European Bank
for Reconstruction and Development

Environmental and Social Requirement 7:
Indigenous Peoples

Guidance note

June 2025

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Environmental and Social Requirement 7

1. Introduction and objectives

1. Introduction and objectives

1.1. Purpose of this guidance note

The European Bank for Reconstruction and Development (EBRD) is committed to promoting environmentally sound and sustainable development in the full range of its activities, pursuant to the Agreement Establishing the European Bank for Reconstruction and Development.[1] The Environmental and Social Policy (ESP) is one of the Bank's three good governance policies and a key document that guides this commitment to promoting "environmentally sound and sustainable development" in the full range of its investment and technical cooperation activities.[2] The EBRD's Board of Directors approved the 2024 ESP and its 10 related Environmental and Social Requirements (ESRs) on 10 October 2024. They apply to projects started after 1 January 2025.

The ESP 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 (both natural and cultural). This, combined with their economic and spiritual dependence on these lands and resources, may make them particularly susceptible to any adverse impacts of projects."[3] Consequently, the EBRD has dedicated an Environmental and Social Requirement, ESR 7, to the management of project impacts on Indigenous Peoples.

This guidance note provides EBRD clients and others with practical guidance for implementing the requirements of Environmental and Social Requirement 7: Indigenous Peoples. While this guidance note was prepared to support the implementation of the 2024 ESP, it can also provide guidance for projects implemented under previous versions of the policy.

There are significant linkages between the requirements of ESR 7 and other sections of the ESP, including:

- ESR 1: Assessment and management of environmental and social risks and impacts
- ESR 5: Land acquisition, restrictions on land use and involuntary resettlement
- ESR 6: Biodiversity conservation and sustainable management of Living natural resources
- ESR 8: Cultural heritage
- ESR 10: Stakeholder engagement.

This guidance note provides references to these requirements where applicable. Readers are encouraged to consult the guidance notes for these standards.

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1   See EBRD (1990), Article 2.1 (vii).
2   See EBRD (2024).
3   See EBRD (2024), paragraph 1.

1.2.   Key changes since 2019

The updated version of ESR 7 took effect on 1 January 2025. It largely follows the 2019 version of Performance Requirement 7 (PR7) but includes some significant changes, such as:

- refining gendered language to more inclusive terms supporting all Indigenous Peoples

- added emphasis on Indigenous Peoples' role in influencing project design (for example, siting, location, routing, sequencing and scheduling)

- additional clarity on the documentation of free, prior and informed consent (FPIC), evidence of agreement between the client and the affected indigenous community as to the outcome of negotiations, and evidence of legitimate representation and deliberative process

- guidance on situations where land is traditionally owned or under customary use or occupation, requiring the client to prepare a plan for the legal recognition of ownership, occupation or usage, with due respect to the customs, traditions and land-tenure systems of the Indigenous Peoples concerned.

1.3.   Key objectives of ESR 7

Paragraph 3 of ES7 sets out the following key objectives:

- to ensure that projects fully respect the dignity, rights, aspirations, cultures, customary laws and livelihoods of Indigenous Peoples

- to both anticipate and avoid adverse risks and impacts[4] of projects on the lives and livelihoods of indigenous communities or, when avoidance is not feasible, minimise, mitigate or compensate for such impacts

- to promote sustainable development benefits and opportunities for Indigenous Peoples in a manner that is accessible, culturally appropriate and inclusive

- to establish and maintain an ongoing relationship with the Indigenous Peoples affected by a project throughout its lifecycle

- to ensure the effective participation of Indigenous Peoples in the design of project activities or mitigation measures that could potentially affect them either positively or negatively

- to ensure good-faith negotiations with Indigenous Peoples and obtain their FPIC in the specific circumstances described in this ESR.

1.3.1.   Indigenous Peoples participation and partnership paradigm

ESR 7 recognises that Indigenous Peoples "are potential partners in sustainable development both contributing to and benefiting from the planning and implementation of project-related activities".[5] This guidance note encourages an approach to ESR 7 implementation that conceives of meaningful consultation (and FPIC, if necessary) as foundational to such partnerships. Establishing a framework of collaboration and joint engagement early on in project planning and building on this engagement throughout the project lifecycle can assist in the delivery of potential benefits and in managing past, present and future issues or challenges.

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4   Adverse impacts may include, but are not limited to, impacts occurring as a result of the loss of assets or resources, restrictions on land use or the conduct of traditional lifestyle activities resulting from project activities.

5   See EBRD (2019), p. 39, paragraph 1.

1.4.   Government role

Governments play a central role in safeguarding the rights of Indigenous Peoples. Consequently, governments, both national and local, are critical partners in projects and the effective implementation of ESR 7. Projects need to comply with national and local regulation. They must also work with government counterparts to describe ESR 7 and FPIC requirements if officials are unfamiliar with the policy and its requirements. This guidance note describes how clients should work with governments throughout the process of assessing the applicability and implementing the requirements of ESR 7.

1.5.   Structure of this guidance note

Depending on the nature of the project and its potential or actual effects on Indigenous Peoples, different elements of ESR 7 and this guidance note may apply. Figure 1 captures the interrelationships between the key elements of ESR 7 (noting relevant sections of the guidance note). The assessment of ESR 7 applicability and implementation of its requirements (for ESR 7-applicable projects) overlaps with Environmental and Social Impact Assessment (ESIA) studies and project preparation in general. Figure 1 illustrates the ideal evolution of these elements over time.

Figure 1. Structure of the ESR 7 guidance note
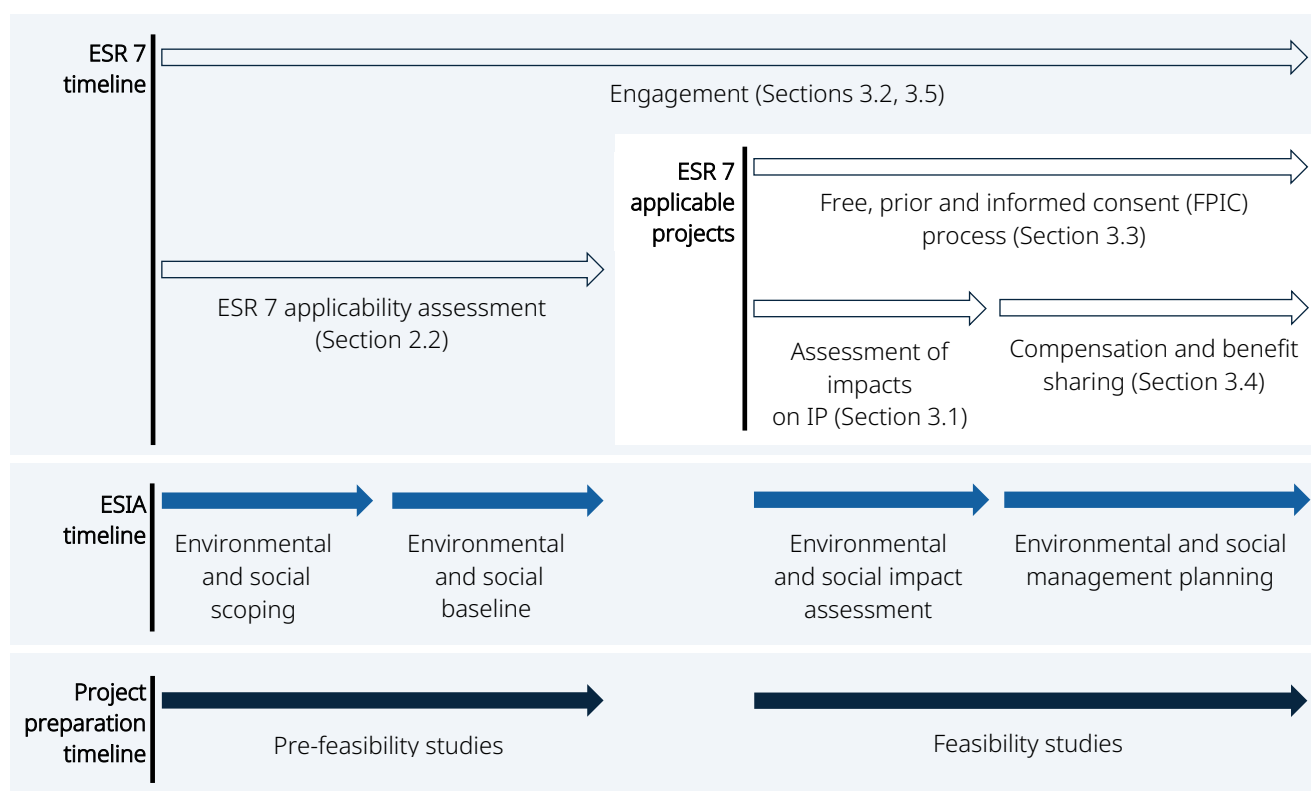
Guidance note
Environmental and Social Requirement 7
2. Scope of application

2. Scope of application

This section covers:

ESR 7 applicability criteria

● the four criteria used to assess the applicability of ESR 7 to a project-affected group

ESR 7 applicability assessment

● how to assess ESR 7 applicability.

2.1.   ESR 7 applicability criteria

ESR 7 advises that 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".[6] In this sense, "distinct" can point to historical situations in which one group was supplanted or subordinated by another. In such cases, the groups will have little shared historical, linguistic or cultural roots, having developed in unrelated geographical areas.

ESR 7 applies to communities possessing four particular characteristics – all of which must be present for the policy to apply. These characteristics narrow the range of groups to which the policy applies. This reliance on a "technical" definition stems from the unsettled and contested definition of the very concept of Indigenous Peoples over the past few decades.

Thus, the EBRD, along with other multilateral development banks (MDBs),[7] has developed the four characteristics of ESR 7's paragraph 4 to help identify which project-affected groups trigger the application of the ESR.[8] For the purposes of ESR 7 and this guidance, these project-affected peoples will be referred to as "Indigenous Peoples".

Figure 2. Four criteria used to assess the applicability of ESR 7

Self-identification	Collective attachment	Customary and distinctive institutions	Distinct language/dialect

2.1.1.   Self-identification

Of the four defining characteristics, "self-identification as members of a distinct indigenous ethnic or cultural group and recognition of this identity by others" is foundational,[9] as some groups may possess the other characteristics but may not claim distinct peoplehood. Furthermore, given the various interpretations and translations of the term "Indigenous Peoples", some communities may self-identify using local terminology

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6   See EBRD (2019a), p. 39, paragraph 4.
7   See World Bank (2018a, IFC (2012) and ADB (2013) for supplementary guidance on aspects of these four characteristics.
8   The four MDB-specified characteristics are themselves derived from prior international usage in conventions and agreements, such as International Labour Organization 169, Article 1 (see ILO, 1989).
9   See EBRD (2024), paragraph 4.

roughly equivalent to Indigenous Peoples. They may not accept, or may not be sure whether they should accept, membership of the category of "Indigenous Peoples" as it is used in international parlance for fear of being seen as disloyal or "disruptive" to national unity or as a less "developed" group. Other communities may feel strongly that they are, indeed, Indigenous Peoples in either/both the national and international senses of the term and demand the protections afforded by policies such as ESR 7. In addition, many communities may be internally split on the question of identity and Indigenous Peoples' status.

To respond to these considerations, the policy requires "recognition of this identity by others". This forestalls allowing groups, on however tenuous grounds, to claim that identity without some corroboration "by others". Although ESR 7 does not define "others", this need for corroboration invites the fear of some that governments may have an interest in not recognising a group as Indigenous Peoples so as not to be beholden to the requirements of ESR 7 or other international standards (that is, the United Nations Declaration on the Rights of Indigenous Peoples) including the notion of consent. However, ESR 7 does not specifically require recognition by government, only by "others", such as society at large, international institutions or instruments, and academic specialists.

2.1.2. Collective attachment

Collective attachment recognises the significance of land and its resources. Collective attachment has lasted over generations and has come to define many indigenous groups' way of life and identities. This attachment may not always be legally recognised by national governments – for example, through formal land title. Furthermore, it may have been forcibly severed due to government resettlement programmes.

"Attachment" can be conveyed by: (i) groups residing on the lands affected by the project; (ii) groups that have been forcibly severed from lands and resources affected by the project[10]; or (iii) communities that do not live full time on the lands affected by the project, but that retain ties to those lands through traditional ownership and/or customary usage, including seasonal or cyclical nomadic or transhumant use.

When determining collective attachment, consulting historical records, speaking to members of the community and conferring with specialists conversant with the local economies and ecologies can provide a solid basis for determining the degree of attachment to the lands, resources and cultural landscapes of the areas affected by the project. As first steps in assessing collective attachment, client project teams can ask: do the project-affected people refer to the project-affected lands as their own by right of group inheritance? Do they speak of generations of their people using the lands and resources but lack formal title? Do their neighbours recognise this connection? Has their attachment to the land been severed or weakened by government policy? When determining whether this characteristic applies, teams should be aware that individual land titles may co-exist with collective attachment, however, this fact by no means invalidates the broader attachment of the people in question collectively to the land and its resources.

Communities living in urban areas often pose special challenges and clients must take care not to exclude these groups by assuming that they are totally assimilated or intermixed with other groups; such groups may indeed be distinct communities, and if they possess the four characteristics of paragraph 4 then ESR 7 would apply. This may also be the case in cities that recognise the existence of Indigenous Peoples living within their urban boundaries. At the same time, ESR 7 does not apply to individuals or small groups migrating to urban or other areas in search of economic opportunity alone. In the latter case, the particular circumstances giving rise to the need for ESR 7 are significantly diluted. Nevertheless, the same group may be considered indigenous in their location of origin if they maintain regular contact with those areas.

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10 See EBRD (2024), footnote 102.

2.1.3.   Customary and distinctive institutions

Do the groups in question truly differ from others sociologically? This characteristic can be best determined with anthropological, ethnographic and/or sociological assessment and should be part of the baseline study during ESIA activities. "Customary" implies longstanding (multigenerational) patterns of social structure that, although not necessarily embedded in written codes of conduct, have long characterised local societies. Social institutions order the thinking and behaviour of people living in a society, as well as their values and expectations. Assessors of this third characteristic should consider kinship and cosmologies along with economic, political, cultural and social institutions.

"Distinctive" implies that these institutions are significantly different from those of dominant national groups, for instance, the official institutions of government in the country. A good rule of thumb is: are certain practices – ceremonies, rituals, activities, greetings – considered to be identifying markers of the group(s) in question? If so, the case for distinctive institutions is strengthened. If, on the other hand, these customs and behavioural patterns can be seen as broadly similar to those of most other national groups, the case for distinctive institutions is weakened. Long periods living alongside other groups may transform once quite distinct cultures into integrated parts of the national fabric and may have led to traditional institutions being eroded or replaced by official administrative structures. One key factor to bear in mind is the presence or absence of force (or the threat of force) in this process.

2.1.4.   Distinct language/dialect

The final characteristic, "a distinct language or dialect, often different from the official language or dialect of the country or region" (ESR 7, paragraph 4) is often the easiest to determine. Dialects – patterned variations in a language's grammar, word use and pronunciation rules – are included along with languages to recognise that groups living near to one another may sometimes have speech patterns distinct to them, even if they can broadly understand what their neighbours say. Anthropologists, ethnographers and linguists are specialists who can help determine the degree of linguistic difference of project-affected groups from both their neighbours and the nationally dominant groups.

Often, governments and local authorities have imposed their own ways of speech on those they have come to dominate, leading to language replacement. In the case of such linguistic "forced severance", the resulting erosion of original tongues does not bar application of ESR 7 if the other characteristics apply. This is particularly the case where a strong sense of local identity has led to dedicated efforts to retain or revive the language or dialect.

2.1.5.   All criteria must apply

Section 2.1 details the process for assessing the applicability of the four criteria. The aforementioned four characteristics must all be present for the standard to apply. This is the case even if some of the group's distinctiveness may have been eroded due to greater contact with other groups, through natural disasters or conflict, or through government policy. While the policy calls for the group being assessed to "possess" all of the characteristics, the EBRD will consider whether the characteristics are – on balance – sufficiently represented to warrant ESR 7 applicability. Furthermore, it should be noted that different communities of the same group, located in different parts of the country (or across national boundaries), may be assessed differently as to their possession of the four characteristics, for example, with regard to collective attachment. By designating a project as being subject to ESR 7, the EBRD is not declaring that it has determined a particular group to be indigenous for any other purpose.

2.2.   ESR 7 applicability assessment

The World Bank's Inspection Panel has observed that "the classification of groups as Indigenous Peoples is a complex process".[11] Given the contested nature of the concept itself, project staff and others are often unsure where to start. Before a client can begin to explore the issue, some thought must go into deconstructing the term "Indigenous Peoples" and, based on that, determining an approach and methodology for assessing ESR 7 applicability.

2.2.1.   The challenge of terminology

In many countries, the term "Indigenous Peoples" is an import and not native to the country's host language(s). How then to translate this external term into local tongues? EBRD clients and their representatives need to use local terms with caution, as their connotations may differ significantly from international or ESR 7 usage of "Indigenous Peoples". For example, in both Turkish and Georgian, "Indigenous Peoples" is sometimes translated as "locals". The reverse can also be true: common internet translation sites often produce environmental and social assessments written in French that translate *indigène* as "indigenous" in English, while the original refers more generically to "local" people.[12]

Historical differences in the use of terms can lead to some groups straddling borders considered indigenous in one country but not in the other. In some contexts, meanwhile, "indigenous" is used to refer to sedentary/farming populations within a state and "non-indigenous" to pastoralist/transhumant groups that migrate or cross state borders.

The four characteristics as a guide: ESR 7 provides a practical solution to this "complex process", as the World Bank's Inspection Panel puts it:13 just check for the four characteristics so that the term can be used in "a technical sense". Consequently, clients and EBRD project teams should not ask if project-affected groups are "Indigenous Peoples", but rather whether the affected groups possess the four characteristics of ESR 7.

This is an appropriate and practical approach, as it is not the EBRD's (nor a client's) remit to decide "who is indigenous", but only to decide whether ESR 7 applies. As a project-financing institution, the EBRD can only determine whether all four criteria are present and base its determination of ESR 7 applicability on the outcome.

2.2.2.   How, when and who decides whether ESR 7 applies

Based on its environmental and social screening of the project, the EBRD will determine whether ESR 7 could apply to any groups of project-affected people. If this is the case, ESIA scoping and baseline studies will need to be structured to carry out an assessment of ESR 7 applicability. Once such a study is completed, it must be submitted to the EBRD, which will determine whether ESR 7 applies to the groups studied. The process of ESR 7 applicability assessment is outlined in Figure 3 and detailed below.

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11 See World Bank (2016), p. 5.

12 In French, the term *indigène* is generally seen as pejorative and *autochtone* is the preferred translation of "indigenous".

13 See World Bank (2016).

Figure 3. Process for assessing ESR 7 applicability
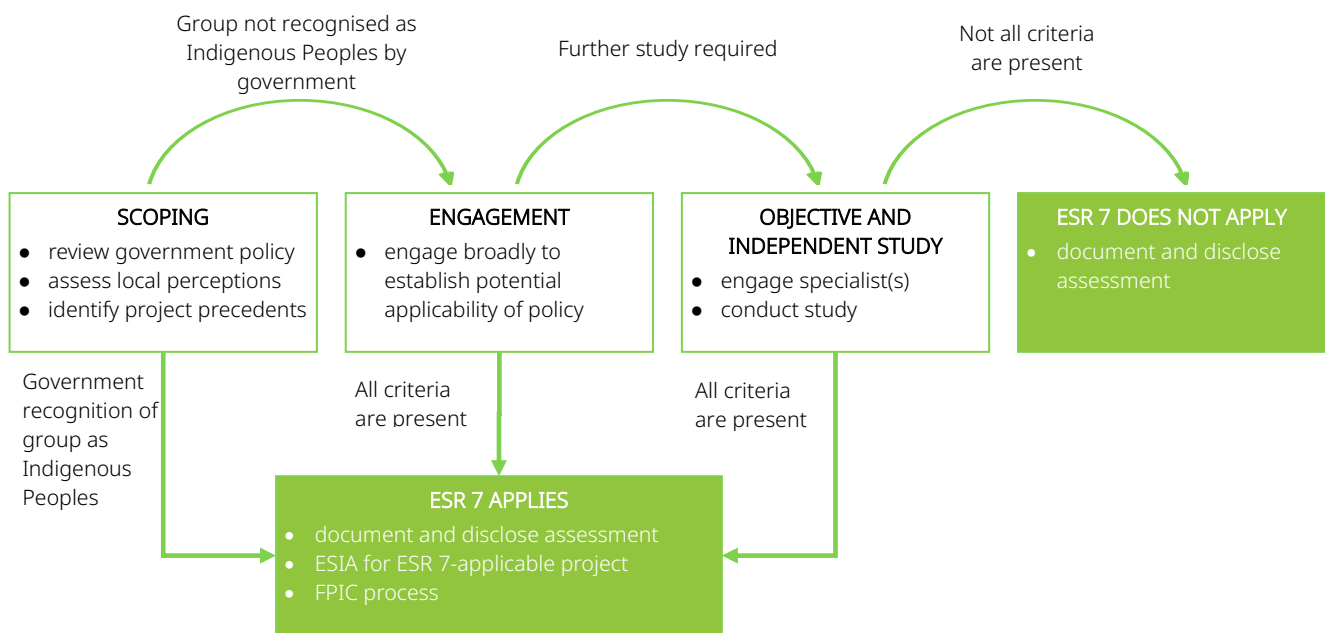
2.2.2.1. Scoping

Whether a project is in its early stages or already under preparation, the first step is information gathering as to government policy, local perceptions and project precedents. Consideration of these three factors will help teams determine how to approach the applicability of ESR 7.

a. **Government policy**: Does the national government recognise Indigenous Peoples (or some similar framing) as applicable to a certain category of groups in its own population? If so, are the particular project-affected groups recognised as such? If the government recognises the project's groups as Indigenous Peoples or uses a similar term that has been agreed on with the EBRD or other MDBs as the equivalent, then the path forwards is fairly simple, requiring only confirmation that the project-affected people are indeed members of those recognised groups. In this case, ESR 7 applies to the project. However, if the government does not recognise the project-affected groups as indigenous, yet those groups claim such status (or others claim it for them), then an independent investigation of the status of the project-affected groups is necessary.

b. **Local perceptions:** Does everyday popular discourse in the host country consider the groups in question to be fundamentally distinct from the dominant groups within national society? Have the groups in question taken a stand on whether they are Indigenous Peoples (or members of a similar category)? Pursuing this line of enquiry will begin to uncover the presence of the first characteristic (self-identification) and its recognition by others. How firmly opinions on this matter are held and expressed will guide the project team in its work to determine ESR 7 applicability. It should also be noted that groups possessing the four characteristics may form the majority of the local population, although they are distinct minorities nationally. This local-majority status cannot be the basis for denying ESR 7 applicability.

c. **Project precedents:** If previous projects (particularly those of the EBRD or other MDBs) have deemed the group(s) to be subject to their Indigenous Peoples policies, this could also help determine the amount of effort needed to confirm ESR 7 applicability for the project at hand. However, decisions not to apply an Indigenous Peoples policy may arise not from groups lacking the requisite characteristics, but from: (i) government or project resistance; (ii) inadequately resourced studies of the applicability characteristics; or

(iii) a lack of adequately experienced investigators. In such cases, the client is still obliged to make good-faith efforts to determine whether the four characteristics exist.

2.2.2.2. Engagement

If the scoping exercise indicates that more information is needed to determine whether ESR 7 applies, the project team should begin to engage government and civil-society participants to get a wide variety of inputs into the determination process. It is advisable to seek the advice of experienced and independent social specialists early on. Consulting with human rights lawyers, Indigenous Peoples organisations at local, national and global levels, Indigenous Peoples experts (such as sociocultural anthropologists/ethnographers with knowledge of the specific histories, cultures and politics of indigenous groups), appropriate government ministries and, of course, local members of the groups in question will alert the client to the parameters of discourse on the issue and help the project team to both inform others of the process and allay unwarranted fears. It is critically important at this stage to avoid rumours and misinformation and to ensure that the safety of all people participating in what could become a contentious exercise is safeguarded appropriately against undue pressure and retaliation. This exercise should be framed within the context of baseline assessment as part of the ESIA and broader project planning. The results of the applicability assessment should be presented in a standalone section of the ESIA or baseline assessment to allow the public to review the entirety of the analysis of ESR 7 applicability in one place.

2.2.2.3. Objective and independent study

If the issues are complex and the application of ESR 7 contentious, it is advisable to hire experienced and independent social specialists with expertise in social and cultural groups and Indigenous Peoples' rights to make a technical judgement as to whether ESR 7 applies to a particular project. Hiring such specialists increases the credibility of any decision on ESR 7 applicability that the project team eventually makes. Such specialists can include internationally recognised social scientists and local scholars with experience in the project area and with the groups under study, as well as representatives of an appropriate Indigenous Peoples organisation. Specialists should be chosen by the client in consultation with the EBRD to ensure that a variety of opinions are gathered and that the experts selected are considered competent and objective.

The terms of reference for such specialist studies should emphasise that:

- The assignment is for the determination of ESR 7 applicability based only on the presence or absence of the four characteristics of ESR 7 paragraph 4. All communications with project stakeholders need to make this point clear, particularly those with government and civil-society participants.

- While vulnerability is a common characteristic of many groups to which ESR 7 applies, vulnerability itself is not a criterion for assessing the applicability of a performance requirement. ESRs 1, 5 and 10 cover measures that apply to all project-affected vulnerable people.[14]

- Their assessment of applicability should rely solely on their professional judgement as to the presence of the four characteristics.

- This focused study should review ethnographic reports on the group in question, covering kinship, language usage, gender relations, religion/beliefs/morality, political/legal/decision-making processes,

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14 "Where affected individuals or groups are identified as vulnerable, marginalised and/or experiencing discrimination during the appraisal process, the ESMP [Environmental and Social Management Plan] will include differentiated measures to ensure that risks and impacts do not fall disproportionately on them and that they are able to take advantage of opportunities to benefit from the project." ESR 1, paragraph 27 (EBRD, 2024).

economic/subsistence activities, ecological adaptations and group identity constructs, as well as other topics or institutions as appropriate.

- A field visit to the project site to consult with local people should complement the document review and remote interviews with client project teams, government officials, non-governmental organisations (NGOs)/Indigenous Peoples organisations and academic experts. The field study must allow for separate opportunities for men and women to give input to the applicability assessment; provide for confidentiality and anonymity as appropriate; allow for both public and private meetings (as appropriate); and be free of coercion or intimidation. Field meetings should be held in the language that participants are most comfortable using and be conducted in neutral spaces (that is, not at project facilities or government offices).

- Specialists conducting these desk and field studies should cover all relevant studies and data sources, ensuring that alternative and even conflicting viewpoints are gathered to allow for a robust consideration of each applicability characteristic.

2.2.3.   Managing the ESR 7 applicability decision process

In countries where previous projects have not been designed in accordance with ESR 7 or with other MDB-equivalent standards, governments may be concerned about ESR 7 applicability. EBRD project teams should explain to concerned government representatives that neither the EBRD nor the client will interfere in the sovereign right of nations to determine how to interact with their citizens.

Governments should be informed that all documents referring to ESR 7 applicability will make clear that no generic determination of Indigenous Peoples' status is implied by ESR 7 application and that the EBRD will only determine whether ESR 7 is applied narrowly and technically for a particular project. A determination that a group or community is covered under ESR 7 will not affect the legal or political status of such a group or community within specific countries. Similarly, the project team must be clear with Indigenous Peoples' rights advocacy groups that the EBRD will determine whether the ESRs apply to projects that it finances.

Clients conducting ESR 7 applicability assessments should, with the support of EBRD project teams, work with government and civil society on this decision in a transparent and inclusive manner to reduce the likelihood of misinterpretation. Government assistance should be solicited to support any studies looking into the presence or absence of the four characteristics to increase the likelihood that:

- government officials at the local level will support such studies by supplying data as needed

- local people are reassured that merely discussing and sharing information with researchers about the nature of their past and present sociocultural attributes will be viewed as support rendered in collaborative pursuit of national development goals

- civil society is reassured that the process will proceed without duress, that their inputs are welcome and the results of the assessment will be disclosed publicly.

The specialists chosen to look into the four characteristics should consider formally engaging with government, civil society and local project-affected communities to discuss their methodology and to solicit opinions on the process to be followed. A follow-up meeting towards the end of the process can report on tentative conclusions and solicit responses. Such meetings are good opportunities to reinforce to stakeholders that the aim of the exercise is to determine ESR 7 applicability and not the presence or absence of "Indigenous Peoples" in any declarative sense.

2.2.4.   Final determination of ESR 7 applicability

With the above steps completed, decision-making on ESR 7 applicability rests with the EBRD. The Bank's project team will consider the specialists' report alongside other factors, such as national and other MDB projects.

2.2.5.   Disclosure of the ESR 7 applicability assessment

Once the decision on applicability is made, it should be publicly disclosed, by appropriate and accessible means, to all who attended the specialists' consultative meetings. It should also be included in the ESIA and other project documents. In cases where the applicability determination has raised an intense level of national and/or international interest, the client may also consider broader engagement and communication on the results of the assessment.

Guidance note
Environmental and Social Requirement 7

3. Requirements

3. Requirements

This section covers the key requirements for ESR 7-applicable projects:

ESIA for ESR 7-applicable projects

● how to assess and develop mitigation measures for the project's impacts on Indigenous Peoples.

Meaningful consultation and FPIC

● how to implement culturally appropriate approaches for consulting and involving Indigenous Peoples in project development throughout the project lifecycle

● conditions requiring the FPIC of Indigenous Peoples

● how to conduct good-faith negotiations (GFNs) of FPIC

● how to implement a process for managing a grievance from affected Indigenous Peoples.

Compensation and benefit sharing

● how to plan for and implement programmes to compensate for the project's impacts on Indigenous Peoples

● how to share project benefits, including developing an Indigenous Peoples Development Plan (IPDP).

3.1. ESIA for ESR 7-applicable projects

3.1.1. Planning

As mentioned in the previous section, the assessment of the applicability of ESR 7 should be conducted early in the ESIA as part of socioeconomic baseline studies. Should this assessment indicate that the ESR applies, the ESIA must include the participation of Indigenous Peoples in assessing all relevant direct and indirect risks and any impacts they may experience as a result of the project and, if the decision is taken to proceed with the project, ensure that these impacts are addressed effectively in the project environmental and social management plan.

ESR 7 (paragraphs 7 to 11) adds to the remit of the ESIA, expanding it to "consider the specific vulnerability of Indigenous Peoples to changes in their environment and way of life".[15] To this end, the assessment should:

● focus particularly on documenting land and resource use as well as land-tenure arrangements, including customary tenure

● contain sufficient information on Indigenous Peoples' customary leadership, decision-making structures and conflict-resolution processes

● assess likely impacts to collective and individual rights of the project-affected population as identified in the United Nations Declaration on the Rights of Indigenous Peoples

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15 See EBRD (2024), paragraph 9.

- map out tangible and intangible cultural aspects to inform later determinations of whether FPIC is required

- pay particular attention to obstacles to women's inclusion in project design and their inputs into mitigation measures and benefits packages (for example, IPDPs)

- consider the vulnerability dimensions of the indigenous communities and specific subgroups within these communities and how project development may exacerbate those aspects.

The ESIA is a time to review and facilitate the resolution of any legacy issues that may exist, particularly if the project has already started (ESR 7, paragraphs 10 and 11). In this way, the project can devise a plan to address these issues so that they do not persist and cause problems later.[16] This is especially important given the need for clarity as regards redress for impacts to the land and resources of Indigenous Peoples before the EBRD's involvement. Once such issues have been raised and recognised, a "mitigation matrix" listing each of the issues and the project response to and possible avenues for (eventual) resolution can be created. Even those issues clearly beyond the scope of an IPDP (for example, demands for a new road or the refurbishment of housing) can be addressed by the client recognising the demands, making clear the scope and limitations of its resources and pledging to help with their resolution *if possible*. This helps "clear the air" and sets a collaborative tone for relations between the community and the project as project preparations intensify.

## 3.1.2.   Carrying out the assessment

Working collaboratively with project-affected peoples directly and through their designated organisations can add greatly to the effectiveness of the ESIA and management planning. In this spirit, the ESIA and other studies can be set up as joint fact-finding (JFF) exercises, whereby the project and affected Indigenous Peoples work together to understand the potential impacts of the project and mutually develop approaches to mitigate them.

An initial activity would be to confirm the following: (i) what the community wants and expects from the project; (ii) how the community prefers to interact with the project; and (iii) the determination of mutually agreeable approaches to collecting, assessing and disclosing data relating to the project's impacts on and benefits for Indigenous Peoples.[17] Following this, the client can work to promote community members' direct participation in data gathering throughout the ESIA study. Topics that could be included in a JFF exercise are covered in Figure 4.

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16 Legacy issues can include, but are not limited to, conflicts related to disputes over compensation for assets acquired by the project, claims of environmental or property damage already incurred, misunderstandings over likely project effects, the sharing of project benefits and unrecognised customary land claims.

17 A good practice approach would be to build capacity so that local communities can also participate in the preparation of terms of reference for studies, the selection of experts and the studies themselves.

Figure 4. Potential focus areas for joint fact-finding
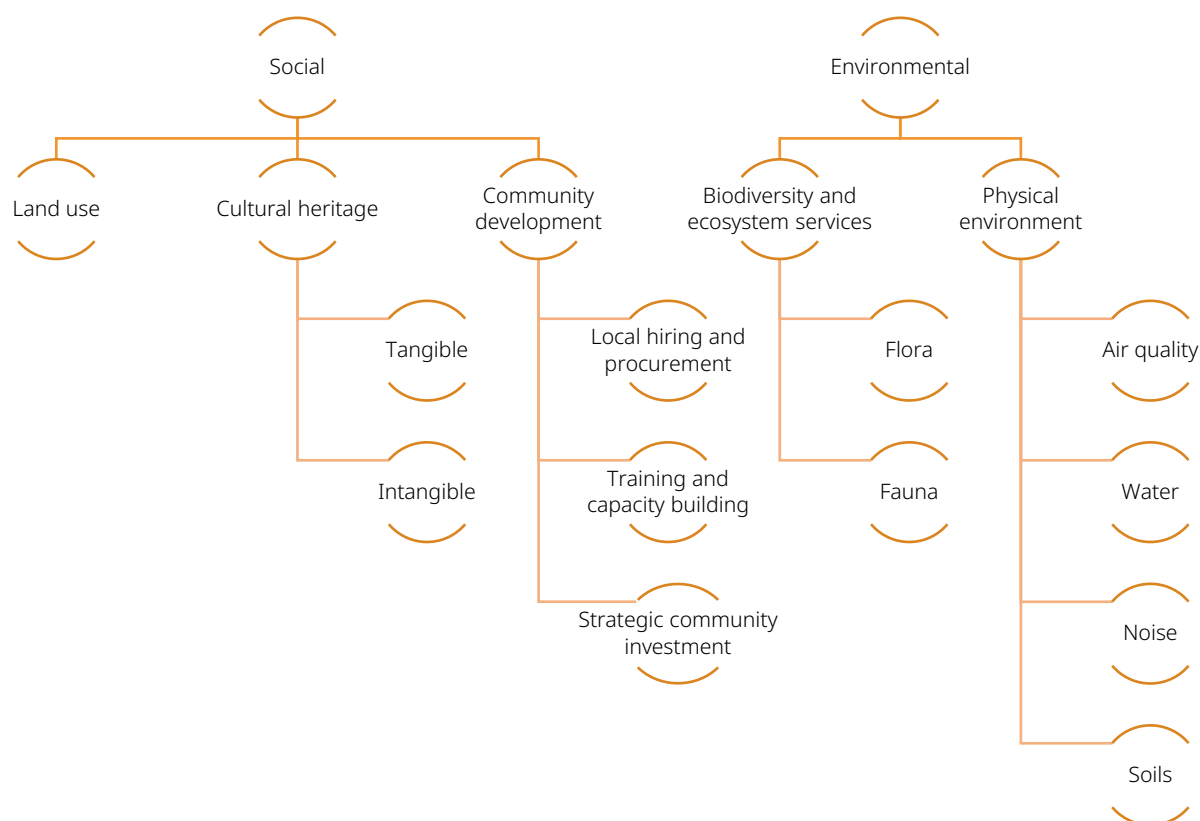
Approaching environmental and social assessment in this way creates a mutually credible knowledge base, providing a firm foundation for the negotiation of FPIC and the development of IPDPs. An added benefit of this JFF approach would be the building of Indigenous Peoples' capacity for the participatory monitoring of environmental and social impacts and for IPDP implementation when required.

To enhance the reliability and credibility of the data collected, a local Indigenous Peoples organisation can be engaged to act within this JFF framework. The organisation can support the community in co-gathering or supplementing information that a consulting firm might be hired to collect (the same organisation could be used to conduct the FPIC process, if one is required, see section 3.3). The client can also provide funds for the community to retain relevant technical specialists to support their participation.

Once the data are gathered, the project team can decide if a separate section of the assessment report is necessary or whether such information can be integrated throughout the ESIA.

3.2.   Meaningful consultation

Client project teams that early on either know or surmise that ESR 7 may be applicable should consider their engagement with potentially affected people to be a critical aspect of project preparation. As such, they should both plan and record the process even before the EBRD or any MDB is brought in. More collaborative working relationships on impact assessment, mitigation and benefits planning, IPDP governance and grievance mechanisms will also require more frequent and inclusive consultations, and clients should plan resource allocations appropriately.

The recording of these many consultation efforts – and translation fees for multiple languages – are activities and costs that need to be anticipated in project planning. Yet project administrators should bear in mind that

the project budget ledger is not all negative; in fact, a larger investment up front for these activities is likely to yield a greater return in the long term.

A critical part of ESR 10, the EBRD's requirements on stakeholder engagement and information disclosure, is that "meaningful consultations" be carried out.[18] ESR 7, builds on this definition with additional requirements:[19]

- **Representative consultations:** It is critical that whoever is leading the consultation engage *all* levels of the Indigenous People's governance structure from the outset, starting with the highest level in the country (if one exists at national level) and proceeding downwards to local level. Do not rely on formally elected or appointed representatives or officials alone for determining the need for engagement, but rather confer with the local village/town, even at household level. It is often wise to avoid over-reliance on officials – even if they are indigenous – as they may be divorced from local realities, especially customary subsistence strategies.

- **Understanding and respect for any relevant customary laws:** Indigenous Peoples may have their own laws or customs regulating consultation and decision-making within their communities. Efforts must be made early in the consultation process to understand these and to work with project-affected peoples to design culturally appropriate consultation approaches.

- **Provision of sufficient time:** Consultation is best framed as an ongoing process: (i) in order to ensure continuing two-way communication; (ii) because it takes time for the project-affected communities (especially those who are relatively isolated or marginalised) to understand what the project components and impacts are; (iii) because cultural and collective impacts may not be identified during scoping or the environmental and social assessment process; and (iv) because the scope and significance of project impacts may change over time and require adaptations to the IPDP and other mitigation and compensation measures. Furthermore, if project-affected communities engage in collective decision-making, the project needs to allocate sufficient time for communities to come to collective decisions. In practice, assume such consultation frameworks will take twice the time of other project consultation scenarios. Continuing consultation in the project implementation phase can be most efficiently done if built into the management of mitigation and benefit sharing. This has the added bonus of not only keeping the project informed in a timely manner of any implementation challenges or conflicts, but also of ensuring the EBRD is aware, so that speedy remedies can be sought.

- **Participation in the design of project activities:** As discussed elsewhere in this guidance note, consultation with project-affected people goes beyond communication of project information and must ensure the effective participation of Indigenous Peoples in the design of project activities or mitigation measures that could potentially affect them in a positive or negative way. This can include participation in the ESIA (section 3.1) as well as compensation and benefit sharing (sections 3.4.1 and 3.4.2).

- **Recognition of community heterogeneity:** As there are often stratification and power differences within groups, finding consensus on any development project may prove difficult. Meaningful consultation means people must be heard and contending voices recorded in the process of consultation. Divergence is expected and should not be ignored. Other ethnic groups, multiple generations and genders, and any vulnerable or excluded groups must be included in the consultative mix. Furthermore, in areas where more than one group meets the criteria of ESR 7, separate consultations may need to be undertaken with each group for language or cultural reasons or due to varying levels of vulnerability to project-induced risks.

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18 See EBRD (2019), paragraphs 28-30.
19 See EBRD (2019).

Some project staff may not be experienced in the dynamics of conducting "meaningful consultation" and could benefit from training in this regard before engaging with Indigenous Peoples and other stakeholder groups. For this purpose, a credible and representative Indigenous Peoples organisation or NGO may prove useful.

3.3.   Free, prior and informed consent

There are three circumstances that can trigger the requirement for FPIC:

1.   Impacts on customary lands and resources.

2.   Relocation of Indigenous Peoples from traditional or customary lands.

3.   Cultural heritage is significantly affected.

When any of these three circumstances apply, this triggers a requirement to take meaningful consultation a few steps further by obtaining the FPIC of such communities. There is no universally agreed definition of FPIC. For the purposes of this ESR, "consent refers to the collective support of affected Indigenous Peoples for the proposed project activities that affect them. It does not require unanimity and may be achieved even when individuals or groups within or among Indigenous Peoples explicitly disagree."[20] The process for determining consent and for dealing with such disagreement must be defined by project-affected peoples at the outset of FPIC negotiations and ideally be documented in a formal agreement, such as a consent process agreement, as discussed below. The EBRD and the client are expected to adhere to the agreed consent process.

Experience suggests that a full year is a reasonable timeframe for completing an FPIC process. Of course, many factors can lengthen or shorten this, such as the number of communities and the contentiousness of the issues involved. Ideally, the FPIC process should run in parallel with project planning and be financed by the client. As discussed below, there is significant overlap with the environmental and social assessment process.

While consent is sought at one point in time (typically when the FPIC process concludes), FPIC principles of transparency and collaboration can serve as a gateway to ongoing engagement for the life of the project. It should also be noted that consent is based on an understanding of the nature of the project and its impacts at a point in time and is contingent on the fulfilment of conditions agreed through a process of GFN. Failure to meet these conditions, or material changes in the project, can lead to consent being called into question. Consequently, continued monitoring of the implementation of the FPIC agreement and the project's impacts by the community of Indigenous People, the client and government is crucial to determining whether the terms on which consent is based are being met and in formulating and implementing corrective action.

3.3.1.   Impacts on customary lands and resources

The collective attachment of project-affected peoples to their lands and resources quite often constitutes a unique way of viewing life itself. Retaining the integrity of their habitat is thus of central concern in any project or intervention. In such circumstances, it is critical that the environmental and social assessment captures the details of land use and the land-tenure system, ensuring that communally held lands under use are included in the assessment of project impacts and risks and that maximal efforts are made to avoid or

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20 See EBRD (2019), paragraph 13.

minimise lands used by the project.[21] If impacts on customary lands and resources are unavoidable, the client must obtain the FPIC of affected Indigenous Peoples. In addition, any impacts on lands and resources resulting in economic displacement must be managed in accordance with the requirements of ESR 5 (on land acquisition, involuntary resettlement and economic displacement). It is also advisable for clients to obtain the services of qualified specialists to conduct studies of land use and land-tenure systems.

3.3.2.   Relocation from customary lands

ESR 7 emphasises that avoiding relocation is the top priority for project planning – a principle that is also fundamental to ESR 5.[22] As with loss of lands and resources, the issue of relocation is fraught with difficulty as, regardless of the goodwill and compensation involved, resettlement almost unavoidably results in negative social, economic and cultural impacts. For many Indigenous Peoples, collective attachment to land is strongly felt and severing that attachment can have severe consequences. When physical displacement is unavoidable, clients need to obtain the FPIC of project-affected peoples and work collaboratively with them to plan resettlement according to their needs and wishes and in line with the requirements of ESR 5.

3.3.3.   Cultural heritage

ESR 7 calls for obtaining the FPIC of project-affected indigenous communities when either their tangible or intangible cultural heritage will be significantly affected.[23] In keeping with the requirements of ESR 8, the environmental and social assessment needs to map cultural sites and cultural aspects appropriately. This is best done with specialists who are knowledgeable about the local cultures and conversant in their languages or dialects. While tangible items, such as churches or monuments made of stone, might be easy to recognise as cultural heritage, many other aspects of the natural landscape may possess spiritual, historical or cultural value. The insights of both local project-affected Indigenous Peoples and cultural-heritage specialists can be critical in assessing to what degree cultural heritage may be significantly affected. Focus-group discussions and key informant interviews with elders, religious specialists and women will bring to life an often hidden dimension of indigenous life.[24] The risk is great – the loss of cultural identity can hardly be compensated for adequately – so clients should place equally great emphasis on avoiding contributing to the unravelling of a culture, and should work with local people to devise strategies to protect cultural heritage as part of any attempt to obtain FPIC.

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21 Similarly, project consultation and disclosure must be sure to inform affected communities of their rights to lands under national law, including any that recognise customary rights or use. If a project affects forest resources, indigenous communities should be part of the forest land resource management and, even if relocated and they so desire, they should be kept within the forest if at all possible, as it is frequently the source of their livelihood and culture. See also World Bank (2018a), paragraphs 29 and 30.

22 Application of ESR 7 should be carried out in close coordination with ESR 5 and its accompanying good practice note, Resettlement Guidance and Good Practice (see EBRD, 2017).

23 Tangible and intangible cultural heritage are as linked in the minds of most indigenous groups as lands and resources. Aside from historical/archaeological sites, which are usually protected by other laws and institutions, indigenous cultural heritage is usually tangible in local arts and crafts, such as metallurgy, textiles and pottery, and intangible in practices, representations, expressions, knowledge and skills that communities, groups and, in some cases, individuals recognise as part of their cultural heritage and which are transmitted from generation to generation.

24 Many of these expressions of culture have religious, symbolic or magical referents. While many of these elements have entered the market economy and, in some cases, have become an integral part of Indigenous Peoples' livelihoods, they retain these traditional referents, even though they may have been blended with other traditions and beliefs. Sometimes only an extended period of consultation can reveal often confidential or secret aspects of a sacred landscape.

ESR 7 (paragraph 21) also requires the FPIC of project-affected peoples for proposals to commercialise cultural heritage. Knowledge of plants and animals, arts and crafts, for instance, are elements that can be monetised and, therefore, require special mechanisms for benefit sharing, including the same protections legally afforded to similar sectors. Similarly, the use of indigenous names and photos can be quite sensitive, and clients should consult with the relevant communities, as well as with academic specialists, before using such items when, for example, naming project sites or infrastructure or designing logos.[25]

3.3.4. FPIC as added value

Experience has taught that clients would do well to embrace the FPIC requirement to build positive and long-lasting relationships with local communities and governments. What might have been previously resisted as an added complication to project development can be reframed as an opportunity for the project that:

● **Deals with the past:** Through multiple rounds of stakeholder engagement, the FPIC process may provide an opportunity to address any outstanding project "legacy issues" during the negotiations, leading to an agreement.

● **Deals with the present:** It allows the project to come to an understanding with local communities as to the impacts of the project, risk mitigation, benefit sharing and resolution of outstanding concerns/grievances, culminating in an FPIC agreement.

● **Deals with the future:** By embedding an ongoing project-communities governance structure into the IPDP and similar instruments, the project can carry over the goodwill and trust of the FPIC process, which may give rise to long-lasting collaboration with local communities.

Consent can be granted or determined at only one point in time and, while the FPIC process concludes with a yes or no decision, FPIC principles of transparency and collaboration can serve as a gateway to ongoing engagement for the life of the project.

3.3.5. Adjusting FPIC scope

Depending on project circumstances, the scope of FPIC could be expanded, for example, when groups to whom the requirement applies live among those to whom it does not, or when some project-affected peoples are subject to one of the three FPIC-requiring circumstances, but others are not. In such cases, all members of the project-affected communities could be incorporated into the FPIC process with negotiation-mitigation and benefit-enhancement measures applying to all. A possible expansion of FPIC scope, including the pros and cons of such an approach, should be carefully evaluated in the context of FPIC planning.

Conversely, the scope of FPIC may also be limited to certain project aspects, such as when a linear project passes through multiple administrative units and requires FPIC only for the specific component. As the World Bank puts it: "In some projects, FPIC may be required only in relation to specific portions of land or aspects of a project. Examples include: (a) linear projects that pass through multiple human habitats, which may require FPIC for the component that traverses [Indigenous Peoples'] lands; (b) projects comprising multiple subprojects, some of which are located on [Indigenous Peoples'] lands, which may require FPIC for the subprojects located on those lands; and (c) projects involving an expansion of ongoing activities, which may require FPIC for the new project activities."[26]

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25 Both IFC (2007), paragraphs 51 and 52, and World Bank (2018b), paragraphs 32 and 33, give further examples of project interaction with aspects of indigenous cultural heritage and the commercialisation thereof.

26 See World Bank (2018a), paragraph 24.2.

3.3.6. The process of good-faith negotiations

FPIC refers to both: (i) a process of seeking consent; and (ii) an outcome in terms of a decision, and should include documented proof of both. FPIC expands the process of meaningful consultation defined in ESR 7 and ESR 10 and is established through good-faith negotiations (GFN). The International Finance Corporation (IFC) defines GFN as involving "on the part of all parties: (i) willingness to engage in a process and availability to meet at reasonable times and frequency; (ii) provision of information necessary for informed negotiation; (iii) exploration of key issues of importance; (iv) use of mutually acceptable procedures for negotiation; (v) willingness to change initial position and modify offers where possible; and (vi) provision of sufficient time for decision making".[27] The challenge for client project teams is how to make this a true negotiation, recognising the reality that indigenous communities often approach negotiations from a weaker position than governments and project developers. It is for this reason that ESR 7 calls for "qualified independent experts to assist in conducting and documenting the good-faith negotiations and FPIC processes",[28] while other MDBs require "independent monitors" of negotiations and some experts call for the provision of indigenous negotiators with their own legal and technical advisers.[29] As discussed in section 3.3.8, it is often useful to engage an ombudsperson (a neutral third party) or an Indigenous Peoples organisation/NGO to facilitate negotiations.

3.3.7. The outcomes

Where FPIC is granted, the process should result in two documents or agreements: (i) a consent process agreement (CPA); and (ii) a consent statement (CS).

3.3.7.1. Consent process agreement

The CPA details how the decision on whether to support the project and its proposed activities will be made and who will make it. It identifies: (i) representatives of the affected communities of Indigenous Peoples; (ii) the agreed consultation process and protocols; (iii) the reciprocal responsibilities of parties to the engagement process; and (iv) agreed avenues of recourse in the event of impasses, including external mediation and/or JFF. When appropriate, it should also define what would constitute consent from project-affected communities of Indigenous Peoples. This CPA should be agreed on early in the FPIC consultations and the client should document support for the agreed process from the affected population, providing legitimacy for the engagement process and the decisions to be made. While the contents of the CPA can be discussed with the client and/or government representatives, determination of its specifics should remain the sole responsibility of the communities (and their representatives) participating in the FPIC process. CPA preparation is one of the tasks assigned to the independent facilitator organisation/specialists described in section 3.3.8. A sample template for a CPA can be found in Annex 1.

3.3.7.2. Consent statement

The CS sets out the parameters of the agreement resulting from the GFN and the multiple rounds of FPIC consultations and negotiations. The CS should ideally include the following components:

1. an IPDP comprising a package of mitigation measures and benefits that includes a planned governance structure built around co-management by local community representatives, the project and local governments

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27 See IFC (2012), paragraph 25.
28 See EBRD (2019), paragraph 15.
29 See, for example, Colchester (2010).

2. a legacy issues document (where relevant) that addresses outstanding community-client issues that could not be incorporated into the IPDP, but which the community wants to retain as topics of future discussion with the project (and possibly local governments). For a discussion of potential legacy issues, see section 3.1.1.

3. an implementation agreement between the parties (local community representatives, the project client and local governments, if they are amenable) detailing each party's responsibilities to carry out the agreements of the CS. Given the concern of many project-affected communities that once their consent has been granted the client might simply walk away from its commitments, it is good practice to clarify in this implementation agreement the respective legal and loan responsibilities provided for in the financing agreements with the EBRD. The implementation agreement should also include mechanisms for monitoring the project's impacts and ongoing respect of the conditions outlined in the CS and IPDP, as well as a means of redress if these conditions are not met.

The end point of the FPIC process is for affected communities of Indigenous Peoples to "arrive at a decision, in accordance with their cultural traditions, customs and practices"[30] on the package of documents/agreements resulting from the GFN process. If the decision (reached in accordance with the guidelines laid out in the CPA) is positive, the CS will be the final outcome of the FPIC process. A sample template for a CS can be found in Annex 2.

3.3.8. Key roles in the process

Clients must seek out "qualified independent experts"[31] to facilitate the FPIC process and its documentation. Two key roles include: (i) an FPIC specialist; and (ii) an FPIC facilitator organisation (FFO).

3.3.8.1. FPIC specialist

To begin with, it is useful to assign a dedicated FPIC specialist to the FPIC effort. Their role is not to facilitate negotiations, but rather to act as an adviser in framing and overseeing the FPIC process. The specialist should work closely with the client, the lenders and other parties to the negotiations – local communities, local governments and the FFO (see below) – to provide advice and ensure that the FPIC process stays on track, while ensuring that the EBRD's ESR 7 requirements are carried out faithfully and in accordance with the Bank's Green Investment Principles (as much as possible). The FPIC specialist should be both conversant with EBRD ESR 7 and experienced in facilitating FPIC or FPIC-like processes.

The FPIC specialist can play the following roles throughout the FPIC process:

Preparatory activities

- engage with parties to the FPIC process to understand priorities, concerns and assess their capacity to engage in the process

- work to identify potential candidates to serve in the role of FFO.

FPIC process planning

- provide input into the design of the FPIC process.

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30 See EBRD (2019), p. 40, paragraph 13.
31 See EBRD (2019), p. 40, paragraph 15.

FPIC negotiation

- serve as a sounding board for the various parties to the FPIC process and ensure regular and constructive communication between them

- provide coaching to the FFO as required as they design and lead the FPIC process.

3.3.8.2. FPIC facilitator organisation

The FFO's[32] role is to develop and implement the FPIC in a transparent and effective manner. This may be an NGO or, if available and experienced in community mobilisation, an Indigenous Peoples organisation. It is critical to engage an FFO that is trusted by the local indigenous communities while commanding the confidence of the client and external observers.[33] The FFO should act as a neutral participant in facilitating the FPIC process, being neither for nor against the project or the project activities on which the FPIC consultations and negotiations will be based. Its neutrality will help all parties to understand their rights and obligations in the FPIC process. Familiarity with the cultures and languages of the affected indigenous communities will be a requisite in the selection of the FFO.

The FFO can play the following roles throughout the FPIC process:

Preparatory activities

- Conduct early-stage consultation with communities of affected Indigenous Peoples.

- Assist project-affected indigenous communities in their self-selection of representatives to participate in the multiple dimensions of the FPIC process.

FPIC process planning

- Develop an acceptable engagement and negotiation framework for the FPIC process (CPA), based on the principle of GFN, and agree what constitutes FPIC for the project.

FPIC negotiation

- Support the identification of issues, project impacts, risks, mitigation measures and benefits to affected Indigenous Peoples. This can include helping to plan and oversee JFF approaches for studies relating to project impacts and benefits.

- Assist the project and local communities in bringing in technical experts (for example, legal and environmental experts) on complex issues to help local people work through the data provided and understand the implications for them.

- Respond to requests from parties to explain and guide their understanding of and implementation of the FPIC process.

- Conduct multiple rounds of community-level consultation.

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32 Unless the FPIC process only encompasses a small number of villages or affected households, an organisation is most likely necessary to coordinate teams of facilitators organising consultations and meetings potentially affecting dozens to hundreds of people over a period of months or even over a year.

33 Also potentially useful in this context is the prototype FPIC-360° tool developed by Equitable Origin (www.equitableorigin.org/programs/free-prior-and-informed-consent/), a prominent NGO and advocate for indigenous rights, for use by all parties in monitoring compliance of the project with the principles and requirements of FPIC. The FPIC-360° increases Indigenous Peoples' ownership of FPIC processes and allows them to participate more equitably, while facilitating dialogue between indigenous communities and project developers.

- Engage with affected Indigenous Peoples' decision-making authorities/representatives and discuss the FPIC process and the development of potential CS documents.

- Facilitate negotiations on the draft IPDP and ancillary documentation and ensure that those documents are revised as needed in response to community inputs. Use mediation if needed to resolve disagreements.

- Document both FPIC processes and outcomes, establishing a record of agreed measures and dissenting views.

- Document community support – to the degree that it exists – in a mutually agreed written format, including an agreed mechanism for monitoring key commitments in the future.

3.3.8.3. Affected Indigenous Peoples

Communities of affected Indigenous Peoples are the most important group in the FPIC process, as it is their consent that is being sought. Subject to the agreement of affected Indigenous Peoples who will ultimately decide how to participate in the FPIC process "in accordance with their cultural traditions, customs and practices",[34] it can be useful to have two distinct groups participating in the process: an advisory council (AC) and a working group (WG). The two groups should ideally be representative of the membership and gender balance of the affected indigenous communities.

Advisory council

The AC should usually be a group of five to 10 representatives per project-affected community (chosen by community members themselves to represent the diversity of community members by gender, age, economic level, ethnicity and so on) and be empowered to make decisions on behalf of all affected FPIC communities. It would agree the consent process, including the mechanism by which the consent (or refusal) of affected Indigenous Peoples would be expressed. AC members would also regularly update the broader communities of affected Indigenous Peoples on the FPIC process.

Working group

The WG would usually comprise one or two AC representatives per community, along with client and local government representatives. The WG would be the core negotiation team, serving as the conduit to working out key issues throughout the FPIC process and on developing documents and proposals for the AC to decide upon, including the CPA, IPDP and CS.

Alternative FPIC participatory structure

For some indigenous groups – and particularly for smaller projects – the above two-group FPIC participatory structure may be disproportionate to their needs. In such cases, representative bodies may not be needed and simple voting by all adults may be the appropriate decision-making structure. No single type of set-up suits all projects or Indigenous Peoples, so client project teams must work with local project-affected people to decide on a culturally appropriate FPIC participatory structure.

3.3.8.4. The client

The client's senior management team would do well to empower their middle management (those responsible for community relations and social/environmental issues) by giving them decision-making capacity to negotiate with community representatives. As they sit closer to the people and conditions in the

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34 See EBRD (2019), paragraph 13.

field than senior management, these middle managers can respond quickly and decisively to developing situations and defuse them before they potentially become crises.
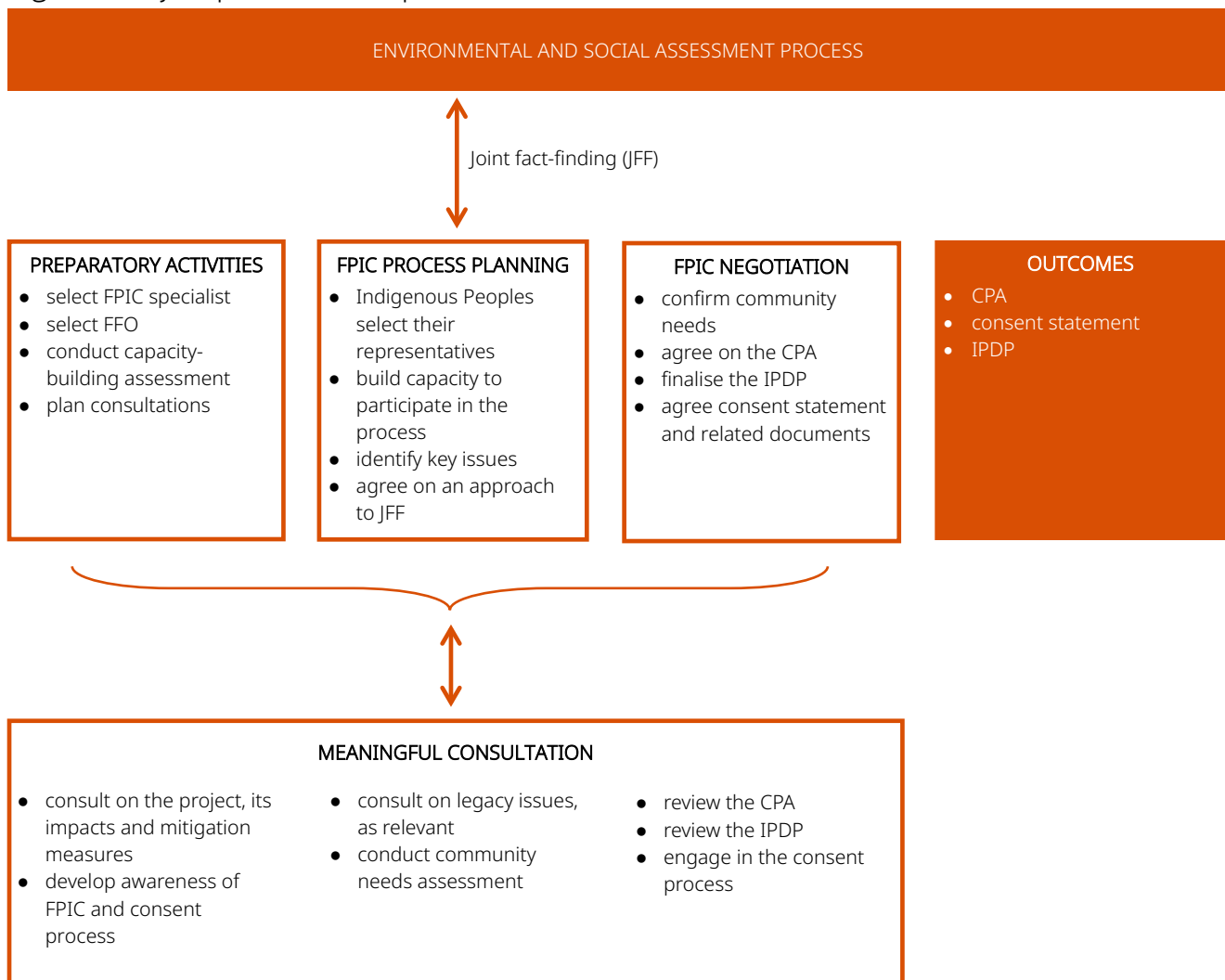
3.3.8.5. Governments

The active participation of local governments as observers of the FPIC process, and as co-participants in the implementation of the IPDP and potentially of any other CS documents or agreements, can be a significant advantage to both the project and local communities of Indigenous Peoples. By keeping local governments aware of the details of the FPIC process, misunderstandings can be avoided and local government insights and support for both mitigation efforts and benefits planning are facilitated. This is important during the implementation of the IPDP and related CS documents.

3.3.9. Possible steps in the process

This section and Figure 5 outline a potential FPIC process in simplified form:[35]

Figure 5. Key steps in the FPIC process

ENVIRONMENTAL AND SOCIAL ASSESSMENT PROCESS

Joint fact-finding (JFF)

PREPARATORY ACTIVITIES
- select FPIC specialist
- select FFO
- conduct capacity-building assessment
- plan consultations

FPIC PROCESS PLANNING
- Indigenous Peoples select their representatives
- build capacity to participate in the process
- identify key issues
- agree on an approach to JFF

FPIC NEGOTIATION
- confirm community needs
- agree on the CPA
- finalise the IPDP
- agree consent statement and related documents

OUTCOMES
- CPA
- consent statement
- IPDP

MEANINGFUL CONSULTATION
- consult on the project, its impacts and mitigation measures
- develop awareness of FPIC and consent process
- consult on legacy issues, as relevant
- conduct community needs assessment
- review the CPA
- review the IPDP
- engage in the consent process

35 Note that not all communities may decide to structure their FPIC process in this way; alternatives that meet ESR 7 standards are also acceptable.

3.3.9.1. Preparatory activities

FPIC planning should begin with the selection of first the FPIC specialist and then the FFO. They would then implement, support and oversee the below activities, which are to:[36]

- conduct a capacity-building assessment of indigenous representatives and FPIC partners (client, local government) for the IPDP/FPIC planning process, with appropriate responses as necessary

- carry out planning for multiple rounds of consultations for every FPIC-applicable community.

3.3.9.2. FPIC process planning

- The affected community of Indigenous Peoples determines how it wishes to participate in the FPIC process (which could take the form of an AC and WG structure as discussed in section 3.3.9.3).

- During this phase, capacity building will also be deployed to ensure that representatives of affected Indigenous Peoples are able to effectively participate in the process.

- A first round of AC meetings are held, including representatives from all communities, to discuss the FPIC process. The smaller WG is also set up to negotiate the CPA, IPDP and CS.

- WG meetings are held to consider key issues in the project and determine areas requiring further information (which could take the form of a JFF process).

3.3.9.3. FPIC negotiation

- Community needs assessment is carried out and community priorities are established to ensure bottom-up input into IPDP and CS (as necessary).

- Meetings of the WG and AC to agree the CPA and review the results of community mapping revisions and ancillary documents (if any).

- Meetings of the WG and AC to finalise IPDP and CS documents and come to a decision (according to the provisions of the CPA), if possible:

  - If consent is achieved, the CS documents are incorporated into the environmental and social management plan and implemented.

  - If consent is not achieved, the FFO seeks out an appropriate mediator and conducts another round of community-level consultations and meetings of the AC and WG. If this extra round is not successful, the FFO discusses with the communities and their representatives whether to continue or to terminate the effort to reach FPIC.

3.3.9.4. Meaningful consultation

Members of affected communities of Indigenous Peoples should be consulted regularly throughout the three phases of the FPIC process:

- **Preparatory activities:** During this phase, the FFO mobilises each village separately to participate in the FPIC process and raises awareness of the project, its impacts, mitigation measures and potential benefits

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36 Client disclosure of project risks, benefits and planned mitigation measures to indigenous communities should occur early in the FPIC process and certainly before the second round of consultations (described below), whereas selection by the client and the EBRD of the specific communities to be incorporated in the FPIC process should occur before FFO selection to enable FFO proposal preparation. Once in place, the FFO should advise the project and the EBRD if, in the FFO's (and the FPIC specialist's) opinions, the appropriate communities have been involved in the FPIC process.

(including the IPDP preparation process). It holds discussions about who should represent communities in making FPIC-related decisions (including issues of appropriate gender and generational balance).

- **FPIC process planning:** Consultations in this phase may involve a discussion of legacy issues, the completion of a community needs assessment with the aim of identifying community development priorities and soliciting community input on the consent process and the CPA.

- **FPIC negotiation:** At this point, the CS and IPDP are negotiated. The communities are updated on the progress of negotiations, including the CPA and IPDP, and once a potential CS has been reached, they participate in the consent process as defined in the CPA.

3.3.9.5. Environmental and social assessment process

The environmental and social assessment process (whether a formal ESIA or other study) can be a key source of information contributing to FPIC and IPDP negotiation. As discussed in section 3.1.2, this process can be structured as a JFF exercise with the active participation of affected Indigenous Peoples. This can both enhance the credibility of data gathered and build the capacity of Indigenous Peoples in the context of participative monitoring in the implementation of the IPDP.

Box 1: FPIC in practice

"Before we were introduced to the FPIC process, our local Indigenous Peoples community was not really involved in the project, although it had been in the works for six or seven years. Local people could only see downsides and consequently few supported the project and many joined a committee to struggle against the project. But then we were informed about FPIC and through this new approach both sides began to recognise each other's values and points of view. When the project is in operation, our water, forest and land will be disturbed; our culture – our way of life – is dependent on nature and forms the heart of our identity and thus will be at risk. But we learned how such risks can be lessened and negative effects mitigated through the use of the FPIC process, which is a give-and-take tool for Indigenous Peoples through which we can make compromises with project developers and, via an Indigenous Peoples plan, co-plan our future.

"With its principles of transparency, accountability, honesty, respect for our beliefs and lifestyle, and mutual commitment, FPIC has opened a new door for both the project and our local indigenous communities for win-win success."[1]

3.4. Compensation and benefit sharing

3.4.1. Compensation

Requirements for the compensation of loss of land and other assets for individuals and households are established under ESR 5 and ESR 6, where applicable.[37] ESR 7 provides for community-level mitigation and benefits-sharing measures (in an IPDP or community development plan, or CDP). During project preparation – and particularly if an FPIC process is under way – it is critical that the client keep ESR 5 requirements, consultations and negotiations for compensation separate to IPDP planning and other ESR 7-related activities. Otherwise, both the IPDP and the FPIC process may be delayed. All involved in the implementation of either ESR 5 or ESR 7 – whether project staff, their consultants or the FFO – should make this division explicitly and repeatedly clear to all community members as a fundamental point of ESP application.

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37 See EBRD (2024).

As regards compensation, clients must meet the requirements of ESR 5 to compensate for loss of land, other assets and special provisions applicable to Indigenous Peoples communities under ESR 7. For example, compensation for "the adverse effects of the project on customary livelihoods" must be taken into consideration.[38] This is in addition to any benefit sharing the project may deliver under the requirements of ESR 7. As determining compensation may be a difficult process, it is important for Indigenous Peoples to be involved in establishing the appropriate compensation mechanisms. When doing so, project staff need to make sure that the compensation process is not dominated or manipulated by the few at the expense of the many; ensuring adequate input and compensation for women, disabled persons, young people and other vulnerable members of society may be a challenge. In such circumstances, it is best to bring in external experts from Indigenous Peoples organisations or academics who can help tease out these social dimensions.

One example is the need to recognise communal customary rights over land and resources and provide compensation appropriately.[39] Where land in general is customary and communally owned, only individual use rights are recognised – a situation bound to create ongoing dissatisfaction from collective "owners". Any compensation package, therefore, must be devised after proper deliberation and consultation to ensure that communal rights compensation is broadly distributed to the community at large. Examples would include community-wide infrastructural improvements or cultural heritage support. Such measures can be placed in the IPDP as communal mitigation and compensation actions, in line with the principle that ESR 5 deals with individual or household-level affected persons, while ESR 7 deals with community-level compensation, benefits and rights.

In such communal compensation cases, the challenge is to find out who is a member of which customary group (for example, using genealogical or demographic records) and then to ensure all members of the group benefit from the project. Lease agreements are often used because customary groups do not want to lose their land in perpetuity. Many corporate managers are simply not aware of this complexity.

Further potential compensation issues for clients include ensuring that budgets extend into operations and that roles and responsibilities for implementing and overseeing the process are clearly defined.

3.4.2.   Benefit sharing: the Indigenous Peoples Development Plan

3.4.2.1. IPDP scale and scope

Development of an IPDP is an explicit requirement of ESR 7. The IPDP details in one place the mitigation, compensation and benefit-sharing measures related to the project and its impacts on Indigenous Peoples. When such indigenous communities are intermixed with other equally project-affected but non-indigenous people, a broader community development plan (CDP) may be prepared instead. In cases where most but not all of the local project-affected people are indigenous, it is good practice to include all local people in an IPDP, avoiding conflicts by applying the "higher standards" of an IPDP to all.

ESR 7 advises (paragraph 27) that benefit-sharing opportunities be commensurate with the degree of project impact. Generally, projects to which ESR 7 applies will have direct impacts on the affected communities and, for these, robust IPDPs will be required. However, for situations where ESR 7 is applied but where the environmental and social assessment determines that only "indirect" effects are likely to be felt, a more circumscribed IPDP (or indigenous sections of a broader CDP) will be necessary.

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38 See EBRD (2019), p. 41, paragraph 22.

39 The project should also consider supporting local communities in formalising such communal land tenure, so that the community's rights to such land and resources are not challenged in future.

3.4.2.2. IPDP participatory planning and capacity building

Good practice consultation approaches with Indigenous Peoples emphasise participation and capacity building. The development of an IPDP requires consultation and involvement with all sectors of indigenous society, from top officials to householders in potentially vulnerable circumstances. The IPDP needs to be developed and implemented collaboratively both to increase the likelihood that FPIC will be achieved and to increase the probability that the plan will be appropriately designed and effectively implemented. Furthermore, capacity-building consultation needs to be built into the IPDP itself so that changing project circumstances can be addressed as they come up throughout project implementation.

A major focus in the planning and implementation of capacity building should be the inclusion of women's perspectives and needs. When establishing planning teams and soliciting input into plans, project teams must take care to ensure that women's voices are heard. This might sometimes require holding women-only discussion groups and setting a quota of one-third or parity for women's participation in all consultative and decision-making bodies.

In pursuit of sustainable development for Indigenous Peoples – a key objective of ESR 7 (paragraph 1) – the IPDP can serve a critical role during both preparation and implementation. Provision of technical support to communities engaging in GFN during the IPDP preparation phase (legal and other advice) and then including indigenous community representatives in the IPDP governance structure can go a long way to building capacity for self-management. IPDP programmes, components or activities can make building human capital a key focus, as such investments can continue to pay dividends over time. Furthermore, by building an active role for indigenous community members into IPDP governance, the IPDP can encourage the acquisition of skills and experience, which can serve members of these communities in their future careers and lives.

3.4.2.3. IPDP preparation

The IPDP should be prepared by social experts with requisite experience in working with indigenous communities on community development in close collaboration with the affected Indigenous Peoples themselves. This collaborative effort should bring together community representatives (such as those selected for a community advisory council or WG, if an FPIC process is necessary) along with the client-engaged social experts drawn from Indigenous Peoples organisations, academia or social consultancy firms. It is critical to put together a team experienced in the complexities of Indigenous Peoples development, at least some of whom are drawn from the affected indigenous groups themselves along with others who have experience in implementing similar plans for other projects. IPDP preparation relies on the inputs of a robust social impact assessment to identify risks and propose mitigation measures, as well as to identify needs and propose benefit options.

If the IPDP is part of an FPIC process, the FFO may also be conducting a bottom-up priorities-gathering exercise that will add to the IPDP planning input mix. Particularly for an FPIC-standard IPDP, indigenous communities should take the lead in setting plan priorities, with leadership and representatives selected by those very same communities. The content of the IPDP, how IPDP preparatory meetings are carried out and how decisions are adopted must be in accordance with Indigenous Peoples' preferences. This includes consultations and meetings held in the local tongue(s), as necessary, and incorporation of indigenous spiritual elements as appropriate.

3.4.2.4. IPDP structure

The IPDP includes sections summarising the project context, the results of the environmental and social assessment and the consultation record. The heart of the IPDP focuses on mitigation measures and benefit delivery via programmatic development, as noted above. As part of the emphasis on mitigation measures, the IPDP can include a "mitigation matrix" that includes a list of all environmental and social risks and concerns raised by the communities during the assessment and the FPIC consultations (as relevant), along with promised client responses, compensation measures, assignment of responsibilities and a timetable for carrying out these activities. As the plan is implemented, the matrix is updated periodically and reviewed by the group charged with oversight of the plan (such as an IPDP monitoring committee).

Box 2: Using a mitigation matrix

The Sakhalin-2 oil and gas project (which includes liquefied natural gas and is operated by the Sakhalin Energy Investment Company Ltd in Russia's Far East region) did not involve the physical displacement of Sakhalin's indigenous minorities through whose ancestral lands the oil and gas pipelines would flow. However, there was great fear among these people that their lands and livelihoods would be severely affected. This fear of economic displacement and environmental damage formed a significant obstacle for the project when it came to obtaining community acceptance of and collaboration with the project and its proposed community development plans. A joint working group – comprising indigenous community members, company staff, consultants and government representatives – devised an approach in 2005 to directly confront such fears by collaboratively working with the Indigenous People to address and resolve these issues one by one. This approach used a "mitigation matrix" comprising two sub-matrices – one for "sustainable resource use and environmental protection" and the other for "social issues" – that listed the specific concerns of Indigenous People and outlined the project's approach to addressing them. This proved very effective in predicting and managing fears over economic displacement and environmental impacts. The matrices also served as a foundation and framework for discussion and resolution of the outstanding issues of concern for the indigenous community. The explicit and transparent nature of these specialised matrices and the accompanying discussions served to assure the communities that all of their concerns were being addressed. Through this approach, Sakhalin-2 went from being vilified and facing indigenous protests to being internationally hailed as an example of good practice for Indigenous Peoples' engagement and development, which continued as the Sakhalin indigenous minorities development plan proceeded through its third iteration (2016-20).

As for IPDP benefits, given the frequent fragility of indigenous cultures, IPDPs could consider devoting a significant portion of their activities and funds to supporting cultural heritage interventions, particularly language retention and documentation. Indigenous sports, arts, crafts, literature, storytelling, music and religious ceremonies are often neglected during the rush to (primarily economic) development. An IPDP can serve an important role in assuring the indigenous cultures affected by the project that they will receive support amid the tensions and stresses a project often causes in social and cultural life. Building bonds across the generations to convey customary knowledge, language and lore can also serve to bolster indigenous group identity in challenging times.

Another key section of the IPDP is the governance structure for delivering the development measures, including monitoring and the plan's grievance mechanism (see section 3.5). Plan governance should reflect a

participatory approach, with strong representation for project-affected peoples on the IPDP supervising and implementing committees, along with project and local government representatives.[40]

Monitoring is yet another area where participation can improve the quality and acceptance of the project and its IPDP. An IPDP should include both internal monitoring (focusing on the use of funds and results of plan activities) and external monitoring (looking at whether IPDP procedures were properly carried out, as well as the outputs of IPDP activities and its outcomes). The inclusion of local Indigenous Peoples on the internal monitoring team ensures the credibility of the monitoring process, while helping the non-indigenous members of the team to understand the motivations and preferences of local people. It might also be advisable to engage people from the project-affected groups to staff plan-coordinating positions. Such broad participation in plan governance helps build local capacity and maintain strong local buy-in to the project.

The IPDP budget should be spelled out clearly during the community consultation period, including the delineation of budget lines by programme. Clients should plan to set aside additional funds to adequately finance the implementation of the IPDP. These funds would be in addition to those allocated to IPDP programmes and actions. Clients should initiate the IPDP at the time of the EBRD loan agreement and have it sustained (with periodic renewals) through planning, construction, operations and demobilisation.

As a collaborative endeavour among partners, transparency is critical to maintaining both public awareness of and trust in the delivery of the mitigation measures and social benefits package. Periodic reporting by the client, as well as public disclosure of external monitoring reports on the IPDP, are essential.

See Annex 3 for a sample IPDP outline.

3.5.   Grievance mechanism

Clients should consider whether one community grievance mechanism[41] for the project as a whole will adequately cover the particular needs of the affected indigenous communities or whether two separate grievance mechanisms would better suit the differing needs of the project and of an IPDP. In either case, the grievance mechanism process should be well documented and regularly monitored (potentially by a third party) with periodic reports made available to significant IPDP stakeholders, as well as the EBRD.

For many projects with Indigenous Peoples, a standard written grievance mechanism may not be preferred, as Indigenous Peoples may wish to make verbal complaints rather than fill out forms or use other media such as websites, emails or faxes (although app-based messaging is becoming more popular). Standard grievance mechanism procedures often do not square with the role of Indigenous Peoples as co-decision-makers in all aspects of an IPDP. For an IPDP-style grievance mechanism, indigenous representatives could form part of a group set up to investigate grievances, along with project and perhaps local government representatives. Whether the client decides on an integrated grievance mechanism for the entire project or a separate grievance mechanism embedded within an IPDP, the grievance mechanism should not interfere with any existing processes or institutions within the Indigenous Peoples communities to settle differences among them.

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40 One successful formula for IPDP governance is to staff governing boards and other bodies with at a minimum one-third of representatives from local indigenous communities. Some projects have elected to make the split 50:50 or to have even higher indigenous proportions.

41 ESR 10 covers general requirements for community grievance mechanisms (paragraph 29), while ESR 7 covers specific requirements pertaining to Indigenous Peoples (paragraph 27).

The grievance mechanism should provide for fair, transparent and timely redress of grievances at no cost to communities and, if necessary, provide special provisions for women, young people and the elderly. From complaint initiation to resolution, the grievance mechanism should provide options for verbal and written engagement in the languages or dialects used by local indigenous communities, and for a variety of locations to file grievances at times convenient to local people. It is also imperative that the grievance mechanism establish clear confidentiality guidelines and internal procedures for non-retaliation against those filing a grievance. Those handling the grievance should also be aware that some grievances may not appear tangible or appropriate in a culture's value system but could be highly signified in the indigenous one. This might be particularly true in relation to standards of "fairness" in the distribution of benefit-sharing measures in the IPDP.

Annex

Annex 1. Consent process agreement – sample outline[42]

CONSENT PROCESS AGREEMENT FOR [name of project]

PRINCIPLE AGREED ON BY [name of indigenous representatives FPIC and IPDP] WORKING GROUP

On [date] at [location], the [number] village representatives selected in the previous [timeframe] in an open, transparent, inclusive and democratic process to serve on the [name of the advisory council or body of community representatives] selected [number of representatives] to serve on a working group (WG) to guide the FPIC process for the [name of] project. These WG members met [timeframe], and during that time considered how a consent decision would be recognised within the FPIC principle guidelines of the EBRD's ESR 7 [and other standards as applicable].

After due and spirited deliberations, the WG agreed on the following:

- The advisory council [or name of the community representatives body] was the appropriate body to make the decision on whether to grant or withhold consent to the [project and/or an Indigenous Peoples development plan].

- The "consent decision" would be placed before the [advisory council or body of community representatives] as a yes or no vote on [the project and/or the contents of the IPDP]; this would only occur after at least two rounds of consultations at the village level and multiple meetings of both the [advisory council or community representatives body] and the WG. During the [number] meeting of the WG, they would decide if the communities and the [advisory council or community representatives body] were ready to make a consent decision.

- At such a consent decision meeting of the [advisory council or community representative body], the representatives would first discuss the latest draft of the IPDP, suggest changes and deliberate openly and freely on its merits and demerits.

- [Voting mechanism: for example, "A simple majority of those present and voting would decide the issue, with both a [determine percentage] quorum [number of members] of the [advisory council or community representatives body] required to be present and votes attested to by [a procedure to record votes; for example, hands raised, written ballots] recording the yes or no votes. Abstentions [would/would not] be permitted.

- If consent was achieved, the [advisory council or community representative body] was the appropriate body to authorise the working group members to continue working with the IPDP as its governing board members to plan, launch and initiate the plan.

- If consent was achieved, the [advisory council or community representatives body] was the appropriate body to work with [local governments] and [the project/client] in a cooperation agreement to implement the plan.

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42 This is a sample template only; each project should add or remove sections as appropriate to adequately reflect that project's circumstances.

On [date], this CPA was read out to the [advisory council or community representative body] whereon it was approved [as amended/without amendment].

[Community representatives' signatures could be listed below, per their preference, attesting to their public agreement with the CPA principles]

Annex 2. Consent statement – sample outline[43]

STATEMENT OF CONSENT FOR THE [name of project] and THE [name] INDIGENOUS PEOPLES DEVELOPMENT PLAN

We, the authorised participants of the [name of advisory council or community representatives' body], hereby affirm that:

1. We are convinced that the [name of the Indigenous Peoples Development Plan (IPDP)] was prepared successfully according to the principles of free, prior and informed consent (FPIC) and with our meaningful input.

2. Our selection as delegates from our [number] project-affected [communities] was conducted in a transparent, accessible and democratic fashion, which resulted in the selection of a group of representatives broadly inclusive of our communities' population.

3. Meetings of both the [name of advisory council or community representatives' body] and its executive body, the [name] working group, were likewise carried out as per FPIC principles.

4. Consultations regarding the content and format of the [name] Indigenous Peoples development plan [timeframe] were held according to current international standards (and particularly the EBRD's ESR 7). The consultations were held in all [number of] communities and included meetings with the local population as well as their [local government] administration representatives. Aside from a preparatory round to familiarise community members with the process and to select representatives, these meetings were held in [number] rounds during [timeframe]. Such discussions were carried out without compulsion, were held early enough for us to discuss the issues at length and were accompanied by the relevant information regarding the [name of project] for us to formulate our own independent assessment of the project and the proffered IPDP.

5. We acknowledge the objectives of the [name] Indigenous Peoples development plan:
    o   [list each objective]
    o   [list each objective].

6. We approve the general content and principles of this [name] Indigenous Peoples development plan as shared with us during this [number] meeting of the [name of advisory council or community representatives body] and affirm that by our signatures we [name of advisory council or community representatives body] members agree to co-implement the IPDP as per the [name] implementation agreement duly signed by the [number] partners [name of advisory council or community representatives body], [local government representatives], [name of project/client].

7. We appreciate [project/client]'s commitment to work with us on some of our outstanding issues, as referenced in the [name of legacy issues agreement] through continuing dialogue.

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43 This is a sample template only; each project should add or remove sections as appropriate to adequately reflect that project's circumstances.

In recognition of the above and acknowledging the broad community support that the [name] Indigenous Peoples development plan has received, we – as representatives of our communities – grant our consent to the [name] project based on the implementation of the [name] IPDP and so indicate by affixing our signatures below.

Signed

[name of advisory council or community representative body] members (name and community)

[place and date]

Annex 3. Indigenous Peoples Development Plan – sample outline[44]

1. Introduction

   ○ background

   ○ relationship of the IPDP to other social management plans

   ○ objectives and scope of the IPDP

   ○ methodology and responsibility for IPDP preparation

   ○ applicable national and international legal and policy frameworks, including discussion of status of Indigenous Peoples issues in the country.

2. Description of the project

   ○ project location

   ○ project facilities

   ○ project operation.

3. Baseline information of Indigenous Peoples in the project area

   ○ ethnographic profiles of Indigenous Peoples communities in the local project area

   ○ land and resources use of Indigenous Peoples in the project area

   ○ profiles of FPIC communities.

4. Information disclosure, consultation and participation

   ○ brief overview of consultations

   ○ public disclosure of project documents

   ○ process for seeking FPIC (if applicable)

   ○ FPIC process consultations (if applicable)

   ○ achieving consent and its supporting documents.

5. Environmental and social impact assessment

   ○ adverse and positive impacts

   ○ avoidance of adverse impacts

   ○ natural resources management (if applicable)

   ○ social impacts and mitigation measures, (including mitigation matrix framework).

6. Development/benefit-sharing measures (each programme described, for example, training, health, business planning, education, infrastructure)

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44 This is a sample outline only; each project should add or remove sections as appropriate to adequately reflect that project's circumstances.

7. IPDP governance structure

    ○ implementation of parties' inputs and responsibilities

    ○ governance bodies

    ○ project IPDP implementation unit.

8. Reporting, monitoring, evaluation and disclosure

9. IPDP grievance mechanism

10. IPDP budget estimates, schedules, financing sources

11. IPDP revision and update

12. Appendices: supplementary documents including any IPDP implementation agreements

Annex 4. List of resources

Below are references that may assist the client in implementing the requirements of ESR 7. The information in the resources listed here does not necessarily represent the views of the EBRD.

Key international Indigenous Peoples documents

International Labour Organization (1989), *Indigenous and Tribal Peoples Convention, No. 169*, Geneva, Switzerland. Available at:
www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169.

United Nations (2007), *Declaration on the Rights of Indigenous Peoples*, New York. Available at:
www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf.

MDB Indigenous Peoples policies and guidelines

MDB joint publication

- Asian Development Bank , African Development Bank, Asian Infrastructure Investment Bank, EBRD, European Investment Bank, Inter-American Development Bank, IDB Invest, New Development Bank, Nordic Development Fund and World Bank (2019), *Meaningful Stakeholder Engagement: A Joint Publication of the Multilateral Financial Institutions Group on Environmental and Social Standards*, Inter-American Development Bank, Washington, D.C. Available at:
https://publications.iadb.org/publications/english/document/Meaningful_Stakeholder_Engagement_A_Joint_Publication_of_the_MFI_Working_Group_on_Environmental_and_Social_Standards_en.pdf

Asian Development Bank

- ADB (2009), *Safeguard Policy Statement,* Manila. Available at: www.adb.org/documents/safeguard-policy-statement.
- ADB (2013), *Indigenous Peoples Safeguards: A Planning and Implementation Good Practice Sourcebook*, draft working document, Manila. Available at: www.adb.org/sites/default/files/institutional-document/33748/files/ip-good-practices-sourcebook-draft.pdf.

European Bank for Reconstruction and Development

- EBRD (1990), *Agreement Establishing the European Bank for Reconstruction and Development*, London. Available at: www.ebrd.com/news/publications/institutional-documents/basic-documents-of-the-ebrd.html.
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Inter-American Development Bank

- IADB (2006), *Operational Policy on Indigenous Peoples and Strategy for Indigenous Development*, Washington, D.C. Available at: http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=2032081.

International Finance Corporation

- IFC (2012), *Performance Standard 7: Indigenous Peoples Guidance Note 7,* Washington, D.C. Available at: www.ifc.org/content/dam/ifc/doc/2010/2012-ifc-ps-guidance-note-7-en.pdf.

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- IFC (2007), *Stakeholder Engagement: A Good Practice Handbook for Companies Doing Business in Emerging Markets*, Washington, D.C. Available at: www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/sustainability-at-ifc/publications/publications_handbook_stakeholderengagement__wci__1319577185063.

World Bank

- World Bank (2017), "Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities", *Environmental and Social Framework*, Washington, D.C. Available at: http://pubdocs.worldbank.org/en/837721522762050108/Environmental-and-Social-Framework.pdf#page=89&zoom=80.

- World Bank (2018), *Guidance Note for Borrowers: Environmental & Social Framework for IPF Operations, ESS7: Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities,* Washington, D.C. Available at: http://documents.worldbank.org/curated/en/972151530217132480/ESF-Guidance-Note-7-Indigenous-Peoples-English.pdf.

- World Bank (2016), *Indigenous Peoples, Emerging Lessons Series No. 2*, The Inspection Panel, Washington, D.C. Available at: http://documents.worldbank.org/curated/en/447361478156710826/pdf/109710-REVISED-PUBLIC-IP-lessons-text-10-31-16web-links.pdf.

Private industry Indigenous Peoples guidelines

International Council on Mining and Metals

- International Council on Mining and Metals (2015), *Good Practice Guide: Indigenous Peoples and Mining*, second edition, London. Available at: www.icmm.com/en-gb/publications/mining-and-communities/indigenous-peoples-and-mining-good-practice-guide.

IPIECA (the global oil and gas industry association for environmental and social issues)

- IPIECA (2012), *Indigenous Peoples and the Oil and Gas Industry: Context, Issues and Emerging Good Practice*, London. Available at: www.ipieca.org/resources/good-practice/indigenous-peoples-and-the-oil-and-gas-industry-context-issues-and-emerging-good-practice/.

Other

- S.J. Anaya (2004), *Indigenous Peoples in International Law,* second edition, Oxford University Press, Oxford, UK.

- M. Colchester (2010), *Free, Prior and Informed Consent: Making FPIC Work for Forests and Peoples*, Yale University, The Forests Dialogue, New Haven, Connecticut.

- IWGIA (International Work Group for Indigenous Affairs) (2020), *The Indigenous World 2020*, 34th edition, Copenhagen. Available at:
  http://iwgia.org/images/yearbook/2020/IWGIA_The_Indigenous_World_2020.pdf.

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ILO (1989), *Indigenous and Tribal Peoples Convention, No. 169*, Geneva, Switzerland. Available at: www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169.

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World Bank (2018b), *Guidance Note for Borrowers, Environmental and Social Framework for IPF Operations, ESS8: Cultural Heritage*, Washington, D.C. Available at: https://documents1.worldbank.org/curated/en/743151530217186766/ESF-Guidance-Note-8-Cultural-Heritage-English.pdf.

Abbreviations

AC	Advisory council
CDP	Community development plan
CPA	Consent process agreement
CS	Consent statement
ESIA	Environmental and Social Impact Assessment
ESP	Environmental and Social Policy
ESR	Environmental and Social Requirement
FFO	FPIC facilitator organisation
FPIC	Free, prior and informed consent
GFN	Good-faith negotiations
IPDP	Indigenous Peoples Development Plan
JFF	Joint fact-finding
MDB	Multilateral development bank
PR	Performance Requirement
WG	Working group

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