

Guidance
Note for
Borrowers

Environment & Social
Framework for IPF
Operations

ESS7:
**Indigenous Peoples/
Sub-Saharan African
Historically
Underserved
Traditional Local
Communities**

The Guidance Notes provide guidance for the Borrower on the application of the Environmental and Social Standards (ESSs), which form part of the World Bank's 2016 Environmental and Social Framework. The Guidance Notes help to explain the requirements of the ESSs; they are not Bank policy, nor are they mandatory. The Guidance Notes do not substitute for the need to exercise sound judgment in making project decisions. In case of any inconsistency or conflict between the Guidance Notes and the ESSs, the provisions of the ESSs prevail. Each paragraph of the Standard is highlighted in a box, followed by the corresponding guidance.

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Introduction

1. *This ESS applies to a distinct social and cultural group identified in accordance with paragraphs 8 and 9 of this ESS. The terminology used for such groups varies from country to country, and often reflects national considerations. ESS7 uses the term “Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities”¹ recognizing that groups identified under paragraphs 8 and 9 may be referred to in different countries by different terms. Such terms include “Sub-Saharan African historically underserved traditional local communities,” “indigenous ethnic minorities,” “aboriginals,” “hill tribes,” “vulnerable and marginalized groups,” “minority nationalities,” “scheduled tribes,” “first nations” or “tribal groups.” ESS7 applies to all such groups, providing they meet the criteria set out in paragraphs 8 and 9. For the purposes of this ESS, the term “Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities” includes all such alternative terminology.*

Footnote 1. ESS7 applies to a distinct social and cultural group, which has been identified as set out in paragraphs 8 and 9. The use of the terms “Indigenous Peoples,” “Sub-Saharan African Historically Underserved Traditional Local Communities” and any other alternative terminology does not broaden the scope of application of this ESS, in particular the criteria in paragraphs 8 and 9.

2. *ESS7 contributes to poverty reduction and sustainable development by ensuring that projects supported by the Bank enhance opportunities for Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities to participate in, and benefit from, the development process in ways that do not threaten their unique cultural identities and well-being.²*

Footnote 2. This ESS recognizes that Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities have their own understanding and vision of their well-being and that, broadly, this is a holistic concept that relates to their intrinsic relationship to lands and traditional practices and is reflective of their way of life. This captures their core principles and aspirations of reaching harmony with their surroundings, and achieving solidarity, complementarity and communal living.

3. *This ESS recognizes that Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities have identities and aspirations that are distinct from mainstream groups in national societies and often are disadvantaged by traditional models of development. In many instances, they are among the most economically marginalized and vulnerable segments of the population. Their economic, social, and legal status frequently limits their capacity to defend their rights to, and interests in, land, territories and natural and cultural resources, and may restrict their ability to participate in and benefit from development projects. In many cases, they do not receive equitable access to project benefits, or benefits are not devised or delivered in a form that is culturally appropriate, and they may not always be adequately consulted about the design or implementation of projects that would profoundly affect their lives or communities. This ESS recognizes that the roles of*

men and women in indigenous cultures are often different from those in the mainstream groups, and that women and children have frequently been marginalized both within their own communities and as a result of external developments, and may have specific needs.

4. Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities are inextricably linked to the land on which they live and the natural resources on which they depend. They are therefore particularly vulnerable if their land and resources are transformed, encroached upon, or significantly degraded. Projects may also undermine language use, cultural practices, institutional arrangements, and religious or spiritual beliefs that Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities view as essential to their identity or well-being. However, projects may also create important opportunities for Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities to improve their quality of life and well-being. A project may create improved access to markets, schools, clinics and other services that seek to improve living conditions. Projects can create opportunities for Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities to participate in, and benefit from project-related activities that may help them fulfill an aspiration to play an active and meaningful role as citizens and partners in development. Furthermore, this ESS recognizes that Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities play a vital role in sustainable development.

5. This ESS recognizes that the situation of Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities varies from region to region and from country to country. The particular national and regional contexts and the different historical and cultural backgrounds will form part of the environmental and social assessment of the project. In this way, the assessment is intended to support identification of measures to address concerns that project activities may exacerbate tensions between different ethnic or cultural groups.

Objectives

- To ensure that the development process fosters full respect for the human rights, dignity, aspirations, identity, culture, and natural resource-based livelihoods of Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities.*
- To avoid adverse impacts of projects on Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities, or when avoidance is not possible, to minimize, mitigate and/or compensate for such impacts.*
- To promote sustainable development benefits and opportunities for Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities in a manner that is accessible, culturally appropriate and inclusive.*
- To improve project design and promote local support by establishing and maintaining an ongoing relationship based on meaningful consultation with the Indigenous*

Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities affected by a project throughout the project's life-cycle.

- *To obtain the Free, Prior, and Informed Consent (FPIC)³ of affected Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities in the three circumstances described in this ESS.*
- *To recognize, respect and preserve the culture, knowledge, and practices of Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities, and to provide them with an opportunity to adapt to changing conditions in a manner and in a timeframe acceptable to them.*

Footnote 3. For the purposes of this ESS, FPIC is defined in paragraphs 25 and 26.

Scope of Application

6. *This ESS applies to a distinct social and cultural group identified in accordance with paragraphs 8 and 9. In some countries, such groups are referred to as 'Indigenous Peoples.' In other countries they may be referred to by other terms, such as "Sub-Saharan African historically underserved traditional local communities," "indigenous ethnic minorities," "aboriginals," "hill tribes," "vulnerable and marginalized groups," "minority nationalities," "scheduled tribes," "first nations," or "tribal groups." As the applicability of the term "Indigenous Peoples" varies widely from country to country, the Borrower may request the Bank to use an alternative terminology for the Indigenous Peoples as appropriate to the national context of the Borrower.⁴ Regardless of which terminology is used, the requirements of this ESS will apply to all such groups. This ESS uses the term "Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities" in recognition of the different terminology which may be used to refer to Indigenous Peoples in the national context.*

Footnote 4. The purpose of ESS7 is not to specify terminology to identify or describe these groups, which will be defined solely in accordance with the criteria set out in paragraphs 8 and 9.

GN6.1. ESS7 recognizes that different terms, including those listed in paragraph 6, can be used to refer to a group identified in accordance with the criteria set out in paragraph 8 and 9 of this ESS. The term "Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities" (IP/SSAHUTLC) is understood to apply to groups or communities, rather than individuals.

GN6.2. A determination that a group or community is covered under ESS7 does not affect the political or legal status of such a group or community within specific countries or states.

GN6.3. It should also be recognized that a number of countries have enacted national legislation on IP/SSAHUTLC and expressed support for international or regional instruments for the protection of IP/SSAHUTLC, which include the UN Declaration on the Rights of Indigenous Peoples (2007).

7. *This ESS applies whenever Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities (as they may be referred to in the national context) are present in, or have collective attachment to a proposed project area, as determined during the environmental and social assessment. This ESS applies regardless of whether Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities are affected positively or negatively, and regardless of the significance of any such impacts.⁵ This ESS also applies irrespective of the presence or absence of discernible economic, political or social vulnerabilities, although the nature and extent of vulnerability will be a key variable in designing plans to promote equitable access to benefits or to mitigate adverse impacts.*

Footnote 5. The scope and scale of consultation, as well as subsequent project planning and documentation processes, will be proportionate to the scope and scale of potential project risks and impacts as they may affect Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities. See paragraph 11.

GN7.1. See Appendix A of this Guidance Note for recommended contents of an IP/SSAHUTLC Plan.

8. *In this ESS, the term “Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities” (or as they may be referred to in the national context using an alternative terminology) is used in a generic sense to refer exclusively to a distinct social and cultural group possessing the following characteristics in varying degrees:*

- (a) Self-identification as members of a distinct indigenous social and cultural group and recognition of this identity by others; and*
- (b) Collective attachment⁶ to geographically distinct habitats, ancestral territories, or areas of seasonal use or occupation, as well as to the natural resources in these areas; and*
- (c) Customary cultural, economic, social, or political institutions that are distinct or separate from those of the mainstream society or culture; and*
- (d) A distinct language or dialect, often different from the official language or languages of the country or region in which they reside.*

Footnote 6. “Collective attachment” means that for generations there has been a physical presence in and economic ties to land and territories traditionally owned, or customarily used or occupied, by the group concerned, including areas that hold special significance for it, such as sacred sites.

9. *This ESS also applies to communities or groups of Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities who, during the lifetime of members of the community or group, have lost collective attachment to distinct habitats or ancestral territories in the project area, because of forced severance, conflict, government resettlement programs, dispossession of their land, natural disasters, or incorporation of such territories into an urban area.⁷ This ESS also applies to forest dwellers, hunter-gatherers, pastoralists or other nomadic groups, subject to satisfaction of the criteria in paragraph 8.*

Footnote 7. Care must be taken in application of this ESS in urban areas. Generally, it does not apply to individuals or small groups migrating to urban areas in search of economic opportunity. It may apply, however, where Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities have established distinct communities in or near urban areas but still possess the characteristics stated in paragraph 8.

GN8.1. The Bank determines the applicability of ESS7. In doing so, the Bank undertakes a screening in accordance with paragraphs 8 and 9 of ESS7.

GN8.2 (Footnote 6). When determining collective attachment, consideration is given to the fact that such groups live under many different circumstances with varying levels of attachment to the areas in which they live. “Collective attachment” signifies that the groups generally consider their lands and resources to be collective assets, and that they see their culture and identity as a function of the group rather than as individuals. It also signifies that these groups’ economies, modes of production, social organization, and cultural and spiritual circumstances are generally linked to particular territories and natural resources. The concept of collective attachment refers to geographically distinct habitats or ancestral territories, or areas of seasonal use or occupation and the natural resources therein, and therefore, groups with collective attachment may include:

- (a) Groups resident upon the lands affected by the project. This could include those who are nomadic or who seasonally migrate, and whose attachment to the area affected by the project may be periodic or seasonal in nature. This could also include those who reside in mixed settlements on the lands affected by the project, such that they only form one part of the broader community;
- (b) Groups that do not live on the lands affected by the project but that retain ties to those lands through traditional ownership and/or customary usage, including seasonal or cyclical use; or
- (c) Groups that have been removed from lands and territories affected by the project, occurring within the concerned group members’ lifetime, because of forced severance, conflict, involuntary resettlement programs by governments, dispossession from their lands, natural calamities, or incorporation into an urban area.

GN8.3. There is no hierarchy to the four characteristics and all of them need to be present. However, they may be present in varying degrees. “Varying degrees” reflects the fact that some characteristics may be less evident for some groups or communities through integration into the broader society or economy, sometimes as a result of government policy. Moreover, given the varying contexts and characteristics of IP/SSAHUTLC today, a group may possess defining characteristics and thereby be covered by the policy in one region, but may be more fully integrated and lack the defining characteristics in another region of the same country, or in a neighboring country. The collective attachment of groups to their traditional territories, for example, may have been forcibly severed due to government resettlement programs. Some groups may no longer speak their own language, or it may be spoken by only a few or even none. The role of traditional institutions may also be eroding or have been replaced by official

administrative structures. These factors alone do not disqualify groups from being covered under ESS7, but are assessed in the final determination made by the Bank.

GN9.1. The phrase “during the lifetime of members of the community or group” introduces a temporal limitation on claims to collective attachment. This means that claims regarding loss of collective attachment that exceed that temporal limitation, which are often complex and can be traced back many years before the lifetime of the members of the community, fall outside the scope of paragraph 9. However, languages that have been lost outside this time frame are still covered if there is evidence of efforts to preserve the language.

10. Following a determination by the World Bank that Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities are present in, or have collective attachment to the project area, the Borrower may be required to seek inputs from appropriate specialists to meet the consultation, planning, or other requirements of this ESS. The World Bank may follow national processes during project screening for the identification, in accordance with paragraphs 8 and 9, of Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities (as they may be referred to in the national context), where these processes meet the requirements of this ESS⁸.

Footnote 8. In conducting this screening, the Bank may seek the technical advice of specialists with expertise on the social and cultural groups in the project area. The Bank will also consult the Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities concerned and the Borrower. See paragraph 54 in the World Bank Environmental and Social Policy for Investment Project Financing.

GN10.1. The engagement of appropriate specialists to provide technical advice and assistance regarding application of ESS7 is important, for example, when there are circumstances or vulnerabilities of IP/SSAHUTLC, or national legislation and general socioeconomic data provide only general information rather than specific data regarding the groups that may be present. The specialists should have proven familiarity with social science research methods, and extensive knowledge and working experience with the subject of IP/SSAHUTLC in the country or region. Projects affecting IP/SSAHUTLC may also benefit from ongoing input from appropriate specialists, for example, in assisting the Borrower to better understand the characteristics, issues, and priorities of the IP/SSAHUTLC, their governance structures and decision-making processes, and establishing appropriate assessment and consultation mechanisms.

Requirements

A. General

11. A key purpose of this ESS is to ensure that Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities present in, or with collective attachment to, the project area are fully consulted about, and have opportunities to actively participate in, project design and the determination of project implementation arrangements. The scope and scale of consultation, as well as subsequent project planning and documentation

processes, will be proportionate to the scope and scale of potential project risks and impacts as they may affect Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities.

12. The Borrower will assess the nature and degree of the expected direct and indirect economic, social, cultural (including cultural heritage),⁹ and environmental impacts on Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities who are present in, or have collective attachment to, the project area. The Borrower will prepare a consultation strategy and identify the means by which affected Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities will participate in project design and implementation. Subsequently, effective project design and documentation will be developed as set out below.

Footnote 9. Additional requirements on protection of cultural heritage are set out in ESS8.

GN11.1. A targeted social assessment for the purposes of ESS7, as set out in Appendix A of this Guidance Note, is conducted when IP/SSAHUTLC are present in, or have collective attachment to, the project area. A key aspect of the assessment is understanding the relative vulnerabilities of the affected IP/SSAHUTLC and how the project may affect them. The assessment is proportionate to the nature and scale of the proposed project’s potential risks to, and impacts on, as well as the vulnerability of, the IP/SSAHUTLC. The assessment should consider differentiated gender impacts of project activities and impacts on potentially disadvantaged or vulnerable groups within the community of IP/SSAHUTLC. Input from qualified specialists and accompanying meaningful consultations with IP/SSAHUTLC are important to inform and support the assessment. The assessment also evaluates the capacity of the Borrower to involve IP/SSAHUTLC in project design and implementation. Consultations with IP/SSAHUTLC can support and strengthen the assessment and help in identifying their development priorities and preferences regarding both project benefits and mitigation measures. Consultations are carried out with IP/SSAHUTLC in a manner that is culturally appropriate, and their inputs are considered in project design and IP/SSAHUTLC Plans. Consultations continue throughout project design and implementation.

GN12.1. In certain circumstances, project benefits, such as enhancing access to roads, health care, and education, can have unintended adverse impacts on IP/SSAHUTLC due to their particular circumstances or vulnerabilities. These impacts may include loss of language and cultural norms, undermining of traditional governance structures, creation of internal conflict, increased pressures and encroachment on lands, and pressures on or contamination of natural resources. The assessment identifies the potential for, and scale of, such adverse impacts.

GN12.2. IP/SSAHUTLC may be heterogeneous and may comprise multiple groups and different social units within these groups (such as individuals, clans, communities, and ethnic groups). Projects may be implemented at the national, regional, or local level, and issues of cultural identity, geographic access, language, governance structures, cohesion, and priorities may differ greatly among groups. Projects also may have different impacts on different subgroups within a community. For example, land for a project may be acquired from one clan, but such acquisition

could impact other clans' traditional access to and use of such land and the resources located on it. The social assessment for the purposes of ESS7 forms the basis for identifying the different groups and understanding the nature and significance of potential impacts on each of them. The consultation with IP/SSAHUTLC and social assessment should be conducted in a culturally appropriate manner.

13. The Borrower's proposed measures and actions will be developed in consultation with the affected Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities and contained in a time-bound plan, such as an Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities plan. The scope and scale of the plan will be proportionate to the potential risks and impacts of the project. The format and title of the plan will be adjusted as appropriate to the project or country context, and will reflect any alternative terminology for the Indigenous Peoples, as referred to in paragraph 6.

GN13.1. In consultation with IP/SSAHUTLC, an IP/SSAHUTLC Plan is prepared that sets out culturally appropriate mitigation measures and benefits, and specifies the timing for completion of actions required. See Appendix A of this Guidance Note for recommended contents of an IP/SSAHUTLC Plan.

Projects Designed Solely to Benefit Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities

14. Where projects are designed to provide benefits only to Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities, the Borrower will proactively engage with the relevant Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities to ensure their ownership and participation in project design, implementation, monitoring and evaluation. The Borrower will also consult with them as to the cultural appropriateness of proposed services or facilities, and will seek to identify and address any economic or social constraints (including those relating to gender) that may limit opportunities to benefit from, or participate in, the project.

15. When Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities are the sole, or the overwhelming majority of, project beneficiaries, the elements of the plan may be included in the overall project design, and preparation of a stand-alone Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities plan is not necessary.

GN15.1. The projects in paragraphs 14 and 15 are specifically designed to benefit only IP/SSAHUTLC and may include health and education projects or community-driven development projects that are focused solely on IP/SSAHUTLC. In such cases, the Borrower may either prepare a stand-alone IP/SSAHUTLC Plan or incorporate elements of such a plan, including cultural appropriateness of proposed services or facilities and arrangements for monitoring and

evaluation, into the overall project design and documentation. It is important to apply the requirements of ESS7, including undertaking a targeted social assessment, and to conduct appropriate consultations with affected IP/SSAHUTLC even where a stand-alone IP/SSAHUTLC Plan is not prepared.

Projects Where Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities Are Not the Sole Beneficiaries

16. *When Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities are not the only beneficiaries of the project, planning requirements will vary with circumstances. The Borrower will design and implement the project in a manner that provides affected Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities with equitable access to project benefits. The concerns or preferences of Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities will be addressed through meaningful consultation and project design, and documentation will summarize the consultation results and describe how Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities' issues have been addressed in project design. Arrangements for ongoing consultations during implementation and monitoring will also be described.*

17. *The Borrower will prepare a time-bound plan, such as an Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities plan setting out the measures or actions proposed. In some circumstances, a broader integrated community development plan¹⁰ will be prepared, addressing all beneficiaries of the project and incorporating necessary information relating to the affected Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities.*

Footnote 10. An Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities and other communities development plan may be appropriate in circumstances where other people, in addition to the Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities, will be affected by the risks and impacts of the project; where more than one Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities group is to be included; or where the regional or national scope of a programmatic project incorporates other population groups. In certain circumstances, a planning framework will be appropriate.

GN17.1. In some projects, affected groups of IP/SSAHUTLC may coexist in the same area as other types of affected communities or they may be integrated within a larger affected population. In such cases, a stand-alone IP/SSAHUTLC Plan can be prepared, or all elements of this plan can be included as part of a broader integrated community development plan. Issues related to IP/SSAHUTLC are addressed in project design to provide equitable access to project benefits in a culturally appropriate manner, as is the case under paragraph 15.

GN17.2 Footnote 10 of ESS7 refers to an IP/SSAHUTLC Planning Framework. The use of the framework approach is appropriate where the design or location of the project cannot be known during project preparation, or when a project has multiple subprojects that will only be designed during project implementation. The framework specifies the timing for completion of any specific plans, and includes a clear statement of roles and responsibilities, budget, and commitment for funding. See Appendix A of this Guidance Note for recommended contents of an IP/SSAHUTLC Planning Framework.

Avoidance of Adverse Impacts

18. *Adverse impacts on Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities will be avoided where possible. Where alternatives have been explored and adverse impacts are unavoidable, the Borrower will minimize and/or compensate for these impacts in a culturally appropriate manner proportionate to the nature and scale of such impacts and the form and degree of vulnerability of the affected Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities.*

19. *When situations arise in which projects potentially affect remote groups with limited external contact, also known as peoples “in voluntary isolation,” “isolated peoples” or “in initial contact,” the Borrower will take appropriate measures to recognize, respect and protect their land and territories, environment, health and culture, as well as measures to avoid all undesired contact with them as a consequence of the project. The aspects of the project that would result in such undesired contact will not be processed further.*

GN19.1. Undesired contact with IP/SSAHUTLC in voluntary isolation may lead to significant adverse social, economic, or cultural impacts on them. It could also lead to conflict and pose significant health risks to such communities as many may not have developed immunity to viruses and diseases common among mainstream populations. When the Bank’s screening or the Borrower’s environmental and social assessment identifies the existence of IP/SSAHUTLC in voluntary isolation or with limited or no previous contact with other parts of society in the project area, the aspects of the project that would result in undesired contact will not be processed further. It is important to include in the IP/SSAHUTLC Plan appropriate protocols to avoid undesired contact, and measures to mitigate potential adverse impacts resulting from any unintended contact.

Mitigation and Development Benefits

20. *The Borrower and affected Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities will identify mitigation measures in alignment with the mitigation hierarchy described in ESS1 as well as opportunities for culturally appropriate and sustainable development benefits. The scope of assessment and mitigation will include cultural impacts¹¹ as well as physical impacts. The Borrower will ensure the timely delivery of*

agreed measures to affected Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities.

Footnote 11. Considerations relating to cultural impacts may include, for example, the language of instruction and curriculum content in education projects, or culturally sensitive or gender-sensitive procedures in projects such as health projects, and others.

21. The determination, delivery, and distribution of compensation and shared benefits to affected Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities will take account of the institutions, rules and customs of these Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local 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.¹² Where compensation occurs on a collective basis, as far as practicable mechanisms that promote the effective distribution of compensation to all eligible members, or collective use of compensation in a manner that benefits all members of the group, will be defined and implemented.

Footnote 12. 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.

GN21.1. The findings of the targeted social assessment help determine the eligibility and the appropriate structure and mechanisms for the delivery and management of compensation and shared benefits. Opportunities for benefit sharing are considered as distinct from compensation for adverse impacts, and address the longer-term sustainable development of the affected communities.

22. Various factors including, but not limited to, the nature of the project, the project context and the vulnerability of affected Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities will determine how affected Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities will benefit from the project. Identified opportunities will aim to address the goals and preferences of the affected Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities, 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.

GN22.1. While ESS7 applies irrespective of the presence or absence of discernible economic, political, or social vulnerabilities, the nature and extent of vulnerability is a key variable in designing plans to promote access to benefits or measures to mitigate adverse impacts on IP/SSAHUTLC. It is important to include, in an analysis of vulnerability, factors such as IP/SSAHUTLC's economic, social, and legal status; tenure security; their institutions, customs, culture, and/or language; their dependence on natural resources; their prior experiences with development activities; and their past and ongoing relationship to the authorities, the mainstream economy, and other groups in the area. Consultations with IP/SSAHUTLC can support

and strengthen this analysis and help in identifying their development priorities and preferences regarding both project benefits and mitigation measures. Consultations are carried out with IP/SSAHUTLC in a manner that is culturally appropriate, and their inputs are taken into account in designing measures intended to help benefit them.

Meaningful Consultation Tailored to Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities

23. *To promote effective project design, to build local project support or ownership, and to reduce the risk of project-related delays or controversies, the Borrower will undertake an engagement process with affected Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities, as required in ESS10. This engagement process will include stakeholder analysis and engagement planning, disclosure of information, and meaningful consultation, in a culturally appropriate and gender and inter-generationally inclusive manner. For Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities, the process of meaningful consultation will also:*

- (a) Involve Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities' representative bodies and organizations¹³ (e.g., councils of elders or village councils, or chieftains) and, where appropriate, other community members;*
- (b) Provide sufficient time for Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities' decision-making processes;¹⁴ and*
- (c) Allow for Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities' effective participation in the design of project activities or mitigation measures that could potentially affect them either positively or negatively.*

Footnote 13. For projects that have a regional or national scope, the meaningful consultation may be carried out with Indigenous organizations or representatives at the relevant national or regional levels. These organizations or representatives will be identified in the stakeholder engagement process described in ESS10.

Footnote 14. 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.

GN23.1. In addition to the elements of the engagement process with IP/SSAHUTLC set out in paragraph 23 of ESS7, ESS10 provides further details on meaningful consultations. Paragraph 22 of ESS10 states that meaningful consultation is a two-way process, that:

- (a) Begins early in the project planning process to gather initial views on the project proposal and inform project design;

- (b) Encourages stakeholder feedback, particularly as a way of informing project design and engaging stakeholders in the identification and mitigation of environmental and social risks and impacts;
- (c) Continues on an ongoing basis;
- (d) Is based on the prior disclosure and dissemination of relevant, transparent, objective, meaningful, and easily accessible information in a time frame that enables meaningful consultations with stakeholders in a culturally appropriate format, in relevant local language(s) and understandable to stakeholders;
- (e) Considers and responds to feedback;
- (f) Supports active and inclusive engagement with project-affected parties;
- (g) Is free of external manipulation, interference, coercion, discrimination, and intimidation; and
- (h) Is documented and disclosed by the Borrower.

GN23.2. Approaches to meaningful consultation are most effective when they build on existing customary institutions and decision-making processes utilized by the affected IP/SSAHUTLC. The capacity of the existing institutions and decision-making processes to address any new issues that may arise due to the project are analyzed as part of the targeted social assessment and in consultation with the IP/SSAHUTLC. Based on this analysis, additional measures to improve capacity can be put into place as necessary. The Borrower should also seek input from appropriate specialists.

GN23.3. The consultation with the affected IP/SSAHUTLC is conducted in a gender-inclusive manner, so that the interests of both genders are considered in all aspects of project planning and implementation.

GN23.4. There may be divergent views and opinions within IP/SSAHUTLC. A meaningful consultation takes into account these different viewpoints and opinions while respecting traditional cultural approaches to consultations and decision making.

B. Circumstances Requiring Free, Prior and Informed Consent (FPIC)

24. *Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities may be particularly vulnerable to the loss of, alienation from or exploitation of their land and access to natural and cultural resources. In recognition of this vulnerability, in addition to the General Requirements of this ESS (Section A) and those set out in ESSs 1 and 10, the Borrower will obtain the FPIC of the affected Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities in accordance with paragraphs 25 and 26 in circumstances in which the project will:*

- (a) have adverse impacts on land and natural resources subject to traditional ownership or under customary use or occupation;*
- (b) cause relocation of Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities from land and natural resources subject to traditional ownership or under customary use or occupation; or*

(c) have significant impacts on Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities' cultural heritage that is material to the identity and/or cultural, ceremonial, or spiritual aspects of the affected Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities' lives.

In these circumstances, the Borrower will engage independent specialists to assist in the identification of the project risks and impacts.

GN24.1. The specialists referred to in paragraph 24 of ESS7 should have significant experience in issues of concern to IP/SSAHUTLC.

GN24.2. In some projects, FPIC may be required only in relation to specific portions of land or aspects of a project. Examples include: (a) linear projects that pass through multiple human habitats, which may require FPIC for the component that traverses IP/SSAHUTLC lands; (b) projects comprising multiple subprojects, some of which are located on IP/SSAHUTLC lands, which may require FPIC for the subprojects located on those lands; and (c) projects involving an expansion of ongoing activities, which may require FPIC for the new project activities.

25. There is no universally accepted definition of FPIC. For the purposes of this ESS, FPIC is established as follows:

- (a) The scope of FPIC applies to project design, implementation arrangements and expected outcomes related to risks and impacts on the affected Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities;*
- (b) FPIC builds on and expands the process of meaningful consultation described in ESS10 and paragraph 23 above, and will be established through good faith negotiation between the Borrower and affected Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities;*
- (c) The Borrower will document: (i) the mutually accepted process to carry out good faith negotiations that has been agreed by the Borrower and Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities; and (ii) the outcome of the good faith negotiations between the Borrower and Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities, including all agreements reached as well as dissenting views; and*
- (d) FPIC does not require unanimity and may be achieved even when individuals or groups within or among affected Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities explicitly disagree.*

GN25.1. Identification of appropriate representation of IP/SSAHUTLC is an important part of the process to establish FPIC. These are the individuals who are considered by the majority of the affected IP/SSAHUTLC to be the legitimate authorities to make decisions on collective support on their behalf. The representatives may be chosen through a process that is culturally appropriate

to the respective IP/SSAHUTLC, such as through referendum or an assembly format, or they may be tribal chiefs or a council of elders, among others.

GN25.2. Particular attention should be given to groups within affected IP/SSAHUTLC that may be disadvantaged or vulnerable, such as women, youth, the poor, and persons with disabilities. Addressing any limitations on their participation in the FPIC process helps to ensure that their interests and concerns are adequately considered and addressed as part of the process to establish FPIC.

GN25.3. Good faith negotiation involves, on the part of all parties:

- (a) Willingness to engage in a process and availability to meet at reasonable times and frequency;
- (b) Sharing of information necessary for informed negotiation;
- (c) Use of mutually acceptable procedures for negotiation;
- (d) Willingness to change initial positions and modify offers where possible; and
- (e) Provision of sufficient time for the process.

GN25.4. The Borrower informs the Bank of the process that has been agreed upon for good faith negotiation on FPIC. Where there is disagreement on what constitutes an appropriate engagement process, or an agreement cannot be reached, the Borrower will seek advice from an independent specialist as required in paragraph 24 of ESS7.

GN25.5. Achieving FPIC requires paying attention to, and documenting, both process and outcome. Documenting the process and outcome establishes a record of agreements reached as well as dissenting views.

GN25.6. FPIC may be achieved even when individuals or groups within or among IP/SSAHUTLC explicitly disagree. In and of itself, such disagreement does not necessarily constitute a veto.

26. For the purposes of this ESS, consent refers to the collective support of affected Indigenous Peoples communities/Sub-Saharan African Historically Underserved Traditional Local Communities for the project activities that affect them, reached through a culturally appropriate process. It may exist even if some individuals or groups object to such project activities, as recognized by paragraph 25 (d).

27. When the FPIC of the affected Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities cannot be ascertained by the Bank, the aspects of the project relevant to those affected Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities for which the FPIC cannot be ascertained will not be processed further. Where the Bank has made the decision to continue processing the project other than the aspects for which the FPIC of the affected Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities cannot be ascertained, the Borrower will ensure that no adverse impacts result on such Indigenous Peoples/Sub-Saharan

African Historically Underserved Traditional Local Communities during the implementation of the project.

GN27.1 If FPIC cannot be ascertained by the Bank, the project design will be adjusted to eliminate the aspects of the project relevant to the affected IP/SSAHUTLC. For example, if FPIC is not obtained from the affected communities of IP/SSAHUTLC for the proposed construction of a new road through their land, the project should reroute the road to avoid acquisition of the land or physical displacement of the communities. In such cases, measures included in the IP/SSAHUTLC Plan help avoid any adverse impacts on the communities.

28. Agreements reached between the Borrower and affected Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities will be described, and actions necessary to accomplish agreements will be included, in the ESCP. During implementation, the Borrower will ensure that necessary actions are taken, and agreed benefits or improvements to services are delivered, so as to maintain Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities' support for the project.

GN28.1. If there are significant changes to the project design, implementation arrangements, and/or expected outcomes that result in additional risks to, and impacts on, the affected communities of IP/SSAHUTLC, and if it is evident that the FPIC already provided is insufficient to include such changes, the Borrower will obtain FPIC for such changes.

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

29. Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities are often closely tied to their land and related natural resources.¹⁵ Frequently, land is traditionally owned or under customary use or occupation. While Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities may not possess legal title to land as defined by national law, their use of the land, including seasonal or cyclical use, for their livelihoods, or for cultural, ceremonial, and spiritual purposes that define their identity and community, can often be substantiated and documented. Where projects involve (a) activities that are contingent on establishing legally recognized rights to lands and territories that Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities have traditionally owned or customarily used or occupied,¹⁶ or (b) the acquisition of such lands, the Borrower will prepare a plan for the legal recognition of such ownership, occupation, or usage, with due respect to the customs, traditions and land tenure systems of the Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities concerned. The objective of such plans will be the following: (a) full legal recognition of existing customary land tenure systems of Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities; or (b) conversion of customary usage rights to communal and/or individual ownership rights.¹⁷ If neither option is possible under national law, the plan includes measures for the legal recognition of Indigenous

Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities' perpetual or long-term renewable custodial or use rights.

Footnote 15. Examples include marine and aquatic resources, timber and non-timber forest products, medicinal plants, hunting and gathering grounds, and grazing and cropping areas.

Footnote 16. For example, extractive industries, creation of conservation areas, agro-development schemes, greenfield infrastructure development, land management or titling programs.

Footnote 17. Conversion of customary usage rights to individual ownership rights will only be an objective following consultation with the Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities concerned and assessment of the impacts of such conversion on the communities and their livelihoods.

GN29.1. Projects that enhance the land tenure security of IP/SSAHUTLC can have significant positive impacts on their well-being. Land titling within an appropriate legal framework helps to protect IP/SSAHUTLC's land and resources from external encroachment and expropriation, constitutes a means for economic growth or self-subsistence, and legitimizes traditional and cultural ways of handling such territories under customary institutions and rules. However, the process of legal recognition of IP/SSAHUTLC's ownership, occupation, or usage of land and natural resources is complex and may carry a number of risks. It may, for instance, lead to conflicts (at least short term) over land and resources among various local communities, or between local communities and outside interests. It may replace customary institutional arrangements with new rules or systems not attuned to the context of IP/SSAHUTLC's land and natural resource use practice. In case of conversion of customary usage rights to individual ownership rights, it could also disturb the essential collective nature of IP/SSAHUTLC's communal ownership. While the possible scenarios described in paragraph 29 of ESS7 are relevant to only a limited number of projects, such risks should be taken into consideration in determining the application of this paragraph.

30. If the Borrower proposes to locate a project, or commercially develop natural resources, on land traditionally owned by, or under the customary use or occupation of, Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities, and adverse impacts¹⁸ can be expected, the Borrower will take the following steps and obtain their FPIC:

- (a) Document efforts to avoid and otherwise minimize the area of land proposed for the project;*
- (b) Document efforts to avoid and otherwise minimize impacts on natural resources subject to traditional ownership or customary use or occupation;*
- (c) Identify and review all property interests, tenurial arrangements, and traditional resource usage prior to purchasing, leasing or, as a last resort, undertaking land acquisition;*
- (d) Assess and document Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities' resource use without prejudicing any Indigenous Peoples/Sub-Saharan African Historically Underserved*

Traditional Local Communities' land claim. The assessment of land and natural resource use will be gender inclusive and specifically consider women's role in the management and use of these resources;

- (e) Ensure that affected Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities are informed of: (i) their land rights under national law, including any national law recognizing customary use rights; (ii) the scope and nature of the project; and (iii) the potential impacts of the project; and*
- (f) Where a project promotes commercial development of their land or natural resources, afford due process, and offer compensation together with culturally appropriate sustainable development opportunities to Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities, at least equivalent to that to which any landowner with full legal title to the land would be entitled, including:
 - (i) Providing fair lease arrangements or, where land acquisition is necessary, providing land-based compensation or compensation in kind in lieu of cash compensation where feasible;¹⁹*
 - (ii) 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;*
 - (iii) Enabling Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities to share equitably in the benefits to be derived from the commercial development of the land or natural resources where the Borrower intends to utilize land or natural resources that are central to the identity and livelihood of affected Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities and the usage thereof exacerbates livelihood risk; and*
 - (iv) Providing affected Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities with access, usage, and transit on land the Borrower is developing subject to overriding health, safety, and security considerations.**

Footnote 18. Such adverse impacts may include impacts from loss of access to assets or resources or restrictions on land use resulting from project activities.

Footnote 19. If circumstances prevent the Borrower from offering suitable replacement land, the Borrower must provide verification that such is the case. Under such circumstances, the Borrower will provide non-land-based income-earning opportunities over and above cash compensation to affected Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities.

GN30.1. Land replacement strategies may include resettlement on public land or on private land purchased for resettlement. When replacement land is offered, the combined

characteristics of the land, such as productive potential, advantages of location, and security of tenure, as well as the legal nature of the land title or use rights are at least equivalent to those of the original site. If the Borrower determines that replacement land is not available, this finding should be documented in a manner that demonstrates to the Bank's satisfaction that the Borrower has adequately evaluated a sufficient range of potential options.

GN30.2. (Footnote 19). Non-land-based income-earning opportunities may include access to credit facilities, skills training, business start-up assistance, employment opportunities, or cash assistance additional to compensation for land. Such opportunities should be provided in a culturally appropriate manner.

Relocation of Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities from Lands and Natural Resources Subject to Traditional Ownership or Under Customary Use or Occupation

31. The Borrower will consider feasible alternative project designs to avoid the relocation of Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities from communally held²⁰ or attached land and natural resources subject to traditional ownership or customary use or occupation. If such relocation is unavoidable the Borrower will not proceed with the project unless FPIC has been obtained as described above; the Borrower will not resort to forced eviction,²¹ and any relocation of Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities will meet the requirements of ESS5. Where feasible, the relocated Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities will be able to return to their traditional or customary land, should the cause of their relocation cease to exist.

Footnote 20. Typically, Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities 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 Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities individually hold legal title, or where the relevant national law recognizes customary rights for individuals, the requirements of ESS5 will apply, in addition to the requirements under paragraph 31 of this ESS.

Footnote 21. See paragraph 31 of ESS5.

GN31.1. Physical relocation of IP/SSAHUTLC, which may result from the project's acquisition of land or through restrictions on or alterations of land use or resources, is particularly complex and may have significant and irreversible adverse impacts on their cultural survival. Therefore, feasible alternative project designs that avoid such relocation are explored. Relocation may be considered only if it has been established that there is no feasible alternative and the FPIC of the affected IP/SSAHUTLC has been obtained.

GN31.2. Upon conclusion of the FPIC process providing for the relocation of IP/SSAHUTLC, a plan is prepared in line with the conclusion of the FPIC process and in accordance with ESS5. The plans to be developed under ESS5 and ESS7 may be prepared separately or combined, as appropriate.

GN31.3. It is important to note that in some cases where individuals among the affected IP/SSAHUTLC hold legal title to land individually, their decision to relinquish the title and relocate may still be subject to a community-based decision-making process.

Cultural Heritage

32. *Where a project may significantly impact cultural heritage²² that is material to the identity and/ or cultural, ceremonial, or spiritual aspects of the affected Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities' lives, priority will be given to the avoidance of such impacts. Where significant project impacts are unavoidable, the Borrower will obtain the FPIC of affected Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities.*

Footnote 22. 'Cultural heritage' is defined in ESS8. It includes natural areas with cultural and/or spiritual value such as sacred groves, sacred bodies of water and waterways, sacred mountains, sacred trees, sacred rocks, burial grounds and sites.

GN32.1. Cultural heritage is both tangible and intangible. Tangible cultural heritage includes movable or immovable objects, sites, structures, groups of structures, and natural features and landscapes that have cultural significance. Intangible cultural heritage includes practices, representations, expressions, knowledge and skills, as well as the associated instruments, objects, artifacts and cultural spaces that communities and groups recognize as part of their cultural heritage. Further explanation and requirements on cultural heritage are set out in ESS8.

GN32.2. The targeted social assessment determines whether there are any potential significant impacts on the cultural heritage of IP/SSAHUTLC, and whether the cultural heritage is material to the identity and/or cultural, ceremonial, or spiritual aspects of their lives.

33. *Where a project proposes to use the cultural heritage of Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities for commercial purposes, the Borrower will inform the affected Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities of: (a) their rights under national law; (b) the scope and nature of the proposed commercial development; and (c) the potential consequences of such development; and obtain their FPIC. The Borrower will also enable Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities to share equitably in the benefits to be derived from commercial development of such cultural heritage, consistent with the customs and traditions of the Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities.*

GN33.1. Commercial use of cultural heritage refers to the development, renovation, production, use, replication, or exhibition of cultural resources for profit-making purposes. Examples of commercial use of tangible cultural heritage may include the production and sale of artifacts and artworks, or tourism projects that bring visitors to traditional villages or historical temples. Examples of commercial use of intangible cultural heritage may include use of traditional medicinal knowledge or of other sacred or traditional techniques for processing plants, fibers, or metals or other traditional forms of production. To facilitate their FPIC, the IP/SSAHUTLC are fully informed about the scope and nature of the proposal to use the cultural heritage, including the entities, companies, or persons involved in the commercial activities, as well as the potential beneficiaries or end users. The IP/SSAHUTLC are also fully informed of the potential consequences of the proposed development, including any impacts on livelihoods, any potential environmental and social risks and impacts, and any impacts on the continued use of such resources by the IP/SSAHUTLC.

GN33.2. The IP/SSAHUTLC are fully consulted as to the potential benefits to be derived from the commercial use of their cultural heritage. This may include, for example, development of benefits from the commercial use of their cultural heritage, including benefits in the form of employment, vocational training, and benefits pursuant to community development and similar programs.

GN33.3. The use of IP/SSAHUTLC names, photographs, and other items depicting them and the environment in which they live can be sensitive in many situations. It is important to assess local norms and preferences, and consult with the relevant communities before using such items, for example, when naming project sites or specific infrastructure.

C. Grievance Mechanism

34. The Borrower will ensure that a grievance mechanism is established for the project, as described in ESS10, which is culturally appropriate and accessible to affected Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities, and takes into account the availability of judicial recourse and customary dispute settlement mechanisms among Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities.

GN34.1. The grievance mechanism is proportionate to the potential risks and impacts of the project, and should be accessible and inclusive. A well-functioning mechanism receives and facilitates resolution of grievances promptly and protects against reprisals for the use of its services. Examples of grievances of affected IP/SSAHUTLC include lack of information on the project and its impacts, inadequacy of compensation, failure of the Borrower to communicate or deliver on agreed action plans, or benefits that are considered culturally inappropriate. Detailed information on grievance mechanisms is provided in ESS10.

GN34.2. Grievance mechanisms take into account the cultural attributes of IP/SSAHUTLC and their traditional mechanisms for raising and resolving issues. Some IP/SSAHUTLC may prefer verbal, as opposed to written, methods of expressing grievances. The grievance mechanism is

designed to address these, and any other relevant considerations. The grievance mechanism should be designed in consultation with project-affected IP/SSAHUTLC.

D. Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities and Broader Development Planning

35. *The Borrower may request Bank technical or financial support, in the context of a specific project or as a separate activity, for preparation of plans, strategies or other activities intended to strengthen consideration and participation of Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities (as they may be referred to in the national context) in the development process. This may include a variety of initiatives designed, for example, to: (a) strengthen local legislation to establish recognition of customary or traditional land tenure arrangements; (b) address the gender and intergenerational issues that exist among Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities; (c) protect indigenous knowledge including intellectual property rights; (d) strengthen the capacity of Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities to participate in development planning or programs; and (e) strengthen the capacity of government agencies providing services to Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities.*

36. *Affected Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities may themselves seek support for various initiatives and these should be taken into consideration by the Borrower and the Bank. They include: (a) support for the development priorities of Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities through programs (such as community-driven development programs and locally managed social funds) developed by governments in cooperation with Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities; (b) preparation of participatory profiles of Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities to document their culture, demographic structure, gender and intergenerational relations and social organization, institutions, production systems, religious beliefs, and resource use patterns; (c) facilitating partnerships among the government, Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities Organizations, Civil Society Organizations, and the private sector to promote Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities' development programs.*

This Appendix describes the aspects of the environmental and social assessment, and the plans and frameworks to promote equitable access to benefits and to mitigate adverse project impacts referred to in ESS7. For purposes of this Appendix, these tools are referred to as the “Social Assessment,” the “IP/SSAHUTLC Plan,” and the “IP/SSAHUTLC Planning Framework.” These names may be adjusted as appropriate to the project or country context, reflecting the alternative terminology in use, as specified in paragraph 6 of ESS7. The above assessment, plan, and framework will be prepared in consultation with project-affected IP/SSAHUTLC. The draft and final assessment, plan, and framework will be disclosed pursuant to the relevant requirements of ESS1 and ESS10.

Targeted Social Assessment for the purposes of ESS7

1. The breadth, depth, and type of analysis of the social assessment is proportionate to the potential risks and impacts of the proposed project on the IP/SSAHUTLC. The social assessment referred to in this Appendix is conducted as part of the environmental and social assessment under ESS1.
2. The social assessment includes the following elements, as needed:
 - a. A review of the legal and institutional framework applicable to IP/SSAHUTLC.
 - b. Gathering of baseline data on the demographic, social, cultural, and political characteristics of the IP/SSAHUTLC; the land and territories that they have traditionally owned or customarily used or occupied; and the natural resources on which they depend.
 - c. Taking the review and baseline data into account, the identification of project-affected parties and the elaboration of a culturally appropriate process for involving and consulting with the IP/SSAHUTLC at each stage of project preparation and implementation (see paragraph 23 of ESS7).
 - d. An assessment, based on meaningful consultation tailored to IP/SSAHUTLC, of the potential adverse and positive effects of the project. Critical to the determination of potential adverse impacts is an analysis of the relative vulnerability of, and risks to, the affected IP/SSAHUTLC, given their distinct circumstances and close ties to land and natural resources, as well as their potential lack of access to opportunities relative to other social groups in the communities, regions, or national societies in which they live. The assessment should consider differentiated gender impacts of project activities and impacts on potentially disadvantaged or vulnerable groups within the community of IP/SSAHUTLC.
 - e. The identification and evaluation of measures necessary to avoid adverse impacts, or if such measures are not feasible, the identification of measures to minimize, mitigate, or compensate for such impacts, and to ensure that the IP/SSAHUTLC receive culturally appropriate benefits under the project. This is based on meaningful consultation tailored to IP/SSAHUTLC and, where relevant, pursuant to paragraph 24 of ESS7, on Free, Prior and Informed Consent.

IP/SSAHUTLC Plan

1. In most cases, the IP/SSAHUTLC Plan includes the following elements, as needed:
 1. A summary of the Targeted Social Assessment, including the applicable legal and institutional framework and baseline data.
 2. A summary of the results of the meaningful consultation tailored to IP/SSAHUTLC, and if the project involves the three circumstances specified in paragraph 24 of ESS7, then the outcome of the process of FPIC carried out with the affected IP/SSAHUTLC during project preparation.
 3. A framework for meaningful consultation tailored to IP/SSAHUTLC during project implementation.
 4. Measures for ensuring IP/SSAHUTLC receive social and economic benefits that are culturally appropriate and gender sensitive and steps for implementing them. If necessary, this may call for measures to enhance the capacity of the project implementing agencies.
 5. Measures to avoid, minimize, mitigate, or compensate IP/SSAHUTLC for any potential adverse impacts that were identified in the social assessment, and steps for implementing them.
 6. The cost estimates, financing plan, schedule, and roles and responsibilities for implementing the IP/SSAHUTLC Plan.
 7. Accessible procedures appropriate to the project to address grievances by the affected IP/SSAHUTLC arising from project implementation, as described in paragraph 35 of ESS7 and in ESS10.
 8. Mechanisms and benchmarks appropriate to the project for monitoring, evaluating, and reporting on the implementation of the IP/SSAHUTLC Plan, including ways to consider input from project-affected IP/SSAHUTLC in such mechanisms.

IP/SSAHUTLC Planning Framework

1. The purpose of the IP/SSAHUTLC Planning Framework is to establish the requirements of ESS7, organizational arrangements, and design criteria to be applied to subprojects or project components to be prepared during project implementation when IP/SSAHUTLC may be present in, or have collective attachment to, the project area. Following identification of the subproject or individual project components and confirmation that IP/SSAHUTLC are present in or have collective attachment to the project area, a specific plan, proportionate to potential risks and impacts, is prepared. Project activities that may affect IP/SSAHUTLC do not commence until such specific plans are finalized and approved by the Bank.
2. The IP/SSAHUTLC Planning Framework sets out:
 - a. The types of subprojects likely to be proposed for financing under the project.
 - b. The potential positive and adverse impacts of such programs or subprojects on IP/SSAHUTLC.
 - c. A plan for carrying out the social assessment for such programs or subprojects.

- d. A framework for ensuring the meaningful consultation tailored to IP/SSAHUTLC and in the specified circumstances, a framework for ensuring their Free, Prior and Informed Consent during project implementation.
- e. Institutional arrangements, including capacity building where necessary, for screening project-supported activities, evaluating their effects on IP/SSAHUTLC, preparing IP/SSAHUTLC Plans and addressing any grievances.
- f. Monitoring and reporting arrangements, including mechanisms and benchmarks appropriate to the project.

Disclosure arrangements for IP/SSAHUTLC Plans to be prepared as specified in the IP/SSAHUTLC Planning Framework.

References

There are many resources that may be useful to a Borrower in addressing the application of the ESF. Set out below are references that may assist the Borrower in implementing the requirements of the ESF. The resources listed here do not necessarily represent the views of the World Bank.

World Bank Group

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