

Indigenous Peoples Planning Framework

Document Stage: Updated

Project Number: 41614

September 2014

India: Assam Power Sector Enhancement Investment Program

Prepared by- Assam Power Distribution Company (APDCL)

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. In preparing any country program or strategy, financing any project, or by making any designation of or reference to a particular territory or geographic area in this document, the Asian Development Bank does not intend to make any judgments as to the legal or other status of any territory or area.

TABLE OF CONTENTS

| | | |
|-------|---|----|
| I. | INTRODUCTION..... | 1 |
| A. | Overview | 1 |
| II. | OBJECTIVES AND POLICY FRAMEWORK | 2 |
| III. | IDENTIFICATION OF AFFECTED INDIGENOUS PEOPLES | 3 |
| IV. | INDIGENOUS PEOPLES PLANNING FRAMEWORK..... | 4 |
| V. | INDIGENOUS PEOPLES PLAN (IPP)..... | 5 |
| A. | Preliminary Screening | 5 |
| B. | Social Impact Assessment..... | 6 |
| C. | Benefits Sharing and Mitigation Measures..... | 6 |
| D. | Outline of Indigenous Peoples Plan..... | 7 |
| VI. | CONSULTATION AND PARTICIPATION..... | 8 |
| VII. | DISCLOSURE | 8 |
| VIII. | GRIEVANCE REDRESS MECHANISM | 9 |
| IX. | INSTITUTIONAL AND IMPLEMENTATION ARRANGEMENTS..... | 10 |
| X. | MONITORING AND REPORTING ARRANGEMENTS..... | 11 |
| XI. | BUDGET AND FINANCING | 11 |

APPENDIX

| | | |
|-------------|--|----|
| Appendix-1 | LEGAL FRAMEWORK..... | 13 |
| Appendix -2 | INDIGENOUS PEOPLES IMPACT SCREENING CHECKLIST..... | 20 |
| Appendix -3 | OUTLINE OF AN INDIGENOUS PEOPLES PLAN | 22 |

LIST OF ACRONYMS

| | |
|---------|--|
| ADB | Asian Development Bank |
| APs | Affected Persons |
| BTAD | Bodoland Territorial Autonomous Districts |
| CPS | Country Partnership Strategy |
| DC | District Commissioner/District Collector |
| DPs | Displaced Persons |
| EA | Executing Agency |
| FYP | Five Year Plan |
| ESMU | Environment and Social Management Unit |
| GOA | Government of Assam |
| GOI | Government of India |
| GRC | Grievance Redress Committee |
| GRM | Grievance Redress Mechanism |
| IA | Implementing Agency |
| IPP | Indigenous Peoples Plan |
| IPPF | Indigenous Peoples Planning Framework. |
| MFF | Multi-Tranche Financing Facility |
| MFPS | Minor Forest Produce |
| NGO | Non-Government Organization |
| NRRP | National Rehabilitation and Resettlement Policy, 2007 |
| PIU | Project Implementation Unit |
| PMU | Project Management Unit |
| R-APDRP | Restructured Accelerated Power Development and Reforms Program |
| RF | Resettlement Framework |
| RP | Resettlement Plan |
| SIA | Social Impact Assessment |
| SPS | Safeguard Policy Statement, 2009 |
| STs | Scheduled Tribes |

I. INTRODUCTION

A. Overview

1. A Framework Financing Agreement (FFA) was signed between the Asian Development Bank (ADB) and the Government of India (the Government) on 15 September 2009 for Assam Power Sector Enhancement Investment Program (the Investment Program). Subsequently on 18 November 2009, the ADB Board of Directors approved the provision of loans to India under a Multitranches Financing Facility (MFF) in an aggregate amount up to \$200 million equivalent for the Investment Program.¹ On 27 November 2009, the President approved Tranche 1 (Loan 2592-IND) for \$60.3 million. The loan and the project agreements for the Tranche 1 (Loan 2592-IND) were signed on 15 February 2010 and the loan became effective on 5 May 2010. On 5 October 2010, the President approved Tranche 2 (Loan 2677-IND) for \$89.7 million. The loan and project agreements were signed on 17 January 2011, and the loan became effective on 1 April 2011. On 4 November 2011, the President approved Tranche 3 (Loan 2800-IND) for \$50 million, and the loan and project agreements were signed on 27 February 2012. Tranche 3 (Loan 2800-IND) became effective on 16 April 2012.

2. The expected impact of the MFF is sustainable state power sector with increased transmission and distribution capacity to support inclusive economic growth and the outcome is enhanced quality and expanded service delivery of electricity through improved technical, commercial, and financial performance and capability of power utilities. The Investment Program is financing: (i) construction of new transmission lines, substations, and other transmission system improvement activities; (ii) construction of new distribution lines and substations, and augmentation of existing substations; (iii) extension and augmentation of transmission substations, reactive compensation and introduction of new technologies to reduce loss.

3. ADB received the Periodic Financing Request (PFR) for Tranche 4 for an amount of \$50.2 million under the MFF on 26 August 2014 (Appendix 1). The investments under Tranche 4 will cover part of the Government of Assam (GOA) power sector road map for enhancing the sub-transmission and distribution capacities to improve operational efficiency and electricity service to end users. The scope of work of the Tranche 4 is within the original scope of the MFF and also in compliance with the FFA.

4. Providing reliable, adequate, and affordable electricity remains a major challenge. This can be achieved only by expanding the state's own generation portfolio, improving the efficiency of existing generation plants, reducing the transmission and distribution losses, and improving the institutional capacities. The government has prepared a transmission and distribution investment plan for the 12th Five Year Plan (FYP) for 2012 – 2017. The Government's power sector roadmap also aims to achieve 100% village electrification by the end of the 12th FYP³; and attain 100% system access by 2020. ADB's India Country

¹ ADB. 2009. *Report and Recommendation of the President to the Board of Directors: Multitranches Financing Facility to India for Assam Power Sector Enhancement Investment Program*. Manila.

² Government's 12th five year transmission and substation improvement plan includes projects for INR 16,523 million in transmission and INR 7,418 million in distribution improvement. The World Bank fund up to \$500 million will be utilized in different stages. In parallel, India Government's Restructured Accelerated Power Development and Reforms Program (R-APDRP) is supporting: (i) capacity development for APDCL for information technology and customer service modernization, and (ii) transmission distribution loss reduction activities.

³ In line with the National Rural Electrification Policy 2004, Rajiv Gandhi Gramin Vidhyutikaran Yojana is being implemented

Partnership Strategy (CPS) for 2009 - 2012 targets low-carbon investments. ADB's CPS for 2013 - 2017 continues with the same approach

5. The Indigenous Peoples Planning Framework (IPPF) provides guidance in formulating Indigenous Peoples Plans (IPPs), where necessary, for subprojects under the future tranches of the MFF.

II. OBJECTIVES AND POLICY FRAMEWORK

6. The objectives of the IPPF are to ensure that if tribal populations are affected by a subproject that they: i) are adequately and fully consulted, ii) receive benefits and compensation equal to that of the mainstream population, (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 culture identities.

7. Article 366(25) refers to Scheduled Tribes (STs) as those communities who are scheduled in accordance with Article 342 of the Constitution. According to Article 342 of the Constitution, 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.

8. 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.

9. 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

10. In Assam, certain areas have been declared as scheduled area as Specified by the Scheduled Areas under the Sixth Schedule of Indian Constitutions. Scheduled areas are autonomous areas within a state, administered federally, usually populated by a predominant Scheduled Tribe. Article 244 (2) of the Indian Constitution makes it clear that for "the administration of the tribal areas in the State of Assam" it is the provisions of the Sixth Schedule which will apply. The Sixth Schedule is "a self-contained Code for the governance of the tribal areas." These districts are Karbi Anglong and North Cachar Hills Districts (now known as Dima Hasao District) and the four Bodoland Territorial Autonomous Districts (BTAD) of Kokrajhar, Baksa, Chirang and Udalguri.

11. ADB's Safeguards Policy Statement (SPS), 2009 ensures equality of opportunity for indigenous peoples. It aims to ensure that any Bank-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. The 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 **Appendix-1**

III. IDENTIFICATION OF AFFECTED INDIGENOUS PEOPLES

12. ADB's SPS uses the following characteristics in varying degrees to define indigenous people (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 the region.

13. 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.

14. According to the Census of India 2011, 8.61 percent of the Indian population is classified as ST. In comparison to the national figure, Assam has 12.45 percent of its populations classified as ST. According to census survey of India, 2011, The STs in Assam comprised 3.88 million of the total State population of 31.21 million. The major tribes of Assam are (i) The Bodo Kachari Tribes, (ii) The Mishing Tribe, (iii) The Deori Tribes, (iv) The Rabha Tribes, (v) The Tiwa or Lalung Tribes, (vi) The khamti Tribe, (vii) The Sonowal Kachari Tribes, (viii) The Tai_Phake or Phakial Tribes, (ix) The Dimasa Kachari Tribes, (x) The Karbi Tribes, (xi) The Barmans of Cachar, (xii) The Hmar Tribe, (xiii) The Kuki Tribe, (xiv) The Rengma Naga Tribes, (xv) Zeme Nagas, (xvi) The Hajong Tribe, (xvii) The Garo Tribe, (xviii) The Khasi Tribe, (xix) The Jaintia Tribe and (xv) The Mech Tribe. Summary profile of ST population in comparison to total population is described in **Table-2**.

Table 2: Details of Scheduled Tribes' Population in India and Assam

| Name | Total Household (Million) | Total Population (Million) | Total Male (Million) | Total Female (Million) | Total ST Population (Million) | Male ST Population (Million) | Female ST Population (Million) | Percentage of ST Population compared to Total Population |
|------------------------------------|---------------------------|----------------------------|----------------------|------------------------|-------------------------------|------------------------------|--------------------------------|--|
| India | 249.45 | 1210.57 | 623.12 | 587.45 | 104.28 | 52.41 | 51.87 | 8.61 |
| Assam | 6.41 | 31.21 | 15.94 | 15.27 | 3.88 | 1.96 | 1.93 | 12.45 |
| Names of Districts in Assam | | | | | | | | |
| Kokrajhar | 0.18 | 0.89 | 0.45 | 0.43 | 0.28 | 0.14 | 0.14 | 31.41 |
| Dhubri | 0.41 | 1.95 | 1.00 | 0.95 | 0.01 | 0.00 | 0.00 | 0.32 |
| Goalpara | 0.20 | 1.01 | 0.51 | 0.49 | 0.23 | 0.12 | 0.12 | 22.97 |

| Name | Total Household (Million) | Total Population (Million) | Total Male (Million) | Total Female (Million) | Total ST Population (Million) | Male ST Population (Million) | Female ST Population (Million) | Percentage of ST Population compared to Total Population |
|---------------------|---------------------------|----------------------------|----------------------|------------------------|-------------------------------|------------------------------|--------------------------------|--|
| Barpeta | 0.34 | 1.69 | 0.87 | 0.83 | 0.03 | 0.01 | 0.01 | 1.61 |
| Morigaon | 0.18 | 0.96 | 0.49 | 0.47 | 0.14 | 0.07 | 0.07 | 14.29 |
| Nagaon | 0.56 | 2.82 | 1.44 | 1.38 | 0.12 | 0.06 | 0.06 | 4.08 |
| Sonitpur | 0.39 | 1.92 | 0.98 | 0.94 | 0.23 | 0.12 | 0.11 | 12.07 |
| Lakhimpur | 0.20 | 1.04 | 0.53 | 0.51 | 0.25 | 0.13 | 0.12 | 23.93 |
| Dhemaji | 0.13 | 0.69 | 0.35 | 0.33 | 0.33 | 0.17 | 0.16 | 47.45 |
| Tinsukia | 0.27 | 1.33 | 0.68 | 0.65 | 0.08 | 0.04 | 0.04 | 6.18 |
| Dibrugarh | 0.28 | 1.33 | 0.68 | 0.65 | 0.10 | 0.05 | 0.05 | 7.76 |
| Sivasagar | 0.25 | 1.15 | 0.59 | 0.56 | 0.05 | 0.02 | 0.02 | 4.26 |
| Jorhat | 0.24 | 1.09 | 0.56 | 0.54 | 0.14 | 0.07 | 0.07 | 12.81 |
| Golaghat | 0.23 | 1.07 | 0.54 | 0.52 | 0.11 | 0.06 | 0.06 | 10.48 |
| Karbi Anglong | 0.18 | 0.96 | 0.49 | 0.47 | 0.54 | 0.27 | 0.27 | 56.33 |
| Dima Hasao | 0.04 | 0.21 | 0.11 | 0.10 | 0.15 | 0.08 | 0.08 | 70.92 |
| Cachar | 0.38 | 1.74 | 0.89 | 0.85 | 0.02 | 0.01 | 0.01 | 1.01 |
| Karimganj | 0.25 | 1.23 | 0.63 | 0.60 | 0.00 | 0.00 | 0.00 | 0.16 |
| Hailakandi | 0.14 | 0.66 | 0.34 | 0.32 | 0.00 | 0.00 | 0.00 | 0.10 |
| Bongaigaon | 0.15 | 0.74 | 0.38 | 0.36 | 0.02 | 0.01 | 0.01 | 2.55 |
| Chirang | 0.10 | 0.48 | 0.24 | 0.24 | 0.18 | 0.09 | 0.09 | 37.06 |
| Kamrup | 0.31 | 1.52 | 0.78 | 0.74 | 0.18 | 0.09 | 0.09 | 12.00 |
| Kamrup Metropolitan | 0.29 | 1.25 | 0.65 | 0.61 | 0.08 | 0.04 | 0.04 | 5.99 |
| Nalbari | 0.16 | 0.77 | 0.40 | 0.38 | 0.02 | 0.01 | 0.01 | 3.03 |
| Baksa | 0.19 | 0.95 | 0.48 | 0.47 | 0.33 | 0.17 | 0.17 | 34.84 |
| Darrang | 0.19 | 0.93 | 0.48 | 0.45 | 0.01 | 0.00 | 0.00 | 0.91 |
| Udalguri | 0.17 | 0.83 | 0.42 | 0.41 | 0.27 | 0.13 | 0.13 | 32.15 |

Source: Census of India-2011

IV. INDIGENOUS PEOPLES PLANNING FRAMEWORK

15. The IPPF seeks to ensure that indigenous people and tribal communities are informed, consulted, and mobilized to participate in the subproject preparation. The Framework is intended to guide selection and preparation of additional subprojects under the Project where impacts on tribal people are identified to ensure better distribution of the project benefits that are culturally appropriate and promote development of the indigenous peoples in the Project areas. The framework is prepared in accordance with ADB's procedures for MFF loans as presented in ADB's SPS.

16. The IPPF is intended to guide the selection and preparation of additional projects under the project to ensure better distribution of project benefits and promote development of IPs in the project area. In cases where impacts on IPs are identified, this framework will be applied during preparation of additional subprojects, in accordance with the ADB's SPS.

17. The IPPF is based on the overall local and national development strategies and SPS. The principle objectives are to:

- (i) ensure IPs affected by any additional project will receive culturally appropriate social and economic benefits from the project.

- (ii) Ensure IPs participate in the entire process for the preparation, implementation and monitoring of project activities and
- (iii) Do not suffer adverse impacts as a result of projects.

V. INDIGENOUS PEOPLES PLAN (IPP)

18. An indigenous peoples plan (IPP) is required if a project directly or indirectly affects the dignity, human rights, livelihood systems, or culture of the IPs or affects the territories or natural or cultural resources that IPs own, use, occupy, or claim as their ancestral domain.

19. In accordance with SPS, in case the physical relocation of IPs results in adverse impacts on their identity, culture and customary livelihoods and if such avoidance is impossible then the EA/IA in consultation with ADB could formulate a combined Indigenous Peoples Plan and resettlement plan to address both involuntary resettlement and Indigenous Peoples issues. If indigenous people are the majority of the direct project beneficiaries and when only positive impacts are identified, the elements of the IPP could be included in the overall project design in lieu of preparing a separate IPP. In such cases the project documents should explain the requirements of meaningful consultations are fulfilled in accordance with the requirements of SPS.

20. This framework seeks to ensure that IPs are informed, consulted, and mobilized to participate in the additional subprojects. Their participation can either provide them benefits with more certainty, or protect them from any potential adverse impacts of the additional subproject. The main features of the IPP will be a preliminary screening process, a social impact assessment to determine the degree and nature of impact of each additional project, and an action plan developed if needed. Meaningful consultations with and participation of IP communities, their leaders, and local government representatives will be an integral part of the overall IPP.

A. Preliminary Screening

21. The EA/IA through its PMU will study all IP communities and villages within and in the vicinity of the proposed sub-project area. The PMU 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. 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.

22. A project's Indigenous Peoples category is determined by the category of its most sensitive component in terms of impacts on Indigenous Peoples. The significance of impacts of an ADB supported project on Indigenous Peoples is determined by assessing (i) the magnitude of impact in terms of (a) customary rights of use and access to land and natural resources; (b) socioeconomic status; (c) cultural and communal integrity; (d) health, education, livelihood, and social security status; and (e) the recognition of indigenous knowledge; and (ii) the level of vulnerability of the affected Indigenous Peoples community. The level of detail and comprehensiveness of the IPP are commensurate with the significance of potential impacts on Indigenous Peoples. A proposed project is assigned to one of the following categories depending on the significance of the potential impacts on Indigenous Peoples:

Category A: A proposed project is classified as category A if it is likely to have significant impacts on Indigenous Peoples. An Indigenous Peoples plan (IPP), including assessment of social impacts, is required.

Category B: A proposed project is classified as category B if it is likely to have limited impacts on Indigenous Peoples. An IPP, including assessment of social impacts, is required.

Category C: A proposed project is classified as category C if it is not expected to have impacts on Indigenous Peoples. No further action is required.

23. 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**

B. Social Impact Assessment

24. The policy on indigenous people ensures that 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.

25. Information will be gathered from separate group meetings within the tribal community, including tribal leaders; group of tribal men and women, especially those who live in the zone of influence of the proposed subproject under the investment program. Discussions will focus on the positive and negative impacts of the subproject as well as recommendations on the design of the subproject. The information to be gathered for the SIA should include (i) a baseline socioeconomic profile of the indigenous groups in the project area and project impact zone; (ii) assessment on their access to and opportunities they can avail of the basic and socio economic services; (iii) assessment of the short and long term, direct and indirect, positive and negative impacts of the project on each group's social, cultural and economic status; (iv) assessing and validating which indigenous groups will trigger the Indigenous peoples policy principles; and (v) assessing the subsequent approaches and resource requirements for addressing the various concerns and issues of projects that affect them. SPS Requirement 3 para 26, outlines that special considerations apply if the project affects IP's ties to lands, natural resources and ancestral domains. The SIA will make provisions for the identification of such ties and impacts. The PMU through its Environment and Social Management Unit (ESMU) and through its PIUs will prepare the SIA and the PMU will be responsible for analyzing 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.

C. Benefits Sharing and Mitigation Measures

26. 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 investment program.

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.

27. As indigenous peoples, they are likely to have traditional land rights; these will be honoured 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). The RF defines IPs as vulnerable people/households.

D. Outline of Indigenous Peoples Plan

28. The IPP is time-bound, with an adequate budget for its implementation. An acceptable IPP addresses 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 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.⁴ 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 usage 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 defined task for each stake holders.

⁴ The compensation will follow the Resettlement Policy Framework of the investment program (MFF).

- (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.
- (ix) The IPP should also include provision for unanticipated impacts during the project implementation.

29. Where warranted, the IPP will be developed by the PMU through its ESMU with technical assistance from other team members and the IPP will form part of the final report for each Tranche. The EA/IA through its PMU will then review and approve the IPP and provide the approved IPP 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**

VI. CONSULTATION AND PARTICIPATION

30. The IPP will be prepared in consultation with the affected IP groups. The mitigation measures and strategies will be presented to them by the EA/IA through its PMU and PIUs 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 EA/IA through its PMU and ESMU will be involved in implementing the IPP and resolution of any dispute arising out of the implementation process. 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 and IA, hence, will be an integral part of the overall IPP. The strategy of the IPP therefore would be to promote participation of IPs, initiating and identifying people's needs, priorities and preferences through participatory approaches appropriate to the social and cultural values of the IPs. 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.

VII. DISCLOSURE

31. The IPP prepared in consultation with affected IPs will be translated into local language or any other medium which will be understood by the IPs and made available to them before implementation with the assistance of PMU and its ESMU. The EA and IA 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 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. The IPP will further be disclosed in the website of EA/IA and ADB. The EA/IA will submit to ADB the following documents to disclose on ADB's website:

- a draft IPP including the social impact assessment, endorsed by the borrower/client, before appraisal;
- the final IPP upon completion;
- a new or updated IPP and a corrective action plan prepared during implementation, if any; and
- the monitoring reports.

32. The EA/IA will provide relevant information, including information from the above documents in a timely manner, in an accessible place and in a form and language(s) understandable to the affected Indigenous Peoples and other stakeholders. If the Indigenous Peoples are illiterate, other appropriate communication methods will be used.

VIII. GRIEVANCE REDRESS MECHANISM

33. The EA/IA will establish a mechanism to receive and facilitate resolution of the affected Indigenous Peoples communities' concerns, complaints, and grievances. The grievance mechanism will be scaled to the impacts of the project. It should address concerns and complaints promptly, using an understandable and transparent process that is culturally appropriate, gender responsive, and accessible to the affected Indigenous Peoples communities at no cost and without retribution. The mechanism should not impede access to the country's judicial or administrative remedies. The affected Indigenous Peoples communities will be appropriately informed about the mechanism. The grievance redress mechanism will be the same as mentioned in the Resettlement Framework with an addition and special importance to indigenous peoples. There is a need for an efficient grievance redress mechanism (GRM), which will assist the APs in resolving queries and complaints. The EA/IA will establish a mechanism to receive and facilitate the resolution of affected persons' including indigenous peoples concerns and grievances about physical and economic displacement and other project impacts, paying particular attention to the impacts on vulnerable groups such as IP. The grievance redress mechanism will address affected persons' including IPs 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. A Grievance Redress Committee (GRC) will be formed to ensure APs grievances are addressed and facilitate timely project implementation. The GRC will consist of following representative.

34. Efficient Grievance redress mechanism has been developed to assist the APs resolve their queries and complaints. Grievances of APs will first be brought to the attention to the site office level of the IA which is APDCL which shall be redressed within 2 week of time. Grievances not redressed by the IA staff (field level) will be brought to the Grievance Redress Committee (GRC) which shall be redressed within 4 weeks. The GRC has representatives from APs, PMU, IA, Environment and Social Management Unit (ESMU), field level staff, representative from district magistrate/commissioner, local administration, and local community. 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 GRC will meet every month (if grievances are brought to the Committee), determine the merit of each grievance, and resolve grievances within a month of receiving the complaint.

35. The proposed mechanism does not impede access to the country's judicial or administrative remedies. The AP has the right to refer the grievances to appropriate courts of law if not satisfied with the redress at any stage of the process. Records will be kept of all grievances received including: contact details of complainant, date the complaint was

received, nature of grievance, agreed corrective actions and the date these were effected, and final outcome.

36. This GRM would provide an effective approach for resolution of complaints and issues of the affected person/community. PMU shall formulate procedures for implementing the GRM, while the PIUs shall undertake GRM's initiatives that include procedures of taking/recording complaints, handling of on-the-spot resolution of minor problems, taking care of complainants and provisions of responses to distressed stakeholders etc. paying particular attention to the impacts on vulnerable groups.

IX. INSTITUTIONAL AND IMPLEMENTATION ARRANGEMENTS

37. In the preparation of IPPs for each tranche (where applicable), the EA/IA will have overall coordination and financing responsibilities. The EA/IA through its PMU, PIU and ESMU will prepare, implement, and monitor the IPP. Since IP issues are sensitive, the PMU and PIU will ensure that a social specialist or consultant or a designated official responsible for IPP will be deputed with knowledge and experience of working among IP groups. The specialist shall be available for assisting in the planning and implementation of IPPs for the Project. The PMU and PIUs will ensure that the specialist hired or designated to assist the PMU and PIUs in planning and implementation of IPPs for subprojects is familiar with ADB policy and requirements for IPPs.

38. APDCL will serve as the EA as well as the IA for the investment program. For resettlement planning and indigenous peoples planning and successful implementation of Resettlement Plan (RP) and IPP, there will be a set of Institutions involved at various levels and stages of the project. APDCL, Concerned District Administration and implementing Non-Government Organization (NGO). However, NGO will be hired depending on the requirements and during the safeguard assessment for future tranches subject to EA's/IA's concurrence. A PMU, headed by the Project Director, constituted for earlier ADB funded projects will continue to be functional for this project also. APDCL already has the PMU to implement the ADB loan at the corporate level and the PMU will be supported for implementation activities through the APDCL field offices.

39. PMU shall designate one Assistant General Manager (AGM) in-charge of Environment and Social Management Unit (ESMU) who shall have oversight responsibilities for monitoring for all sub-projects in areas such as Environment, social, involuntary resettlement and indigenous peoples. The IPP implementation schedule will vary from subproject to subproject. In general, the project implementation will consist of the three major phases, namely project preparation, land acquisition and rehabilitation of DPs. The EA/IA will ensure that project activities are synchronized between the IPP implementation activities as well as the subproject implementation. The EA/IA will ensure that no physical/or economic displacement of affected households will occur until: (i) compensation at full replacement cost has been paid to each displaced person including IPs for project components or sections that are ready to be constructed; (ii) other entitlements listed in the resettlement plan and IPP are provided to the displaced persons; and (iii) a comprehensive income and livelihood rehabilitation program, supported by adequate budget, is in place to help displaced persons, improve, or at least restore, their incomes and livelihoods. Furthermore, all RPs and IPPs will be revised during detailed design, and ADB will clear all RPs and IPPs prior to contract award. All land required will be provided free of encumbrances to the contractor prior to handing over of sub-project sites and the start of civil works.

X. MONITORING AND REPORTING ARRANGEMENTS

40. The EA/IA will monitor and measure the progress of implementation of the IPP. The extent of monitoring activities will be commensurate with the project's risks and impacts. In addition to recording information to track performance, the EA/IA should use dynamic mechanisms, such as inspections and audits, to verify compliance with requirements and progress toward achieving the desired outcomes. For projects with significant adverse impacts on Indigenous Peoples, the borrower/client will retain qualified and experienced external experts or qualified NGO to verify monitoring information. The external experts engaged by the borrower/client will advise on compliance issues, and if any significant Indigenous Peoples issues are found, the borrower/client will prepare a corrective action plan or an update to the approved IPP. The borrower/client will implement the corrective actions and follow up on these actions to ensure their effectiveness. The EA/IA will prepare periodic monitoring reports on the progress of IPP implementation, highlighting compliance issues and corrective actions, if any. The EA/IA will submit semi-annual monitoring reports. The costs of monitoring requirements will be reflected in project budgets

41. Implementation of the IPP will be monitored regularly. The PMU will establish a semi-annual monitoring system involving the PMU and PIUs staff, ESMU, 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 and PIUs 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/IA through the PMU/PIU will be responsible for determining if any follow-up actions are necessary and ensuring any necessary actions are taken regarding the implementation of IPPs.

42. The PMU will implement the IPP and carry out the monitoring and evaluation activities as prescribed in this section. The PMU's through its PIUs will be trained and motivated in carrying out these activities. IPP implementation will be closely monitored to provide the PMU/PIUs with an effective basis for assessing IPP progress and identifying potential difficulties and problem areas. Monitoring will also cover the physical progress of implementation of IPP. Reporting and monitoring formats will be prepared for an effective internal and external monitoring. These reports will be submitted to ADB for review and comments. Each IPP will be submitted by EA/IA to ADB for review and approval.

XI. BUDGET AND FINANCING

43. Each IPP will have its own budget. The EA/IA 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 social, resettlement and rehabilitation unit taking into account all activities associated with the formulation and implementation of the IPP. Such budgets will be an integral part of the program cost, and will be made available during program implementation. The EA/IA will be responsible for making the budget available in advance to its PMU for implementation of IPP.

APPENDIX 1: 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 inter generationally 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 favour 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.

1. The Fifth Schedule of Indian Constitution

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. This provides for the administration and control of Scheduled Areas and Scheduled Tribes (areas and tribes needing special protection due to disadvantageous conditions).

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.

2. The Sixth Schedule of Indian Constitution with reference to Assam

8. Article 244 (2) of the Indian Constitution makes it clear that for "the administration of the tribal areas in the State of Assam" it is the provisions of the Sixth Schedule which will apply. The Sixth Schedule is "a self-contained Code for the governance of the tribal areas." When 73rd amendment for empowerment of Panchayati Raj Institutions (PRI) was passed in 1992, "the tribal areas referred to in Clause 2 of Article 244" were expressly left out of the coverage of Article 243, contained in Part IX of the Constitution. Of course, a separate provision in Article 244 (4) provides for extension of Part IX to the Sixth Schedule areas by an amendment of the Constitution. The procedure, however, is so complicated that it would be politically unwise to try to follow the same. Therefore, when the Third Assam State Finance Commission (TASFC) was set up, the Sixth Schedule areas of Karbi Anglong and North Cachar Hills Districts (now known as Dima Hasao District) and the four Bodoland Territorial Autonomous Districts (BTAD) of Kokrajhar, Baksa, Chirang and Udalguri had to be left out of its purview. The Government notification in this connection expressly laid down that TASFC should make their recommendations "after taking into account the transfers that are to be made by the State of Assam to the Autonomous District Councils constituted under the Sixth Schedule of the Constitution". TASFC recommended that the State Government "may appoint a small Committee to go into the problems of (1) an institutional framework to carry out functions of rural and urban development and (2) the flow of funds to these institutions for rural and urban development".

9. PRIs never existed in the two Autonomous Hills Districts of Karbi Anglong and North Cachar Hills. PRIs which existed in the BTAD areas have been dissolved after BTAD was set up. There are a total of 16 Urban Local Bodies (ULB) in the Sixth Schedule areas. For both PRIs and ULBs of Sixth Schedule areas provision should be made for local finance as

in the cases of the general areas. Otherwise, these tribal areas will not be able to reorganise and revamp the delivery system under non-Plan which is required if the Plan projects, schemes and programmes are to be properly administered and implemented. The Government of Assam has not taken any steps in this direction although TASFC's report had been submitted 22 months ago. It may be recalled that while accepting this recommendation of TASFC the State Government had directed that the "Hill Areas and WPT & BC Departments will take up the matter with GOI (Government of India)". No such action has been initiated.

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

10. 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. 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.

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

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

5. Draft National Tribal Policy, 2006

20. 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.

21. 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.

22. 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.

23. 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.

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

24. 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) | | | | |
| 12. Will the project be in an area (land or territory) occupied, owned, or used by Indigenous Peoples, and/or claimed as ancestral domain? | | | | |

| KEY CONCERNS (Please provide elaborations on the Remarks column) | YES | NO | NOT KNOWN | Remarks |
|---|-----|----|--------------|---------|
| 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 |
|--|-----------------------------|-----------------------------|
| | | |

APPENDIX 3: OUTLINE OF AN INDIGENOUS PEOPLES PLAN

1. 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

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

B. Description of the Project

3. 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

4. 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

5. 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

6. 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

7. 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

8. 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

9. 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

10. 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

11. 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

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