

Indigenous Peoples Planning Framework

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The Indigenous Peoples Planning Framework is a document of the borrower. The views expressed herein do not necessarily represent those of ADB's Board of Directors, Management, or staff, and may be preliminary in nature.

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List of Acronyms

ADB	Asian Development Bank
DPs	Displaced Persons
EA	Executing Agency
FGD	Focus Group Discussions
GOI	Government of India
GoU	Government of Uttarakhand
GRC	Grievance Redress Committee
IA	Implementing Agency
IP	Indigenous Peoples
IPP	Indigenous Peoples Planning
IPPF	Indigenous Peoples Planning Framework
NGOs	Non-Government Organizations
NRRP	National Rehabilitation and Resettlement Policy, 2007
PMU	Project Management Unit
RF	Resettlement Framework
R & R	Resettlement and Rehabilitation
RP	Resettlement Plan
SIA	Social Impact Assessment
STs	Scheduled Tribes

A. INTRODUCTION

1. The State witnessed major cloud bursts, incessant rains and major floods in the upper valleys during 15-17 June 2013 that resulted in severe damages in several parts of Uttarakhand. The districts of Bageshwar, Chamoli, Pithoragarh, Rudraprayag and Uttarkashi were directly affected by this disaster. These regions are among the country's most important pilgrimage centres and the calamity occurred during the peak pilgrimage season. Several towns have been washed away by the unprecedented flash floods and landslides and a large number of houses, public buildings, roads and bridges, urban and rural infrastructure has been damaged. Government of Uttarakhand informed that over 900,000 people have been affected, 580 human lives have been lost and over 5,400 people are still reported as missing.

2. The Uttarakhand Emergency Assistance Project (the project) envisages rehabilitation and reconstruction of state roads and bridges, tourism infrastructure (including construction of helipads, heliports, or helidromes and trekking routes), urban water supply and urban roads. The expected impact of the project will be economic and social recovery from the disaster in Uttarakhand state. The project outputs will be rehabilitated and reconstructed (i) roads and bridges; (ii) urban infrastructure-mainly water supply systems and urban roads; (iii) tourism infrastructure and trekking routes; and (iv) helipads, heliports, or helidromes for emergency evacuation in case of future disaster which will also provide better air connectivity for the tourists and pilgrims. Another output will be project managed and monitored efficiently and strengthened capacity of the concerned sector agencies and local communities. Improved road connectivity would increase mobility and accessibility to educational and health services, employment opportunities, and markets for the community and enterprises in rural and urban areas of the state. The enhanced tourism, the backbone of state economy, will create employment and income generating activities and hence the livelihood to the local communities, including vulnerable groups and women dependent on the flow of large number of tourists and pilgrims in a year. The project will have a positive long-term impact on the state's economy and living standards of the population.

3. The Indigenous Peoples Planning Framework (IPPF) prepared is in line with the requirements of the Safeguard Policy Statement, 2009 of ADB. It is based on the data provided in the secondary sources. The findings of the social assessments carried out for on-going ADB funded projects in their influence area under the referred three sectors were also referred to. During the fact finding mission, meetings and consultations were organized with the concerned government officials, including those from the field, and consultants engaged for implementing the on-going ADB funded projects to update the data in all three sectors. Thus, the analysis is based on the secondary sources reviewed and the information provided about the project by the officials through personal interactions during the fact-finding mission. Due to perpetuating disaster like conditions, the baseline social-economic surveys and socio impact assessment of the project could not be conducted and the mission was unable to undertake on-site consultations with the affected persons.

B. OBJECTIVES AND POLICY FRAMEWORK

4. Although no land acquisition and resettlement impacts, including negative as well as positive impacts, on IPs are envisaged due to rehabilitation and reconstruction of damaged infrastructure under the Project. If any indigenous peoples/scheduled tribes are likely to be affected by a subproject, an Indigenous Peoples Plan (IPP) will be prepared in accordance with the ADB's Safeguard Policy Statement (2009) on Indigenous People and the agreed Indigenous Peoples Planning Framework and submitted to ADB for approval. The project is classified Category C for indigenous peoples and in case the need arise during implementation to undertake a subproject classified as Category B for IPs, the required recategorization will be undertaken. Each subproject will be screened for indigenous people's impacts.

5. The IPPF provides guidance in formulating Indigenous Peoples Plans (IPPs), where necessary, for subprojects under the project. The objectives of the IPPF are to ensure that if tribal populations are affected by a subproject that they: (i) are adequately and meaningfully consulted; (ii) receive culturally appropriate benefits and compensation at least equal to that of the mainstream beneficiary population of the subproject; (iii) are provided with special assistance as per laws and policies because of their vulnerabilities vis-à-vis the mainstream population; and (iv) receive adequate protection against project adverse impacts on their cultural identities.

6. Article 366(25) refers to Scheduled Tribes (STs) as those communities who are scheduled in accordance with Article 342 of the Constitution of India. According to Article 342 of the Constitution of India, STs are the tribes or tribal communities or part of or groups within these tribes and tribal communities which have been declared as such by the President through a public notification. Identification of tribes is a State subject. Thus, classification of a tribe would depend on the status of that tribe in the respective State. Therefore, tribes notified for Uttarakhand State are Schedule Tribes in Uttarakhand only and their category may vary in other States.

7. Government of India implements provisions contained in Panchayats (Extension to Scheduled Areas) Act, 1996. According to this Act, Gram Sabha has adequate power to regulate the MFPs (Minor Forest Produce) in tribal areas and Scheduled Areas.

8. The Ministry of Tribal Affairs, Government of India has drafted a National Policy on Scheduled Tribes to bring these tribes into the mainstream society through a multi-pronged approach for their all-round development without disturbing their distinct culture. The Policy stipulates that displacement of tribal people should be kept to a minimum and undertaken only after possibilities of non-displacement and least displacement have been exhausted. When displacement becomes inevitable, each scheduled tribe family having land in the earlier settlement shall be given land against land. To handle the problem of shifting cultivation, land tenure system is proposed giving tribals the right to land ownership so that they invest their energy and resources in checking soil erosion and fertility. The Policy seeks to tackle tribal land alienation by stipulating that:

- (i) Tribals have access to village land records.
- (ii) Land records are displayed at the Panchayat.
- (iii) Oral evidence be considered in the absence of records in the disposal of tribals' land disputes.
- (iv) States prohibit transfer of lands from tribal to non-tribal.
- (v) Tribals and their representatives are associated with land surveys

9. ADB's Safeguards Policy Statement (2009) ensures equality of opportunity for indigenous peoples. It aims to ensure that any ADB-assisted development interventions which will have any impact on indigenous peoples will be consistent with the needs and aspirations of affected indigenous peoples and compatible in substance and structure with affected IP's culture and social and economic institutions. This IPPF recognizes the vulnerability of indigenous peoples and it specifically ensures that any project intervention, whether positive or adverse will be addressed by the implementing agencies. Moreover, the implementing agencies will ensure that affected IPs will have opportunities to participate in and benefit equally from such project interventions. A detailed policy review is given in **Appendix1**.

C. IDENTIFICATION OF AFFECTED INDIGENOUS PEOPLES

10. ADB's Safeguards Policy Statement (2009) uses the following characteristics in varying degrees to define indigenous people as (i) self-identification as members of a distinct indigenous cultural group and recognition of this identity by others; (ii) collective attachment to

geographically distinct habitats or ancestral territories in the project area and to the natural resources in these habitats and territories; (iii) customary cultural, economic, social or political institutions that are separate from those of the dominant society and culture; and (iv) a distinct language, often different from the official language of the country or region.

11. Likewise, the President of India under Article 342 of the Constitution uses the following characteristics to define indigenous peoples [Scheduled Tribes (ST)], (i) tribes' primitive traits; (ii) distinctive culture; (iii) shyness with the public at large; (iv) geographical isolation; and (v) social and economic backwardness before notifying them as a Scheduled Tribe. Essentially, indigenous people have a social and cultural identity distinct from the 'mainstream' society that makes them vulnerable to being overlooked or marginalized in the development processes. In the context of the project areas, STs who have no modern means of subsistence, with distinctive culture and are characterized by socio-economic backwardness could be identified as Indigenous Peoples.

12. Since the constitutions identification of scheduled tribes, there has been continuous movement of populations and tribal communities have been a part of this historical process. Tribal and non-tribal communities have lived side-by-side leading to acculturation and assimilation to mainstream societies. Many STs no longer keep their traditions/cultures and individuals and groups of STs have settled amongst non-tribal populations.

13. In India about 8.2% of the total population is classified under scheduled tribes (STs). In comparison, 2, 91,903 ST population reported in Uttarakhand state was only 2.9% of total population as per Census of India, 2011. There are five major tribal groups (Bhotia, Buksa, Juansari, Raji, and Tharu) spread in varying number throughout the state. They are predominantly living in rural areas and are concentrated mainly in Udham Singh Nagar and Dehradun districts. Details are provided at Table 1.

Table 1: Scheduled Tribe Population in Uttarakhand State

District	Male	Female	Total	Decadal Change 2001-2011	Sex Ratio
Uttaranchal	148669	143234	2,91,903	14.0	963
Uttarkashi	1651	1861	3512	30.8	1127
Chamoli	6021	6239	12260	16.9	1036
Rudraprayag	217	169	386	107.5	779
TehriGarhwal	459	416	875	26.6	906
Dehradun	58264	53399	111663	12.4	917
Garhwal	1174	1041	2215	39.0	887
Pithoragarh	9558	9977	19535	1.3	1044
Bageshwar	971	1011	1982	2.0	1041
Almora	633	648	1281	45.9	1024
Champawat	777	562	1339	80.9	723
Nainital	3801	3694	7495	51.1	972
Udham Singh Nagar	61758	61279	123037	11.6	992
Hardiwar	3385	2938	6323	101.4	868

Source: Census of India, 2011

14. In Uttarakhand state, tribals lead the agrarian-pastoral way of life. Some tribes are traders and migrate to distant places for earning livelihood. According to 2001 Census, 41.1 per cent of the STs had been recorded as workers, which was below the aggregated national level for STs (49.1 per cent). Of the total workers, 73.1 per cent were main workers and 26.9 per cent as marginal workers. Among STs, 63.2 per cent of the population has been recorded as literate, which is well above the national average (47.1 per cent). The male and female literacy rate of 76.4 per cent and 49.4 per cent respectively suggest for wider gender gap in

literacy. The female work participation rate of 31.9 per cent was just lower than males (49.9 per cent). The overall sex ratio among the STs is 963, which is below the aggregate national figure of 990 for STs.

15. In the absence of required data, the project impacts on IPs could not be ascertained. However, it is envisaged that the project activities will not cause any potential impacts on the IPs. This is due to the rehabilitation and construction of subprojects expected to be within the available right-of-way and government land. To ensure that impacts on IPs, if any, are addressed consistent with ADB's SPS, 2009, an Indigenous Peoples Planning Framework (IPPF) will be followed for preparing IPP for the relevant subprojects.

D. SOCIAL IMPACT ASSESSMENT AND STEPS FOR FORMULATING AN IPP

16. The IPPF seeks to ensure that IPs are informed, consulted, and mobilized to participate in the sub-projects during IPP preparation. Their participation can either provide them with benefits or protect them from potential adverse impacts of the sub-project.

i) Preliminary Screening

17. The EA through its PMU and IAs will study all IP communities and villages within and in the vicinity of the proposed sub-project area. The IAs assisted by implementing NGO will arrange public meetings at IP communities to provide information regarding the proposed sub-project. During these meetings, community leaders and other participants will be given an opportunity to present their views and concerns.

18. An initial screening will check for the following:

- (i) Name(s) of IP community group(s) in the area;
- (ii) Total number of IP community groups in the area;
- (iii) Percentage of IP community population in the area compared with the total population; and
- (iv) Number and percentage of IP households to be affected by the sub-project site.

19. An IP assessment checklist will be prepared. If the results of the preliminary screening show that there are IP households in the proposed sub-project area, a social impact assessment (SIA) will be conducted to capture IP issues and development opportunities that exist in the area. A checklist format for screening of IPs in the sub projects is in **Appendix 2**

ii) Social Impact Assessment

20. The process of initial social assessment includes specific consideration of indigenous peoples as a potentially affected population. If the initial social assessment identifies indigenous peoples specifically as a significantly and adversely affected population, or vulnerable to being so affected, it is required that an indigenous peoples plan acceptable to ADB is prepared by the project proponent. The SIA will gather relevant information on demographic data; social, cultural, and economic situation; and both positive and negative social, cultural and economic impacts.

21. The expert with anthropology/sociology background having experience of working with tribals and familiar with SIA and ADB procedures will collect the required qualitative and quantitative data through questionnaire, checklists, focus group discussion, formal and informal discussions, and meetings with IPs and other stakeholders.¹ Information will be

¹ It is emphasized that the expert designated as SDRO will be retained for SIA, IP planning, its implementation and monitoring.

gathered through separate consultation meetings within the IP community – with IP representatives; IP men and women, especially those who live in the zone of influence of the proposed sub-project. Discussions will focus on positive and negative impacts of the sub-project as well as recommendations on the design of the sub-project. The PMU through its IAs and consultants will prepare the SIA and the PMU will be responsible for analysing the SIA and preparation of an action plan with the support of IP community leaders. If the SIA indicates that the potential impact of the proposed sub-project will be significantly adverse—threatening the cultural practices and IP sources of livelihood, or that the IP community rejects the sub-project works—the PMU will consider other design options to minimize such adverse impacts. If IP communities support the sub-project an IPP will be formulated. The draft IPP will be forwarded to ADB for review and approval.

iii) Benefits Sharing and Mitigation Measures

22. Where impacts on indigenous households are potentially positive, measures will be undertaken to ensure that benefits are equally shared. This will be through ensuring indigenous peoples as stakeholders take part during all stages of the Project. Where impacts are potentially negative, all affected indigenous households will be provided with assistance, which would help them to improve their living standards without exposing their communities to disintegration. As vulnerable groups, they are entitled to receive special assistance not only to restore and improve their income and livelihood, but also to maintain their distinct cultural identity.

23. As indigenous peoples, they are likely to have traditional land rights; these will be honored and the absence of land titles will not be a bar for receiving compensation and alternate land. Their compensation entitlements will be the same that are listed in the approved Resettlement Framework (RF) of the Project. The RF defines IPs as vulnerable people/ households.

iv) Indigenous Peoples Plan

24. The IPP is time-bound, with an adequate budget for its implementation. An acceptable IPP focus on the (i) aspirations, needs, and preferred options of the affected indigenous peoples; (ii) local social organization, cultural beliefs, ancestral territory, and resource use patterns among the affected indigenous peoples; (iii) potential positive and negative impacts on indigenous peoples; (iv) measures to avoid, mitigate, or compensate for the adverse project effects; (v) measures to ensure project benefits will accrue to indigenous peoples; (vi) measures to strengthen social, legal, and technical capabilities of government institutions to address indigenous peoples issues; (vii) the possibility of involving local organizations and non-governmental organizations with expertise in indigenous peoples issues; (viii) budget allocation; and (ix) monitoring. Where there is land acquisition in IP communities, the project will ensure their indigenous rights will not be violated and that they be compensated for the use of any part of their land in a manner that is culturally acceptable to the affected IPs. The IPP will include:

- (i) **Baseline data:** Base line data will be collected both from the primary and secondary sources. In India, most of the tribal people are mainstreamed with the help of Government's effort to bring them in to the mainstream. The survey will be designed to collect the baseline data on their socio-economic and cultural aspect which will help in identifying the intensity of impact on indigenous people.
 - (ii) **Land tenure information:** Land holding among the tribal people is very less compared to other section of mainstreamed people. Tribal people use the public land and forest land for their various uses. Therefore, details on the land tenure and customary usage
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pattern will be collected in order to measure the dependency of tribal people on the land.

- (iii) Local participation: The plan will be developed in a participatory approach with due consultation with the local IP communities. The views of the IP will be recorded and will be incorporated in the plan.
- (iv) Technical identification of development enhancement or mitigation activities: The survey and the engineering design should clearly reflect the impact of sub projects on the IPs. The sub project engineering plan, thus, be developed or modified based on these inputs so that negative impacts are mitigated or better benefits are distributed to the IPs.
- (v) Institutional arrangement: The detailed institutional arrangements will be prepared as per the details given in RF.
- (vi) Implementation schedule: The implementation schedule has to be aligned with the overall project implementation schedule and all the compensation and mitigations will be done prior to the civil work.
- (vii) Monitoring and evaluation: The IPP will be monitored both internally and externally. Details are given in the following sections.
- (viii) Cost estimate and financing plan: Based on the impacts, a budget will be prepared for the implementation of IPP and the EA will be responsible for providing the budget.

25. Where warranted, the IPP will be formulated for the relevant subproject by the SDROs of PMU through its IAs, consultants and with technical assistance from other team members, as required. The IPP will be endorsed by the high powered committee (HPC) and the revised IPP, if required, will be submitted to ADB for review and approval. The IPP policy and measures must comply with ADB's *SPS, 2009*. An outline of IPP is given in **Appendix 3**.

E. CONSULTATION, PARTICIPATION AND DISCLOSURE

26. Each required IPP will be prepared in consultation with the affected IP groups. The mitigation measures and strategies will be presented to them by the PMU at various places which will be easily approachable to them. Inputs from the IPs through consultation will be considered in subproject design and the final IPP. The SDROs of PMU, IAs, and DSCs assisted by implementing NGOs will be involved in implementing the IPP and resolution of any dispute arising out of the implementation process.

27. Consultations and information disclosure will be undertaken to ensure that needs, priorities and preferences of IPs are adequately dealt with. The strategy of IPP therefore would be to promote participation of the IPs, initiating and identifying people's need, priorities and preferences through participatory approaches. Consultations with and participation of IP communities, their leaders and representatives of EA, hence, will be an integral part of the overall IPP. The affected IPs will be informed and consulted in preparing IPP. Their participation in planning will enable them to benefit from the project and to protect them from any potential adverse impacts of the project. The IPP prepared in consultation with affected IPs will be translated into local language of IPs and made available to them before implementation with the assistance of PMU. The EA will ensure that adequate funds will be made available for consultation and facilitation. Indigenous Peoples may be particularly vulnerable when project activities include (i) commercial development of the cultural resources and knowledge of Indigenous Peoples; (ii) physical displacement from traditional or customary lands; and (iii) commercial development of natural resources within customary lands under use that would impact the livelihoods or the cultural, ceremonial, or spiritual uses that define

the identity and community of Indigenous Peoples. In deciding whether to proceed with a project involving such project activities, the borrower/client will seek the consent of affected Indigenous Peoples communities.

F. GRIEVANCE REDRESS MECHANISM

28. The grievance redress mechanism will be the same as mentioned in the Resettlement Framework. There is a need for an efficient grievance redress mechanism, which will assist APs in resolving queries and complaints. ADB procedures require the EA to establish a Grievance Redressal Mechanism (GRM) having suitable grievance redress procedure for the project affected persons. The EA will establish a mechanism to receive and facilitate the resolution of affected persons' concerns and grievances about physical and economic displacement and other project impacts, paying particular attention to the impacts on vulnerable groups. The grievance redress mechanism will address affected persons' concerns and complaints promptly, using an understandable and transparent process that is gender responsive, culturally appropriate, and readily accessible to the affected persons at no costs and without retribution. At the project level, the implementing agency together with the NGO will redress the grievances of DPs in the first place.. At the district level, a Grievance Redress Committee (GRC) will be formed to deal with the disputes and grievances of DPs and facilitate timely implementation of the project. This GRM consists of a GRC and its composition, procedure, process, responsibilities, etc will be the same as given in the RF.

29. The main responsibilities of the GRC are to: (i) provide support to APs on problems arising from land/property acquisition; (ii) record AP grievances, categorize, and prioritize grievances and resolve them; (iii) immediately inform the PMU of serious cases; and (iv) report to APs on developments regarding their grievances and decisions of the GRC and the PMU. Other than disputes relating to ownership rights under the court of law, GRC will review grievances involving all resettlement benefits, compensation, relocation, replacement cost and other assistance. The IAs will keep records of all grievances received including: contact details of complainant, date that the complaint was received, nature of grievance, agreed corrective actions and the date these were effected, and final outcome. The GRCs will continue to function during the life of the Project including the defects liability period.

G. INSTITUTIONAL AND IMPLEMENTATION ARRANGEMENTS

30. In the preparation of IPPs for each subproject, where applicable, the EA will have overall coordination and financing responsibilities. The SDROs of PMU, IAs and DSCs, assisted by the implementing NGOs, will prepare, implement, and monitor the IPP. Since IP issues are sensitive, the EA will ensure that the SDROs, particularly the SDRO at PMU recruited will have requisite educational background and experience of working among IP groups also, who would be overall responsible in providing technical inputs for the planning and implementation of IPPs for the Project. The PMU will also ensure that the SDRO hired to assist the PMU in planning and implementation of IPPs for subprojects is familiar with ADB's Safeguard Policy Statement (2009) and its requirements. The PMU will get the support from the IAs and DSCs for the filed level operations. The issues of IPP will be handled through the same institutional mechanism as suggested in RF.

H. MONITORING AND REPORTING ARRANGEMENTS

31. Implementation of an IPP will be monitored regularly by PMU. The PMU will establish a semi-annual monitoring system involving the PMU, IAs, DSCs SDRO and related staff, representative of affected IP groups, and local community to ensure participatory monitoring arrangements. A set of monitoring indicators will be determined during IPP implementation. The PMU will also prepare appropriate monitoring formats for effective internal and external monitoring and reporting requirements. Monitoring will be carried out twice a year during project implementation. These reports will be submitted to ADB for review. The EA through

the PMU will be responsible for determining if any follow-up actions are necessary and ensuring any necessary actions are taken regarding the implementation of IPPs.

32. The PMU with IAs will implement the IPP and carry out the monitoring activities as prescribed in this section. The SDRs and staff engaged will be trained and motivated in carrying out these activities. IPP implementation will be closely monitored to provide the PMU with an effective basis for assessing resettlement progress and identifying potential difficulties and problem areas. The internal monitoring will involve the following tasks:

- (i) Administrative monitoring to ensure that implementation is on schedule and problems are dealt with on a timely basis.
- (ii) Socio-economic monitoring during and after the relocation process utilizing the baseline information established by the socio-economic survey of APs undertaken during project preparation to ensure that people are settled and recovering.
- (iii) Overall monitoring whether recovery has indeed taken place successfully and in time.

33. Data from the baseline socio-economic surveys undertaken during the project preparation stage will provide the benchmark for the monitoring process to assess the progress and success of the IPP project. The prevalent customs and traditions of the IPs will also be recorded and will be monitored during the implementation. The monitoring process will include the following:

- (i) Communication to and noting of reactions from APs.
- (ii) Information from APs on entitlements, options, alternative developments and relocation timetables.
- (iii) Valuation of properties.
- (iv) Usage of grievance redress mechanism.
- (v) Disbursement of compensation amounts and all assistances.

34. Monitoring will also cover the physical progress of implementation of IPP. This will include land acquisition of the Affected Households (AHs) and project affected community properties. Internal Monitoring Indicators are as follows:

- (i) Process Indicators – Indicating project inputs, expenditure, staff deployment, etc.
- (ii) Output Indicators – Indicating results in terms of numbers of affected indigenous people compensated and resettled, training imparted, credit disbursed, etc.

35. Reporting and monitoring formats will be prepared for an effective monitoring. These reports will be submitted to ADB for review and comments. Each IPP will be submitted by EA to ADB for review and approval.

I. BUDGET AND FINANCING

36. Each IPP will have its own budget. The EA will provide sufficient resources to formulate an IPP for each sub-project that will have impacts on IPs. A detailed budget will be prepared by the PMU taking into account all activities associated with the formulation and implementation of the IPP. Such budgets will be an integral part of the project cost, and will be made available during project implementation. The EA will be responsible for making the budget available in advance to its PMU for implementation of IPP. Tentative details for budget estimation are given in Table 2.

Table 2: R & R Budget Estimation (in INR)

Items	Unit Rates	Quantity	Total
Compensation for loss of private land			
Compensation for loss of structures			
Compensation for loss of trees			
Resettlement costs and assistance			
Administration and implementation costs, including costs of surveys, consultations, SIA, training, grievance redress, etc.			
Hiring IP expert			
Hiring NGOs			
Hiring External Monitor			
Contingencies (15 % of total cost)			

LEGAL FRAMEWORK

A. ADB'S SAFEGUARD POLICY STATEMENT ON INDIGENOUS PEOPLES SAFEGUARDS

1. The objectives are to design and implement projects in a way that fosters full respect for Indigenous Peoples' identity, dignity, human rights, livelihood systems, and cultural uniqueness as defined by the Indigenous Peoples themselves so that they (i) receive culturally appropriate social and economic benefits, (ii) do not suffer adverse impacts as a result of projects, and (iii) can participate actively in projects that affect them.

2. The Indigenous Peoples safeguards are triggered if a project directly or indirectly affects the dignity, human rights, livelihood systems, or culture of Indigenous Peoples or affects the territories or natural or cultural resources that Indigenous Peoples own, use, occupy, or claim as an ancestral domain or asset. The term Indigenous Peoples is used in a generic sense to refer to a distinct, vulnerable, social and cultural group possessing the following characteristics in varying degrees: (i) self-identification as members of a distinct indigenous cultural group and recognition of this identity by others; (ii) collective attachment to geographically distinct habitats or ancestral territories in the project area and to the natural resources in these habitats and territories; (iii) customary cultural, economic, social, or political institutions that are separate from those of the dominant society and culture; and (iv) a distinct language, often different from the official language of the country or region. In considering these characteristics, national legislation, customary law, and any international conventions to which the country is a party will be taken into account. A group that has lost collective attachment to geographically distinct habitats or ancestral territories in the project area because of forced severance remains eligible for coverage under this policy.

3. The Policy Principles are as follows:

- Screen early on to determine (i) whether Indigenous Peoples are present in, or have collective attachment to, the project area; and (ii) whether project impacts on Indigenous Peoples are likely.
- Undertake a culturally appropriate and gender-sensitive social impact assessment or use similar methods to assess potential project impacts, both positive and adverse, on Indigenous Peoples. Give full consideration to options the affected Indigenous Peoples prefer in relation to the provision of project benefits and the design of mitigation measures. Identify social and economic benefits for affected Indigenous Peoples that are culturally appropriate and gender and intergenerationally inclusive and develop measures to avoid, minimize, and/or mitigate adverse impacts on Indigenous Peoples.
- Undertake meaningful consultations with affected Indigenous Peoples communities and concerned Indigenous Peoples organizations to solicit their participation (i) in designing, implementing, and monitoring measures to avoid adverse impacts or, when avoidance is not possible, to minimize, mitigate, or compensate for such effects; and (ii) in tailoring project benefits for affected Indigenous Peoples communities in a culturally appropriate manner. To enhance Indigenous Peoples' active participation, projects affecting them will provide for culturally appropriate and gender inclusive capacity development. Establish a culturally appropriate and gender inclusive grievance mechanism to receive and facilitate resolution of the Indigenous Peoples' concerns.
- Ascertain the consent of affected Indigenous Peoples communities to the following project activities: (i) commercial development of the cultural resources and knowledge of Indigenous Peoples; (ii) physical displacement from traditional or customary lands; and (iii) commercial development of natural resources within customary lands under

use that would impact the livelihoods or the cultural, ceremonial, or spiritual uses that define the identity and community of Indigenous Peoples. For the purposes of policy application, the consent of affected Indigenous Peoples communities refers to a collective expression by the affected Indigenous Peoples communities, through individuals and/or their recognized representatives, of broad community support for such project activities. Broad community support may exist even if some individuals or groups object to the project activities.

- Avoid, to the maximum extent possible, any restricted access to and physical displacement from protected areas and natural resources. Where avoidance is not possible, ensure that the affected Indigenous Peoples communities participate in the design, implementation, and monitoring and evaluation of management arrangements for such areas and natural resources and that their benefits are equitably shared.
- Prepare an Indigenous Peoples plan (IPP) that is based on the social impact assessment with the assistance of qualified and experienced experts and that draw on indigenous knowledge and participation by the affected Indigenous Peoples communities. The IPP includes a framework for continued consultation with the affected Indigenous Peoples communities during project implementation; specifies measures to ensure that Indigenous Peoples receive culturally appropriate benefits; identifies measures to avoid, minimize, mitigate, or compensate for any adverse project impacts; and includes culturally appropriate grievance procedures, monitoring and evaluation arrangements, and a budget and time-bound actions for implementing the planned measures.
- Disclose a draft IPP, including documentation of the consultation process and the results of the social impact assessment in a timely manner, before project appraisal, in an accessible place and in a form and language(s) understandable to affected Indigenous Peoples communities and other stakeholders. The final IPP and its updates will also be disclosed to the affected Indigenous Peoples communities and other stakeholders.
- Prepare an action plan for legal recognition of customary rights to lands and territories or ancestral domains when the project involves (i) activities that are contingent on establishing legally recognized rights to lands and territories that Indigenous Peoples have traditionally owned or customarily used or occupied, or (ii) involuntary acquisition of such lands.
- Monitor implementation of the IPP using qualified and experienced experts; adopt a participatory monitoring approach, wherever possible; and assess whether the IPP's objective and desired outcome have been achieved, taking into account the baseline conditions and the results of IPP monitoring. Disclose monitoring reports.

B. NATIONAL LEGAL AND POLICY FRAMEWORK

4. The first legal notification specifically for the protection of Scheduled Tribes was issued in 1950. The Constitution, through several Articles, has provided for the socio-economic development and empowerment of Scheduled Tribes.

5. Recognizing the special needs of the STs, the Constitution of India made certain special safeguards to protect these communities from all possible exploitation. While Article 14 confers equal rights and opportunities to all, Article 15 prohibits discrimination against any citizen on the grounds of sex, religion, race, caste etc; Article 15 (4) enjoins upon the State to make special provisions for the advancement of any socially and educationally backward classes; Article 16(4) empowers the State to make provisions for reservation in appointments or posts in favor of any backward class of citizens, which in the opinion of the State, is not adequately represented in the services under the State; Article 46 enjoins upon the State to promote with special care the educational and economic interests of the weaker sections of the people and, in particular, the STs and promises to protect them from social injustice and

all forms of exploitation. Further, while Article 275(1) promises grant-in-aid for promoting the welfare of STs and for raising the level of administration of the Scheduled Areas, Articles 330, 332 and 335 stipulate reservation of seats for STs in the *Lok Sabha* and in the State Legislative Assemblies and in services. Finally, the Constitution also empowers the State to appoint a Commission to investigate the conditions of the socially and educationally backward classes (Article 340) and to specify those Tribes or Tribal Communities deemed to be as STs (Article 342). The constitutional commitment prompted the policy-makers and the planners to accord high priority to the welfare and development of STs from the beginning of country's developmental planning. The Tenth Five Year Plan (2002-2007) of India further lays stress on empowering tribals through continuing the on-going 3-pronged strategy of i) Social Empowerment; ii) Economic Empowerment; and iii) Social Justice.

i) The Fifth Schedule

6. The Fifth Schedule is the constitutional provision with reference to the administration and development of the Scheduled Areas and Scheduled Tribes in India. The Schedule has been framed to protect of the rights of the Adivasis on their land, forest and water as their natural rights.

7. The Fifth Schedule is incorporated in the Constitution of India to allow the character and life of tribal peoples to exist side by side with the general population. Article 244(1) of the Constitution mentions that the distinct identity and rights of the tribal people of the Scheduled Areas needed to be protected. Special provisions were therefore laid down in the Fifth Schedule to the Constitution. The said Article of the Constitution includes the rights of the tribal people, with special mention of the land of the tribal peoples and related regulation.

ii) Provisions of the Panchayat Extension to the Scheduled Areas Act (PESA), 1996

8. The Parliament of India passed the Provisions of the Panchayats Extension to the Scheduled Areas Act (PESA), 1996, to extend the provisions of the 73rd Constitutional Amendment to the Schedule V Areas of the country. This Act accords statutory status to the Gram Sabhas in Schedule V areas with wide-ranging powers and authority. This aspect was missing from the provisions of the 73rd Constitutional Amendment. The Act has recognized the prevailing traditional practices and customary laws besides providing the management and control of all the natural resources—land, water and forest in the hands of people living in the Schedule Areas. The Act empowers people in the tribal areas through self governance.

9. Important Provisions of the PESA 1996:

- (i) Definition of a village— According to the Act, a village in a Scheduled Area shall ordinarily consist of a habitation or a group of habitations or a hamlet or a group of hamlets comprising a community and managing its affairs in accordance with traditions and customs. This definition of a “village” is quite clear and overcomes the deficiency in the 73rd Constitutional Amendment wherein village has not been defined.
- (ii) Constitution of Gram Sabha— A Gram Sabha (GS) will be constituted for each village. According to the Act (PESA), it will consist of persons whose names are included in the electoral rolls for the panchayats at the village level. The Gram Sabha is competent to safeguard and preserve the traditions and customs of the tribal people, their cultural identity, community resources and customary mode of conflict resolution. It is important to note that PESA has vested the Gram Sabha as a powerful institution having full powers to manage the affairs of local communities.
- (iii) Constitution of Panchayats— A panchayat will be constituted for each village in the Scheduled Areas in the following manner:

- (a) The reservation of seats at every panchayat will be in proportion to the population of communities in that panchayat for whom the reservation is sought to be given under Part IX of the Constitution provided that reservation for scheduled tribes will not be less than one-half of the total number of seats.
- (b) All the seats of chairpersons of panchayats at all levels will be reserved for the scheduled tribes; and
- (c) The State government will nominate persons belonging to such scheduled tribes that have no representation in the panchayats at the intermediate level or district level, but such nomination will not exceed one-tenth of total members to be elected in that panchayat.
- (iv) The powers of Gram Sabha as specified in the Act can be divided into the following four categories: (i) Mandatory powers; (ii) Powers to be consulted; (iii) Recommendatory powers and (iv) power to be devolved by the State Government According to Section 4(i) of the Gram Sabha or the panchayats at the appropriate level shall be consulted before making the acquisition of land in the Scheduled Areas for development projects and before resettling or rehabilitating persons affected by such projects in the Scheduled Areas; the actual planning and implementation of the projects in the Scheduled Areas shall be coordinated at the State level.

iii) The Scheduled tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006

10. The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006, recognises and vests the forest rights and occupation in forest land to Scheduled Tribes and other traditional forest dwellers who have been residing in such forests for generations but whose rights are not recorded.

11. This Act, notwithstanding any other law in force, and subject to the provisions of the Act, extends to the whole of India except the State of Jammu and Kashmir. This Act is for members or community of the Scheduled Tribes who primarily reside in forests or forest lands for their livelihood, including Scheduled Tribe pastoralist communities or the members or community of the Scheduled Tribes who have been residing in the forest for 75 years.

12. The Government of India (GoI) recognizes and vests forest rights with forest dwelling STs,, where they are declared as STs, and other traditional forest dwellers. The Act provides a detailed list of rights to ST and forest dwellers. These rights can be broadly divided into the following:

- (i). Title rights (i.e. ownership)- Refers to land that is being farmed by Tribals or forest dwellers as on December 13, 2005, subject to a maximum of 4 hectares; ownership is only for land that is actually being cultivated by the concerned family as on that date, meaning that no new lands are granted;
- (ii) User rights- Refers to minor forest produce (also including ownership), to grazing areas, ponds for fishing, to pastoralist routes, etc.
- (iii) Relief and development rights- Refers to rehabilitation in case of illegal eviction or forced displacement and to basic amenities, subject to restrictions for forest protection;
- (iv) Forest management rights- Refers to protect forests and wildlife.
- (v) Rights to indigenous knowledge- Refers to biodiversity and community right to intellectual property and traditional knowledge related to biodiversity and cultural diversity

- (vi) Traditional rights- Refers to any other traditional rights enjoyed by forest dwellers except (a) right of hunting or trapping or extracting any part of any wild animal.

13. Recognition, Restoration and Vesting of Forest Rights include: (i) In critical wildlife habitats, forest rights may be modified or people resettled provided they meet the provisions as detailed in the Act; (ii) The recognition and vesting of forest rights under this Act applies to forest ST/forest dwellers occupying land before 13th December 2005; (iii) The right under this Act is heritable, but also alienable or transferable, and shall be registered jointly in the name of both the spouses or single head as the case may be; (iv) Other than provided, no forest dweller shall be evicted or removed from forest land under his occupation till the recognition and verification procedure is complete; (v) The forest rights recognized under the occupation of an individual or family or community on the date of commencement of this Act shall be restricted to the area under actual occupation and shall not exceed 4 hectares; (vi) Forest right will be conferred free of all encumbrances, including procedural clearance under the Forest (Conservation) Act, except for those specified under this Act; and (vii) Under this Act the forest dweller has the right to land provided he can establish that that he was displaced from his dwelling and cultivation without land compensation due to State development interventions and where land has not been used for the said purpose within five years of acquisition.

14. Authority and Procedure for Vesting of Forest Rights: The Gram Sabhas will be the authority for determining the nature and extent of individual or community forest rights. The GS will receive claims, verify and consolidate them, and prepare a map delineating the area. The resolution will be forwarded then to the sub-divisional-level committee.

15. Any person aggrieved by the resolution of the Gram Sabha may prefer a petition to the Sub Divisional Level Committee constituted under this Act. The State Government will constitute a Sub-Divisional Level Committee (SDLC) to examine the resolution passed by the GSs and forward it to the District Level Committee.

16. The State Government will also constitute a District Level Committee (DLC) to consider and approve the record of forest rights prepared by the Sub divisional level committees. The decision of the DLC will be final.

17. The State government will also constitute a State Level Monitoring Committee (SLMC) to monitor the process of recognition and vesting of rights to the nodal agency.

18. The SDLC, DLC and the SLMC will consist of officers from Revenue, Tribal and Forest departments; 3 members of whom from Panchayati Raj institutions, two of whom shall be ST members and one shall be a woman member.

iv) Draft National Tribal Policy, 2006

19. Ministry of Tribal Affairs has prepared a draft of the National Tribal Policy (yet to go to the Cabinet for approval). This is the first time the Government has come out with a policy to guide the development of STs in an integrated and holistic manner. The proposed policy will address the issues such as enhancement of human development index of STs, improvement of infrastructure in STs dominated areas, ensuring their control over the natural resources base, displacement from their habitat and resettlement, distribution of wealth and opportunities among Tribals and empowerment.

20. The objective of the policy is to bring STs up to par with rest of the population in terms of their HDI, socio-economic conditions and basic infrastructure facilities in tribal areas. The policy provides for regulatory protection, socio-economic and political empowerment, development of infrastructure, increased livelihood opportunities, improved governance and administration, preservation of cultural and traditional rights and traditional knowledge,

protection of traditional knowledge in the intellectual property rights regime and access to privileges.

21. The strategy for implementing the policy includes addressing of tenurial insecurity among Tribals by amending State anti-alienation land laws, amending the Indian Registration Act and establishing fast track courts to deal with tribal alienation reorienting institutional arrangements in the Scheduled/ Tribal areas, strengthening and revamping of the administrative machinery; developing a quantifiable Tribal Development Index (TDI); linking devolution of funds to improvements in TDI so as to bring STs and tribal areas up to par with national level standards of living by 2020; preparation of a separate tribal-centric strategy for each sector; strengthening Integrated Tribal Development Plans/ITDAs, Modified Area Development Approaches and Clusters in tribal areas; introducing a single line administration in the Scheduled/ Tribal areas; adopting an area planning approach in the Scheduled/ Tribal Areas; adopting a Tribal Sub-Plan Strategy in letter and spirit; converging efforts and resources; devising an appropriate personnel policy to ensure the presence of Government functionaries in far-flung tribal areas; supporting voluntary action in the service deficient far-flung areas; developing an appropriate communication strategy to effectively reach the STs; encouraging academic, anthropological and policy research; putting in place an institutionalised system of monitoring and evaluation mechanism for concurrent feedback and linked to outcomes; and, empowerment of the community in terms of the provisions of the PESA Act to transfer resources and benefits directly to the Gram Sabhas.

22. The National Tribal Policy 2006 outlines several new and continuing initiatives for accelerating the pace of welfare and development of STs tribal areas in the country. To make the policy a living document, the Cabinet Committee on Tribal Affairs (CCTA) will be requested to review of the Policy every three years to redefine the objectives and the guiding principles of the policy if necessary and to accordingly recast the strategy to address new challenges that may emerge.

v) The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989

23. The Act deals with atrocities against members of Scheduled Castes and Scheduled Tribes. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989—the main Act dealing with atrocities against members of Scheduled Castes and Scheduled Tribes—largely remains unimplemented. Then Minister of State for Home Affairs, Mr. I.D. Swami informed the parliament on 23 April 2002 that over 28,000 incidents of crimes, including murder and rape, were committed against Scheduled Castes and Scheduled Tribes across India during 2001. Mr. Swami further informed that while 24,792 cases were reported against Scheduled Castes, as many as 3,691 crimes were committed against Scheduled Tribes. The statistics pertaining to the calendar year 2001 show that the States of Uttar Pradesh (7356 cases), Madhya Pradesh (4336 cases), Rajasthan (1996 cases), Gujarat (1760 cases), Andhra Pradesh (1288 cases) and Orissa (1125 cases), collectively accounted for 82.39% of total number of 21,678 cases charge sheeted in the courts under the Act.

Appendix 2

INDIGENOUS PEOPLES IMPACT SCREENING CHECKLIST

KEY CONCERNS (Please provide elaborations on the Remarks column)	YES	NO	NOT KNOWN	Remarks
A. Indigenous Peoples Identification				
1. Are there socio-cultural groups present in or use the project area who may be considered as "tribes" (hill tribes, schedules tribes, tribal peoples), "minorities" (ethnic or national minorities), or "indigenous communities" in the project area?				
2. Are there national or local laws or policies as well as anthropological researches/studies that consider these groups present in or using the project area as belonging to "ethnic minorities", scheduled tribes, tribal peoples, national minorities, or cultural communities?				
3. Do such groups self-identify as being part of a distinct social and cultural group?				
4. Do such groups maintain collective attachments to distinct habitats or ancestral territories and/or to the natural resources in these habitats and territories?				
5. Do such groups maintain cultural, economic, social, and political institutions distinct from the dominant society and culture?				
6. Do such groups speak a distinct language or dialect?				
7. Has such groups been historically, socially and economically marginalized, disempowered, excluded, and/or discriminated against?				
8. Are such groups represented as "Indigenous Peoples" or as "ethnic minorities" or "scheduled tribes" or "tribal populations" in any formal decision-making bodies at the national or local levels?				
B. Identification of Potential Impacts				
9. Will the project directly or indirectly benefit or target Indigenous Peoples?				
10. Will the project directly or indirectly affect Indigenous Peoples' traditional socio-cultural and belief practices? (e.g. child-rearing, health, education, arts, and governance)				
11. Will the project affect the livelihood systems of Indigenous Peoples? (e.g., food production system, natural resource management, crafts and trade, employment status)				

KEY CONCERNS (Please provide elaborations on the Remarks column)	YES	NO	NOT KNOWN	Remarks
12. Will the project be in an area (land or territory) occupied, owned, or used by Indigenous Peoples, and/or claimed as ancestral domain?				
C. Identification of Special Requirements <i>Will the project activities include:</i>				
13. Commercial development of the cultural resources and knowledge of Indigenous Peoples?				
14. Physical displacement from traditional or customary lands?				
15. Commercial development of natural resources (such as minerals, hydrocarbons, forests, water, hunting or fishing grounds) within customary lands under use that would impact the livelihoods or the cultural, ceremonial, spiritual uses that define the identity and community of Indigenous Peoples?				
16. Establishing legal recognition of rights to lands and territories that are traditionally owned or customarily used, occupied or claimed by indigenous peoples?				
17. Acquisition of lands that are traditionally owned or customarily used, occupied, or claimed by indigenous peoples?				

Anticipated project impacts on Indigenous Peoples

Project component/ activity/ output	Anticipated positive effect	Anticipated negative effect

OUTLINE OF AN INDIGENOUS PEOPLES PLAN

This outline is part of the Safeguard Requirements 3. An Indigenous Peoples plan (IPP) is required for all projects with impacts on Indigenous Peoples. Its level of detail and comprehensiveness is commensurate with the significance of potential impacts on Indigenous Peoples. The substantive aspects of this outline will guide the preparation of IPPs, although not necessarily in the order shown.

A. Executive Summary of the Indigenous Peoples Plan

This section concisely describes the critical facts, significant findings, and recommended actions.

B. Description of the Project

This section provides a general description of the project; discusses project components and activities that may bring impacts on Indigenous Peoples; and identify project area.

C. Social Impact Assessment

This section:

- Reviews the legal and institutional framework applicable to Indigenous Peoples in project context.
- Provides baseline information on the demographic, social, cultural, and political characteristics of the affected Indigenous Peoples communities; the land and territories that they have traditionally owned or customarily used or occupied; and the natural resources on which they depend.
- Identifies key project stakeholders and elaborate a culturally appropriate and gender-sensitive process for meaningful consultation with Indigenous Peoples at each stage of project preparation and implementation, taking the review and baseline information into account.
- Assesses, based on meaningful consultation with the affected Indigenous Peoples communities, the potential adverse and positive effects of the project. Critical to the determination of potential adverse impacts is a gender-sensitive analysis of the relative vulnerability of, and risks to, the affected Indigenous Peoples communities given their particular circumstances and close ties to land and natural resources, as well as their lack of access to opportunities relative to those available to other social groups in the communities, regions, or national societies in which they live.
- Includes a gender-sensitive assessment of the affected Indigenous Peoples' perceptions about the project and its impact on their social, economic, and cultural status.
- Identifies and recommends, based on meaningful consultation with the affected Indigenous Peoples communities, the measures necessary to avoid adverse effects or, if such measures are not possible, identifies measures to minimize, mitigate, and/or compensate for such effects and to ensure that the Indigenous Peoples receive culturally appropriate benefits under the project.

D. Information Disclosure, Consultation and Participation

This section:

- Describes the information disclosure, consultation and participation process with the affected Indigenous Peoples communities that was carried out during project preparation;

- Summarizes their comments on the results of the social impact assessment and identifies concerns raised during consultation and how these have been addressed in project design;
- In the case of project activities requiring broad community support, documents the process and outcome of consultations with affected Indigenous Peoples communities and any agreement resulting from such consultations for the project activities and safeguard measures addressing the impacts of such activities;
- Describes consultation and participation mechanisms to be used during implementation to ensure Indigenous Peoples participation during implementation; and
- Confirms disclosure of the draft and final IPP to the affected Indigenous Peoples communities.

E. Beneficial Measures

This section specifies the measures to ensure that the Indigenous Peoples receive social and economic benefits that are culturally appropriate, and gender responsive.

F. Mitigative Measures

This section specifies the measures to avoid adverse impacts on Indigenous Peoples; and where the avoidance is impossible, specifies the measures to minimize, mitigate and compensate for identified unavoidable adverse impacts for each affected Indigenous Peoples groups.

G. Capacity Building

This section provides measures to strengthen the social, legal, and technical capabilities of (a) government institutions to address Indigenous Peoples issues in the project area; and (b) Indigenous Peoples organizations in the project area to enable them to represent the affected Indigenous Peoples more effectively.

H. Grievance Redress Mechanism

This section describes the procedures to redress grievances by affected Indigenous Peoples communities. It also explains how the procedures are accessible to Indigenous Peoples and culturally appropriate and gender sensitive.

I. Monitoring, Reporting and Evaluation

This section describes the mechanisms and benchmarks appropriate to the project for monitoring, and evaluating the implementation of the IPP. It also specifies arrangements for participation of affected Indigenous Peoples in the preparation and validation of monitoring, and evaluation reports.

J. Institutional Arrangement

This section describes institutional arrangement responsibilities and mechanisms for carrying out the various measures of the IPP. It also describes the process of including relevant local organizations and NGOs in carrying out the measures of the IPP.

K. Budget and Financing

This section provides an itemized budget for all activities described in the IPP.