NOTE: This document should be read in conjunction with the proposed ADB Environmental and Social Framework, which contains the full text of the Environmental and Social Policy (proposed responsibilities of the ADB), the 10 Environmental and Social Standards (proposed responsibilities of the Borrowers/Clients, and the Prohibited Investment Activities List (activities ineligible for ADB financing). This document is being circulated for consultation purpose only. Guidance from the ADB Board of Directors will be sought on this document as part of the Working Paper, scheduled in Q4 2023.

DRAFT FOR CONSULTATION
7 SEPTEMBER 2023

Environmental and Social Standard 7. Indigenous Peoples

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ESS7: INDIGENOUS PEOPLES

I. INTRODUCTION

1. This Environmental and Social Standard (ESS) 7 establishes the requirements that borrowers/clients will meet to ensure that projects affecting Indigenous Peoples and their cultural identities, practices, and customary lands take the necessary measures to address them. Within Asia and the Pacific, individual indigenous communities reflect tremendous diversity in their cultures, histories, and current circumstances. The contexts in which such peoples live are varied and changing. Indigenous Peoples may be referred to in different countries by such terms that include indigenous ethnic minorities, indigenous cultural communities, aboriginals, hill tribes, minority nationalities, scheduled tribes, tribal groups, forest dwellers, hunter-gatherers, pastoralists, or other nomadic groups. This ESS7 applies to all such groups meeting the criteria outlined in paras 6 and 7.

2. This ESS7 recognizes that Indigenous Peoples are often among the most marginalized and vulnerable segments of the population. In many cases, their economic, social, and legal status limits their capacity to defend their rights to, and interests in, lands and natural and cultural resources, and may restrict their ability to participate in and benefit from development in ways that are in accordance with their worldview. Indigenous Peoples are increasingly threatened as development programs infringe into areas that they traditionally own, occupy, use, or view as ancestral domain. Indigenous Peoples are closely linked to the lands on which they live and the natural resources on which they depend. They are particularly vulnerable if their lands and resources are transformed, encroached upon, or significantly degraded. Their languages, cultures, religions, spiritual beliefs, and institutions may also come under threat. As a consequence, Indigenous Peoples may be more vulnerable to the adverse impacts associated with development projects than non-indigenous communities. They may also not receive equitable access to project benefits, or benefits may not be devised or delivered in a form that is culturally appropriate, and they may not always be adequately consulted about the design or implementation of projects that would profoundly affect their lives or communities.

3. The United Nations Declaration on the Rights of Indigenous Peoples was adopted by the United Nations General Assembly in September 2007. The Declaration is the most comprehensive international instrument on the rights of Indigenous Peoples. Many countries in Asia and the Pacific voted in favor of this declaration. ADB recognizes the rights of Indigenous Peoples to direct the course of their own development. This ESS7 recognizes that Indigenous Peoples do not automatically benefit from development, which is often planned and implemented by those in the mainstream or dominant population in the countries in which they live. Special efforts are needed to engage Indigenous Peoples in the planning of development programs that affect them, in particular, development programs that are supposedly designed to meet their specific needs and aspirations that affect their land and territories.

4. Development projects may, however, also create opportunities for Indigenous Peoples to improve their quality of life and well-being. Projects can create opportunities for Indigenous Peoples to participate in and benefit from project-related activities that may help them fulfill their aspiration for economic and social development. Indigenous Peoples may play a role in sustainable development by promoting and managing activities as partners in development. ADB member borrowers often play a central role in the management of Indigenous Peoples’ issues.
II. OBJECTIVES

a. Ensure that Indigenous Peoples do not suffer adverse impacts as a result of projects or, where avoidance is not possible, to minimize, mitigate, and/or compensate for such impacts;
b. Design and implement projects in a way that fosters full respect for Indigenous Peoples' identity, dignity, human rights, livelihood systems, and cultural uniqueness as defined by the Indigenous Peoples themselves;
c. Ensure that Indigenous Peoples receive culturally appropriate social and economic benefits and can participate actively in projects that affect them;
d. Promote sustainable development benefits and opportunities for Indigenous Peoples in a culturally appropriate manner;
e. Ensure free, prior, and informed consent (FPIC) in the three circumstances described in this ESS7;
f. Recognize, respect, and preserve the culture, knowledge, and practices of Indigenous Peoples where possible in a project context, and consider opportunity to adapt to changing conditions in a manner and in a time frame acceptable to them, as appropriate.

III. SCOPE OF APPLICATION

5. The applicability of this ESS7 is established during the environmental and social (E&S) assessment process described in ESS1. The scope and scale of meaningful consultation, subsequent project planning, documentation processes, and monitoring will be proportionate to the scope and scale of potential project risks and impacts as they may affect Indigenous Peoples. The requirements of this ESS7 also apply to actions conducted by a borrower/client in anticipation of or in preparation for a project.

6. For this ESS7, the term Indigenous Peoples refers to a distinct social and cultural group possessing the following characteristics in varying degrees:

(i) self-identification as members of a distinct indigenous social and cultural group and recognition of this identity by others;
(ii) collective attachment to geographically distinct areas or ancestral territories or areas of seasonal use or occupation, including nomadic and transhumance routes in a project-affected area and to the natural resources in these areas and territories;
(iii) customary cultural, economic, social, or political institutions, laws, or regulations that are separate from those of the dominant society and culture; and
(iv) a distinct language or dialect, often different from the official language of the country or region.

7. In considering these characteristics, a borrower/client will take into account the host country's applicable laws, including those laws implementing the host country’s obligations under international laws, and customary laws.

8. Subject to the criteria listed in para 6, a borrower/client will also apply the provisions of this ESS7 to a group that has been assimilated, mainstreamed, or lost collective attachment to distinct areas or ancestral territories in a project-affected area because of forced severance, conflict, government resettlement programs, dispossession of their land, natural disasters, or
incorporation of such territories into an urban area. In such cases, some characteristics defined in para 6 may have eroded or be less evident for some groups or communities through integration into the broader society or economy.

9. This ESS7 will apply whenever Indigenous Peoples are present in, or have collective attachment to, a proposed project-affected area as determined during the E&S assessment process under ESS1. This ESS7 applies regardless of whether Indigenous Peoples are affected positively or negatively, directly or indirectly, and regardless of the significance of any such impacts. This ESS7 also applies irrespective of the presence or absence of discernible economic, political, or social vulnerabilities, although the nature and extent of vulnerabilities will be a key variable in designing plans to promote equitable access to benefits or to mitigate adverse impacts.

IV. GENERAL REQUIREMENTS

A. Impact Assessment for Indigenous Peoples

10. The borrower/client will retain qualified and experienced experts to carry out a comprehensive, field-based assessment of potential risks to and impacts on Indigenous Peoples. A project’s potential social, cultural, and economic risks and impacts will be assessed against the requirements set out in this ESS7 and the host country’s applicable laws that pertain to Indigenous Peoples matters, including those laws implementing host country obligations under international laws. The borrower/client will undertake a policy gap analysis comparing the host country’s applicable laws relevant for Indigenous Peoples with the requirements of this ESS7 and any gaps identified will be addressed by the borrower/client.

11. A borrower/client will conduct the impact assessment as part of the E&S assessment process described in ESS1 or as a standalone Indigenous Peoples assessment depending on the nature and scale of the potential risks and impacts. A borrower/client, in a gender-sensitive manner and in meaningful consultation with the Indigenous Peoples’ communities, will identify project-affected Indigenous Peoples and the potential risks and impacts of a proposed project on them. The assessment shall include physical and tangible and intangible cultural impacts, as set out in ESS8, as well as risks to and impacts on biodiversity and the ecosystem services upon which the identified Indigenous Peoples depend, as set out in ESS6. The borrower/client will use the impact assessment to document and create a baseline socio-economic profile of the Indigenous Peoples’ communities in a project-affected area. The assessment will assess the existing economic, political, social, and historical vulnerabilities amongst the project-affected Indigenous Peoples’ communities and with reference to the wider society. The borrower/client will, at minimum, assess: the Indigenous Peoples’ access to and opportunities to avail themselves of basic social and economic services; the short- and long-term, direct and indirect, and positive and adverse impacts of a project on each community’s social, cultural, and economic status; and subsequent approaches and resource requirements for addressing their concerns regarding a project that affects them.

12. The borrower/client will ensure that the level of detail and comprehensiveness of the assessment of potentially project-affected Indigenous Peoples will be proportionate to the nature and scale of a proposed project’s potential effects on Indigenous Peoples, whether positive or negative.
B. Meaningful Consultation

13. The borrower/client will undertake meaningful consultation, as described in ESS10, with project-affected Indigenous Peoples to ensure their informed participation in (i) designing, implementing, and monitoring measures to avoid adverse impacts on them or, where avoidance is not possible, to minimize, mitigate, and/or compensate for such impacts; and (ii) tailoring project benefits that accrue to them in a culturally appropriate manner. This includes meaningful consultation with affected Indigenous Peoples on climate risk assessment. The borrower/client will also undertake meaningful consultation where a project is intended to have only positive impacts to ensure that the impacts are indeed seen as positive by the project-affected Indigenous Peoples’ communities. The borrower/client will establish a context-specific strategy for inclusive and participatory consultation, including approaches for identifying appropriate Indigenous Peoples’ representatives, and consultation methods appropriate to the social and cultural values of the project-affected Indigenous Peoples’ communities. The borrower/client’s consultation process will provide sufficient time for Indigenous Peoples’ collective decision-making processes and will pay special attention to the concerns of indigenous women, youth, people with disabilities, and people with other disadvantages or vulnerabilities. The borrower/client will assess the willingness and capacity of the Indigenous Peoples’ communities to participate in consultation activities and where required, build such capacities prior to the commencement of meaningful consultation.

14. The borrower/client will carry out meaningful consultation in a manner proportionate to a project’s risks to and impacts on project-affected Indigenous Peoples’ communities. The borrower/client will document the consultation process and reflect its results in the Indigenous Peoples’ plan (IPP) or other form of documentation, as appropriate. For purposes of this ESS7, other forms of documentation will include an Indigenous Peoples planning framework (IPPF), Environmental and Social Management System, or other management tools described in ESS1.

C. Indigenous Peoples Planning

15. The borrower/client will engage qualified and experienced experts to prepare an IPP or other form of documentation, as appropriate based on an impact assessment as described in paras 10-12. The borrower/client, in consultation and in agreement with ADB, may propose an alternative title to IPP based on the national context. The borrower/client will also ensure that the IPP reflects the results of the meaningful consultation with project-affected Indigenous Peoples’ communities. The level of detail and comprehensiveness of an IPP will vary depending on the specific project and the nature of risks and impacts to be addressed. In the IPP, the borrower/client will set out measures to ensure that (i) potential adverse impacts on Indigenous Peoples are avoided to the maximum extent possible and (ii) project-affected Indigenous Peoples receive culturally appropriate social and economic benefits and meaningfully participate in project preparation and implementation processes. Where avoidance is not possible, based on meaningful consultation with project-affected Indigenous Peoples’ communities, the borrower/client will, in the IPP, outline measures to minimize, mitigate, and/or compensate for the adverse impacts. The borrower/client will integrate the elements of the IPP into a project’s design. An indicative outline of an IPP is provided in Annex 1 of this ESS7.

16. The borrower/client will prepare an IPPF for projects or project sub-components which have not completed the final detailed design of project facilities and where the nature and magnitude of project risks to and impacts on Indigenous Peoples’ communities is still uncertain during project preparation. The IPPF will establish a project’s general principles, approach, and procedures for the assessment and mitigation of all potential risks to and impacts on Indigenous
Peoples and for preparation of the future IPP. The IPPF will clearly outline the procedures for conduct of FPIC and specific requirements as set out in this ESS7. An indicative outline of an IPPF is provided in Annex 2 of this ESS7.

17. When a project will potentially affect remote groups of Indigenous Peoples with limited external contact, also known as peoples “in voluntary isolation,” “isolated peoples”, or peoples “in initial contact,” the borrower/client will take appropriate measures to recognize, respect, and protect their land and territories, environment, health, and culture, and to avoid all undesired contact with them as a consequence of a project. The borrower/client will not process further the aspects of a project that would result in such undesired contact.

18. The borrower/client and project-affected Indigenous Peoples will jointly identify mitigation measures in alignment with the mitigation hierarchy described in ESS1 as well as opportunities for culturally appropriate and sustainable development benefits from a project. The scope of mitigation measures will include social and cultural as well as physical impacts. The borrower/client will ensure the timely delivery of agreed measures to project-affected Indigenous Peoples.

19. Factors such as the nature of a project, the project context, and the vulnerability of project-affected Indigenous Peoples will affect how they will benefit from a project. The borrower/client will identify opportunities that address the goals and preferences of the project-affected Indigenous Peoples, including improving their standard of living and Indigenous livelihoods in a culturally appropriate manner.

20. In determining, delivering, and distributing compensation and sharing benefits to project-affected Indigenous Peoples, the borrower/client will take account of the institutions, rules, and customs of the affected Indigenous Peoples as well as their level of interaction with the mainstream society. Eligibility for compensation may be collective or individual or a combination of both. Where compensation is on a collective basis, the borrower/client will, as far as practicable, define and implement mechanisms that promote the effective distribution of compensation to all eligible members of an Indigenous Peoples’ community, or collective use of compensation in a manner that benefits all members of the community. Compensation for lost assets including customary land-related losses will be paid in accordance with provisions under ESS5.

21. When Indigenous Peoples are the sole or the overwhelming majority of direct project beneficiaries, and when only positive impacts are identified, the borrower/client may include the elements of an IPP in the overall project design in lieu of preparing a separate IPP. In such cases, the borrower/client will proactively engage with the project-affected Indigenous Peoples to ensure their participation in the project design, implementation, and monitoring and evaluation. The borrower/client will also meaningfully consult with them as to the cultural appropriateness of proposed services or activities and will seek to identify and address any economic or social constraint that may limit opportunities to benefit from or participate in a project. The borrower/client will include in project documents a summary of how a project complies with this ESS7. In particular, project documents will explain how the borrower/client has complied with requirements for meaningful consultation or seeking FPIC from the affected Indigenous Peoples, if required, and how the borrower/client has integrated accrual of benefits in a culturally appropriate way into a project’s design.

22. When Indigenous Peoples are not the sole or overwhelming beneficiaries of a project, planning requirements will vary according to the nature and scale of a project’s potential risks and adverse or positive impacts. In such a project, the borrower/client will pay particular attention to
the Indigenous Peoples and design and implement a project in a manner that provides project-affected Indigenous Peoples’ communities with equitable access to project benefits. The concerns or preferences of project-affected Indigenous Peoples will be addressed through meaningful consultation and project design. The borrower/client will prepare a time-bound IPP setting out measures or actions proposed. An IPP will summarize the consultation outcomes and describe how Indigenous Peoples’ issues have been addressed in the project design. The borrower/client will also describe in a project’s stakeholder engagement plan the arrangements for ongoing meaningful consultation with and continued participation of project-affected Indigenous Peoples during project implementation. In some circumstances and with due justification, the borrower/client will prepare a broader community development plan addressing all beneficiaries of a project and incorporating necessary information on how the plan meets the requirements of this ESS7 relating to project-affected Indigenous Peoples’ communities.

23. The borrower/client will update the IPP following the completion of any detailed engineering design and detailed measurement surveys, as necessary. As part of the update, the borrower/client may adjust mitigation measures to avoid adverse impacts on Indigenous Peoples and any measures to enhance culturally appropriate development benefits, but the agreed outcomes as specified in the draft IPP will not be lessened or minimized. If new or additional groups of Indigenous Peoples are identified prior to submission of the final IPP to ADB and are determined to be project-affected, the borrower/client will undertake meaningful consultation with them or seek their FPIC if required, and update the IPP.

24. The borrower/client will engage internationally recognized experts, including an Indigenous Peoples expert who is not affiliated with a project, for High Risk and Substantial Risk projects that are contentious, involve serious and multidimensional issues, and generally have interrelated potential environmental and social (E&S) risks and impacts on Indigenous Peoples. These experts may be engaged individually or as an advisory panel during the preparation and implementation phases of a project cycle.

25. In cases where project activities or operations have already commenced, the borrower/client will provide all relevant information and documents to demonstrate that it has sought and acted upon the opinions of project-affected Indigenous Peoples. If, in such cases, the requirements of this ESS7 have not been satisfied, the borrower/client will carry out an impact assessment as specified in paras 10-12. In such assessment, the borrower/client will also: (i) review the effects to date on the lives and indigenous livelihoods of project-affected Indigenous Peoples; (ii) identify any gaps with the requirements of this ESS7; and (iii) identify the corrective actions that may be required to achieve the intended outcomes of this ESS7. The borrower/client will then agree to a time bound action plan with ADB. Where such existing activities were not undertaken in anticipation of a project, ESS1 requirements on existing facilities and activities will apply.

26. During project implementation, the borrower/client will ensure that necessary actions are taken and agreed benefits or improvements to services are delivered in accordance with the IPP. The borrower/client will also ensure that the actions or measures required in the IPP are sufficiently budgeted.

27. If there are significant changes to a project that result in additional risks to and impacts on Indigenous Peoples, the borrower/client will meaningfully consult with the project-affected Indigenous Peoples’ communities on how to mitigate these risks and impacts and will update the IPP, and the environmental and social commitment plan (ESCP)/ environmental and social action plan (ESAP) accordingly, setting out any additional mitigation measures described in ESS1.
D. Grievance Mechanism

28. As early as feasible, the borrower/client will establish a grievance mechanism as described in ESS10 to receive and facilitate resolution of the project-affected Indigenous Peoples’ concerns, complaints, and grievances. The borrower/client will scale the grievance mechanism proportionately to the potential risks and impacts of a project. The borrower/client will address concerns and complaints promptly, using an understandable and transparent process that is culturally appropriate, gender responsive, and accessible to the project-affected Indigenous Peoples’ communities at no cost to them and without threat of reprisal. The borrower/client will ensure that the grievance mechanism will not impede access to the host country’s judicial or administrative remedies, and also takes into account the availability of customary dispute settlement mechanisms and customary laws, as appropriate. The borrower/client will appropriately inform project-affected Indigenous Peoples’ communities about the grievance mechanism. The borrower/client will ensure that the grievance mechanism provides Indigenous Peoples culturally appropriate options for submitting their grievances.

29. The borrower/client will design the grievance mechanism to: (i) keep complainants’ identities confidential, especially in instances where the complainants fear reprisal; (ii) provide for interpretation/translation to overcome language barriers/limitations; (iii) publicly advertise procedures that identify the means for submitting grievances, setting out the length of time complainants can expect to wait for acknowledgment, response, and resolution of their grievances, descriptions of the transparency of the procedures, and the governing and decision-making structures; and (iv) establish measures to ensure anonymity and protect complainants from retaliation. The borrower/client will encourage and support the engagement of independent indigenous experts as part of the grievance mechanism.

E. Unanticipated Impacts

30. If unanticipated impacts on Indigenous Peoples, such as a change in a project’s footprint, become apparent during project implementation, the borrower/client will carry out an impact assessment as set out in paras 10-12 and in a timely and effective manner will update the IPP and/or or formulate a new IPP and/or IPPF, including conduct of meaningful consultation or seeking FPIC, if required.

V. SPECIAL REQUIREMENTS

A. Free, Prior, and Informed Consent of Affected Indigenous Peoples

31. Indigenous Peoples may be particularly vulnerable to the loss of, alienation from, or exploitation of their land and access to natural and cultural resources. Recognizing this vulnerability, in addition to the general requirements on meaningful consultation in paras 13-14 and those described in ESS10, the borrower/client will obtain FPIC of project-affected Indigenous Peoples, in accordance with the following paras, when a project will:

(i) have adverse impacts on land and natural resources subject to traditional ownership or under customary use or occupation;
(ii) cause relocation of Indigenous Peoples’ communities from land and natural resources subject to traditional ownership or under customary use or occupation;
(iii) have significant impacts on Indigenous Peoples’ cultural heritage that is material to their identity and culture, and/or to ceremonial and/or spiritual aspects of their
lives.

32. FPIC applies from a project’s concept design phase to the end of the implementation phase of a project cycle. FPIC builds on and expands the process of meaningful consultation described in ESS10 and paras 13-14 and will be established through good faith negotiation between the borrower/client and project-affected Indigenous Peoples’ communities. The borrower/client will engage external experts, including Indigenous Peoples’ organizations where possible, to assist in identification of a project’s risks and impacts and in conducting and documenting the FPIC process.

33. FPIC does not require unanimity and may be achieved even when individuals or groups within or among project-affected Indigenous Peoples’ communities explicitly disagree. For the purpose of this ESS7, consent refers to the collective support of project-affected Indigenous Peoples’ communities for project activities that affect them, reached through a culturally appropriate process. It may exist even if some individuals or groups object to such project activities.

34. The borrower/client will document: (i) the mutually accepted process to carry out good faith negotiations that has been agreed by the borrower/client and the Indigenous Peoples who are potentially project-affected; and (ii) the outcome of the good faith negotiations between the borrower/client and Indigenous Peoples, including all agreements reached as well as dissenting views. The borrower/client will submit the documentation of the FPIC process, as part of the IPP, to ADB for review. The borrower/client will ensure that the IPP describes agreements reached between the borrower/client and potentially project-affected Indigenous Peoples and includes the actions necessary to implement those agreements. During implementation, the borrower/client will ensure that necessary actions are taken and agreed benefits or improvements to services are delivered in a timely manner.

35. FPIC is required to be ascertained by the time of project appraisal. When the FPIC of potentially project-affected Indigenous Peoples cannot be ascertained, the aspects of a project relevant to those affected Indigenous Peoples for which the FPIC cannot be ascertained will not be processed further. Where ADB has made the decision to continue processing a project other than the aspects for which the FPIC of the project-affected Indigenous Peoples cannot be ascertained, the borrower/client will ensure that no adverse impacts result on such Indigenous Peoples during the implementation of the project.

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

36. Indigenous Peoples are closely connected with land, forests, water, wildlife, and other natural resources, and therefore special considerations apply if a project affects such ties. In this situation, when carrying out the assessment for Indigenous Peoples and preparing an IPP or IPPF, as appropriate, the borrower/client will pay particular attention to the following:

(i) the customary rights of the Indigenous Peoples, both individual and collective, pertaining to ancestral domains, lands, or territories that they traditionally own or customarily use or occupy, 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 lives.

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lands and resources;
(iv) the Indigenous Peoples’ natural resources management practices and the long-term sustainability of such practices; and
(v) the need to rehabilitate the livelihood systems and socio-cultural practices of Indigenous Peoples who have been evicted from their lands.

37. Indigenous Peoples’ land is often traditionally owned or under their customary use or occupation. While some Indigenous Peoples may not possess legal title to land as defined by the host country’s applicable laws, their use of the land, including seasonal or cyclical use, for their livelihoods, or for cultural, ceremonial, and spiritual purposes that define their identity and community, can often be substantiated and documented. Where a project involves (i) activities that are contingent on establishing legally recognized rights to lands and territories that Indigenous Peoples have traditionally owned or customarily used or occupied, or (ii) the acquisition of such lands, the borrower/client will prepare a plan for the legal recognition of such ownership, occupation, or usage, with due respect to the customs, traditions, and land tenure systems of the Indigenous Peoples. The objective of such a plan will be (i) full legal recognition of Indigenous Peoples’ existing customary land tenure systems; or (ii) conversion of customary use to communal and/or individual ownership rights. If neither option is possible under the host country’s applicable laws, the borrower/client will ensure that the plan includes measures for the legal recognition of Indigenous Peoples’ perpetual or long-term renewable custodial or use rights.

38. If a borrower/client proposes to locate a project or commercially develop natural resources on land traditionally owned by or under the customary use or occupation of Indigenous Peoples, the borrower/client will take the following steps, obtain their FPIC, and:

(i) document efforts to avoid and otherwise minimize the area of land proposed for a project;
(ii) document efforts to avoid and otherwise minimize impacts on natural resources and natural areas of importance to Indigenous Peoples;
(iii) identify and review all property interests, tenurial arrangements, and traditional resource uses prior to purchasing, leasing or, as a last resort, undertaking land acquisition;
(iv) assess and document the potentially project-affected Indigenous Peoples’ resource uses without prejudicing any Indigenous Peoples’ land claim. The borrower/client will ensure that assessment of land and natural resource use will be gender-inclusive and specifically consider women’s role in the management and use of these resources; and
(v) ensure that project-affected Indigenous Peoples’ communities are informed of their land rights under the host country’s applicable laws, including those laws recognizing customary use rights, the scope and nature of a project, and the potential impacts of a project.

39. Where a project promotes commercial development of Indigenous Peoples’ land or natural resources, the borrower/client will afford due process, and offer compensation together with culturally appropriate sustainable development opportunities to project-affected Indigenous Peoples, at least equivalent to that to which any landowner with full legal title to the land would be entitled, including:

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1 Conversion of customary usage rights to individual ownership rights will only be an objective following consultation with the Indigenous Peoples concerned and assessment of the impacts of such conversion on the communities and their livelihood.

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(i) providing fair lease arrangements or, where land acquisition is necessary, providing land-based compensation or compensation in kind in lieu of cash compensation where possible. If circumstances prevent the borrower/client from offering suitable replacement land, the borrower/client must provide verification that such is the case. Under such circumstances, the borrower/client will provide non-land-based income-earning opportunities over and above cash compensation to Indigenous Peoples’ communities;

(ii) ensuring continued access to natural resources, identifying the equivalent replacement resources or, as a last option, providing compensation and identifying alternative livelihoods if project development results in the loss of access to and the loss of natural resources independent of project land acquisition;

(iii) enabling Indigenous Peoples to share equitably in the benefits to be derived from the commercial development of the land or natural resources where the borrower/client intends to utilize land or natural resources that are central to the identity and livelihood of project-affected Indigenous Peoples and their use exacerbates livelihood risks; and

(iv) providing project-affected Indigenous Peoples access to, use of, and transit on land the borrower/client is developing subject to overriding health, safety, and security considerations.

C. Relocation of Indigenous Peoples’ Communities

40. The borrower/client will explore to the maximum extent possible alternative project designs to avoid relocation of Indigenous Peoples’ communities from land that is communally held or occupied or land to which Indigenous Peoples have collective attachment and natural resources that are subject to traditional ownership or customary use or occupation. If such relocation is unavoidable, the borrower/client will not proceed with a project unless FPIC has been obtained as set out in paras 31-35. The borrower/client will not resort to forced eviction, and any relocation of Indigenous Peoples will meet the requirements of ESS5. Where possible, the borrower/client will ensure that relocated Indigenous Peoples’ communities will be able to return to their traditional or customary land, should the cause of their relocation cease to exist.

D. Cultural Heritage

41. Where a project may significantly impact cultural heritage, both tangible and intangible, that is material to the identity and/or cultural, ceremonial, or spiritual aspects of project-affected Indigenous Peoples’ lives, priority will be given to the avoidance of such impacts. Where significant project impacts are unavoidable, the borrower/client will obtain the FPIC of the project-affected Indigenous Peoples. Cultural heritage is defined in ESS8 and includes natural areas with cultural and/or spiritual value such as sacred groves, sacred bodies of water and waterway, sacred mountains, sacred trees, sacred rocks, burial grounds and sites.

42. When a borrower/client proposes to use the cultural heritage of Indigenous Peoples’ communities for commercial purposes, the borrower/client will inform the project-affected Indigenous Peoples’ communities of: (i) their rights under the host country’s applicable laws; (ii) the scope and nature of the proposed commercial development; and (iii) the potential consequences of such development; and (iv) obtain their FPIC. The borrower/client will also enable Indigenous Peoples’ communities to share equitably in the benefits to be derived from commercial development of such cultural heritage, consistent with the customs and traditions of
the Indigenous Peoples.

E. Private Sector Responsibilities Where Government is Responsible for Managing Indigenous Peoples Issues

43. Where the government has a defined role in the management of Indigenous Peoples issues in relation to a project, the client will collaborate with the responsible government agency, to the extent feasible and permitted by the agency, to achieve outcomes that are consistent with the objectives of this ESS7. In addition, where government capacity is limited, the client will play an active role during planning, implementation, and monitoring of activities to the extent permitted by the agency. The client will prepare a plan that together with the documents prepared by the responsible government agency will address the relevant requirements of this ESS7. The client may need to include (i) the plan, implementation, and documentation of the process of informed consultation and participation and engagement and FPIC where relevant; (ii) a description of the government-provided entitlements of affected Indigenous Peoples; (iii) the measures proposed to bridge any gaps between such entitlements, and the requirements of this ESS7; and (iv) the financial and implementation responsibilities of the government agency and/or the client.

F. Indigenous Peoples and Development

44. ADB’s developing member countries, borrowers/clients, and Indigenous Peoples’ organizations may ask ADB to support them in their development planning and poverty reduction strategies by providing financial assistance for initiatives, such as the following:

(i) strengthen local legislation to establish legal recognition of the customary or traditional land tenure systems of Indigenous Peoples;
(ii) enhance participation by Indigenous Peoples in the development process by incorporating their perspectives into 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 meaningful consultation, 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) preserve and respect indigenous knowledge, including strengthening 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.
VI. MONITORING AND DISCLOSURE

45. The borrower/client will monitor, measure, and assess the progress of implementation of the IPP and/or IPPF and whether the IPP’s/IPPF’s objectives and desired outcomes, including non-tangible impacts and outcomes, have been achieved. The scope of monitoring activities will be proportionate to a project’s risks and impacts. In addition to recording information to track performance, the borrower/client will use mechanisms such as inspections and audits to verify compliance with requirements and progress toward achieving the desired outcomes. For a project with potentially significant adverse impacts on Indigenous Peoples, the borrower/client will retain qualified, credible, and experienced external experts or qualified civil society organizations to verify monitoring information. The external experts engaged by the borrower/client will advise on compliance with the IPP and/or IPPF requirements, and identify any unanticipated Indigenous Peoples issues. If any noncompliance is found, the borrower/client will timely prepare a corrective action plan. The borrower/client will promptly implement the corrective actions and follow up on these actions to ensure their effectiveness. The borrower/client will prepare and submit semi-annual monitoring reports on the progress of IPP and/or IPPF implementation, highlighting compliance issues and corrective actions, if any. The frequency of monitoring reports will be determined by the complexity and risks associated with a project’s impacts. The borrower/client will reflect the costs of monitoring requirements in project budgets. Monitoring reports will be disclosed to the affected Indigenous Peoples’ communities.

46. The borrower/client will submit for disclosure on the ADB website a draft IPP and/or IPPF endorsed by the borrower/client before project appraisal or final credit approval. The final IPP, any new or updated IPP and/or IPPF, a corrective action plan prepared during implementation, if necessary, and the monitoring reports will also be submitted in a timely manner to ADB for disclosure on the ADB website.

47. The borrower/client will provide relevant information, including information from the IPP and/or IPPF and any action plan, in a timely manner, in an accessible place, and in a form and language(s) understandable to project-affected Indigenous Peoples and other project-affected persons. If the project-affected Indigenous Peoples have literacy barriers, the borrower/client will meaningfully consult with them to identify and use other appropriate communication methods.
Annex 1: OUTLINE OF AN INDIGENOUS PEOPLES PLAN (IPP)

This outline of an Indigenous Peoples plan (IPP) is for the requirements of this ESS 7 for projects with risks to and impacts on Indigenous Peoples. The level of detail and comprehensiveness of the IPP would be proportionate to the significance of potential impacts on Indigenous Peoples. The substantive aspects of this outline will guide the preparation of IPPs, although not necessarily in the order shown. A borrower/client, in lieu of IPP, could use an alternate title based on the national nomenclature for Indigenous Peoples of a developing member country (DMC) in consultation and in agreement with ADB.

A. Executive Summary
This section presents a concise summary of the IPP describing critical facts, significant findings, and recommended actions.

B. Description of the Project
This section provides a general description of the project; discusses project components and activities that may bring risks to and impacts on Indigenous Peoples; and identifies the project-affected area. Maps of the project area indicating Indigenous Peoples’ presence, if available, should be included.

C. Project Impact Assessment for Indigenous Peoples
This section provides a comprehensive characterization of the Indigenous Peoples’ communities and details of impact assessments undertaken for a project or project sub-components impacting Indigenous Peoples. It will clearly outline the quantitative and qualitative methodological tools used for impact assessment and will demonstrate how the impact assessment has used participatory tools to enhance Indigenous Peoples’ participation in the conduct of impact assessment. This section:

(i) Identifies all affected Indigenous Peoples’ communities within the project-affected area, who will be affected directly or indirectly by the project;
(ii) Provides 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; land tenure systems and customary uses of land; the natural resources on which they depend; community and governance structures including decision making mechanisms; a description of Indigenous community’s world-view, way of life, gender and intergenerational relationships including inheritance and property rights; religious orientation such as animism, naturism, ancestor worship;
(iii) Reviews the DMC’s legal and institutional framework including commitments to international conventions and treaties applicable to Indigenous Peoples, identifies gaps with respect to the requirements under this ESS 7 and provides gap-filling measures;
(iv) Includes a gender-sensitive assessment of the affected Indigenous Peoples’ perceptions about the project and its impact on their social, economic, and cultural status;
(v) Identifies and recommends, based on meaningful consultation with the affected Indigenous Peoples’ communities, the measures necessary to avoid adverse effects or, if such measures are not possible, identifies measures to minimize, mitigate, and/or compensate for such effects and to ensure that the Indigenous Peoples receive culturally appropriate benefits under the project.
D. Information Disclosure, Consultation and Participation
This section:

(i) Identifies key project stakeholders and elaborates a culturally appropriate and vulnerability and gender-sensitive process for meaningful consultation with Indigenous Peoples at each stage of project preparation and implementation;
(ii) Assesses, based on meaningful consultation with the affected Indigenous Peoples' communities and utilizing participatory assessment tools, 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 particular circumstances and close ties to land and natural resources, as well as their lack of access to opportunities relative to those available to other social groups in the communities, regions, or national societies in which they live;
(iii) Describes the information disclosure, consultation and participation process with the affected Indigenous Peoples' communities that was carried out during project preparation. Establishes that the consultation process is undertaken in a culturally appropriate manner and has followed the Indigenous Peoples' communities’ own specific requirements and ensured that all potential barriers to consultation process were addressed;
(iv) Summarizes Indigenous Peoples’ communities' responses and comments on the results of the impact assessment and identifies concerns raised during consultation and how these have been addressed in project design;
(v) In the case of project activities requiring FPIC, documents the processes and outcomes of consultations with affected Indigenous Peoples' communities and any agreement resulting from such consultations for the project activities and measures addressing the risks and impacts of such activities. Provides ADB’s own assessment and verification that FPIC for the project has been established;
(vi) Describes consultation and participation mechanisms to be used during implementation to ensure Indigenous Peoples' participation during implementation;
(vii) Confirms disclosure of the draft and final IPP to the affected Indigenous Peoples' communities.

E. Beneficial Measures
This section provides description of culturally appropriate beneficial measures for the Indigenous Peoples' communities to ensure that they are equal project beneficiaries. It will demonstrate the participatory methods used for developing beneficial measures in a culturally appropriate and gender responsive manner.

F. Mitigative Measures
This section specifies the measures to avoid adverse impacts on Indigenous Peoples; and where avoidance is not possible, specifies the measures to minimize, mitigate, and compensate for identified unavoidable adverse impacts for each affected Indigenous Peoples' community. Risks of particular importance includes those related to Indigenous Peoples’ physical and cultural survival, territorial integrity, social organization and customary laws and economy. Project risks should include climate change scenarios, when appropriate.

G. Capacity Building
This section provides measures to strengthen the social, legal, and technical capabilities of (a) government institutions to address Indigenous Peoples’ issues in a project area; and (b) Indigenous Peoples’ organizations in the project area to enable them to represent the affected
Indigenous Peoples more effectively.

H. Grievance Mechanism
This section describes the procedures to redress grievances by affected Indigenous Peoples’ communities. It establishes clear time-lines and processes to redress grievances. It explains how the procedures are accessible to Indigenous Peoples in a culturally appropriate and gender-sensitive manner and where feasible ensures inclusion of Indigenous Peoples’ communities’ own customary dispute settlement mechanisms. The mechanism clearly demonstrates the way it will deal with any acts of reprisal and retribution against the complainants.

I. Monitoring, Reporting and Evaluation
This section describes the mechanisms and benchmarks appropriate to the project for monitoring and evaluating the implementation of the IPP. It also specifies arrangements for participation of affected Indigenous Peoples in the preparation and validation of monitoring and evaluation reports.

J. Institutional Arrangement
This section describes institutional arrangement responsibilities and mechanisms for carrying out the various measures of the IPP. It also describes the process of including relevant local organizations and civil society organizations in carrying out the measures of the IPP.

K. Budget and Financing
This section provides an itemized budget for all activities described in the IPP and a borrower/client’s commitment to provide the required budget in a timely manner.
Annex 2: OUTLINE OF AN INDIGENOUS PEOPLES PLANNING FRAMEWORK (IPPF)

The Indigenous Peoples planning framework (IPPF) sets out the requirements of this ESS 7 to be applied to a project or project sub-components that are not yet defined and will be assessed and prepared after the loan approval or during project implementation. The key objectives of the IPPF are to outline the procedures for screening, impact assessment, participation, consultation and information disclosure, and development of mitigative and beneficial measures and other requirements under an IPP once the project components, subprojects, and/or activities have been fully defined and assessment can be undertaken. The IPPF is a tool that supports preparation of an IPP once a project or sub-project is fully defined and IPP preparation processes can commence. IPPF does not substitute for an IPP and it is critical that any project activities that have risks to and impacts on Indigenous Peoples will not commence until the IPP is developed with the meaningful participation of the affected Indigenous Peoples, and FPIC where required, and appropriate mitigation measures are in place.

A. Executive Summary
This section presents a concise summary of the key processes that will be required for preparation of an IPP.

B. Introduction
This section briefly describes the project and its subprojects and/or components or activities likely to be proposed for financing and explains why the IPP for the whole project or some subprojects cannot be prepared before project appraisal.

C. Objectives and Policy Framework
This section: (i) clarifies the principles and objectives governing the preparation and implementation of IPP, and demonstrates how they are consistent with ESS 7 requirements; (ii) compares the host country’s applicable laws and this ESS 7, identifies the gaps if any and describes measures to fill the gaps; and (iii) describes the criteria for screening and selecting components, projects, and/or subprojects.

D. Identification of Affected Indigenous Peoples
This section: (i) describes how the ESS7 criteria for identifying groups that are considered Indigenous Peoples will be applied in the project; (ii) provides details related to the demographic, socio-cultural, economic, political, way of life, religious and spiritual aspects of the Indigenous Peoples who are most likely to be affected by the project or subprojects, and how such information will be collected; and (iii) delineates the potential positive and adverse effects of the project or subprojects on Indigenous Peoples.

E. Impact Assessment and IPP for Subprojects and/or Components
This section sets out procedures for carrying out an impact assessment for the project or subprojects or components that will be assessed once these get defined following the engineering design and establishment of project-affected area. The section outlines quantitative and qualitative impact assessment methods including relevant participatory methods for impact assessment that demonstrate affected Indigenous Peoples’ communities’ active engagement in the impact assessment process.

F. Consultation and Participation
This section outlines the mechanisms and strategy that will be adopted for the conduct of meaningful consultation with the affected Indigenous Peoples at each stage of subproject preparation and implementation. Provides guidelines on ensuring cultural appropriateness of
consultative process; provides for a gender-responsive consultative process and ensuring inclusion of vulnerable groups within the Indigenous Peoples’ communities; provides measures to deal with participation barriers such as language. For project activities requiring FPIC, this section outlines the mechanisms and procedures for documentation of the consultation process that establishes FPIC from affected Indigenous Peoples’ communities.

G. Information Disclosure
The section outlines disclosure arrangements, such as the information to be disseminated and the method and form of dissemination, to both affected Indigenous Peoples and the public.

H. Grievance Mechanism
This section discusses processes to establish culturally appropriate and gender-sensitive grievance redress mechanisms for affected Indigenous Peoples.

I. Institutional and Implementation Arrangements
This section describes institutional arrangements, including capacity building where necessary for screening and categorization, social impact assessment and preparation of IPPs, and monitoring.

J. Monitoring and Reporting Arrangements
This section identifies the steps taken to establish mechanisms and benchmarks appropriate for monitoring and reporting. It explains the way monitoring indicators will be formulated following impact assessment and a baseline will be established for monitoring and reporting.

K. Budget and Financing
This section provides an indicative budget, and identifies funding sources and responsibilities for allocating, approving, and delivering funds, including contingency arrangement.