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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 set of operational guidance materials related to the [UNDP Social and Environmental Standards \(SES\)](#). UNDP's SES seek to (i) strengthen quality of programming by ensuring a principled approach; (ii) maximize social and environmental opportunities and benefits; (iii) avoid adverse impacts to people and the environment; (iv) minimize, mitigate, and manage adverse impacts where avoidance is not possible; (v) strengthen UNDP partner capacities for managing social and environmental risks; and (vi) ensure full and effective stakeholder engagement, including through mechanisms to respond to complaints from project-affected people.

The SES guidance notes follow a similar structure to assist users in finding specific information or guidance (however the SESP Guidance Note focuses on the steps of the screening process). The set of guidance notes will develop over time to include specific guidance on each of the SES Programming Principles, Project-level Standards, and elements of the Social and Environmental Management System (see Key Elements of the SES). The [SES Toolkit](#) is an on-line resource for the guidance notes and supporting materials.

### *How to Use This Guidance Note*

The target users for the SES guidance notes are staff, consultants, stakeholders and partners who are involved in developing, assessing 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, social and environmental assessment, and management** (including monitoring).
- Assist in determining the applicability of relevant SES requirements in the screening process for all projects.
- Provide additional guidance for projects that require assessment and development of management measures (i.e. projects with Moderate, Substantial or High Risks related to a certain Principle or Standard).
- Provide a practical resource for implementing SES requirements to address potential social and environmental impacts within the context of the project cycle. Users do not necessarily need to read them in full but rather may select information that is specific to their needs.
- Complement and elaborate on 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](mailto:info.ses@undp.org)

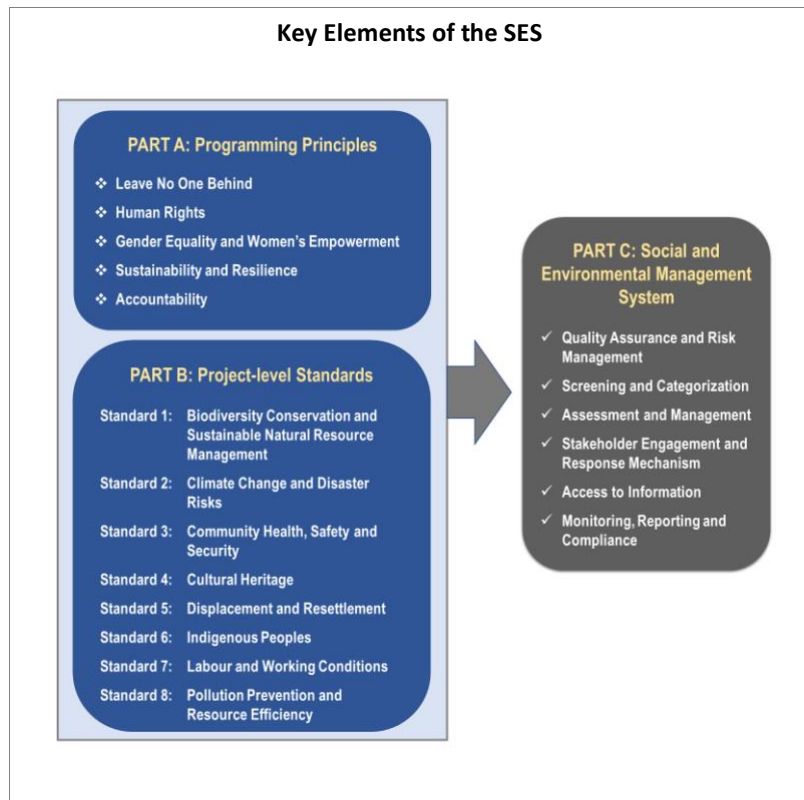
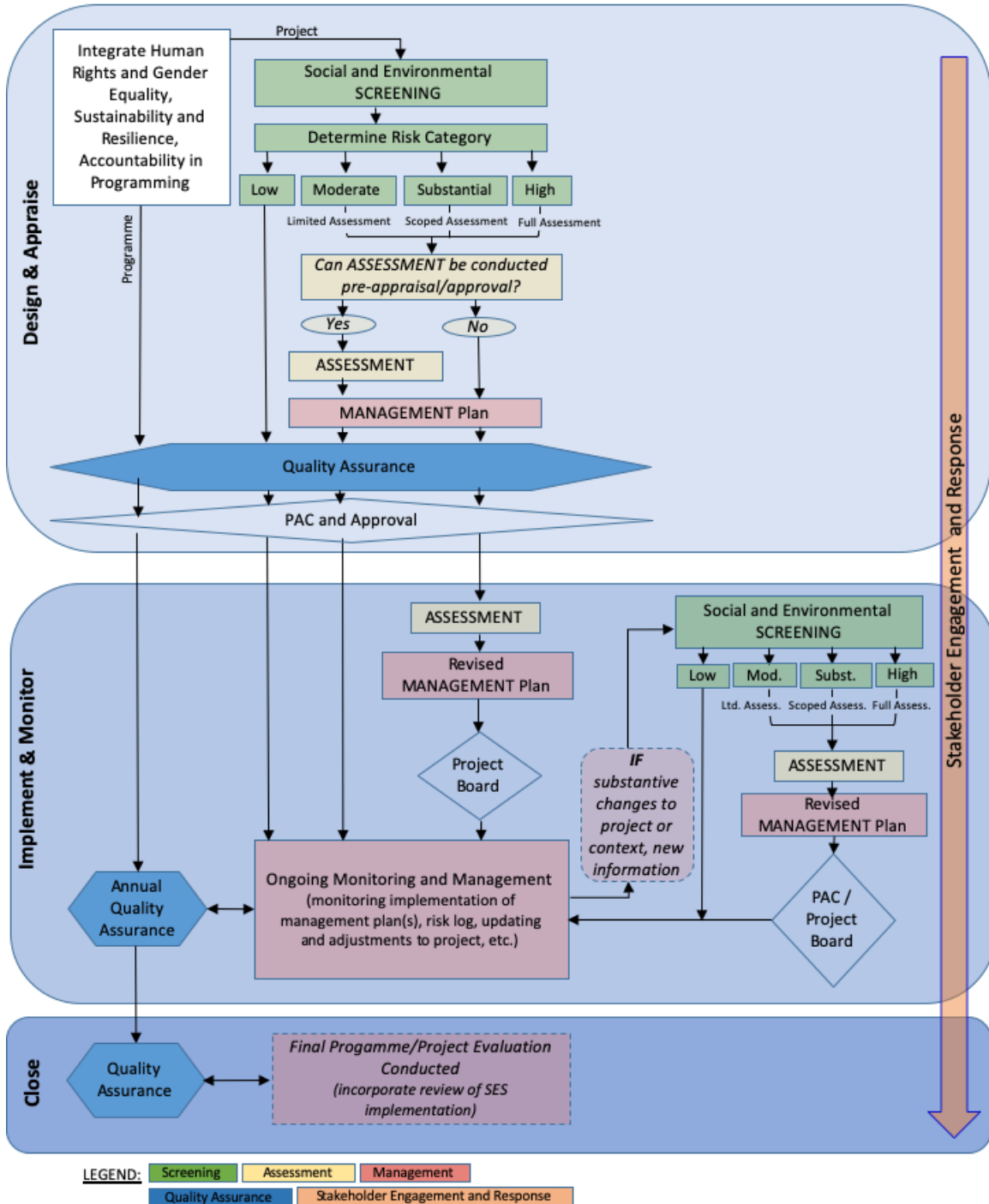


Figure 1. SES Implementation – Screening, Assessment and Management in the Programming Cycle



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## What's New?

### Key changes to SES Standard 6: Indigenous Peoples in revised SES (2020 version) and relevant issues addressed in updated S6 Guidance Note:

- *Recognition of indigenous peoples* (SES para. 5): additional provision regarding indigenous peoples who have lost access to lands, territories or resources because of forced severance, conflict, government resettlement, dispossession, natural disasters, or incorporation of lands into urban areas, but who still maintain collective attachment to those lands, territories and/or resources (regardless of their present physical location).
- *FPIC* (SES para. 10): slightly reorganized para. to reflect that all circumstances requiring FPIC are noted (e.g. reference added to impacts on cultural heritage and relocation). Also elaborated that the FPIC requirement applies to activities proposing the development, utilization or exploitation of mineral, forest, water or other resources on lands and territories traditionally owned, occupied or otherwise used or acquired by indigenous peoples, including lands and territories for which they do not yet possess title.
- *Consultation documentation* (SES para. 11): new para. on need to document the (a) process and (b) outcomes of good faith negotiations and, and (c) efforts to accommodate indigenous peoples interests and concerns in final programming design.
- *Appropriate benefits* (SES para. 13): Emphasis added on ensuring that equitable benefit sharing takes into account the institutions, rules, and customs of affected indigenous peoples, giving full consideration of preferred options and that benefit sharing may occur on a collective basis, with mechanisms for effective distribution. Further emphasized that equitable benefits sharing applies to commercial development of indigenous peoples' lands, territories or resources or from the use or development of indigenous peoples' cultural heritage.
- *Cultural Heritage* (SES para. 15d): Provision added recognizing need to maintain confidentiality where indigenous peoples hold the location, characteristics or traditional use of cultural heritage in secret.
- *IPP* (SES para. 16): Reference added to potential use of an Indigenous Peoples Planning Framework (IPPF).
- In addition to addressing the above revisions to SES S6, the guidance note:
  - has been reorganized to streamline certain sections
  - places greater emphasis on first identifying whether indigenous peoples are present in proposed project areas and, where this is the case, initiating engagement processes in order to complete further risk screening and project development
  - emphasizes the need to verify that identified risks and impacts are being addressed and appropriate assessments, management plans, and FPIC processes are undertaken
  - includes additional information on the Akwé: Kon assessment guidelines, the Tkarihwaí:ri Code regarding cultural heritage of indigenous peoples, traditional knowledge, customary use of biodiversity, and indigenous peoples in voluntary isolation and in initial contact.

# 1. Introduction

## 1.1 Purpose and organization of this Guidance Note

This Guidance Note outlines how UNDP addresses the requirements of Standard 6: Indigenous Peoples during the development and implementation of UNDP projects. The Guidance Note covers the following sections:

- **Section 2** defines objectives, key concepts and requirements of Standard 6.
- **Section 3** focuses on determining whether Standard 6 is applicable by utilizing the Social and Environmental Screening Procedure (SESP).
- **Section 4** informs how to engage with potentially affected indigenous peoples to understand and document their preferences and concerns.
- **Section 5** discusses (a) tailoring the environmental and social assessment process around the requirements of Standard 6, and (b) developing measures to avoid, mitigate, and manage potentially significant risks and impacts on indigenous peoples in an open dialog with them.
- **Section 6** outlines how UNDP will assure itself through monitoring that projects deliver on the agreed project-related mitigation measures and therefore the minimum requirements of Standard 6.

**Figure 1** provides a general overview of SES implementation in UNDP’s project cycle. It should be noted that screening, assessment and development of management measures may occur at different stages of the cycle.

**Table 1** below outlines key considerations of Standard 6 during this process.

| Table 1. Quick overview of key steps for addressing Standard 6 requirements  |
|--|
| <p><b>SCREEN TO IDENTIFY POTENTIALLY AFFECTED INDIGENOUS PEOPLES AND RISKS AND IMPACTS:</b></p> <ul style="list-style-type: none"> <li>• Screen project design early and throughout project development with SESP (a) to determine if any indigenous peoples are present in or have an attachment to project areas; (b) to identify potential risks and impacts on indigenous peoples and their lands, territories, resources, livelihoods, and cultural heritage; and (c) to categorize the project (Low, Moderate, Substantial, High Risk) and propose initial risk mitigation measures. Verify whether preferences and concerns of potentially affected indigenous peoples have been identified and documented (all Section 3)</li> </ul> <p><b>ASSESS POTENTIAL RISKS AND IMPACTS IN AN OPEN DIALOG WITH POTENTIALLY AFFECTED INDIGENOUS PEOPLES:</b></p> <ul style="list-style-type: none"> <li>• Engage as early as possible with potentially affected indigenous peoples to (a) understand their preferences and concerns, (b) integrate and address these preferences and concerns in the project design, and (c) seek to obtain the free, prior and informed consent (FPIC) of potentially affected indigenous peoples where needed (Section 4)</li> <li>• Tailor the assessment process around the needs and preferences of potentially affected indigenous peoples by assessing direct and indirect, positive and negative impacts of project activities on indigenous peoples; their rights, lands, territories and resources, governance, social, cultural and economic status; livelihood systems, social stratification, gender, etc. (Section 5). Determine whether an IPP/IPPF is required (see below).</li> </ul> <p><b>MITIGATE, MANAGE AND MONITOR RISKS AND IMPACTS:</b></p> <ul style="list-style-type: none"> <li>• Ensure for projects with significant impacts (e.g. complex Moderate Risk, Substantial Risk, High Risk projects) that (a) an Indigenous Peoples Plan (IPP) or Indigenous Peoples Planning Framework (IPPF) is established in open, culturally appropriate dialog with those affected, and (b) potentially affected indigenous peoples are provided with adequate information (e.g. ESIA, IPP/IPPF) to make an informed decision to approve the project, seek changes, or reject the project or activities that might affect them (Sections 4 and 5)</li> <li>• Ensure arrangements for the affected indigenous peoples to participate in project management and decision making where they expressed this desire and to steer the participatory monitoring of implementation of the IPP/IPPF and all activities that might affect them (Section 6)</li> <li>• Rescreen project in the event of changes in project design or context that increases the project’s risk profile. Undertake any necessary additional assessment and management planning.</li> </ul> |

## 2. Understanding the Basics of UNDP’s Standard 6: Indigenous Peoples

### 2.1 Background

UNDP’s work with indigenous peoples is grounded on its overall vision to support countries to achieve the simultaneous eradication of poverty and significant reduction of inequalities and exclusion.

Indigenous peoples number more than 476 million, living in some 90 countries, representing 6.2% of the world population. The majority live in Asia (70.5%), followed by Africa (16.3%), Latin America and the Caribbean (11.5%), North America (1.6%) and Europe and Central Asia (0.1%). Indigenous peoples continue to be among the poorest of the poor with an estimated 18.2% living below the threshold of \$1.90 a day.<sup>1</sup>

Indigenous peoples often face economic, social, political and cultural marginalization – compounded by discrimination and exclusion – resulting in extreme poverty and vulnerability for a disproportionate number of them.

Indigenous peoples holistic approach to well-being often emphasizes harmony with nature, self-governance, priority of community interests over individual ones, security of land, resource rights, cultural identity and dignity. Central to their identity is the relationship to ancestral territories and resources. However, given that many indigenous peoples live in the world’s most resource rich areas, long-standing pressures from mining, logging, conservation, agriculture, etc., threaten indigenous peoples’ lands, territories and resources and thus core facets of their identity.

Too often, indigenous peoples’ own forms of land and resource management have been undervalued and development projects have been undertaken near to and within their lands. That has often led to environmental degradations and, at times, has undermined their physical and cultural survival, violated their human rights, and excluded them from equitable benefits.

UNDP’s work with indigenous peoples is guided by international human rights standards, principles and implementation guidelines (see **Box 1**).

#### 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 \(ILO No. 169\)](#)
- [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.<sup>2</sup> 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

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<sup>1</sup> ILO, *Implementing the ILO Indigenous and Tribal Peoples Convention No. 169: Towards An Inclusive, Sustainable and Just Future*, (2020), at [https://www.ilo.org/global/publications/books/WCMS\\_735607/lang--en/index.htm](https://www.ilo.org/global/publications/books/WCMS_735607/lang--en/index.htm).

<sup>2</sup> 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.

all phases of the programming process.”<sup>3</sup>  
Commitments to respect and uphold the rights of indigenous peoples are further reflected in UNDP policy and strategy documents.<sup>4</sup>

## 2.2 Objectives and requirements

SES Standard 6: Indigenous Peoples 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 in order to build sustainable partnerships with indigenous peoples as companions in development and conservation efforts. UNDP will not participate in projects or project activities that are not supported by the indigenous peoples concerned. **Box 2** outlines the objectives of Standard 6.

### Box 2. Objectives of Standard 6: Indigenous Peoples

- To recognize and foster full respect for indigenous peoples' human rights as recognized under Applicable Law, including but not limited to their rights to self-determination, their lands, resources and territories, traditional livelihoods and cultures
- To support countries in their promotion and protection of indigenous peoples' rights, through implementation of domestic laws, policies, and project activities consistent with the State's human rights obligations
- To ensure that UNDP projects that may impact indigenous peoples are designed in a spirit of partnership with them, with their full and effective participation, with the objective of securing their free, prior, and informed consent (FPIC) where their rights, lands, territories, resources, traditional livelihoods may be affected
- To promote greater control and management by indigenous peoples over developments affecting them, including their lands, resources and territories, ensuring alignment of projects with indigenous peoples' distinct vision and self-identified development priorities
- To avoid adverse impacts on the rights of indigenous peoples, their lands, territories, resources, to mitigate and remedy residual impacts, and to ensure provision of just and equitable benefits and opportunities for indigenous peoples in a culturally appropriate manner

Through implementation of Standard 6, UNDP aims to avoid adverse impacts on indigenous peoples, their rights, lands, territories and resources; mitigate/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 should be carefully reviewed by all parties, stakeholders, etc., involved in the preparation, screening and implementation of UNDP Projects. **Box 3** contains a high-level summary of Standard 6 requirements:

### 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. 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) (Para. 4)
- **Identification of indigenous peoples:** Identify indigenous peoples who may be affected by project activities utilizing range of criteria (Para. 5)
- **Land, territory and resources:** Recognize collective rights of indigenous peoples to lands, territories and resources. Include measures to promote such recognition when necessary for project activities (Para. 6)
- **Legal personality:** Recognize rights of indigenous peoples to legal personality. Include measures to promote such recognition when necessary for project activities (Para. 7)
- **Involuntary resettlement:** Prohibit forcible removal of indigenous peoples from lands and territories and ensure no relocation without FPIC (Paras. 8, 9)

<sup>3</sup> 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](http://www.undg.org/content/programming_reference_guide_%28undaf%29/un_country_programming_principles/human_rights-based_approach_to_development_programming_%28hrba%29).

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



- **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 (Para. 10) (also relocation and appropriation of cultural heritage)
- **Documentation:** Ensure documentation of engagement processes, including (a) mutually accepted process, (b) outcomes of good faith negotiations, and (c) efforts to accommodate IPs interests and concerns (Para.11)
- **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 (Para. 12)
- **Appropriate benefits:** Ensure equitable sharing of benefits in culturally appropriate manner (Para. 13)
- **Support rights implementation:** Support countries to implement their human rights duties and obligations regarding the rights of indigenous peoples (Para. 14)
- **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 (Para. 15)
- **Indigenous Peoples Plan:** Develop IPP/IPPF for projects that may affect rights, lands, territories and resources of indigenous peoples. Plan summarizes potential impacts and documents culturally appropriate mitigation measures (Para. 16)
- **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 (Para. 17)

## 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 (see **Box 2** for the 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 (see S6 para. 5), 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, territories and natural resources 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

### Box 4. Resources on identifying indigenous peoples

- National authorities and census data may provide information on indigenous communities. However, such data may not reflect groups that are not officially recognized
- Indigenous peoples organizations, human rights organizations, sociologists, civil society organizations may possess important information on locations of indigenous peoples lands and territories
- The International Working Group for Indigenous Affairs (IWGIA) produces an annual report on indigenous peoples by country. See [Indigenous World 2020](#).
- The AfDB has published a report on [Development and Indigenous Peoples in Africa](#) (2016) that may also be useful in identifying indigenous peoples in many African countries.

- 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. 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 terms<sup>5</sup> 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 3 below lists some practical questions that may assist in determining a collective's identification as indigenous. **Box 4** provides information on resources for identifying indigenous peoples.

The identification of indigenous peoples should also include those who have lost access to lands, territories or resources because of forced severance, conflict, government resettlement, dispossession, natural disasters, or incorporation of lands into urban areas but who still maintain collective attachment to those lands, territories and/or resources, regardless of their present physical location, or country they live in. This might also include people which have been involuntarily integrated into other societies, whether as laborers, servants etc., or as foster children.

In countries in which all or nearly all people meet the characteristics of indigenous peoples (for example some countries in the Pacific) and in countries that are inhabited entirely or largely by different indigenous peoples' communities (for example Afghanistan), the standard still applies. The objective is, as in all other countries, to ensure that those indigenous peoples' communities that are potentially affected by the project are able to voice their interests and concerns through meaningful consultation processes and to have their rights respected.

**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.<sup>6</sup> While there is no single internationally agreed definition of FPIC, there is a sufficient and growing 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 5** and Section 4 of these guidelines elaborate on the definition, meaning, and Standard 6 requirements regarding FPIC.

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<sup>5</sup> 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.

<sup>6</sup> 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](http://www.un-redd.org/Launch_of_FPIC_Guidelines/tabid/105976/Default.aspx), and the "Legal Companion to the UN-REDD 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](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).

### Box 5. 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.*

**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 (see **Box 6**). 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. Para. 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.

#### **Box 6. 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)?

#### **Lands, Territories and Resources:**

Indigenous peoples' relationship with their traditional lands, territories and resources often 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 Para. 6). In addressing this requirement, it is important to keep in mind at all times that:

- 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;
- the collective dimension of this relationship is significant; and

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

**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.<sup>8</sup> 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 Peoples<sup>9</sup> 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.”<sup>10</sup>

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.<sup>11</sup>

### 3. Screening

UNDP's SESP should be utilized early in project design to help identify (a) areas where indigenous peoples are present (or have collective attachment) and (b) potential social and environmental risks and impacts. The Social

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<sup>7</sup> *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).

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

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

<sup>10</sup> UNDRIP FAQ available at [http://www.un.org/esa/socdev/unpfii/documents/faq\\_drips\\_en.pdf](http://www.un.org/esa/socdev/unpfii/documents/faq_drips_en.pdf).

<sup>11</sup> See the online Resources section of the [SES Toolkit](#).

and Environmental Risk Screening Checklist provides a range of questions to guide this process. The Tables 1a and 1b below provide additional guidance on the screening questions related to Standard 6.

Under Standard 6 the screening process should involve the following steps:

1. **Initial Screening:** The objective of initial screening is to determine and verify whether a potential UNDP project might impact (positively or negatively; directly or indirectly) on indigenous peoples.
2. **Full Screening:** The task here is to assess and characterize potential risks and impacts on indigenous peoples in order to guide the development of adequate mitigation measures (e.g. ESIA, FPIC process based on IPP/IPPF)
3. **Verification:** Before and during project implementation, the SESP Checklist should be utilized to help ensure that all risks and impacts on indigenous peoples are being adequately addressed (e.g. as identified in the ESIA) and that for projects with significant risks and impacts an IPP/IPPF has been developed and the potentially affected people have provided their FPIC to the project and/or relevant activities (see Section 4). If this is not the case, UNDP should not support those activities further until the S6 requirements are met.

During the initial and full screening, it is important to recall that **all potential results and activities** need to be screened and reviewed for potential direct and indirect, and positive and negative impacts on indigenous peoples, and that screening should be **iterative** and conducted before and throughout the assessment process and the drafting of environmental and social mitigation and management measures.

During project implementation, the project SESP may need to be revised due to new information (e.g. from completed assessments) or substantial changes to the project or to the project context (e.g. conflict, disaster, disease). Revised SESPs, especially those that have escalated the risk categorization level, need to be reviewed by the Project Board or a subsequent PAC process (and where relevant the GEF or GCF). The Project Risk Register would also need to be updated.

***For projects that may affect indigenous peoples, it is critical to ensure there is sufficient time to engage with potentially affected indigenous peoples in order to understand their concerns and visions. This starts early during project development and screening and must be planned for during the assessment of potential risks and impacts, and, for projects with significant impacts, during the development of IPPs/IPPFs (see Section 4).***

### 3.1 Identify whether a project might affect indigenous peoples

Questions 6.1 and 6.2 of the SESP Checklist help guide the project screener to determine whether indigenous people are present in or have attachment to proposed project areas. These are of course key threshold questions that need to be addressed carefully. See Section 2.3 and the resources there to assist with this process. Iterative screening should be undertaken as project activities and locations are further defined during the project development process.

| Table 1a. Guidance for Responding to Standard 6 Risk Based Questions in SESP<br>(Note: numbering reflects that of SESP Risk Screening Checklist)   |  |
|--|--|
| <b>Would the project potentially affect:</b>   |  |
| <b>6.1 areas where indigenous peoples are present (including project area of influence)?</b>   |  |
| This question highlights the importance of correctly identifying a potentially affected group as indigenous. This approach is designed to avoid, reduce or mitigate potential risks and impacts on potentially vulnerable communities, enhance opportunities for inclusiveness in project benefits and provide potentially significantly affected indigenous peoples with decision making powers through the FPIC Process. |  |
| “Project area” and “project area of influence” refer to geographic areas that are potentially affected by a proposed project and includes downstream areas and areas from which resources are extracted. While some projects may be national or  |  |

regional in scope, the focus in the screening should be on the intended geographic areas most likely to be affected (for example, a project that aims to enhance the management of logging concessions in Southeast Asia might include more than one country, but the area of influence would here be the remaining forest blocks rather than the entire countries).

“Presence” in the project area includes actual occupation, whether permanent or temporal (i.e. nomadic uses, seasonal agricultural activities, etc.), as well as ancestral territories (see Section 2.3.). The engagement of indigenous peoples experts in the initial screening is critical to understand which group meets the characteristics commonly associated with indigenous peoples, a clear understanding of the geography of the project location and the presence of indigenous peoples in this area as well as an ability to identify based on an assessment of activities and potential impacts the project's area of influence (see SES Part C. Assessment and Management), including associated facilities (components not funded as part of the project but whose viability and existence depend on the project) and potential cumulative impacts (including 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 projects, it would not be feasible to answer screening question 6.1 with any precision and the focus should be here to verify whether the Global/Regional project is designed to provide benefits to all indigenous peoples or only to some of them. In case of the latter, the rationale for this limitation will need to be scrutinized and documented.

Some questions to consider are:

- Are there peoples in the project area of influence that identify 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?
- Do group(s) that have lost access to lands, territories or resources because of forced severance, conflict, government resettlement, dispossession, natural disasters, or incorporation of lands into urban areas still maintain collective attachment to those lands, territories and/or resources, regardless of their present physical location?
- 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 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).<sup>12</sup> This distinction is important when the question arises as to who must effectively and meaningfully participate in all the phases of the project.

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<sup>12</sup> 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.



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 meet definitions noted in Standard 6, para. 5.*

## 6.2 activities located on lands and territories claimed by indigenous peoples?

Project screeners need to examine whether the project location and area of influence encompasses lands, territories, and resources 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).

*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.*

In addition, care needs to be taken in identifying lands and territories claimed by indigenous peoples in areas where more than one group lives of which one is indigenous and the other not. Take for example a project that aims to enhance the quality of cocoa production in the Congo rainforest. Indigenous peoples (Baka, etc.) are present (Question 6.1), but the land of the "Bantu" used for agriculture is not claimed by the Baka as both groups have lived on the same land for centuries with one owning agricultural land along the larger rivers and the other the forests away from the larger rivers.

If the initial screening identifies that indigenous peoples may be present in project areas (including the area of influence) and/or have attachment to such areas, this will be documented in the SESP and Project Document. At this stage the project team should, if it has not already done so, initiate meaningful consultations (see Section 4) with the potentially affected indigenous peoples in order to identify their interests and concerns. Although it may not be possible to undertake comprehensive consultations at this stage (e.g. given uncertainties of proposed activities or resource constraints), the project team should undertake best efforts to engage with the indigenous communities and representatives that have so far been identified.

If the initial screening finds that the potential project will not affect indigenous peoples, the rationale for this should be documented in the SESP (especially in areas inhabited by indigenous peoples). This decision should be reviewed from time to time to verify whether the project area has changed and therefore potentially requires additional screening. If all available information confirms that the project will not affect indigenous people, no further action is required to meet the requirements of Standard 6.

## 3.2 Identifying potential risks and impacts to indigenous peoples

When screening for potential risks and impacts to indigenous peoples (after determining that a given project might affect indigenous peoples via checklist questions 6.1 and 6.2), it is important to recall that:

- (i) **All results and activities** outlined in the project Results and Resources Framework – 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.



Addressing the questions in Table 1b below should involve input from the potentially affected indigenous communities and relevant experts. The project developers or team should verify the screening with affected communities and their representatives during early consultations to ensure that potential risks and impacts of proposed activities are well understood and recorded.

| <p><b>Table 1b. Guidance for Responding to Standard 6 Risk Based Questions in SESP</b><br/> <i>(Note: numbering reflects that of SESP Risk Screening Checklist)</i></p>   |
|---|
| <p><b>Would the project potentially involve or lead to:</b></p>   |
| <p><b>6.3 impacts (positive or negative) to the human rights, lands, natural resources, territories, and 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)?</b></p>   |
| <p><i>Note: If the answer to screening question 6.3 is “yes”, the project entails significant risks to the indigenous peoples and requires the elaboration of an IPP/IPPF and an FPIC process with the affected indigenous peoples (the most appropriate categorization level would be Substantial Risk or High Risk)</i></p> <p>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. <b>Box 7</b> identifies a range of issues to consider regarding ownership and usage rights.</p> <p>Understanding the <i>potential</i> effects (both <i>direct</i> and <i>indirect</i>) 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 and/or poor 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 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.</p> <p><i>For example, a project in indigenous territories that grants usage or extraction rights to other stakeholders or restricts access rights to indigenous peoples, a project that provides agricultural extension services in an area in which indigenous pastoralists are living, a project that supports the modernization of land tenure registration, a project that aims to support the use of local languages in the curricula of primary schools.</i></p> <p><i>With a view on Global and Regional Projects see guidance provided above in Table 1a at question 6.1.</i></p> |
| <p><b>Box 7. Analysis of ownership and usage rights to potentially affected lands, territories, resources</b></p> <p>The screening process (and subsequent analysis) should consider, at a minimum, the following issues when a project may affect lands, territories, and resources of indigenous peoples:</p> <ul style="list-style-type: none"> <li>• customary laws of the affected people related to land tenure and resource use and management</li> <li>• 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</li> <li>• existence of any formal legal title resting with the concerned indigenous peoples to all or some of the ancestral area</li> </ul>  |

- 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 other communities.

**6.4 the 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 4 assists in determining what culturally appropriate consultation and consent processes have been undertaken. 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 project cannot proceed without an FPIC process with the affected indigenous peoples based on detailed assessments and measures agreed on in an IPP/IPPF.

*For example, project documentation does not contain a record of early consultation processes with potentially affected indigenous peoples. 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 the utilization, commercial development or conservation of natural resources on lands and territories claimed by indigenous peoples?**

Utilization or commercial development or conservation 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). Such projects require an FPIC process and documented agreement of the affected indigenous peoples based on an IPP/IPPF.

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

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

SES Standard 5 prohibits the use of “forced eviction” (see SES Standard 5 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 whether physical displacement (temporary or permanent, full or partial) and/or economic displacement are potential risks that 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 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. In addition, the screeners will need to go beyond registered and/or recognized land tenure and property rights and ensure that all indigenous people that have an attachment to the land, territory or resource in question, including those that might have been involuntarily displaced from this land, are included in this assessment. Any projects that involve potential displacement of indigenous peoples requires FPIC processes and documented agreement of the indigenous peoples based on an IPP/IPPF.

*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*

|  |  |
|--|--|
| <b>6.7 adverse impacts on the development priorities of indigenous peoples as defined by them?</b>   |  |
| <p>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 adequate and/or a benign effect by non-indigenous peoples may be perceived as quite adverse to indigenous peoples (e.g. exclusion, limited opportunities to benefit). In such cases, the project developers or team should use the assessment and IPP/IPPF processes to structure the project around the development priorities of potentially affected indigenous peoples, including targeted benefits and actions.</p> <p><i>For example, a project that provides benefits only to non-indigenous peoples in areas where indigenous peoples are present, or benefits (health, education, etc.) that are culturally inappropriate in the view of the indigenous peoples.</i></p>  |  |
| <b>6.8 risks to the physical and cultural survival of indigenous peoples?</b>  |  |
| <p>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. Such projects require an FPIC process leading to documented agreement (if granted) of the affected indigenous peoples based on an IPP/IPPF.</p> <p>Risks involving uncontacted or voluntarily isolated indigenous populations ought be considered and evaluated in a context-specific manner, respecting the wishes and needs of the respective groups.</p> <p><i>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</i></p> |  |
| <b>6.9 impacts on the Cultural Heritage of indigenous peoples, including through the commercialization or use of their traditional knowledge and practices?</b>  |  |
| <p>“Cultural Heritage” is defined in SES Standard 4 and its guidelines.<sup>13</sup> This screening question requires a process of evaluating the possible <i>direct</i> and <i>indirect</i> impacts, both beneficial and adverse, of all proposed activities on tangible cultural heritage, e.g. 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 (intangible cultural heritage), this can come in various forms, including appropriation (see <b>Box 8</b>). It should be noted that UNDP is required to respect standards related to FPIC of</p>  | <p><b>Box. 8. Traditional knowledge</b> refers to the knowledge, innovations and practices of indigenous and local communities around the world. Traditional knowledge is transmitted orally from generation to generation. It tends to be collectively owned and takes the form of stories, songs, folklore, proverbs, cultural values, beliefs, rituals, community laws, local language, and agricultural practices, including the development of plant species and animal breeds. In the context of the Convention on Biological Diversity Art. 8(j),</p> |

<sup>13</sup> 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>.

|   |  |
|---|--|
| <p>indigenous peoples where such utilization or commercialization is to take place and consequently requires the elaboration of an IPP/IPPF.</p> <p><i>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</i></p> | <p>traditional knowledge is understood as the knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biodiversity.</p> |
|---|--|

One of the key objectives of the early 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 empowerment, mainstreams sustainability and resilience, and strengthens accountability.

Where potential risks and impacts are identified in the screening checklist, the very process of identifying needed assessment and mitigation/management measures also provides a platform for identifying opportunities to further respect and promote indigenous peoples rights and to enhance their living standards and livelihoods (see **Table 2**).

| <b>Table 2. Examples of Relationship Between Identifying Risks and Opportunities for Projects with Potential Adverse Impacts to Indigenous Peoples</b>  |   |
|---|---|
| <b>RISKS</b>  | <b>OPPORTUNITIES</b>  |
| <p>Where the risk and likelihood of marginalization and discrimination exists...</p>  | <p>An opportunity exists to support activities for greater inclusion of actors.</p>   |
| <p>Where the risk of interferences with land rights of indigenous peoples may exist...</p>  | <p>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.</p>   |
| <p>Where the risk of denied access to resources used for livelihoods, traditional medicines etc. exists in the context of a conservation project...</p> | <p>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.</p> |
| <p>Where the risk of indigenous development priorities and perspectives may be ignored...</p>   | <p>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.</p>   |
| <p>Where the risk of conflicts between stakeholders and indigenous peoples may occur...</p>   | <p>An opportunity exists to support forums to increase peaceful dialogue and encourage agreement.</p>   |
| <p>Where the risk of commercial exploitation of cultural heritage of indigenous peoples exists in the context of an ecotourism project.</p>             | <p>An opportunity exists that indigenous peoples take ownership of this project and use it to generate awareness and document their cultural heritage</p>   |

### 3.3 Determining the safeguard instrument required to ensure compliance with Standard 6

Standard 6 notes that requirements of the Standard apply to all projects that may affect the human rights, lands, territories, natural resources, and 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).

As outlined above, if the initial screening and/or any update of this including the appraisal-stage screening suggests that the project might entail social and/or environmental risks and impacts to indigenous people (that is, any “yes” answers to the screening questions), this needs to be summarized in the SESP template and stakeholder engagement needs to be undertaken with potentially affected indigenous peoples to understand their preferences, views and concerns.

Based on these consultations as well as the full screening of the proposed project following the processes outlined in Section 4, the project developers or team will determine, whether:

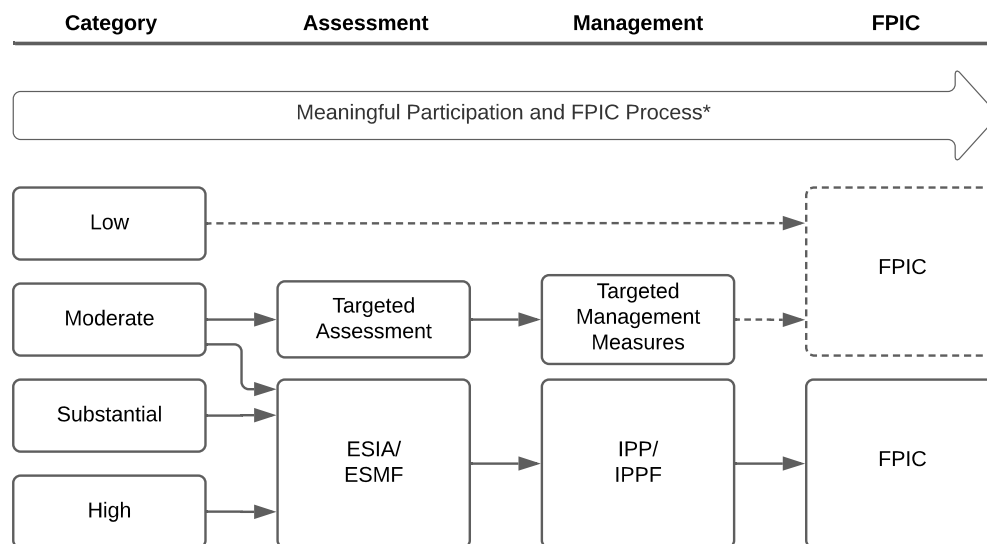
- all expected risks and impacts on indigenous peoples are positive or minor and do not require further assessment. Documentation should reflect that the project-affected indigenous peoples share this determination.
- expected risks and impacts are limited in scale, can be identified with a reasonable degree of certainty, and can be addressed through application of standard good practice and targeted assessments (e.g. straightforward Moderate Risk project).
- the anticipated risks and impacts are potentially significant (complex Moderate Risk, Substantial Risk and High Risk projects) and therefore require an ESIA (or SESA) and the elaboration of a detailed IPP/IPPF.

See **Figure 2** below for a general outline of risk categories and levels of assessment and management planning. As discussed in Section 4, FPIC processes may need to be pursued for projects with only positive and/or minor impacts and must be pursued for projects with potentially significant adverse impacts.

### 3.4 Verification before and throughout project implementation

Project teams need to use the SESP Template to document how identified impacts are to be avoided and, if avoidance is not possible, addressed in the project design, in the ESIA and/or the IPP/IPPF and whether FPIC is required. The project team should also use the SESP Template together with the ESIA and/or IPP/IPPF to guide its monitoring and supervision process. If UNDP notes during implementation that commitments and/or mitigation plans outlined in the ESIA and IPP/IPPF are not implemented as planned, it will require the implementer to bring the project back into compliance with Standard 6 through a timebound action plan agreed on with the affected indigenous peoples. If this action plan is not respected or fails to bring the project back into compliance, the project team should suspend its support until compliance has been reestablished.

Figure 2. General diagram of risk categories, assessment, management and FPIC processes



\* SES requires FPIC to be ensured for projects that "may affect – positively or negatively – the indigenous peoples' rights and interests, lands, territories, resources, livelihoods, cultural heritage." Dotted line indicates that FPIC may be required.

## 4. Stakeholder Engagement

### 4.1 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 who might be impacted by a UNDP-supported project. Standard 6 contains specific requirements regarding participation of and agreement with indigenous peoples throughout the project cycle (see S6, para. 10).

If a project may affect – positively or negatively – indigenous peoples' rights and interests, lands, territories, resources, livelihoods, cultural heritage), then FPIC must be sought (see definitions in Section 2.3 and Section 4.2 below).

As these requirements go beyond the general stakeholder engagement requirements of the SES, the following elements must be carefully reviewed and implemented:

***If the initial screening indicates that the project might affect indigenous peoples, the project development team defines mechanisms and processes for full, effective participation of indigenous peoples throughout the project cycle.*** As early as possible, mechanisms and processes need to be established in an open dialog with the potentially affected indigenous peoples to ensure their full, effective participation throughout the project cycle. Participation mechanisms and processes are to be outlined in the overall Stakeholder Engagement Plan (SEP, see also SES Section C para.18ff). 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. For projects that entail only positive or minor impacts and do not require an FPIC process, this might be limited to assurances that indigenous peoples have equal access to decision-making processes, grievance redress mechanisms, etc. For projects with potentially significant adverse impacts, the project's SEP will summarize the detailed participatory processes and procedures (the project's IPPF, where developed, would indicate these processes and the SEP may reference it).

Issues discussed during consultation processes shall 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 and IPP/IPPF processes, see below) should be clearly defined at the outset of the project and reviewed from time to time to ensure that they are still adequate in case of design changes, etc.

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

#### Box 9. 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.

**Ensure that consultation processes are culturally appropriate and conducted in good faith.** Consultation, and specifically FPIC processes (see below) shall be 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.

UNDP is aware that in some cases the consultation and engagement process needs to strike a balance between traditional decision-making processes and international standards of inclusiveness. As there is no one-size-fits-all solution, the project team will consult with indigenous peoples experts to ensure that all strata of society are involved and document the rationale for the chosen approach in the SEP and/or IPP/IPPF.

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.

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 9**). 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 or certain project activities—should be respected (see **Box 10**).



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.

#### **Box 10. 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.

**The process and outcomes of good faith negotiations with indigenous peoples will be well documented** (see SES S6 para. 11), including agreements reached as well as disagreements and dissenting views. Consultation reports will indicate how the expressed interests and concerns of participants have been accommodated in the project design and activities. Records of engagement processes will be shared and reviewed by the indigenous peoples concerned.

***Ensure participation of indigenous peoples is gender inclusive and tailored to needs of disadvantaged and vulnerable groups.***<sup>14</sup> It may often be the case that indigenous women, persons with disabilities, youth, poor, etc., are often dually disadvantaged due to their gender and their cultural identity and their status and identity may continually shift depending on the roles and occupations they hold. Indigenous women and youth 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, young adults and poorer households in community decision making. They might be censored in community forums and their relatives may talk on their behalf without proper internal consultations. Households headed by women and young adults, especially when unmarried or with no children or poor, 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, youth, the poor, etc., that might be excluded from customary decision making may be sought through means such as targeted (women-only/youth-only/poor-only, etc.) discussion groups, plays and music, or cultural events or festivals. Consultation with indigenous women, youth, poor, etc., and their participation may require additional 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 all strata of the indigenous peoples communities.

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<sup>14</sup> 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>.



**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. SEPs, screening reports, both draft and final ESIA/ESMPs and IPP/IPPFs, if needed, and monitoring reports are to be disclosed (see SES, Part C, para. 28).

In addition to disclosing complete documents, summaries in local languages of the assessment's key findings, benefits, mitigation measures, etc., will 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 assessments and IPPs/IPPFs—in draft and updated forms—need to be disclosed locally. Disclosure should be proactive, employing methods such as delivery of the assessment and IPP/IPPF directly to rural townships and indigenous peoples organizations, posted on village communal walls, described in a village meeting, or distributed as brochures to households (see also the SES Supplemental Guidance on Disclosure of Project-related Social and Environmental Screenings, Assessments and Management Plans in the [SES Toolkit](#)).

**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 ensuring that an effective project-level grievance mechanism is available for projects that may present potentially significant adverse impacts (e.g. complex Moderate Risk, Substantial Risk, High Risk projects).

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. While UNDP aims to use an integrated grievance redress mechanism for all people potentially affected by its interventions, there might be situations where this would result in an unequal access of indigenous peoples due to conflicts, power imbalance and cultural and language barriers. In these cases, the project team will need to consider establishing a stand-alone grievance process for indigenous peoples.

The SEP/IPP/IPPF will document the proposed structure of the GRM and the results of consultations on this subject with the indigenous peoples including their preferences and concerns so that the appropriateness of the chosen approach can be reviewed during monitoring and evaluation.

UNDP's SES Guidance Note on Stakeholder Engagement and Supplemental Guidance on Grievance Redress Mechanisms in the [SES Toolkit](#) provide additional background information on GRMs.

In addition, UNDP's Accountability Mechanism – the Stakeholder Response Mechanism and the Social and Environmental Compliance Unit – is available to all of UNDP's project stakeholders.<sup>15</sup> Information on how to access UNDP's Accountability Mechanism needs to be shared during the stakeholder engagement process.

## 4.2 Ensure Free, Prior and Informed Consent (FPIC) processes pursued in certain circumstances

**What types of projects require FPIC processes and the development of IPP/IPPFs?** 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.

As noted earlier, the SES requires that FPIC be ensured on any matters that may affect – positively or negatively – the indigenous peoples' rights and interests, lands, territories, resources, livelihoods, and cultural heritage (SES

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<sup>15</sup> Information on UNDP's Accountability Mechanism is available at <https://www.undp.org/content/undp/en/home/accountability/social-and-environmental-responsibility/social-and-environmental-standards.html>

Standard 6 para. 10). This encompasses a wide-range of circumstances, including projects that may have only positive or very minor impacts, but may still affect, for example, the rights and interests of the affected indigenous peoples (e.g. supporting educational or health services).

Below are key circumstances that require FPIC:

- **Loss, restrictions or modification of rights to and use of lands, territories, resources, and livelihoods:** *FPIC needs to be ensured on any matters that may affect the rights to, interests on, and use of lands, resources, territories, etc. (whether titled or untitled to the people in question) as well as livelihoods of affected indigenous peoples. This includes but is not limited to activities proposing the development, utilization, or exploitation of mineral, forest, water or other resources on lands and territories traditionally owned, occupied or otherwise used, acquired by indigenous peoples, including lands and territories for which they do not yet possess title. This may also include territories from which they were displaced. (S6 para. 10)*
- **Relocation:** *No relocation of indigenous peoples will take place without the FPIC of the indigenous peoples concerned and only after agreement on just and fair compensation, and where possible, with the option of return (S6, para.9) The SES also categorically prohibits support for projects that may result in the forcible removal of indigenous peoples from their lands and territories (S6 para. 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 FPIC (S6 para. 15d)*

**SES S6 clearly states that “project activities that may adversely affect the existence, value, use or enjoyment of indigenous lands, resources or territories are not conducted unless agreement has been achieved through the FPIC process” (para. 10).**

The following checklist (**Table 3**) may assist in helping to determine whether project activities require an FPIC process including but not limited to the establishment of an IPP/IPPF in open dialog with the potentially affected indigenous peoples.

| <b>Table 3. Checklist for appraising whether an activity requires an FPIC process and an IPP/IPPF (partial listing)</b>  | <b>Yes/No</b> |
|--|---------------|
| 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, FPIC will be required of the potentially affected peoples for the specific activity that may result in the impacts identified in the questions and an IPP/IPPF will be needed.*

**Undertaking an FPIC process.** When an FPIC process is required, the project team will engage the potentially affected indigenous peoples to reach agreement on the scope and format of the FPIC process and the scope of the IPP/IPPF. This 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 and the associated IPP/IPPF 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 and the establishment of the IPP/IPPF. A facilitator who speaks the necessary languages should be hired to lead the process. The facilitator needs to be available throughout the project, be aware of the project context, and be culturally and gender-sensitive. If possible, the facilitator should be identified by the affected indigenous peoples. It will also be helpful to involve other stakeholders 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.<sup>16</sup>

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) on the project or project components and the IPP/IPPF 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 activities (or project) for which FPIC could not be ascertained will not proceed and/or that engagement must be*

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<sup>16</sup> Annex V of the UN-REDD Guidelines on Free, Prior and Informed Consent provides details on the role of such a facilitator.

*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 activities and/or project.*<sup>17</sup>

A few key points:

- Understand what constitutes consent within the community, including both the process as well as the actual indicators that consent has been achieved (e.g. show of hands, ballots, decision among elders, etc.).
- Document the process (see below) followed and decisions made, using methods that are relevant and useful to all parties. It may be necessary to document the process and decisions in more than one way, for example in both a written document and a recording of the representative speaking the decision.
- If the project/activities will be moving forward, work in partnership with the indigenous peoples' community to determine the next steps, and move forward with the project planning and implementation phase per the agreements reached.
- Conduct periodic review of the agreements with the community throughout the lifecycle of the project. The frequency of review should be determined with the community and modified as needed with the agreement of the parties once the project or is underway.

**Recording and documenting the FPIC process.** The FPIC process should be well-documented in writing and reflected in the IPP/IPPF and made publicly available. The outcomes documentation should clarify if consent was provided or withheld and record whether the community provided consent through an oral contract.

It is important to document the whole FPIC process in the IPP/IPPF (or subsequent reports), including commitments and requirements agreed upon to reach such agreement as well as ideas, questions and concerns raised, so that it is possible to review the whole process during monitoring and in the event a grievance or dispute arises.

Rights-holders may choose to grant their consent on the basis of certain conditions to be documented and operationalized (e.g. benefits continue to be derived from the project, restrictions on access to certain areas, limitations on contact with certain sectors of society or members living in voluntary isolation, etc.). These should be noted in the IPP/IPPF. If these conditions are not met, the community may review and either reaffirm or refuse consent. This option may be invoked at any stage of project implementation. Consent is an iterative process, not a single decision point.

## 5. Assess, Avoid, Mitigate and Manage Risks and Impacts

### 5.1 Assessing potential risks and impacts to indigenous peoples

Recognizing the particular issues and challenges of assessing activities that may affect indigenous peoples, the international community developed the “Akwé: Kon Voluntary 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 (CBD Decision VII/16)”.<sup>18</sup> They outline how to facilitate a collaborative framework within which decision makers, project proponents, governments and indigenous peoples can undertake culturally appropriate forms of impact assessment that:

- a. support the full and effective participation and involvement of indigenous and local communities in screening, scoping and development planning exercises

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<sup>17</sup> Quoted from UN-REDD Guidelines on FPIC, p.20.

<sup>18</sup> Available at <https://www.cbd.int/traditional/guidelines.shtml>.

- 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.

The following expands on the above and discuss the specific S6 requirements:

***The perspective of the indigenous peoples concerned is a critical starting point for impact assessment***, and the indigenous peoples concerned should have ample opportunities as early as possible to participate in the assessment and development of avoidance and mitigation measures. Indigenous peoples' traditional knowledge is a valuable resource for identifying and addressing potential environmental and social risks, including hazards and disaster risks, and should be incorporated throughout the project cycle.

***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 (S6 para. 12). The assessment report (usually an ESIA report) should include confirmation and description of the attachment (via ownership, occupation and use or claims) of indigenous peoples to areas and resources that may be affected by the project's activities, including baseline socioeconomic profile, etc. In addition, the assessment report needs to summarize the participatory processes with affected indigenous groups on the conduct of the assessment, including, where required and already initiated, a summary of FPIC processes and the underlying IPP/IPPF and documented outcomes.

***Analyze the substantive rights of the affected indigenous peoples:*** UNDP will ensure that the assessment process for projects involving indigenous peoples include an analysis of their substantive rights, as affirmed in Applicable Law and the status and challenges of implementation (S6 para. 4). 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 6**) as well as the status of land tenure related to the relevant areas that may be affected by the project (see **Box 7**). A national or international legal expert (from the UNCT or academia or other) would be able to undertake and provide this analysis in consultation with potentially affected indigenous peoples, their organizations and relevant civil society organizations (if any).

***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 (including persons with disabilities, youth, poor, etc.) 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 7**). 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.

As noted in Section 4.2, 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, based on an IPP/IPPF. All potential adverse impacts on such lands, territories, and resources must be identified and addressed in the ESIA and IPP/IPPF – including identification of alternative designs to avoid and/or reduce adverse impacts and the development of mitigation measures for adverse impacts that cannot be avoided. 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 FPIC 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.

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, territories, and resources 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.

Where the assessment finds that indigenous peoples lands, territories and resources will not be affected, this needs to be clearly reflected in assessment report.

**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 FPIC (S6 para. 15d). For projects that may affect the cultural heritage of indigenous peoples, assessments should apply as a minimum standard of guidance the “Akwé: Kon Voluntary Guidelines” (see above). In addition, project developers should adhere to The Tkarihwaí:ri Code of Ethical Conduct on Respect for the Cultural and Intellectual Heritage of Indigenous and Local Communities Relevant for the Conservation and Sustainable Use of Biological Diversity (2010).<sup>19</sup> The Code provides a collaborative framework aimed at the effective participation and approval of indigenous and local communities in activities, including research proposed, on their knowledge, territories and related resources. It proposes a set of ethical principles, special considerations, and methods for working with indigenous peoples and these should be followed to the extent possible.

If indigenous peoples affected by project activities hold the location, characteristics or traditional use of cultural heritage in secret, measures should be put in place to maintain confidentiality (again, see the Tkarihwaí:ri Code). 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

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<sup>19</sup> Available at <https://www.cbd.int/traditional/code.shtml>.

intrusions and unconsented sharing of intellectual property, with proper justification (see the SES Standard 4 on Cultural Heritage and the [SES Toolkit](#) for further guidance).

In addition, it is important to respect indigenous peoples' traditional knowledge (see **Box 8**) and customary use of biological resources (also referred to as customary sustainable use) which is understood in the context of the Convention on Biological Diversity Art. 10(c) as the uses of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements.

**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.<sup>20</sup> 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 process of ethnocide.” “For indigenous peoples, the loss of ancestral land is tantamount to the loss of cultural life, with all its implications.”<sup>21</sup>

Standard 6 (paras. 8, 9) 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.**<sup>22</sup> 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 for Standard 5 and Question 6.6 for Standard 6). 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 in the [SES Toolkit](#) 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 (S6 para. 15c).

Indigenous peoples in voluntary isolation are indigenous peoples or segments of indigenous peoples who do not maintain sustained contacts with the majority non-indigenous population, and who generally reject any type of contact with persons not part of their own people. They may also be peoples or segments of peoples previously contacted and who, after intermittent contact with the non-indigenous societies, have returned to a situation of isolation and break the relations of contact that they may have had with those societies.

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<sup>20</sup> 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.

<sup>21</sup> *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.

<sup>22</sup> 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.

Indigenous peoples in “initial contact” are indigenous peoples or segments of indigenous peoples who maintain intermittent or sporadic contact with the majority non-indigenous population, generally used in reference to peoples or segments of peoples who have initiated a process of contact recently. However, “initial” should not necessarily be understood as a temporal term, but as a reference to the scant extent of contact and interaction with the majority non-indigenous society. Indigenous peoples in initial contact are peoples who were previously in voluntary isolation and who for some reason, voluntary or otherwise, came into contact with members of the surrounding population, and although they maintain a certain level of contact, they are not fully familiar with nor do they share the patterns and codes of social relations of the majority population.<sup>23</sup>

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 (see Section 5.2).

**Timing of assessments and management plans:** Assessments are most effective when initiated early during project preparation and the draft assessment report should be shared with potentially affected indigenous peoples and other stakeholders prior to project approval for review and comments. However, many UNDP projects may not have full information regarding specific project components and locations at the time of project appraisal. Conducting an assessment with incomplete information would generally lead to inappropriate assessments and management plans. Where project components and locations are not yet fully defined, a framework approach (e.g. ESMF, IPPF) is utilized that includes a preliminary social and environmental analysis and establishes procedures for further assessment and the development of management measures/plans (ESMP/IPP) during project implementation.

The SES Guidance Note on Social and Environmental Assessment and Management provides more detail on utilizing a framework approach and the following section notes the use of an Indigenous Peoples Planning Framework (IPPF). However:

- ***In all cases the required social and environmental assessment and adoption of appropriate mitigation and management measures (ESMP/IPP) 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.***

## 5.2 Indigenous Peoples Plan/Framework

For projects/activities with significant impacts (i.e. projects that “may affect the rights, lands, resources or territories of indigenous peoples,” S6 para. 16) and thus also require the FPIC of affected indigenous peoples (see above), an IPP needs to be prepared.

Standard 6 para. 16 notes that where programming activities are designed solely to benefit indigenous peoples, a separate action plan may not be required, provided that the programming documentation address the elements of the IPP (hence, the ProDoc may serve as the IPP).

The IPP is based on the findings of the assessment process and needs to be developed with full, effective and meaningful participation of potentially affected indigenous peoples. The IPP establishes a timebound, fully budgeted action plan for ensuring that identified impacts are appropriately addressed, culturally appropriate benefits are provided, participatory processes are followed, and needed capacity support and institutional

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<sup>23</sup> IACHR, Indigenous Peoples in Voluntary Isolation and Initial contact in the Americas (2013), pp. 4-5, at <http://www.oas.org/en/iachr/indigenous/docs/pdf/Report-Indigenous-Peoples-Voluntary-Isolation.pdf>



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, territories, and resources. 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, while the following focuses on key requirements:

**Ensuring culturally appropriate benefits:** The IPP needs to detail the arrangements, agreed to by 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 (S6 para. 13). 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.

When project or activities include the commercial development of indigenous peoples’ lands, territories and resources, the implementing partner informs the affected people of their rights under national law and of the scope, nature and impacts of the potential use, enabling the indigenous peoples to share equitably in the benefits from such commercial development or use.

**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 11**) 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 (S6 para. 6) and, where necessary, legal personality (see S6 para. 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 11. 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:** S6 para. 14 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:** When the physical 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 FPIC of the indigenous peoples concerned and only after agreement on just and fair compensation and, where possible, with the option of return (S6 paras. 8, 9). 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 in the [SES Toolkit](#).

**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, territories, resources or their way of life, the IPP (and where relevant IPPF) 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 (S6 para. 15c). 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.

**When is an IPPF prepared?** As noted above, the assessment and development of appropriate mitigation and management measures such as an IPP are most effective when developed prior to project appraisal. However, sometimes the project and/or activities that might affect indigenous peoples are not defined at appraisal to a level of detail that enables the establishment of a meaningful IPP. The use of the framework approach and therefore the development of an IPPF is appropriate when:

- the design or location of the project is not known during project preparation,
- a project has multiple subprojects that will only be designed during project implementation, or
- the assessment process must be funded through the project budget.

The framework specifies the timing for completion of further assessments/studies, specific plans and includes a clear statement of roles and responsibilities, budget, and commitment for funding. The IPPF should be presented for PAC consideration and should address as many aspects of the IPP as possible and needs to clearly state when and how the full IPP will be developed. As with the IPP, the IPPF needs to be developed as much as possible with meaningful consultation and participation of the indigenous peoples concerned (to the degree that they are known) and outline steps for ongoing consultation and any required FPIC processes.

The IPPF shall be periodically reviewed throughout project implementation and modified when necessary with the meaningful participation of indigenous peoples concerned to ensure that subsequent IPPs are prepared in due time.

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. In all cases, 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.***

**Expertise requirements:** Projects that require an IPP/IPPFs should be conducted by, or supported by 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. Monitoring Project Implementation

The assessment reports and management plans prepared under Standard 6 will include key performance indicators and a monitoring plan to ensure that the project's mitigation and management measures are being implemented (S6 para. 17).

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 all strata of the affected indigenous peoples and for the implementation of any identified corrective actions. The extent of monitoring will be proportionate to the nature of the project, the project's social and environmental risks and impacts, and compliance requirements.

The assessment and/or IPP outline the specific monitoring framework for the project. 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.).

Monitoring implementation activities includes the following:

- i. progress of implementation of mitigation/management plans required by the SES
- ii. review of complaints and grievances from project-affected stakeholders
- iii. follow-up on any identified corrective actions, and
- iv. completion and disclosure of any required monitoring reports on SES implementation (including on-going reporting to project-affected stakeholders).

Findings from monitoring should be integrated into an adaptive management framework where management responses are adapted as necessary to ensure that project risks and impacts are properly addressed. When appropriate the findings from monitoring should be verified with independent experts, communities and other key stakeholders.

Projects or activities for which FPIC has been established (based on an agreed IPP/IPPF) should include indigenous peoples specialists and representatives of the affected indigenous peoples in the monitoring team.

Standard 6 requires that transparent participatory monitoring arrangements be put in place wherein the indigenous peoples concerned will jointly monitor project implementation (S6 para.17). 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.

A project should not be considered completed unless all measures and actions set out in the IPP have been implemented; thus when considering to close a project UNDP will assess whether all IPP provisions including benefit sharing have been delivered and, if this is not the case, an action plan should be put in place to ensure that all commitments will be achieved.

Where monitoring or other sources of information indicate a potential lack of compliance with project commitments related to indigenous peoples as outlined in the ESIA and IPP or Standard 6 in general, the implementing partners will need to discuss and agree with the affected indigenous peoples how to bring the

project back into compliance. This corrective action plan should be disclosed as part of the monitoring reports and closely supervised by UNDP.

If there are substantive changes to the project during implementation or changes in the project context that alters the project's risk profile, then additional screening, assessment and revised management measures may be needed.

UNDP's review activities should be appropriate to the type and scope of the requirements, and may include:

- reviewing monitoring reports, conducting site visits and reviewing project-related information
- reviewing compliance with Standard 6 requirements in particular for projects with significant impacts on indigenous peoples
- advising partners on how to manage issues related to the Standard 6
- communicating risks and probable consequences of failure to comply with the SES requirements, and initiating remedies if the partner fails to (re)establish compliance.

## ANNEX 1: Indicative Outline of Indigenous Peoples Plan

If the proposed project may affect the rights, lands, territories or resources 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. Where the specific project activities, subprojects and/or locations are not yet defined and will be prepared during project implementation, an Indigenous Peoples Planning Framework (IPPF) is to be utilized (see Annex 2).

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:

1. Executive Summary: Concisely describes the critical facts, significant findings, and recommended actions
2. Description of the Project: General description of the project, the project area, and components/activities that may lead to impacts on indigenous peoples
3. Description of Indigenous Peoples: A description of affected indigenous people(s) and their locations, including:
  - a. description of the community or communities constituting the affected peoples (e.g. names, ethnicities, dialects, estimated numbers, etc.);
  - b. description of the lands, territories and resources to be affected and the affected peoples connections/ relationship with those lands, territories and resources; and
  - c. an identification of any vulnerable groups within the affected peoples (e.g. uncontacted and voluntary isolated peoples, women and girls, persons with disabilities, elderly, others).
4. Summary of Substantive Rights and Legal Framework: A description of the substantive rights of indigenous peoples and the applicable legal framework, including:
  - a. 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);
  - b. Analysis as to whether the project involves activities that are contingent on establishing legally recognized rights to lands, territories or resources that indigenous peoples have traditionally owned, occupied or otherwise used or acquired. Where such contingency exists (see Standard 6 Guidance Note, sections 5.1., 5.2), include:
    - i. 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
    - ii. list of the activities that are prohibited until the delimitation, demarcation and titling is completed.
  - c. 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 5.2):
    - i. 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
    - ii. list of the activities that are prohibited until the recognition is achieved.

5. Summary of Social and Environmental Assessment and Mitigation Measures
  - a. A summary of the findings and recommendations of the required prior social and environmental impact studies (e.g. targeted assessment, ESIA, SESA, as applicable) – specifically those related to indigenous peoples, their rights, lands, territories and resources. 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.
  - b. Where potential risks and adverse impacts to indigenous peoples, their lands, territories and resources are identified, the details and associated timelines for the planned measures to avoid, minimize, mitigate, or compensate for these adverse effects. Include where relevant measures to promote and protect the rights and interests of the indigenous peoples including compliance with the affected peoples’ internal norms and customs.
6. Participation, Consultation, and FPIC Processes
  - a. 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.
  - b. 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 meaningful consultation and FPIC (consistent with section 4 of the Standard 6 Guidance Note).
7. 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.
8. Capacity support: 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. 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.
9. 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.
10. Institutional Arrangements: Describe schedule and institutional arrangement responsibilities and mechanisms for carrying out the measures contained in the IPP, including participatory mechanisms of affected indigenous peoples. Describe role of independent, impartial experts to validate, audit, and/or conduct oversight of the project.
11. Monitoring, Reporting, Evaluation: Describe the monitoring framework for the project and key indicators for measuring progress and compliance of requirements and commitments. Include 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. Indicate process for participatory review of IPP implementation and any necessary modifications or corrective actions (including where necessary consent processes).
12. Budget and Financing: Include 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 take place before the corresponding activities in the IPP are implemented. Such activities should be clearly identified. Where other project documents already develop and address issues listed in the above sections, citation to the relevant document(s) shall suffice.

## ANNEX 2: Indicative Outline of Indigenous Peoples Planning Framework

The purpose of an Indigenous Peoples Planning Framework (IPPF) is to set out the requirements of UNDP SES Standard 6, organizational arrangements, and design criteria to be applied to subprojects or project components that are not yet defined and will be prepared during project implementation.

A key purpose of an IPPF is to outline the procedures for screening, assessment and development of a specific IPP once the project components, subprojects and/or activities have been fully defined and/or assessment is possible.

It is critical to emphasize that any project activities that may adversely affect indigenous peoples will not commence until the IPP is developed with the meaningful participation of the affected indigenous peoples (and FPIC where required) and appropriate mitigation measures are in place.

The IPPF at a minimum needs to set out:

1. **Executive Summary:** Concisely describes the project and reason why an IPPF is being utilized. Include description of the types of activities/subprojects likely to be proposed under the project.
2. **Description of Indigenous Peoples:** Include a description of indigenous people(s) that may be affected by the forthcoming project activities. Identify the applicable legal framework that pertains to the potentially affected indigenous peoples and relevant issues regarding their substantive rights.
3. **Potential Impacts:** Identify the types of potential positive and adverse impacts of the planned types of activities or subprojects on indigenous peoples.
4. **Procedures:** Describe in detail the procedures for carrying out the screening, assessment and development of the IPP with appropriate mitigation and management measures for the planned activities/subprojects.
5. **Participation, Consultations and FPIC Processes:** Describe the framework for ensuring meaningful consultation and participation of potentially affected indigenous peoples and, where relevant per the requirements of UNDP SES S6 a framework for seeking their free, prior, and informed consent, during further project development and implementation.
6. **Appropriate Benefits:** Indicate potential types of social and economic benefits of project activities that would be further tailored to preferences of potentially affected persons through meaningful consultations, consent processes, benefit sharing agreements, etc.
7. **Grievance Redress:** A description of the procedures available to address grievances brought by the affected indigenous peoples.
8. **Institutional arrangements:** Describe institutional arrangements, including capacity building where necessary, for screening project-supported activities, evaluating their effects on indigenous peoples, and preparing the IPP.
9. **Monitoring and reporting:** Describe arrangements for monitoring implementation of the IPPF, in particular consultation and FPIC processes and completion of anticipated screening, assessment, and development of the IPP. Include mechanisms and benchmarks appropriate to the project, including reporting.
10. **Budget and Financing:** Include an appropriately costed plan, with itemized budget sufficient to undertake the activities described in the IPPF, including the screening, assessments development of IPP, meaningful consultations, and where relevant FPIC processes.