislative bodies and administrative institutions: “... *The consultations carried out in application of this Convention shall be undertaken, in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures.*”

Enforcing this provision of Convention 169 is one of the most significant demands of indigenous peoples throughout the world, in addition to making the prior consultation binding.

Furthermore, according to article 19 of the United Nations Declaration, “*States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them,*” while paragraph 2 of article 32 says that “*States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.*”

The Committee on the Elimination of Racial Discrimination mentioned the obligations of the States and indigenous rights under Convention 169, and its report, asked the States Parties to:

*“... guarantee that the members of indigenous groups have the same rights in relation to effective participation in public life, and that no decisions be made that are directly related to their rights and interests without their informed consent.”*

Additionally, for the Americas, the case law of the Inter-American System of Human Rights (The Inter-American Human Rights Commission and Court) has upheld this right consistently. Decisions such as *Saramaka v. Surinam* and *Sarayaku v. Ecuador* have created a precedent for all countries in the Inter-American system. If the ESS7 establishes a standard that is lower than that which has been established in these cases, it would be in violation of the obligations that the countries have already acquired, in addition to having a negative impact on indigenous peoples.

The ESS7 should clearly reflect the fact that the Consultation<sup>7</sup>: Is a process through which approval for an initiative must be obtained, and FPIC represents the right that the indigenous peoples have to give their free, prior, informed consent. It is important to highlight the

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<sup>7</sup> The Right to Consultation: Each country has its peculiarities, however some basic concepts and principles related to consultations should be considered: Identification of the impact on collective rights, have the indigenous group and the government agree when to hold the consultation, agree on the appropriate mechanisms (FPIC methodology), hold consultation in good faith, with appropriate scheduling and flexibility, clear objectives for the consultation, the necessary resources, shared responsibility. The agreements resulting from the consultation. Monitoring and evaluation plan.

difference between the prior consultation and free, prior and informed consent. The first is a process which must be carried out according to the principles of good faith<sup>8</sup>, and be free<sup>9</sup>, informed, prior<sup>10</sup>, and use appropriate procedures<sup>11</sup>; while in the latter, the decision made by the people consulted as to whether or not to approve the proposed measures must be respected; therefore these are two different but complementary things.

Therefore, the decision-making capacity of indigenous peoples must be translated into the power to be able to decide on matters that involve them or affect their way of life, and when this power is limited, the likelihood of equitable, full and effective management of any given activity in indigenous territories is considerably reduced, especially in the case of extractive activities carried out on indigenous land and territories.

Therefore, it is essential to revise ESS7 on this issue, and to include the recognition of free, prior and informed consent of indigenous peoples in accordance with the latest developments in international law, and that this apply to more than only that impact the local territory, cultural heritage or imply forced displacement. FPIC is a fundamental right that must be respected when the Bank and its borrowers carry out any actions that could affect indigenous people, their land, territories, or natural and cultural resources.

Finally, we believe that ESS7 should be consistent with international human rights standards for indigenous peoples, which have been discussed in global political contexts, to use terms that are more appropriate to the indigenous world view and that have the right meanings/connotations from a legal standpoint.

An additional aspect that has been considered in the FIAY discussions, in terms of the geographic scope of application of the FPIC of indigenous peoples, and which is also related to the review of the WB's ESS7, is the issue of members of indigenous peoples who live in urban areas but who maintain all of the cultural and identity characteristics of their communities of origin. This is a reality in all of the capitals and large cities of Latin America, where indigenous people have settled temporarily or permanently, and they should also enjoy all of the rights and guarantees afforded to them by national and international law on indigenous peoples, in terms of their individual and collective rights.

### 3.4 Participation Mechanisms at the Country Level:

Establishing mechanisms for the participation of Indigenous Peoples and communities is crucial for all types of interventions in indigenous territories. ESS7 should provide agile and timely mechanisms for Indigenous Peoples and communities to participate for example in environmental management and monitoring plans, including contingency plans regarding

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<sup>8</sup> The principle of good faith is expressly addressed in ILO Convention 169, (art 6.2) and in the Declaration of the General Assembly of 2007 (art. 19). Regarding the right to be consulted, see also the recommendations of the Inter-American Court on Human Rights (CIDH) (for example, Maya Indigenous Communities of Toledo vs. Belize, case 12.053 of 2004).

<sup>9</sup> The convention states that the governments are obliged to “*establish the means through which interested peoples can participate freely, at least to the same extent as other sectors of the population, and at all levels in decision-making ... that affect them*”.

<sup>10</sup> In other words, the consultation should come before the adoption and implementation of the administrative or legislative measures that concern indigenous peoples.

<sup>11</sup> The government will have to agree with the indigenous communities on the procedures, locations, contents of the consultation.

possible negative cultural, environmental and social impacts of a development project. For this participation to be full and effective, the WB and the borrower must provide for the allocation of human, financial, technical and legal resources to facilitate the participation of indigenous people<sup>12</sup>. This is fundamental for guaranteeing full and effective participation on the part of indigenous communities.

The ESS7 should call for the full and effective participation of indigenous peoples in infrastructure, basic services, social, cultural, health and other programs and projects at the national level that have potential direct and indirect benefits and impacts on indigenous people.

ESS7 should promote indigenous participation in the planning of the **Country Development Strategy**, which is where priorities are set and program and project design begin.

### 3.5 Indigenous People and Good Living

In these times in which modernity is submerged in the paradigm of individualism and humanity is in crisis, it is important to recover the origins and worldview of indigenous peoples. All cultures have a way of seeing, feeling, perceiving and projecting the world.

The grandfathers and grandmothers of today's indigenous people helped a culture of life to flourish, in which everything is connected, interrelated, nothing is left out, on the contrary "everything is a part..."; harmony and balance of **one** and of **all** is important for our peoples.

*"To live well, is life in fullness. Knowing how to live in harmony and balance; in harmony with the cycles of Mother Earth, the cosmos, life ad history, and in balance with all forms of being in permanent respect."*

And this is precisely the path and the horizon of indigenous peoples, which implies first of all knowing how to live, and then knowing how to co-exist. One cannot live well if others are living poorly, or if Mother Nature is being damaged. Living well means understanding that the deterioration of one species is the deterioration of the whole.

Taking into account that the WB is not only a moneylending institution, but it supports and provides technical assistance, fosters the creation, evolution, and exchange of knowledge, has considerable convening power and administers significant amounts of funds in trust, we encourage the Bank to go beyond the spirit of sustainable development set forth in the Environmental Social Framework. The ESS7 should encourage direct support to indigenous peoples, as bearers of rights, who can carry out initiatives without the intervention of the State in all cases.

Indigenous peoples do not identify with the concept of sustainable development from a Western perspective, and therefore the ESS7 should promote Good Living, understood as a fullness of life, holistic well-being based on the collective economic, political, cultural, and spiritual

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<sup>12</sup> Akwé: Kon Guidelines, Secretariat of the Convention on Biological diversity. Montreal, 2004

welfare, and on a balanced and equitable relationship between economics and nature.

Good Living requires conditions in the ESS7 that promote the establishment of pluri-culturalism, as expressed in the construction of new social, economic, political and cultural relationships between indigenous groups and the States. The exercise of Good Living implies the recognition and effective realization of the rights of indigenous peoples, a new dimensions of rights with respect to the relationship with Mother Earth, guaranteeing the restoration and continuity of the components and systems of Mother Earth, based on an integrated and balanced harmony with nature. This includes a respect for traditional indigenous knowledge, as an input in public planning and management processes.

The ESS7 should create indicators to assess Good Living, beginning with the establishment of a harmonious relationship with the living systems of Mother Earth, social justice and climate justice, through a holistic approach based on the right to consultation, free, prior and informed consent, a plural economy under the principles of complementarity, reciprocity, redistribution and balance based on the collective good; a dialogue of knowledge that implies respect for indigenous knowledge and know-how.

The ESS7 should promote the following indicators of Good Living:

- Collective benefit
- Autonomous decision-making
- Strengthening of native institutions
- A secure sense of cultural identity
- The philosophy must begin by strengthening the organization

### **3.6 Investments in Indigenous Territories**

It is important that the policy call for the creation of a line of work that establishes a direct partnership between the WB and indigenous peoples, which includes mechanisms to set up and expand funds allocated specifically to indigenous peoples, recognizing their capacity for management, operations, transparency and achieving results, so that indigenous peoples can administer World Bank resources without the need for intermediary institutions. This approach is intended to strengthen the direct Bank – Indigenous Peoples – State relationship, to not only increase financial support, but to enhance the level of participation in the communities, receive technical assistance, promote knowledge, etc.

The objectives of the ESS7 should be written in such a way that does not portray the indigenous person as only an external stakeholder, but rather as partners with natural and cultural wealth, that can contribute to the conceptualization and implementation of all stages of a project. Indigenous people are not only stakeholders, but the bearers of rights and owners of the territory where development projects take place.

The ESS7 should create a financial mechanism for indigenous peoples, which allows for the funding of life plans and contributes to poverty reduction objectives.

Shared Prosperity: We feel that this new principle that will guide the World Bank's operations can only be effective to the extent that the Bank ensures an equitable distribution of the benefits and profits generated from the loans given to the states (monetary revenues). We propose that the Bank allocate a budget line to provide access to financing that can directly support indigenous peoples and organizations through grants and loans.

The WB must ensure that the loans to the States cover the priorities and demands of indigenous peoples, guaranteeing that affirmative steps are taken to fulfill the rights and address the priorities of indigenous peoples. (The loans that the Bank makes to borrower countries are also paid by indigenous communities who do not receive anything in return).

The WB should require States to create finance access mechanism for indigenous peoples. The WB should set up a special line of financing accessible to indigenous peoples on a bilateral WB-indigenous organizations basis.

Requirements for establishing financial relationships between indigenous peoples and the WB:

- a. Consolidate the indigenous people's own governance and administration systems and institutions.
- b. Train organizations on managing funds and transparency.
- c. Ensure legal mechanisms in each country to ensure access of indigenous peoples to bilateral and multi-lateral funding.
- d. Shared public convocation between the WB and Indigenous Peoples (as co-implementers, with counterpart resources committed by Indigenous Peoples).
- e. Design financing mechanisms for indigenous peoples.
- f. Set rules for the economic and managerial participation of indigenous peoples in projects financed in indigenous territories.
- g. Create a department of financing for indigenous peoples.

Contributions to World Bank Policy regarding Indigenous Peoples

- a. The full and effective participation of indigenous peoples in the formulation of the Country Development Strategy.
- b. Guarantee the capacities of indigenous people for autonomous economic organization, to administer productive and competitive enterprises.
- c. Indigenous people should be participating in all stages of social and economic projects that affect their territories, culture and interests.

Areas for Investment: Strengthening the Indigenous Economy (Community Indigenous Businesses) as part of Good Living:

- a. Productive infrastructure and food sovereignty
- b. Rescue and protection of cultural heritage
- c. Protection of traditional practices and knowledge
- d. Strengthening institutions of governance and autonomy.
- e. Participation of women and youth

- f. Promotion of organic products and markets.
- g. Fostering trade networks and agreements among indigenous peoples.
- h. Community Forestry
- i. Energy products (hydroelectric, wind, etc.).

### 3.7 Ways to Communicate Projects to Indigenous Peoples

It is also established that the borrower will make the social assessment available to the affected communities in an appropriate manner, and in appropriate language. Nevertheless, it should be noted that in some areas, indigenous people are unable to read and write, and the language used in some projects is very technical, and will therefore be difficult to understand. It is thus imperative that the project as such be reported on in a simple, easy-to-understand way, and that it can be presented to the community, and that any questions, doubts, or clarifications be resolved on site and at the time when the community wishes, according to its own uses and customs.

The ESS10 should include principles that can guide the WB and the borrowers on how to implement culturally appropriate outreach, communication participation process.

OP4.10 states that the borrower will make the social assessment report and the preliminary version of the Indigenous Peoples Plan and the Indigenous Peoples Planning Framework (IPPM) available in an appropriate way, using appropriate language:

- Simple language
- Culturally adapted (cultural relevance)
- Available in indigenous languages
- Prepare guides on FPIC.

### 3.8 Grievance mechanism at all levels

We ask the WB to improve the mechanism for grievances and redress. This mechanism should contain at a minimum:

- a. An indication of what institution or office people can submit grievances to, and an effective means of communication or people to provide information on the grievance process.
- b. Determine the scope of the grievance process, and issues which cannot be resolved through said process.
- c. Establish a procedure for applying sanctions or penalties in the event of abuse, improper exploitation, human rights violations, etc.
- d. Create a standard grievance form.
- e. Assign a department within the WB to be in charge of following up with and investigating grievances and providing responses.

## 4. General Considerations from the analysis of the World Bank Sustainable Development Standards

- For indigenous peoples, it is necessary to make some clarifications on some concepts and terms (Indigenous Peoples, Consultation, Free, Prior and Informed Consent, Participation, Full and Effective Participation, Land and Territories, etc.), in order to ensure that ESS7 is fully implemented in all of the government initiatives in our countries which have World Bank funding.
- It is important for ESS7 to be coherent with international instruments that protect the rights of indigenous peoples, especially the United Nations Declaration on the Rights of Indigenous Peoples.
- We would ask the World Bank that paragraph 9 of ESS7 be deleted, because as it is written, there is a huge risk that the parties will adopt the “alternative approach” to the detriment of indigenous peoples. Furthermore, this paragraph weakens the spirit of Operational Policy 4.10, and violates the international law principle of non-regression and omission. The safeguards have to have the intention of improving Operational Policy 4.10, not weakening it.

Paragraph 5 of ESS7 should read: the following are considered Indigenous Peoples: tribal peoples in independent countries, whose social, cultural and economic conditions distinguish them from other sectors of national society, and which are governed wholly or partially by their own customs or traditions or by special legislations; peoples in independent countries considered to be indigenous by virtue of the fact that they are descendants of peoples who inhabited the country or a geographic region to which the country belonged at the time of the conquest, colonization or the establishment of the current political borders, and which, regardless of their legal status, conserve all or part of their own social, economic, cultural, and political institutions.

- It is important for ESS7 to properly address the issue of gender, particularly the participation of indigenous women, and therefore the pronouns and other language used should be understood to refer to both male and female indigenous persons. Paragraph 12 of ESS7 should eliminate the parenthesis that reads “(including those relating to gender)”.
- The ESS, particularly ESS7, should address the concept of environment.
- ESS7 must address the issues of monetary and non-monetary benefits, from the perspective of the fair and equitable distribution of the benefits in a just and equitable manner.
- ESS7 must guarantee that where there are sacred places and sites, no conservation efforts, extractive projects or other actions will be carried out that affect those sites without free, prior and informed consent, since those sacred places and sites are fundamental to the indigenous worldview and the development of their culture and daily life.

- ESS5 Involuntary Resettlement, the WB should choose to make a firm decision and present its objection to any attempt to physically displace indigenous people as a result of extractive activities on their land, and if this should happen, then the WB should immediately suspend any financial contributions, especially if the borrowers are intervening in the territories of indigenous peoples in voluntary isolation.
- The only exception to the physical displacement of indigenous peoples that could be considered involving WB intervention would be in the case of natural catastrophes or phenomena that make it impossible for communities to remain in place; in this case as per ILO Convention 169, whenever it is possible, an attempt should be made to return them to their places of origin when circumstances permit.
- The ESS, particularly ESS7, should recognize and encourage projects and programs to include interculturalism, integrality and indigenous systems. Projects that lead to assimilation over the long-term should be avoided, rather efforts should be made to strengthen ancestral practices and knowledge, without neglecting the need for technology exchange or transfer.

## 5. Revision of Environmental and Social Standard 7. Indigenous Peoples.

***DRAFT FOR CONSULTATION 30 July 2014***

### Environmental and Social Standard 7. Indigenous Peoples

#### Introduction

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1. ESS7 contributes to poverty reduction and sustainable development from the viewpoint of indigenous peoples 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>13</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, children, youth and the elderly have frequently been marginalized both within their own communities and as a result of development policies, and may have specific needs.

3. Indigenous Peoples are inextricably linked to the ancestral land and territories on which they live and the natural resources on which they depend. They are therefore particularly vulnerable if their land, territories and resources are transformed, encroached upon, or 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 development from an indigenous perspective.

#### Objectives

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- To ensure that Bank investments foster full respect for the human rights, dignity, aspirations, identity, culture, and natural resource-based livelihoods of Indigenous Peoples, in accordance with international standards, especially the United Nations Declaration on the Rights of Indigenous People.

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<sup>13</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.

- 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 guarantee the fair and equitable distribution of 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, respecting the systems and procedures of 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, preserve and promote the ancestral 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

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>14</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.

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
- (b) Collective attachment<sup>15</sup> to geographically distinct habitats, ancestral territories, bodies of water, seas 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,

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<sup>14</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.

<sup>15</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.

natural disasters, or incorporation of such territories into an urban area.<sup>16</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.

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## Requirements

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### A. General

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

11. The Borrower, together with the indigenous community, will assess the nature and degree of the expected direct and indirect economic, social, cultural (including cultural heritage),<sup>17</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.

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<sup>16</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.

<sup>17</sup> Additional requirements on protection of cultural heritage are set out in ESS8.

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>18</sup>

### **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 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>19</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 guarantee the effective project design, implementation and evaluation, and to reduce the risk of project-related delays or controversies, the Borrower will guarantee 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>20</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>21</sup> and

## **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

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<sup>18</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. When all necessary information cannot be made available because project design or siting is not finalized, preparation of a planning framework is appropriate.

<sup>19</sup> See footnote 6.

<sup>20</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>21</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.

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 within the territory, land and natural; (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:

- (c) The scope of FPIC applies to project design, implementation arrangements and expected outcomes related to risks and impacts on the affected Indigenous Peoples;
- (d) 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;
- (e) 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
- (f) Customary decision-making processes carried out by indigenous peoples are based on the collective will of indigenous communities and people through their representative institutions, which leads to a decision free of coercion or manipulation. Conflicting points of view must be resolved by members of the community and the borrower must respect the final outcome of the decision-making process, taking into account the legitimate opinions and issues raised by the community members as the basis for their decision.

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 proceed 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 and the environment Subject to Traditional Ownership Occupation***

23. Indigenous Peoples are often closely tied to their land and related natural resources.<sup>22</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 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>23</sup> the Borrower will legally recognize the right over these territories. .

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<sup>22</sup> Examples include marine and aquatic resources, timber and non-timber forest products, medicinal plants, hunting and gathering grounds, and grazing and cropping areas.

<sup>23</sup> For example, extractive industries, creation of conservation areas, agro-development schemes, greenfield infrastructure development, land management or titling programs.

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>24</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 within the territory;
- (c) Identify and review all property rights and claims, tenurial arrangements, and traditional resource usage prior to purchasing, leasing or, as a last resort, undertaking land acquisition;
- (d) Assess and document, using independent experts together with indigenous people, 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 territorial management and the use of these resources and it will be carried out by independent experts, jointly with the indigenous people.
- (e) Ensure that affected Indigenous Peoples are informed of: (i) their land rights under national law, including any national or international 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>25</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 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 related 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.

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<sup>24</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>25</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.

### **Relocation of Indigenous Peoples from their lands, territories and natural resources**

25. The Borrower will consider feasible alternative project designs to avoid the relocation of Indigenous Peoples from communally held<sup>26</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>27</sup> or other forms of physical and psychological violence, legal coercion, criminalization or intimidation, 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 impact cultural heritage<sup>28</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 intellectual property, access to genetic resources, knowledge, innovations, or practices of Indigenous Peoples for commercial, scientific, or technological purposes, the Borrower will work with the affected Indigenous Peoples to guarantee: (a) their rights under national and international 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, intellectual property, innovation, or practice, consistent with the customs and traditions of the Indigenous Peoples.

## **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>29</sup> as well as physical impacts. The Borrower will ensure the timely delivery of agreed measures with 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, the circumstances, social and cultural characteristics. Eligibility for compensation can either be individually or collectively-based, or be a combination of both.<sup>30</sup> Where compensation occurs on a collective basis, mechanisms that promote the fair and equitable distribution of monetary and non-monetary benefits 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. The Borrower and the indigenous peoples will agree on various factors including, but not limited to, the nature of the project, the project context and the vulnerability of affected Indigenous Peoples, which will

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<sup>26</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>27</sup> See footnote 5 of ESS5.

<sup>28</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.

<sup>29</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>30</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.

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 independent, culturally appropriate, effective, 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, in consultation with the Indigenous Peoples, 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.

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.