

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, Indira and the rest of the Safeguard Update Team,

Please find attached here the compiled recommendations from the indigenous peoples' consultation and some additional recommendations drawn from the continuing conversations during the multi-stakeholder consultation. The participants have asked me to ensure that all is compiled together and forward on to you, together with the compiled tracked changes version of the policy principles and safeguard requirements.

Please contact Joan and the other participants with any questions or clarifications you may want,

Best wishes,
Helen

Attachments: a/s

The views expressed in this document are those of the authors and do not necessarily reflect the views or policies of the Asian Development Bank (ADB), its Board of Directors, or the governments they represent. ADB does not guarantee the accuracy or reliability of any statement, information, data, finding, interpretation, advice, opinion, or view presented herein.

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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