



Food and Agriculture
Organization of the
United Nations

FRAMEWORK FOR ENVIRONMENTAL AND SOCIAL MANAGEMENT GUIDANCE NOTE

ENVIRONMENTAL AND SOCIAL STANDARD (ESS) 8: INDIGENOUS PEOPLES





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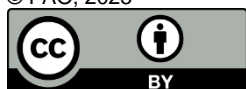
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Abbreviations

ESMP	Environmental and social management plan
ESOP	Environmental and social operational pillar
ESS	Environmental and social standard
ESS	Environmental and social standards
FAO	Food and Agriculture Organization of the United Nations
FESM	Framework for environmental and Social Management
FPIC	free, prior and informed consent
ILO	International Labour Organization
IPP	Indigenous people's plan
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
VGGT	Voluntary guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests

1. Introduction

Environmental and Social Standard (ESS) 8 – Indigenous Peoples – 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, 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.

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. The 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, coastal regions, water sources, wildlife and other natural resources may affect their institutions, livelihoods, economic development and their ability to survive and maintain or develop their identities and cultures. ESS 8 of the Framework for Environmental and Social Management (FESM) sets out specific requirements for situations where projects affect these relationships.

In 2010, the Food and Agriculture Organization of the United Nations (FAO) published its Policy on Indigenous and Tribal Peoples¹, which is based on international legal agreements such as the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)², adopted by the General Assembly in 2007, and the Indigenous and Tribal Peoples Convention of the International Labour Organization.³ FAO's Policy on Indigenous and Tribal Peoples underpins ESS 8 and provides the corporate guidance to respect, include and promote Indigenous Peoples' issues in FAO's work. The core principles of the policy are self-determination, respect for indigenous knowledge, cultures and traditional practices that contribute to sustainable and equitable development, and free, prior and informed consent (FPIC). The core principles of this policy are further engrained throughout the FESM, and most specifically through the requirements of ESS 8.

¹ See **FAO**. 2015. *Policy on indigenous and tribal peoples*. Rome. <https://www.fao.org/3/i4476en/i4476en.pdf>

² The United Nations Declaration on the Rights of Indigenous Peoples can be downloaded from the United Nations website at https://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf

³ Convention 169 of the International Labour Organization (ILO) on Indigenous and Tribal Peoples (1989) can be found on ILO's website at https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169

This guidance note provides further information and guidance on addressing issues and requirements related to ESS 8 during programme and project design and implementation. It articulates the requirements in a clear and concise manner, and proposes mitigation and management measures, tools and studies.

Section 2 introduces key background information and an approach for working with Indigenous Peoples, and presents the objectives of ESS 8 and its scope of application.

Section 3 provides a discussion of key issues related to addressing each of the specific requirements as outlined in ESS 8 of the FESM.

This note also includes a step-by-step guide to develop an FPIC process (**Annex 1**).

2. Background and basics of ESS 8

2.1. Background

ESS 8 is an important tool to further FAO's goal to design projects with the full, effective and meaningful participation of Indigenous Peoples, and in a manner that aligns with their distinct vision and development priorities. ESS 8 helps build sustainable partnerships with Indigenous Peoples as partners in development and conservation efforts. The objectives of ESS 8 are to ensure that projects are designed and implemented in a way that fosters full respect for Indigenous Peoples and their human rights, livelihoods and cultural uniqueness as they define them. The need for the standard is an acknowledgement of a history of discrimination and exclusion that has limited or prevented Indigenous Peoples from directing the course of their own development and well-being. At the same time, it is a recognition of the enormous wealth of knowledge and wisdom accumulated by Indigenous Peoples, which can greatly contribute to rural development and the accomplishment of the Sustainable Development Goals.

2.2. Objectives

The objectives of ESS 8 are as follows:

- Recognize and foster full respect for Indigenous Peoples and their human rights, dignity, cultural uniqueness, autonomy, identity and aspirations.
- Avoid adverse impacts on Indigenous Peoples from activities supported and implemented by FAO and its partners, and minimize, mitigate and remedy adverse impacts where avoidance is not possible.
- Promote the rights of Indigenous Peoples to self-determination and development according to their culture and identity.
- Recognize and respect the rights of Indigenous women and men to the lands, territories and resources that they have traditionally owned, occupied or otherwise used or acquired.
- Recognize, respect, protect and preserve the culture, knowledge and practices of Indigenous Peoples and provide them with an opportunity to adapt to changing conditions in a manner and timeframe that is acceptable to them.
- Promote interventions that are designed, managed and implemented for, by and with Indigenous Peoples, including Indigenous women and Indigenous youth.
- Ensure that FAO programmes and projects are designed in partnership with Indigenous Peoples, with their full, effective and meaningful consultation and participation, and that project activities do not commence before their FPIC has been obtained.
- Ensure that Indigenous Peoples obtain fair and equal benefits and opportunities from FAO-supported activities and from the commercial development of their lands or resources in a culturally appropriate and inclusive manner, with due consideration for gender equality.
- Incite countries to respect, protect and fulfil the rights of Indigenous Peoples.
- Protect cultural heritage from damage, inappropriate alteration, disruption, removal or misuse, support its preservation and protection, and ensure the equitable sharing of benefits generated from the integration and utilization of cultural heritage in FAO programmes and projects.

- Promote meaningful consultation with stakeholders, including Indigenous women and Indigenous youth, regarding the preservation, protection, use and management of cultural heritage.

2.3. Scope of application

The applicability of ESS 8 is established during the environmental and social screening. ESS 8 applies to all programmes and projects supported by FAO that may involve or affect the rights, lands, natural resources, territories, livelihoods, knowledge, gender relations, social fabric, traditions, governance systems and the culture and the tangible and intangible heritage of Indigenous Peoples.

2.4. Approach for working with Indigenous Peoples

FAO Members have defined the Organization’s ultimate objectives as “improve agricultural productivity, raise levels of nutrition, better the lives of rural populations and contribute to the growth of the world economy” (FAO, 2015, p. 2). As a specialized agency of the United Nations, FAO has a primary role to play in promoting greater food security and reducing poverty. FAO has long realized that achieving these objectives requires the involvement of society at large; indeed, the consensus that development efforts must include various actors and stakeholders is now widespread. Indigenous Peoples must be considered an undeniable stakeholder in a development agenda shaped by such a mandate. In 2007, the United Nations General Assembly adopted the United Nations Declaration on the Rights of Indigenous Peoples, recognizing their rights and making specific mention of free, prior and informed consent (FPIC) as a prerequisite for any activity that affects their ancestral lands, territories and natural resources.

As articulated in FAO’s Policy on Indigenous and Tribal Peoples:

Indigenous Peoples around the world are culturally distinct, yet they share a number of common values and a shared sense of purpose in their demand for internationally recognized rights and autonomy. These commonalities are expressed in a set of core principles and rights, which have been articulated by Indigenous representatives and are at the heart of the UNDRIP as well as of other international legal and standard-setting instruments. As such, they provide an international framework by which United Nations agencies are guided. In this respect, they must be addressed when working with Indigenous Peoples and must consequently also form the basis of FAO’s work in this area (FAO, 2015, p. 4).

FAO’s Policy on Indigenous and Tribal Peoples outlines the agency’s objectives for working with Indigenous Peoples. These objectives are consistent with ESS 8 of the FESM, and serve as a crucial normative underpinning of the standard. They are as follows:

- FAO will improve its institutional environment and capacities to respond to and collaborate with Indigenous Peoples and their organizations.
- FAO will enhance the capacity of governments to engage Indigenous Peoples at the national and international level, in pursuance of their rights and visions of development.
- FAO will integrate Indigenous Peoples’ issues into those normative and operational areas of its work that affect or support Indigenous Peoples and their traditional agricultural, food and livelihood systems.
- FAO will facilitate the direct and effective participation of Indigenous Peoples in current and future FAO programmes and activities that affect them. It will support the creation of

enabling environments to foster the inclusion of Indigenous Peoples in the design, execution and evaluation of policies and programmes that affect them.

- FAO will establish measures to collaborate with Indigenous Peoples and discourage ventures that may have an adverse impact on their communities. When there is a direct impact on or relation to Indigenous Peoples’ issues, FAO will follow the provisions of UNDRIP in relation to FPIC.
- FAO will approach Indigenous Peoples in a way that answers to, interacts with and learns from their unique food and agriculture practices, livelihood systems and specific sociocultural circumstances, thus building on their potential contributions and actively encouraging “development with identity”.
- FAO activities that affect Indigenous Peoples will be guided by the human rights-based approach to development, premised on the notion that everyone should live in dignity and attain the highest standards of humanity guaranteed by international human rights law. It will be guided in particular by the core principles expressed in this policy document and UNDRIP.

Table 1. Examples of the relationship between risks and opportunities for projects with potential adverse impacts on Indigenous Peoples

Risks	Opportunities
Where the risk and likelihood of marginalization and discrimination exists an opportunity exists to support activities that promote the inclusion of actors.
Where the risk of interferences with the land rights of Indigenous Peoples exists an opportunity exists to support land reform activities that ensure Indigenous Peoples' greater use and enjoyment of their lands, and to facilitate the delimitation, demarcation and titling of Indigenous lands.
Where the risk of denied access to traditional medicines and nutritional needs exists (in the context of a conservation project) an opportunity exists to support activities (e.g. workshops, research) that increase the understanding of Indigenous Peoples' rights, resource uses and traditional practices, and include them both as participants and potential leaders in the management of conservation areas and the development of resources management plans.
Where the risk that Indigenous development priorities and perspectives are ignored exists (in the context of a national policy) an opportunity exists to support activities that assist Indigenous communities to meet, organize, consider their options, present common positions with respect to development and strengthen their internal governance systems.
Where the risk of conflicts between Indigenous Peoples and other stakeholders exists an opportunity exists to support the formation of forums for peaceful dialogue and agreement.

Source: authors’ own elaboration

While adhering to the promotion of the objectives of the Policy on Indigenous and Tribal Peoples, the FESM (and more specifically ESS 8) seeks to ensure that the rights of Indigenous Peoples are respected, and that any potential negative impacts to their lands, environment or cultural heritage are avoided, minimized or mitigated. In identifying potential risks during project screening, opportunities for positive outcomes and impacts can be found and pursued. Table 1 provides a snapshot of the relationship between risks and opportunities.

2.5. Importance of meaningful engagement and participation

Full, effective and meaningful consultation is core to FAO's approach to working with Indigenous Peoples. ESS 8 of the FESM includes specific requirements concerning the participation of and engagement with Indigenous Peoples. The following are key elements of the meaningful consultation and the full, effective and meaningful participation of project-affected Indigenous Peoples, and underpin ESS 8:⁴

(i) Define the mechanisms and processes for full, effective and meaningful participation of Indigenous Peoples throughout the project cycle. Mechanisms and processes to ensure the full and effective participation of Indigenous Peoples throughout the project cycle must be identified at the earliest stage of project conceptualization and design. A stakeholder mapping exercise must be conducted based on the guidance note for ESOP 2. The Indigenous Peoples who may be affected by the project must be mapped early on in the design phase. Participation mechanisms and processes must be articulated in a stakeholder engagement plan; this plan must be incorporated in the project documentation, as well in the Indigenous Peoples' plan. The breadth and detail of participatory mechanisms and processes must reflect the project's potential social and environmental risks and impacts and its particular circumstances. Issues discussed during consultation processes should be documented and outcomes should be incorporated into the further implementation of the project. Planned project activities and phases that require further specific participatory processes should be defined clearly at the outset of the project. It is essential that such processes are developed in a participatory manner with the Indigenous Peoples concerned.

(ii) Ensure that consultation processes are culturally appropriate and conducted in good faith. Consultation and consent are about Indigenous Peoples' right to participate meaningfully and effectively in decision-making on matters that may affect them. Consultations, and especially FPIC processes, are exercised collectively by the Indigenous Peoples concerned, and not by single members. They are exercised through their own governance structures and by their chosen representatives, in accordance with their own laws and customs for decision-making. Project developers must be aware that Indigenous Peoples are rights holders; therefore, special attention must be paid to the international human rights standards of equality and non-discrimination, participation and inclusion in all processes, including of Indigenous women and Indigenous youth. All consultations with Indigenous Peoples should be carried out in good faith, with the objective of achieving agreement or consent.

⁴ This list has been adapted from:

UNDP (United Nations Development Programme). 2017. *Guidance note. UNDP Social and Environmental Standards. Standard 6: Indigenous Peoples.* New York, USA. <https://ses-toolkit.info.undp.org/standard-6>

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

Effective and meaningful consultations are only possible when Indigenous Peoples are well informed and have the capacities necessary to participate in the consultation process. Thus, project developers should, to the extent possible, provide technical and financial support to the Indigenous Peoples concerned, to increase their awareness of their rights and strengthen their participation – in accordance with their own norms, values and customs, and by representatives designated by them.

While consultation and consent processes should be designed in view of the potential limitations (i.e. budgetary constraints) of the project, circumstances and people concerned, certain characteristics help to ensure effective good faith consultation, negotiation and consent processes and increase the likelihood of reaching an agreement. Agreement and consent may not be forthcoming in all cases. The decision of Indigenous Peoples to discontinue such processes – and consequently to halt the implementation of the project – should be respected.

Other stakeholders (e.g. other local communities, forest dwellers or local farmers) who may be affected by the project must also be consulted. The stakeholder engagement plan will have to define processes to reach out to these individuals and groups in a manner that corresponds with their interests. These processes, however, may be distinct and separate from those focusing on Indigenous Peoples, as Indigenous Peoples' traditional decision-making processes may differ from those of other local communities.

(iii) Ensure that processes for the participation of Indigenous Peoples are gender-inclusive, reflect intergenerational considerations and are tailored to local needs. Cultural barriers often hinder the participation of disadvantaged and vulnerable groups such as women, households headed by women and young adults in community decision-making. Indigenous women are often the most active agents of change, and have their own economic and social interests and strengths. Their status and identity shift continually, depending on the roles and occupations they hold. However, they are often doubly disadvantaged: based on their gender, and based on their cultural identity. Women may not be able to speak freely in community fora and their male relatives may talk on their behalf.

Households headed by women and young adults, especially when unmarried or without children, may be marginalized, and the rest of the community may be unwilling to take their views into account. These cultural barriers, which must be identified in the social and environmental assessment, have to be addressed in the design of mechanisms and instruments for consultation and participation. However, this must be done with care – forcing such issues may create risks for the very people whom participation is meant to help. There are subtle, albeit more time-consuming, ways to

overcome barriers to the participation of marginalized groups without going against local customs. The participation of these groups may be facilitated through instruments such as women-only discussion groups or cultural events or festivals with plays and music. Projects may need to hire female professionals and technical staff to guarantee the participation of Indigenous women. Only if women are truly engaged can effective benefits and mitigation measures that meet the needs of both women and men be designed.

3. ESS 8 requirements

ESS 8 specifies a range of requirements that must be adhered to throughout the project design, preparation and implementation phases. Each of the following subsections begins with a summary of the specific requirement as presented in ESS 8, followed by guidance on potential tools, studies and measures that may be employed by project formulation teams and operational partners as they work through the safeguards procedure.

3.1. Identification of Indigenous Peoples

Summary of requirements: *The international community has not adopted a single definition of “Indigenous Peoples”, and the prevailing view today is that no formal universal definition is necessary for the recognition and protection of their rights. According to the United Nations, the term “Indigenous Peoples” refers to distinct collectives who possess any of the more commonly accepted definitions of Indigenous Peoples, with self-identification as distinct peoples as a fundamental criterion, regardless of the local, national and regional terms applied to them.*⁵

Guidance: There is no internationally accepted definition of “Indigenous Peoples”; the term “indigenous” may even be considered to be sensitive in certain circumstances. The applicability of ESS 8 does not depend on the use of the term “Indigenous Peoples”. Indeed, the standard recognizes the fact that various terms are utilized at the local, regional or national levels to identify Indigenous Peoples and that these can include *inter alia* ethnic minorities, minority nationalities, first nations or tribal groups, such as hill tribes or scheduled tribes.

ESS 8 applies to Indigenous Peoples who maintain a collective attachment to distinct habitats or ancestral territories and the natural resources therein. These groups may include:

- Indigenous Peoples who reside in 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;
- 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 residing in urban settings but with ties to lands affected by a project;

⁵ Including, but not limited to, those provided for in:

- *Indigenous and Tribal Peoples Convention*. International Labour Organization, Geneva, 7 June 1989. C169.
- **United Nations, Department of Economic and Social Affairs** 2014. *Study of the problem of discrimination against Indigenous Populations: final report submitted by the Special Rapporteur, Mr. José Martínez Cobo*. New York, USA.
<https://www.un.org/development/desa/indigenouspeoples/publications/2014/09/martinez-cobo-study/>
- **United Nations, Economic and Social Council, Commission on Human Rights**. 1996. *Working paper on the concept of “indigenous people”*. E/CN.4/Sub.2/AC.4/1996/2. New York, USA.
<https://digitallibrary.un.org/record/236429?ln=en&v=pdf>

- Indigenous Peoples who have lost their collective attachment to lands and territories in the project area of influence during the lifetime of the members of the concerned group, but who retain ties to the lands affected by the project. The collective attachment may be lost as a result of forced severance, conflict, involuntary resettlement programmes by governments, dispossession from their lands, natural calamities or incorporation into an urban area;
- Indigenous Peoples who reside in mixed settlements, so that the affected Indigenous Peoples form part of a more broadly defined community; and
- Indigenous Peoples with collective attachment to ancestral lands located in urban areas.

ESS 8 is applicable to groups and communities of Indigenous Peoples who, by virtue of their economic, social and legal status, or their institutions, customs, culture or language may be characterized as distinct from mainstream society, and who may be disadvantaged in development processes as a result of their identity. Projects that affect 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 reasonably integrated within mainstream society, are still required to meet the requirements of this standard.

3.2. Free, prior and informed consent

Summary of requirements: *Before undertaking any project or programme activities that affect Indigenous communities, FAO must follow a process that ensures that affected Indigenous Peoples give their free, prior and informed consent (FPIC).⁶ Complete and understandable information on the likely potential impacts of the project or programme must be provided to the affected Indigenous communities. This information must be provided in a timely manner (i.e. allowing sufficient time for the community to carry out internal deliberations), in accordance with Indigenous traditions and customs, in their own language(s) and in an environment and in ways to which they can relate.*

Guidance: There is no universally accepted definition of FPIC, and practices related to FPIC are still evolving. For the purpose of ESS 8, FPIC concerns the process of informed consent and participation, agreed upon following good faith negotiations between FAO (or the executing entity) and the affected communities. At a very general level, FPIC may be understood as the right of Indigenous Peoples to approve or reject certain proposed actions that may affect them; the process through which this decision is reached must possess certain characteristics.

Ensuring the full and effective participation of Indigenous Peoples is core to FAO's programming objectives. The FESM, and more specifically ESS 8, will help ensure that projects engage with Indigenous Peoples in a culturally appropriate manner, with due regard to Indigenous Peoples' institutions, governance systems, customs and traditional methods of decision-making, and that they will seek the FPIC of affected Indigenous Peoples. ESS 8 contains requirements concerning the participation and consultation of Indigenous Peoples that go beyond the general requirements for stakeholder engagement of the FESM as outlined in ESOP 2 (stakeholder engagement plan, information disclosure and grievance redress mechanism).

⁶ For more information on the five-step procedure to facilitate the FPIC process, see Annex 1.

In a FPIC process, the “how”, “when” and “with and by whom”, are as important as “what” is being proposed. The way in which a FPIC process is conducted is crucial to its effectiveness. The time allocated for the discussions among the Indigenous Peoples, the cultural appropriateness of the way in which information is conveyed and the involvement of the entire community (including key groups like women, older people and youths) are all essential. A thorough and well-developed FPIC process helps guarantee communities’ right to self-determination by allowing all actors to participate in decisions that affect their lives.

The Indigenous Peoples who may be affected by a project must have a central role in the definition of the FPIC process. Thus, the development of a FPIC process begins with a stakeholder consultation and validation exercise to define the parameters of the FPIC process. The process should be launched as early as possible; no activities that require FPIC should be initiated until the outcomes of the FPIC process are validated and mitigation measures are in place.

The FPIC process should be supported by a facilitator i.e. a person or a group of persons who will be available throughout the project, speak the local language(s), are aware of the project context and are culturally and gender-sensitive. Where possible, the facilitator should be selected by the affected Indigenous Peoples themselves. Any actors who are likely to be involved in the implementation of the FPIC process, such as local or national authorities, should also be involved in its development. Facilitators, together with the government and stakeholders, must ensure *inter alia* that the FPIC process meets the following criteria:

- Full and accurate information regarding the project (both positive and negative, describing the potential risks and short- and long-term impacts and benefits) is communicated through the most appropriate medium and in the most widely understood language, to ensure that the information is easily accessible and understood. It may be necessary to use innovative forms of communication.
- The information reaches all members of the affected Indigenous community and is delivered in a manner that is consistent with the community’s mechanisms for information sharing.
- A secure, culturally appropriate and trusted environment for discussions is provided.
- Decision-making processes, timelines and languages for communication are determined by the affected Indigenous Peoples, without interference; and
- The customary laws and practices of the affected Indigenous Peoples are respected.

While the objective of FPIC processes is to reach an agreement between the parties (be it a signed agreement or a formalized oral contract), this does not mean that all FPIC processes will lead to the consent of and approval by the rights holders in question. At the core of FPIC processes is the right of the peoples concerned to choose to engage, negotiate and decide to grant or withhold consent. Therefore, if the affected community decides that they do not want to commence or continue negotiating, or if they decide to withhold their consent, it must be accepted that engagement must be ceased or that the project will not proceed.

See Annex 1 for a description of the key steps in the development of an FPIC process, which must be considered during the different phases of the project cycle.

3.3. Prior assessment and impact avoidance

Summary of requirements: *Projects or programmes that may affect Indigenous Peoples will carry out an environmental and social assessment as part of the design process, to verify whether any Indigenous Peoples inhabit the programme areas and whether activities may affect Indigenous Peoples outside such areas.*

Guidance: If the safeguard screening process shows that ESS 8 applies to a project, the project's potential impacts on Indigenous Peoples and on their lands, territories and resources must be examined as an integral part of the assessment of the project's full range of potential adverse social and environmental impacts.

Assessments integrate social and environmental considerations into project decision-making so that adverse impacts can be avoided and positive impacts can be delivered in a culturally appropriate manner. The assessment provides data and analysis that will inform the preparation of mitigation and management measures; for issues related to Indigenous Peoples, these measures generally take the form of an Indigenous Peoples' Plan. Assessments must be conducted with the meaningful participation of all affected communities, whose contributions and opinions must be reflected in the assessment report's analysis and conclusions.

FESM requires that FAO-supported projects and programmes examine the differentiated short-and long-term, direct and indirect, and positive and negative impacts of the project on the social, cultural and economic status of Indigenous Peoples. The assessment should confirm and describe the presence (i.e. occupation and/or use) of Indigenous Peoples in areas that may be affected by the project activities, and include a baseline socioeconomic profile of the Indigenous Peoples groups in the project area. In addition, the assessment must summarize the participatory processes for Indigenous groups, including an overview of FPIC processes and documented outcomes.

Further guidance on the assessment of the potential impacts on Indigenous Peoples, their lands and traditions is provided in the guidance note for ESOP 1.

3.4. Culturally appropriate benefits

Summary of requirements: *FAO projects and programmes will ensure that affected Indigenous Peoples derive benefits from their activities in a culturally appropriate and inclusive manner. They should take due consideration of the preferences of Indigenous men and women in this respect, paying attention to the different needs of both sexes.*

Guidance: This section of ESS 8 ensures that Indigenous Peoples derive benefits from programme or project activities in a culturally appropriate and inclusive manner. Indigenous Peoples should be provided with full information on any potential income streams, services and benefits that the project may generate for potential beneficiaries. All benefits should be delivered in a way that takes into account the institutions, rules and customs of the affected Indigenous Peoples. Benefits may be provided collectively, with mechanisms for their effective distribution to all members of the affected group(s), as far as practically feasible. Indigenous Peoples must share equitably in the benefits derived from any commercial development of their lands, territories or resources or from the use or development of their cultural heritage or intellectual property.

When determining what constitutes fair and equitable benefit sharing – particularly where traditional knowledge, cultural heritage, lands, territories and resources are involved – Indigenous Peoples should be treated not just as stakeholders, but as rights holders. The definition of appropriate forms of benefits is part of the FPIC process.

Where project or programme activities include the commercial development of Indigenous Peoples' lands, territories and resources, the project must inform the affected people of their rights under national law and of the scope, nature and impacts of the potential use, thus enabling Indigenous Peoples to share equitably in the benefits from such commercial development.

3.5. Support rights to lands, territories and resources

Summary of requirements: *Where appropriate, FAO will support activities that promote the legal recognition of customary or traditional land tenure and management systems and of the collective rights of Indigenous Peoples, including through the implementation of FAO's Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests (VGGT).⁷*

Guidance: The Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security promote secure tenure rights and equitable access to land, fisheries and forests as a means to eradicate hunger and poverty, support sustainable development and enhance the environment. The guidelines are meant to benefit all people in all countries, although there is an emphasis on vulnerable and marginalized communities and on Indigenous Peoples.

The guidelines serve as a reference and set out principles and internationally accepted standards for practices for the responsible governance of tenure.

In cases where legal reforms or delimitation, demarcation and titling activities are needed but cannot take place within the project's timeframe, project developers must evaluate whether the project can continue without causing undue harm. If only some of these activities can take place within the project's timeframe (e.g. some progress towards the recognition of land and territory rights, but not the formal recognition itself), the consequences must be evaluated carefully. Activities to promote the legal recognition of Indigenous rights must be undertaken with the consent of the authorities.

3.6. People living in voluntary isolation or initial contact

Summary of requirements: *Where FAO-supported project or programme activities may directly or indirectly affect Indigenous Peoples in voluntary isolation or initial contact, all appropriate measures shall be taken to avoid undesired contact and to respect and protect their lands and territories, environment, health and culture.*

Guidance: It must be determined whether the project's area of influence includes Indigenous Peoples living in voluntary isolation or initial contact, and whether project activities may affect or lead to

⁷ See FAO. 2012. *Voluntary guidelines on the responsible governance of tenure of land, fisheries and forests in the context of national food security*. Rome. <https://www.fao.org/docrep/016/i2801e/i2801e.pdf>

contact with them. Measures must be implemented to avoid contact and safeguard the collective and individual physical, territorial and cultural integrity of these peoples.

Indigenous Peoples in initial contact are peoples who were previously in voluntary isolation and who for some reason, voluntary or otherwise, came into contact with members of the surrounding population. They maintain intermittent or sporadic contact with the majority non-indigenous population, and are not fully familiar with, nor do they share the patterns and codes of social relations of the majority population (Inter-American Commission on Human Rights, 2013). The term is generally used to indicate peoples or segments of peoples who have recently initiated a process of contact. However, “initial” should not be understood as a strictly temporal term, but as a reference to the limited extent of contact and interaction with the majority non-indigenous society.

3.7. Cultural heritage

Summary of requirements: *Where project-supported activities may lead to significant adverse impacts on the cultural heritage of Indigenous Peoples, FAO will consult and cooperate in good faith with these peoples to allow them to express or withhold their free, prior and informed consent prior to the approval of the activities. In addition, the project must comply with the requirements of ESS 9 on cultural heritage.*

Guidance: ESS 8 requires that projects respect, protect, preserve and do not use or appropriate the cultural, intellectual, religious and spiritual property of Indigenous Peoples without their FPIC.

Assessments for projects that may affect the cultural heritage of Indigenous Peoples should follow, as a minimum, the voluntary guidelines of the Convention on Biological Diversity for developments that may affect sacred sites or lands and waters traditionally occupied or used by Indigenous Peoples and local communities.⁸ These guidelines are designed to facilitate the creation of a framework for collaboration between project decision-makers, governments and Indigenous Peoples that:

- a) guarantees the effective participation of Indigenous Peoples in screening, scoping and planning exercises;
- b) takes into account the cultural, environmental and social concerns and interests of Indigenous Peoples (and especially of women, who often bear a disproportionately large share of negative development impacts);
- c) takes due account of the traditional knowledge and practices of Indigenous Peoples in environmental, social and cultural impact assessment processes, respecting the ownership of this knowledge and these practices, as well as of the need to protect and safeguard them;
- d) promotes the use of appropriate technologies;
- e) implements adequate measures to prevent or mitigate any negative impacts of the proposed developments; and
- f) takes into consideration the interrelationships between cultural, environmental and social elements.

⁸ See **Convention on Biological Diversity**. 2004. *Akwé: Kon voluntary guidelines for the conduct of cultural, environmental and social impact assessment regarding developments proposed to take place on, or which are likely to impact on, sacred sites and on lands and waters traditionally occupied or used by Indigenous and local communities*. Montreal, Canada. <http://www.cbd.int/doc/publications/akwe-brochure-en.pdf>

Projects may obtain information regarding the precise location of culturally or spiritually valuable heritage. In such cases, and with proper justification, non-disclosure is permitted to avoid unwanted intrusions or the theft, sale or unconsented sharing of the heritage.

3.8. Indigenous Peoples' Plan

Summary of requirements: *Projects or programmes that may have negative impacts upon Indigenous Peoples must prepare an Indigenous Peoples' Plan (IPP) after completion of the FPIC process. Resource partners may also specifically request such a plan.*

Guidance: For projects that may affect Indigenous Peoples, mitigation and management measures are typically specified in an Indigenous Peoples' Plan (IPP). The IPP is based on the findings of the social and environmental assessment. They must be developed with the continuous full, effective and meaningful consultation and participation of potentially affected Indigenous Peoples (including women and youths) during project implementation, monitoring and evaluation.

An IPP provides the management framework to ensure that project impacts are adequately addressed, benefits are provided in a culturally appropriate way, participatory processes are followed, and the necessary capacity support measures and institutional arrangements are in place. The level of detail of the plan should be proportionate to the complexity and scale of the proposed project, as well as of its potential impacts on Indigenous Peoples and their rights, lands, resources and territories. The enhancement and mitigation measures outlined in the plan should provide an effective response to the assessment's findings and fulfil the requirements of ESS 8.

3.9. Feedback and grievance redress mechanism

Summary of requirements: *Projects must set up culturally appropriate, easily accessible and inclusive channels for feedback and grievance redress for Indigenous Peoples, in collaboration with their representatives. These channels must be available during each phase of the project, and align with the customary dispute settlement mechanisms of the Indigenous Peoples concerned.*

Guidance: ESOP 2 requires that stakeholders who may be adversely affected by the project can communicate their concerns about a project's social and environmental performance through various entry points, scaled to the nature of the activity and its potential impacts. This requirement includes the creation of an accessible, effective grievance redress mechanism at project level. Such a mechanism should be developed under the full, effective and meaningful consultation and participation processes, and should be specified in any agreements between the project and its stakeholders.

Project-level grievance redress mechanisms must take due account of Indigenous Peoples' customary laws and traditional dispute resolution processes, which should be incorporated, as much as possible, into these mechanisms. When setting up a project grievance redress mechanism, the capacity of Indigenous Peoples to denounce violations of their rights under national laws and secure remedies (e.g. in courts or through administrative processes) must be evaluated.

References

FAO. 2015. *Policy on Indigenous and Tribal peoples*. Rome.

<https://www.fao.org/3/i4476en/i4476en.pdf>

Inter-American Commission on Human Rights. 2013. *Indigenous peoples in voluntary isolation and initial contact in the Americas. Recommendations for the full respect of their human rights*.

Washington, DC. <https://www.oas.org/en/iachr/indigenous/docs/pdf/Report-Indigenous-Peoples-Voluntary-Isolation.pdf>

Annex 1. Key steps in the free, prior and informed consent process

Free, prior and informed consent (FPIC) processes vary according to the specific local context in which a project is developed. In some cases, Indigenous Peoples may already have FPIC guidelines. The following steps guide and facilitate the development of FPIC processes:⁹

- 1. Identify the Indigenous Peoples concerned and their representatives.**
 - Find out which Indigenous Peoples may be affected by the project, based on diverse sources of information.
 - Carry out interviews and talks in and around the project area to identify Indigenous communities and understand their language, customs, land usage patterns and land rights.
 - Cross-check the existence of mobile communities who may migrate seasonally across a territory, depending on their type of livelihood.
 - Approach Indigenous Peoples' self-governance systems and structures to identify their accountable and legitimate representatives.
 - Explain who you represent, your mandate and the nature of the project, highlight that you will respect the principle of FPIC in relations with the community, and outline a timeline of the steps that may lead from initial talks to negotiations and to a final decision by the community.
 - Encourage the participation of the broader community, including potentially marginalized groups such as women, youths, older persons or people with disabilities.
 - Research local legislation in relation to FPIC.

- 2. Document geographic and demographic information through participatory mapping.**
 - Document and map Indigenous communities' land usage, natural resources, communication channels and customary rights (geographic and demographic information) as part of the initial project assessment, taking into account the fact that Indigenous Peoples have a culturally distinct understanding of their territory.
 - Document customary rights, spiritual practices or traditional ethical codes, as well as relevant legal frameworks.
 - Ensure that all affected communities are equally involved in the mapping exercise, as well as in the rest of the FPIC process.
 - Identify the "non-negotiables" of the Indigenous Peoples' and of the project team.

⁹ These steps are further detailed in **FAO**. 2016. *Free prior and informed consent. An Indigenous Peoples' right and a good practice for local communities. Manual for practitioners*. Rome.
<http://www.fao.org/3/I6190E/i6190e.pdf>

3. Design a participatory communication plan to disclose project information in a transparent way.

- Communicate with the Indigenous Peoples throughout all stages of the process, in line with the principle of FPIC.
- Develop a participatory communication plan that details information needs, communication channels and means (traditional and local media, information and communication technology), and communication activities.
- Carry out iterative discussions with the Indigenous Peoples regarding the project activities that may affect them (if they agree to enter into discussions).

4. Try to obtain the consent of the Indigenous Peoples, document their needs and agree on a grievance redress mechanism.

- Any agreements must be accepted by all parties and take due account of customary modes of decision-making and consensus-seeking.
- Identify any additional needs and associated risks during discussions with Indigenous Peoples, and identify possible modifications to the project that may remediate or eliminate potential negative impacts.
- If a community is opposed to certain parts of a project, the project manager must clarify which parts are acceptable and which parts must be adapted or abandoned.
- If consent is withheld, establish the causes and the conditions that would have to be met for the Indigenous Peoples to give their consent. Indicate whether the community would consider renegotiating, and specify the terms and timing of an eventual renegotiation. The right of Indigenous Peoples to refuse to enter into renegotiations must be respected.
- Document the agreement process and outcome in an accessible form and language, and make this information available to all members of the community to allow for review and confirmation by stakeholders.

5. Conduct participatory monitoring and evaluation of the agreement.

- Communities should participate in the monitoring and evaluation of projects implemented in their territories; this participation should be inscribed in the terms and conditions of the agreement between all parties involved.
- Projects should ensure that the communities affected by the project are regularly informed about project progress; they must be given frequent opportunities to ask questions, raise concerns and inspect activities that take place in their territory.



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