

Indigenous Peoples Planning Framework

September 2012

IND: Uttarakhand State Road Investment Program

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CURRENCY EQUIVALENTS

(as of 28 September 2012)

Currency unit	–	Indian rupee (INR)
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\$1.00	=	INR 52.865000

ABBREVIATIONS

ADB	–	Asian Development Bank
CGPWD	–	Chhattisgarh Public Works Department
DPR	–	detailed project report
EA	–	Executing Agency
IP	–	indigenous people
IPP	–	indigenous peoples plan
IPPF	–	indigenous peoples planning framework
NGO	–	nongovernment organization
RF	–	resettlement framework
RP	–	resettlement plan
SC	–	scheduled caste
ST	–	scheduled tribe

NOTE

In this report, "\$" refers to US dollars.

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CONTENTS

	Page
I. BACKGROUND	1
II. INDIGENOUS/TRIBAL GROUPS	1
III. LEGAL POLICY FRAMEWORK IN INDIA	2
A. National Commission for Scheduled Tribes	2
B. The SCs/STs Prevention of Atrocities Act, 1989	2
C. Panchayat Extension to the Scheduled Areas Act (PESA), 1996	3
D. The Scheduled tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006	4
E. The National Policy on Tribals, 2006	4
IV. INDIGENOUS/TRIBAL GROUPS IN INDIA	4
V. TRIBAL SCENARIO OF UTTRAKHAND	5
VI. INDIGENOUS PEOPLES PLANNING FRAMEWORK (IPPF)	6
VII. INDIGENOUS PEOPLES PLAN (IPP)	6
A. Screening	7
B. Social Impact Assessment	7
VIII. CONSULTATION & INFORMATION DISCLOSURE	8
IX. MITIGATION MEASURES	8
X. GRIEVANCE REDRESS MECHANISM	8
XI. MONITORING AND REPORTING	9
XII. INSTITUTIONAL FRAMEWORK AND BUDGET	9
XIII. OUTLINE OF THE IPP	9

I. BACKGROUND

1. India and State of Uttarakhand¹ envision a reduction in poverty and an increase in personal incomes by improving personal mobility and accessibility through increased investment in road infrastructure. Uttarakhand has prepared a road development plan (RDP) to guide its investment in roads. Investments under the RDP include 7 sequential projects to be implemented between 2007 and 2017. The estimated cost of implementing the RDP is \$1.2 billion. A Framework Financing Agreement (FFA) was signed between Asian Development Bank (ADB) and India on 14 November 2006 with regard to Uttarakhand State Road Investment Program² (Investment Program). Subsequently on 18 December 2006, the Board approved the provision of loans under a Multitranchise Financing Facility (MFF) in an aggregate amount up to \$550 million to India for the Investment Program to finance part of the RDP. The Investment Program will have a positive long-term impact on the state's economy and living standards of the rural population. The principal outcomes of the physical components under the Investment Program will be increased efficiency, safety, comfort, and reliability of inter- and intrastate transport services, and lower road maintenance costs. The non-physical components of the Investment Program would lead to (i) increased satisfaction among road users; (ii) more opportunities for private sector participation; (iii) more synergy benefits for the parallel road development programs; and (iv) improved governance. Together, these investments would increase mobility and accessibility to educational and health services, employment opportunities, and markets for the community and enterprises in rural and urban areas of the state. For the third PFR the outputs will include (i) resurfacing, upgrading or rehabilitation of about 1,036 km of the selected priority state roads.

2. Indigenous peoples (IP) are defined as those having a distinct social, cultural, economic and political traditions and institutions compared with the mainstream or dominant society. In India, Scheduled Tribes (STs) constitutes roughly 8% of the total population or more than 84 million people, according to the 2001 census.

3. This Indigenous Peoples Planning Framework (IPPF) is intended to guide selection and preparation of subprojects under the subsequent projects where impacts on tribal people are identified to ensure better distribution of the Project benefits and promote development of the indigenous peoples in the Project areas. The framework is updated in accordance with ADB's procedures for MFF lending as presented in ADB's Safeguard Policy Statement, 2009 (SPS).

II. INDIGENOUS/TRIBAL GROUPS

4. By definition, indigenous people (IP) refer to a population with social, cultural, economic, and political traditions and institutions distinct from the mainstream or dominant society and culture. IP with similar cultural characteristics are known as *Adivasi* in Hindi and are recognized as Schedule Tribes (STs) as per the Indian Constitution.

5. As per SPS the term Indigenous People is used in a generic sense to refer to a distinct, vulnerable, social and cultural group possessing the following characteristics in varying degrees:

¹ Formerly named "Uttaranchal".

² ADB. 2006. *Report and Recommendation of the President to the Board of Directors on a Proposed Multitranchise Financing Facility India: Uttaranchal State-Road Investment Program*. Manila.

(i) self identification as members of a distinct indigenous cultural group and recognition of its identity by others; (ii) collective attachment to geographically distinct habitats or ancestral territories in the project area and to the natural resources in these habitats and territories; (iii) customary cultural, economic, social or political institutions that are separate from those of the dominant society and culture; and (iv) a distinct language, often different from the official language of the country or the region. Essentially, indigenous peoples have a social and cultural identity distinct from the mainstream society that makes them vulnerable to being overlooked in development processes. The Indigenous Peoples Safeguards are triggered if a project directly or indirectly affects the dignity, human rights, livelihood systems or culture of the Indigenous Peoples or affects the territories or natural or cultural resources that Indigenous Peoples own, use, occupy or claim as their ancestral domain.

III. LEGAL POLICY FRAMEWORK IN INDIA

A. National Commission for Scheduled Tribes

6. The bifurcation of the National Commission for Scheduled Tribes from the National Commission for Scheduled Castes and Scheduled Tribes is under the 94th Amendment Act of the Constitution. Although, the National Commission for Scheduled Tribes has been created in August 2003, little measures in terms of budgetary and staff allocations have been made to make the Commission functional.

7. One of the duties assigned to the National Commission for Scheduled Tribes and Scheduled Castes is to submit reports to the President annually or at such other time as the Commission may deem fit, upon the working of the safeguards.

B. The SCs/STs Prevention of Atrocities Act, 1989

8. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, the main Act to deal with atrocities against members of Scheduled Castes and Scheduled Tribes largely remains unimplemented. Then Minister of State for Home Affairs, Mr. I D Swami informed the parliament on 23 April 2002 that over 28,000 incidents of crimes, including murder and rape, were committed against Scheduled Castes and Scheduled Tribes across India during 2001. Mr. Swami further informed that while 24,792 cases were reported against Scheduled Castes, as many as 3,691 crimes were committed against Scheduled Tribes. The statistics pertaining to the calendar year 2001 show that the States of Uttar Pradesh (7,356 cases), Madhya Pradesh (4,336 cases), Rajasthan (1,996 cases), Gujarat (1,760 cases), Andhra Pradesh (1,288 cases) and Orissa (1125 cases), collectively accounted for 82.39% of total number of 21,678 cases charge sheeted in the courts under the Act.

9. The majority of the States have failed to set up Special Courts under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. As of 2 February 2003, exclusive Special Courts have been set up only in Andhra Pradesh (12), Bihar (11), Chhattisgarh (7), Gujarat (10), Karnataka (6), Madhya Pradesh (29), Rajasthan (17), Tamil Nadu (4), Uttar Pradesh (40) and Uttarakhand (1). The remaining States and Union Territories have notified the existing Courts of Sessions as Special Courts for the trial of offences under the Act. As the courts in India are already over-burdened with 3.5 million and 40 thousand cases at

the High Courts level in 2002 according to the report of the Parliamentary Standing Committee on Home Affairs, designation of the Court of Sessions as Special Courts helps little and further adds to judicial delay in India.

10. **Budgetary allocations:** Without the adequate budgetary allocations, no policy can be successful. The Draft National Policy on Tribals is silent on the issue. In the recent years, there has been sharp fall in budgetary allocations for the Scheduled Tribes.

11. The Joint Parliamentary Committee on the Welfare of Scheduled Caste and Scheduled Tribes noted that keeping in view the approach and objectives in the 9th Five Year Plan Ministry of Social Justice & Empowerment projected its requirements of funds to the level of INR 33,358.16 crores on the basis of recommendations of the expert groups. The Planning Commission reduced it to Rs.10,501 crores. It was again twice reduced to the level of Rs.6,608.13 crores.

12. The Joint Parliamentary Committee also noted the declining trend in the budget allocations for the various schemes for SCs/STs. The Planning Commission restricted the allocation to INR1,350.00 crores against the projection of Rs.1,414.02 crores, thereby depriving the benefits to indigenous peoples. The Annual Plan expenditure for 1998-99 has also come down in comparison to the Budget Estimates for the year 1997-98.

13. Under the 10th Plan, a total outlay of INR1,754 crore (which excludes INR2,500 crore as SCA to TSP and INR1,500 crore as Grants-in-Aid under Article 275(1), subject to changes) has been earmarked in the Central Budget of the Ministry of Tribal Affairs. The 10th Plan also brought down the number of the ongoing schemes of the Ninth Plan from 25 to 14 (10 Central Sector and 4 Centrally Sponsored Schemes) for empowering the Tribals.

14. It is essential that the Draft National Policy on Tribals provides for specific measures for strengthening of the National Commission for Scheduled Tribes by making it independent through legal and operational autonomy, financial autonomy, appointment and dismissal procedures and independence through composition, by developing mechanisms for submission of Annual Reports to the President regularly and implementation of the recommendations contained in these annual reports.

C. Panchayat Extension to the Scheduled Areas Act (PESA), 1996

15. The Parliament of India passed the Provisions of the PESA, to extend the provisions of the 73rd Constitutional Amendment to the Schedule V Areas of the country. This Act accords statutory status to the Gram Sabhas in Schedule V areas with wide-ranging powers and authority. This aspect was missing from the provisions of the 73rd Constitutional Amendment. The Act has recognized the prevailing traditional practices and customary laws besides providing the management and control of all the natural resources—land, water and forest in the hands of people living in the Schedule Areas. The Act empowers people in the tribal areas through self governance.

16. One of the important provisions of this act states “the Gram Sabha or the Panchayats at the appropriate level shall be consulted before making the acquisition of land in the Scheduled Areas for development projects and before re-settling or rehabilitating persons affected by such projects in the Scheduled Areas

D. The Scheduled tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006

17. The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006, recognises and vests the forest rights and occupation in forest land to Scheduled Tribes and other traditional forest dwellers who have been residing in such forests for generations but whose rights are not recorded.

18. This law provides for recognition of forest rights to Scheduled Tribes in occupation of the forest land prior to 13.12.2005 and to other traditional forest dwellers who are in occupation of the forest land for at least 3 generations i.e. 75 years, up to maximum of 4 hectares. These rights are heritable but not alienable or transferable.

E. The National Policy on Tribals, 2006

19. The success of the National Policy on Tribals of the Government of India to a large extent will depend on strengthening of the National Commission for Scheduled Tribes, implementation of the Civil Rights Act and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and making necessary budgetary allocations. However, the Draft National Policy fails to make any reference to these issues.

IV. INDIGENOUS/TRIBAL GROUPS IN INDIA

20. According to Article 342 of the Constitution of India³, the Scheduled Tribes are “*the tribes or tribal communities or part of or groups within these tribes and tribal communities which have been declared as such by the President through a public notification*”. The STs constitute roughly 8.1% of India’s total population as per the 2001 Census of India. The Constitution of India has recognized about 573 communities as STs, which confers entitlements to affirmative action programs including reserved seats in legislatures, various subsidies and separate educational facilities. However, the majority of tribal communities continue to be vulnerable even today in comparison to the general population and this is reflected in the socioeconomic realities and problems of these groups such as land alienation, indebtedness, deprivation of forest rights, which is further compounded by low literacy and high drop-out rates and prevalence of extreme poverty.

21. Recognizing the special needs of the STs, the Constitution of India made certain special safeguards to protect these communities from all possible exploitation. While Article 14 confers equal rights and opportunities to all, Article 15 prohibits discrimination against any citizen on the grounds of sex, religion, race, caste etc; Article 15 (4) enjoins upon the State to make special provisions for the advancement of any socially and educationally backward classes; Article 16(4) empowers the State to make provisions for reservation in appointments or posts in favor of any backward class of citizens, which in the opinion of the State, is not adequately represented in the services under the State; Article 46 enjoins upon the State to promote with special care the

³ Article 342 of the Constitution of India prescribes procedure to be followed in the matter of specification of scheduled tribe.

educational and economic interests of the weaker sections of the people and, in particular, the STs and promises to protect them from social injustice and all forms of exploitation. Further, while Article 275(1) promises grant-in-aid for promoting the welfare of STs and for raising the level of administration of the Scheduled Areas, Articles 330, 332 and 335 stipulate reservation of seats for STs in the *Lok Sabha* and in the State Legislative Assemblies and in services. Finally, the Constitution also empowers the State to appoint a Commission to investigate the conditions of the socially and educationally backward classes (Article 340) and to specify those Tribes or Tribal Communities deemed to be as STs (Article 342). The constitutional commitment prompted the policy-makers and the planners to accord high priority to the welfare and development of STs from the beginning of country's developmental planning. The Tenth Five Year Plan (2002-2007) of India further lays stress towards empowering tribals, with the major approach to 'Resolve the Unresolved Issues' and 'Solve the Persisting Problems' through continuing the ongoing 3-pronged strategy of (i) Social Empowerment, (ii) Economic Empowerment; and (iii) Social Justice.

V. TRIBAL SCENARIO OF UTTARAKHAND

22. Nationwide, 8.2% of the total population is classified under STs. In comparison, 256,129 in Uttarakhand or only 3.02% are classified under STs. There are five major tribal groups (Bhotia, Buska, Jannasari, Raji, and Tharu) in Uttarakhand. These are hill tribes observed to interact closely with mainstream society. None of the Uttarakhand's STs are primitive tribal groups. STs are concentrated mostly in Udham Singh Nagar District and Dehradun (**Table 1**).

Table 1: ST Population in Uttarakhand

District	Population	% of Tribal Population to the National Tribal Population	% of Tribal Population to the State Tribal Population
India	84,326,240	100	NA
Uttaranchal	256,129	0.30	100
Uttarkashi	2,685	0.003	1.05
Chamoli	10,484	0.01	4.09
Rudraprayag	186	0.0002	0.07
Tehri Garhwal	691	0.001	0.27
Dehradun	99,329	0.12	38.78
Garhwal	1,594	0.002	0.62
Pithoragarh	19,279	0.02	7.53
Bageshwar	1,943	0.002	0.76
Almora	878	0.001	0.34
Champawat	740	0.001	0.29
Nainital	4,961	0.01	1.94
Udham Singh Nagar	110,220	0.13	43.03
Hardwar	3,139	0.004	1.23

Source: Census of India, 2001

VI. INDIGENOUS PEOPLES PLANNING FRAMEWORK (IPPF)

23. The Indigenous Peoples Planning Framework (IPPF) seeks to ensure that indigenous people and tribal communities are informed, consulted, and mobilized to participate in the subproject preparation. The Framework is intended to guide selection and preparation of additional subprojects under the Project where impacts on tribal people are identified to ensure better distribution of the Project benefits and promote development of the indigenous peoples in the Project areas. The framework is prepared in accordance with ADB's procedures for MFF lending presented in ADB's *Safeguard Policy Statement*, 2009 (SPS).

24. The IPPF is intended to guide the selection and preparation of subprojects under the subsequent projects to ensure better distribution of project benefits and promote development of IPs in the project area. In cases where significant impacts on IPs are identified, this framework will be applied if impacts on IP communities are identified during the preparation of additional subproject, in accordance with the ADB's *Safeguard Policy Statement* (SPS), 2009.

25. The IPPF is based on the overall local and national development strategies and SPS. The principle objectives are to:

- (i) ensure IPs affected by any additional project will receive culturally appropriate social and economic benefits from the project.
- (ii) Ensure IPs participate in the entire process for the preparation, implementation and monitoring of project activities and
- (iii) Do not suffer adverse impacts as a result of projects.

VII. INDIGENOUS PEOPLES PLAN (IPP)

26. An indigenous peoples plan (IPP) is required if a project directly or indirectly affects the dignity, human rights, livelihood systems, or culture of the IPs or affects the territories or natural or cultural resources that IPs own, use, occupy, or claim as their ancestral domain.

27. In accordance with SPS, in case the physical relocation of IPs results in adverse impacts on their identity, culture and customary livelihoods and if such avoidance is impossible then the EA in consultation with ADB could formulate a combined Indigenous Peoples Plan and resettlement plan to address both involuntary resettlement and Indigenous Peoples issues. If indigenous people are the majority of the direct project beneficiaries and when only positive impacts are identified, the elements of the IPP could be included in the overall project design in lieu of preparing a separate IPP. In such cases the safeguard documents should explain the requirements of meaningful consultations are fulfilled in accordance with the requirements of SPS.

28. This framework seeks to ensure that IPs are informed, consulted, and mobilized to participate in the additional subprojects. Their participation can either provide them benefits with more certainty, or protect them from any potential adverse impacts of the additional subproject. The main features of the IPP will be a preliminary screening process, a social impact assessment to determine the degree and nature of impact of each additional project, and an action plan developed if needed. Meaningful consultations with and participation of IP communities, their leaders, and local government representatives will be an integral part of the overall IPP.

A. Screening

29. The EA and detailed project report (DPR) Consultants responsible for subproject preparation and implementation will visit all tribal settlements near the subproject areas or in likelihood of being affected and influenced by the subproject components. Public meetings will be arranged in selected communities by the EA and DPR Consultants with the tribal communities and their leaders to provide them information about the subproject and take their views on the subproject.

30. During this visit, the social specialist/s of the EA will undertake a screening of the tribal communities with the help of the community leaders and local authorities. The screening will cover the following aspects:

- (i) Name(s) of tribal community group(s) in the area;
- (ii) Total number of tribal community groups in the area;
- (iii) Percentage of tribal community population to that of total area/locality population;
- (iv) Number and percentage of tribal community households along the zone of influence of the proposed subproject.

31. If the results of the screening bring forth the presence of tribal community households in the zone of influence of the proposed subproject, a social impact assessment will be planned for those areas.

B. Social Impact Assessment

32. The EA will undertake a social impact assessment (SIA). The SIA will gather relevant information on demographic data; social, cultural and economic situation; and social, cultural and economic impacts both positive and negative on the tribal communities in the subproject area.

33. Information will be gathered from separate group meetings within the tribal community, including tribal leaders; group of tribal men and women, especially those who live in the zone of influence of the proposed subproject under the Project. Discussions will focus on the positive and negative impacts of the subproject as well as recommendations on the design of the subproject. The information to be gathered for the SIA should include i) a baseline socio economic profile of the indigenous groups in the project area and project impact zone, ii) assessment on their access to and opportunities they can avail of the basic and socio economic services, iii) assessment of the short and long term, direct and indirect, positive and negative impacts of the project on each group's social, cultural and economic status, iv) assessing and validating which indigenous groups will trigger the Indigenous peoples policy principles and v) assessing the subsequent approaches and resource requirements for addressing the various concerns and issues of projects that affect them.

34. The EA will be responsible for analyzing the SIA and based on it developing an action plan with the tribal community leaders. If the SIA indicates that the potential impact of the proposed Project will be significantly adverse threatening the cultural practices and their source of livelihood, the EA will consider other design options to minimize such adverse impacts and will prepare an IPP.

35. The EA will submit the IPP to ADB for review and approval prior to the selection of specific subprojects. The IPP policy and measures must comply with ADB's SPS.

VIII. CONSULTATION & INFORMATION DISCLOSURE

36. The tribal groups/IP will be consulted during the preparation of the IPP. They will be informed of the mitigation measures proposed and their views will be taken into account in finalizing the plan. The Plan will be translated into the local language and made available to the affected people before implementation. The disclosure will be in a manner accessible to APs where there are differing levels of literacy skills.

37. As per SPS-2009 requirement, wherever physical relocation of indigenous people is required, the EA and ADB ascertain that broad community support for such activities by the affected Indigenous Peoples' communities exists, before proceeding further with the project processing. Broad community support is a collective expression by the affected Indigenous Peoples' communities, through individuals and/or their recognized representatives, of support for such project activities. In addition, as per requirement of Provisions of the Panchayats Extension to the Scheduled Areas Act (PESA), 1996, the EA has to take the consent of Gram Sabha or Panchayat as appropriate for all tribal villages wherever land acquisition is proposed and falling in Scheduled Area.

38. The tribal institutions and organizations in the affected area will also be involved in implementing the IPP and in resolving any disputes that may arise.

IX. MITIGATION MEASURES

39. The mitigation measures will be described in the IPP. The main objective will be to ensure all affected indigenous households are provided with assistance, which would help them to improve their living standards without exposing their communities to disintegration. As vulnerable groups, they are entitled to receive special assistance not only to restore and improve their income and livelihood, but also to maintain their distinct cultural identity

X. GRIEVANCE REDRESS MECHANISM

40. The IPP should clearly describe the procedures to redress the grievances of the affected indigenous peoples communities. It should also explain how the procedures are accessible to the indigenous peoples and are culturally appropriate and gender sensitive. The GRC will comprise of the District Collector or his representative, member from the Revenue Department, representative of EA. The implementing NGO will organize the GRC meetings monthly basis or as per project requirement. The nongovernment organization (NGO) will first of all register the grievances and take up with VLC for redress and any grievances not redressed at VLC level will be dealt in by the GRC. Grievances will be redressed within two to four weeks from the date of lodging the complaints, depending on severity of problem. All costs incurred in resolving the

complaints will be borne by the project. A comprehensive record will be maintained by EA for all grievance proceedings and subsequent redress.

XI. MONITORING AND REPORTING

41. The EA will set up an internal monitoring system comprising RO (as defined in the RF), NGO/agency, tribal people/IP and their institutions to monitor the plan implementation. Monitoring indicators will be established. EA will submit semi-annual monitoring report to ADB. In addition, an experienced and qualified external monitoring agency/expert will be engaged by the EA with ADB concurrence to undertake independent external monitoring of the IPP implementation. The external experts engaged by the EA will advise on compliance issues and if any significant issues indigenous peoples issues are found, prepare a corrective action plan and or update the IPP. The external monitor will submit semi annual reports to EA and the EA will be responsible for submitting the reports to ADB.

42. Any IPP prepared under this Project will be endorsed by the EA before sending to ADB for final approval.

XII. INSTITUTIONAL FRAMEWORK AND BUDGET

43. The EA will have the primary responsibility for the preparation of the IPP. The EA will also prepare a detailed itemized budget taking into account all the activities associated with the formulation and implementation of the IPP. The IPP will have its own budget and will form an integral part of the overall project cost. The responsibility of financing, implementation and monitoring of the IPP will rest with the EA. A local nongovernment organization (NGO)/agency with the relevant experience will be hired to assist in planning and implementing the IPP. The NGO/agency will be fully oriented on ADB's SPS. Any grievances under IPP will be redressed as per the same procedure prescribed under RF.

XIII. OUTLINE OF THE IPP

44. The IPP will consist of a number of activities and will include mitigation measures of potentially negative impacts by means of modification of subproject design and development assistance. Where there is land acquisition in tribal communities, the Project will ensure that their rights will not be violated and that they will be compensated for the use of any part of their land in a manner that is culturally acceptable to them. The compensation will be in keeping with Entitlement Matrix as provided in the resettlement framework (RF) of the Project. The IPP will include:

- (i) Executive Summary of the IPP;
- (ii) Description of the Project;
- (iii) Social Impact Assessment;
- (iv) Information Disclosure, Consultation and Participation;
- (v) Beneficial Measures
- (vi) Mitigative Measures and capacity building

- (vii) Grievance Redress Mechanism;
- (viii) Monitoring, Reporting and Evaluation;
- (ix) Institutional arrangement;
- (x) Budget and Financing