

## Environmental and Social Sustainability Framework

# Standard 7 – Vulnerable Groups and Indigenous Peoples

Draft – 3 June 2021

This document is for information purposes only.

In case of discrepancies between the different linguistic versions,  
the English version of the document prevails.

# Glossary

Terms used in these Standards have the following meanings:

“gender”	refers to the social, behavioural and cultural attributes, expectations, norms and opportunities associated with being male or female, or with an individual’s sexual orientation or sexual identity
“mitigation hierarchy”	measures to avoid, prevent and reduce any significant adverse effects and, if required, remedy/compensate any residual effects on affected people, communities and workers, as well as on the environment  A human rights mitigation hierarchy is premised on the principle of remedy rather than compensation
“project”	a set of defined works, goods, services and/or business activities for which EIB financing is sought either directly or through an intermediated financing structure for a specific sub-project/underlying investment, as approved by the EIB’s Governing Bodies
“promoter”	EIB’s counterparty implementing a project, as defined in the finance contract
“rights-holders”	from a human rights perspective, all individuals and population groups that can make valid claims to fundamental rights. In the context of EIB projects, persons who are, actually or potentially, adversely affected by the project, including project-affected persons, local community members, workers, etc.
“sexual abuse”	the actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions. All sexual activity with children (defined by the UN Convention on the Rights of the Child as any person under the age of 18) is sexual abuse, regardless of the local age of maturity or consent. Mistaken understanding of the age of a child is not a defence
“sexual exploitation”	any actual or attempted abuse of a position of vulnerability, differential power or trust for sexual purposes, including profiting monetarily, socially or politically from the sexual exploitation of another
“sexual harassment”	any form of unwanted verbal, non-verbal or physical conduct of a sexual nature with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment
“social issues”	issues which pertain to workers and persons or groups affected by the project, in relation to: a) Standards 6 to 10; and b) cross-cutting issues such as human rights, stakeholder engagement, gender equality, building resilience in particular in conflict-affected and fragile situations, and social inclusion
“stakeholder engagement”	an inclusive and iterative process that involves, in varying degrees, identification and analysis of stakeholders, engagement planning, information disclosure, meaningful consultation, and a mechanism ensuring access to grievance and remedy
“stakeholders”	persons and/or communities who: i) are directly and indirectly affected by the project, including their legitimate representatives; or ii) have an interest in the project and/or the ability to influence its outcome, either positively or negatively; and iii) the project workforce

<p>“vulnerable groups”</p>	<p>groups or persons who may be more adversely affected by project impacts than others on the basis of their socioeconomic characteristics, such as, but not limited to, sex, sexual orientation, gender, gender identity, caste, racial, ethnic, indigenous or social origin, genetic features, age, birth, disability, religion or belief, political or any other opinion, activism, membership of a national minority, affiliation to a union or any other form of workers’ organisation, property, nationality, language, marital or family status, medical condition, or migrant or economic status</p>
<p>“vulnerability”</p>	<p>a context-specific characteristic determined the interplay of three factors: i) exposure to risk and adverse impacts; ii) sensitivity to those risks and impacts; and iii) adaptive capacity</p>

DRAFT

## STANDARD 7: VULNERABLE GROUPS AND INDIGENOUS PEOPLES

### INTRODUCTION

- 1 Within the context of EIB projects, vulnerable or marginalised persons and groups are those that: (a) are usually exposed to several risks and adverse impacts at once; (b) are more sensitive to those risks and impacts, often having been subject to pre-existing discrimination; and (c) have a weaker adaptive capacity for coping with those risks and recovering from those impacts, due to limited access or rights to required assets and/or resources.<sup>1</sup> As a result, they can be disproportionately affected by project-related risks and impacts.
- 2 This Standard recognises that in some cases, certain individuals or groups are vulnerable, marginalised, systematically discriminated against or excluded on the basis of their socioeconomic characteristics. Such characteristics include, but are not limited to, sex, sexual orientation, gender, gender identity, caste, racial, ethnic, indigenous or social origin, genetic features, age, birth, disability, religion or belief, political or any other opinion, activism, membership of a national minority, affiliation to a union or any other form of workers' organisation, property, nationality, language, marital or family status, medical condition, or migrant or economic status.
- 3 These persons and groups are not inherently more vulnerable than others but due to discriminatory practices and norms, and therefore a less enabling environment, they often face additional barriers that limit their opportunity or ability to equally participate in decision-making related to the project and enjoy project benefits. Indigenous Peoples<sup>2</sup> and ethnic minorities in particular have identities and aspirations that are distinct from dominant groups in national societies and are often disadvantaged by traditional models of development.
- 4 Importantly, discrimination, entrenched social and gender roles and attitudes, gender-based violence and lack of access to decision-making can weaken the resilience of the aforementioned individuals and groups and render them disproportionately vulnerable to adverse project impacts.

### OBJECTIVES

- 5 This Standard outlines the responsibilities of promoters in terms of assessing, managing and monitoring project impacts, risks, and opportunities related to Indigenous Peoples as well as persons or groups that are vulnerable, marginalised or discriminated against due to their socioeconomic characteristics mentioned in paragraph 2 of this Standard.
- 6 The overall objective of this Standard is to address inequalities and other factors contributing to vulnerability, marginalisation and/or discrimination within the context of an EIB project, and to facilitate equal access to effective mitigation measures as well as project benefits for project-affected individuals and groups.
- 7 In addition, the Standard aims to:
  - Ensure that projects respect the rights and interests of vulnerable, marginalised or discriminated-against persons and groups, and Indigenous Peoples, including the right to non-discrimination and the right to equal treatment between women and men;
  - Foster their effective participation in the design of project activities and mitigation measures that could potentially affect them by establishing and maintaining an ongoing constructive relationship between them and promoters throughout the EIB project cycle in line with Standard 2;
  - Promote sustainable development gains and opportunities in a manner that is accessible, culturally appropriate and inclusive of vulnerable, marginalised or discriminated-against persons and groups, and Indigenous Peoples, and that enables them to benefit from the EIB-financed projects.
- 8 The additional objectives specific to projects affecting **Indigenous Peoples** only are to:

---

<sup>1</sup> Including social, physical, financial, natural, human and cultural assets, technological resources, knowledge and governance.

<sup>2</sup> There is no universally accepted definition of Indigenous People. For the purposes of this Standard, the term is used in a generic sense to refer exclusively to a distinct and/or vulnerable sociocultural group possessing the characteristics defined in paragraph 10.

- Ensure that the projects foster full respect for their rights, identity, culture, and livelihoods;<sup>3</sup>
- Ensure good-faith negotiation with project-affected Indigenous Peoples and obtain their Free, Prior and Informed Consent (FPIC)<sup>4</sup> when required by this Standard<sup>5</sup>; and
- Respect the rights of indigenous communities in voluntary isolation and adhere to the principle of no contact unless the contact is at the initiative of the peoples in isolation.

## SCOPE

- 9 This Standard applies to a specific project when its relevance is determined during the environmental impact assessment/environmental and social impact assessment (EIA/ESIA) process (as outlined in Standard 1), and specifically:
- (a) whenever vulnerable, marginalised or discriminated-against persons and/or groups are affected by the project and /or
- (b) whenever Indigenous Peoples are present in, or have collective attachment to: (i) a proposed project area; or (ii) an area that will be negatively impacted by the project, regardless of whether Indigenous Peoples are positively or negatively affected by the project..
- 10 In this Standard, the term Indigenous Peoples is used in a generic sense to refer exclusively to a distinct<sup>6</sup> and/or vulnerable<sup>7</sup> sociocultural group possessing all of the following characteristics<sup>8</sup>:
- Self-identification as members of a distinct ethnic or cultural group and recognition of this identity by others; and
  - Collective attachment<sup>9</sup> to geographically distinct habitats, ancestral lands, or areas of seasonal use or occupation, as well as to the natural resources in these areas and use thereof; and
  - Customary cultural, economic, social or political institutions, laws or regulations that are distinct or separate from those of the dominant society or culture; and
  - A language or dialect, often different from the official language or languages of the country or region in which they reside.
- 11 In different countries, Indigenous Peoples may be referred to as, for example, “ethnic minorities,” “aboriginals,” “hill tribes,” “minority nationalities,” “scheduled tribes,” “tribal groups,” and “Sub-Saharan African historically underserved traditional local communities.” Given this, an alternative terminology for the Indigenous Peoples may need to be used as appropriate to the national context of the project. Regardless of which terminology is used, the requirements of this Standard shall apply to all groups meeting the definition of Indigenous Peoples in paragraph 10.
- 12 This Standard shall also apply to communities or groups of Indigenous Peoples who, during the lifetime of members of the community or group, have lost collective attachment to distinct habitats or ancestral territories in the project area, because of forced severance, conflict, government resettlement programmes, dispossession of their land, natural disasters, or incorporation of such territories into an urban area<sup>10</sup>. It shall also apply to Indigenous Peoples recognised nationally who do not necessarily possess all the characteristics listed in paragraph 10.

<sup>3</sup> In line with the International Labour Organisation’s [Convention C169 - Indigenous and Tribal Peoples Convention, 1989 \(No. 169\) \(ilo.org\)](#) and [United Nations Declaration on the Rights of Indigenous Peoples | United Nations For Indigenous Peoples](#).

<sup>4</sup> See the subsequent section on FPIC for a definition. The FAO has developed an FPIC good practice manual: <https://www.refworld.org/pdfid/57fdec864.pdf>.

<sup>5</sup> As per requirements laid out in paragraph 45.

<sup>6</sup> ‘Distinct’ can indicate historical situations wherein there was a supplanting and subordination of one distinct group by another. In such cases, the groups will have little shared historical, linguistic and cultural roots, having developed in unrelated geographic areas.

<sup>7</sup> Vulnerability for indigenous groups is expressed as being subject to discrimination or marginalisation either historically or presently simply for being members of their group. In extreme cases, vulnerability may also be expressed as being at risk for imposed cultural assimilation or ethnocide (i.e. the terminal undermining of the group’s way of life).

<sup>8</sup> Some characteristics may have eroded or be less evident for some groups due to integration into the broader society or economy, sometimes as a result of government policy.

<sup>9</sup> ‘Collective attachment’ means that for generations there has been a physical presence and economic ties to land and territories traditionally owned, or customarily used or occupied, by the group concerned, including areas that hold special significance for it, such as sacred sites.

<sup>10</sup> In urban areas, the Standard does not apply to individuals or small groups migrating to urban areas in search of economic opportunity. It may apply, however where Indigenous Peoples have established distinct communities in or near urban areas but still possess the characteristics stated in paragraph 10.

## GENERAL REQUIREMENTS

- 13 All projects located in EU, EFTA, Candidate and potential Candidate countries shall comply with the relevant national and EU legislation. All projects located in the rest of the world shall comply with the relevant national legislation and align with the principles of EU legislation, as defined in the remaining sections of this Standard.<sup>11</sup>
- 14 Once the applicability of this Standard is determined during the environmental impact assessment/environmental and social impact assessment (EIA/ESIA) process (as outlined in Standard 1), the promoter shall take steps to ensure compliance with this Standard as early as possible in the project cycle and, in any case, no later than during the environmental and social impact assessment process.
- 15 The promoter shall take the necessary measures to identify and avoid potential project risks and impacts that would affect the lives and livelihoods of vulnerable, marginalised or discriminated-against persons and groups, and Indigenous Peoples; or when avoidance is not feasible, to reduce, minimise, mitigate or effectively compensate/remedy such impacts. To this end, the promoter shall, as relevant, seek to strengthen their adaptive capacity and give them equal opportunity to voice their opinions about proposed project activities and mitigation measures that might affect them<sup>12</sup>, in line with the requirements set out in Standard 2.
- 16 The promoter shall adopt a gender-responsive approach to the identification, management, and monitoring of environmental and social impacts and risks that takes into account the rights and interests of women and girls, and men and boys, including specific attention to the differential burdens, barriers and impacts that they might experience, including gender-based violence and harassment.<sup>13</sup>

## SPECIFIC REQUIREMENTS

### *Requirements for projects located in EU, EFTA, Candidate and potential Candidate countries*

- 17 As part of the EIA process, the promoter shall assess if there are any vulnerable groups of people who could be disproportionately affected by the project, or if the project is likely to affect human or community health or welfare.<sup>14</sup> The aspects to consider may include but are not limited to minority rights, cultural identity and associations, social institutions, or community cohesion and identity. Any such impacts will be managed and mitigated through appropriate mitigation and/or compensation measures, in line with the objectives of this Standard.
- 18 If the promoter or the EIB identifies the likelihood of disproportionate adverse impacts and risks<sup>15</sup> affecting vulnerable, marginalised, and/or discriminated-against groups and individuals that may not be covered by the EIA process, the promoter shall supplement its assessment with any action identified and/or deemed necessary by the EIB, in line with the provisions listed in the remaining sections of this Standard.

### *Requirements for projects in the rest of the world*

- 19 For projects in all other countries, the promoter will need to comply with the requirements set out in paragraphs 19 to 29 of this Standard, as deemed appropriate.
- 20 The need for measures to manage risks and adverse impacts on vulnerable, marginalised and/or discriminated-against groups is particularly critical in situations where discrimination is systemic and entrenched, governance is poor and/or protection of the rights of vulnerable, marginalised or discriminated-against groups is weak, as may be the case in conflict-affected and fragile areas.

### *Screening*

- 21 The promoter shall identify the likelihood of the project disproportionately impacting individuals and groups who might be vulnerable, marginalised, discriminated against or at risk of being excluded from the intended benefits of the project due to their socioeconomic characteristics. In particular,

---

<sup>11</sup> In particular, in line with the spirit and principles of the [EU Charter of Fundamental Rights | European Commission \(europa.eu\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02000A05%3A0001_20100729)

<sup>12</sup> Including any concerns about potential climate change impacts and how these might be exacerbated by the project.

<sup>13</sup> In line with the spirit and principles of [CETS 210 - Council of Europe Convention on preventing and combating violence against women and domestic violence \(coe.int\)](https://www.coe.int/t/e/treaties/Convention_on_preventing_and_combating_violence_against_women_and_domestic_violence_coe.int) and [CEDAW 29th Session 30 June to 25 July 2003](https://www.coe.int/t/e/treaties/CEDAW_29th_Session_30_June_to_25_July_2003)

<sup>14</sup> In line with [EIA guidance Scoping\\_final.pdf \(europa.eu\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02000A05%3A0001_20100729)

<sup>15</sup> Such as adverse impacts on ethnic minority groups, lesbian, gay, bisexual, transgender and intersex (LGBTI) persons, children, women and girls or other individuals or groups in certain instances.

the promoter will ascertain, with the support of qualified specialists as needed, potential project impacts on any groups with rights that require special protection.<sup>16</sup>

- 22 If as part of the screening the promoter determines that: (a) there are potential adverse impacts on vulnerable, marginalised and/or discriminated-against persons or groups; or (b) specific gender risks or discriminatory social norms are present; and (c) additional information is required on either of these, the promoter shall undertake a more in-depth social analysis.

#### *Assessment and management of impacts and risks*

- 23 Further assessment can be part of the environmental and social impact assessment (in the case of identified persons and/or groups) if appropriate and can be covered adequately or of be part of a separate social study (in the case of identified groups), such as a Social Impact Assessment or a Gender Assessment.
- 24 In cooperation with relevant stakeholders, including affected communities, the promoter shall<sup>17</sup>:
- Assess the profile of the affected persons or groups with socioeconomic characteristics which contribute to vulnerability as per paragraph 2 of this Standard (hereafter these groups);
  - In the case of identified groups, assess the specific context, including legal and institutional parameters and cultural, social and gender norms, and nature of the marginalisation, discrimination, and/or exclusion suffered by the identified population;
  - Identify and assess the type, scope, nature and significance of both positive and negative project impacts on these persons and/or groups;
  - Identify appropriate measures needed and present the evidence of efforts already made, if any, by the time of the assessment to avoid, minimise, mitigate or remedy negative impacts and, as appropriate, to reinforce positive effects, including identifying opportunities and actions to promote benefit-sharing arrangements for the affected communities, including these groups; and
  - As required by the Bank, include new and/or additional differentiated measures targeting these persons and/or groups in the appropriate environmental and social management plans, so that risks and impacts do not fall disproportionately on them and they are able to take advantage of opportunities to benefit from the project.

#### *Stakeholder engagement*

- 25 Stakeholder engagement is essential, and shall be integrated at each stage of project preparation and implementation in accordance with the requirements specified in Standard 2.
- 26 In terms of the engagement process, affected persons or groups identified as vulnerable, marginalised and/or discriminated against shall be given equal opportunity, through tailored and targeted approaches, to voice their opinions and concerns, which will then be taken into account in project preparation and implementation, and the mitigation measures that could affect them. To this end, the promoter might need to make special efforts to overcome the barriers that prevent them from participating, such as mobility, access to communication technology, literacy, language, etc., and ensure any engagement plan and/or activities take these constraints into account and mitigate them to the extent possible.
- 27 To ensure full and effective participation of affected vulnerable, marginalised, and/or discriminated-against individuals and groups in engagement processes, the promoter shall include the following elements in the meaningful consultation process:
- Representative bodies and organisations, such as civil society or community-based organisations, councils of elders or village councils, or chieftains, of the project-affected vulnerable, marginalised and/or discriminated-against persons or groups, and where appropriate other community members;
  - Gender-responsive consultation mechanisms ensuring that the concerns of women and men are equally heard and responded to; and/or

<sup>16</sup> Such as ethnic minority groups, LGBTI persons, children, women and girls or other individuals or groups in certain instances.

<sup>17</sup> Through a careful analysis of the legal framework and comprehensive collection of available baseline data, disaggregated by factors such as sex, ethnicity, age, etc.

- Consultations in a “safe space” or through secure channels to offer protection against intimidation or retaliation.

#### *Monitoring*

- 28 The promoter will ensure that the project’s monitoring system is adjusted to effectively respond to the rights and interests of vulnerable, marginalised and/or discriminated-against persons and groups, and to safeguard them from instances of discrimination and unequal treatment. The monitoring system will include relevant indicators disaggregated by sex, age, and/or other relevant socioeconomic characteristics as appropriate, to capture the specific characteristics of any such persons and/or groups in the project. The monitoring system will track and document the implementation of the engagement processes with vulnerable, marginalised and/or discriminated-against persons and groups, and the implementation of mitigation and remedial measures affecting them.
- 29 As part of its monitoring activities, the promoter is advised to engage with the vulnerable, marginalised and/or discriminated-against persons and groups, as well as relevant non-governmental organisations, civil society or community-based organisations, or other relevant locally based organisations and associations that represent, have particular knowledge about and/or work with these persons/groups.

#### **Requirements for projects affecting Indigenous Peoples**

- 30 For all projects, whether in the European Union or outside the European Union, where Indigenous Peoples are present in, or have a collective attachment to: (i) a proposed project area; or (ii) an area that will be negatively impacted by the project, the promoter will ensure compliance with the relevant national legislation, and the requirements laid out in paragraphs 30 to 59 of this Standard.

#### *Screening*

- 31 The promoter shall report to the EIB from the very outset: (i) the confirmed or potential presence of Indigenous Peoples in the EIB project area; (ii) which groups of Indigenous Peoples are present; and (iii) the likelihood of the project’s impacting the Indigenous Peoples’ land and/or their access to natural resources, and/or their livelihoods. The promoter will also record and report the presence of Indigenous Peoples that use land and natural resources by virtue of customary/informal rights.
- 32 The EIB reserves the right to determine on its own if the project may have a potential impact on Indigenous Peoples’ traditional ways of life, may threaten the natural resources they rely upon, or may lead to their displacement and to a substantial loss of distinct cultural heritage, both tangible and intangible.
- 33 The promoter shall seek inputs from appropriate specialists to meet the screening, assessment, consultation, planning or other requirements of this Standard. In determining whether a group or communities should be considered indigenous, the promoter will seek the most reliable information and consult the pertinent indigenous groups as to whether they meet the applicable criteria of indigenesness.
- 34 The nature and extent of identifiable vulnerabilities of affected Indigenous Peoples will be a key variable in designing plans to mitigate adverse impacts and promote equitable access to benefits.

#### *Assessment*

- 35 Once the presence of Indigenous Peoples has been confirmed by the promoter and verified by the EIB, the promoter will carry out an assessment of potential positive and negative impacts and risks relating to them.
- 36 Where a project is still in an initial design stage when the EIB financing is requested, the promoter shall undertake or commission a study by appropriate specialists to identify Indigenous Peoples, assess the potential project impacts on these groups and gather their views regarding the project. The scope of the assessment will include cultural and physical impacts as well as impacts on biodiversity and the ecosystem services upon which the identified Indigenous Peoples depend (see Standard 4), their link to resources and territories and any project-related benefit-sharing arrangements. This assessment will consider the specific vulnerabilities of project-affected Indigenous Peoples to changes in their environment and way of life. This independent study can be a standalone study, or if appropriate and if it can be adequately covered, be part of the ESIA as defined in Standard 1.



- 37 The promoter shall seek to avoid impacts on Indigenous Peoples' lands or natural resources, and present the options considered to avoid impacts in the assessment described in paragraph 36. Where the impacts cannot be avoided, the promoter shall, through close collaboration with the affected indigenous communities, prepare an Indigenous Peoples Development Plan (IPDP) as described in paragraphs 50 to 52. In some cases, such as when Indigenous Peoples live in mixed communities with non-indigenous people or when indigenous communities are not the only ones affected by the project<sup>18</sup>, preparing a broader integrated Community Development Plan may be more appropriate, addressing all affected communities and integrating required information relating specifically to the affected Indigenous Peoples. In cases where the design or location of the project or subprojects cannot be known during project preparation, the preparation of an Indigenous Peoples Planning Framework may be appropriate.<sup>19</sup>
- 38 When there is a potential for projects to affect groups in voluntary isolation, the promoter shall undertake appropriate measures to recognise, respect and protect their land and territories, environment, health and culture, as well as measures to avoid all undesired contact with them as a consequence of the project. The aspects of the project that would result in such undesired contact will no longer be further considered as part of the project financed by the EIB.
- 39 Where the project-related activities have already started, the promoter will provide the EIB with all relevant information and documents, to demonstrate that it has sought and acted upon the opinions of project-affected Indigenous Peoples. If the requirements of this Standard have not been met, the promoter shall carry out or commission an independent assessment as outlined above. In addition, this assessment shall: (i) review the effects to date on the lands, natural resources, livelihoods and/or ways of life of Indigenous Peoples, or access to these; (ii) identify any gaps with the requirements of this Standard; and (iii) identify any remedial actions that may be required to ensure that the intended outcomes of this Standard are achieved. The Remedial Action Plan shall be provided to the EIB in a timely manner in order for the Bank to make a decision on whether the project can be financed.
- 40 The promoter shall engage with the affected Indigenous Peoples regarding the development of an IPDP or other appropriate plans, such as a Community Development Plan, as early as possible in the process in order to allow for a meaningful consultation with them. The promoter will publicly disclose the final draft of the plan to the project-affected Indigenous Peoples' communities in an appropriate form, manner and language. Once adopted and agreed upon by the affected Indigenous Peoples, the promoter will make these documents available to them in the same manner as the earlier final draft documents. The promoter will report on the timely disclosure and progress of the implementation of the IPDP or other appropriate plans to the Bank.

#### *Meaningful consultation*

- 41 To build trust with indigenous communities and to allow for their views to be effectively integrated in the project, the promoter will engage with them as early as possible in compliance with preceding paragraphs and in line with the requirements specified in Standard 2.
- 42 In addition to the general requirements for meaningful consultation, this process with Indigenous Peoples will include the following specific elements:
- The involvement of legitimate Indigenous Peoples' representative bodies, Indigenous Peoples' organisations as well as members of the affected communities of Indigenous Peoples;
  - Due consideration of and respect for any relevant customary laws;
  - Sufficient time for Indigenous Peoples' collective decision-making processes.<sup>20</sup>

---

<sup>18</sup> Also in cases where there is more than one group of Indigenous Peoples, or where the scope of a regional or national project affects other population groups.

<sup>19</sup> This Framework should specify the timing for completion of any specific plans and include a clear statement of roles and responsibilities, budget, and commitment for funding.

<sup>20</sup> Acknowledging that indigenous communities are not homogenous and that community members may have differing views on the project. The consultation process should therefore accommodate such dynamics and allow sufficient time for indigenous communities to reach conclusions that are considered legitimate by most of their members concerned.

### *Free, Prior and Informed Consent (FPIC)*

43 For the purpose of this Standard, FPIC refers to the process whereby the affected community of Indigenous Peoples arrives at a decision undertaken with sufficient time and in accordance with their cultural traditions and practices. Specifically:

- *Free* should imply no coercion, intimidation or manipulation;
- *Prior* should imply consent has been sought sufficiently in advance of any authorisation or commencement of activities and that the time requirements of indigenous consultation processes have been respected;
- *Informed* should imply that information is provided that covers (at least) the following aspects: (a) the nature, size, pace, reversibility and scope of any proposed project or activity; (b) the reason/s or purpose of the project and/or activity; (c) the duration of the project or activity; (d) the locality of areas that will be affected; (e) a preliminary assessment of the likely economic, social, cultural and environmental impact, including potential risk- and benefit-sharing in a context that respects the precautionary principle; (f) the personnel likely to be involved in the execution of the proposed project (including Indigenous Peoples, private sector staff, research institutions, government employees and others); and (g) procedures that the project may entail; and
- *Consent* shall be understood as the collective support of the community of Indigenous Peoples for the project activities that affect them.

44 The FPIC process will be required where a project:

- Affects the lands, territories or resources<sup>21</sup> that Indigenous Peoples customarily own, occupy or otherwise use; or
- Relocates them from land and natural resources subject to traditional ownership or under customary use or occupation; or
- Affects or exploits their cultural resources<sup>22</sup>, whether tangible or intangible, or their ways of life.

45 When the FPIC process is required, the Bank shall not be able to proceed with the financing of these activities unless the promoter is able to ascertain and document that the consent of Indigenous Peoples was obtained through an adequate FPIC process. The promoter will carry out an FPIC process even if the right to FPIC has not been legally and formally recognised in the country or region where the project activities are located.

46 When FPIC is required, the promoter will engage qualified specialists<sup>23</sup> to assist in conducting and documenting the good-faith negotiations and FPIC process. The FPIC process will build on the process of meaningful consultation defined in Standard 2 and will be established through good-faith negotiations between the promoter and the affected Indigenous Peoples. The promoter shall help build the capacity of indigenous communities as appropriate to allow for their active and effective participation in the FPIC-required activities.

47 FPIC is expected to be fully documented as a mutually accepted process between the parties, carrying evidence of agreement between them as the outcome of the negotiations and clearly outlining benefit- and risk-sharing provisions. The EIB is not prescriptive on what constitutes consent and does not require that FPIC achieve unanimity. Instead, it requires that satisfactorily documented evidence of the meaningful engagement of the whole body of a participating community be provided.

48 Specifically, the promoter shall:

---

<sup>21</sup> Including but not limited to marine and terrestrial resources.

<sup>22</sup> Cultural resources include cultural heritage, traditional knowledge and traditional cultural expressions, intellectual, religious and spiritual property, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts.

<sup>23</sup> Indigenous Peoples Organisations (IPOs) can frequently serve as an objective FPIC facilitator trusted by all parties.

- Fully document the mutually agreed-upon process between the promoter and the project-affected Indigenous Peoples as to how the FPIC process will be carried out and what would constitute “consent”<sup>24</sup>; and
  - Provide suitably documented evidence of agreement between the promoter and the affected indigenous community as to the outcome of the negotiations, accompanied by an appropriate IPDP including all accompanying mitigating measures and benefit-sharing agreements.
- 49 In the application of FPIC, the promoter shall pay particular attention to the representativeness and legitimacy underpinning the process with the objective of reaching a collective decision. The promoter shall also consider the following factors:
- The capacity of the communities concerned to negotiate; the need to assist indigenous communities in gaining access to legal advice as regards their rights under national and international law;
  - The verification of freedom from coercion or intimidation and the cultural appropriateness of the engagement over an adequate period of time that allows for such engagement to be meaningful; and
  - Whether the information is provided to the communities in a culturally appropriate format and in a timely manner.

*Compensation and benefit-sharing*

- 50 In agreement with the affected indigenous community, the promoter will compensate the Indigenous Peoples for any loss of livelihood incurred as a result of project-related activities. When calculating compensation, the promoter shall meet the requirements of Standard 6 and take into consideration the adverse effects of the project on traditional ways of life and livelihoods, including nomadic/transhumant practices, as well as the family life of Indigenous Peoples with specific consideration of women’s wages and non-wage subsistence activities.
- 51 The promoter will further provide affected communities with opportunities for culturally appropriate development benefits. Such opportunities should be commensurate with the degree of project impacts, with the aim of improving their standard of living and livelihoods in an appropriate manner and of fostering the long-term sustainability of the natural resources on which they may depend.
- 52 The promoter shall detail the actions referred to above in a time-bound plan, such as an IPDP or equivalent (see paragraph 37). This plan will be developed in close consultation with and with the participation of affected Indigenous Peoples. The plan will assess differentiated impacts with respect to gender and different generations, as well as different groups of Indigenous Peoples if applicable, and will include actions to address these impacts on the different groups of the community.

*Cooperation with public authorities*

- 53 In those cases where the FPIC process is required and the competent authority has issued a decision approving the project or granted a land concession for the project, the promoter shall verify and the EIB shall determine whether the authority has followed an FPIC process in compliance with this Standard. Specifically, the promoter will report on the nature of the FPIC process implemented and the level of consent given to the project activities by the Indigenous Peoples concerned, based on which the EIB will assess the adequacy and compliance of the proposed mitigation measures and benefit-sharing arrangements with the requirements of this Standard. If the relevant authority has not undertaken due FPIC process, the promoter will engage with the community in order to seek their views and informed consent, with the support of qualified specialists.
- 54 Where the government has a defined role in the management of risks and impacts on Indigenous Peoples in relation to the project, the promoter shall collaborate with the responsible government agency, to the extent that is feasible and permitted by the agency, to achieve outcomes that are consistent with the objectives of this Standard.

---

<sup>24</sup> FPIC does not require unanimity and may be achieved even when individuals or groups within or among project-affected Indigenous peoples explicitly disagree.

### *Grievance mechanism*

- 55 The promoter will establish a culturally appropriate and accessible grievance mechanism for the entire project, as described in Standard 2.
- 56 In the case of projects affecting Indigenous Peoples, such grievance mechanism shall take into account the availability and acceptability of judicial recourse and customary dispute settlement mechanisms for the affected indigenous community.
- 57 During project implementation, the promoter will immediately notify the EIB should there be any conflicts between Indigenous Peoples and the promoter that remain unresolved despite having gone through the project grievance mechanism.

### *Monitoring*

- 58 The promoter will ensure that the project's monitoring system is adjusted to effectively respond to the rights and interests of Indigenous Peoples, and to safeguard them from instances of discrimination and unequal treatment. The system will track and document the implementation of the engagement processes with them, and the implementation of IPDP or any other project activities and/or mitigation and remedial measures affecting them.
- 59 As part of its monitoring activities, the promoter is advised to engage with the affected Indigenous Peoples, as well as relevant non-governmental organisations, civil society or community-based organisations, or other relevant locally based organisations and associations that represent, have particular knowledge about and/or work with the indigenous communities.

DRAFT