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Guidance Note
UNDP Social and Environmental Standards

Standard 6: Indigenous Peoples

UNDP Guidance Notes on the Social and Environmental Standards (SES)

This Guidance Note is part of a package of operational guidance material related to the UNDP Social and Environmental Standards (SES). Each of the guidance notes follows a similar structure to facilitate the ease in which users can find the information or guidance they are seeking. The package of guidance notes will develop over time and will include specific guidance on each of the SES Overarching Principles, Project-Level Standards, and elements of the Project Delivery Process (see key SES elements below).

How to Use This Guidance Note

The target users for the SES guidance notes are staff, consultants, stakeholders and partners who are involved developing and implementing projects that invoke UNDP's SES. To facilitate use of the overall package of SES guidance, users should understand that the guidance notes:

- Are structured around the process of **screening, assessment, and management**.
- Provide assistance in determining the applicability of relevant SES requirements in the screening process for all projects.
- Provide additional guidance related to assessment and management for projects with potential Moderate or High Risks related to a certain Principle or Standard.
- Provide a practical resource for addressing implementation of SES requirements within the context of a project. Users do not necessarily need to read them in full but rather may select information that is specific to their needs.
- Complement the SES which must be read in conjunction with the guidance notes (SES language is generally not repeated in the notes).
- Will continue to be developed as lessons are derived from implementation. Feedback is always welcome and can be sent to info.ses@undp.org.
- The package of Guidance Notes will be available online through the SES Toolkit: https://intranet.undp.org/unit/bpps/DI/SES_Toolkit/default.aspx.

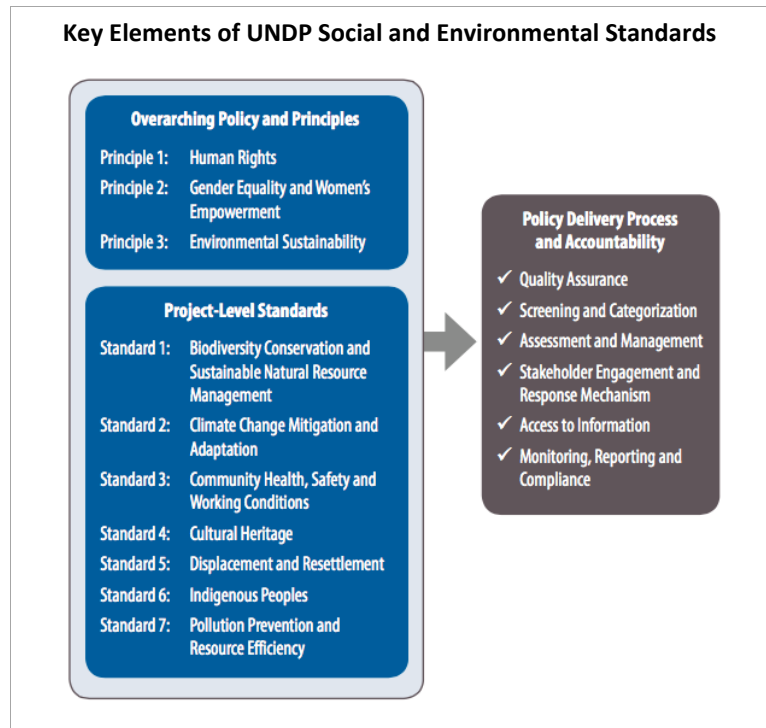


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1. Introduction

1.1 Purpose and Organization of this Guidance Note

This Guidance Note provides operational guidelines for addressing the requirements of Standard 6 Indigenous Peoples during the development and implementation of UNDP Projects.

Figure 1 outlines key considerations of Standard 6 during the process of screening, assessment, and development of management measures, and provides a guide to navigating this document.

This Guidance Note begins with an introduction to the objectives, key concepts and an overview of the requirements of Standard 6 (**Section 2**). **Section 3** addresses requirements related to meaningful participation and free, prior and informed consent (FPIC) on indigenous peoples in UNDP Projects. **Section 4** discusses how to determine if the Standard is relevant by applying the Social and Environmental Screening Procedure. It also discusses the assignment of a risk category to the project. **Section 5** addresses the integration of the requirements of Standard 6 into the social and environmental assessment process. **Section 6** addresses the development of measures to avoid, mitigate, and manage risks and impacts as well as monitoring implementation of management plans. All Moderate and High Risk projects require a management plan for PAC consideration (the form of which will vary depending on nature/scale of risks and timing of assessment).

Figure 2 provides a general overview of SES implementation in UNDP’s project cycle. It should be noted that screening, assessment, and management may occur at different stages of the cycle.

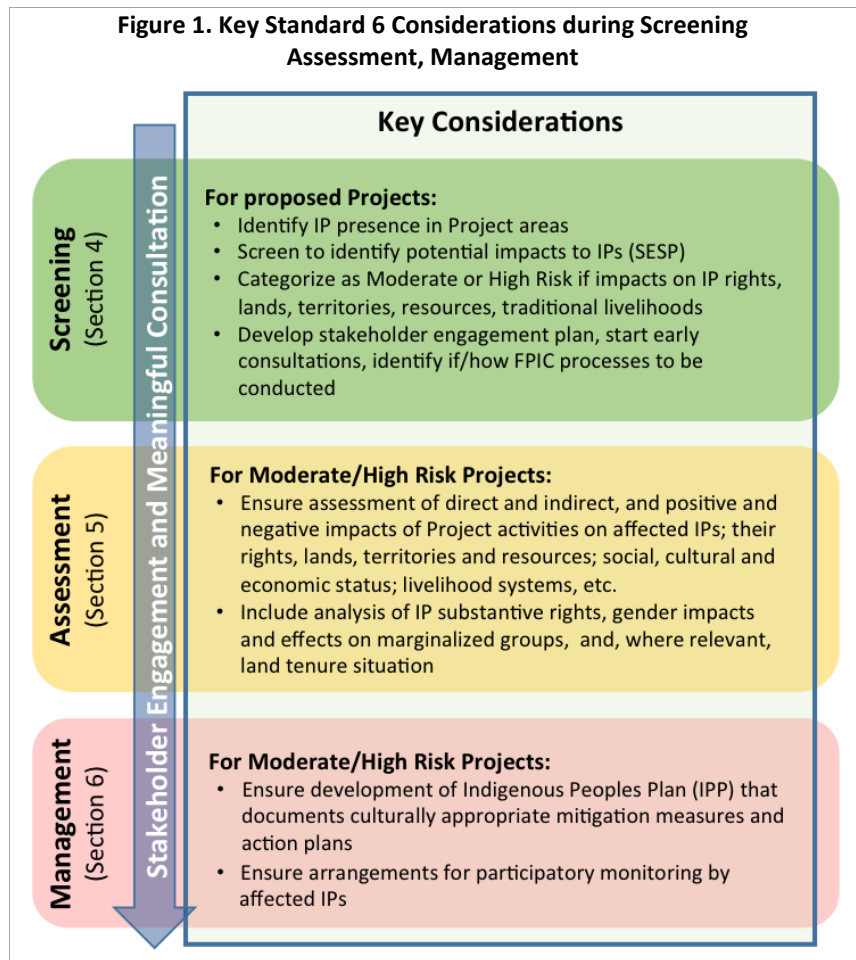
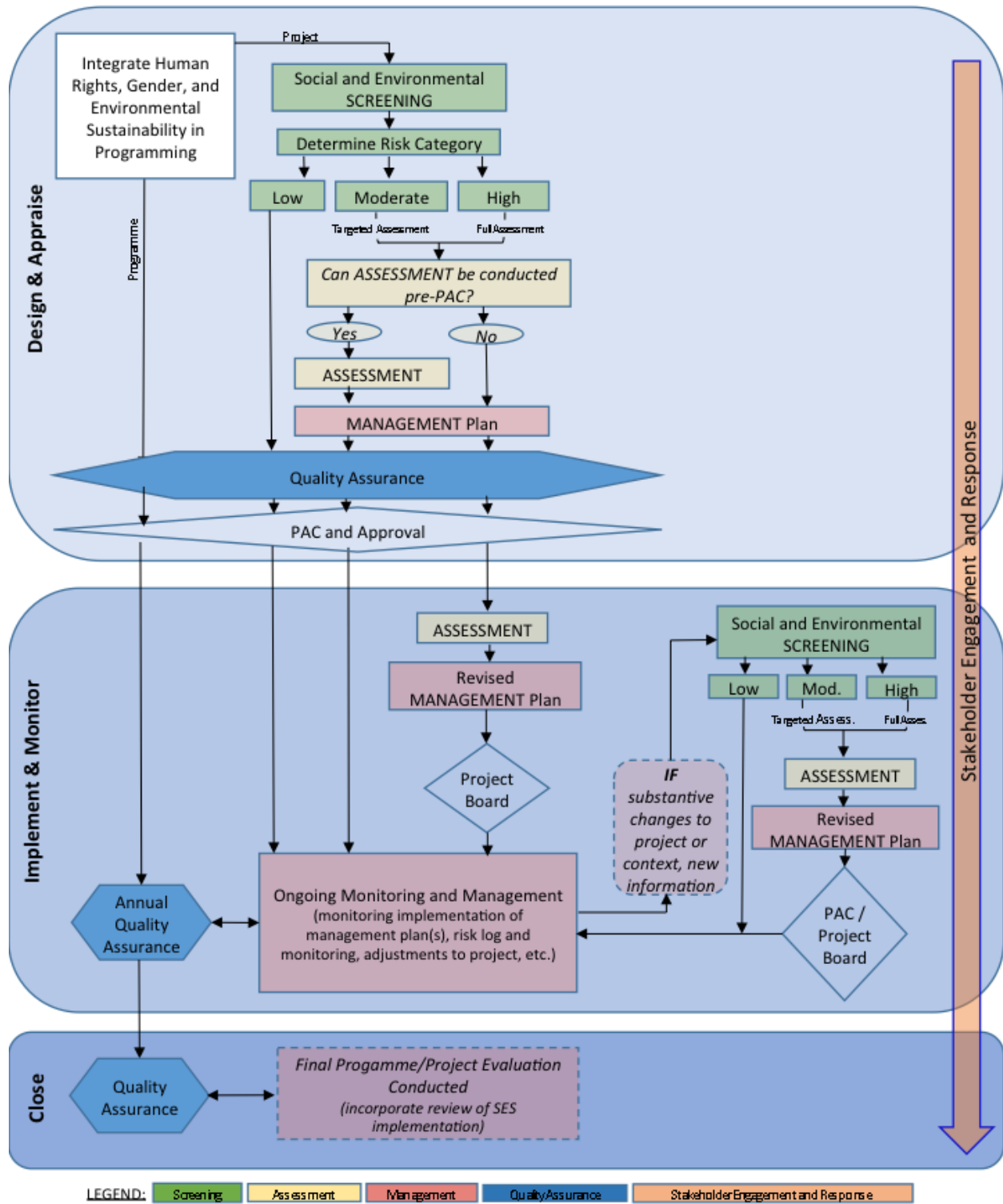


Figure 2. SES Implementation – Screening, Assessment and Management in the Programming Cycle



2. Understanding the Basics of Standard 6 Indigenous Peoples

2.1 Background

UNDP's work with indigenous peoples is grounded on its overall vision to help countries achieve the simultaneous eradication of poverty and significant reduction of inequalities and exclusion. Indigenous peoples number more than 370 million living in some 90 countries. It is estimated that they constitute 15 percent of the world's poor, and one third of the 900 million people living in extreme poverty in rural areas.¹

In vast numbers, indigenous peoples live in some of the world's most resource rich areas, and while their own forms of conservation and resource management have been historically undervalued, too often development projects and programmes undertaken near to and within their lands result in degradations to the environments upon which their physical and cultural survival depends, violate their human rights, and/or excludes them from equitable benefits.

UNDP's work with indigenous peoples is guided by international human rights standards and principles (see Box 1) and numerous decisions of the respective international bodies charged with interpreting these agreements.

Box 1. Normative Basis for Standard 6 (partial listing)

- [Universal Declaration of Human Rights](#)
- [International Covenant on Civil and Political Rights](#)
- [International Covenant on Social, Economic and Cultural Rights](#)
- [Convention Against all Forms of Racial Discrimination](#)
- [Convention concerning Indigenous and Tribal Peoples in Independent Countries \(ILO N°. 169\)](#)
- [Convention on Biological Diversity](#)
- [The American Convention on Human Rights](#)
- [The African Charter on Human and Peoples' Rights](#)
- [UN Declaration on the Rights of Indigenous Peoples](#)

For example, the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP 2007) specifically mandates the organs and specialized agencies of the United Nations system (including UNDP) to promote respect for and full application of the rights affirmed in UNDRIP.² UNDP also follows the UN "Statement of Common Understanding" on Human Rights-Based Approaches to Development Cooperation providing that "[h]uman rights standards contained in, and principles derived from, the Universal Declaration of Human Rights and other international human rights instruments guide all development cooperation and programming in all sectors and in all phases of the programming process."³ Commitments to respect and uphold the rights of indigenous peoples are further reflected in UNDP policy and strategy documents.⁴

¹ See UNDP, "Fast Facts: Indigenous Peoples," 2014, available at http://www.undp.org/content/undp/en/home/librarypage/results/fast_facts/ff_indigenous_peoples/.

² UNDRIP is specifically highlighted in Standard 6 because, while legally a declaration and not a binding treaty, UNDRIP in many respects effectively compiles the human rights of indigenous peoples already affirmed in binding treaties ratified by the overwhelming majority of UN Member States and as such helps to increase understandings of how State duties and obligations are to be exercised with respect to the protection and promotion of such rights.

³ UNDG, "The Human Rights Based Approach to Development Cooperation – Towards a Common Understanding Among UN Agencies," (Statement of Common Understanding) (2003), available at http://www.undg.org/content/programming_reference_guide_%28undaf%29/un_country_programming_principles/human_rights-based_approach_to_development_programming_%28hrba%29.

⁴ For example, "UNDP and Indigenous Peoples: A Policy of Engagement" (2001) and the upcoming UN System Wide Action Plan on Indigenous Peoples.

2.2 Objectives and Requirements

SES Standard 6 Indigenous Peoples ("Standard 6") is a cornerstone to UNDP's goal to design Projects not only with the full, effective and meaningful participation of indigenous peoples, but also in a manner which aligns with their distinct vision and development priorities, building sustainable partnerships with indigenous peoples as companions in development and conservation efforts. Box 2 outlines the key objectives of Standard 6.

Through implementation of Standard 6 UNDP aims to avoid adverse impacts on indigenous peoples, their rights, lands, territories and resources; mitigate and remedy impacts that cannot be avoided; support countries to implement human rights obligations; and ensure equitable and culturally appropriate benefit sharing with indigenous peoples.

The requirements of Standard 6 seek to further these objectives and should be carefully reviewed in order to inform Project screening and development. Box 3 contains a high-level summary of Standard 6 requirements:

Box 2. Key Objectives of Standard 6

- Recognize and foster full respect for indigenous peoples' human rights
- Support countries in their promotion and protection of indigenous peoples' rights
- Design projects in a spirit of partnership with full and effective participation
- Seek to secure free, prior, and informed consent (FPIC) where rights, lands, resources, territories, traditional livelihoods may be affected
- Promote greater control and management by indigenous peoples over developments affecting them
- Avoid adverse impacts and ensure equitable and culturally appropriate benefits and opportunities

Box 3. Summary of Requirements of Standard 6 Indigenous Peoples (refer to full text of Standard 6)

- **Respect for domestic and international law:** Ensure respect for domestic and international law regarding rights of indigenous peoples (IPs). Do not participate in a Project that violates the human rights of indigenous peoples as affirmed by Applicable Law and the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) (Requirement 4)
- **Identification of indigenous peoples:** Identify indigenous peoples who may be affected by Project activities utilizing range of criteria (Req. 5)
- **Land, territory and resources:** Recognize rights of indigenous peoples to lands, territories and resources. Include measures to promote such recognition when necessary for Project activities (Req. 6)
- **Legal personality:** Recognize rights of indigenous peoples to legal personality. Include measures to promote such recognition when necessary for Project activities (Req. 7)
- **Involuntary resettlement:** Prohibit forcible removal of indigenous peoples from lands and territories and ensure no relocation without free, prior and informed consent (FPIC) (Req. 8)
- **Full, effective and meaningful participation:** Ensure full, effective meaningful participation of affected indigenous peoples throughout project cycle and seek FPIC on any matters that may affect rights and interests, lands, territories, resources, and traditional livelihoods (Req. 9) (also relocation and appropriation of cultural heritage)
- **Prior social and environmental assessment:** Ensure prior social and environmental impact review/assessment if Project may affect rights, lands, territories and resources of indigenous peoples (Req. 10)
- **Appropriate benefits:** Ensure equitable sharing of benefits in culturally appropriate manner (Req. 11)
- **Support rights implementation:** Support countries to implement their human rights duties and obligations regarding the rights of indigenous peoples (Req. 12)
- **Special considerations:** Pay particular attention to rights and special needs of women and girls and marginalized indigenous peoples; respect, protect and promote rights of uncontacted or voluntarily isolated peoples; respect, protect, and conserve cultural heritage of indigenous peoples and ensure FPIC before use or appropriation (Req. 13)
- **Indigenous Peoples Plan:** Develop Indigenous Peoples Plan (IPP) for Projects that may affect rights, lands, territories and resources of indigenous peoples. IPP summarizes potential impacts and documents culturally appropriate mitigation measures (Req. 14)
- **Monitoring:** Ensure participatory approach to verifying Project designed in manner consistent with Standard 6 and ensure arrangements for participatory joint monitoring of Project implementation with indigenous peoples (Req. 15)

2.3 Key Concepts and Definitions of Standard 6

Standard 6 seeks to ensure that Projects are designed and implemented in a way that fosters full respect for indigenous peoples and their human rights, livelihoods, and cultural uniqueness as they define them (see Box 2 for key objectives of Standard 6). The need for the Standard is an acknowledgement of a history of discrimination and exclusion of indigenous peoples that has limited or prevented them from directing the course of their own development and well-being.

A number of key concepts and terms need to be understood when addressing the requirements of Standard 6. These are noted below.

Indigenous Peoples: There is no one universally accepted definition of indigenous peoples. It is critical to note that States and indigenous groups might differ regarding official recognition.

For purposes of the SES UNDP will identify distinct collectives as "indigenous peoples" if they satisfy any of the more commonly accepted definitions of indigenous peoples, regardless of the local, national and regional terms applied to them. These definitions include, among other factors, consideration of whether the collective:

- self-identifies as indigenous peoples;
- has pursued its own concept and way of human development in a given socio-economic, political and historical context;
- has tried to maintain its distinct group identity, languages, traditional beliefs, customs, laws and institutions, worldviews and ways of life;
- has exercised control and management of the lands, natural resources, and territories that it has historically used and occupied, with which it has a special connection, and upon which its physical and cultural survival as indigenous peoples typically depends; and
- whether its existence pre-dates those that colonized the lands within which it was originally found or of which it was then dispossessed.

While self-identification as indigenous or tribal is considered a fundamental criterion in identifying a collective as indigenous, it is not the only criteria to consider. This is especially true where self-identification as indigenous may result in prejudice. Consideration of a collective's classification as indigenous should also not be unduly influenced by local terms⁵ or whether the State in question has recognized the collective as an indigenous people, but rather whether the collective satisfies any of the more commonly accepted definitions of indigenous peoples. Guidance on screening question 6.1 in section 4 below lists some practical questions that may assist in determining a collective's identification as indigenous.

Applicable Law: "Applicable Law" for purposes of the SES refers to the national and international laws that impose duties and obligations on the State or States in question. UNDP will not support activities that do not comply with Applicable Law. In the event that domestic law is inconsistent with or has a lower standard than the State's obligations under international law, the latter will be the standard to be applied in the Project. UNDP also will not support Project activities that may violate the human rights as affirmed in the UN Declaration on the Rights of Indigenous Peoples (UNDRIP, see below).

Free, Prior and Informed Consent (FPIC): Numerous international and regional instruments have affirmed FPIC as a legal norm imposing clear affirmative duties and obligations on States that should be pursued in a wide range of circumstances.⁶ While there is no single internationally agreed definition of FPIC, there is a sufficient and growing

⁵ For instance, perhaps they are referred to as national (or ethnic) minorities, or indigenous peoples, or Native Americans, or Scheduled Classes, or Forest Peoples, aborigines, tribal, hill people, pastoralists, etc. Perhaps there is a term with derogatory, racist, or other adverse connotation, but nonetheless, terms that connote they are different from the larger population.

⁶ For an incisive summary, see the "UN-REDD Guidelines on Free, Prior and Informed Consent" (Section 1.4), available at http://www.un-redd.org/Launch_of_FPIC_Guidelines/tabid/105976/Default.aspx, and the "Legal Companion to the UN-REDD

consensus around what FPIC is comprised of, and regarding the bare minimum measures that a State must take to guarantee its respect, protection and enjoyment. At a very general level, FPIC may be understood as the right of indigenous peoples to approve or reject certain proposed actions that may affect them and that the process for reaching such a decision must possess certain characteristics. Box 4 and Section 3 of these guidelines elaborate on the definition, meaning, and Standard 6 requirements regarding FPIC.

Box 4. Elements of a Common Understanding of FPIC

The below definitions build on the elements of a common understanding of free, prior and informed consent endorsed by the UNPFII at its Fourth Session in 2005*

FREE refers to a consent given voluntarily and absent of coercion, intimidation or manipulation. Free refers to a process that is self-directed by the community from whom consent is being sought, unencumbered by coercion, expectations or timelines that are externally imposed:

- *Stakeholders determine process, timeline and decision-making structure;*
- *Information is transparently and objectively offered at stakeholders' request;*
- *Process is free from coercion, bias, conditions, bribery or rewards;*
- *Meetings and decisions take place at locations and times and in languages and formats determined by the stakeholders; and*
- *All community members are free to participate regardless of gender, age or standing.*

PRIOR means consent is sought sufficiently in advance of any authorization or commencement of activities. Prior refers to a period of time in advance of an activity or process when consent should be sought, as well as the period between when consent is sought and when consent is given or withheld. Prior means at the early stages of a development or investment plan, not only when the need arises to obtain approval from the community:

- *Prior implies that time is provided to understand, access, and analyze information on the proposed activity. The amount of time required will depend on the decision-making processes of the rights-holders;*
- *Information must be provided before activities can be initiated, at the beginning or initiation of an activity, process or phase of implementation, including conceptualization, design, proposal, information, execution, and following evaluation; and*
- *The decision-making timeline established by the rights-holders must be respected, as it reflects the time needed to understand, analyze, and evaluate the activities under consideration in accordance with their own customs.*

INFORMED refers mainly to the nature of the engagement and type of information that should be provided prior to seeking consent and also as part of the ongoing consent process. Information should:

- *Be accessible, clear, consistent, accurate, constant, and transparent;*
- *Be delivered in appropriate language and culturally appropriate format (including radio, video, graphics, documentaries, photos, oral presentations);*
- *Be objective, covering both the positive and negative potential of project activities and consequences of giving or withholding consent;*
- *Be complete, covering the spectrum of potential social, financial, political, cultural, environmental impacts, including scientific information with access to original sources in appropriate language;*
- *Be delivered in a manner that strengthens and does not erode indigenous or local cultures;*
- *Be delivered by culturally appropriate personnel, in culturally appropriate locations, and include capacity building of indigenous or local trainers;*
- *Be delivered with sufficient time to be understood and verified;*
- *Reach the most remote, rural communities, women and the marginalized; and*
- *Be provided on an ongoing and continuous basis throughout the FPIC process.*

Programme Guidelines on FPIC," available at

http://www.unredd.net/index.php?option=com_docman&view=document&category_slug=legal-companion-to-fpic-guidelines-2655&alias=8792-legal-companion-to-the-un-redd-programme-guidelines-on-fpic-8792&Itemid=134.

CONSENT refers to the collective decision made by the rights-holders and reached through the customary decision-making processes of the affected peoples or communities. Consent must be sought and granted or withheld according to the unique formal or informal political-administrative dynamic of each community. Consent is:

- *A freely given decision that may be a “Yes” or a “No,” including the option to reconsider if the proposed activities change or if new information relevant to the proposed activities emerges;*
- *A collective decision determined by the affected peoples (e.g. consensus, majority, etc.) in accordance with their own customs and traditions;*
- *The expression of rights (to self-determination, lands, resources and territories, culture); and*
- *Given or withheld in phases, over specific periods of time for distinct stages or phases of the project. It is not a one-off process.*

While the objective of consultation processes shall be to reach an agreement (consent) between the relevant parties, this does not mean that all FPIC processes will lead to the consent of and approval by the rights-holders in question. At the core of FPIC is the right of the peoples concerned to choose to engage, negotiate and decide to grant or withhold consent, as well as the acknowledgement that under certain circumstances, it must be accepted that the project will not proceed and/or that engagement must be ceased if the affected peoples decide that they do not want to commence or continue with negotiations or if they decide to withhold their consent to the project.

Countries like Australia, Philippines and Peru have included FPIC in their national legal framework. Requirements thus go beyond the legal need for consultation (such as in laws in Bolivia or Ecuador) and stipulate the obligation to obtain written or otherwise confirmed consent by the affected indigenous population.

** Report of the International Workshop on Methodologies Regarding Free Prior and Informed Consent E/C.19/2005/3, endorsed by the UNPFII at its Fourth Session in 2005.*

Legal Personality: Legal personality of indigenous peoples is not to be confused with the identification of indigenous peoples (see above definition). In some cases, a group may be recognized by a State as indigenous peoples, but still lack formal recognition of its ‘legal personality’ under the laws of that State. Often this formal recognition (typically resulting in a form of administrative registration and or certification) is provided for in a civil code, municipal election laws, or other regulation of the State or in an indigenous peoples-specific rule or law. If a State fails to recognize the legal personality of indigenous peoples, it may prevent them from entering into binding agreements, holding titles to lands, filing a case against a trespasser, or pursuing litigation in the name of the community to denounce and seek a remedy for rights violations. Requirement 7 of Standard 6 calls for measures to recognize the legal personality of indigenous peoples if Project activities are contingent on such recognition (e.g. land titling) and such recognition is not provided for in national laws consistent with the norms, values and customary laws of the peoples concerned.

Lands, Territories and Resources: Indigenous peoples’ relationship with their traditional lands, territories and resources forms a core part of their identity and spirituality and is deeply rooted in their culture and history. For indigenous peoples, the absence of secure and enforceable rights to ancestral lands, resources and territories signifies a threat to their means of subsistence or even to their physical and cultural survival. While some might see a Project activity – such as restricted access to resources for conservation purposes – as having little or no adverse impact on indigenous rights, lands or resources, from an indigenous perspective, it may be a deprivation of traditional medicines and materials or an interference with spiritual practices related to sacred flora or fauna. Such restrictions might represent a permanent loss of the territorial base from which indigenous people sustain their unity and distinct governance, and manifest, preserve and transmit their cultural norms, values and practices. Standard 6 thus requires that “UNDP Projects will recognize that indigenous peoples have collective rights to own, use, and develop and control the lands, territories and resources they have traditionally owned, occupied, or otherwise used or acquired, including lands and territories for which they do not yet possess title” (see Requirement 6). In addressing this requirement, it is important to keep in mind at all times that:

- i. a profound relationship exists between indigenous peoples and their lands, territories and resources which has various social, cultural, spiritual, economic and political dimensions and responsibilities;
- ii. the collective dimension of this relationship is significant; and

- iii. the intergenerational aspect of such a relationship is also crucial to indigenous peoples' identity, survival and cultural viability.⁷

Traditional Livelihoods: While great diversity exists among the multitude of indigenous peoples throughout the world, a commonality tends to be the special connection they have with their natural environment. They have adapted to those surroundings, with their customary laws, cultures, and traditions often developing around the very manner in which they depend on those resources for their subsistence. These traditional practices are essential to meet basic needs – food, shelter, health, etc. – as well as to maintain, preserve and transmit to future generations their spiritual and cultural identity. For instance, the UN Human Rights Committee has affirmed that "culture" within the meaning of article 27 of the International Covenant on Civil and Political Rights provides for protection of the traditional means of livelihood for national minorities such as indigenous peoples, in so far as they are essential to the culture and necessary for its survival.⁸ These livelihood activities may manifest themselves in traditional occupations involving, among others, the gathering of food and forest products, making handicrafts, weaving, fishing, hunting, rotational farming/shifting cultivation, trapping, wild life rearing and animal husbandry, or woodcarving, and other community-based industries. In some cases, the traditional activities have evolved to account for contemporary and ever changing social, economic and political circumstances, however, not necessarily losing their origins in a traditional livelihood.

UNDRIP: The United Nations Declaration on the Rights of Indigenous Peoples⁹ is "a comprehensive statement addressing the human rights of indigenous peoples. It was drafted and formally debated for over twenty years prior to being adopted by the General Assembly on 13 September 2007. The document emphasizes the rights of indigenous peoples to live in dignity, to maintain and strengthen their own institutions, cultures and traditions and to pursue their self-determined development, in keeping with their own needs and aspirations. The Declaration addresses both individual and collective rights, cultural rights and identity, rights to education, health, employment, language, and others. The text says indigenous peoples have the right to fully enjoy as a collective or as individuals, all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and the rest of international human rights law. Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity. Indigenous peoples have the right to self-determination. By that right they can freely determine their political status and pursue their economic, social and cultural development. They have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their rights to participate fully, if they choose to, in the political, economic, social and cultural life of the state."¹⁰

Articles 41 and 42 of UNDRIP require the organs and specialized agencies of the UN system to contribute to the full realization, respect for, and application of the provisions of this Declaration. Standard 6 requires UNDP not to participate in Projects that violate the human rights affirmed in UNDRIP. For those unfamiliar with UNDRIP, a number of manuals and toolkits are available.¹¹

⁷ *Indigenous people and their relationship to land. Final working paper prepared by Mrs. Erica-Irene A. Daes, Special Rapporteur.* UN Doc. E/CN.4/Sub.2/2001/21, para. 20 (2001).

⁸ UN HRC 511/1992 of *Länsman et al. v. Finland*.

⁹ UNDRIP available at: <http://undesadspd.org/indigenouspeoples/declarationontherightsofindigenouspeoples.aspx>

¹⁰ UNDRIP FAQ available at http://www.un.org/esa/socdev/unpfii/documents/faq_drips_en.pdf.

¹¹ See the online Resources section of the SES toolkit at https://intranet.undp.org/unit/bpps/DI/SES_Toolkit/default.aspx.

3. Stakeholder Engagement

3.1 Full, Effective and Meaningful Participation of Indigenous Peoples

Ensuring full, effective and meaningful participation is at the heart of UNDP’s approach to working with indigenous peoples. Standard 6 contains specific requirements regarding participation of and agreement with indigenous peoples throughout the Project cycle (see SES, Standard 6, para. 9). In certain circumstances, free prior informed consent (FPIC) must be sought. These requirements go beyond the general stakeholder engagement requirements of the SES and must be carefully reviewed and implemented.

Define mechanisms and processes for full, effective participation of indigenous peoples throughout the Project cycle. At the earliest stage of Project conceptualization and design, mechanisms and processes need to be identified to ensure full, effective participation of indigenous peoples throughout the Project cycle. Participation mechanisms and processes are to be articulated in a stakeholder engagement plan that is incorporated in Project documentation, and specifically in the Indigenous Peoples Plan. The breadth and detail of participatory mechanisms and processes are scaled to the Project’s potential social and environmental risks and impacts and particular circumstances (e.g. “Low Risk” projects may only require relatively streamlined consultation processes whereas Projects with potentially significant adverse impacts will require detailed plans and mechanisms for each phase of Project decision-making).

Issues discussed during consultation processes should be documented and outcomes should be incorporated into implementation of the Project going forward. Planned Project activities/phases that require further specific participatory processes (such as FPIC processes, see below) should be clearly defined at the outset of the Project.

Box 5. Elements of Consultation and Consent Processes with Indigenous Peoples

- Identification of parties to the negotiation and decision-makers
- Elaboration of the decision-making processes of the respective parties
- The role if any of outside counsel and expertise, including e.g. a third party mediator/negotiator
- Agreement on relevant time periods
- Applicable community protocols that must be respected
- Steps to guarantee an environment without coercion or duress
- The manner in which analysis and results of the prior social and environmental assessments shall be incorporated into the process
- The format for benefit sharing discussions and arrangements
- Sharing of information in meaningful, accessible and culturally appropriate manner
- Identification of other project activities or circumstances that will trigger additional consent processes
- The format for documenting the agreement, conditions that attach, and/or other conclusions of the process.

An early mapping of the affected indigenous peoples to be consulted should begin in the design phase. It is essential that such processes be developed in a participatory manner with the indigenous peoples concerned.

Ensure consultation processes are culturally appropriate and conducted in good faith. Consultation, and specifically FPIC processes (see below) are exercised collectively by the indigenous peoples concerned, and not by single members. It is exercised through their own governance structures and chosen representatives, and in accordance with their own laws and customs for decision-making on such matters. UNDP will pay special attention to applying international human rights standards of equality and non-discrimination, participation and inclusion in all processes, including of women and young indigenous peoples.

Ultimately, all consultations with indigenous peoples should be carried out in good faith with the objective of achieving agreement or consent. Consultation and consent is about indigenous peoples’ right to meaningfully and effectively participate in decision-making on matters that may affect them.

It is critical to note that consultation and consent processes are not a substitute for the full recognition and protection of indigenous peoples' rights to property, self-determination and other human rights. The requirement of consent arises from indigenous peoples' human rights to lands, territories and resources as well as their right to self-determination and many other rights (e.g. right to culture, right to practice their religion). The assessment process and management measures must still examine how these underlying and fundamental rights may be at risk, how they should be protected, and where opportunities exist to enhance their realization.

While each consultation and consent process should be tailored to the circumstances and people concerned, certain characteristics help to ensure effective good faith consultation, negotiation and consent processes and increase the likelihood of agreement (see Box 5). Agreement and consent may not be forthcoming in all cases and the decision of indigenous peoples to discontinue such processes – and consequently implementation of the project - should be respected (see Box 6).

Other stakeholders (e.g. other local communities, forest dwellers, local farmers) who may be affected by the Project must also be consulted. The stakeholder engagement plan will need to define the steps to reach out to these individuals and groups in a manner commensurate with their defined interests. These processes, however, may be distinct and separate from those focused on affected indigenous peoples.

Understanding that effective and meaningful consultations require an informed and participating indigenous people, UNDP, to the extent possible, will seek to provide technical and financial support to the indigenous peoples concerned in order to increase the awareness of their rights and strengthen their participation in accordance with their own norms, values and customs and through representatives designated by them.

Ensure participation of indigenous peoples is gender inclusive and tailored to needs of disadvantaged and vulnerable groups.²² Indigenous women are often dually disadvantaged due to their gender and their cultural identity. Their status and identity continually shift depending on the roles and occupations they hold. Indigenous women are often the most active agents of change, and they have their own economic and social interests and strengths.

Some common cultural barriers hinder the participation of disadvantaged and vulnerable groups such as women, households headed by women, and young adults in community decision making. Women may be censored in community forums and their male relatives may talk on their behalf. Households headed by women and young adults, especially when unmarried or with no children, may be marginalized and their comments unwelcomed by the rest of the community. These cultural barriers, to be identified in the social and environmental assessment, have to be addressed in the design of mechanisms and instruments for consultations and participation. Yet this must be done with care—sometimes forcing the issue may expose risks to the very people whom participation is meant to help.

There are often subtle, albeit more time-consuming, ways to overcome such barriers without inducing conflict with local customs and that help to engender participation. The participation of community subgroups, such as indigenous women, that might be excluded from customary decision making may be sought through means such

Box 6. Good faith negotiations and consent

It is important to recognize that while the objective is always agreement, this does not mean agreement will always be secured. Like any dialogue between two parties, even in a good faith consultation and consent process the two parties may still not agree. At the conclusion of a process, indigenous peoples still may not consent to a particular Project or activity. The Project Developer also may not agree with conditions or asks of the indigenous peoples concerned. In either case, Standard 6 does not endorse continued pursuit of agreement where such additional efforts are no longer welcome by the affected peoples.

²² Following paragraphs referenced from Asian Development Bank, Indigenous Peoples Safeguards – A Planning and Implementation Good Practice Sourcebook, A Working Document, Revised June 2013, p. 22, available at <http://www.adb.org/documents/indigenous-peoples-safeguards-planning-and-implementation-good-practice-sourcebook>.

as women-only discussion groups, plays and music, or cultural events or festivals. Consultation with indigenous women and their participation may require female professionals and technical staff to be hired. It is through such engagement that appropriate benefits and mitigation measures can be designed to meet the needs of women as well as men. For other excluded vulnerable groups such as the poor, separate consultations without higher-ranked groups present may be needed to obtain a full picture of their needs.

Ensure timely access to information. Meaningful participation is predicated on access to timely, relevant information. The SES requires that Project information is made available in a timely and ongoing manner, in an accessible place, and in a form and language understandable to the affected people. Stakeholder engagement plans, screening reports, both draft and final social and environmental assessments and management plans (including an IPP), and monitoring reports are to be disclosed (see SES, Policy Delivery Process, para. 21).

In addition to disclosing complete documents, summaries in local languages of the assessment's key findings, benefits, mitigation measures, etc., may be needed to increase accessibility. For those projects likely to affect many illiterate people, pictorial depictions and oral representations can be used. Full and abbreviated versions of the IPP – in draft and updated forms – need to be disclosed locally. Disclosure should be proactive, employing methods such as delivery of the IPP directly to rural townships and indigenous peoples organizations, posted on village communal walls, described in a village meeting, or distributed as brochures to households.

Ensure access to grievance redress mechanism. The SES requires UNDP to ensure that stakeholders who may be adversely affected can communicate their concerns about a Project's social and environmental performance through various entry points, scaled to the nature of the activity and its potential impacts. This includes, where necessary, ensuring that an effective Project-level grievance mechanism is available.¹³ Project-level grievance mechanisms need to take into account indigenous peoples' customary laws and dispute resolution processes. Traditional dispute mechanisms of affected indigenous peoples should be utilized to the largest extent possible.

3.2 Ensure Free, Prior and Informed Consent (FPIC) Processes Pursued in Certain Circumstances

What types of Projects require FPIC processes? While all consultations with indigenous peoples should be carried out in good faith with the objective of achieving agreement, Standard 6 stipulates circumstances in which FPIC *must* be pursued and secured before proceeding with the specified actions:

- **Rights, lands territories, resources, traditional livelihoods:** *FPIC will be ensured on any matters that may affect the rights and interests, lands, resources, territories (whether titled or untitled to the people in question) and traditional livelihoods of the indigenous peoples concerned. Project activities that may adversely affect the existence, value, use or enjoyment of indigenous lands, resources or territories shall not be conducted unless agreement has been achieved through the FPIC process. (Requirement 9)*
- **Resettlement:** *No relocation of indigenous peoples will take place without the free, prior and informed consent (FPIC) of the indigenous peoples concerned and only after agreement on just and fair compensation, and where possible, with the option of return (Requirement 8)*
- **Cultural Heritage:** *UNDP will respect, protect, conserve and not take or appropriate the cultural, intellectual, religious and spiritual property of indigenous peoples without their free, prior and informed consent (Requirement 13d)*

The following checklist (Table 1) may assist in helping to determine whether Project activities may require an FPIC process.

¹³ The SES Toolkit provides materials and references regarding the development of project-level grievance mechanisms, available at https://intranet.undp.org/unit/bpps/DI/SES_Toolkit/default.aspx.

Table 1. Checklist for appraising whether an activity may require an FPIC process (partial listing)	Yes/No
1. Will the activity involve the relocation/resettlement/removal of an indigenous population from their lands?	
2. Will the activity involve the taking, confiscation, removal or damage of cultural, intellectual, religious and/or spiritual property from indigenous peoples?	
3. Will the activity adopt or implement any legislative or administrative measures that will affect the rights, lands, territories and/or resources of indigenous peoples (e.g. in connection with the development, utilization or exploitation of mineral, water or other resources; land reform; legal reforms that may discriminate de jure or de facto against indigenous peoples, etc.)?	
4. Will the activity involve natural resource extraction such as logging or mining or agricultural development on the lands/territories of indigenous peoples?	
5. Will the activity involve any decisions that will affect the status of indigenous peoples' rights to their lands/territories, resources or livelihoods?	
6. Will the activity involve the accessing of traditional knowledge, innovations and practices of indigenous and local communities?	
7. Will the activity affect indigenous peoples' political, legal, economic, social, or cultural institutions and/or practices?	
8. Will the activity involve making commercial use of natural and/or cultural resources on lands subject to traditional ownership and/or under customary use by indigenous peoples?	
9. Will the activity involve decisions regarding benefit-sharing arrangements, when benefits are derived from the lands/territories/resources of indigenous peoples (e.g. natural resource management or extractive industries)?	
10. Will the activity have an impact on the continuance of the relationship of the indigenous peoples with their land or their culture?	

If the answer is 'Yes' to any of these questions, it is likely that FPIC will be required of the potentially affected peoples for the specific activity that may result in the impacts identified in the questions.

Undertaking an FPIC process When an FPIC process is required, a stakeholder consultation and validation exercise to define the parameters of the FPIC process will need to be initiated. The FPIC process should be launched as early as possible. In all cases, no activities predicated on the granting of FPIC should be initiated until the outcomes of the FPIC process are validated and any required mitigation measures are in place.

The indigenous peoples who may be affected by the Project will have a central role in defining the FPIC process. A facilitator should support this process, a person who will be available throughout the Project, who speaks the necessary languages and is aware of the project context, and is culturally and gender-sensitive. If possible, the facilitator should be identified by the affected indigenous peoples. It will also be helpful to involve any actors which are likely to be involved in implementing the FPIC process, such as local or national authorities.

Facilitators, in cooperation with the government and stakeholders, are responsible for ensuring, among other things, that the following key arrangements are part of the FPIC process:

- Full, accurate information regarding the Project (e.g. positive and negative, potential risks and short and/or long term impacts, benefits) is communicated in the most appropriate language and medium, ensuring that is easily understandable and accessible (innovative and creative forms of communication may be required)
- Information reaches all members of affected indigenous community and is consistent with the community's mechanisms for information sharing
- A secure, culturally appropriate and trusted environment for discussions is provided
- Decision-making processes, timelines, and languages for communicating are determined by the affected indigenous peoples without interference
- Customary laws and practices of the affected indigenous peoples are respected.¹⁴

The overall aim of the FPIC process with all stakeholders is to obtain a signed agreement or oral contract witnessed by an independent entity agreed to by both parties, ensuring that the greatest number of community members are involved and represented, including potentially marginalized groups. The community's customs and norms for participation, decision making and information sharing are to be respected.

While the objective of the FPIC process is to reach an agreement (consent) between the relevant parties – be it a signed agreement or otherwise formalized oral contract – this does not mean that all FPIC processes will lead to the consent of and approval by the rights-holders in question. At the core of FPIC is the right of the peoples concerned to choose to engage, negotiate and decide to grant or withhold consent, as well as the acknowledgement that under certain circumstances, it must be accepted that the Project will not proceed and/or that engagement must be ceased if the affected peoples decide that they do not want to commence or continue with negotiations or if they decide to withhold their consent to the Project.¹⁵

4. Screening

4.1 Identifying Potential Impacts to Indigenous Peoples

UNDP's Social and Environmental Screening Procedure (SESP) should be utilized early in Project design to help identify potential social and environmental risks and impacts. Social and Environmental Risk Screening Checklist (attachment 1 of the SESP) provides a range of questions to help identify if the Project may present adverse impacts and risks to indigenous peoples. Table 2 below provides additional guidance on the screening questions related to Standard 6.

When screening for potential impacts to indigenous peoples, it is important to recall that:

- (i) **All results and activities** outlined in the Project Results and Resources Framework and annual work plans – whether originating within or outside of indigenous peoples lands and territories – need to be screened and reviewed for potential direct and indirect impacts in the Project's area of influence, and
- (ii) Project **activities** need to be screened for potential social and environmental risks **prior to the application of planned mitigation and management measures** in order to form a clear picture of potential risks, in the event that mitigation measures are not implemented or fail. Risks are to be identified and quantified as if no mitigation or management measures were to be put in place.

¹⁴ Annex V of the UN-REDD Guidelines on Free, Prior and Informed Consent provides details on the role of such a facilitator.

¹⁵ Quoted from UN-REDD Guidelines on FPIC, p.20.

Table 2. Guidance for Responding to Standard 6 Risk Based Questions in SESP

(Note: numbering reflects that of SESP Risk Screening Checklist)

6.1 Are indigenous peoples present in the Project area (including Project area of influence)?

This question highlights the importance of correctly identifying a potentially affected group as indigenous (see section 2.3 above and the note on “Who are Indigenous Peoples?” in SES Toolkit). This is not necessarily a straightforward process as there is no one universally accepted definition of indigenous peoples (see SES Standard 6, para. 5) and States and indigenous groups might differ regarding official recognition. As described in Section 2.3, UNDP applies a broader identification method that goes beyond whether a State has or has not recognized the group as indigenous. This approach is designed to avoid risks to potentially vulnerable communities, enhance opportunities for inclusiveness in Project benefits, and avoid involvement in conflicts and debates surrounding the absence of State recognition. It is also consistent with the approaches taken by other development and international financial institution policies on indigenous peoples.

“Project area” and “Project area of influence” refer to geographically defined areas that can be readily identified. “Presence” in the Project area should include actual occupation as well as use, whether permanent or temporal (i.e. nomadic uses, seasonal agricultural activities, etc.). The engagement of indigenous peoples experts in Project screening is critical. Project screeners require a clear understanding of the geography of the Project location, activities and potential impacts, including broad knowledge of the Project's area of influence (described in SES footnote 98), related associated facilities (components not funded as part of the Project but whose viability and existence depend on the Project), and potential cumulative impacts, including from unplanned but predictable developments or activities caused by the Project.

Note on Global and Regional Projects: UNDP Global and Regional Projects that seek to advance indigenous rights through global/regional fora or instruments may have exceptionally broad, geographically indistinct areas of potential influence. For such limited number of projects, it would not be feasible to answer screening question 6.1 with any precision and would be considered not applicable.

Some questions to consider are:

- Are there peoples identifying themselves as indigenous?
- Is the group and/or their rights recognized in the Constitution, legislation, laws?
- What is the general situation of the group compared to the mainstream dominant society?
- Do the people have distinct customs and norms (e.g. practices, language, internal laws)?
- Do they have their own traditional governance systems?
- Does the group appear to have a distinct relationship to the lands and resources they inhabit (e.g. related to their traditional livelihoods or spiritual beliefs)?
- How long have they been using or occupying those lands, and are they using or occupying it for reasons of resettlement and/or displacement?
- Were they present on their lands prior to colonization?
- Is the group distinctly reflected in a census or other sociological data?
- Are there indications that the peoples concerned are unaware of the rights that attach to the designation as indigenous peoples or that they may fear the implications of calling themselves indigenous peoples?

At times questions may arise as to whether certain *other* individuals or groups are also part of an identified indigenous collective or constitute another indigenous people or collective entirely (e.g. a relocated but long-standing local farming community). These are however separate questions. Each collective must be considered on its own merit given the facts and circumstances in question. Once a collective is determined to be an indigenous peoples for purposes of Standard 6, the extent of that collective – that is the scope of its membership – is an internal question that can only be answered by the

people in question (as recognized under UNDRIP and other jurisprudence).¹⁶ This distinction is important when the question arises as to who must effectively and meaningfully participate in all the phases of the Project.

The identification of indigenous peoples can be facilitated through consultations and gathering of information from, among others: Project-affected people; relevant state entities; official registrations; qualified independent experts (e.g. academics, historians, anthropologists, civil society actors, sociologists); and the treatment of the same collectives by international organizations, tribunals, financial institutions, commissions and bodies.

For example, a Project may affect groups not referred to locally as indigenous peoples but who satisfy definitions noted in Standard 6, para. 5. Also, Projects involving land use changes would need to ensure that seasonal uses by indigenous peoples were also considered, not just actual and permanent occupation.

6.2 Is it likely that the Project or portions of the Project will be located on lands and territories claimed by indigenous peoples?

Project screeners need to examine whether the Project location and area of influence encompasses lands, resources and territories already titled, occupied, used or otherwise claimed by indigenous peoples. It is critical to recall that indigenous peoples rights to their ancestral lands, resources and territories is a collective right, arising from their own customary laws, not from the existence of a title or other property interest recognized and issued by the State. Also, it is important to note that delimitation on a map may not always reflect demarcations on the ground or the full extent of traditional lands and territories (and the natural resources therein) claimed by the affected peoples. Occupation, use or titling by non-indigenous peoples does not invalidate a claim by indigenous peoples. "Claim" should be interpreted to include not just legal petitions before judicial or administrative bodies in accordance with the law, but also denunciations and requests before one or more government bodies (administrative, legislative or otherwise). (See Section 6.1 for further assistance in identifying indigenous lands, resources and territories).

For example, a Project may be located in or otherwise affecting an area on the western bank of a river claimed by indigenous people while the State has only titled to said peoples the lands on the eastern bank of the river.

6.3 Would the proposed Project potentially affect the human rights, lands, natural resources, territories, and traditional livelihoods of indigenous peoples (regardless of whether indigenous peoples possess the legal titles to such areas, whether the Project is located within or outside of the lands and territories inhabited by the affected peoples, or whether the indigenous peoples are recognized as indigenous peoples by the country in question)?

Note: If the answer to screening question 6.3 is "yes", the Project would be categorized as either Moderate or High Risk since the potential risk of impacts are presumed to be potentially severe and/or critical

Human rights that indigenous peoples have to their lands and territories (and the natural resources therein) arise from their own customary laws and not the titling by the State. UNDP recognizes this in its programming and as mandated by UNDRIP. As such, UNDP's inquiry does not stop if no title is issued. Where title is issued, screeners also need to explore if the affected peoples have claimed rights to lands and territories that exceed the titled area. Furthermore, the rights of the affected people are collective in nature and include the right to own, use, develop and control the lands, resources and territories that they have traditionally owned, occupied or otherwise used or acquire. Understanding the *potential* effects (both *direct* and *indirect*) of the Project requires an understanding of how the affected indigenous peoples use and relate to their lands, resources and territories for their subsistence, livelihood and traditional practices and knowledge, as well as for the furtherance of their spiritual and cultural activities and beliefs. Early discussions with affected peoples – including women, young people – will assist in making the determinations relevant to this screening question. Screeners must also consider potential affects on human rights of indigenous peoples that may or may not be directly related to their lands, resources and

¹⁶ See, for example, United Nations Declaration on the Rights of Indigenous Peoples, UN GA Res. 61/295, Arts. 9 & 33(1) (13 September 2007); *Case of the Saramaka People v. Suriname*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 28, 2007. Series C No. 172, paras. 164 & 188; see also Martinez Cobo Study, UN Doc. E/CN.4/Sub.2/1983/21/Add.8, part F, p. 8 "Definition" and "Last Part", paras. 381-82.

territories, such as rights to traditional governance, rights to freedom of speech, right to health, etc. Familiarity with the rights affirmed by UNDRIP and the Applicable Law will be necessary.

For example, a Project in indigenous territories that grants usage or extraction rights to other stakeholders

Note on Global and Regional Projects: UNDP Global and Regional Projects that seek to advance indigenous rights through global/regional fora or instruments may "affect" indigenous rights and require careful screening and review. However such Projects would not necessarily be categorized as Moderate or High Risk, particularly if they were conducted in close partnership with indigenous groups.

6.4 Has there been an absence of culturally appropriate consultations carried out with the objective of achieving FPIC (free prior and informed consent) on matters that may affect the rights and interests, lands, resources, territories and traditional livelihoods of the indigenous peoples concerned?

Section 3 assists in determining what culturally appropriate consultation and consent processes are. If no such processes have been as yet undertaken (even if they are planned for later stages of the project), the answer to this question shall be "yes". Where there is an absence of consultations and consent processes, the risk category should be rated no less than Moderate.

For example, Project documentation does not contain a record of early consultation processes with potentially affected indigenous peoples or, where the Project is more advanced, are there documented outcomes of a consultation and consent process developed and implemented in conjunction with the affected peoples?

6.5 Does the proposed Project involve the utilization and/or commercial development of natural resources on lands and territories claimed by indigenous peoples?

Utilization or commercial development can involve, but not be limited to, activities to use, manage, alter, extract, exploit, conserve, reproduce, and/or monetize or otherwise negotiate an exchange for value the lands and territories as well as the resources therein of the affected indigenous peoples (e.g. trade on carbon credits, mining, limits on resource uses for preservation purposes, payment of services for reforestation efforts).

For example, the Project proposes to pay indigenous communities to conserve forests within their lands or territories

6.6 Is there a potential for forced eviction or the whole or partial physical or economic displacement of indigenous peoples, including through access restrictions to lands, territories, and resources?

"Forced eviction" is prohibited by the SES (see SES Standard 5: Displacement and Resettlement and the accompanying Guidance Note for more on forced eviction and "whole or partial physical or economic displacement"). This question seeks to identify "potential" eviction or displacement, not actual. The analysis also requires assessment of physical displacement (temporary or permanent, full or partial) and/or economic displacement are potential risks which can be caused, for example, by interference and loss of critical assets even where full relocation is not an issue. In the case of indigenous peoples, particular attention must be paid to how they currently use, depend on, and view their surrounding environment. Screeners need to examine whether Project activities may displace indigenous peoples from their lands, territories, resources and traditional livelihoods, including through alterations or contamination or limitations to access. Considerations must also be given to the fact that particular deprivations or interferences with lands, territories and resources may have adverse consequences to indigenous peoples that may not otherwise be experienced by non-indigenous persons.

For example, a Project may support the establishment of a conservation area which overlaps indigenous titled or claimed areas and which may limit indigenous peoples' access to natural resources needed for their subsistence

6.7 Would the Project adversely affect the development priorities of indigenous peoples as defined by them?

Consultation with the affected indigenous peoples is required so as to solicit and document the development priorities as defined by them. It is vital to note that what might be considered a benign effect to non-indigenous peoples may be perceived as quite adverse by indigenous peoples possessing at times distinct values and norms, development priorities, special connections to their environments, etc.

For example, a Project that builds factories for agricultural processing and roads to improve transportation induces settlers to encroach on areas indigenous peoples consider traditional hunting grounds. Or, Projects that may seek to provide health or education benefits that are culturally inappropriate.

6.8 Would the Project potentially affect the physical and cultural survival of indigenous peoples?

This screening question asks about "potential" and not just actual effects. Screeners should interpret the "physical and cultural survival" of indigenous peoples as the ability of the affected peoples to preserve, protect and guarantee the special relationship that they have with their territory so that they may continue living their traditional way of life, and that their distinct cultural identity, social structure, economic system, customs, beliefs and traditions are respected, guaranteed and protected. It signifies much more than physical survival and will require knowledge about the indigenous peoples in question. Project activities that may prompt a "yes" response to this screening procedure may include, for example, those that may contaminate or otherwise eliminate or restrict food sources, limit freedom of movement to areas of religious significance or to border crossings thereby dividing the affected peoples, or entail construction of roads or other infrastructure that might bring changes to demographics of the area and alternative pressures on governance structures or scarce resources. Risks involving uncontacted or voluntarily isolated indigenous populations ought to be considered and evaluated in a context-specific manner, respecting the wishes and needs of the respective groups.

For example, dam construction or mineral extraction that alters the environment (decreased air, water, soil quality) such that indigenous peoples' ability to traditionally farm or access clean water is impinged. Or a Project may support regional infrastructure integration that could lead to encroachment on voluntarily isolated indigenous groups

6.9 Would the Project potentially affect the Cultural Heritage of indigenous peoples, including through the commercialization or use of their traditional knowledge and practices?

"Cultural Heritage" is defined in SES Standard 4 and its guidelines.¹⁷ This screening question requires a process of evaluating the possible *direct* and *indirect* impacts, both beneficial and adverse, of all proposed activities on the physical manifestations of the affected peoples' cultural heritage including sites, structures, and remains of archaeological, architectural, historical, religious, spiritual, cultural, ecological or aesthetic value or significance. Regarding commercialization or use of traditional knowledge and practices, this can come in various forms. It should be noted that UNDP is required to respect standards related to FPIC of indigenous peoples where such utilization or commercialization is to take place.

For example, a Project that incorporates indigenous resource management practices to enhance the success of a protected area, or includes indigenous knowledge regarding alternative uses of biodiversity to support a project oriented toward increased equitable income generation

One of the key objectives of the earlier screening process is to identify opportunities (Part A of the SESP Template) to strengthen the realization of human rights in the context of Project implementation. This includes describing how the Project mainstreams the human-rights based approach, improves gender equality and women's empowerment, and mainstreams environmental sustainability. Where risks are identified (Part B and risk checklist), the very process of identifying applicable Project-level Standards and needed assessment and mitigation and management measures also provides a platform for identifying opportunities to further respect and promote the rights of indigenous peoples (see Table 3).

¹⁷ Guidance on how to identify Cultural Heritage of indigenous peoples and types of relevant impacts to assess can be found at Section IV.A of the *Akwé: Kon Guidelines for the Conduct of Cultural, Environmental and Social Impact Assessments Regarding Developments Proposed to Take Place on, or which are Likely to Impact on, Sacred Sites and on Lands and Waters Traditionally Occupied or Used by Indigenous and Local Communities*, available at <http://www.cbd.int/doc/publications/akwe-brochure-en.pdf>.

Table 3. Examples of Relationship Between Identifying Risks and Opportunities for Projects with Potential Adverse Impacts to Indigenous Peoples

RISKS	OPPORTUNITIES
Where the risk and likelihood of marginalization and discrimination exists...	An opportunity exists to support activities for greater inclusion of actors.
Where the risk of interferences with land rights of indigenous peoples may exist...	An opportunity exists to support land reform activities that ensure indigenous peoples' greater use and enjoyment of their lands, and to facilitate the delimitation, demarcation and titling of indigenous lands.
Where the risk of denied access to traditional medicines and nutritional needs exists in the context of a conservation project...	An opportunity exists to support activities (workshops, research) that increase understanding of indigenous peoples' rights, resource uses and traditional practices, and include them both as participants and potential leaders in management of conservation areas and development of resources management plans.
Where the risk of indigenous development priorities and perspectives may be ignored...	An opportunity exists to support activities that assist indigenous communities to meet, organize, consider their options, present common positions with respect to development, and to strengthen internal governance.
Where the risk of conflicts between stakeholders and indigenous peoples may occur...	An opportunity exists to support forums to increase peaceful dialogue and encourage agreement.

4.2 Determining the Applicability of Standard 6

Standard 6 notes that requirements of the Standard apply to all Projects which may affect the human rights, lands, natural resources, territories, and traditional livelihoods of indigenous peoples regardless of (i) whether the Project is located within or outside of the lands and territories inhabited by the indigenous peoples in question, (ii) whether or not title is possessed by the affected indigenous peoples over the lands and territories in question, or (iii) whether the indigenous peoples are recognized as indigenous peoples by the country in question (see SES, Standard 6, para. 3).

Any “yes” responses to the screening questions related to Standard 6 indicate the potential for social and environmental risks that need to be summarized in the SESP template with a determination of significance based on Probability and Impact (see the SESP for determining Probability and Impact ratings). When the significance of a potential risk is judged to be Moderate or High, the related Standard is considered applicable and is then recorded in the template. See Table 4 for examples of Low, Moderate, and High risks related to Standard 6.

Table 4. Indicative Examples of Risk Significance for Projects that may affect indigenous peoples

Risk Significance	Example
Low	<p>A Project directing only financial support and capacity building to a national indigenous federation. Here the risks are minimal as the objective is just capacity building.</p> <p>A Global or Regional Project that supports indigenous groups to participate in and advocate for indigenous rights at global or regional fora.</p>
Moderate	<p>A forest conservation project conducted in conjunction with affected local indigenous communities. The risks are likely to be at most moderate if the project’s parameters and activities are defined in partnership with the affected indigenous community.</p> <p>A project promoting national or local electoral processes that does not include special efforts to include indigenous populations may lead to de facto discrimination against indigenous peoples rights to participation.</p>
High	<p>A high risk activity includes any activity which may (i) result in significant adverse social impacts to local communities (such as indigenous peoples), (ii) adversely impact the rights, lands, resources and territories of indigenous peoples, or (iii) potentially threaten the destruction or loss of Cultural Heritage.</p> <p>For example, a hydroelectric dam constructed in an area outside of indigenous lands may result in hydrological changes or unintended animal migrations that may have significant adverse impacts on the cultivation cycles of the indigenous peoples or even on the population of animals necessary for their nutrition and traditional diets.</p> <p>For example, an extractive industries or natural resource management project affecting lands or territories that are inhabited by indigenous peoples without official land titles could lead to dispossession. Rights of indigenous ownership over the affected lands and territories would need to be respected with due FPIC obtained, and appropriate (financial and/or other) remedies provided as relevant.</p> <p>Such large-scale projects affecting indigenous lands and livelihoods inherently have the potential of significant risks especially if the rights, views and perspectives of indigenous peoples are not considered at the earliest stages.</p>

4.3 Categorization of the Project

As noted above, the screening process also leads to an overall risk categorization of the project, which is based on the highest level of significance of any one risk. For example, if five different risks were identified, one with a high level of significance and the other four with a moderate level of significance, the project would be categorized as “High Risk.” The Project Risk categorization determines the nature of assessment that will be required.

As noted in the screening checklist (question 6.3), there is a presumption that Projects that may affect the human rights, lands, natural resources, territories, and traditional livelihoods of indigenous peoples are to be considered either Moderate or High Risk projects (depending on the rating of significance of impact).

5. Assessment

If Standard 6 is determined to be applicable for the Project, potential impacts on indigenous peoples, their lands, territories and resources need to be examined as an integral aspect of assessing the Project's full range of potential adverse social and environmental impacts.

Assessments integrate social and environmental considerations into Project decision-making so that adverse impacts can be avoided and positive impacts can be delivered in a culturally appropriate manner. The assessment provides data and analysis for preparing mitigation and management measures, which for indigenous peoples issues generally takes the form of an Indigenous Peoples Plan (IPP) (see below). Assessments are to be conducted with the meaningful and effective participation of the affected peoples concerned whose inputs and contributions are to be reflected in the assessment report's analysis and conclusions (see Section 3).

The assessment and development of management measures must integrate relevant requirements of all applicable Principle(s) and/or Standard(s). The general steps and requirements for assessing the potential social and environmental impacts of Moderate and High Risk Projects are outlined in the UNDP Guidance Note on Social and Environmental Assessment [add link when finalized and posted]. Moderate Risk Projects require focused or limited forms of social and environmental assessment, while Projects that present potentially High Risks require comprehensive assessment of potential social and environmental impacts, i.e. Environmental and Social Impact Assessment (ESIA) or Strategic Environmental and Social Assessment (SESA).

5.1 Address Standard 6 Requirements in the Social and Environmental Assessment Process

Standard 6 contains a range of requirements that need to be addressed during the social and environmental assessment process. Not all requirements may be relevant to a particular Project (e.g. resettlement provisions when the Project does not involve land acquisition or land use issues). The impact assessment process identifies specific potential risks and impacts and the relevant UNDP requirements to be addressed. The paragraphs below provide additional guidance on how to address various Standard 6 requirements in the social and environmental assessment process, where relevant.

Examine the short-and long-term, direct and indirect, and positive and negative impacts of the Project on the social, cultural and economic status and differential impacts of the project on their livelihood systems, culture and socioeconomic status of affected indigenous peoples (Requirement 10). The assessment should include confirmation and description of the presence (via both occupation and use) of indigenous peoples in areas that may be affected by the Project's activities, including baseline socioeconomic profile of the IP groups in the project area (Requirement 5). In addition the assessment needs to summarize the participatory processes with affected indigenous groups on the conduct of the assessment, including, if already initiated, a summary of FPIC processes and documented outcomes (Requirement 9).

Box 7. Legal personality of indigenous peoples

Recognition of legal personality is critical to the protection, respect and fulfillment of human rights of indigenous peoples. The required analysis of substantive rights of indigenous peoples includes a review of the legal personality of indigenous peoples under domestic law. The review should address questions such as the following:

- Do the indigenous peoples concerned have recognition of their legal personality in national law? If so, is such recognition consistent with the norms, values and customary laws of the peoples concerned?
- Have the indigenous peoples concerned applied for legal recognition and does there appear to be an unreasonable delay or undue prejudice in State responses?
- Are the indigenous peoples concerned prevented from securing titles because they lack the recognized legal personality which permits them to hold titles in their name (collectively or individually)?
- Do indigenous peoples have limited access to domestic remedies because of lack of legal personality (i.e. no standing before judicial bodies)?

Analyze the substantive rights of the affected indigenous peoples: UNDP will ensure that social and environmental assessments for Projects involving indigenous peoples include an analysis of their substantive rights, as affirmed in Applicable Law (Requirement 4). Projects categorized as Moderate or High Risk require further scoping to specify the parameters of the required social and environmental assessment (on scoping, see the Guidance Note on Social and Environmental Assessment [LINK]). The scoping process should include a comprehensive analysis of the legal framework and substantive rights of potentially affected indigenous peoples. A base understanding of the nature of the rights involved is needed in order to fully assess the Project’s potential impacts on those rights. The status of the “legal personality” (see description in Section 2.3) of indigenous peoples under domestic law should be included in this analysis (see Box 7 and Requirement 7) as well as the status of land tenure related to the relevant areas that may be affected by the Project (see Box 8 and Requirement 6). A national or international legal expert (from the UNCT or academia or other) would be able to undertake and provide this analysis, preferably in consultation with indigenous populations and civil society organisations.

Analyze gender dimensions and impacts on marginalized groups: As part of the screening process (see the SESP screening checklist questions regarding human rights and gender equality), UNDP undertakes an initial mapping of the constituency that makes up the potentially affected indigenous peoples, including *inter alia* gender equality considerations, impacts on marginalized groups and individuals and risks of impacts on voluntarily isolated groups. Disaggregated data on the composition of potentially affected indigenous peoples should be collected as part of the scoping and assessment of potential adverse social impacts. Potential differentiated impacts on marginalized or vulnerable groups should be examined. In assessing potential gender and power relation impacts, opportunities for women's empowerment should be identified. It should be recognized that while often marginalized, women often play an indispensable role with respect to the management and use of indigenous lands and resources, protection of livelihoods, and the transmission of the communities’ culture.

Examine ownership and usage rights to lands, territories, resources: Where Project activities may affect indigenous peoples’ lands, territories and resources, the social and environmental assessment will need to include a targeted analysis of the status of ownership and usage rights of the affected lands, territories and resources in order to analyze the Project’s potential impacts on such rights (see Box 8). The analysis would be conducted as part of the scoping exercise for the assessment in order to help focus the assessment on critical issues that require detailed examination.

Box 8. Analysis of ownership and usage rights to potentially affected lands, territories, resources

The scoping process for social and environmental assessment should consider, at a minimum, the following issues when a Project may affect lands, territories, and resources of indigenous peoples:

- customary laws of the affected people related to land tenure and resource use and management
- indigenous use of the land and resources in accordance with their customary laws, values and traditions, including cultural, ceremonial or spiritual use, and seasonal or intermittent use of resources (for example, for hunting, fishing, grazing, agriculture, flora extraction of forest and woodland products, periodic cultural, ceremonial and spiritual uses)
- existence of any formal legal title resting with the concerned indigenous peoples to all or some of the ancestral area
- identification of relevant recognitions, protections, and mechanisms for securing indigenous land tenure security under Applicable Law
- extent of titling given, sometimes contrary to Applicable Law, to non-indigenous peoples within the lands and territories in question, as well as any competing claims and the squatting or intrusions that already exist within the same area
- existence of land claims initiated by indigenous peoples before tribunals, relevant government offices and administrative proceedings (including their duration in process)
- the interest and potential for indigenous contributions and/or management of Project activities impacting their lands, resources and territories, and
- the potential for increased land and resource conflicts between indigenous and surrounding communities.

Project activities that may adversely affect the existence, value, use or enjoyment of indigenous lands, resources or territories shall not be conducted unless agreement has been achieved through the FPIC process (see Section 3.2).

All potential adverse impacts on such lands, resources and territories must be identified and addressed in the social and environmental assessment – including identification of alternative designs to avoid impacts and/or needed mitigation measures. Avoidance of harm is a primary objective (following the mitigation hierarchy). Only where avoidance is not feasible shall mitigation, post-Project restoration, and full and fair compensation measures be employed – all developed with the free, prior and informed consent of the peoples concerned. Land-based compensation should be preferred, while recognizing the difficulty of replacing a cultural connection to a specific parcel and its attendant resources. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.

In some cases, land under indigenous peoples' claim may be designated by the host government for alternate uses, which may include conservation and protected areas and reserves, mineral concession areas, agricultural schemes. Also, non-indigenous users may have obtained title to the land. Such designations may or may not be consistent with the State's obligations under Applicable Law. For instance, under international law mere declarations of public interest do not alone excuse interferences and acquisitions of indigenous lands, resources and territories. The analysis of land issues should therefore not presume the legitimacy of such designations but evaluate the same.

The analysis of indigenous lands, resources and territories should also have a primary objective of identifying where there are opportunities for advancing the rights, contributions, benefits, and greater management and control of indigenous peoples over Project activities that may affect their lands, resources and territories.

Analyze potential impacts on Cultural Heritage: Standard 6 requires that Projects respect, protect, conserve and not take or appropriate the cultural, intellectual, religious and spiritual property of indigenous peoples without their free, prior and informed consent (Requirement 13). For Projects that may affect the cultural heritage of indigenous peoples, assessments should apply as a minimum standard of guidance the “Akwe: Kon Voluntary Guidelines for the Conduct of Cultural, Environmental and Social Impact Assessment regarding Developments Proposed to take place on, or which are Likely to Impact on, Sacred Sites and on Lands and Waters Traditionally Occupied or Used by Indigenous and Local Communities.”¹⁸ Where there are findings related to the precise location of valuable or sacred cultural heritage or other areas of cultural and spiritual significance, non-disclosure is permitted to ensure against theft, illegal sale, unwanted intrusions and unconsented sharing of intellectual property, with proper justification (see the Guidance Note on Standard 4 Cultural Heritage).

Analyze potential relocation and displacement risks and impacts: The UN Committee on Economic, Social and Cultural Rights has deemed that forced relocations are “incompatible” with the rights affirmed in the Convention on Economic, Social and Cultural Rights.¹⁹ Forcible relocation of indigenous peoples severs their relationship to their ancestral lands and, as observed by the UN Sub-Commission on Economic, Social and Cultural Rights, “where population transfer is the primary cause for an indigenous people's land loss, it constitutes a principal factor in the

¹⁸ The Guidelines are designed to facilitate a collaborative framework within which decision makers, project proponents, Governments and indigenous peoples can: (a) Support the full and effective participation and involvement of indigenous and local communities in screening, scoping and development planning exercises; (b) Properly take into account the cultural, environmental and social concerns and interests of indigenous and local communities, especially of women who often bear a disproportionately large share of negative development impacts; (c) Take into account the traditional knowledge, innovations and practices of indigenous and local communities as part of environmental, social and cultural impact-assessment processes, with due regard to the ownership of and the need for the protection and safeguarding of traditional knowledge, innovations and practices; (d) Promote the use of appropriate technologies; (e) Identify and implement appropriate measures to prevent or mitigate any negative impacts of proposed developments; [and] (f) Take into consideration the interrelationships among cultural, environmental and social elements. Available at <http://www.cbd.int/doc/publications/akwe-brochure-en.pdf>.

¹⁹ General Comment No. 4, The Right to Adequate Housing (Art. 11(1) of the Covenant), adopted at the Committee's Sixth session, 1991, para. 18.

process of ethnocide.” “For indigenous peoples, the loss of ancestral land is tantamount to the loss of cultural life, with all its implications.”²⁰

Standard 6 (Requirement 8) reflects the emphasis in international law that only under narrow and exceptional circumstances should relocation of indigenous peoples be considered. **Forcible removal is prohibited and in all cases, no relocation of indigenous peoples concerned will take place without their free, prior and informed consent.**²¹ Where there are potential risks of physical and economic displacement, the requirements of Standard 5 also need to be addressed (without prejudice to the requirements of Standard 6).

During project screening, UNDP identifies whether physical displacement (temporary or permanent, full or partial) and/or economic displacement are potential risks (see SESP screening checklist questions regarding displacement and resettlement). The assessment would need to seek to identify Project options and their potential impacts in order to avoid, and where avoidance is not possible, minimize and mitigate impacts of physical and economic displacement. In the context of indigenous peoples, economic displacement might be implicated where Project activities cause loss of critical assets. The assessment would need to identify the precise scope and extent of impacts on all potentially affected people. A survey of potentially affected indigenous peoples would need to be conducted together with socioeconomic analysis in order to determine eligibility for entitlements and baseline information for measuring restoration of incomes and living standards. The Guidance Note on Standard 5 Displacement and Resettlement provides further guidance.

Examine potential risks to uncontacted and voluntarily isolated indigenous peoples: Standard 6 requires respect for the right of uncontacted or voluntarily isolated indigenous peoples to remain in isolation and to live freely in that condition according to their culture (Requirement 13). Assessments need to identify whether the Project’s area of influence may include such peoples and whether Project activities could lead to potential impacts and/or contact with them. Measures would be required to avoid contact and to safeguard collective and individual physical, territorial, and cultural integrity of these peoples.²²

Timing of assessments: Every effort should be undertaken to ensure that the assessment is conducted and shared with potentially affected indigenous peoples and other stakeholders prior to Project approval. However, as noted in the SESP (see para. 45) and in the Guidance Note on Social and Environmental Assessment, in certain circumstances, completion of a social and environmental assessment (and the scoping process) may need to be financed through the Project budget (hence, conducted during Project implementation). In such cases, the Project Document needs to incorporate an initial management plan and budget to conduct appropriate assessment during project implementation. However:

- ***In all cases the required social and environmental assessment and adoption of appropriate mitigation and management measures must be completed, disclosed, and discussed with stakeholders (via applicable consultation and FPIC processes) prior to implementation of any activities that may cause adverse social and environmental impacts. Activities that cannot proceed until completion of the analysis, assessment, and adoption of mitigation measures should be clearly identified in the Project Document prior to appraisal.***

²⁰ *The human rights dimensions of population transfer, including the implantation of settlers. Preliminary report prepared by Mr. A.S. Al-Khasawneh and Mr. R. Hatano.* UN Doc. E/CN.4/Sub.2/1993/17*, at para. 101 and para. 336.

²¹ Among others, ILO 107, art. 12, ILO 169, art. 16(2), UNDRIP, art. 10, and Committee on the Elimination of Racial Discrimination, General Recommendation XXIII.

²² For region specific guidelines, see OHCHR Guidelines for Protection of Indigenous Peoples in Isolation and Initial Contact of the Amazon Region, Gran Chaco and Oriental Region of Paraguay (2012), available in Spanish at <http://acnudh.org/2012/05/directrices-de-proteccion-para-los-pueblos-indigenas-en-aislamiento-y-en-contacto-inicial-de-la-region-amazonica-el-gran-chaco-y-la-region-oriental-de-paraguay/>.

Expertise requirements: Assessments for High Risk Projects are to be conducted by, or with the assistance of, qualified and experienced independent experts on indigenous peoples. Beyond the qualifications obtained through formal technical training, experience should have been gained by close work with the potentially affected indigenous groups, or at the minimum in the immediate area or similar groups in other area. The entity or the indigenous specialist should be independent and impartial. Conflicts of interest between Project proponents, designers and assessment specialists are to be avoided.

6. Management and Monitoring

Mitigation and management measures need to be developed and implemented for each impact and risk identified in the social and environmental assessment. In developing such measures, a mitigation hierarchy is followed, starting with avoiding adverse impacts, and if avoidance is not possible followed by impact minimization, then mitigation, and lastly compensatory measures to offset significant residual impacts. Mitigation and management measures need to meet (and ideally exceed) not only Applicable Law (i.e. national law and obligations under international law) but also the requirements specified in Standard 6 and UNDP's SES.

6.1 Indigenous Peoples Plan

For Projects that may affect indigenous peoples, mitigation and management measures are typically contained in an Indigenous Peoples Plan (IPP). The IPP is based on the findings of the social and environmental assessment and needs to be developed with full, effective and meaningful participation of potentially affected indigenous peoples. The IPP provides the management planning framework for ensuring that identified impacts are appropriately addressed, culturally appropriate benefits are provided, participatory processes are followed, and needed capacity support and institutional arrangements are in place. The IPP should have a level of detail proportional to the complexity of the nature and scale of the proposed Project and its potential impacts on indigenous peoples and their rights, lands, resources and territories. Enhancement and mitigation measures outlined in the IPP should reflect an appropriate response to the assessment's findings and adhere to all relevant requirements of Standard 6. Annex 1 provides an outline of the minimum elements that need to be addressed in the IPP.

When is an IPP required? An IPP is required for Projects that “may affect the rights, lands, resources or territories of indigenous peoples” (Requirement 14). As noted in Section 5, there is a presumption that such Projects are to be considered either Moderate or High Risk projects (depending on the significance of risk rating). High Risk Projects would require an IPP in all cases. The presumption is that Moderate Risk Projects that affect indigenous peoples' rights, lands, resources or territories would also require development of an IPP.

Specific types of projects may not require an IPP, such as global projects or initiatives that solely seek to promote the rights of indigenous peoples and/or their participation in international forums (in such a case, the Project may be rated as Moderate Risk since indigenous rights may be affected). For projects that are specifically aimed at promoting and protecting indigenous peoples rights and include their partnership and participation, the Project Document may constitute the IPP, considering that the criteria of an IPP is covered by the Project Document.

Timing of completion of an IPP: As depicted in Figure 2 and explained in the Guidance Note on Social and Environmental Assessment, all Moderate and High Risk Projects require a management plan for consideration by the PAC at project appraisal. The form of this plan will vary depending on the nature and scale of potential risks and the timing of assessments. For projects that may require an IPP, every effort should be expended to ensure that the assessment is undertaken prior to project appraisal and a fully developed IPP be presented for PAC consideration. Where the assessment must be funded through the project budget and hence conducted during project implementation, an initial management plan must be presented for PAC consideration. The initial management plan seeks to address as many aspects of the required IPP as possible (see Annex 1) and needs to clearly state when and how the full IPP will be developed and reflect the findings and recommendations of the social and environmental assessment, consultation and any required FPIC processes once undertaken. A subsequent PAC meeting or the Project Board needs to review the completed IPP and ensure all required measures are incorporated into the Project plan, budget, and monitoring indicators. Whether the assessment is conducted pre- or post- appraisal, the following SES requirement must be observed:

- ***The IPP needs to be in place and mitigation measures taken prior to the conduct of any activity that may cause adverse impacts on indigenous peoples, including the existence, value, use or enjoyment of their lands, resources or territories.***

The IPP shall be periodically reviewed throughout the life of the Project and modified when necessary with the meaningful participation of indigenous peoples concerned.

6.2 Address Standard 6 Requirements in the IPP and Management Measures

Annex 1 provides an indicative outline of the substantive aspects that are to be addressed in the IPP. The section below provides further guidance on addressing certain Standard 6 requirements in the development of the IPP and/or other management measures.

Ensuring culturally appropriate benefits: The IPP needs to detail the arrangements agreed to with the indigenous peoples concerned regarding the equitable sharing of benefits to be derived by the Project in a manner that is culturally appropriate and inclusive and that does not impede land rights or equal access to basic services including health services, clean water, energy, education, safe and decent working conditions, and housing (Requirement 11). Those arrangements should be evidenced in the written outcomes of the consultation and consent process undertaken. Indigenous peoples should be provided with full information of the scope of potential income streams, services and benefits that the Project may generate for all potential beneficiaries. In determining what constitutes fair and equitable benefit sharing – particularly where traditional knowledge, cultural heritage, lands, resources, and territories are involved – indigenous peoples should be treated not just as stakeholders, but appropriately as rights holders.

Action Plans for legal recognition of indigenous peoples rights to lands, territories, resources and legal personality: Certain Project activities may not be successful or may lead to adverse impacts unless the rights of indigenous peoples to traditional lands, territories and resources are officially recognized. For example, initiatives to support indigenous peoples land tenure or to develop resources on traditional lands may first require official recognition of legal rights. In addition, recognition of the rights of indigenous peoples to legal personality may also be required if not adequately provided for under domestic law.

Where the success and continuation of the Project as a whole, or specific Project activities, are contingent (Box 9) on establishing legally recognized rights to lands, resources, or territories of the affected indigenous peoples, the IPP will need to contain an action plan that outlines steps and timetables for achieving legal recognition of indigenous peoples' ownership, occupation, or usage rights (see Requirement 6) and, where necessary, legal personality (see Requirement 7). Where such recognition would require further domestic action, legal or policy reform, UNDP would support such activities with the consent of relevant authorities.

UNDP must carefully evaluate whether a Project could continue without undue harm if needed legal reforms or delimitation, demarcation and titling activities cannot take place within the relevant time period of the Project given its mandate and financing. In such cases the IPP would need to clearly address the potential consequences where only some of the activities take place within the Project period (e.g. some progress but not final recognition of the land and territory rights). With the consent of relevant authorities, UNDP will support such activities to achieve such recognition.

Box 9. What is meant by “contingent”?

The *contingency* is triggered where in the absence of such recognition and as a result of implementation of Project activities there is a likelihood of adverse impacts to the rights, lands, resources and territories of indigenous peoples.

Support Rights Implementation: Requirement 12 notes that UNDP Projects will at all times be conducted in a manner consistent with UNDP's commitment to supporting countries to implement their duties and obligations under domestic and international law regarding the rights of indigenous peoples, including relevant treaty obligations. Whenever possible, and at the request of the relevant government, Projects will include activities that support legal reform of domestic laws to strengthen compliance with the country's duties and obligations under international law with respect to the rights of indigenous peoples, and these steps and timetable will be included in the IPP.

Resettlement Action Plan and Livelihood Action Plan: In the exceptional circumstances when physical displacement or economic displacement of indigenous peoples is unavoidable, UNDP needs to integrate into the Project documentation a Resettlement Action Plan (RAP) or Livelihood Action Plan (LAP) that has been developed transparently with the individuals and communities to be displaced. No relocation of indigenous peoples will take place without the free, prior and informed consent of the indigenous peoples concerned and only after agreement on just and fair compensation and, where possible, with the option of return (Requirement 8). The RAP/LAP must meet the requirements of Standard 5 and Standard 6, including documentation of agreement through FPIC. The objectives, activities, and timelines for both of these plans will be harmonized and incorporated by reference in the IPP. (See the Guidance Note on Standard 5 Displacement and Resettlement).

Measures to safeguard integrity of uncontacted and voluntarily isolated indigenous peoples: Where Projects may directly or indirectly impact uncontacted or voluntarily isolated indigenous peoples, their lands, resources, territories or their way of life, the IPP must include measures to (i) safeguard the collective and individual physical, territorial, and cultural integrity of these peoples, (ii) recognize, respect and protect their lands and territories, environment, health and culture, and (iii) prohibit and therefore avoid contact with them as a direct or indirect consequence of the Project (Requirement 13d). Where relevant, UNDP will support countries to regularize the lands and territories of these peoples and establish buffer zones, to limit access to such territories, and to develop monitoring and emergency response measures, making avoidance of contact a priority.

6.3 Monitoring Project Implementation

The IPP also outlines monitoring measures to ensure that the Project's mitigation and management measures are being implemented. Monitoring is an iterative process throughout Project implementation until the completion of all closure activities. Monitoring and evaluation mechanisms will include arrangements for ongoing information disclosure, consultation and informed participation with the affected indigenous peoples (both women and men) and for the implementation of any identified corrective actions.

The SES requires monitoring of implementation of all applicable SES requirements, including the provisions detailed in the IPP. Standard 6 requires that transparent participatory monitoring arrangements be put in place wherein the indigenous peoples concerned will jointly monitor Project implementation (Requirement 15).

High Risk Projects should include indigenous peoples' specialists in the monitoring mechanism. Project documentation should provide a detailed description of the format for monitoring, the obligation to report to the communities in a culturally appropriate manner, and the timing of monitoring (mid-term, closure, when there are significant changes in implementation, etc.).

In order to ensure participation of indigenous peoples in the monitoring process, the IPP should detail, at a minimum:

- i. the manner in which indigenous peoples will participate in monitoring activities
- ii. progress indicators and an estimated budget to ensure robust monitoring
- iii. the participatory selection and involvement of an independent expert, where needed
- iv. schedules for monitoring activities, and
- v. the mechanism for redress and corrective action.

ANNEX 1: Indigenous Peoples Plan Indicative Outline

If the proposed Project may affect the rights, lands, resources or territories of indigenous peoples, an "Indigenous Peoples Plan" (*IPP*) needs to be elaborated and included in the Project documentation. The *IPP* is to be elaborated and implemented in a manner consistent with the UNDP Social and Environmental Standards and have a level of detail proportional to the complexity of the nature and scale of the proposed Project and its potential impacts on indigenous peoples and their lands, resources and territories. With the effective and meaningful participation of the affected peoples, the *IPP* shall be elaborated and contain provisions addressing, at a minimum, the substantive aspects of the following outline:

- A. Executive Summary of the Indigenous Peoples Plan: Concisely describes the critical facts, significant findings, and recommended actions
- B. Description of the Project: General description of the project, the project area, and components/activities that may lead to impacts on indigenous peoples
- C. Description of Indigenous Peoples: A description of affected indigenous people(s) and their locations, including:
 - i. description of the community or communities constituting the affected peoples (e.g. names, ethnicities, dialects, estimated numbers, etc.);
 - ii. description of the resources, lands and territories to be affected and the affected peoples connections/relationship with those resources, lands, and territories; and
 - iii. an identification of any vulnerable groups within the affected peoples (e.g. uncontacted and voluntary isolated peoples, women and girls, the disabled and elderly, others).
- D. Summary of Substantive Rights and Legal Framework: A description of the substantive rights of indigenous peoples and the applicable legal framework, including:
 - i. An analysis of applicable domestic and international laws affirming and protecting the rights of indigenous peoples (include general assessment of government implementation of the same).
 - ii. Analysis as to whether the Project involves activities that are contingent on establishing legally recognized rights to lands, resources, or territories that indigenous peoples have traditionally owned, occupied or otherwise used or acquired. Where such contingency exists (see Standard 6 Guidance Note, sections 6 & 7), include:
 - a. identification of the steps and associated timetable for achieving legal recognition of such ownership, occupation, or usage with the support of the relevant authority, including the manner in which delimitation, demarcation, and titling shall respect the customs, traditions, norms, values, land tenure systems and effective and meaningful participation of the affected peoples, with legal recognition granted to titles with the full, free prior and informed consent of the affected peoples; and
 - b. list of the activities that are prohibited until the delimitation, demarcation and titling is completed.
 - iii. Analysis whether the Project involves activities that are contingent on the recognition of the juridical personality of the affected Indigenous Peoples. Where such contingency exists (see Standard 6 Guidance Note, section 7):
 - a. identification of the steps and associated timetables for achieving such recognition with the support of the relevant authority, with the full and effective participation and consent of affected indigenous peoples; and
 - b. list of the activities that are prohibited until the recognition is achieved.
- E. Summary of Social and Environmental Assessment and Mitigation Measures
 - i. A summary of the findings and recommendations of the required prior social and environmental impact studies (e.g. limited assessment, ESIA, SESA, as applicable) – specifically those related to indigenous peoples, their rights, lands, resources and territories. This should include the manner in which the affected indigenous peoples participated in such study and their views on the participation mechanisms, the findings and recommendations.
 - ii. Where potential risks and adverse impacts to indigenous peoples, their lands, resources and territories are identified, the details and associated timelines for the planned measures to avoid, minimize, mitigate, or compensate for these adverse effects. Identification of special measures to promote and protect the rights and interests of the indigenous peoples including compliance with the affected peoples' internal norms and customs.

- iii. If the Project will result in the relocation of indigenous peoples from their lands and territories, a description of the consultation and FPIC process leading to the resulting agreement on relocation and just and fair compensation, including the possibility of return.
 - iv. A description of measures to protect traditional knowledge and cultural heritage in the event that the Project will result in the documentation and/or use and appropriation of such knowledge and heritage of the indigenous peoples and the steps to ensure FPIC before doing so.
- F. Participation, Consultation, and FPIC Processes
 - i. A summary of results of the culturally appropriate consultation and, where required, FPIC processes undertaken with the affected peoples' which led to the indigenous peoples' support for the Project.
 - ii. A description of the mechanisms to conduct iterative consultation and consent processes throughout implementation of the Project. Identify particular Project activities and circumstances that shall require consultation and FPIC (consistent with section 4 of the Standard 6 Guidance Note).
- G. Appropriate Benefits: An identification of the measures to be taken to ensure that indigenous peoples receive equitable social and economic benefits that are culturally appropriate, including a description of the consultation and consent processes that lead to the determined benefit sharing arrangements.
- H. Capacity support
 - i. Description of Project activities aimed at increasing capacity within the government and/or the affected indigenous peoples, and facilitating exchanges, awareness, and cooperation between the two.
 - ii. Description of measures to support social, legal, technical capabilities of indigenous peoples' organizations in the project area to enable them to better represent the affected indigenous peoples more effectively
 - iii. Where appropriate and requested, description of steps to support technical and legal capabilities of relevant government institutions to strengthen compliance with the country's duties and obligations under international law with respect to the rights of indigenous peoples.
- I. Grievance Redress: A description of the procedures available to address grievances brought by the affected indigenous peoples arising from Project implementation, including the remedies available, how the grievance mechanisms take into account indigenous peoples' customary laws and dispute resolution processes, as well as the effective capacity of indigenous peoples under national laws to denounce violations and secure remedies for the same in domestic courts and administrative processes.
- J. Monitoring, Reporting, Evaluation
 - i. Mechanisms and benchmarks appropriate to the Project for transparent, participatory joint monitoring, evaluating, and reporting, including a description of how the affected indigenous peoples are involved.
 - ii. Define the mechanisms put in place to allow for periodic review and revision of the **IPP** in the event that new Project circumstances warrant modifications developed through consultation and consent processes with the affected indigenous peoples.
- K. Institutional Arrangements: Describes institutional arrangement responsibilities and mechanisms for carrying out the measures contained in the **IPP**, including participatory mechanisms of affected indigenous peoples. Describes role of independent, impartial entities to audit, conduct social and environmental assessments as required, and/or to conduct oversight of the project.
- L. Budget and Financing: An appropriately costed plan, with itemized budget sufficient to satisfactorily undertake the activities described.

Note: The **IPP** will be implemented as part of Project implementation. However, in no case shall Project activities that may adversely affect indigenous peoples – including the existence, value, use or enjoyment of their lands, resources or territories – take place before the corresponding activities in the **IPP** are implemented. The relationship between the implementation of specific **IPP** measures and the permitted commencement of distinct Project activities shall be detailed within the **IPP** to allow for transparent benchmarks and accountability.

Where other Project documents already develop and address issues listed in the above sections, citation to the relevant document(s) shall suffice.