

PR 7: Indigenous Peoples

Introduction

1. Private sector projects can create opportunities for Indigenous Peoples to participate in, and benefit from, project-related activities that may help them fulfil their aspiration for economic and social development. This Performance Requirement (“PR”) recognises that Indigenous Peoples may play a role in the process of transition towards open-market economies by promoting and managing activities and enterprises as partners in development alongside the private sector and their governmental representatives.

2. *Partnership.* This PR approaches Indigenous Peoples as partners, respecting them as people and peoples whose values can contribute greatly to not only their own, but also to national socio-economic development. This PR recognises, however, that Indigenous Peoples, as social groups with identities that are distinct from dominant groups in national societies, are often among the most marginalised and vulnerable segments of the population. Their economic, social and legal status often limits their capacity to defend their interests in, and rights to, lands and natural and cultural resources, and may restrict their ability to participate in and benefit from development. They are particularly vulnerable if their lands and resources are transformed, encroached upon by those who are not members of their communities, or significantly degraded.

3. *Need for special measures.* This PR recognises that the identities, cultures, lands and resources of Indigenous Peoples are uniquely intertwined and especially vulnerable to changes caused by some types of investments so that their languages, cultures, religions, spiritual beliefs, and institutions may be threatened. These

characteristics expose Indigenous Peoples to different types of risks and severity of impacts, including loss of identity, culture, and natural resource-based livelihoods, as well as exposure to impoverishment and disease. It is further recognised that the roles of men and women in indigenous cultures are often different from those in the dominant groups, and that women and their children have frequently been marginalised both within their own communities and as a result of external developments. Due to these realities, issues related to Indigenous Peoples are frequently complex. Thus, special measures are required to ensure that indigenous men and women are not disadvantaged and that they are included in, and benefit from, Bank-supported projects as appropriate.

4. *Need for free, prior and informed consent.* This PR recognises the principle, outlined in the UN Declaration on the Rights of Indigenous Peoples,¹ that the prior informed consent of affected Indigenous Peoples is required for the project-related activities identified in paragraphs 31–37, given the specific vulnerability of Indigenous Peoples to the adverse impacts of such projects.

5. *EBRD countries of operations.* This PR recognises that the circumstances of Indigenous Peoples in EBRD’s countries of operations are unique due to their particular history. Indigenous Peoples are no longer involved solely in customary subsistence livelihoods nor can their identity be associated solely with the pursuit of such traditional livelihoods and lifestyles. Furthermore, it is recognised that Indigenous Peoples often live in mixed ethnicity settlements while at the same time the continued existence of nomadism or transhumance and a history of involuntary resettlement means that the expectation of continuing fixed links to specific territories is not always appropriate.

¹ UN General Assembly Declaration on the Rights of Indigenous Peoples adopted on 13 September 2007.

Objectives

6. Specific objectives are as follows:

- to ensure that the transition process fosters full respect for the dignity, rights, aspirations, cultures and natural resource-based livelihoods of Indigenous Peoples
- to avoid adverse impacts of projects on the lives and livelihoods of Indigenous Peoples' communities, or when avoidance is not feasible, to minimise, mitigate, or compensate for such impacts
- to enable Indigenous Peoples to benefit from projects in a culturally appropriate manner
- to support the client to establish and maintain an ongoing relationship with the Indigenous Peoples affected by a project throughout the life of the project
- to foster good faith negotiation of the client with, and the informed participation of, Indigenous Peoples when projects are to be located on traditional or customary lands used by the Indigenous Peoples, when customary or non-traditional livelihoods will be affected by the project, or in the case of commercial exploitation of the Indigenous Peoples' cultural resources
- to recognise and respect the customary laws and customs of Indigenous Peoples and to take these into full consideration
- to respect and preserve the culture, knowledge and practices of Indigenous Peoples in accordance with their wishes.

Scope of application

7. This PR will apply when a project is likely to affect Indigenous Peoples.

8. The applicability of this PR will be determined by the Bank during the environmental and social appraisal process according to the criteria outlined in paragraphs 9–12. Implementation of the actions necessary to meet these requirements is to be managed in accordance with this PR, and PRs 1, 5, 8 and 10 as appropriate.

9. There is no universally accepted definition of "Indigenous Peoples". Indigenous Peoples may also be referred to in different countries by different terms.

10. In the Policy and this PR, the term "Indigenous Peoples" is used in a technical sense to refer to a social and cultural minority group, distinct from dominant groups within national societies, possessing the following characteristics in varying degrees:

- self-identification as members of a distinct indigenous ethnic or cultural group and recognition of this identity by others
- collective attachment to geographically distinct habitats, traditional lands or ancestral territories in the project area and to the natural resources in these habitats and territories²
- descent from populations who have traditionally³ pursued non-wage (and often nomadic/transhumant) subsistence strategies and whose status was regulated by their own customs or traditions or by special laws or regulations

² A group that has lost "collective attachment to geographically distinct habitats or ancestral territories in the project area" because of forced severance remains eligible for coverage under this PR, if expected to be affected by the project. "Forced severance" refers to loss of collective attachment to geographically distinct habitats or ancestral territories occurring within the concerned group members' lifetime because of conflict, government resettlement programmes, dispossession from their lands, natural calamities, or incorporation of such territories into an urban area. For purposes of this PR, "urban area" normally means a city or a large town, and takes into account all of the following characteristics, no single one of which is definitive: (a) the legal designation of the area as urban under domestic law; (b) high population density; and (c) high proportion of non-agricultural economic activities relative to agricultural activities.

³ This applies even if the pursuit no longer takes place, as per previous footnote.

- customary cultural, economic, social, or political institutions that are separate from those of the dominant society or culture
- a distinct language or dialect, often different from the official language or dialect of the country or region.

11. The fact that a group, or members of a group, lead a nomadic or transhumant way of life, live in mixed or urban communities and/or only visit their traditional lands on a seasonal basis, having experienced forced severance, is no *prima facie* bar to the application of this PR.

12. In ascertaining whether a particular group is considered as Indigenous Peoples for the purpose of this PR, the Bank may seek expert advice.

Requirements

13. In projects where Indigenous Peoples are likely to be affected,⁴ the client is required to carry out an assessment (see below) of impacts on Indigenous Peoples. Depending upon the outcome of this, the client is expected to first avoid adverse effects and where this is not feasible, to prepare an Indigenous Peoples' Development Plan (as per paragraph 21) so as to minimise and/or mitigate any potential adverse impacts and identify benefits. The client is also expected to engage in informed consultation and participation with the affected indigenous communities, implement a specific grievance mechanism and identify and determine appropriate modalities for compensation and benefit-sharing.

14. Where the client has commenced project activities that may have affected and/or may affect Indigenous Peoples, prior to the Bank's involvement, due diligence will be carried out to identify a) any gaps and b) the corrective actions that may be required to ensure compliance with this PR. An action plan shall then be agreed.

15. Where the appropriate resource is not available within the client's organisation, the advice of experienced and independent social specialists should be sought throughout the course of the project development and implementation.

Assessment

16. Where there is a national legal requirement for a specific type of social appraisal, the client shall carry this out and share the appraisal with the EBRD, in addition to carrying out any additional social appraisal required by the Bank.

17. In cases where the project has not yet commenced, the client will identify through a social assessment all communities of Indigenous Peoples who may be affected, both positively and negatively, by the project within the project's area of influence, as well as the nature and degree of the expected social, cultural (including cultural heritage), and environmental impacts on them, and the measures planned to (i) avoid or mitigate adverse impacts and (ii) share any project-related benefits.

18. In cases where construction, project-related activities or operations have already commenced in respect of a proposed project, the client shall provide the Bank with documents and information (including those regarding the company's past performance) and a record of documents already submitted to the authorities, which demonstrates that they have sought and acted upon the opinions of project-affected Indigenous Peoples following, to the extent possible, the process outlined in this PR.

19. If the requirements of paragraph 18 are satisfied, the Bank will request that the client commission an objective and independent study of both the effects of the project on the Indigenous Peoples population and their views

⁴ Project affected Indigenous Peoples are those whose socio-economic status and/or traditional culture and way of life are affected by a project.

regarding the project. This study, to be conducted in a culturally appropriate manner, will review the effects to date on the lives and livelihoods of Indigenous Peoples, the efforts of the client to both mitigate adverse effects and to identify and share project benefits, and the level of Indigenous Peoples' participation in project planning and implementation.

Avoidance of adverse effects

20. All efforts should first be directed towards avoiding any adverse project effects on Indigenous Peoples. When avoidance of adverse effects is not feasible, the client will minimise, mitigate or compensate for these impacts in an appropriate and proportional manner.

Preparation of an Indigenous Peoples Development Plan (IPDP)

21. The client's proposed actions to minimise, mitigate and compensate for adverse effects and to identify and share benefits will be developed with the informed participation of affected Indigenous Peoples and contained in a time-bound plan, such as an Indigenous Peoples Development Plan (IPDP), or a broader community development plan with separate components for Indigenous Peoples. The client will retain qualified social scientists with relevant and appropriate technical expertise to prepare the Plan.

The level of details and the scope of an IPDP will vary according to the specific project and nature and scope of the project activities. In general an IPDP will comprise the following components:

Section I – Summary of the Social Assessment

- Baseline Information
- Key findings: analysis of impacts, risks and opportunities.

Section II – Consultation and Participation

- Result of consultations and plan for future engagement.

Implementation Plan

- Measures to avoid, minimise and mitigate negative impacts and enhance positive impacts
- Measures to ensure continuation of community-based natural resource management
- Measures to derive project benefits and/or development opportunities
- Grievance mechanism
- Costs, budget, timetable and organisational responsibilities
- Monitoring, evaluation and reporting.

Information disclosure, meaningful consultation and informed participation

22. The client will establish an ongoing relationship with the affected communities of Indigenous Peoples from as early as possible in the project planning process and throughout the life of the project. The engagement process will ensure their meaningful consultation in order to facilitate their informed participation on matters that affect them directly, proposed mitigation measures, the sharing of development benefits and opportunities, and implementation issues.

23. The client shall ensure that the project-affected Indigenous Peoples are adequately informed in a culturally appropriate manner about EBRD PRs and about project plans affecting them.

24. The process of community engagement will be culturally appropriate, respectful of the Indigenous Peoples' collective decision-making process, and commensurate with the risks and potential impacts on the Indigenous Peoples. It is for the client to demonstrate to the EBRD that this process has been adequately carried out.

25. In particular, the engagement process will include the following:

- involvement of Indigenous Peoples' representative bodies (for example, councils of elders or village councils, among others), Indigenous Peoples' organisations as well as individually affected indigenous persons
- understanding and respect for any relevant customary laws
- provision of sufficient time for Indigenous Peoples' collective decision-making process
- facilitation of the Indigenous Peoples' expression of their views, concerns, and proposals in the language of their choice, and without external manipulation, interference, or intimidation and in a culturally appropriate manner
- disclosure to Indigenous Peoples of all relevant plans and information on potential social and ecological impacts affecting indigenous communities in a culturally appropriate manner and language, and without jargon
- Recognition of community heterogeneity, taking into account the following:
 - Indigenous Peoples live in mixed communities with non-Indigenous Peoples
 - Indigenous communities are multi-vocal; consultations and participation must be inclusive of gender, generational, and excluded groups

- dissemination of appropriate information to the EBRD, and involvement of the Bank in the consultation process, where practicable

- full documentation⁵ of the consultation process.

Grievance mechanism and prevention of ethnically based discrimination

26. The client will ensure that the grievance mechanism established for the project, as described in PR 10 is culturally appropriate and accessible for Indigenous Peoples; this may entail less reliance on written procedures and more use of verbal reporting channels.

27. The Bank will not finance projects where the client excludes Indigenous Peoples on the basis of ethnicity. In Bank-financed projects where implicit factors exist that exclude Indigenous Peoples and individuals from the benefits, such as employment opportunities, on ethnic grounds, the project activities will include such corrective measures as: (i) informing Indigenous Peoples' organisations and individuals of their rights under labour, social, financial, and business legislation and of the recourse mechanisms available; (ii) appropriate and effective information dissemination, training, and measures to eliminate barriers to benefits and resources such as credit, employment, business services, health services and education services, and other benefits generated or facilitated by the projects; and (iii) granting to indigenous workers, entrepreneurs, and beneficiaries the same protection afforded under national legislation to other individuals in similar sectors and categories, taking into account gender issues and ethnic segmentation in goods and labour markets, as well as linguistic factors.

⁵ These can comprise written transcripts and records and/or audio recordings.

Compensation and benefit-sharing

28. Participatory approaches will be the foundation of determining mitigation, benefits-sharing and customary lifestyle-supporting measures. The Bank will require that the client compensate the affected Indigenous Peoples directly for any loss of livelihood (as calculated in accordance with this PR) incurred as a result of project-related activities and reinstate any land used to its previous status. Eligibility for compensation can either be individually or collectively-based, or be a combination of both. Compensation will be available both for adverse effects on customary livelihoods and for negative impacts on wage or profit-dependent economic initiatives. The nature of “customary livelihoods” is to be interpreted flexibly (so as to include contemporary adaptations such as ethno-tourism and food processing). When calculating compensation, clients will adequately take into consideration the adverse social effects of the project on the traditional lifestyles and family life of Indigenous Peoples. This shall be undertaken in cooperation with Indigenous Peoples’ representatives and experts. The provisions of this paragraph also apply in cases where the client has to pay compensation to local or regional government bodies.

29. Acceptable and legally feasible ways of compensation and implementation of IPDPs should be discussed during consultations with Indigenous Peoples. Based on these consultations a mechanism for transferring the compensation and/or resources should be developed and agreed upon. If necessary assistance/support should be facilitated by the client so as to enable the establishment of appropriate management and governance systems.

30. The client will provide, through the process of meaningful consultation with, and the informed participation of, the affected communities of Indigenous Peoples’⁶ opportunities for culturally appropriate development benefits. Such opportunities should be commensurate with the degree of project impacts, with the aim of improving their standard of living and livelihoods in an appropriate manner and of fostering the long-term sustainability of the natural resources on which they may depend. The client will document identified development benefits consistent with the requirements of this PR, and provide them in a timely manner. Strong support should be given to customary subsistence activities, including traditional economic activities and their modern derivatives such as crafts and ethno-tourism.

Special requirements

31. As Indigenous Peoples may be particularly vulnerable in the project circumstances described below, the following special requirements will also apply, in addition to the General Requirements above. Common to these requirements is the need for the client to:

- enter into good faith negotiation with Indigenous Peoples
- ensure the Indigenous Peoples’ informed participation
- obtain the free, prior and informed consent⁷ of Indigenous Peoples before starting with an activity described in paragraphs 32–37.

In the case of any of the following circumstances, the client will retain qualified independent social scientists to assist in conducting and documenting the activities described in paragraphs 32–37.

⁶ As outlined in sections 22–25.

⁷ Consent refers to the process whereby the affected community of Indigenous Peoples, arrive at a decision, in accordance with their cultural traditions, customs and practices, as to whether to become involved in the proposed project.

Impacts on traditional or customary lands under use

32. Indigenous Peoples are often closely tied to their customary lands and its forests, water, wildlife, and other natural resources, and therefore special considerations apply if the project affects such ties. While these lands may not be under legal ownership pursuant to national law, use of these lands, including seasonal or cyclical use, by communities of Indigenous Peoples for their livelihoods, or cultural, ceremonial, or spiritual purposes that define their identity and community, can often be substantiated and documented.

33. If the client proposes to locate the project on, or commercially develop natural resources located within, customary lands under use, and adverse impacts⁸ can be expected on the livelihoods, or cultural, ceremonial, or spiritual uses that define the identity and community of the Indigenous Peoples, the client will respect their use as follows:

- The client will enter into good faith negotiation with the affected communities of Indigenous Peoples, and document their informed participation and consent as a result of the negotiation.
- The client will document its efforts to avoid or at least minimise the size of land used, occupied and/or owned by Indigenous Peoples which is proposed for the project.
- The Indigenous Peoples' land use will be documented by experts in collaboration with the affected communities of Indigenous Peoples without prejudicing any other Indigenous Peoples' land claim.

- The affected communities of Indigenous People will be informed of their rights with respect to these lands under national laws, including any national law recognising customary rights or use.
- The client will offer affected communities of Indigenous Peoples at the minimum compensation and due process available to those with full legal title to land in the case of commercial development of their land under national laws, together with culturally appropriate development opportunities; land-based compensation or compensation-in-kind will be offered in lieu of cash compensation, where feasible.
- The client will give adequate time to the affected indigenous communities to come to an internal agreement, without the client imposing its will directly or indirectly.
- The client may use functions such as an ombudsman and/or other such public institution within the relevant national system to facilitate community consent to the project/the proposed land use by the client and the mitigation package.

34. During project implementation, the client will bring to the immediate attention of the EBRD any conflicts between Indigenous Peoples and the client that remain unresolved despite having gone through the project grievance mechanism. The Bank will assess the situation and decide upon an appropriate approach to resolve the issue.

⁸ Adverse impacts may include but not be limited to impacts occurring as a result from loss of assets or resources, restriction on land use, or carrying out traditional lifestyle activities, resulting from project activities.

Relocation of Indigenous Peoples from traditional or customary lands

35. The client will explore feasible alternative project designs to avoid the relocation of Indigenous Peoples from their communally held traditional or customary lands under use. When relocation is unavoidable, the client will not carry out such relocation without obtaining free, prior and informed consent for it from the affected Indigenous Peoples' communities as a result of good faith negotiations. These negotiations shall take into consideration Indigenous Peoples' laws, traditions, customs and land tenure and involve their full participation. Any relocation of Indigenous Peoples will be consistent with the Resettlement Planning and Implementation requirements of PR 5. Indigenous Peoples shall receive fair and equitable compensation for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied used or damaged as a result of the project without their free, prior and informed consent.

36. Where feasible, the relocated Indigenous Peoples should be able to return to their traditional or customary lands, should the reason for their relocation cease to exist and the land should be fully reinstated.

Cultural resources

37. Where a project proposes to use the cultural resources, knowledge, innovations, or practices of Indigenous Peoples for commercial purposes, the client will inform the Indigenous Peoples of: (i) their rights under national law; (ii) the scope and nature of the proposed commercial development; and (iii) the potential consequences of such development. The client will not proceed with such commercialisation unless it: (i) enters into a good faith negotiation with the affected communities of Indigenous People; (ii) documents their informed participation and their free, prior, informed consent to such an activity; and (iii) provides for fair and equitable sharing of benefits from commercialisation of such knowledge, innovation, or practice, consistent with their customs and traditions.