

EBRD COVID-19 Resilience Framework - Environmental and Social Assessment Training Programme

PR7 – Indigenous Peoples

Introduction

PR7 recognises that indigenous peoples are social groups with identities and livelihoods that are distinct from dominant groups in national societies. They may be among the most marginalised and vulnerable segments of the population.

Their economic, social and legal status may limit their capacity to defend their rights to, and interest in, lands and resources. Combined with their economic and spiritual dependence on these lands and resources, their status may make them particularly susceptible to any adverse Project impacts.

The term “indigenous peoples” is used in a technical sense to refer to a social and cultural group, distinct from dominant groups within national societies, possessing all of the following characteristics:

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

This PR will apply when a Project is likely to affect indigenous peoples. In ascertaining whether a particular group is considered as “indigenous” the Client must seek expert advice.

A screening process is required if the area where Project facilities or infrastructure is located in, has the potential for distinct social groups to be directly or indirectly impacted. The screening process should be conducted by an independent expert, working in close collaboration with EBRD, to determine whether this PR applies.

It is important to note that the overall aim of any ESDD assignment, regardless of the specific characteristics of an individual Project, is to:

- identify and assess potentially significant, existing and future, adverse environmental and social impacts associated with the Client's current operations and the Project;

- assess compliance with applicable laws and EBRD's Environmental and Social Policy (2019);
- determine the measures needed to prevent or minimise and mitigate the adverse impacts; and
- identify potential environmental and social opportunities, including those that would improve the environmental and social sustainability of the Project and the current operations.

The ESDD process should be commensurate with, and proportional to, the scale and magnitude of the Project, and the associated environmental and social risks and impacts. The ESDD will cover, in an integrated way, all relevant direct and indirect environmental and social risks and impacts of the Client's operations, the Project and the relevant stages of the Project cycle (e.g. pre-construction, construction, operation, and decommissioning or closure and reinstatement).

The guidance on PR7 is presented across each of the three ESDD tasks:

Task 1 – Review of existing documentation

The following documents should be requested from the Client for review:

- Environmental and social impact assessment reports; and
- Any other documentation relating to indigenous peoples.

The Client's documentation should be compared against applicable national legislation, and EBRD's requirements which are summarised in this guidance document using the table overleaf.

PR7 Requirement	Issues to consider
In cases where the Project has not yet commenced, the Client will commission an objective and independent study identifying all communities of indigenous peoples who may be directly or indirectly affected and, in consultation with affected indigenous peoples, assess the potential effects of the Project on these groups and their views regarding the Project.	Has the Client undertaken a social assessment process on communities where indigenous peoples are present? How recent is this assessment and does it need to be updated to reflect the latest Project design, location and schedule? Was the assessment based on academic data, or did it involve community meetings and interviews? Did the assessment take into account the geographical and seasonal presence of indigenous peoples, including nomadic communities? Did the assessment include the use of natural resources available in the Project area, such as herding, hunting, fishing, medicinal herbs collection or worshipping sites? Are there reliable maps showing the geographic and seasonal distribution and migratory routes of indigenous peoples?
This assessment will consider the specific vulnerability of indigenous peoples to changes in their environment and way of life.	Did the social assessment consider the vulnerability of indigenous communities? <i>NOTE: the consideration of vulnerability should include the status of indigenous communities before the Project, as well as the potential for the Project to increase/decrease their vulnerability.</i>
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 undertake a process of meaningful consultation, as defined in PR10.	Did the Client engage with indigenous peoples at an early stage of the Project? Did the consultation process include: • the involvement of indigenous peoples' representative bodies (such as a council of elders or village councils); • understanding and respecting relevant customary laws; • the provision of sufficient time for indigenous peoples' collective decision-making processes; and • the effective participation of indigenous peoples in the design of Project activities or mitigation measures that could potentially affect them either positively or negatively?

PR7 Requirement	Issues to consider
Free Prior and Informed Consent (FPIC) of affected indigenous peoples is required in circumstances where a Project: (i) affects their customary lands or resources; (ii) relocates them from their traditional or customary lands; or (iii) affects or proposes to use their cultural resources. In these circumstances, the Client will retain qualified independent social experts to assist in conducting and documenting the good faith negotiations and FPIC process.	What are the qualifications and experience of the experts involved? Did the assessment process involve a broad range of qualified experts (e.g. anthropologists; ethnologists; ethnographers; linguists, medical specialists, lawyers etc.) with the specialised knowledge of the indigenous peoples' traditional territories; lifestyle, traditions, customary way of life and health issues?
The Client will explore feasible alternative Project designs to avoid the relocation of indigenous peoples from their communally held traditional or customary lands.	Has the Client explored alternative Project designs to avoid the relocation of indigenous peoples from their communally-held, traditional, or customary lands?
When relocation is unavoidable, the Client will minimise the size of land used and not carry out such relocation without obtaining the FPIC of affected indigenous peoples.	If relocation is unavoidable, does the Project require FPIC to be demonstrated?
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 this PR; (ii) the scope and nature of the proposed commercial development; (iii) the potential consequences of such development; and (iv) will obtain their FPIC.	Does the Project intend to use the cultural resources, knowledge, innovations or practices of indigenous peoples for commercial purposes? If yes, check that the requirements under PR7 paragraph [21] have been fulfilled.
The Client will ensure, in agreement with the local community, that affected indigenous peoples are fairly compensated for any loss of livelihood incurred as a result of Project-related activities. When calculating compensation, the Client will meet the requirements of PR5 and take into consideration the adverse effects of the Project on customary livelihoods including nomadic/transhumant practices, as well as family life of indigenous peoples with specific consideration of women's wage and non-wage subsistence activities.	How has the Client approached compensation measures for losses to livelihoods and other land-related impacts? Has the Client taken into consideration traditional lifestyles and family life? Has the Client considered collective compensation strategies?
The Client will provide affected indigenous peoples opportunities for culturally appropriate development benefits.	Has the Client provided opportunities for culturally appropriate development benefits?

PR7 Requirement	Issues to consider
The Client's proposed actions to minimise mitigate and compensate for adverse effects and to identify and share benefits will be 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.	Has an IPDP been prepared? If yes, was this prepared with the informed participation of indigenous peoples? Does the IPDP consider ways in which the Project could impact men and women differently, as well as those of different generations? How has the IPDP addressed the differences in impacts that are expected to occur to men/women?
The Client will ensure that the grievance mechanism established for the Project, as described in PR10 is culturally appropriate and accessible for indigenous peoples and takes into account the availability of judicial recourse and customary dispute-settlement mechanisms.	Is the grievance mechanism culturally appropriate and accessible for indigenous peoples? Is there an over-reliance on written procedures?

A list of queries should be compiled following the review of all documentation received during Task 1, including any gaps in the material provided. Use the 'Task 1 Key Findings' format presented in Module 1 of this training programme.

Task 2 – Site visit and discussions

The site visit and discussion with Client representatives should be used as an opportunity to discuss the list of queries compiled during Task 1. During Task 2, you may need to meet with the following (these meetings should be organised in advance):

- **Project Director** – for a brief introduction associated with the purpose and scope of your visit, to request the availability of other Client representatives that you need to meet, and to thank them for their general support;
- **Project Manager, or the Environmental and Social Manager** – to discuss the Client's general approach towards indigenous peoples; and
- **Representatives of Indigenous Peoples amongst affected communities** – to discuss how the Project has complied with applicable national legislation and EBRD's requirements.

NOTE: The questions may need to be modified to reflect the current status of the Project.

Interview with the Project Manager, or Environmental and Social Manager

A Client representative should be interviewed to clarify the list of queries generated during Task 1. During this meeting, the following additional questions could be asked:

- How did the Client initially approach the classification of people in affected communities to be 'indigenous'? What experts were involved and how were they identified as being suitable for involvement on the Client's team?
- How were stakeholder engagement outcomes used to change the design of the project to avoid/minimise adverse impacts on indigenous peoples?
- What are the Client's current practices and procedures for negotiating with indigenous peoples?
- Have any assistance measures been provided to ensure the active participation of vulnerable indigenous peoples?
- Does the organisation have any ongoing social or community development initiatives or programs specifically targeted towards the needs of indigenous peoples?
- Have any grievances been raised by indigenous peoples amongst the affected communities? If yes, how have these been resolved?

Completion of the site visit and engagement with indigenous people's representatives

During the site visit an inspection of the Project's physical footprint should be undertaken. Communities who may be impacted by the Project should be visited. You may wish to organise meetings with representatives of indigenous peoples to ask the following:

- Has the Client respected their unique culture and decision making processes?
- Do they have a clear idea and sufficient information about the nature and magnitude of the Project, its physical location and Project time schedule?
- How do indigenous peoples organisations or community leaders provide information and communicate with individual communities and households, especially nomadic communities and those engaged in remote seasonal activities like herding or hunting?
- What are their general views towards the Project?
- Has the Client taken your views into consideration?
- Was information on the Project provided in an accessible format and in local language(s)?
- Was the information easy to understand?
- Were you satisfied with the negotiation process between your community and the Client associated with the Project's use of land?
- Are you satisfied with the way in which compensation is being calculated, and how this is to be provided to individuals and/or the community collectively?
- Are you aware of how to raise a grievance should you wish to do so?
- Have you been provided with any support by the Client to seek legal recourse from the courts or other type of judicial process?
- How could stakeholder engagement activities be improved by the Client in the future?

NOTE: Before leaving the location of the Project, complete the checklist overleaf to ensure that the EBRD's key requirements under PR7 have been covered.

Task 3 – Analysis and reporting using the EBRD format

The findings of Task 1 and 2 need to be analysed and presented using EBRD's Reporting Framework presented in Module 3 of this training programme. During the analysis of the data collected on information disclosure and stakeholder engagement, consider the following:

- Did the Client make efforts to reach out to all indigenous peoples communities and groups?
- Did the Client conduct a PR7 screening assessment that meets the requirements of PR7?
- Do formal indigenous peoples organisations truly and adequately represent all indigenous peoples and gauge their views, or are they instead more of a political organisation?
- Are there any disagreements or conflicts between different indigenous peoples groups or within the community that may be affected by the Project?
- Is the Client respecting the dignity and human rights of indigenous peoples?
- Has the Client taken adequate steps to avoid/minimise adverse risks and impacts on indigenous peoples, particularly in relation to land-based livelihoods?
- Has the Client explored ways in which indigenous peoples could benefit from the Project?
- Did the Client enter into an honest and transparent negotiation process in relation to the Project's use of traditional and/or customary land resources?
- Has the Client demonstrated that FPIC has been obtained?
- Did the Client assess the way in which Project impacts could be experienced differently by gender, and by vulnerable groups?
- Has the Client used the outcome of engagement activities to modify the Project design, or mitigation and monitoring measures that are to be used?
- Are grievances being quickly responded to and managed appropriately?

EBRD COVID-19 Resilience Framework - Local Environmental and Social Due Diligence Skills Capacity Building

PR7 – Indigenous Peoples – ESDD Checklist

Please confirm all of the actions have been completed	Yes / No
<i>Existing documentation relevant to indigenous peoples</i>	
Copies of the ESIA, IPDP and other relevant documentation has been reviewed.	
<i>Avoiding and minimising impacts to indigenous peoples</i>	
The efforts made to avoid and minimise impacts to indigenous peoples has been discussed with Client representatives.	
<i>Assessment of impacts</i>	
The experts the Client is using to advise them on indigenous peoples have been checked for their suitability.	
The assessment of Project impacts to indigenous people's livelihoods and land has been reviewed.	
<i>Management of impacts</i>	
The Project's mitigation measures associated with impacts to indigenous peoples has been reviewed.	
Stakeholder engagement records have been reviewed to check that the mitigation measures proposed have been disclosed and discussed with indigenous peoples and/or their representatives.	
<i>Grievance mechanism</i>	
The way in which details of the grievance mechanism has been disclosed to indigenous peoples has been checked.	
Grievance mechanism records have been reviewed to check the mechanism is functioning appropriately.	