

Inquiries, Comments, and Suggestions on the Safeguard Policy Statement (second draft)

TO: safeguards_update@adb.org
FROM: helen@forestpeoples.org
DATE: 4 December 2008

Dear Nessim, Xiaoying and Indira,

Please find attached here the formal submission from the Forest Peoples Programme for the safeguard update review. It includes a cover submission and a copy of a full document with all suggested changes for the Policy Principles for Indigenous Peoples and Safeguard Requirement 3: Indigenous Peoples. We look forward to seeing the W-paper in the new year.

Best wishes,

Helen

Helen Leake

Policy Advisor

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4th of December 2008

To the SPS Update Team,

Submission of comments to the 2nd (2008) Safeguard Policy Statement Review

Thank you for the opportunity to join the consultations held in Manila on the 2008 draft of the new proposed Safeguard Policy Statement. The consultations provided a forum for a frank exchange of views and opinions. It also enabled different stakeholders to gain a better understanding of the constraints and needs of other stakeholder groups, as well as indigenous peoples as rights-holders.

We are pleased to submit here a summary of our key analysis points regarding the new draft and look forward to seeing the W-Paper and the incorporation of the many comments provided during the consultations. We are appending to this letter a full set of 'tracked changes' comments that incorporate all the proposed text changes that we would like to see reflected in the W-Paper. We are of course happy to discuss any particular aspect of these proposed changes with you should you wish.

In particular we would like to draw attention to two key areas of the policy which we believe emerged as areas of general agreement during the course of the consultation. We are providing here also suggested language changes to the text of the policy.

Free, prior and informed consent

Free, prior and informed consent ("FPIC") is an international legal term of art that refers to the right of indigenous peoples, stemming from their right to self-determination, to control the course of their own development including as it relates to the use of their traditionally owned lands, territories and resources.¹ The 2007 UN Declaration on the Rights of Indigenous Peoples ("UNDRIP") affirms that FPIC applies to any activity that may affect

¹ The concept of free, prior and informed consent, or FPIC, has been developed and elaborated in a number of international fora. Of particular relevance to the ADB in developing their approach to recognizing the right is the workshop report from the UN Permanent Forum on Indigenous Issues in which the Forum elaborates methodologies for realizing FPIC, please see: <http://daccessdds.un.org/doc/UNDOC/GEN/N05/243/26/PDF/N0524326.pdf?OpenElement>. The application of the right of FPIC has been confirmed by the Committee on the Elimination of Racial Discrimination in General Comment 23 and elsewhere, reiterating this right in respect to the ownership, development and use of indigenous peoples' traditional lands, territories and resources and to decisions involving development projects. [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/73984290dfea022b802565160056fe1c?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/73984290dfea022b802565160056fe1c?Opendocument).

indigenous peoples' traditional territories, to resettlement, and to the adoption of legislative, administrative and other measures that may affect them.² It further declares that FPIC constitutes one of "the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world."³

This right is not unique to the UNDRIP, which simply restates existing international law on this point. Accordingly, indigenous peoples' right to FPIC has also been upheld by, *inter alia*, the UN Committee on the Elimination of Racial Discrimination ("CERD"), the UN Human Rights Committee and the UN Committee on Economic, Social and Cultural Rights. CERD, for instance, has affirmed that all decisions directly relating to indigenous peoples' rights shall be taken only with "their informed consent."⁴ It also emphasizes indigenous peoples' right to FPIC, through representatives chosen by themselves, in connection with a range of specific activities including: mining, oil and gas operations; logging; the establishment of protected areas; dams; agro-industrial plantations; resettlement; and compulsory takings.⁵ CERD further holds that states should use the UNDRIP "as a guide to interpret [their] obligations under the Convention relating to indigenous peoples."⁶ CERD oversees compliance with the Convention on the Elimination of All Forms of Racial Discrimination, an instrument ratified by all but one of the ADB's member states.

Most recently, citing a range of international instruments and jurisprudence, including the UNDRIP, the Inter-American Court of Human Rights held that FPIC was the applicable standard for any investment or project "that could affect the integrity" of indigenous and tribal peoples' territories.⁷ The Court explicitly applied this right when assessing the legality of state-authorised measures to restrict indigenous and tribal property rights for development projects.⁸

² See Articles 3, 10, 19, and 32, UN Declaration on the Rights of Indigenous Peoples, <http://www.un.org/esa/socdev/unpfii/en/drip.html>.

³ Article 43, UN Declaration on the Rights of Indigenous Peoples

⁴ *General Recommendation XXIII on Indigenous Peoples*, adopted by the Committee on the Elimination of Racial Discrimination at its 51st session, 18 August 1997, at para. 4, [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/73984290dfea022b802565160056fe1c?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/73984290dfea022b802565160056fe1c?Opendocument).

⁵ See *inter alia* Cambodia, 31/03/98, CERD/C/304/Add.54, at para. 13 and 19 (observing that the "rights of indigenous peoples have been disregarded in many government decisions, in particular those relating to citizenship, logging concessions and concessions for industrial plantations" and recommending that Cambodia "ensure that no decisions directly relating to the rights and interests of indigenous peoples are taken without their informed consent"); India, 05/05/2007, CERD/C/IND/CO/19, at para. 20 (stating that the "State party should also ensure that tribal communities are not evicted from their lands without seeking their prior informed consent and provision of adequate alternative land and compensation..."); Indonesia, 15/08/2007, CERD/C/IDN/CO/3, at para. 17 (recommending that Indonesia "ensure that meaningful consultations are undertaken with the concerned communities, with a view to obtaining their consent and participation in the Plan"); Guyana, 04/04/2006, CERD/C/GUY/CO/14, at para. 19 (recommending that Guyana "seek the informed consent of concerned indigenous communities prior to authorizing any mining or similar operations which may threaten the environment in areas inhabited by these communities"); India, 05/05/2007, CERD/C/IND/CO/19, at para. 19 (stating that the India "should seek the prior informed consent of communities affected by the construction of dams in the Northeast or similar projects on their traditional lands in any decision-making processes related to such projects and provide adequate compensation and alternative land and housing to those communities"); and Australia, CERD/C/AUS/CO/14, 14 April 2005, at para. 11 (recommending "that the State party refrain from adopting measures that withdraw existing guarantees of indigenous rights and that it make every effort to seek the informed consent of indigenous peoples before adopting decisions relating to their rights to land").

⁶ United States, 02/2008, CERD/C/USA/CO/6, at para. 29.

⁷ See *Saramaka People v. Suriname. Interpretation of the Judgment on Preliminary Objections, Merits, Reparations and Costs*. Judgment of 12 August 2008. Series C No. 185, at para. 17, http://www.corteidh.or.cr/docs/casos/articulos/seriec_185_ing.pdf.

⁸ *Id.*, and; *Saramaka People v. Suriname. Preliminary Objections, Merits, Reparations and Costs*. Judgment of 28 November 2007. Series C No. 172, para. 129-40.

While the 2nd draft of the SPS has taken some steps towards acknowledging FPIC, it is extremely disappointing to observe that the proposed definition of FPIC employed therein is fundamentally incompatible with current understandings of the term, including as used by other IFIs (the EBRD and Inter-American Development Bank (“IADB”), for example). This definition, if permitted to stand, also would greatly undermine the rights of indigenous peoples as guaranteed in international human rights norms accepted by the vast majority of ADB members and even in international environmental law. This is difficult to understand in light of the international community’s affirmation in the UNDRIP that FPIC is one of the “minimum standards for the survival, dignity and well-being of the indigenous peoples.” Additionally, and as discussed below, this misappropriation and contortion of the definition of FPIC is inappropriate as guidance for borrowers/clients, exposes them and the ADB to a series of legal, commercial and reputational risks, and ultimately undermines development effectiveness.

The current proposed language in the SPS defines FPIC as follows:

For the purposes of policy application, consent refers to a collective expression by the affected Indigenous Peoples communities through individuals and/or their recognized representatives, of broad community support for such project activities. Such broad community support may exist even if some individuals or groups were to object to the project activities.

This conflates two separate terms, FPIC on the one hand, and 'broad community support' as used by the World Bank and the International Finance Corporation on the other. 'Broad community support' has no accepted definition or meaning and is unacceptable to indigenous peoples, as clearly demonstrated during the recent consultations. World Bank management has also recommended that the policy on indigenous peoples be amended to replace broad community support with FPIC, as publically stated by the World Bank representatives at the recent consultation and it was explicitly rejected by the EBRD in its 2008 policy on indigenous peoples, which unambiguously requires FPIC for projects that may affect indigenous territories.⁹

By redefining FPIC as 'broad community support' the ADB is adopting a retrograde standard that undermines its members international legal obligations pertaining to indigenous peoples and could also be accused of failing to even seek to attain the internationally accepted minimum standards. The 'broad community support' standard is even contrary to Article 8(j) of the Convention on Biological Diversity, which protects indigenous peoples' traditional knowledge and requires their “approval” before it can be used. The World Bank’s OP 4.10 acknowledges this legal obligation by also requiring indigenous peoples' 'agreement' in this respect, as does the IFC’s policy on indigenous peoples. The ADB however is proposing to adopt a lower standard.

We strongly recommend amending the proposed definition of FPIC and replacing it with an internationally acceptable and accurate description of what the term entails. Leaving the definition as is risks exposing the ADB to accusations of contorting and misapplying existing concepts and standards, and, as discussed below, of adopting standards that fall below those employed by other IFIs. We propose the following alternative definition:

For the purposes of policy application, consent refers to a collective agreement by the affected Indigenous Peoples' communities, through an independent and self-determined decision-making process undertaken with sufficient time and in accordance with their cultural traditions, customs and practices.

⁹ The European Bank on Reconstruction and Development defines consent as: 'Consent refers to the process whereby the affected community of Indigenous Peoples, arrive at a decision, in accordance with their cultural traditions, customs and practices, as to whether to become involved in the proposed project.'
<http://www.ebrd.com/about/policies/enviro/policy/2008policy.pdf>

The 2nd draft of the SPS also unjustifiably limits the application of FPIC, again inappropriately defined as 'broad community support', to a specific set of project activities, as follows:

Apply the principle of free, prior, informed consent of affected Indigenous Peoples to the following project activities: (i) commercial development of the cultural resources and knowledge of Indigenous Peoples, (ii) physical relocation from traditional or customary lands, and (iii) commercial development of natural resources on lands used with impacts on the livelihood, or cultural, ceremonial, or spiritual uses that define the identity and community of Indigenous Peoples.

The World Bank and the IFC, the original architects of the 'broad community support' concept, apply it across the board to ALL project activities that may adversely impact on indigenous peoples, rather than just to these three above listed circumstances as the ADB is now proposing.¹⁰ Moreover, the IFC, IADB and EBRD apply a significantly higher standard to these three activities (successfully concluded negotiations, agreement and FPIC, respectively), and all apply these higher standards to economic displacement in addition to physical displacement. The ADB, however, only applies 'broad community support' rather than a higher, more appropriate standard (FPIC or agreement), and does not include non-physical displacement at all in this category.

The 2nd draft of the SPS is thus adopting a retrograde standard when compared with the standards adopted by other international financial institutions and multilateral development agencies. As one of the stated aims of the SPS update is to harmonize with other financial institutions, it is difficult to see how such a regression is justified. This deficiency could of course be addressed by ensuring that FPIC is not defined as 'broad community support' and we reiterate our prior recommendation above that the proposed definition be amended.

We further recommend that economic displacement be added to physical displacement as one of the activities for which FPIC is required in the policy. As it currently stands, 2nd draft of the SPS allows for the acquisition of indigenous peoples' lands and territories - and the economic displacement of indigenous peoples - without FPIC as long as such acquisition does not result in physical displacement. Therefore, potentially large areas of indigenous territories may be taken without FPIC as that term is understood internationally and also without even applying opaque the 'broad community support' standard.¹¹ The acquisition of indigenous peoples' traditional lands, territories and resources without their consent is impermissible under international law, and under existing voluntary and mandatory standards governing development finance activities. The IFC, EBRD and IADB all require some form of agreement in this context and even the World Bank requires 'broad community support'. Failure to address this issues seriously undermines the ability of the ADB to provide appropriate safeguards for the rights of indigenous peoples in Asia.

There are two further key problems with the specified list of project activities, even if the principle of FPIC is defined to meet international standards. The first issue is the use of the language 'apply the principle of free, prior and informed consent' rather than 'obtain the free, prior and informed consent'. This is an unnecessary confusion and could be easily addressed by clarifying for borrowers/clients that the requirement from the ADB is to obtain the free, prior and informed consent of the affected indigenous peoples – not to apply a principle in the abstract.

The second issue with the cited paragraph is the restriction of application of FPIC. Even if the Bank alters the current proposed definition to bring it inline with international law and international good practice, the proposed restrictions in application remain problematic. As an internationally recognized right, the right to give or withhold consent to a proposed

¹⁰ IFC Performance Standard 7: Indigenous Peoples

¹¹ ADB SPS consultation draft 2008, SR3 paragraph 25

development initiative is not restricted, it encompasses every activity that may directly or indirectly impact on the lands and resources of indigenous peoples. We strongly recommend removing the restrictions on application of FPIC and ensuring that it is required and obtained for all activities impacting on indigenous peoples.

If, for the purposes of policy application, the restriction is retained we would like to draw your attention to one of the points of consensus that arose during the recent consultation, namely the inclusion of projects aimed at affecting, altering, supporting or subsidizing the health and education systems of indigenous peoples. We would also recommend the reformulation of the restrictions to more fully reflect the required protections for indigenous peoples. Our proposed alternative text, with alterations highlighted, is:

Obtain the free, prior, informed consent of affected Indigenous Peoples to the following project activities: (i) **impacts on** cultural resources and knowledge of Indigenous Peoples, (ii) physical **and/or economic displacement** of indigenous peoples, (iii) **impacts on** natural resources on lands used with impacts on the livelihood, or cultural, ceremonial, or spiritual uses that define the identity and community of Indigenous Peoples, **and (iv) projects involving health and education activities for Indigenous Peoples.**

Country Safeguard Systems

The current draft of the SPS formalizes in the ADB's policies the introduction of a country safeguard system approach. The ADB is not the first Bank to work with the idea of using national systems to safeguard the environment, human rights and social impacts from large-scale projects and the trend of using such an approach is likely to gain momentum with the Paris Declaration on Aid Effectiveness and the Accra Declaration.

The concept of strengthening country systems of safeguards, raising them progressively to meet international standards and improving capacity to implement and monitor such safeguards, is an aim that we fully support. In line with the Paris Declaration, we feel that country ownership is fundamental to ensuring a sustained and effective system of protection for the environment, social impacts and human rights. However we also recognize that often both the words and the deeds of country safeguard systems fail to match up to the minimum standard of the ADB's safeguards and fall far short of international standards, laws and agreements.

The 'bottom line' for the ADB is that ADB financing should not ever be used in projects that lead to wide-spread environmental and social damage or exacerbate and increase abuses of human rights in Asian countries and against Asian peoples. This bottom line is non-negotiable for the Bank and for its lender countries. The difficulty for the Bank is to balance the desire to improve country safeguards against the prohibition to do harm.

The current proposal to introduce country safeguard systems (CSS) fails to appropriately address these two countervailing needs of the Bank. The proposed approach provides no detail on the basis for the proposed 'equivalence assessment', what aspects of a national system would be taken into account, how actual practice would be considered along side the words of the relevant laws and regulations and no requirement for disclosure of such assessments.

The lack of any requirement for involvement of indigenous peoples in the assessment of the laws and regulations impacting on them contravenes the spirit and words of the ADB safeguard standards and contravenes the internationally recognized and protected right of indigenous peoples to be in control of the course of their own development. We strongly call for the Bank to develop a detailed paper, in consultation with civil society and indigenous peoples, on the mechanisms for the assessments proposed in the CSS as presented in the

current SPS. Only on successful conclusion of such discussions should the proposal to implement such a system be initiated.

In regards to the text proposed for the CSS currently included in the SPS, significant revisions are required if the system is going to be able to cope with the challenges of implementing a diverse range of safeguard systems without violating the intent of safeguards. In particular, the text needs to include (i) reference to international laws and standards as part of the definition of a country system; (ii) provisions for the disclosure of draft and final equivalence and acceptability assessments to the public with opportunity for public comment and (iii) provisions for full and effective involvement of concerned sections of society in the conduct and finalization of such assessments and public validation of the results.

In concrete terms, we propose the following text changes:

Specific reference within the CSS sections of the SPS to the need to develop a separate paper, through open consultations and involvement of relevant stakeholders and rights holders, to further elaborate the mechanisms and procedures for the assessments proposed within the CSS.

Inclusion of international standards

The CSS approach proposed is based primarily on assessing a country's safeguard system based on the following definition:

Definition. “Country safeguard systems” is used to mean a country’s legal and institutional framework, consisting of its national, sub-national, or sectoral implementing institutions and relevant laws, regulations, standards, and procedures, which pertain to the safeguard policy areas.

This definition fails to incorporate any reference to international standards, commitments and agreements which are an integral part of any nation's legal framework. Alternative proposed text is:

Definition. “Country safeguard systems” is used to mean a country’s legal and institutional framework, consisting of its **international commitments**, national, sub-national, or sectoral implementing institutions and relevant **international and national** laws, regulations, standards, and procedures, which pertain to the safeguard policy areas.

Provisions for disclosure of draft and final assessments

The proposed adoption of the CSS relies heavily on the outcome of the two proposed assessments, the equivalence and acceptability assessments. However there is no provision for public involvement with or validation of the results of such assessments. The SPS must ensure that the draft and final assessments are provided for public comment prior to any acceptance of the findings of the assessments by the Bank. We strongly recommend public disclosure of the draft assessments *as early as possible* in the conduct of the assessments, and disclosure of the final assessments no later than 120 days prior to consideration of the findings of the assessments by the Board, with opportunity provided for public comment.

Without such disclosure the ADB risks conducting its assessments and reaching decisions with potentially wide-ranging impacts on the peoples of the Asia-Pacific without sufficient information and lacking external and practical perspectives from potentially affected peoples. Proposed text changes are provided here in bold:

- (vi) Disclosure and Consultation. Draft equivalence assessments at country / sector / agency level will be documented and disclosed on ADB's website **as early as possible, with at least 120 days provided** for public comments **prior to any Board consideration of the assessment results** upon completion. ADB ~~may~~ **shall** organize in-country consultation workshops to solicit comments and feedback from stakeholders including governments and NGOs. **Equivalence assessments involving possible use of country safeguards for indigenous peoples shall provide for the full and effective involvement of indigenous peoples in the conduct of the equivalence assessment.** Final equivalence assessment reports will be disclosed on ADB's website upon completion. Issues related to the acceptability assessments at project level will be an element of the normal safeguard consultation process undertaken for project preparation.

Provisions for full and effective involvement and consultation with concerned sections of society

In addition to providing no requirement for public disclosure, the equivalence assessment as currently proposed fails to balance the need to assess both the words and the deeds of country safeguard systems through the involvement of non-governmental sections of society. Although many countries may have laws or standards that seem – on paper – to be functionally equivalent to the ADB safeguards and to international standards, any true equivalence assessment must look also at the actual capacity and *political will* within a country to achieve the implementation of such safeguards. Without the formal involvement of civil society and indigenous peoples such an assessment would necessarily fail to incorporate all necessary perspectives and experiences of an existing safeguard system. We propose the following text to address this serious gap (additions in bold):

Phase I: Country/Sector/Agency Level Assessment—Determining Equivalence. ADB will be responsible for assessing and determining the equivalence through CSS assessment at national, sub-national, sector, or agency level. **Such assessments will be undertaken with the involvement of a wide variety of stakeholders to ascertain equivalence assessment in both the policies and laws and in the actual practice within the country. In particular non-government organizations with expertise in the given policy area will be involved in the assessments, and in the case of the indigenous peoples' safeguards national and sub-national indigenous peoples' organizations and representative authorities will be involved.** If the assessments reveal that gaps can be addressed reasonably, ADB and the borrower will agree on specific gap-filling measures to be included in an action plan. **Such agreed gap-filling measures will be implemented and completed prior to the adoption of a successful equivalency assessment.** The assessments will need to be updated as required to reflect changes in CSS. Recent analytical work and assessments of other MFIs, updated as required, can be used. Joint assessments with other MFIs will be encouraged. At this phase, ADB will not consider application of CSS to any specific project and ADB's safeguard policies and requirements will apply. If the equivalence assessments conclude that gaps at country/sector/agency level cannot be addressed within a reasonable timeframe, ADB will not move into the second phase of acceptability assessment

In addition to the two areas of specific concern which we have highlighted in this submission, we are also providing you herein with a full document of suggested text changes to address the weaknesses in the current draft. You will note that the suggestions we make within the appended document reflect and support the recommendations provided to you also by the indigenous peoples' representatives at the recent consultation. In particular we fully endorse the following recommendations already provided to you:

1. The policy should confirm to and reaffirm the international understanding of development provided by the UN Common Understanding of the Human Rights Based Approach to Development.
2. The policy, for indigenous peoples, should refer to and implement the UN Declaration on the Rights of Indigenous Peoples as the primary international instrument on the human rights of indigenous peoples
3. The linkages between the implementation and the principles of the three policy areas, resettlement, environment and indigenous peoples, should be made explicit. Additional provisions should be included within the resettlement and environment policies in areas relevant to indigenous peoples to ensure that specific protections are consistent.
4. Terminology used in the policy should be active and strong in order to avoid misinterpretation, *inter alia*, feasible should be replaced with possible, 'normally acceptable' should be removed, 'applicable' should be removed in reference to laws and standards, 'where relevant' should be removed.
5. References to the use of external experts should be consistent throughout the document, and should use the term "independent, qualified and experienced experts". In the case of projects impacting on indigenous peoples references to the use of experts should additionally specify the use of indigenous peoples' experts.
6. The conduct of all assessments related to indigenous peoples including both environmental and social impact assessments must be conducted by independent, qualified and experienced experts and must include a process of validation by the affected indigenous peoples

We stand ready to provide further information should it be required or provide additional details and background on any of the suggestions and recommendations provided herein,

Best regards,

Helen Leake
Policy Advisor

3. Objectives, Scope and Policy Principles on the Indigenous Peoples Safeguards

Objectives	To design and implement projects in a way that fosters full respect for Indigenous Peoples' identity, dignity, human rights, livelihood systems, and cultural uniqueness, <u>consistent with the UN Declaration on the Rights of Indigenous Peoples</u> , so that they (i) receive culturally appropriate social and economic benefits; (ii) do not suffer adverse impacts of projects; and (iii) are able to participate actively <u>at all levels of projects that affect them</u> .
Scope	The Policy is triggered if a project impacts directly or indirectly on the dignity, human rights, livelihood systems, or culture of Indigenous Peoples, or affects the territories, natural or cultural resources that Indigenous Peoples own, use, occupy or claim as an ancestral domain or asset. "Indigenous Peoples" is used in a generic <u>and inclusive</u> sense to refer to a distinct <u>social and cultural group</u> possessing the following characteristics in varying degrees: (i) self identification and recognition of this identity by others, (ii) collective attachment to geographically distinct habitats or ancestral territories and to the natural resources in these habitats and territories, (iii) presence of distinct customary cultural, economic, social or political institutions, and (iv) a distinct language, often different from the official language of the country or region. A group that has lost "collective attachment to geographically distinct habitats or ancestral territories in the project area" (item [iii]) because of forced severance remains eligible for coverage under this Policy.
Policy Principles	<ol style="list-style-type: none"> 1. Screen <u>as early as possible</u> to determine (a) whether Indigenous Peoples are present in, or have collective attachment to, the project's <u>area of influence</u>, and (b) whether there are likely <u>direct or indirect</u> project impacts on Indigenous Peoples. 2. Undertake a culturally appropriate and gender sensitive social assessment, <u>in partnership with the affected indigenous peoples and indigenous peoples' organizations</u> to assess potential project impacts, both positive and adverse, on Indigenous Peoples. Give full consideration to options preferred by the affected Indigenous Peoples in the provision of project benefits and in designing of mitigation measures. Identify social and economic benefits for affected Indigenous Peoples that are culturally appropriate, and gender and inter-generationally inclusive and develop measures to avoid, minimize and/or mitigate adverse impacts on Indigenous Peoples. 3. <u>Seek and obtain the free, prior and informed consent of affected communities and concerned Indigenous Peoples' organizations</u> to solicit their participation (a) in designing, implementing, and monitoring <u>all project activities that may impact on them</u>, (b) <u>designing, implementing and monitoring any agreed</u> measures to avoid adverse impacts, or, when avoidance is not <u>possible</u>, to minimize, mitigate, or compensate for such effects; and (c) <u>in tailoring project benefits for them in a culturally appropriate manner</u>. To enhance Indigenous Peoples' active participation, the projects affecting them will provide for culturally-appropriate capacity development. Establish a culturally appropriate <u>and agreed</u> grievance mechanism to receive and facilitate resolution of the Indigenous Peoples' concerns. 4. <u>Obtain the free, prior, informed consent of affected Indigenous Peoples to the following project activities:</u> (i) <u>impacts on</u> cultural resources and knowledge of Indigenous Peoples, (ii) <u>physical and/or economic displacement of indigenous peoples</u>, (iii) <u>impacts on</u> natural resources on lands used with impacts on the livelihood, or cultural, ceremonial, or spiritual uses that define the identity and community of Indigenous Peoples, <u>and (iv) projects involving health and education activities for Indigenous Peoples</u>. For the purposes of policy application, consent refers to a collective <u>agreement</u> by the affected Indigenous Peoples communities, <u>through an independent and self-determined decision-making process undertaken with sufficient time</u>. <u>Such consent does not necessarily require support from every individual</u>. 5. Prepare an Indigenous Peoples Plan (IPP) <u>in partnership with affected indigenous peoples' communities, indigenous peoples' organizations and representative indigenous peoples' authorities</u>, with the assistance of qualified <u>independent</u> and experienced expert(s), <u>including indigenous peoples' experts</u>, and draws on indigenous knowledge and the participation of the affected Indigenous Peoples' communities. The IPP includes a framework for continued consultation with the affected Indigenous Peoples communities during project implementation; specifies measures to ensure that Indigenous Peoples receive culturally appropriate benefits; identify measures to avoid, minimize, mitigate or compensate for any adverse project impacts; and include culturally-appropriate grievance procedures, monitoring and evaluation arrangements, and a time-bound actions and budget for implementing the planned measures. 6. Disclose a draft IPP including documentation of the consultation process and the results of the social assessment, before project appraisal, in a form, manner and language(s) accessible to affected <u>indigenous peoples' communities</u> and the public. The final IPP and its updates will also be disclosed to the affected communities and other stakeholders. <u>Disclose draft and final SIA and EIA and any other assessments, and monitoring reports and progress assessments, in a form and manner and language(s) accessible to the affected indigenous peoples' communities and the public</u>.

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	<p>7. Put in place an action plan for the legal recognition of customary rights to lands and territories, or ancestral domain, when the project involves activities that are contingent on establishing legally recognized rights to lands and territories that Indigenous Peoples traditionally owned, or customarily used or occupied.</p> <p>8. Avoid, to the maximum extent possible, any restricted access to and relocation from protected areas and natural resources. Where such avoidance proves not to be <u>possible and free, prior and informed consent has been obtained before any restriction of access or relocation</u>, ensure that the affected Indigenous Peoples' communities participate in the design, implementation, monitoring and evaluation of management arrangements for such areas and natural resources and that their benefits are equitably shared.</p> <p>9. Monitor the implementation of the IPP, using <u>qualified, independent and experienced expert(s), including indigenous peoples' expert(s)</u>, and adopting a participatory monitoring approach, wherever possible, and prepare a project completion report that assesses if the objective and desired outcome of the IPP have been achieved, taking into account the baseline conditions and the results of IPP monitoring.</p>
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DRAFT SAFEGUARD REQUIREMENTS FOR BORROWERS/CLIENTS 3

INDIGENOUS PEOPLES

A. Introduction

1. Nearly three-quarters of the world’s Indigenous Peoples live in the Asia and Pacific region. ADB recognizes the rights of Indigenous Peoples to development. In practice, however, Indigenous Peoples do not automatically benefit from development, which often planned and implemented by those in the dominant population in the respective countries they reside. Special efforts are needed to engage Indigenous Peoples in the planning of development programs which affect them. Indigenous Peoples are threatened as development programs infringe into areas which they traditionally own, occupy or use or consider as ancestral domain.

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2. This policy document outlines the mandatory requirements that borrowers/clients must meet in delivering Indigenous Peoples safeguards to projects supported by ADB. It discusses the scope of application, and underscores the important requirements on social assessment and planning process, preparation of social assessment reports and planning documents, information disclosure and consultation including the requirement to obtain the free, prior, informed, consent of affected indigenous peoples to projects affecting them, establishment of an independent grievance mechanism, and monitoring and reporting. This set of policy requirements aims to safeguard Indigenous Peoples’ rights, consistent with the UN Declaration on the Rights of Indigenous Peoples, to maintain, sustain and preserve their cultural identities, practices and habitats, and ensure that projects affecting them will establish and implement necessary measures to protect these rights.

B. Scope of Application

3. These requirements for Indigenous Peoples safeguards apply to all projects including ADB-financed and/or ADB-administered sovereign and non-sovereign investment projects, and covers all project components whether financed by ADB, cofinanciers, financial intermediaries or the borrower, funded by a loan, and/or a grant, and/or other means (such as equity and/or guarantee). They also cover actions conducted in anticipation of ADB projects.

4. There are varied and changing contexts in which Indigenous Peoples live and there is no universally accepted definition of “Indigenous Peoples.” Indigenous Peoples are referred to as “indigenous communities,” “indigenous cultural communities,” “ethnic minorities,” “aboriginals,” “hill tribes,” “minority nationalities,” “scheduled tribes,” “tribal groups,” or other such terms in different countries.

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5. For operational purposes, the term “Indigenous Peoples” is used in a generic and inclusive sense to refer to a distinct, social and cultural group possessing the following characteristics in varying degrees:

- (i) self-identification as members of a distinct indigenous cultural group and recognition of this identity by others;
- (ii) collective attachment to geographically distinct habitats or ancestral territories and to the natural resources in these habitats and territories;
- (iii) distinct customary cultural, economic, social, or political institutions that are separate from those of the dominant society and culture; and
- (iv) an indigenous language, often different from the official language of the country or region.

6. Transhumant and nomadic indigenous peoples are covered by this policy. A group that has lost “collective attachment to geographically distinct habitats or ancestral territories in the project area” (paragraph 5 [ii]) because of forced severance, remain eligible for coverage under the Policy.

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7. The Policy on Indigenous Peoples is triggered, if a project impacts directly or indirectly on the dignity, human rights, livelihood systems, or culture of Indigenous Peoples, or affects the territories, natural or cultural resources that Indigenous Peoples own, use, occupy, or claim as their ancestral domain.

C. General Requirements

[Insert the section on free, prior and informed consent para 28-30]

1. Consultation and Participation

8. When ADB has determined that the indigenous peoples’ policy and safeguard requirements are triggered, the borrower/client will undertake a process of full and effective consultation with affected Indigenous Peoples to ensure their informed participation in (a) designing, implementing, and monitoring measures to avoid adverse impact on them, or when prior agreement has been obtained and avoidance is not possible, to minimize, mitigate, and compensate for such effects; and in (b) tailoring project benefits that accrue to them in a culturally appropriate manner. Full and effective consultation is an ongoing process and will be initiated as early as possible in the project cycle so that views of affected Indigenous Peoples can be taken into account in the project design and continued throughout the project cycle.

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9. To carry out full and effective consultation, the borrower/client will:

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(i) establish a strategy for inclusive consultation to take place on a level playing field on which all participants (affected Indigenous Peoples’ communities and Indigenous Peoples organizations if any, and other local civil society organizations) have the same say and are able to voice their concerns without facing any pressure;

(ii) provide technical assistance to indigenous peoples’ communities including funding to secure independent technical and legal expertise for the duration of the project cycle

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(iii) use consultation methods appropriate to the social and cultural values of the affected Indigenous Peoples’ communities, giving special attention to the concerns of indigenous women, and the youth; and

(iv) provide the affected Indigenous Peoples, prior to actual consultation, all relevant information from draft documents and plans, including an assessment of potential impacts that may arise during and after project implementation, in local language accessible to the affected people.

(v) set aside adequate time before decisions are taken for indigenous peoples’ communities to become informed, discuss using their own methods and provide inputs into the process

(vi) demonstrate responsiveness, including reports on how input has been used in the project design process

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10. Subsequent to free, prior and informed consent being obtained, if serious differences and disagreements on the project, its components, or IPP arise between the borrower/client and

the affected Indigenous People, the borrower/ client will adopt good faith negotiations for them to resolve such differences and disagreements. Only upon successful resolution of the differences and disagreements has been reached will the project activities resume.

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2. Social Impact Assessment

11. When screening by ADB confirms likely direct and/or indirect impacts on Indigenous Peoples, or affects their territories, natural and cultural resources that they own, use, occupy or claim as their ancestral domain the borrower/client will retain qualified, independent and experienced expert(s), including indigenous peoples' expert(s) to carry out a full social impact assessment (SIA), and if impacts on Indigenous Peoples are identified, prepare an IPP in conjunction with the feasibility study. [insert the provisions of paragraph 24 as guidance]

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12. Based on the screening, a field-based SIA will be conducted either as part of the feasibility study or as a stand-alone activity. The SIA will, in gender sensitive manner and in partnership with affected indigenous peoples' communities, indigenous peoples' organizations and representative indigenous peoples' authorities, identify the project affected Indigenous Peoples and the potential impacts of the proposed project on them. The SIA will provide the baseline socioeconomic profile of the Indigenous groups in the project's area of influence and project impact zone, validated by the affected indigenous peoples, assess their access to and opportunities to avail of basic social and economic services, assess the short and long-term, direct and indirect as well as positive and adverse impacts of the project on each ethnic group's social, cultural and economic status, assess and validate which Indigenous peoples will trigger the Indigenous Peoples policy principles and safeguard requirements, and assess the subsequent approaches and resource requirements to address the various concerns and issues of projects that affect them. The draft SIA will be subject to a validation process by the affected indigenous peoples.

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13. The level of detail and comprehensiveness of the SIA will be proportional to the complexity of the proposed project and commensurate with the nature and scale of the proposed project's potential effects on the Indigenous Peoples, whether positive or adverse.

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3. Indigenous Peoples Planning

14. If the screening and SIA indicate that the proposed project will have impacts, positive and/or adverse, on Indigenous Peoples, the borrower/client will, in partnership with affected indigenous peoples' communities, indigenous peoples' organizations and representative indigenous peoples' authorities, prepare an Indigenous Peoples Plan (IPP). The IPP will set out the measures through which the borrower/client will ensure that (a) affected Indigenous Peoples receive culturally appropriate social and economic benefits; and (b) when potential adverse impacts on Indigenous Peoples are identified, these will be avoided to the maximum extent possible. Where this avoidance is proven to be impossible, and where the free, prior and informed consent of the affected indigenous peoples' communities has been obtained, the IPP will contain measures to minimize, mitigate, and compensate for the adverse impacts designed in collaboration and partnership with affected indigenous peoples' communities, indigenous peoples' organizations and representative indigenous peoples' authorities. The level of detail and comprehensiveness of IPPs (Annex 1) will vary depending on the specific project and the nature of impacts to be addressed. The borrower/client will integrate fully the elements of the IPP into the project design.

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15. If Indigenous Peoples are the sole or the overwhelming majority of direct project beneficiaries, the elements of an IPP will be included in the overall project design, and a separate IPP will not be required. In such cases, the project document will include a summary of how the project complies with the Policy on Indigenous Peoples Safeguards, in particular, will explain how the requirements for free, prior and informed consent are fulfilled and how accrual of benefits has been integrated into the project. The project design and legal covenants will also explicitly specify how benefits accrue to Indigenous Peoples in the project's area of influence and how a continuing relationship including full and effective consultations will be maintained throughout the project cycle.

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16. The borrower/client will update IPPs after the completion of detailed engineering design, and detailed measurement surveys. Addendums to the updated IPPs will be prepared closely following the award of contract packages, and the implementation time schedules of each project component or subproject for implementing IPPs. Both mitigating measures to avoid adverse impact on IPs as well as measures to enhance culturally appropriate development benefits will be adjusted but the agreed outcomes of the draft IPP will not be lowered or minimized.

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17. The borrower/client will use qualified, independent and experienced expert(s), including indigenous peoples' expert(s) in the preparation of social impact assessment and IPP, and will conduct such planning and assessment in partnership with affected indigenous peoples' communities, indigenous peoples' organizations and representative indigenous peoples' authorities. For highly complex and sensitive projects, independent advisory panels during preparation and implementation of projects will be used. Any highly complex and sensitive projects affecting Indigenous Peoples will require an Indigenous Peoples expert in the advisory panel.

4. Information Disclosure

18. The borrower/client will submit to ADB the following documents to disclose on ADB's website:

- (i) a social impact assessment will be disclosed prior to the drafting of the Indigenous Peoples Plan,
- (ii) a draft IPP and/or Indigenous Peoples Planning Framework (IPPF) including social impact assessment, endorsed by the borrower/client, before appraisal;
- (iii) the final IPP and/or IPF endorsed by the borrower/client upon completion of such documents;
- (iv) a new or updated IPPs or addendums to IPPs, and corrective action plan prepared during implementation, if any;
- (v) periodic progress reports submitted by the borrower,
- (vi) monitoring reports.

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19. The borrower/client will provide these documents, and any other relevant key information on the projects and the IPPs in a form, manner and language(s) accessible to key stakeholders, especially the affected Indigenous Peoples. For example, in case of non-literate Indigenous Peoples, visual appropriate communication methods will be utilized.

5. Grievance Redress Mechanism

20. The borrower/client will establish an independent grievance mechanism to receive and facilitate resolution of the affected indigenous peoples' communities' concerns, complaints and grievances. The composition of the grievance mechanism will include an independent expert acceptable to the affected indigenous peoples' communities. The purpose of the grievance mechanism is to receive grievances and facilitate dialogue between affected indigenous peoples' communities and other project decision makers. The grievance mechanism will be scaled to the impacts of the project. It should address concerns promptly, using an understandable and transparent process that is culturally appropriate, gender responsive, and accessible to the affected indigenous peoples' communities, and at no cost and without retribution. The mechanism shall not impede access to the country's judicial or administrative remedies. The affected Indigenous Peoples communities will be appropriately informed about the mechanism.

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6. Monitoring and Reporting

21. The borrower/client will monitor and measure the progress of implementation of IPP with the effective involvement of affected indigenous peoples' communities, indigenous peoples' organizations and representative indigenous peoples' authorities. In addition to recording information to track performance, the borrower/client should use dynamic mechanisms, such as inspections and audits, where relevant, to verify the compliance with the requirements and the progress toward achieving the desired outcomes. For projects with significant adverse impacts on Indigenous Peoples, the borrower/client will retain qualified and experienced external expert(s) including indigenous peoples' experts or qualified NGOs to verify monitoring information of borrower/client. The external experts engaged by the borrower/client will advise on compliance issues, and if any significant Indigenous Peoples issues are found, an additional IPP or an addendum to the approved IPP will be prepared. Monitoring reports will be subject to validation by affected indigenous peoples' communities.

22. The borrower/client will prepare periodic progress reports on progress of IPP implementation highlighting compliance issues and corrective actions, if any. The borrower/client will submit semiannual progress reports. The costs of monitoring requirements will be reflected in project budgets.

7. Unanticipated Presence of Indigenous Peoples in Project's Area of Influence or Unanticipated Impacts

23. In the event that unanticipated indigenous peoples are present in the project's area of influence, or it is found that the project unexpectedly impacts on the territories, natural and cultural resources that indigenous peoples own, use, occupy or claim as their ancestral domain the borrower/client will comply fully with the requirements of this policy and all requirements of SR3, particularly those provided in paragraph 8-22.

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D. Special Requirements

1. Ancestral Domains, Lands and Related Natural Resources

24. Indigenous Peoples are closely tied to land, forests, water, wildlife, and other natural resources, and therefore special considerations apply if the project affects such ties. In this situation, when carrying out the social impact assessment and preparing the IPP, the borrower/client will pay particular attention to

- (i) the customary rights of the Indigenous Peoples, both individual and collective, pertaining to ancestral domains, lands or territories that they traditionally owned, or customarily used or occupied, and where access to natural resources is vital to the sustainability of their cultures and livelihood systems;
- (ii) the need to protect such ancestral domains, lands and resources against illegal intrusion or encroachment;
- (iii) the cultural and spiritual values that the Indigenous Peoples attribute to such lands and resources;
- (iv) Indigenous Peoples' natural resources management practices and the long-term sustainability of such practices, and
- (v) the need to rehabilitate the livelihood systems of Indigenous Peoples who have been evicted from their lands.

[this information should be provided also in the outline of the IPP]

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25. If the project involves (a) activities that are contingent on establishing legally recognized rights to lands and territories that Indigenous Peoples have traditionally owned or customarily used or occupied (such as land titling projects), or (b) the use of lands where the free, prior and informed consent of the affected indigenous peoples has been obtained, the borrower/client will integrate in the IPP an action plan for the legal recognition of customary rights to such lands, territories, and ancestral domain. Normally, the action plan is carried out before project implementation but in some cases, it may need to be formulated concurrently with the project itself. Such legal recognition shall, where possible, take the forms of full legal recognition of existing customary land tenure systems of Indigenous Peoples.

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26. If neither option is possible under national law, the IPP will include action plan for legal recognition of perpetual or long-term renewable custodial or user rights.

27. In addition, for projects with potential impacts on Indigenous Peoples, the borrower/client will ensure their free, prior, and informed consultation and facilitate their informed participation on matters affecting them directly, such as proposed mitigation measures, sharing of project benefits and opportunities, and implementation arrangements.

Free, Prior and Informed Consent

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28. Indigenous Peoples may be particularly vulnerable when project activities include: (i) impacts on the cultural resources and knowledge of Indigenous Peoples; (ii) physical and/or economic dislocation; (iii) impacts on natural resources on lands used or claimed which has impacts on the livelihood, or cultural, ceremonial, or spiritual uses that define the identity and community of Indigenous Peoples; and (iv) health and education projects. If such activities occur, the following special requirements will also apply in addition to the requirements above. Common to these requirements is the need for the borrower/client to obtain the free, prior, and informed consent of Indigenous Peoples before starting with such activities.

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29. For purposes of policy application, consent refers to a collective agreement by the affected Indigenous Peoples communities, through an independent and self-determined decision-making process undertaken with sufficient time and according to their cultural traditions, customs and practices. In deciding whether to proceed with a project involving such activities, the borrower/client will ascertain whether the affected Indigenous Peoples communities provide their consent to such activities.

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30. Where there is such consent, the borrower/client will provide documentation that details the process and outcomes of consultations with Indigenous Peoples and Indigenous Peoples organizations, including (i) the findings of the SIA; (ii) the process of full and effective consultation with the affected Indigenous Peoples' communities; (iii) additional measures including project design modification, that may be required to address adverse impacts on the Indigenous Peoples and to provide them with culturally appropriate project benefits; (iv) recommendations for full and effective consultations with and participation by Indigenous Peoples' communities during project implementation, monitoring and evaluation; and (v) any formal agreements reached with Indigenous Peoples communities and/or the Indigenous Peoples organization. Where there is such consent, the consultation process will be clearly documented in the safeguard documents. The borrower/client will submit to ADB the documentation of the engagement process for review, and in addition, for ADB's own investigation to assure itself that there is consent for the project activities. The project will not be financed by ADB if such consent does not exist.

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31. Impacts on Cultural Resources. If the project impacts on Indigenous Peoples' cultural resources and knowledge, the borrower/client will ensure that the affected communities are informed of (a) their rights to such resources under statutory and customary law; (b) the scope and nature of the proposed commercial development and the parties interested or involved in such development; and (c) the potential effects of such development on Indigenous Peoples' livelihoods, environments, and use of such resources. The borrower/client will submit to ADB the documentation of the engagement process for review, to assure itself that there is consent for the proposed activities involving commercial development of cultural resources and knowledge. The IPP will reflect the nature and content of such agreements and will include arrangements to ensure that Indigenous Peoples receive in a culturally appropriate way an equitable share of the benefits to be derived from such commercial development.

32. Physical and/or Economic Displacement of Indigenous Peoples. The borrower/client will explore to the maximum extent possible alternative project designs to avoid physical and/or economic dislocation of Indigenous Peoples which will result in any adverse impacts on their identity, culture, and customary livelihoods. In exceptional circumstances, when avoidance is proven to be impossible, the borrower/client will document the results of the consultation process for that particular Indigenous Peoples community. The borrower/client will submit to ADB the documentation of the engagement process for review, to assure itself that there is consent to such physical relocation of Indigenous Peoples. The borrower/client will prepare an IPP that could be combined with a resettlement plan. Such a combined plan needs to be compatible with the Indigenous Peoples' cultural preferences, and will include a land-based resettlement strategy. Where possible, the plan will allow the affected Indigenous Peoples to return to the lands and territories they traditionally owned, or customarily used or occupied, if the reasons for their relocation cease to exist.

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33. Impacts on Natural Resources. If the project impacts on natural resources (such as minerals, hydrocarbon resources, forests, water, or hunting/fishing grounds) on lands or territories used or claimed by Indigenous Peoples, the borrower/client will ensure that the affected communities are informed of (a) their rights to such resources under statutory and customary law; (b) the scope and nature of the proposed commercial development and the parties interested or involved in such development; and (c) the potential effects of such development on the Indigenous Peoples' livelihoods, environments, and use of such resources. The borrower/client will submit to ADB the documentation of the engagement process for review, to assure itself that the affected communities have provided their free, prior and informed consent to the proposed project activities including any commercial development of natural resources. The borrower/client will include in the IPP, arrangements to enable the

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Indigenous Peoples to receive in a culturally-appropriate manner an equitable and agreed share of the benefits to be derived from such commercial development which is at least equal or higher than any other affected landowner.

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34. Health and Education Projects. Culturally inappropriate health and education projects could bring about inadvertent but severe adverse impacts on indigenous peoples, including loss of their languages, cultures and identities. If projects aimed at supporting, strengthening or altering indigenous peoples' traditional health and education systems, the borrower will inform the affected indigenous peoples' communities of the potential impacts of such activities and will gain their free, prior and informed consent for the project. The borrower/client will submit to the ADB the documentation of the full and effective consultations for review and the ADB will assure itself that there is consent to the proposed health and educational activities.

34. When the borrower/client and the affected Indigenous Peoples have differences or disagreements about the design, IPPs, or the implementation of any project activities, the borrower/client will adopt good faith negotiations for them to resolve such differences and disagreements.

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3. Indigenous Peoples and Development

35. In furtherance of the objectives to benefit Indigenous Peoples, DMCs could request ADB to support the country in its development planning and poverty reduction strategies by providing financial assistance for a variety of initiatives designed to

- (i) strengthen local legislation to establish legal recognition of the customary or traditional land tenure systems of Indigenous Peoples;
- (ii) enhance the participation of Indigenous Peoples in the development process by incorporating their perspectives in the design of development programs and poverty reduction strategies, and providing them with opportunities to benefit more fully from development programs through policy and legal reforms, capacity building, and free, prior, and informed consultations, participation, and empowerment;
- (iii) support the development priorities of Indigenous Peoples through programs developed by governments in cooperation with Indigenous Peoples;
- (iv) address the gender and intergenerational issues that exist among many Indigenous Peoples, including the special needs of indigenous women, youth, and children;
- (v) prepare 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;
- (vi) strengthen the capacity of Indigenous Peoples' communities and Indigenous Peoples organizations to prepare, implement, monitor, and evaluate development programs;
- (vii) strengthen the capacity of government agencies responsible for providing development services to Indigenous Peoples;
- (viii) protect indigenous knowledge, including the strengthening of intellectual property rights; and
- (ix) facilitate partnerships among the government, Indigenous Peoples' organizations, civil society organizations, and the private sector to promote

Indigenous Peoples' development programs.

OUTLINE OF INDIGENOUS PEOPLES PLAN

- A. Executive Summary of the IPP
- B. Description of the Project
- C. Social Assessment (to be undertaken in partnership with affected indigenous peoples' communities, indigenous peoples' organizations and representative indigenous peoples' authorities)
 - (i) A review of the legal and institutional framework applicable to Indigenous Peoples.
 - (ii) Baseline information on the demographic, social, cultural, and political characteristics of the affected Indigenous Peoples' communities, the land and territories that they have traditionally owned or customarily used or occupied, and the natural resources on which they depend.
 - (iii) When carrying out the social impact assessment and preparing the IPP, the borrower/client will pay particular attention to
 - a. the customary rights of the Indigenous Peoples, both individual and collective, pertaining to ancestral domains, lands or territories that they traditionally owned, or customarily used or occupied, and where access to natural resources is vital to the sustainability of their cultures and livelihood systems;
 - b. the need to protect such ancestral domains, lands and resources against illegal intrusion or encroachment;
 - c. the cultural and spiritual values that the Indigenous Peoples attribute to such lands and resources;
 - d. Indigenous Peoples' natural resources management practices and the long-term sustainability of such practices, and
 - e. the need to rehabilitate the livelihood systems of Indigenous Peoples who have been evicted from their lands.
 - (iv) Taking the review and baseline information into account, the identification of key project stakeholders and the elaboration of a culturally appropriate and gender sensitive process for full and effective consultation with the Indigenous Peoples at each stage of project preparation and implementation.
 - (v) An assessment, based on free, prior, and informed consultation, with the affected Indigenous Peoples' communities, of the potential adverse and positive effects of the project. Critical to the determination of potential adverse impacts is a gender sensitive analysis of the relative vulnerability of, and risks to, the affected Indigenous Peoples' communities given their distinct circumstances and close ties to land and natural resources, as well as their lack of access to opportunities relative to other social groups in the communities, regions, or national societies in which they live.
 - (vi) A gender sensitive assessment of the affected IPs' perception about the project and its impact on their social, economic and cultural status.
 - (vii) The identification and evaluation, based on full and effective consultation with the affected Indigenous Peoples' communities, of prior agreed measures necessary to avoid adverse effects, or if such measures are not possible, the identification

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of measures to minimize, mitigate, or compensate for such effects, and to ensure that the Indigenous Peoples receive culturally appropriate benefits under the project.

- D. The documentation of the free, prior, and informed consent of the affected Indigenous Peoples' communities, including documentation of all consultations and dialogues that were carried out during project preparation, and that led to their consent for the project activities and safeguard measures addressing impacts of such activities.
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- E. A plan for ensuring full and effective consultation with the affected Indigenous Peoples' communities during project implementation.
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- F. Measures to ensure that the Indigenous Peoples receive social and economic benefits that are culturally appropriate.
- G. When potential adverse effects on Indigenous Peoples are identified, agreed measures to avoid, minimize, mitigate, or compensate for these adverse effects.
- H. Measures to strengthen social, legal, and technical capabilities of (a) government institutions to address Indigenous Peoples issues and (b) of Indigenous Peoples' organizations to represent Indigenous Peoples more efficiently.
- I. Accessible culturally appropriate, independent and gender sensitive procedures appropriate to the project to address grievances by the affected Indigenous Peoples' communities arising from project implementation. When designing the grievance procedures, the borrower/client takes into account the availability of judicial recourse and customary dispute settlement mechanisms among the Indigenous Peoples.
- J. Mechanisms and benchmarks appropriate to the project for monitoring, evaluating, and reporting on the implementation of the IPP. The monitoring and evaluation mechanisms should include arrangements for the full and effective consultation with the affected Indigenous Peoples' communities, and mechanism for disclosure of information. Monitoring reports will be shared with affected indigenous peoples' communities for validation.
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- K. Process of involving local organizations and nongovernment organizations with proven expertise in Indigenous Peoples development.
- L. The institutional arrangement and mechanism for implementing the IPP.
- M. The cost estimates and financing plan for the IPP.

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