

Guidance Note 7 corresponds to Performance Standard 7. Please also refer to the Performance Standards 1–6 and 8 as well as their corresponding Guidance Notes for additional information. Information on all referenced materials appearing in the text of this Guidance Note can be found in the Bibliography.

### **Introduction**

**1. Performance Standard 7 recognizes that Indigenous Peoples, as social groups with identities that are distinct from mainstream groups in national societies, are often among the most marginalized and vulnerable segments of the population. In many cases, their economic, social, and legal status limits their capacity to defend their rights to, and interests in, lands and natural and cultural resources, and may restrict their ability to participate in and benefit from development. Indigenous Peoples are particularly vulnerable if their lands and resources are transformed, encroached upon, or significantly degraded. Their languages, cultures, religions, spiritual beliefs, and institutions may also come under threat. As a consequence, Indigenous Peoples may be more vulnerable to the adverse impacts associated with project development than non-indigenous communities. This vulnerability may include loss of identity, culture, and natural resource-based livelihoods, as well as exposure to impoverishment and diseases.**

**2. Private sector projects can create opportunities for Indigenous Peoples to participate in, and benefit from project-related activities that may help them fulfill their aspiration for economic and social development. Furthermore, Indigenous Peoples may play a role in sustainable development by promoting and managing activities and enterprises as partners in development. Government often plays a central role in the management of Indigenous Peoples' issues, and clients should collaborate with the responsible authorities in managing the risks and impacts of their activities.<sup>1</sup>**

### **Objectives**

- **To ensure that the development process fosters full respect for the human rights, dignity, aspirations, culture, and natural resource-based livelihoods of Indigenous Peoples.**
- **To anticipate and avoid adverse impacts of projects on communities of Indigenous Peoples, or when avoidance is not possible, to minimize and/or compensate for such impacts.**
- **To promote sustainable development benefits and opportunities for Indigenous Peoples in a culturally appropriate manner.**
- **To establish and maintain an ongoing relationship based on informed consultation and participation with the Indigenous Peoples affected by a project throughout the project's life-cycle.**
- **To ensure the Free, Prior, and Informed Consent (FPIC) of the Affected Communities of Indigenous Peoples when the circumstances described in this Performance Standard are present.**
- **To respect and preserve the culture, knowledge, and practices of Indigenous Peoples.**

<sup>1</sup> In addition to meeting the requirements under this Performance Standard, clients must comply with applicable national law, including those laws implementing host country obligations under international law.

GN1. IFC recognizes that key United Nations (UN) Human Rights Conventions (see Bibliography) form the core of international instruments that provide the rights framework for members of the world's Indigenous Peoples. In addition, some countries have passed legislation or ratified other international or regional conventions for the protection of Indigenous Peoples, such as the [International Labour Organization \(ILO\) Convention 169](#), ratified by 17 countries.<sup>GN1</sup> In addition, various declarations and resolutions address rights of Indigenous Peoples, including the [UN Declaration on the Rights of Indigenous Peoples](#) (2007). While such instruments address the responsibilities of states, it is increasingly expected that private sector companies conduct their affairs in a way that would uphold these rights and not interfere with states' obligations under these instruments. It is in recognition of this emerging business environment that private sector projects are increasingly expected to foster full respect for the human rights, dignity, aspirations, cultures, and customary livelihoods of Indigenous Peoples.

GN2. Many Indigenous Peoples' cultures and identities are inextricably linked to the lands on which they live and the natural resources on which they depend. In many cases, their cultures, identities, traditional knowledge, and oral histories are connected to, and maintained through the use of, and relationships with, these lands and natural resources. These lands and resources may be sacred or have a spiritual significance. Use of sacred sites and other places of cultural significance may have important functions for the conservation and sustainable use of the natural resources upon which Indigenous Peoples rely for their livelihoods and well-being. Thus, project impacts on lands, forests, water, wildlife, and other natural resources may affect their institutions, livelihoods, economic development, and their ability to maintain and develop their identities and cultures. Performance Standard 7 sets out specific requirements when projects affect these relationships.

GN3. The objectives of Performance Standard 7 underscore the need to avoid adverse project impacts on Indigenous Peoples' communities living in the project's area of influence, or where avoidance is not feasible, to minimize and/or compensate for these impacts in a manner commensurate with the scale of project risks and impacts, the vulnerability of the Affected Communities of Indigenous Peoples, and through mechanisms that are tailored to their specific characteristics and expressed needs.

GN4. The client and the Affected Communities of Indigenous Peoples should establish an ongoing relationship throughout the life of the project. To this end, Performance Standard 7 requires the client to engage in a process of informed consultation and participation (ICP). In the special circumstances described in paragraphs 13–17 of Performance Standard 7, the client's engagement process will ensure the Free, Prior and Informed Consent (FPIC) of the Affected Communities of Indigenous Peoples. As noted in Performance Standard 7 there is no universally accepted definition of FPIC and thus, for the purposes of Performance Standards 1, 7, and 8, FPIC has the meaning described in paragraph 12 of Performance Standard 7. This meaning is further elaborated in paragraphs GN24–GN26. Taking into account the Indigenous Peoples' understanding of the changes brought about by a project helps to identify both positive and negative project impacts. Similarly, the effectiveness of impact avoidance, mitigation and compensation measures is enhanced if the points of views of Indigenous Peoples on matters that affect them are taken into consideration and form part of project decision-making processes.

### *Scope of Application*

**3. The applicability of this Performance Standard is established during the environmental and social risks and impacts identification process. The implementation of the actions necessary to meet the requirements of this Performance Standard is managed through the**

<sup>GN1</sup> See [ILO 169 and the Private Sector](#), IFC's practical guide for IFC clients who operate in countries that have ratified ILO 169.

*client's Environmental and Social Management System, the elements of which are outlined in Performance Standard 1.*

*4. There is no universally accepted definition of "Indigenous Peoples." Indigenous Peoples may be referred to in different countries by such terms as "Indigenous ethnic minorities," "aboriginals," "hill tribes," "minority nationalities," "scheduled tribes," "first nations," or "tribal groups."*

*5. In this Performance Standard, the term "Indigenous Peoples" is used in a generic sense to refer to a distinct social and cultural group possessing the following characteristics in varying degrees:*

- Self-identification as members of a distinct indigenous cultural group and recognition of this identity by others;*
- Collective attachment to geographically distinct habitats or ancestral territories in the project area and to the natural resources in these habitats and territories;*
- Customary cultural, economic, social, or political institutions that are separate from those of the mainstream society or culture; or*
- A distinct language or dialect, often different from the official language or languages of the country or region in which they reside.*

*6. This Performance Standard applies to communities or groups of Indigenous Peoples who maintain a collective attachment, i.e., whose identity as a group or community is linked, to distinct habitats or ancestral territories and the natural resources therein. It may also apply to communities or groups that have lost collective attachment to distinct habitats or ancestral territories in the project area, occurring within the concerned group members' lifetime, because of forced severance, conflict, government resettlement programs, dispossession of their lands, natural disasters, or incorporation of such territories into an urban area.*

*7. The client may be required to seek inputs from competent professionals to ascertain whether a particular group is considered as Indigenous Peoples for the purpose of this Performance Standard.*

GN5. Over the past 20 years, "Indigenous Peoples" have emerged as a distinct group of human societies under international law and in the national legislation of many countries. However, there is no internationally accepted definition of "Indigenous Peoples." Further the term "indigenous" may also be considered to be sensitive in certain circumstances. For this reason, Performance Standard 7 does not define, use, or require use of the term "Indigenous Peoples" to determine the applicability of Performance Standard 7. Rather it is recognized that various terms including but not limited to indigenous ethnic minorities, hill tribes, scheduled tribes, minority nationalities, first nations or tribal groups may all be used to identify Indigenous Peoples. Accordingly, for the purposes of this Performance Standard applicability is determined on the basis of the four characteristics presented in paragraph 5 of Performance Standard 7. Each characteristic is evaluated independently, and no characteristic weighs more than the others. In addition, Performance Standard 7 applies to groups or communities, rather than individuals. A determination that a group or community is indigenous for the purpose of Performance Standard 7 does not affect the political or legal status of such a group or community within specific countries or states. Instead, such determination leads the client to meet the requirements of Performance Standard 7 in terms of avoidance of impacts, the process of engagement and management of potentially high risk circumstances.

GN6. Clients will need to exercise judgment in determining whether a group or communities should be considered “indigenous” for the purpose of Performance Standard 7. In making this determination, the client may undertake a number of activities, including investigation of the applicable national laws and regulations (including laws reflecting host country obligations under international law), archival research, ethnographic research (including documentation of culture, customs, institutions, customary laws, etc.), and participatory appraisal approaches with the Affected Communities of Indigenous Peoples. Both legal recognition and precedents in recognition of a group or community as indigenous should be given due consideration but are not determining factors for triggering Performance Standard 7. The client should retain competent experts to assist in this work.

GN7. The Performance Standard applies to groups or communities of Indigenous Peoples who maintain a collective attachment to distinct habitats or ancestral territories, and the natural resources therein. This may include:

- Communities of Indigenous Peoples who are resident upon the lands affected by the project as well as those who are nomadic or who seasonally migrate over relatively short distances, and whose attachment to ancestral territories may be periodic or seasonal in nature;
- Communities of Indigenous Peoples who do not live on the lands affected by the project, but who retain ties to those lands through traditional ownership and/or customary usage, including seasonal or cyclical use. This may include Indigenous Peoples resident in urban settings who retain ties to lands affected by a project;
- Communities of Indigenous Peoples who have lost collective attachment to lands and territories in the project area of influence, occurring within the concerned group members’ lifetime, as a result of forced severance, conflict, involuntary resettlement programs by governments, dispossession from their lands, natural calamities or incorporation into an urban area but who retain ties to lands affected by a project;
- Groups of Indigenous Peoples who reside in mixed settlements, such that the Affected Indigenous Peoples only form one part of the more broadly defined community; or
- Communities of Indigenous Peoples with collective attachment to ancestral lands located in urban areas.

GN8. The Performance Standard is applicable to groups and/or communities of Indigenous Peoples who, by virtue of their economic, social, and legal status and/or their institutions, custom, culture and/or language may be characterized as distinct from mainstream society and who may be disadvantaged in the development process as a result of their identity. Projects affecting Indigenous Peoples who are resident within the project-affected area and who are part of a larger regional population of Indigenous Peoples, or who are substantially integrated with mainstream society, are still required to meet the requirements of this Performance Standard. However, in these cases the mitigation measures (as described in subsequent sections) should be tailored to the specific circumstances of the Affected Communities of Indigenous Peoples.

GN9. Performance Standard 7 addresses vulnerabilities pertinent to Indigenous Peoples. Other vulnerable groups affected economically, socially, or environmentally by project impacts are addressed through the environmental and social risks and impacts assessment process, and by the management of environmental and social impacts set out in Performance Standard 1 and Guidance Note 1.

### Requirements

#### General

##### Avoidance of Adverse Impacts

**8. The client will identify, through an environmental and social risks and impacts assessment process, all communities of Indigenous Peoples within the project area of influence who may be affected by the project, as well as the nature and degree of the expected direct and indirect economic, social, cultural (including cultural heritage<sup>2</sup>), and environmental impacts on them.**

**9. Adverse impacts on Affected Communities of Indigenous Peoples should be avoided where possible. Where alternatives have been explored and adverse impacts are unavoidable, the client will minimize, restore, and/or compensate for these impacts in a culturally appropriate manner commensurate with the nature and scale of such impacts and the vulnerability of the Affected Communities of Indigenous Peoples. The client's proposed actions will be developed with the informed consultation and participation of the Affected Communities of Indigenous Peoples and contained in a time-bound plan, such as an Indigenous Peoples Plan, or a broader community development plan with separate components for Indigenous Peoples.<sup>3</sup>**

<sup>2</sup> Additional requirements on protection of cultural heritage are set out in Performance Standard 8.

<sup>3</sup> The determination of the appropriate plan may require the input of competent professionals. A community development plan may be appropriate in circumstances where Indigenous Peoples are a part of larger Affected Communities.

GN10. The screening phase of the environmental and social risks and impacts assessment process should identify the existence of communities of Indigenous Peoples in the project's area of influence (as defined in paragraphs 7 and 8 of Performance Standard 1) that may be potentially affected by the client's project. If the screening indicates potentially adverse impacts on Indigenous Peoples, further analysis should be undertaken to collect baseline data on those communities, covering key environmental and socioeconomic aspects that may be impacted by the project. The analysis should also identify positive impacts and potential benefits of the project to Indigenous Peoples and consider ways to enhance them. Further guidance on possible social impacts and mitigation approaches is provided in [IFC Good Practice Note: Addressing the Social Dimensions of Private Sector Projects](#) and guidance on the conduct of cultural, environmental, and social impact assessments is available in the [Akwé: Kon Guidelines](#).

GN11. The breadth, depth, and type of assessment should be proportional to the nature and scale of the proposed project's potential impacts on the Affected Communities and the vulnerability of the Affected Communities of Indigenous Peoples. The analysis of vulnerability will include consideration of Indigenous Peoples': (i) economic, social, and legal status; (ii) their institutions, customs, culture, and/or language; (iii) their dependence on natural resources; and (iv) their past and ongoing relationship to dominant groups and the mainstream economy. When used in the context described above, vulnerability refers to group- and/or community-level vulnerability defined by the nature of the relationship between the Affected Communities of Indigenous Peoples and mainstream society rather than household or individual level indicators of vulnerability. A competent expert should be engaged to carry out a vulnerability analysis as part of the project's assessment. Such analysis should use participatory approaches and reflect the views of the Affected Communities of Indigenous Peoples on expected project risks, impacts, and benefits.

GN12. Projects can adversely impact Indigenous Peoples' identity, natural resource-based livelihoods, food security and cultural survival. For these reasons, clients should avoid such impacts. Instead, clients

should explore viable alternative project designs, consult the Affected Communities of Indigenous Peoples, and seek advice of competent experts in an effort to avoid such impacts.

GN13. If adverse impacts are unavoidable, the client will minimize and/or compensate for these impacts in a manner commensurate with the nature and scale of impacts and the vulnerability of the Affected Communities of Indigenous Peoples. The client should prepare an Indigenous Peoples Plan (IPP) outlining the actions to minimize and/or compensate for adverse impacts in a culturally appropriate manner. Depending on local circumstances, a free-standing IPP may be prepared, or it may be a component of a broader community development plan where Affected Communities of Indigenous Peoples exist in the same area with other similarly Affected Communities or where the Indigenous Peoples are integrated within a larger affected population. The plan should detail actions to minimize and/or compensate for adverse social and economic impacts, and identify opportunities and actions to enhance positive impacts of the project on the Indigenous Peoples. Where appropriate, the plan may also include measures to promote conservation and sustainable management of the natural resources on which the Indigenous Peoples depend, in a manner consistent with Performance Standard 6 or measures by the project to manage land usage by the Affected Communities of Indigenous Peoples. The plan should include a clear statement of roles and responsibilities, funding and resource inputs, a time-bound schedule of activities, and a budget. See Annex 1 for recommended contents of an IPP. Further guidance on community development programs is provided in [IFC's Community Development Resource Guide, Investing in People: Sustaining Communities through Improved Business Practice](#).

### ***Participation and Consent***

***10. The client will undertake an engagement process with the Affected Communities of Indigenous Peoples as required in Performance Standard 1. This engagement process includes stakeholder analysis and engagement planning, disclosure of information, consultation, and participation, in a culturally appropriate manner. In addition, this process will:***

- ***Involve Indigenous Peoples' representative bodies and organizations (e.g., councils of elders or village councils), as well as members of the Affected Communities of Indigenous Peoples; and***
- ***Provide sufficient time for Indigenous Peoples' decision-making processes.***<sup>4</sup>

***11. Affected Communities of Indigenous Peoples may be particularly vulnerable to the loss of, alienation from or exploitation of their land and access to natural and cultural resources.***<sup>5</sup> ***In recognition of this vulnerability, in addition to the General Requirements of this Performance Standard, the client will obtain the FPIC of the Affected Communities of Indigenous Peoples in the circumstances described in paragraphs 13–17 of this Performance Standard. FPIC applies to project design, implementation, and expected outcomes related to impacts affecting the communities of Indigenous Peoples. When any of these circumstances apply, the client will engage external experts to assist in the identification of the project risks and impacts.***

<sup>4</sup> Internal decision making processes are generally but not always collective in nature. There may be internal dissent, and decisions may be challenged by some in the community. The consultation process should be sensitive to such dynamics and allow sufficient time for internal decision making processes to reach conclusions that are considered legitimate by the majority of the concerned participants.

<sup>5</sup> Natural resources and natural areas with cultural value referred to in this Performance Standard are equivalent to ecosystem provisioning and cultural services as described in Performance Standard 6.

**12. There is no universally accepted definition of FPIC. For the purposes of Performance Standards 1, 7 and 8, “FPIC” has the meaning described in this paragraph. FPIC builds on and expands the process of informed consultation and participation described in Performance Standard 1 and will be established through good faith negotiation between the client and the Affected Communities of Indigenous Peoples. The client will document: (i) the mutually accepted process between the client and Affected Communities of Indigenous Peoples, and (ii) evidence of agreement between the parties as the outcome of the negotiations. FPIC does not necessarily require unanimity and may be achieved even when individuals or groups within the community explicitly disagree.**

### *General Principles of Engagement*

GN14. The client should engage with the Affected Communities of Indigenous Peoples within the project's area of influence through a process of information disclosure and ICP. The general characteristics of engagement with Affected Communities are described in Performance Standard 1 and the accompanying Guidance Note, and are further described below as they apply to Indigenous Peoples.<sup>GN2</sup>

GN15. The process of ICP entails consultation that occurs freely and voluntarily, without any external manipulation, interference or coercion, and without intimidation. In addition, the Affected Communities of Indigenous Peoples should have access to relevant project information prior to any decision making that will affect them, including information on potential adverse environmental and social impacts affecting them at each stage of project implementation (i.e., design construction, operation and decommissioning). To achieve this objective, consultations should take place prior to and during project planning.

GN16. The engagement process will take account of existing social structures, leadership, and decision-making processes as well as social identities such as gender and age, and be cognizant of, inter alia:

- The existence of patriarchal traditions and social norms and values that may limit women's participation in leadership roles and decision-making processes;
- The need to protect and ensure the legal rights of indigenous women; and
- Marginal or vulnerable groups' potentially limited realization of their economic and social rights as a consequence of poverty and limited access to economic resources, social services, or decision-making processes.

GN17. Clients should adopt ICP approaches that build upon existing customary institutions and decision-making processes utilized by the Affected Communities of Indigenous Peoples. However clients should assess the capacity of the existing institutions and decision-making processes to deal with the wide array of new issues introduced by the project. In many situations, projects introduce issues that existing institutions and decision-making processes are poorly equipped to address. Inadequate capacity and experience may result in decisions and outcomes that have detrimental consequences for the Affected Communities and project relations with them. Specifically, poor processes, decisions, and outcomes may lead to challenges to existing institutions, decision-making processes, and recognized leadership, and to disputes over agreements between the Affected Communities of Indigenous Peoples and the project. Building awareness and capacity to address issues that can reasonably be predicted to occur can strengthen both Affected Communities and project agreements with them. Such capacity building can be done in a number of ways, including but not limited to involving competent local organizations such as

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<sup>GN2</sup> Further guidance on engagement processes is provided in (i) Stakeholder Engagement: A Good Practice Handbook for Companies Doing Business in Emerging Markets, and (ii) Indigenous Peoples and Mining, Good Practice Guide, ICMM 2010.

civil society organizations (CSOs) or government extension agencies; contracting with academic or research organizations undertaking applied or action research involving communities; linking up with existing support programs for local communities run by government or other agencies; and providing resources and technical support for local municipal authorities in facilitating community engagement and strengthening.

GN18. Clients should keep in mind that the communities of Indigenous Peoples are not necessarily homogeneous and there can be divergent views and opinions within them. Experience demonstrates that: the views of the traditional elders or leaders may differ from those who have received formal education; the views of the elderly may differ from those of the youth; and the views of men may differ from women. Nonetheless in many cases, community elders or leaders, who are not necessarily the elected officials of these communities, play a key role. Furthermore, some segments of the community such as women, youth, and the elderly, may be more vulnerable to project impacts than others. The consultation should take into account the interests of these segments in the community while being cognizant of traditional cultural approaches that may exclude segments of the community from the decision-making process.

GN19. The ICP processes with and within Affected Communities of Indigenous Peoples will frequently span an extended period of time. Providing adequate information to the members of the indigenous community about a project's potential adverse impacts and proposed minimization and compensation measures may involve an iterative process involving various segments of the community. Thus, (i) consultation should start as early as possible in the risks and impacts assessment process; (ii) client engagement processes should aim to ensure that the entire population of Affected Communities of Indigenous Peoples is aware of and understands the risks and impacts associated with project development; (iii) project information should be made available in an understandable format, using indigenous languages where appropriate; (iv) the communities should have sufficient time for consensus building and developing responses to project issues that impact upon their lives and livelihoods; and (v) clients should allocate sufficient time to fully consider and address Indigenous Peoples' concerns and suggestions about the project in the project design and implementation.

GN20. Assessment of the capacity of the Affected Communities of Indigenous Peoples to engage in a process of ICP should inform the engagement process. The client may consider effective communication and capacity building programs to enhance the effectiveness of the ICP process with Indigenous Peoples and their informed participation in key aspects of the project. For example the client:

- Should seek the active participation of the Affected Communities of Indigenous Peoples throughout the key stages of the risks and impacts assessment process on matters that pertain to them.
- May provide members of the Affected Communities with an opportunity to assess the potential risks and impacts associated with project development by facilitating cross-visits to comparable projects.
- May enable Indigenous Peoples' access to legal advice about their rights and entitlements to compensation, due process, and benefits under national law.
- Should ensure that all groups' views are adequately represented in decision making.
- Should facilitate a culturally appropriate decision-making process for communities where no established decision-making process or leadership exists.
- May promote capacity building and involvement in areas such as participatory monitoring and community development.

GN21. Affected Communities of Indigenous Peoples should be enabled to raise and receive client responses to grievances and complaints. The client may utilize the general grievance mechanism for the project in accordance with the requirements of Performance Standard 1 or a grievance mechanism

specifically dedicated to the Affected Communities of Indigenous Peoples that meets the requirements of Performance Standard 1 to achieve this objective. The grievance mechanism should be designed in consultation with the Affected Communities of Indigenous Peoples. The grievance mechanism should be culturally appropriate and should not interfere with any existing processes or institutions within the Affected Communities of Indigenous Peoples to settle differences among them. The grievance mechanism should provide for fair, transparent, and timely redress of grievances at no cost, and if necessary provide special provisions for women, youth and the elderly. As part of the engagement process, all members of the Affected Communities of Indigenous Peoples should be informed of the client's grievance mechanism.

GN22. For successful outcomes to be achieved for the mutual benefit of all parties, it is important that the parties have a shared view of the process for achieving ICP and, where applicable, FPIC itself. These processes should ensure the meaningful participation of Indigenous Peoples in decision-making, focusing on achieving agreement while not conferring veto rights to individuals or sub-groups, or requiring the client to agree to aspects not under their control. The client and Affected Communities of Indigenous Peoples should agree on appropriate engagement and consultation processes as early as possible, commensurate with the scale of impact and vulnerability of the communities. This should ideally be done through a framework document or plan that identifies representatives of Affected Communities of Indigenous Peoples, the agreed consultation process and protocols, the reciprocal responsibilities of parties to the engagement process and agreed avenues of recourse in the event of impasses occurring (see GN23). Where appropriate, it should also define what would constitute consent from Affected Communities of Indigenous Peoples. The client should document support for the agreed process from the affected population.

GN23. Companies have a responsibility to work with Affected Communities of Indigenous Peoples to ensure a meaningful engagement process, including on achieving FPIC where appropriate. Affected Communities of Indigenous Peoples are similarly expected to work with the client to establish an acceptable engagement process and to participate in this process. It is recognized that differences of opinion may arise, which in some cases may lead to setbacks or delays in reaching agreement. At the outset the parties should agree on reasonable tests or avenues of recourse to be applied in such situations. This might include seeking mediation or advice from mutually acceptable third parties. As noted in GN26, the engagement process between the client and Affected Communities of Indigenous Peoples required in the Performance Standards is separate from project-related processes and decisions of the government.

### *Definition of Free, Prior and Informed Consent*

GN24. It is recognized that there is no universally accepted definition of FPIC and that the definition and practices related to FPIC are evolving. For the purposes of this Performance Standard, FPIC is defined in Paragraph 12 of Performance Standard 7 and further elaborated below.

GN25. FPIC comprises a process and an outcome. The process builds upon the requirements for ICP (which include requirements for free, prior and informed consultation and participation) and additionally requires Good Faith Negotiation (GFN) between the client and Affected Communities of Indigenous Peoples. GFN involves on the part of all parties: (i) willingness to engage in a process and availability to meet at reasonable times and frequency; (ii) provision of information necessary for informed negotiation; (iii) exploration of key issues of importance; (iv) use of mutually acceptable procedures for negotiation; (v) willingness to change initial position and modify offers where possible; and (vi) provision of sufficient time for decision making. The outcome, where the GFN process is successful, is an agreement and evidence thereof.

GN26. States have the right to make decisions on the development of resources pursuant to applicable national law, including those laws implementing host country obligations under international law. Performance Standard 7 does not contradict the state's right to develop its resources. A state may have obligations or commitments to ensure that Indigenous Peoples provide their free, prior, and informed consent for matters pertaining to the overall development of indigenous territories. Such state-level obligations are distinct from the project-level FPIC requirements described in Performance Standard 7. As described in GN62–65, where government processes involve project-level decision and actions, the client should review these processes in relation to the requirements of the Performance Standard and address identified gaps where feasible.

### *Requirement for Free, Prior and Informed Consent*

GN27. Over and above the requirement for ICP for projects adversely impacting Indigenous Peoples, projects are required to facilitate a process of FPIC with the Affected Communities of Indigenous Peoples with regard to project design, implementation and expected outcomes if these are associated with any of the potentially adverse impacts identified below:

- Impacts on lands and natural resources subject to traditional ownership or under customary use;
- Relocation of Indigenous Peoples from lands and natural resources subject to traditional ownership or under customary use;
- Significant impacts on critical cultural heritage that is essential to the identity and/or cultural, ceremonial, or spiritual aspects of Indigenous Peoples lives, including natural areas with cultural and/or spiritual value such as sacred groves, sacred bodies of water and waterways, sacred trees, and sacred rocks;<sup>GN3</sup> or
- Use of cultural heritage, including knowledge, innovations or practices of Indigenous Peoples for commercial purposes.

### *Application of Free, Prior and Informed Consent*

GN28. FPIC applies to those aspects of project design, activities, and outcomes associated with the specific potential adverse impacts described in GN27, and which directly affect communities of Indigenous Peoples. In some cases, the scope of FPIC will be limited and targeted to specific portions of land or aspects of a project. Examples of such targeted FPIC include: (i) linear projects that pass through multiple human habitats may only require FPIC for the component that traverses Indigenous Peoples' lands; (ii) projects with multiple facilities and/or comprising multiple sub-projects, some of which are located on Indigenous Peoples' lands, may only require FPIC for the facilities and/or sub-projects located on Indigenous Peoples' lands; (iii) for projects involving an expansion of existing facilities, FPIC should focus on the new project activities to the extent possible.

GN29. In certain cases it may not be possible to define all aspects of the project and its locations, identify Affected Communities (including Indigenous Peoples) and review project environmental and social assessment and related mitigation plans before decisions are taken about project design aspects (e.g., exploration phase activities in the extractive industries). In the absence of these elements, achieving FPIC prior to approving a project may not be feasible and/or considered meaningful because the determination should be closely related to the defined impacts of a known project on directly Affected Communities. The appropriate sequencing of achieving FPIC is generally to first agree on key principles through an overall framework, and then consult on specific aspects once designs are further advanced and locations are determined. In such circumstances the client should (i) develop forward-looking stakeholder engagement strategies that ensure that relevant stakeholders are aware of potential

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<sup>GN3</sup> Natural areas with cultural value are equivalent to priority ecosystem services as defined in Performance Standard 6 in that they may be central to the identity and/or cultural, ceremonial, or spiritual aspects of Indigenous Peoples' lives.

development pathways; (ii) ensure that stakeholders have adequate awareness, understanding and access to information concerning their resource rights (lands, forests, tenure systems, government established compensation frameworks, etc); and (iii) commit to implementing a process of FPIC for any subsequent project development adversely impacting Indigenous Peoples in the manner described in GN27, once such impacts become known. Documents that may be submitted in the process of achieving FPIC may include a framework agreement on engagement and consultation, agreements demonstrating FPIC, and IPPs.

GN30. Similarly, there may be situations where likely project scope and location are known, but where the engagement process with Affected Communities of Indigenous Peoples is not yet sufficiently advanced to have obtained FPIC at the time of project approval. In such cases the overall principles and engagement process, and criteria for obtaining FPIC, should be agreed on before project approval. As a minimum FPIC should be obtained prior to any of the circumstances requiring FPIC taking place.

GN31. Circumstances may arise where a project is required to achieve both ICP for mainstream communities impacted by the project, and FPIC for Indigenous Peoples impacted by the project, such as linear projects that traverse both non-Indigenous and Indigenous Peoples' lands; and projects implemented in areas where both mainstream society and Indigenous Peoples reside in proximate but separate communities or in mixed communities. Since the achievement of ICP and FPIC as separate processes with different groups within a community or between proximate communities may be difficult and in some cases be a cause of division within the community, a single engagement process resulting in one agreement is generally recommended. In such cases the process and agreement should reference the higher standard (i.e., GFN and agreement demonstrating FPIC). Whether the agreement entails different benefits for the differently affected groups will depend on the project context, the Affected Communities and the nature of project impacts.

GN32. Where government decision-making processes have been directly applied at a project level (e.g., land acquisition, resettlement), the client's due diligence process should assess whether these processes have occurred in a manner consistent with the requirements of this Performance Standard and, if not, if any corrective action is feasible to address the situation (see GN63). Where key project decisions such as land acquisition and resettlement are not managed by the client, it may not be possible for the client to achieve all elements of this Performance Standard, including the requirement of FPIC (see also GN23). In these cases, the client should assess the overall risks from proceeding with its project when aspects of Performance Standards are not met.

GN33. The FPIC process and outcome do not require unanimous support from all members of Affected Communities of Indigenous Peoples. FPIC should be viewed as a process that both allows and facilitates Affected Communities of Indigenous Peoples to build and agree upon a collective position with regard to the proposed development cognizant that individuals and groups within the Affected Communities may retain differing views on various issues pertaining to the proposed development. Such collective "community consent" should derive from the group of Affected Communities as a whole, representing their view vis-à-vis the proposed development. Thus, an FPIC agreement captures the Affected Communities' broad agreement on the legitimacy of the engagement process and the decisions made.

GN34. FPIC entails consent for specific project activities, impacts and mitigation measures as anticipated at the time when consent is given. While the agreement should be valid for the duration of the project, for projects with an extended operational lifespan, it is good practice to monitor IPPs or similar action plans and be flexible in adapting them as needed if circumstances change, while maintaining the overall principles, commitments, and mutual accountabilities outlined in the agreement.

### *Process of Achieving Free, Prior and Informed Consent*

GN35. Achieving FPIC requires that the client address both process (i.e., GFN) and outcome (i.e., evidence of agreement). The client should document (i) the mutually accepted engagement and negotiation process between the client and Affected Communities of Indigenous Peoples; and (ii) evidence of agreement between the parties regarding the outcome of the negotiations. Impacts on vulnerable groups within the Affected Communities of Indigenous Peoples should be adequately addressed during negotiation and in relevant documentation.

GN36. Designing a process to achieve the FPIC of Affected Communities of Indigenous Peoples should, inter alia, take account of the following:

- (i) While the project environmental and social risks and impacts assessment process typically defines the project area of influence and identifies the population of directly Affected Communities of Indigenous Peoples, in certain circumstances the formal and informal leaders and decision-making bodies of the Affected Communities of Indigenous Peoples may be located outside this area;
- (ii) As with many communities, communities of Indigenous Peoples may be affected by issues related to governance, leadership and representativeness. Assessment of these issues will inform the engagement and negotiation process. Where administrative and traditional systems recognize different leaders, where leadership is known to be highly politicized and/or only marginally representative of the affected population or if there are multiple groups representing different interests, FPIC should rely on identification, recognition and engagement of greater numbers or representativeness of stakeholder sub-groups;
- (iii) The occurrence of conflict—whether past or present—within the Affected Communities of Indigenous Peoples or between the Affected Communities of Indigenous Peoples and other stakeholders (e.g., non-Indigenous Peoples, companies, and/or the state) should be assessed in terms of the nature of the conflict, the different interest groups and the Affected Communities' approaches to conflict management and resolution mechanisms;
- (iv) The role, responsibilities and participation of external stakeholders with vested interests in the outcome; and
- (v) The possibility of unacceptable practices (including bribery, corruption, harassment, violence, and coercion) by any of the interested stakeholders both within and outside the Affected Communities of Indigenous Peoples.

GN37. The process of achieving the FPIC of Affected Communities of Indigenous Peoples may require investment in building relevant institutions, decision-making processes and the capacity of Affected Communities. Clients should approach the achievement of FPIC from a development perspective that prioritizes the sustainability of development activities implemented with the Affected Communities of Indigenous Peoples.

GN38. FPIC will be established through a process of GFN between the client and Affected Communities of Indigenous Peoples. Where the GFN process is successful, an agreement should document the roles and responsibilities of both parties and specific commitments. This may include: (i) agreed engagement and consultation process; (ii) environmental, social and cultural impact management (including land and resource management); (iii) compensation and disbursement framework or arrangements; (iv) employment and contracting opportunities; (v) governance arrangements; (vi) other commitments such as those pertaining to continued access to lands, contribution to development, etc;<sup>GN4</sup> and

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<sup>GN4</sup> Refer to ICMM 2010, Indigenous Peoples and Mining, Good Practice Guide for additional guidance on the various aspects of such agreements.

(vii) agreed implementation/delivery mechanisms to meet each party's commitments. The agreement between parties should include requirements to develop time-bound implementation plans such as a Community Development Plan or an IPP. Examples of agreements include a memorandum of understanding, a letter of intent, and a joint statement of principles.

GN39. Confirmation of support for agreements is an important step in concluding the agreement. Agreements should have demonstrable support from the constituency defined through the risks and impacts assessment process and with whom the process of engagement and GFN has occurred. However as noted in GN33, the FPIC process and outcome does not require unanimous support from all members of the Affected Communities of Indigenous People. Documentation of the agreement (GN41) should include evidence of support from the Affected Communities of Indigenous Peoples. Where either the appropriate engagement process or agreement cannot be achieved, consideration should be given to third party advice and mediation as described in paragraph GN23.

GN40. As noted in GN33, FPIC can only be provided at a single point in time. Projects with long life cycles may elect to develop an agreement that involves commitments being delivered through periodic development plans (e.g., IPP) covering defined project planning periods. The evolution of such agreements is project- and context-specific. Nonetheless it may be anticipated that such agreements will typically evolve from a focus on project impact mitigation and development measures towards Indigenous Peoples'-managed development models supported by defined project contributions and/or benefit-sharing mechanisms.

GN41. Different types of documents, plans and agreements will typically be produced during the various phases of a project cycle. The Environmental and Social Impact Assessment process as described in Performance Standard 1 should be seen as an ongoing, iterative process combining analytical and diagnostic work; stakeholder engagement; and the development and implementation of specific action plans with appropriate monitoring mechanisms. The overall, guiding principle should be that while these documents may be prepared at any time during the project cycle, implementation action plans such as IPPs should be in place and mitigation measures taken prior to any direct adverse impacts on Communities of Indigenous Peoples occurring. Key documents normally produced are:

- A framework document containing, inter alia, the principles of engagement, project design and implementation process as it relates to the Communities of Indigenous Peoples, and principles for obtaining FPIC where required (see below).
- An IPP or similar action plan.
- An FPIC agreement reflecting the mutual consent to the process and proposed actions, by the client and the Affected Communities of Indigenous Peoples. This agreement may refer to and endorse a proposed IPP or similar action plan, but it may also establish that an IPP or similar action plan be developed or finalized subsequent to FPIC having been obtained.

### *Circumstances Requiring Free, Prior, and Informed Consent*

#### **Impacts on Lands and Natural Resources Subject to Traditional Ownership or Under Customary Use**

**13. Indigenous Peoples are often closely tied to their lands and related natural resources.<sup>6</sup> Frequently, these lands are traditionally owned or under customary use.<sup>7</sup> While Indigenous Peoples may not possess legal title to these lands as defined by national law, their use of these lands, including seasonal or cyclical use, for their livelihoods, or cultural, ceremonial, and spiritual purposes that define their identity and community, can often be substantiated and documented.**

**14. If the client proposes to locate a project on, or commercially develop natural resources on lands traditionally owned by, or under the customary use of, Indigenous Peoples, and adverse impacts<sup>8</sup> can be expected, the client will take the following steps:**

- **Document efforts to avoid and otherwise minimize the area of land proposed for the project;**
- **Document efforts to avoid and otherwise minimize impacts on natural resources and natural areas of importance<sup>9</sup> to Indigenous People;**
- **Identify and review all property interests and traditional resource uses prior to purchasing or leasing land;**
- **Assess and document the Affected Communities of Indigenous Peoples' resource use without prejudicing any Indigenous Peoples' land claim.<sup>10</sup> The assessment of land and natural resource use should be gender inclusive and specifically consider women's role in the management and use of these resources;**
- **Ensure that Affected Communities of Indigenous Peoples are informed of their land rights under national law, including any national law recognizing customary use rights; and**
- **Offer Affected Communities of Indigenous Peoples compensation and due process in the case of commercial development of their land and natural resources, together with culturally appropriate sustainable development opportunities, including:**
  - **Providing land-based compensation or compensation-in-kind in lieu of cash compensation where feasible.<sup>11</sup>**
  - **Ensuring continued access to natural resources, identifying the equivalent replacement resources, or, as a last option, providing compensation and identifying alternative livelihoods if project development results in the loss of access to and the loss of natural resources independent of project land acquisition.**
  - **Ensuring fair and equitable sharing of benefits associated with project usage of the resources where the client intends to utilize natural resources that are central to the identity and livelihood of Affected Communities of Indigenous Peoples and their usage thereof exacerbates livelihood risk.**
  - **Providing Affected Communities of Indigenous Peoples with access, usage, and transit on land it is developing subject to overriding health, safety, and security considerations.**

<sup>6</sup> Examples include marine and aquatic resources timber, and non-timber forest products, medicinal plants, hunting and gathering grounds, and grazing and cropping areas. Natural resource assets, as referred to in this Performance Standard, are equivalent to provisioning ecosystem services as described in Performance Standard 6.

<sup>7</sup> The acquisition and/or leasing of lands with legal title is addressed in Performance Standard 5: Land Acquisition and Involuntary Resettlement.

<sup>8</sup> Such adverse impacts may include impacts from loss of access to assets or resources or restrictions on land use resulting from project activities.

<sup>9</sup> "Natural resources and natural areas of importance" as referred to in this Performance Standard are equivalent to priority ecosystem services as defined in Performance Standard 6. They refer to those services over which the client has direct management control or significant influence, and those services most likely to be sources of risk in terms of impacts on Affected Communities of Indigenous Peoples.

<sup>10</sup> While this Performance Standard requires substantiation and documentation of the use of such land, clients should also be aware that the land may already be under alternative use, as designated by the host government.

<sup>11</sup> If circumstances prevent the client from offering suitable replacement land, the client must provide verification that such is the case. Under such circumstances, the client will provide non land-based income-earning opportunities over and above cash compensation to the Affected Communities of Indigenous Peoples.

GN42. If issues related to land use as described in paragraph 14 of Performance Standard 7 are identified in the screening phase, the client will engage competent experts to carry out the outlined assessment with active participation of the Affected Communities of Indigenous Peoples. The assessment should describe the Indigenous Peoples' traditional land and resource tenure system (both individual and collective) within the project's area of influence. The assessment should also identify and record all customary use of land and resources, including cultural, ceremonial or spiritual use, and any ad hoc, seasonal or cyclical use of land and natural resources (for example, for hunting, fishing, grazing, or extraction of forest and woodland products), and any potential adverse impacts on such use. Customary use of land and resources refers to patterns of long-standing community land and resource use in accordance with Indigenous Peoples' customary laws, values, customs, and traditions, including seasonal or cyclical use, rather than formal legal title to land and resources issued by the state. Cultural, ceremonial, and spiritual uses are an integral part of Indigenous Peoples' relationships to their lands and resources, are embedded within their unique knowledge and belief systems, and are key to their cultural integrity. Such uses may be intermittent, may take place in areas distant from settlements, and may not be site-specific. Any potential adverse impacts on such use must be documented and addressed within the context of these systems. Any information from the client's assessment that identifies the existence of critical habitats and critical cultural resources consistent with Performance Standards 6 and 8 within the project area of influence will be relevant in the analysis and should be taken into account. Indigenous Peoples' claims to land and resources not legally owned under national law should also be documented as part of the assessment process. The client should ensure that lack of documentation of land claims, or absence of land claims should not prejudice existing or future legal proceedings of Indigenous Peoples to establish legal title.

GN43. The priority objective of the assessment process is to identify measures to avoid adverse impacts on these lands and resources, and Indigenous Peoples usage thereof. Where avoidance is not feasible, mitigation, and/or compensation measures should be developed to ensure the availability of, and access to, the land and natural resources necessary for the livelihoods and cultural survival of the Affected Communities of Indigenous Peoples. Land-based compensation should be preferred, provided that suitable land is available. In addition, the client should observe due process, such as appropriate notification and responses to inquiries, for the Affected Communities of Indigenous Peoples. In some cases, land under Indigenous Peoples' claim may already be designated by the host government for alternate uses, which may include nature reserves, mining concession areas, or as individual parcels by users who have obtained title to the land. In this case, the client should seek to involve the relevant government agency in any consultation and negotiation with the Affected Communities of Indigenous Peoples.

GN44. Whether the project should proceed with activities that may result in adverse impacts on these lands should be subject to securing the FPIC of the Affected Communities of Indigenous Peoples. In some cases, it may be possible for the client to work with a national governmental agency to facilitate the legal recognition of lands claimed or used by Affected Communities of Indigenous Peoples in connection with land titling programs of the government. The client can base this work on the customary land tenure information gathered during the assessment process and help the Affected Communities or members of the Affected Communities to pursue land titles, if the Indigenous Peoples so request and participate in such programs.

**Relocation of Indigenous Peoples from Lands and Natural Resources Subject to Traditional Ownership or Under Customary Use**

**15. The client will consider feasible alternative project designs to avoid the relocation of Indigenous Peoples from communally held<sup>12</sup> lands and natural resources subject to traditional ownership or under customary use. If such relocation is unavoidable the client**

***will not proceed with the project unless FPIC has been obtained as described above. Any relocation of Indigenous Peoples will be consistent with the requirements of Performance Standard 5. Where feasible, the relocated Indigenous Peoples should be able to return to their traditional or customary lands, should the cause of their relocation cease to exist.***

<sup>12</sup> Typically, Indigenous Peoples claim rights and access to, and use of land and resources through traditional or customary systems, many of which entail communal property rights. These traditional claims to land and resources may not be recognized under national laws. Where members of the Affected Communities of Indigenous Peoples individually hold legal title, or where the relevant national law recognizes customary rights for individuals, the requirements of Performance Standard 5 will apply, rather than the requirements under paragraph 17 of this Performance Standard.

GN45. Because physical relocation of Indigenous Peoples is particularly complex and may have significant and irreversible adverse impacts on their cultural survival, the client is expected to make every effort to explore feasible alternative project designs to avoid any physical relocation of Indigenous Peoples from their communally held traditional lands or customary lands under use. The potential relocation may result from the project's acquisition of land, or through restrictions or alterations on land use or resources (for example, where the communally held traditional lands or customary lands under use by Indigenous Peoples are designated by the relevant government agency for another use in conjunction with the proposed project, such as establishment of protected areas for resource conservation purposes). Any physical relocation should only be considered after the client has established that there is no feasible alternative to relocation and the client has secured the FPIC of the Affected Communities of Indigenous Peoples, building on the process of their informed participation.

GN46. In case the host government has made the decision to relocate Indigenous Peoples, the client should consult with relevant government officials in order to understand the rationale for such relocation and determine whether a GFN based on informed participation of the Indigenous Peoples has been implemented and successfully concluded regarding the aspects of the project and the relocation of Affected Communities of Indigenous Peoples. Clients may be required to address gaps in process and outcomes where these are identified.

GN47. Upon conclusion of the FPIC process providing for the relocation of Indigenous Peoples, the client will prepare a Resettlement Action Plan/Livelihood Restoration Plan consistent with the conclusion of the negotiation and in accordance with paragraphs 19–24 and 25–29, respectively, of Performance Standard 5. The client should be guided by paragraph 9 of Performance Standard 5 on the level of compensation for land. Such a plan should include a provision to allow the Affected Communities, where possible and feasible, to return to their lands when the reasons for their relocation cease to exist.

GN48. The requirements under Performance Standard 7, paragraph 15, are intended for situations where traditionally owned lands or customary usage of resources are held and used by Indigenous Peoples communally. Where individual members of the Affected Communities of Indigenous Peoples hold legal title, or where relevant national law recognizes customary rights for individuals, the requirements of Performance Standard 5 will apply. However, even where individuals within the Affected Communities of Indigenous Peoples hold legal title to land individually, the client should be aware that the decision of relevant individuals to cede title and to relocate may still be subject to a community-based decision-making process, as these lands may be not be considered private property but ancestral lands.

### **Critical Cultural Heritage**

***16. Where a project may significantly impact on critical cultural heritage<sup>13</sup> that is essential to the identity and/or cultural, ceremonial, or spiritual aspects of Indigenous Peoples lives, priority will be given to the avoidance of such impacts. Where significant project impacts on***

***critical cultural heritage are unavoidable, the client will obtain the FPIC of the Affected Communities of Indigenous Peoples.***

***17. Where a project proposes to use the cultural heritage including knowledge, innovations, or practices of Indigenous Peoples for commercial purposes, the client will inform the Affected Communities of Indigenous Peoples of (i) their rights under national law; (ii) the scope and nature of the proposed commercial development; (iii) the potential consequences of such development; and (iv) obtain their FPIC. The client will also ensure fair and equitable sharing of benefits from commercialization of such knowledge, innovation, or practice, consistent with the customs and traditions of the Indigenous Peoples.***

<sup>13</sup> Includes natural areas with cultural and/or spiritual value such as sacred groves, sacred bodies of water and waterways, sacred trees, and sacred rocks. Natural areas with cultural value are equivalent to priority ecosystem cultural services as defined in Performance Standard 6.

GN49. Knowledge, innovations, and practices of Indigenous Peoples are often referred to as traditional knowledge and include expressions of folklore or traditional cultural expressions. Such knowledge is referred to as intangible cultural heritage. Further, knowledge, innovations, and practices of Indigenous Peoples often remain in use for sacred or ritual purposes, and can be held secret by the community or designated members. Commercial development of intangible cultural heritage is the subject of current international discussions, with international standards emerging slowly. The one exception is in the commercial use of genetic resources and associated traditional knowledge of indigenous or traditional communities as reflected in the [Convention on Biological Diversity](#) in which women's vital role in preserving and managing biological diversity is also mentioned. Useful guidance in this area is provided by the [Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising out of their Utilization](#) and the [Akwé: Kon Guidelines](#) and the [Tkarihwaí:ri Code of Ethical Conduct to Ensure Respect for the Cultural and Intellectual Heritage of Indigenous and Local Communities](#) issued under the Convention on Biological Diversity (see Bibliography). Examples of commercial development include commercialization of traditional medicinal knowledge or other sacred or traditional techniques for processing plants, fibers or metals. Traditional cultural expressions such as sale of art or music should be treated in accordance with national law and emerging international practice.

GN50. Clients should comply with applicable national laws, if any, regarding their use of knowledge, innovation or practices of Indigenous Peoples for commercial purposes. Because such information, processes, and materials may be used for sacred or ritual purposes by communities of Indigenous Peoples, and may in some cases be kept secret by such communities or designated members thereof, the client should seek the informed consent of the owner(s) before using or disclosing them, and in any event, enable the relevant communities to continue to use the genetic materials for customary or ceremonial purposes

GN51. Where a project proposes to exploit and develop intangible cultural heritage including knowledge, innovations, or practices of Indigenous Peoples, the client should (i) investigate whether the indigenous cultural heritage is held individually or collectively prior to entering into any agreements with local indigenous holder(s) of the cultural heritage; (ii) obtain the informed consent of the indigenous cultural heritage holder(s) for its use; and (iii) share the benefits accruing from such use as appropriate with the Affected Communities of Indigenous Peoples. The client should use expert and unbiased information in seeking the FPIC of indigenous holders of cultural heritage, even if ownership of the item is in dispute. The client should document the FPIC of the affected Indigenous Peoples' communities for the proposed commercial development, in addition to any requirements pursuant to national law. Where benefit sharing is envisioned, benefits should be determined on mutually agreed terms as part of the process of securing FPIC. Benefits may include, for example, development benefits in the form of employment, vocational

training, and benefits pursuant to community development and similar programs as well as from the making, marketing and licensing of some forms of traditional cultural expression. Clients should be mindful of specific consent requirements under the relevant international conventions or national law, and may have to address identified gaps, if any.

GN52. Clients should be aware that use of indigenous names, photographs, and other items depicting them and the environment in which they live can be sensitive. The client should assess local norms and preferences, and consult with the relevant communities before using such items even for such purposes as naming project sites or pieces of equipment.

GN53. Clients should refer to similar requirements and guidance available in Performance Standard 8 and Guidance Note 8 with respect to the cultural heritage of communities other than those of Indigenous Peoples.

### *Mitigation and Development Benefits*

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**18. The client and the Affected Communities of Indigenous Peoples will identify mitigation measures in alignment with the mitigation hierarchy described in Performance Standard 1 as well as opportunities for culturally appropriate and sustainable development benefits. The client will ensure the timely and equitable delivery of agreed measures to the Affected Communities of Indigenous Peoples.**

**19. The determination, delivery, and distribution of compensation and other benefit sharing measures to the Affected Communities of Indigenous Peoples will take account of the laws, institutions, and customs of these communities as well as their level of interaction with mainstream society. Eligibility for compensation can either be individually or collectively-based, or be a combination of both.<sup>14</sup> Where compensation occurs on a collective basis, mechanisms that promote the effective delivery and distribution of compensation to all eligible members of the group will be defined and implemented.**

**20. Various factors including, but not limited to, the nature of the project, the project context and the vulnerability of the Affected Communities of Indigenous Peoples will determine how these communities should benefit from the project. Identified opportunities should aim to address the goals and preferences of the Indigenous Peoples including improving their standard of living and livelihoods in a culturally appropriate manner, and to foster the long-term sustainability of the natural resources on which they depend.**

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<sup>14</sup> Where control of resources, assets and decision making are predominantly collective in nature, efforts will be made to ensure that, where possible, benefits and compensation are collective, and take account of intergenerational differences and needs.

GN54. Affected Communities of Indigenous Peoples may comprise multiple groups and different social units (e.g., individuals, clans, tribes, etc.) within these groups. The project may impact upon the social units in different ways. For example, land take may affect all members' access to and use of land and resources while specifically impacting the land claims of only one clan, as well as any current use of the resources. The social assessment should form the basis of identifying affected groups and understanding the nature of specific impacts.

GN55. Eligibility for compensation may either be individual or collectively-based, or be a combination of both. For example, with regard to land and natural resources, eligible Indigenous Peoples may include community members with hereditary rights of resource ownership and management, members with use

rights, and members currently utilizing the resource. Determination of eligibility and the appropriate structure and mechanisms for the delivery and management of compensation should take account of the results of the social assessment; the laws, institutions, and customs of the Affected Communities of Indigenous Peoples; the direct and induced changes which the project will bring upon the Affected Communities of Indigenous Peoples including changing relations with mainstream society; and international good practice.

### *Mitigation and Compensation*

GN56. The client, together with the Affected Communities of Indigenous Peoples, will design appropriate mitigation and compensation mechanisms to address project-induced adverse impacts. In certain circumstances the delivery of agreed mitigation and compensation may benefit from development of the human resource capacity of the Affected Communities of Indigenous Peoples so as to ensure the protection, sustainable management, and continued delivery of these benefits.

GN57. Where replacement land and resources are provided to the Affected Communities of Indigenous Peoples, legally valid and secure forms of land tenure should be provided. Allocation of land titles may occur on an individual or a collective basis based on results of the social assessment; the laws, institutions and customs of the Affected Communities of Indigenous Peoples; and the direct and induced changes that the project will bring upon the Affected Communities of Indigenous Peoples, including changing relations with mainstream society.

GN58. Agreed mitigation and compensation mechanisms (and associated development interventions) should be documented in an agreement and delivered as an integrated program either through an IPP or a Community Development Plan. The latter may be more appropriate where Indigenous Peoples live alongside other affected groups who are not indigenous, but share similar vulnerabilities and related livelihoods.

### *Broader Development Opportunities*

GN59. Private sector operations may provide unique opportunities for Indigenous Peoples' broader development. Depending on the project and context, the client may catalyze and/or directly support the delivery of development programming to support the development of the Affected Communities of Indigenous Peoples. While addressing project-induced adverse impacts is a compliance requirement under Performance Standard 7, providing broader development opportunities is not. It is recommended as good practice where opportunities exist, but is not mandatory. In large-scale projects, the client may be able to offer a more comprehensive set of development benefits, as part of its community or regional development effort, or effort to stimulate local enterprises and economy. The client may also look for opportunities to support existing programs tailored to deliver development benefits to Indigenous Peoples, such as bilingual educational programs, maternal, and child health and nutrition programs, employment generation activities, and arrangements for micro-credit schemes. In engaging with the communities of Indigenous Peoples, it is recommended that the distinction between rights and entitlements related to mitigation of project-induced adverse impacts on the one hand, and broader development opportunities on the other hand, be made clear, in order to avoid confusion and unreasonable expectations over what the client is required to do and what may be provided additionally in terms of benefits.

GN60. Such development programming may include: (i) supporting the development priorities of Indigenous Peoples through programs (such as community-driven development programs and locally managed social funds) developed by governments in cooperation with Indigenous Peoples; (ii) addressing the gender and intergenerational issues that exist among many Indigenous Peoples, including the special needs of indigenous women, youth, and children; (iii) preparing participatory profiles

of Indigenous Peoples to document their culture, demographic structure, gender and intergenerational relations and social organization, institutions, production systems, religious beliefs, and resource use patterns; (iv) strengthening the capacity of Indigenous Peoples' communities and organizations to prepare, implement, monitor, and evaluate development programs and interact with mainstream economy; (v) protecting indigenous knowledge, including by strengthening intellectual property rights; and (vi) facilitating partnerships among the government, Indigenous Peoples organizations, CSOs, and the private sector to promote Indigenous Peoples' development programs.

GN61. The nature and scale of appropriate development opportunities will vary. It is important to identify, plan and implement development programs in close consultation with Affected Communities of Indigenous Peoples. Broader development interventions may be documented in community or regional development plans, as appropriate.

### *Private Sector Responsibilities Where Government is Responsible for Managing Indigenous Peoples Issues*

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**21. Where the government has a defined role in the management of Indigenous Peoples issues in relation to the project, the client will collaborate with the responsible government agency, to the extent feasible and permitted by the agency, to achieve outcomes that are consistent with the objectives of this Performance Standard. In addition, where government capacity is limited, the client will play an active role during planning, implementation, and monitoring of activities to the extent permitted by the agency.**

**22. The client will prepare a plan that, together with the documents prepared by the responsible government agency, will address the relevant requirements of this Performance Standard. The client may need to include (i) the plan, implementation, and documentation of the process of informed consultation and engagement and FPIC where relevant; (ii) a description of the government-provided entitlements of affected Indigenous Peoples; (iii) the measures proposed to bridge any gaps between such entitlements, and the requirements of this Performance Standard; and (iv) the financial and implementation responsibilities of the government agency and/or the client.**

GN62. Host government legislation and regulations may define responsibilities for the management of Indigenous Peoples' issues and constrain the role and responsibilities of the private sector with regard to management of adverse impacts on Affected Communities of Indigenous Peoples. Furthermore host government legislation and regulations may be inconsistent with the requirements of Performance Standard 7 and thereby limit a client's scope to implement the required processes and achieve the intended outcomes of the Performance Standard. In such circumstances clients should seek ways to comply with the requirements and to achieve the objectives of Performance Standard 7, without contravening applicable laws. Clients should offer to play an active role during the preparation, implementation and monitoring of the processes and should coordinate with the relevant government authorities those aspects of the processes that can be facilitated more efficiently by the client or other agents such as consultants or CSOs.

GN63. Under certain circumstances, a client may be provided with unoccupied land for the project, unencumbered by any current claims, by a government agency or other authority. If land clearance or preparation has occurred in anticipation of the project, but not immediately preceding project implementation, the client should make a determination as to whether the process of securing the land and any requisite resettlement has occurred in a manner consistent with the requirements of this Performance Standard (and where relevant Performance Standard 5) and, if not, if any corrective action

is feasible to address the situation. Under such circumstances, the following factors should be considered: (i) the length of the intervening period between land acquisition and project implementation; (ii) the process, laws and actions by which the land acquisition and resettlement was carried out; (iii) the number of people affected and the significance of the impact of land acquisition; (iv) the relationship between the party that initiated the land acquisition and the client; and (v) the current status and location of the people affected.

GN64. Where compensation procedures are not addressed under national law or policy, the client should establish methods for determining adequate compensation and for providing it to the Affected Communities of Indigenous Peoples.

GN65. Where the responsible agency will enable the client to participate in the ongoing monitoring of affected persons, the client should design and carry out a program of monitoring with particular attention to those who are poor and vulnerable so as to track their standards of living and effectiveness of compensation, resettlement assistance, and livelihood restoration. The client and the responsible agency should agree to an appropriate allocation of responsibilities with respect to completion audits and corrective actions.

## **Annex A**

### **Indigenous Peoples Plan (IPP)**

The IPP is prepared in a flexible and pragmatic manner, and its level of detail varies depending on the specific project and the nature of the effects to be addressed. In general and where appropriate, an IPP should include the following elements:

**(a) Baseline information (from environmental and social risks and impacts assessment process)**

Summarize relevant baseline information that clearly profiles the Affected Communities, their circumstances and livelihoods, with description and quantification of the natural resources upon which the Indigenous Peoples depend.

**(b) Key Findings: Analysis of Impacts, Risks & Opportunities (from environmental and social risks and impacts assessment process)**

Summarize key findings, analysis of impacts, risks and opportunities and recommended possible measures to mitigate adverse impacts, enhance positive impacts, conserve and manage their natural resource base on a sustainable basis, and achieve sustainable community development.

**(c) Result of Consultations (during environmental and social risks and impacts assessment process) and Future Engagement**

Describe the process of information disclosure, consultation and informed participation and where relevant the FPIC process including GFN and documented agreements, with the Affected Communities of Indigenous Peoples, and how issues raised have been addressed. The consultation framework for future engagement should clearly describe the process for ongoing consultations with, and participation by Indigenous Peoples (including women and men), in the process of implementing and operating the project.

**(d) Avoid, Minimize, and Mitigate Negative Impacts and Enhance Positive Impacts**

Clearly describe the measures agreed to in the process of information disclosure, consultation and informed participation to avoid, minimize and mitigate potential adverse effects on Indigenous Peoples, and to enhance positive impacts. Include appropriate action times that detail the measures to be taken, responsibilities and agreed schedule and for implementation (who, how, where and when) (refer to Performance Standard 1 and Guidance Note 1 for more details of the contents of an Action Plan). Whenever feasible, avoidance or preventative measures should be given primacy over mitigatory or compensatory measures.

**(e) Community Based Natural Resource Management Component**

Where applicable, focus on the means to ensure continuation of livelihood activities key to the survival of these communities and their traditional and cultural practices. Such livelihood activities may include grazing, hunting, gathering, or artisanal fishing. This component clearly sets out how the natural resources upon which the Affected Communities depend, and the geographically distinct areas and habitats in which they are located, will be conserved, managed and utilized on a sustainable basis.

#### **(f) Measures to Enhance Opportunities**

Clearly describe measures to enable Indigenous Peoples to take advantage of opportunities brought about by the project, and to conserve and manage on a sustainable basis the utilization of the unique natural resource base upon which they depend. Such opportunities should be culturally appropriate.

#### **(g) Grievance Mechanism**

Describe appropriate procedures to address grievances by Affected Communities of Indigenous Peoples arising from project implementation and operation. When designing the grievance procedures, the client will take into account the availability of judicial recourse and customary dispute settlement mechanisms among the Indigenous Peoples. Affected Communities (both women and men) must be informed of their rights and the possibilities of administrative and legal recourse or remedies, and any legal aid available to assist them as part of the process of consultation and informed participation. The grievance mechanism should provide for fair, transparent and timely redress of grievances without costs, and if necessary provide for special accommodations for women, youth and the elderly, and other vulnerable groups within the community, to make their complaints.

#### **(h) Costs, budget, timetable, organizational responsibilities**

Include an appropriate summary of costs of implementation, budget and responsibility for funding, timing of expenditure and organizational responsibilities in managing and administering project funds and expenditures.

#### **(i) Monitoring, Evaluation & Reporting**

Describe monitoring, evaluation and reporting mechanisms (including responsibilities, frequencies, feedback and corrective action processes). Monitoring and evaluation mechanisms should include arrangements for ongoing information disclosure, consultation and informed participation with the Affected Communities of Indigenous Peoples (both women and men) and for the implementation and funding of any corrective action identified in the evaluation process.

### **Annotated Bibliography**

The requirements set out in the performance standard relate to the international conventions and guidelines in this bibliography.

#### **Six United Nations Conventions of Relevance to Indigenous Peoples**

The following is a list of United Nations (UN) conventions that are relevant to indigenous peoples' issues.

- Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment
- Convention on the Elimination of All Forms of Discrimination against Women
- Convention on the Rights of the Child
- International Covenant on Civil and Political Rights
- International Covenant on Economic, Social, and Cultural Rights
- International Convention on the Elimination of All Forms of Racial Discrimination

Links to these six UN conventions are available at <http://www2.ohchr.org/english/law>. The ratification status of each convention by country is available at <http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en>.

#### **Treaties, Declarations, and Guidelines**

ILO (International Labour Organization). 1989. "Convention Concerning Indigenous and Tribal Peoples in Independent Countries." ILO, Geneva. <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C169>

Secretariat of the Convention on Biological Diversity. 1992. "Convention on Biological Diversity." 1992. Secretariat of the Convention on Biological Diversity, Montreal. <http://www.cbd.int>. The website for this convention provides information on the convention, lists signatory nations and biodiversity experts, and offers other useful information.

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### Additional Guidance

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