iha
international hydropower association

Hydropower and Indigenous Peoples

A guide for hydropower project developers and operators on delivering good international industry practice

Acknowledgements

Disclaimer

Publication details

Contents

Glossary

Adaptive management	The process of adapting environmental and social management in response to information on its effectiveness.
Agreement	A recorded understanding between individuals, groups or entities to follow a specific course of conduct or action. It may be incorporated into, for example, a memorandum of understanding, minutes of a meeting, a letter of intent, a joint statement of principles, a contract, an operating licence, etc. Sometimes can be a regulatory/legal requirement.
Area of influence	The geographical area in which impacts of a project will be felt.
Baseline	A set of measurements, statistics or conditions used as a basis for later comparison.
Community groups	Groups of people with common characteristics or interests, who live together within the larger society. There are many different ways to view these groups, which will need to be defined in meaningful ways for the project. These may include, for example, urban dwellers, rural dwellers, Indigenous Peoples, ethnic minorities, people of a common profession or religion; disabled, elderly or illiterate people; women, men, children, etc.
Compensation	Payment in cash or in kind for an asset or a resource that is acquired or affected by a project.
Consensus	General agreement; the consensus of opinion means the opinion of all or most of the people consulted.
Consent	Signed agreements with community leaders or representative bodies who have been authorised by the affected communities which they represent, through an independent and self-determined decision-making process undertaken with sufficient time and in accordance with cultural traditions, customs and practices.
Cumulative impacts	Impacts that result from the incremental impact of the project when added to other past, present, and reasonably foreseeable future actions.
Customary	According to the customs of the social group; according to a usage adopted and practised by an individual or group over a period of time.
Decision-making	The way in which a community makes choices such as whether to decide to provide or deny consent.
Direct impacts	Impacts that result from a direct interaction between a planned project activity and the receiving environment/receptors.
Expert	A person with a high degree of skill in or knowledge of a certain subject, as a result of extensive experience or training in that subject.
Gender	Culturally based expectations of the roles and behaviours of males and females. The term distinguishes the socially constructed from the biologically determined aspects of being male or female.
Grievance mechanism	The processes by which stakeholders are able to raise concerns, grievances and legitimate complaints, as well as the project procedures to track and respond to any grievances.
Human rights	The basic rights and freedoms to which all humans are entitled, encompassing civil, political, economic, social and cultural rights, and which are enshrined in international declarations such as the Universal Declaration on Human Rights, 1948.
Indirect impacts	Impacts that result from other activities that happen as a consequence of the project.

Legacy issues	Impacts of previous projects that are unmitigated or not compensated, or long-standing issues with a present (existing) project, or pre-existing issues in the present location of a new project.
Livelihood	The capabilities, assets (stores, resources, claims and access) and activities required for a means of living; they are indicators of household well-being.
Living standards	The level of material comfort, as measured by the goods, services and luxuries available to an individual, group or nation.
Management plan	A tool used as a reference for managing a particular project issue, and which establishes the 'why, what, how, who, how much, and when' for that issue.
Meaningful consultation	A process that (i) begins early in the project preparation stage and is carried out on an ongoing basis throughout the project cycle; (ii) provides timely disclosure of relevant and adequate information that is understandable and readily accessible to affected people; (iii) is undertaken in an atmosphere free of intimidation or coercion; (iv) is gender inclusive and responsive, and tailored to the needs of disadvantaged and vulnerable groups; and (v) enables the incorporation of all relevant views of affected people and other stakeholders into decision-making, such as project design, mitigation measures, the sharing of development benefits and opportunities, and implementation issues.
Mitigation	Moderation, alleviation and/or relief of a negative impact.
Mitigation hierarchy	An approach to impact management which involves the sequential application of measures to avoid, minimise, restore or rehabilitate; and to compensate for adverse impacts. Measures to avoid or prevent negative or adverse impacts are always prioritised, and where avoidance is not practicable, then minimisation of adverse impacts is sought. Where avoidance and minimisation are not practicable, then mitigation and compensation measures are identified and undertaken commensurate with the project's risks and impacts.
Negotiated settlement	The situation in which the developer tries to arrive at a mutually agreeable negotiated settlement with the landowner or land user, to avoid the costs, delays and implications involved in compulsory acquisition processes.
Proportionality	The quality of corresponding in size or amount in a proportional manner to something else. Consultation and consent required are proportional to the nature of the rights affected.
Publicly disclosed	The public is informed that the agreement, commitment, assessment, management plan or significant report has been made or completed, and it is made publicly available either voluntarily (e.g. posted on a website) or on request in a timely manner.
Representative	A person chosen or appointed to act or speak for another or others.
Resettlement	The process by which people who are physically displaced are supported to re-establish their housing, living arrangements and livelihoods, because due to the project they are no longer allowed to stay in the area in which they were residing.
Residual impacts	Adverse impacts which remain after avoidance and minimisation measures have been applied.
Respect	Due regard for the feelings, wishes, rights or traditions of others.
Rights	Something to which a person has a rightful claim, for which the state and others have responsibility and can be held accountable. May be upheld in law, defined by custom, and/or as a social norm.
Self-determination	The process by which a group of people determines its own form of government without reference to the wishes of any other group of people.
Self-identification	The attribution of certain characteristics or qualities to oneself.
Transparent / transparency	Open to public scrutiny, publicly available, and/or able to be viewed or disclosed to the public on request.
Veto	The right or power to forbid or reject unilaterally.
Vulnerable	Marginalised or impoverished, with very low capacity and means to absorb change.

Introduction

Hydropower can provide clean electricity, and hydropower dams can provide other essential services such as irrigation, flood control and drought mitigation. While people in the area of influence of a project can participate in these benefits, they are also at risk of being negatively affected by the project. Indigenous Peoples are often among the communities that can be the most impacted. As distinct social and cultural groups, they require particular attention and treatment, and are often the most marginalised and vulnerable segments of the population.

International good practice, and the principles of justice and law require that hydropower projects respect Indigenous Peoples' rights, which can be distinct from those of more dominant groups in national societies. Good practice requirements include that the project respects the dignity, human rights, aspirations, culture, traditions, lands, knowledge, practices and natural resource-based livelihoods of Indigenous Peoples in an ongoing manner throughout the entire project life cycle.

1.1   This How-to Guide

1.1.1   Aim

This How-to Guide contributes to increasing knowledge and understanding of the practical measures that can be undertaken to meet good international industry practice, in conformance with the internationally recognised Hydropower Sustainability Tools (see Box 1). This suite of sustainability tools seeks to harmonise the understanding and promotion of sustainability in hydropower.

This How-to-Guide can help developers and operators engage with Indigenous Peoples and ensure that their projects meet good industry practice. It expands upon the Hydropower Sustainability Good International Industry Practice Guidelines (HGIIP) and is designed to provide practical support for practitioners and stakeholders when managing Indigenous issues in planning, developing and operating projects.

This guide is focused on Indigenous Peoples but also may be useful in managing issues associated with ethnic minorities and traditional communities, given that they often share some of the same attributes of being minorities in society and being marginalised and vulnerable. It is one of a series of How-to Guides published by IHA.

The primary benefits of this guide for project planners, developers, owners and operators are two-fold:

1. An enhanced ability to engage with Indigenous Peoples, as the guide provides:

•   An understanding of how Indigenous Peoples have a specific historical and current background and have additional rights compared to other groups;

•   An explanation of engagement principles and approaches;

•   An explanation of how to plan, construct and operate projects in a manner that safeguards the rights at risk of Indigenous Peoples and enhances benefits to Indigenous Peoples; and

•   A set of tools to improve a project's social licence to operate in relation to effects on Indigenous Peoples, including reducing the risk of delays due to protests and non-approvals, and increasing the likelihood of project acceptance.

Assessment
Hydropower Sustainability
Assessment Protocol (HSAP)

Gap Analysis
Hydropower Sustainability
ESG Gap Analysis Tool (HESG)

Hydropower Sustainability Tools

Guidelines
Hydropower Sustainability
Guidelines on Good International
Industry Practice (HGIIP)

26 topics
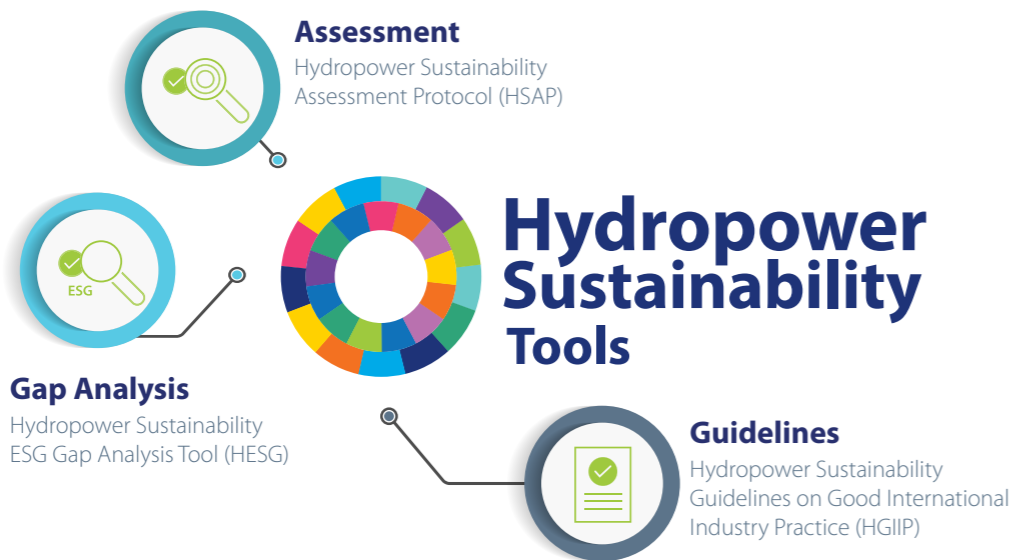
The Hydropower Sustainability Tools are governed by the Hydropower Sustainability Assessment Council, a multi-stakeholder group of industry, government, financial institutions, and social and environmental NGOs. The tools are supported by the International Hydropower Association (IHA), the council's management body.

Sustainability guidelines

The HGIIP define expected sustainability performance for the sector across a range of environmental, social, technical and governance topics. Released in 2018, the 26 guidelines present definitions of the processes and outcomes related to good practice in project planning, operation and implementation. As a compendium, the guidelines are a reference document for meeting the expectations of lenders, regulators and consumers. Compliance with each guideline can be specified in commercial contracts between financiers and developers, and between developers and contractors. The guidelines are based on the performance framework of the HSAP.

Indigenous Peoples

The Indigenous Peoples good practice guideline addresses the management of Indigenous Peoples' rights at risk in relation to the hydropower project or operating facility. Adherence to this guideline is measured using the HSAP and the HESG.

Further information

Visit Hydrosustainability.org

Assessment protocol

The HSAP offers a framework for objective assessments of hydropower project performance. This was developed between 2007 and 2010 following a review of the World Commission on Dams' recommendations, the Equator Principles, the World Bank Safeguard Policies and IFC Performance Standards, and IHA's own previous sustainability tools. Assessments are delivered by independent accredited assessors and can examine different stages of a project's life cycle. Evidence collected during an assessment is used to create a sustainability profile and to benchmark performance against both good and best proven practice. The assessment protocol was updated in 2018 with a new topic covering hydropower's carbon footprint and resilience to climate change, and in 2020 to incorporate Indigenous Peoples' Consent.

Gap analysis tool

IThe HESG enables hydropower project proponents and investors to identify and address gaps against international good practice. Launched in 2018 and updated in 2020, the tool is based on the assessment framework of the HSAP's environmental, social and governance topics. It provides a gap management action plan to help a project team address any gaps, and is divided into 12 sections that are compatible with both the IFC Environmental and Social Performance Standards and the World Bank's Environmental and Social Framework.

2. An improved ability to utilise the Hydropower Sustainability Tools to achieve good practice outcomes, as the guide provides:

- An overview of the strategies and approaches to achieve good practice criteria when engaging with Indigenous Peoples;

- A practical explanation of how to apply the Hydropower Sustainability Assessment Protocol (HSAP) and the Hydropower Sustainability ESG Gap Analysis Tool (HESG) throughout the project life cycle; and

- A demonstration to affected Indigenous and non-Indigenous Peoples, the public, regulators and lending institutions, of how assessing projects against the HSAP and the HESG enhances project sustainability performance and reflects international good practice.

1.1.2 Approach and structure

This guide maps out the steps and processes that responsible parties should follow to meet good international industry practice in relation to the project life cycle, from early concept through to detailed design, construction and operation.

The guide is presented in five chapters and two annexes, with the second annex of case studies being a separate volume:

- **Chapter 1** – Introduction

- **Chapter 2** – Understanding Indigenous Peoples in hydropower

- **Chapter 3** – Achieving good international industry practice

- **Chapter 4** – Strategies and approaches

- **Chapter 5** – Conclusions

- **Annex 1** – Bibliography

- **Annex 2** – Project examples

1.2 Indigenous Peoples in the Hydropower Sustainability Tools

A separate topic on Indigenous Peoples is included in all three of the Hydropower Sustainability Tools that correspond to the project life-cycle stages of Preparation, Implementation and Operation. These tools provide a definition of good international industry practice in the management of Indigenous Peoples' rights at risk, structured by criteria on Assessment, Management, Stakeholder Engagement, Stakeholder Support, Conformance and Compliance, and Outcomes. The Early stage tool does not contain a stand-alone topic on Indigenous Peoples, but topic ES-7 Social Issues and Risks requires an assessment of social issues and risks most relevant to the project, including in relation to Indigenous Peoples.

The intent of the Indigenous Peoples topic is that:

- the project respects the dignity, human rights, aspirations, culture, traditions, lands, knowledge, practices and natural resource-based livelihoods of Indigenous Peoples in an ongoing manner throughout the project life; and

- commitments made to Indigenous Peoples are fully delivered.

As with all project-affected communities, and clearly stated in the Project-Affected Communities and Livelihoods topic, the intent is that livelihoods and living standards impacted by the project are improved relative to pre-project conditions for project-affected communities with the aim of self-sufficiency in the long-term, and that commitments to project-affected communities are fully delivered over an appropriate period of time.

1.2.1 Objectives of this How-to Guide

This guide:

- sets out the many considerations that arise in relation to planning for and managing issues of importance to Indigenous Peoples, and Indigenous Peoples' rights at risk, with regard to hydropower development and operations;

- outlines important principles, methodological steps and practical strategies to achieve good international practice; and

- highlights the Indigenous Peoples' rights at risk that need to be monitored and managed, how they can be best avoided, and how they can be identified and mitigated in a timely manner.

The guide explains the steps and the risks that need to be managed in developing and operating a hydropower project that impacts Indigenous Peoples' rights at risk. It highlights and responds to the questions that arise for those in positions of responsibility when they are trying to follow guidelines and to put the words into practice. It raises questions that responsible parties should be asking, such as "How can we ensure that the entitlements and intended benefits for Indigenous Peoples are most likely to achieve their objectives?" and "How can we identify and manage the risks?", and proposes approaches for addressing these concerns. It provides guidance on engagement with the affected communities, in order to empower them in the project processes, so that they are most likely to be supportive of the approach taken. Ultimately, this guide provides the developer with strategies and approaches that can help achieve good practice processes and outcomes for Indigenous Peoples whose rights at risk are potentially or actually impacted by the project.

1.2.2 Scope

The scope of the guide covers:

- the basic good practice requirements for the management of issues of importance or concern to Indigenous Peoples, as set out in the Hydropower Sustainability guidelines and associated tools; and

- all stages of a project's life, from the Early stage through Preparation, Implementation and Operation.

This guide does not attempt to comprehensively cover all aspects of managing Indigenous Peoples' issues in project development and operation. Rather, it focuses on the aspects specific to Indigenous Peoples, as described in

the Indigenous Peoples topic in the Hydropower Sustainability Tools. IHA How-to-Guides covering other topics provide guidance regarding both Indigenous and non-Indigenous Peoples, which will not be replicated here. Particularly pertinent are the guides on Benefit Sharing, Resettlement, and Environmental and Social Assessment and Management. Other considerations that may affect Indigenous Peoples are dealt with under other topics, for example: cultural heritage; public health; biophysical issues, such as water quality; erosion and sedimentation; biodiversity; and downstream flows.

Understanding Indigenous Peoples in hydropower

This chapter explores the main themes and concerns regarding Indigenous Peoples' issues as they relate to hydropower development and operation. A greater common understanding of fundamental aspects and issues associated with Indigenous Peoples and hydropower development and operation is the first step towards increasing the demonstration of international good practice.

Indigenous Peoples have historically been disadvantaged and maltreated in society and by a wide variety of projects, including hydropower and others. The means of engagement with and treatment of Indigenous Peoples is evolving and has been associated with controversy all over the world. The situation for Indigenous Peoples varies dramatically from country to country, and it varies significantly even within individual countries regarding their legal treatment and recognition, economic and social well-being, education, engagement capacity and culture.

According to the World Bank:

"There are approximately 476 million Indigenous Peoples worldwide, in over 90 countries. Although they make up over 6 percent of the global population, they account for about 15 percent of the extreme poor. Indigenous Peoples' life expectancy is up to 20 years lower than the life expectancy of non-Indigenous Peoples worldwide."

"Indigenous Peoples often lack formal recognition over their lands, territories and natural resources, are often last to receive public investments in basic services and infrastructure, and face multiple barriers to participate fully in the formal economy, enjoy access to justice, and participate in political processes and decision making."

Indigenous Peoples represent 5,000 different cultures and speak the overwhelming majority of the world's 6,700 languages. They own, occupy or use a quarter of the world's surface area, in regions that contain more than 80% of the planet's biodiversity today (United Nations General Assembly, 2019). In a world globally affected by severe biodiversity erosion, Indigenous Peoples have a key role to play in terms of climate change adaptation. Increasingly, new hydropower development is taking place in remote parts of a river catchment, areas where Indigenous Peoples tend to be located. The IHA good practice guide on hydropower and protected areas provides more detailed insights regarding their role in environmental protection.

2.1 Indigenous Peoples as a distinct group

Different organisations may have different definitions of Indigenous Peoples. For practical purposes, hydropower developers and operators should be mindful of the definitions used by the organisations they work with, such as government and funding entities, as well as those within the Hydropower Sustainability Tools, since each organisation or framework may have requirements based on their own definition of Indigenous Peoples.

Indigenous Peoples may be referred to in different countries by such terms as 'Indigenous ethnic minorities', 'aboriginals', 'hill tribes', 'minority nationalities', 'scheduled tribes', 'first nations' or 'tribal groups'. This guide is based on the Hydropower Sustainability Tools definition of Indigenous Peoples, which is aligned with the definitions of Indigenous Peoples in the IFC Performance Standard 7 and the World Bank Environmental and Social Standard 7.

In the Hydropower Sustainability Tools, Indigenous Peoples are defined as:

*"a distinct social and cultural group possessing the following characteristics in varying degrees: **self-identification** as members of a distinct indigenous cultural group and recognition of this identity by others; **collective attachment** to geographically distinct habitats or ancestral territories in the project area and to the natural resources in these habitats and territories; customary cultural, economic, social or political **institutions** that are separate from those of the dominant society or culture; an indigenous language, often different from the official **language** of the country or region within which they reside."*

As social groups with identities distinct from majority groups in national societies, Indigenous Peoples are often among the most **marginalised** and **vulnerable** segments of the population. They usually have a high dependence on natural resources, and they may have a strong spiritual or cultural connection to ancestral territories. However, their traditional rights to land tenure and access to natural resources are not always recognised. They often have difficulties in advocating and negotiating safeguards and agreements for their rights, which can be at risk from infrastructure development and other encroachments. This combination of circumstances makes Indigenous Peoples more exposed to the impacts of hydropower projects and other developments that cause significant changes to the landscape, and less equipped to adapt to changes and prosper post-development.

In the international arena, there is an increasingly broad recognition that Indigenous Peoples have special rights and interests. Some countries have integrated these considerations into their legislation and policies. There is growing pressure on hydropower developers and operators to consider Indigenous rights, interests and vulnerabilities, even

when the countries in which they operate may not do so. Multilateral funding agencies, through their policies and contractual requirements for borrowers, require recognition of specific Indigenous rights in the projects they fund.

Consistent with these perspectives, the Hydropower Sustainability Tools specifically acknowledge the importance of project-affected Indigenous Peoples as a special social group by creating the topic of Indigenous Peoples, separate from but a subset of the Project-Affected Communities and Livelihoods topic that assesses all other social groups.

A complication is that the Indigenous Peoples are sometimes very mainstream, do not make up a cohesive community, and are not marginalised or disadvantaged. If their status is unclear, these Indigenous Peoples should be approached the same way as other Indigenous Peoples, and good practice is to ensure that any rights at risk are respected and fully considered.

As a social group with distinct rights, Indigenous Peoples should be engaged with in a way that recognises these differences. A developer or operator may ask themselves "How do I engage with Indigenous Peoples differently from other project-affected people?" While the purpose of this guide is to answer this question through an in-depth overview of good practices in engagement with Indigenous Peoples, the simple response is threefold:

1. Project engagement with Indigenous Peoples should be specifically tailored, in that the engagement needs to recognise and adjust for the inherent differences in indigenous culture, language, customs, socio-economic situation and history.

2. The project's accommodation of the Indigenous community's concerns may be greater due to their having inherent rights distinct from those of other social groups. For example, Indigenous Peoples may have a customary ownership or right to a resource that other people in the area may not.

3. A developer needs to understand how Indigenous Peoples are recognised by the government, and whether there is a need to engage with national and regional authorities to ensure Indigenous protection and legal recognition.

2.2 Indigenous Peoples' rights including Free, Prior and Informed Consent (FPIC)

There is broad recognition in the international arena that Indigenous Peoples have special individual and collective rights and interests. A number of standards and instruments have been developed to recognise and safeguard their unique rights. The most prominent recognition is the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted by the UN General Assembly in 2007. It is generally understood that UNDRIP's provisions do not create new rights as such, but rather provide a contextualised elaboration of general human rights principles and rights as they relate to the specific historical, cultural and social circumstances of Indigenous Peoples. Some of the most relevant rights include:

Rights to lands, territories and resources: Indigenous Peoples' rights to their lands, territories and resources, including to those traditionally held by them but now controlled by others as a matter of fact and also of law. This includes Indigenous Peoples' right to the lands, territories and resources they have traditionally owned, occupied or otherwise used, and to the lands, territories and resources that they possess under Indigenous customary conceptions of 'ownership'.

Particularly significant for resource development, including hydropower, is the issue of customary land, which is land owned by indigenous communities and administered in accordance with their customs, as opposed to statutory tenure that was often introduced during the colonial periods. Common ownership is one form of customary land ownership. However, the statutory recognition and protection of Indigenous and community land rights is a major challenge. The gap between formally recognised statutory and customarily held and managed land is a significant source of conflict in resource development.

Economic, social and cultural rights: Indigenous Peoples' rights to health, education, employment, housing, sanitation, social security and an adequate standard of living, and to freely determine their economic, social and cultural development. These include their right not to be subjected to assimilation or destruction of their culture; to maintain and

protect their cultural identity; the right to practise and revitalise their cultural traditions and customs, to teach their cultural mores, and to the repatriation of human remains; and the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions.

Equality and non-discrimination: The right of Indigenous Peoples, as a collective or as individuals, to all human rights.

Environment: The right to the conservation and protection of the environment, and the productive capacity of Indigenous Peoples' lands or territories and resources.

Self-determination: The right to freely determine their political status and freely pursue their economic, social and cultural development. The right to self-determination is closely related to Indigenous Peoples' political rights. These include their right to participate in decision-making in matters that would affect their rights, and states' duties to consult and cooperate with them to obtain their **free, prior and informed consent** before adopting and implementing legislative or administrative measures that may affect them. In both cases, and consistent with their right to self-determination, Indigenous Peoples have the right to participate through their own representative institutions.

A key right unique to Indigenous Peoples, embedded within the right to self-determination, is **Free, Prior and Informed Consent** (FPIC). The right to FPIC is particularly important for hydropower development and operation, and the HGIIP, Hydropower Sustainability Assessment Protocol and HESG require Indigenous Peoples' consent as part of good practice. This requirement is the focus of Section 4.7.

There is general agreement on the meaning of 'Free', 'Prior' and 'Informed' as components of FPIC. **Free** implies that Indigenous Peoples' involvement should occur freely and voluntarily, without any external manipulation, interference or coercion, and without intimidation. **Prior** implies that consultation is initiated prior to a decision being made on project design, and commitment and respect are shown, to align the timing requirements with Indigenous engagement and consensus processes. **Informed** implies that Indigenous Peoples should have access to relevant, comprehensive, non-biased, meaningful

and understandable information during all phases of the project (i.e. concept, design, construction, commissioning, operation, major upgrades), prior to any decision-making that will affect them.

Unlike the terms Free, Prior and Informed, the specific definition of 'Consent' continues to be debated. Since the inclusion of FPIC in the International Labour Organisation (ILO) Convention 169 on Indigenous and Tribal Peoples in 1989, the concept of FPIC has evolved and become more widely recognised. More recent demonstrations of this international recognition are expressed in UNDRIP, the International Finance Corporation (IFC) Performance Standards on Social and Environmental Sustainability (IFC PS), and the World Bank policy on Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities (ESS7, August 2016).

Broadly consistent with these definitions, the Hydropower Sustainability Tools define consent to be: "Signed agreements with community leaders or representative bodies who have been authorised by the affected communities which they represent, through an independent and self-determined decision-making process undertaken with sufficient time and in accordance with cultural traditions, customs and practices".

Indigenous Peoples' rights are considered to be at risk when project activities or impacts prevent Indigenous Peoples from exercising their rights. Issues arising from the project that may pose risks to Indigenous Peoples' rights should ideally be self-identified. This does not mean that the Indigenous communities must have identified the issue, but

that the affected communities may concur if issues are suggested by others. Any views expressed as community views should come from members of the community appointed by the communities as representatives and/or leaders.

Sections 4.7 and 4.8.2 provide guidance on understanding what is meant by consent and how to demonstrate consent.

2.3 Potential impacts of hydropower projects on Indigenous Peoples

During the development of a hydropower project there are impacts that may be experienced by Indigenous Peoples. Table 1 provides examples of possible impacts, both positive and negative. One reason why the negative effects of hydropower development can be so acutely experienced by Indigenous Peoples arises from the loss of land that they traditionally used, and for which their jurisdiction and management may have been previously removed by the decisions of outside powers. Another reason is that Indigenous Peoples often have strong spiritual, cultural and economic relationships with the waterways and lands affected by hydropower projects, even if such areas of land are not lost. There are also opportunities for hydropower development to bring positive effects, which are also noted in Table 1. The realisation of positive impacts can be highly dependent on the strength and long-term sustainability of local systems of governance.

Table 1 Potential negative and positive impacts of hydropower projects affecting Indigenous Peoples

Potential Negative Impacts
Reduced or variable flows that could affect the safety, irrigation, water uses and livelihoods of communitiesliving downstream
Reduction in water quality due to sedimentation or altered flows
Physical displacement, resettlement
Loss of ancestral land and loss of cemeteries, or reduction of their territory
Increased land conflicts
Loss of access to or reduction of resources (e.g. water, fish and animal species, fertile land and forested areas) and associated nutritional issues
Reduced or variable flows that could affect the safety, irrigation, water uses and livelihoods of communitiesliving downstream
Reduction in water quality due to sedimentation or altered flows
Physical displacement, resettlement
Loss of ancestral land and loss of cemeteries, or reduction of their territory
Increased land conflicts
Loss of access to or reduction of resources (e.g. water, fish and animal species, fertile land and forested areas) and associated nutritional issues

Potential Positive Impacts
Increased safety by having flood control and regulated flows
Improved availability and access to resources, including restoration of damage from other projects or activities
Legal recognition of land tenure and natural resources management practices
Improved water quality (water quality can be improved or harmed depending on the project)
Comprehensive collection of knowledge about a non-mainstream culture and support to protect that knowledge
Support to promote and enhance cultural traditions
Support to protect sites of cultural heritage or spiritual value
Creation of protected areas with dedicated access for Indigenous Peoples, to protect traditional customs and livelihood activities
Mitigation or compensation for legacy issues from other projects
Training (pre-project, construction and operation) and improved community governance capacity
Employment and business opportunities through the project life, including environmental and monitoring studies prior to project commitment, accessing traditional knowledge, and drawing on traditional land-management practices
Benefit agreements for long-term security
Investment revenues from project partnerships with Indigenous Peoples' communities
Increased Dividend and capacity from the government through the use of royalties or partnerships
Enhanced and improved community services (e.g. better housing, schools, health services, safety measures, access roads, access to electricity)
Programmes targeting vulnerable groups with the aim of improving their livelihoods
Better community livelihoods and living standards through the provision of livelihood programmes

3

Achieving good international industry practice

The Hydropower Sustainability Tools provide definitions of current good practices for engagement and consultation with Indigenous Peoples. Chapter 3 of this guide links these concepts to the specific requirements of the tools, which are structured by different stages in the project life cycle and by different criteria for each stage. This structure helps to identify specific steps that should be taken to achieve good practices.

3.1   Indigenous Peoples in the project life cycle

Figure 1 depicts the four HSAP assessment tool stages, milestones between the stages, and some examples of key activities related to Indigenous Peoples. The term 'Implementation' includes pre-construction activities such as land acquisition or resettlement, as well as the hydropower construction activities. Another milestone differentiating Preparation and Implementation is the awarding by authorities of a Certificate of Authorisation or similar authorisation.

Figure 1 HSAP assessment tools and key decision points

Assessment tools for Project Life Cycle Stages

Examples of Key Indigenous Related Activities

EARLY STAGE

Preliminary identification of Indigenous Peoples and their concerns.

Initial contact with indigenous communities in area of field investigations.

Commence Hydropower Project Preparation

Consult with Indigenous Peoples on how they want to be consulted.

PREPARATION

Consult on baseline, impacts, mitigation, compensation and benefits.

Negotiate, reach Consent and enter into agreements.

Award of Environmental Licence

Continuous engagement with Indigenous Peoples.

Implement mitigation, compensation and benefits measures.

IMPLEMENTATION

Implement monitoring, issue raising, grievance procedures and adaptive management.

Document engagement activities, outcomes and lessions learned.

Project Commissioning

Ongoing engagement with Indigeous Peoples.

OPERATION

Ongoing implementation of mitigation, compensation and benefit measures.

Ongoing monitoring, issue raising, grievance procedures and adaptive management.

Figures 2 to 5 provide a description of typical hydropower project activities during the four project stages, along with some key activities related to Indigenous Peoples. For each activity, the figures also list references to the guide sections pertinent to the activity. An alternative but similar set of decision milestones, which is strongly focused on FPIC considerations, is the guide developed for extractive industries: "The Practice of FPIC: Insights from the FPIC Solutions Dialogue", RESOLVE, 2021.

The Preparation stage portion of this guide includes all the Indigenous Peoples-related requirements up to the point of a decision to start construction and award construction contracts. While it is recognised that some of the requirements may have been dealt with in the Early stage, good practice requirements and this guide include all requirements in the Preparation stage, to ensure that none are missed.

3.1.1 Early stage

While the Early stage tool does not contain a stand-alone topic on Indigenous Peoples, topic ES-7 Social Issues & Risks requires an assessment of social issues and risks most relevant to the project, including those related to Indigenous Peoples.

For the Early stage, good practice requires that a potential developer identify potential social issues and risks that may affect the project, and undertake a preliminary assessment of these risks. This guide will discuss this preliminary assessment in so far it pertains to Indigenous Peoples' issues and risks, rather than the more general social issues and risks. The benefit of undertaking a preliminary assessment of these issues and risks is that the potential developer has better information to inform decisions such as:

• whether to proceed to the Preparation stage with this particular project;

• which project option to select amongst various options (e.g. various sites for the dam axis or diversion scheme); and

• the programmes, studies and schedule for the project if it is decided to proceed to the Preparation stage.

The preliminary assessment should include a preliminary identification of whether there are Indigenous Peoples living in the project impact area, either in Indigenous Peoples' communities or as individuals in non-Indigenous Peoples' communities, or if there are Indigenous Peoples using the resources in the area or who have a strong cultural or religious attachment to features that would be impacted. The potential developer should utilise the information available on the preliminary project concept and physical/social environment to conduct a preliminary assessment of project impacts and their extent. This assessment could be fairly basic, with much exercise of judgement. To the degree allowed by preliminary information, qualitative judgements should be made regarding: whether the Indigenous Peoples' rights would be impacted by the project; the developer's ability to reduce, mitigate and compensate the impacts; and the type and scale of consultation and engagement required. There should be a judgement made as to the likelihood that, given an appropriate engagement process and good management of impacts, the Indigenous Peoples would object to or support the project. There may be some determination of the degree of significance this would have for the project programmes, budget and schedule, as well as project risks.

An Early stage assessment or preliminary assessment will, by necessity, be undertaken with much less information available than an assessment undertaken later in the Preparation stage. A preliminary assessment of the social issues and rights at risk can make significant use of desktop studies based on information available from databases, and previous studies and surveys by government, academia, the developer, or others. These should be supplemented by limited field studies, interviews with experts and knowledge holders, and possibly consultations with the Indigenous Peoples themselves.

It is particularly important to assess the risks for Indigenous Peoples in the case of uncontacted Indigenous Peoples, such as in Peru, Brazil and Bolivia, where there are some groups of Indigenous People who have never met other humans. A direct contact with them may be disastrous in terms of their health, sanitation and social acceptance. A developer would be recommended to determine

Figure 2 Early stage activities

Project tasks	Indigenous Peoples-related activities	Chapter 4 reference
Early project design concepts including alternative river-reach development options	Preliminary identification of Indigenous Peoples in the directly and indirectly affected areas	4.2
Government regulatory context	Analysis of the recognition of Indigenous Peoples by the government, and possible gaps with funder and developer safeguarding policies	4.3.1
Identification of government and financier requirements	Initial contact with Indigenous communities in the area of field investigations	4.4.7
Preliminary field surveys and design options	Preliminary consideration of approach to engaging with Indigenous Peoples and their role in the project	4.5
Preliminary identification of biophysical environmental impacts	Preliminary identification and subjective assessment of impacts on Indigenous activities and rights	4.4
Siting and design option assessment leading to proposed project axis and design	Preliminary Indigenous Peoples engagement plan	4.4.7, 4.4.8
Initial financial and economic analysis of project viability	Early engagement with Indigenous Peoples on project options	4.4
Initial identification of potential financiers	Identification of key human rights topics, such as identified by Indigenous Peoples' protectors	4.5
Initial project timeline established	Update the project timeline with FPIC activities. Extend time for consultation if necessary	4.4.3, 4.4.5

in the Early stage whether development should be considered in this situation at all.

Although the Hydropower Sustainability Tools do not require that a potential developer engage with Indigenous Peoples in the Early stage to meet the Basic Good Practice Criteria, this is strongly recommended.

Figure 3 Preparation stage activities

Project tasks	Indigenous Peoples-related activities	Chapter 4 reference
Government consultations and arrangements	Review Indigenous Peoples' legal context, funder requirements and mandatory benefit sharing	4.3.1
Detailed field investigations for project design	Detailed identification of Indigenous Peoples in the area. Ensure field investigations are sensitive to social customs and concerns	3.1.1, 4.2
Detailed project design and construction plan	Consult with Indigenous Peoples on how they want to be engaged. Consult on project design alternatives	4.4
Environmental and Social Impact Assessment	Community capacity building as required	4.4.3
Consultations with impacted and other stakeholders	Develop and implement Indigenous engagement plan	4.4
Preparation of project Environmental and Social Management Plans (ESMPs)	Consult with Indigenous Peoples on baseline, impacts, mitigation measures, compensation and benefit measures	4.5, 4.6
Convert ESMPs measures into specifications for contractors	Detailed measures related to Indigenous Peoples' employment, protection, security, accommodation, and staff awareness	4.6
Establishing Environment and Social Management Systems	Develop Indigenous Peoples management plan(s)	4.6
Feasibility studies	Develop monitoring plan if resettlement or biodiversity offset is required, and determine feasibility	4.9 Resettlement How-to Guide, Biodiversity and Invasive Species How-to-Guide, and GIIP Guidelines (e.g. Business and Biodiversity Offsets Programme)
Environmental and social regulatory process	Establish and implement grievance procedure	4.10
Project approvals and licences	Negotiate and enter into agreements	4.7.2, 4.8.2, 4.8.3
Procurement packages prepared	Implement front-end measures, e.g. pre-project training	4.6.3

3.1.2 Preparation stage

The good practice requirements in the Preparation stage involve establishing a socio-economic baseline for the Indigenous Peoples who are potentially affected; assessing risks for the project and rights at risk for the Indigenous Peoples; analysing the degree and nature of potential impacts of the project on Indigenous Peoples' rights at risk; identifying opportunities; and outlining impact avoidance, minimisation, mitigation and compensation measures to be embedded into management plans for Construction and Operation.

Engagement processes are a central feature of the project Preparation stage, and can vary greatly in scale and scope depending on the project and the Indigenous Peoples involved. Working to develop an Indigenous Peoples engagement plan and managing expectations at the start of the process can help minimise conflict throughout the project, as well as build transparency and trust.

3.1.3 Implementation stage

The requirements at the Implementation stage involve ensuring that the processes and plans designed in the Preparation stage for construction

Figure 4 Implementation stage activities

Project tasks	Indigenous Peoples-related activities	Chapter 4 reference
Project funding finalised	Continuous engagement with Indigenous Peoples	4.4.9
Tenders finalised	Coordinate with government	4.3
Implement environmental and social pre-construction activities	Resettlement of affected Indigenous Peoples (if required)	Resettlement How-to Guide
Site development and construction activities implemented	Implement mitigation, compensation and benefit-sharing measures	4.4.9, 4.6
Mitigation and community benefit-sharing activities	Implement monitoring, issue-raising and grievance procedures	4.9, 4.10
Information management, monitoring, reporting and supervision of project activities, including contractors	Modify project activities as required under adaptive management	4.6.1
Continuing community and stakeholder engagement	Document engagement activities and outcomes	4.8
Dam closure, reservoir filling, station commissioning	Describe the participation of Indigenous Peoples in these key activities in the management and engagement plans	4.4
Project handover to operators	Organise handover to operators and stakeholders, with an emphasis on Indigenous-related commitments, communication requirements and benefit sharing.	4.4

activities are being implemented effectively, and additional processes are in place to identify any ongoing or emerging issues for the Indigenous Peoples in relation to the construction activities project, and to monitor those impacts.

The methods of engagement during project Implementation should be agreed on with the Indigenous Peoples, and should not be assumed to be the same as for the Preparation stage. Some methods may be more appropriate and effective during Construction, such as periodic focus group meetings, and continuous liaison with social experts present on-site, who are accepted by the community and speak their language. This will allow the developer to react quickly enough if any new adverse impacts or risks emerge.

3.1.4 Operation stage

The requirements at the Operation stage involve the following: ensuring processes are in place to identify any ongoing or emerging issues for the Indigenous Peoples in relation to the operating facility activities; monitoring impacts of ongoing activities on Indigenous Peoples, including any direct or indirect impacts; and ensuring the required

management measures are being implemented effectively.

The methods of engagement during project Operation should be agreed on with the Indigenous Peoples, and should not be assumed to be the same as for the Implementation stage. Having ongoing communication and liaison with the community is beneficial in maintaining and developing a relationship which is positive, or at least less negative. This will assist in being more able to deal effectively when problems and issues arise, which inevitably happens.

Figure 5 Operation stage activities

Project tasks	Indigenous Peoples-related activities	Chapter 4 reference
Ongoing plant commercial operation and maintenance	Ongoing implementation of mitigation, compensation and benefit-sharing measures	4.4.9
Post-commissioning environmental and social monitoring	Monitoring and adaptive management	4.6.1, 4.9
Ongoing mitigation and community benefit-sharing activities	Long-term grievance and issue-raising processes	4.10
Long-term stakeholder engagement	Ongoing long-term communication and engagement with Indigenous communities	4.4.9
Reporting to regulators and other stakeholders	Document engagement activities and outcomes	4.8

3.2 International good practice requirements for Indigenous Peoples' issues

In the Preparation, Implementation and Operation stage tools of the Hydropower Sustainability Assessment Protocol, international good practice criteria are set out to articulate the core requirements that the developer should demonstrate are being met. The criteria requirements are grouped under: Assessment, Management, Stakeholder Engagement, Stakeholder Support, Conformance and Compliance, and Outcomes. The following sections present the criteria requirements and highlight important points. Where relevant, the text indicates which parts of Chapter 4 contain more detailed guidance on the strategies and approaches that can be used to meet these requirements. All requirements need to be delivered to a degree proportionate to the risks and impacts associated with the project.

3.2.1 Assessment

Table 2 summarises the Assessment criterion requirements for international good practice in the Hydropower Sustainability Tools topics for Indigenous Peoples

Table 2 HSAP and HESG Assessment criteria on the topic for Indigenous Peoples

Criterion	Indigenous Peoples Topic requirements	Products helpful in demonstrating requirements are met
Assessment	**Preparation stage**: An assessment of the representation of Indigenous Peoples in the project-affected community has been undertaken, including identification of their rights at risk in relation to the project, utilising local knowledge and expertise.	• Analysis of the Indigenous Peoples' legal context and financiers' requirements • Indigenous Peoples identification and baseline study, including human rights issues • Indigenous Peoples impact assessment study, including design alternatives matrix with Indigenous Peoples' concerns criteria • Resettlement feasibility study involving Indigenous Peoples • Use of Indigenous knowledge
	Implementation stage: Issues that may affect Indigenous Peoples' rights in relation to the project have been identified through an assessment process utilising local knowledge and expertise. Also, monitoring of project impacts and effectiveness of management measures is being undertaken during project Implementation, as appropriate to the identified rights at risk.	• Updating and assessment of ongoing project issues (those identified in the Preparation stage and later in Implementation and Operation stages) • Monitoring Reports (impacts and effectiveness of management measures)
	Operation stage: Ongoing or emerging issues relating to the operating hydropower facility that may affect Indigenous Peoples' rights have been identified. If management measures are required, then monitoring is being undertaken to assess if management measures are effective.	• Identification and assessment of project ongoing and emerging issues • Monitoring Reports (impacts and effectiveness of management measures)

Issues for Indigenous Peoples associated with natural resource development projects such as hydropower can be complex. Indigenous issues can in some cases be highly politicised and susceptible to political interference in assessment processes and decision-making. Some jurisdictions may not recognise Indigenous Peoples as members of the community with equal rights or land tenure status. The barriers to effective assessment, engagement and management of issues important to Indigenous Peoples are often political, institutional, legal and cultural (e.g. the attitudes of the broader community towards Indigenous rights).

The Indigenous Peoples legal analysis is not specifically required by the criteria, but it is an important activity that enables the developer to meet the criteria and provide evidence of doing so. Local or traditional knowledge from the indigenous communities is essential for the assessment process and is discussed in Section 4.5.3. Opportunities to improve the status of Indigenous Peoples through project benefits should also be a component of the assessment process (see Outcomes criterion, Section 3.2.6). The Indigenous Peoples' legal context and other items, such as baselines, Indigenous engagement plans, impact assessments, management plans and monitoring plans, can be prepared as stand-alone documents separate from the more general all-encompassing project documents dealing with both Indigenous and non-Indigenous Peoples, or as portions of such documents. The key is that these analyses and plans identify the Indigenous Peoples and have sections which clearly deal with the specifics of the Indigenous Peoples.

The main assessment activities and products dealing with the Indigenous Peoples' requirements are:

- an analysis of the legal context of the Indigenous Peoples' and funders' requirements (see Section 4.3.1);

- a baseline study of the socio-economic situation of the Indigenous Peoples, which will be used as a comparison point for impact assessment (see Section 4.5.1);

- the social impact studies on the Indigenous Peoples, which would form part of the project

Environment and Social Impact Assessment (ESIA) (see Section 4.5.2); and

- a monitoring plan to assess the ongoing activities' impacts on the Indigenous Peoples and the effectiveness of the impact management measures that are being undertaken, including identifying new impacts and concerns as they arise, and the effectiveness of additional management measures (see Section 4.9).

As described in Section 3.1, Resettlement and Biodiversity Offset studies also have to consider Indigenous Peoples as main stakeholders in their scope: for instance, in terms of being physically or economically impacted, as the host community (or close proximity to activities), or playing a central role in biodiversity conservation and ecosystems services' sustainability. Readers can refer to the applicable How-to Guide and GIIP for these specific requirements.

3.2.2 Management

Table 3 summarises the Management criteria requirements for international good practice in the HSAP and HESG topics for Indigenous Peoples. Section 4 addresses in greater detail the activities related to these management criteria.

At the project Preparation stage, plans and processes that address Indigenous Peoples' rights at risk should be incorporated within the overall project **Environmental and Social Management Plan (ESMP)**, specifications for contractors and associated plans such as a resettlement action plan, a project development agreement, a cultural heritage plan, a livelihood restoration and enhancement plan, or a biodiversity management plan. It needs to be demonstrably clear that the management plans fully address the Indigenous Peoples' rights at risk, and the issues identified as important for, or of concern to Indigenous Peoples. The Grievance Redress Mechanism data should be designed to respond to Indigenous Peoples' concerns and requests. Processes should include reporting on how the management plans have been implemented, monitoring of impacts, and effectiveness of management measures during project Implementation and Operation. **Adaptive management processes** should be included,

such that these plans would be updated during Implementation and Operation if the monitored outcome differs from the predicted outcome, in response to concerns raised by the Indigenous Peoples and if new opportunities arise.

Good practice, as well as financiers, requires the developer to enter into **formal agreements** with the Indigenous Peoples regarding arrangements that may affect these communities. In a new project, the developer needs formal agreements with the Indigenous Peoples if the project is at the end of the Preparation stage, or the developer must at least have the intent and be making progress towards such agreements if they are at an earlier part of the Preparation stage. Agreements need to be in place before commencement of construction, to cover not just the Implementation period but also the

Operation period. The agreements may need to be revised during the Implementation and Operation stages to reflect monitoring results, new issues arising, experience with implementing the plans, and ongoing negotiation processes. If agreements are not in place for existing projects, they can still be developed during the Implementation and Operation stages, and even for older operating facilities (see Section 4.8.2, 4.8.3).

The main management-related products dealing with the Indigenous Peoples' requirements are:

- a management plan prepared in the Preparation stage, detailing the plans and processes that address Indigenous Peoples' rights at risk. These would include contractor specifications and

Table 3 HSAP and HESG Management criteria on the topic for Indigenous Peoples

Criterion	Indigenous Peoples Topic requirements	Products helpful in demonstrating requirements are met
Management	**Preparation stage**: Plans and processes have been developed for project Implementation and Operation to address the Indigenous Peoples' rights at risk in relation to the project, and formal commitments are publicly disclosed.	• Indigenous Peoples Management Plan • Indigenous Peoples Monitoring Plan (Implementation and Operation Stages) • ESMP, RAP, BAP chapters and specifications for contractor(s) directly referring to Indigenous Peoples • Agreements
	Implementation stage: Measures are in place to address the Indigenous Peoples' rights at risk in relation to the project, and formal commitments are publicly disclosed.	• Indigenous Peoples plan progress reports (detailing how the Indigenous Peoples plan has been implemented) • Revisions of the Indigenous Peoples plan's Implementation and Operation stages (as a result of the monitoring) • Contractor(s) and subcontractor(s) plans/contracts and KPIs referring to Indigenous Peoples • Labour Management Plan (preparation and implementation stage) • Agreements (Implementation stage, and ongoing negotiation processes)
	Operation stage: Measures are in place to address the Indigenous Peoples' rights at risk relating to the operating hydropower facility, and formal agreements are publicly disclosed.	• Indigenous Peoples Management Plan reports (detailing how the Indigenous Peoples plan has been implemented) • Revisions of the Indigenous Peoples plan Operation stage (as a result of the monitoring) • Agreements (Operation stage, and ongoing negotiation processes)

bidding requirements, and labour management plans (see Section 4.6.3);

• a plan prepared in the Preparation stage, outlining how the impacts on Indigenous Peoples' rights at risk will be monitored in the Implementation and Operations stages, as well as how well the management measures are performing. The requirements would include demonstrating that this monitoring was undertaken in the Implementation and Operation stages (see Section 4.9); and

• agreements specifying the commitments made by the project (distributed among the project owner, the contractors and other stakeholders) and, if appropriate, by the Indigenous Peoples (see Section 4.8).

3.2.3 Stakeholder Engagement

Table 4 summarises the Stakeholder Engagement criteria requirements for international good practice in the HSAP and HESG topics for Indigenous Peoples.

Good-faith consultations and cooperation are a precondition for agreements with Indigenous Peoples concerning development activities. Consultations should be centred on negotiations towards mutually acceptable arrangements, prior to the decisions on proposed measures, rather than simply being mechanisms for informing Indigenous Peoples about decisions already made or in the making, or soliciting a simple "yes" or "no" to the project without allowing them to genuinely influence the decision-making process. The intent should be to achieve a mutual agreement on decisions, but it is understood that this may not be the outcome. This implies ensuring a suitable engagement process that is mindful of the communities' vulnerabilities and challenges.

Consultation should be an engagement process which is appropriately timed, two-way and culturally appropriate, with self-selected community representatives, and it should include processes agreed upon with the Indigenous Peoples on how to raise issues and get feedback. Good practice requires that this process be a good-faith consultation, which involves:

• all parties' willingness to engage in a process, and availability to meet at reasonable times and frequency;

• sharing of information that is accessible and understandable to the Indigenous Peoples, disseminated in a culturally appropriate manner and in the local language(s)/dialect(s);

• commitment that Indigenous Peoples are fully informed of project impacts affecting their rights;

• use of mutually acceptable procedures for negotiation;

• willingness to change initial positions and modify offers where possible; and

• provision of sufficient time and resources for the Indigenous Peoples to consider information by applying their customary internal processes.

The main Stakeholder Engagement-related products for dealing with the Indigenous Peoples' requirements are:

• a plan for engaging with the Indigenous Peoples in the Preparation stage (see Section 4.4.8);

• a plan for engaging with the Indigenous Peoples in the Implementation and Operation stages (see Section 4.4.9)

• documentation of the engagement and consultation with the Indigenous Peoples in all stages (see Section 4.8.1); and

• mechanisms to respond to issues and grievances, with documentation (see Section 4.10).

3.2.4 Stakeholder Support

Table 5 summarises the Stakeholder Support criteria requirements for international good practice in the HSAP and HESG topics for Indigenous Peoples.

The right of Free, Prior and Informed Consent (FPIC) was explained in Section 2.3. It is important to remember that FPIC comprises both a process and an outcome. The process, as defined in the Hydropower Sustainability Tools, involves:

• good-faith consultation;

Table 4 HSAP and HESG Stakeholder Engagement criteria on the topic for Indigenous Peoples

Criterion	Indigenous Peoples Topic requirements	Products helpful in demonstrating requirements are met
Stakeholder Engagement	**Preparation stage**: Good-faith consultation with Indigenous Peoples' institutions of representation and decision-making, as determined by them, has been carried out through a process that was appropriately timed, culturally appropriate and two-way; ongoing processes are in place for Indigenous Peoples to raise issues and get feedback; and a mutually agreed disputes procedure is in place.	• Initial Engagement Plan (Preparation stage) • Documentation of Initial Engagement with Indigenous Peoples (Preparation stage) • Indigenous Peoples Engagement Plan (Implementation and Operation stages) • Mechanisms to respond to requests, issues and grievances (Implementation and Operation stages)
	Implementation stage: Appropriately timed, culturally appropriate and two-way channels of communication are maintained; ongoing processes are in place for Indigenous Peoples to raise issues and get feedback; and a mutually agreed disputes procedure is in place.	• Review Indigenous Peoples Engagement Plan (Implementation stage) with agreed processes to raise issues and receive feedback (Implementation stage) • Consultation report (Implementation stage) with records of engagement and grievance
	Operation stage: Appropriately timed, culturally appropriate and two-way channels of communication are maintained; ongoing processes are in place for Indigenous Peoples to raise issues and get feedback; and a mutually agreed disputes procedure is in place.	• Review Indigenous Peoples Engagement Plan (Operation stage) with agreed processes to raise issues and receive feedback (Operation stage) • Consultation report (Operation stage) with records of engagement and grievance

Table 5 HSAP and HESG Stakeholder Support criteria on the topic for Indigenous Peoples

Criterion	Indigenous Peoples Topic requirements	Products helpful in demonstrating requirements are met
Stakeholder Support	**Preparation stage**: Free, Prior and Informed Consent has been achieved with respect to the Indigenous Peoples' rights at risk, following the principle of proportionality.	• Analysis of stakeholder support (all stages) and evidence of support during Preparation stage
	Implementation stage: Free, Prior and Informed Consent has been achieved with respect to the Indigenous Peoples' rights at risk, following the principle of proportionality.	• Analysis of stakeholder support and evidence of support during Implementation stage
	Operation stage: N/A	N/A

- mutual and cross-cultural understanding with dialogue that is ongoing and open, and is gender- and intergenerationally inclusive whenever possible (with gender- and age-disaggregated data and analysis);

- inclusive and participatory engagement, including during the assessment of issues and the identification of mitigation measures, with clarity on the Indigenous Peoples' level of participation throughout the consultation process;

- provision of adequate resources in the various stages, to ensure that the Indigenous Peoples' representatives can participate in the FPIC process equitably – including the services of legitimate independent technical or legal consultants (such as an Indigenous Peoples Organisation);

- mutual agreement on the process and desired outcome from the outset of the consultation; and

- documentation that is evaluated on an ongoing basis, is verifiable by a mutually agreed methodology, and made publicly available.

The good practice requirements for FPIC require that FPIC is achieved following the **principle of proportionality**, which stipulates that the extent of consultation and consent required is **proportional to the nature and scope of the Indigenous Peoples' rights** that are impacted by the project.

The effects of hydropower or other large-scale projects that have been built exclusively or substantially within Indigenous Peoples' territory are usually so pervasive that the affected communities' consent for the project is required. It is important to note that the consultation and consent required are proportional to the nature of the substantive rights affected. Hence, if a project only partially affects Indigenous Peoples' rights, consent need be sought only for the portion of the project that will affect those rights, and not with respect to the entire project. Sections 4.7 and 4.8.2 elaborate on what achieving consent involves.

3.2.5 Conformance and Compliance

Table 6 summarises the Conformance and Compliance criteria requirements for international good practice in the HSAP and HESG topics for Indigenous Peoples. Adherence to legal requirements is a matter of compliance. Conformance addresses the level to which implementation measures conform to policies, public commitments, and the most up-to-date project-related plans.

Development and operation measures need to be fully compliant with relevant government requirements, which may be expressed in licence or permit conditions or captured in legislation and national policies. The project needs to demonstrate that the measures conform to the management plans and any commitments made to the Indigenous Peoples. This implies that the commitments of various parties are clearly spelled out in the management plans, including Key Performance Indicators (KPIs), systems for monitoring and reporting, and caps or limitations regarding these commitments in terms of time, space, scope or resources. Commitments may be expressed in policies of the developer or owner/operator, or in company statements made publicly or within management plans.

Commitments should be fulfilled in a timely manner: during the Preparation stage by construction start, and during the Implementation stage before the Indigenous Peoples suffer significant impacts, or at least before commercial operation. A Compliance Register is a useful tool for documenting commitments as they are made, and their subsequent satisfaction (refer to Section 4.8.1).

Table 6 HSAP and HESG Conformance and Compliance criteria on the topic for Indigenous Peoples

Criterion	Indigenous Peoples Topic requirements	Products helpful in demonstrating requirements are met
Conformance and Compliance	**Preparation stage**: N/A	N/A
	Implementation Stage: Processes and objectives relating to Indigenous Peoples' rights at risk have been and are on track to be met, with no major non-compliances or non-conformances, and any Indigenous Peoples-related commitments have been or are on track to be met.	• Conformance and Compliance Register: the output of a process for recording non-compliances/ non-conformances and their follow-up • Compliance reports (from or to: regulators, banks, independent experts, governments): the output of a process for internal/external audits
	Operation stage: Processes and objectives relating to Indigenous Peoples' rights at risk have been and are on track to be met, with no major non-compliances or non-conformances, and commitments made to Indigenous Peoples have been or are on track to be met.	• Conformance and Compliance Register: the output of a process for recording non-compliances/ non-conformances and their follow-up • Compliance reports (from or to: regulators, banks, independent experts, governments): the output of a process for internal/external audits

3.2.6 Outcomes

Table 7 summarises the Outcomes criteria requirements for international good practice in the HSAP and HESG topics for Indigenous Peoples.

An evidence-based approach should demonstrate that negative impacts on Indigenous Peoples arising from project Implementation and Operation activities are avoided, minimised, mitigated and compensated, with no significant gaps. Measures to avoid or prevent negative or adverse impacts are always prioritised, and where avoidance is not practicable, then minimisation of adverse impacts is sought. An inherent element of such measures is to consider project design alternatives. Where avoidance and minimisation are not practicable, then mitigation and compensation measures are identified and undertaken, commensurate with the project's risks and impacts.

The developer, owner and operator should demonstrate that responsibilities and budgets have been allocated to implement relevant plans and commitments. Monitoring reports and data in the Implementation and Operation stages should clearly track performance against commitments and objectives, and capture any impacts on Indigenous Peoples. The developer, owner and operator should

document evidence of how identified risks from the assessment were avoided or minimised, and that mitigation plans have been implemented and monitored. Implementation of measures to improve pre-project conditions for Indigenous Peoples should be evident, such as livelihood enhancement, better access to resources, cultural support, and support for capacity building, and monitoring should show how the developer, owner and operator are achieving their stated objectives.

Good practice requires that some practical opportunities are achieved to ensure the project's positive impact on Indigenous Peoples. Opportunities or benefits should clearly be additional to actions to mitigate or compensate impacts. Opportunities, and the approaches taken to assess and manage them, should ideally be self-identified and informed by the Indigenous communities themselves. Examples of opportunities might include improvements compared to pre-project conditions, in areas such as education and training, health services, freshwater access, natural resource access, livelihood resource extent and quality, business and investment support, employment, institutional and governance frameworks, and legacy issue assistance and solutions (see Section 4.6.3 for further discussion of benefit sharing).

Table 7 HSAP and HESG Outcomes criteria on the topic for Indigenous Peoples

Criterion	Indigenous Peoples Topic requirements	Products helpful in demonstrating requirements are met
Outcomes	**Preparation stage**: Plans provide for the project's negative impacts on Indigenous Peoples' rights to be avoided, minimised, mitigated or compensated, with no significant gaps, and for some practicable opportunities for positive impacts to be achieved.	• Plans, monitoring and audit reports demonstrating that impacts will be or are being avoided, minimised, mitigated or compensated. • Documentation showing that opportunities for positive impacts will be or are being achieved, including benefit sharing
	Implementation stage: Plans provide for the project's negative impacts on Indigenous Peoples' rights to be avoided, minimised, mitigated or compensated, with no significant gaps, and for some practicable opportunities for positive impacts to be achieved.	• Monitoring and audit reports demonstrating that impacts will be or are being avoided, minimised, mitigated or compensated. • Documentation showing that opportunities for positive impacts will be or are being achieved, including benefit sharing
	Operation stage: Processes provide for the project's negative impacts on Indigenous Peoples' rights to be avoided, minimised, mitigated or compensated, with no significant gaps, and for some practicable opportunities for positive impacts to be achieved.	• Monitoring and audit reports demonstrating that impacts are being avoided, minimised, mitigated or compensated. • Documentation showing that opportunities for positive impacts are being achieved, including benefit sharing

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Strategies and approaches

This chapter describes the strategies and approaches that will allow project developers to achieve good practice in engaging with Indigenous Peoples during the design, construction and operation of hydropower projects. The approach strongly promoted in international good practice is for the developer to work in partnership with the government to plan and deliver a development opportunity for those people who are affected, and in particular for Indigenous Peoples, through improvements in livelihoods and living standards agreed upon through good-faith consultation.

4.1 Common risks and challenges in engaging with Indigenous communities

Table 8 provides a compilation of the more common issues that can arise when engaging with Indigenous Peoples, and some suggested approaches to manage the issues.

This section on common issues draws a great deal from a similar section in the IFC publication "Capturing Hydropower's Promise: Case Studies on Local Benefit Sharing in Hydropower Projects". The IFC guide contains additional items that are more specific to benefit sharing. There is much commonality between the issues addressed in that report and those encountered when hydropower projects engage with Indigenous Peoples.

Table 8 Common risks and challenges

Risks and challenges when engaging with Indigenous Peoples		Potential approaches to manage or mitigate risks and challenges
No consent	• Community is unwilling to consent to project	• This whole guide is focused on good practices which overall enhance the likelihood of achieving consent and in a reasonable time frame, although it needs to be recognised that engagement with Indigenous Peoples may involve a substantial duration due to their traditions and mores (see Section 4.4.5). Section 4.7.2 suggests some approaches that specifically address these issues
Extremely long process	• Engagement with community stretches to such a long duration that the project schedule and viability are at risk	

Protests and blockades	• Community or community members protest against the project • Community blocks access to the project site	• Following good practice outlined in the guide will generally reduce the risk of protest actions • Consult community or protestors as to what the underlying concerns are • Identify leaders of the protest and try to be sure that they represent the community; try to define legitimate representatives • Assess the concerns and develop a reasonable approach to them. Be careful that there are no legacy issues or unfulfilled commitments acting as drivers. Determine whether the views are commonly held in the community or are outliers • Attempt to establish a good-faith consultation/negotiation process with the community or protestors, and address concerns whether they are valid or not • Consider utilising an independent facilitator • If deciding whether to utilise legal means and/or enforcement, consider impacts on relationships with the community and on the project's social licence
Negative Campaigns/Publicity	• Potential for negative publicity about the project and the hydro sector in general: NGOs or other stakeholders could use a project as a vehicle to campaign against dams in general, rather than focusing on how to maximise the sustainability of the project.	• Ensure transparency and availability of corporate and asset-level policies on sustainability and community benefits; if questions arise, external stakeholders can be directed to this information • Try engaging with these stakeholders in a meaningful manner • If engagement fails, focus on countering the negative publicity with concrete results on the ground. Maintain ongoing engagement with communities, governments and other stakeholders, with a more positive outlook and collaborative approach • Remember that such negative campaigns will gain little traction if community support has been won
Community Dependency	• Dependency of the community upon developer's support and programmes • Sense of entitlement • Expectation that the developer will operate as a replacement for local or regional government	• Early in the process, communicate the extent and limit of benefits; differentiate clearly between benefit-sharing and mitigation measures • Emphasise the developer's role in helping local stakeholders help themselves, and teaching and encouraging community self-management • Partner with and support government, NGO and Indigenous organisations: clearly specify partners' roles and responsibilities, and take into account from the outset the fact that the project may need to maintain support or have an alternative exit if partners cannot assume or follow through on their responsibilities
Elite Capture	• Dominance of the community's elite in the decisions regarding programmes, i.e. those who receive contracts, jobs, training or funding • This can be more complicated when governance involves competing hereditary and elected leaders • Frequent corruption in fund management, disbursements, procurement and allocation of benefits • Concern that benefits might not go to the neediest, with instead a tendency to focus on those ready and able to participate	• Determine the governance system prior to the Implementation stage, and implement some small-scale projects or activities to test the Governance system • If possible, use existing local community committees and processes that are accepted and transparent for decision-making and implementation • Ensure transparency and accountability in awarding of project development contracts, program funding, mitigation, compensation and benefit-sharing processes • Understand community dynamics, and put in place mechanisms to ensure full community representation in consultations and planning of community priorities. Regional Indigenous organisations may be of assistance in this regard • If possible, start a co-sharing management of the programmes or even the project itself between the developer/operator and the communities, up until the company's exit with a gradual handover programme • Monitor programmes/projects • Ensure good documentation and record-keeping, to help demonstrate accountability and proper processes
Eligibility	• Non-recipients' resentment of programmes or benefits, i.e. from those receiving lower levels • Disputes over land and resource rights, which can interfere with determining who was impacted by the project and eligibility for programmes • Disputes over who is Indigenous and a member of the community • Difficulty in maintaining reasonable eligibility boundaries for programmes • Immigration and disputes with existing residents; questions about immigrants' eligibility for benefits • Lack of data to determine eligibility	• Use transparent processes for decisions on eligibility, grounded in a solid rationale and information • Use community processes and entities trusted by the community to help determine eligibility and implement programmes • Clearly communicate the decision-making processes on eligibility to local stakeholders from early stages • Diversify and customise programmes and implementation to address different stakeholder needs, taking into account project stages and geographic boundaries • As early as possible (i.e. before mitigation, compensation and benefit-sharing programmes start attracting immigrants), establish a registry of residents living in the affected area, and a cut-off date after which new residents would not qualify for programmes: this will create a rationale for differentiation between beneficiaries later on. However, this may become complicated with indigenous communities who have members living outside the community but with traditional rights to live in the community if they so choose.

Community Desire and Capacity	• Lack of community capacity to consult, negotiate, plan and implement programmes and projects, and to manage their own community development and affairs • Unwillingness of communities to get involved in what they consider to be externally imposed decision-making or participative structures, or as a continuation of 'colonial' practices	• Rely on existing engagement processes to understand the capacity and skills constraints that may preclude participation, such as regarding literacy, technical expertise, or constraints of daily schedules • Provide formal training and hands-on learning experiences along with coaching, to build community capacity for planning, project initiation and implementation, and decision-making • Consider empowering communities to do 'ethno-mapping' of their territories and the project-affected area. What do they consider of greatest importance? What is their vision for their territory? • In evaluating the community's capacity to consult, plan and implement community programmes, consider existing incentives, and assume that motivations will differ among various community members • Try to identify and strengthen already existing community institutional structures that work well
Managing social mixing and dynamics	• Frustration and jealousy of non-Indigenous Peoples regarding the greater attention and mitigation measures received by Indigenous Peoples • Developing the appetite of some opportunistic people to obtain Indigenous status and be included as beneficiaries of social programmes. Additional social impacts (physical or psychological violence, STDs) related to the presence of many workers during construction stage	• Develop a 'community living well programme' to help resettlers handle change and modernity issues • Develop a 'social influx study' to consolidate the Environmental and Social Management Plan, with robust measures to manage social tensions with newcomers and security forces • Develop a local employment plan starting during the pre-feasibility stage, which considers local capacity, local employment potential, worker numbers (peak and average), accommodation, transport, food and energy supply. Include the recommended options as specifications for contractor(s) and subcontractor(s) as legally binding documents. Identify potential positive and negative effects on Indigenous Peoples, with possible levers for improvement • Develop a Labour Management Plan with access to a Grievance Redress Mechanism for all workers, with filters to sort Indigenous Peoples' grievances
Government Capacity	• Lack of local, district and national government's financial and organisational expertise to support and partner on compensation and benefit sharing • Expectation that developer will operate as a replacement for local or regional government	• Conduct analysis of government capacity and rely on government's organisational expertise to the extent possible: supplement by helping to build government capacity • As another option, manage the work critical to the success of the programme internally and arrange for government to take over at a later stage. If taking this approach, be sure to formalise roles and responsibilities as part of an agreement, so all parties are clear on process as early as possible. Make public the information on payments to government, to encourage government transparency on funds use

Legacy Issues	• Lack of trust of developer due to legacy issues from an earlier stage of the project or other projects. This could give rise to concerns that might not seem relevant, such as problems associated with expansion or rehabilitation of an earlier project	• Acknowledge the existence of such legacy issues, or, at minimum, the community's perception that legacy issues exist • Determine the legitimacy of the legacy issue claims and decide whether there is a rationale for taking steps to address the issues. If such legacy impacts exist and are significant, it is highly likely that the project will face ongoing community relations difficulties. In some cases, a conflict resolution process mediated by an independent expert will be needed • If community claims are not valid, provide the evidence and rationale for this conclusion. Benefit sharing to address the claims could still be provided, to enhance community development and build a more positive relationship • If community claims prove valid, consider including measures to help address legacy impacts. If mitigation and compensation for impacts of a new project are being planned, extending the programmes to the legacy-impacted communities could be an effective way to address the issues

4.2 Identifying Indigenous Peoples

4.2.1 Identification processes

The developer needs to identify as early as possible whether there are any Indigenous Peoples in the project area, and whether the project has the possibility of impacting Indigenous Peoples' rights. This will determine the need to undertake engagement with Indigenous Peoples, and which communities should be included.

The Hydropower Sustainability Tools require that all affected Indigenous Peoples should be included. Determination of which people are Indigenous, which are ethnic minorities, and which are neither, can be guided by the discussion in the next section.

Determining whether Indigenous Peoples are affected by a development can be complex. The location of communities and/or smaller settlements inhabited by Indigenous Peoples in the geographic area affected by a project is the first and most obvious indication that Indigenous Peoples may be affected. However, there are other factors that need to be considered, beyond the presence of physical communities and settlements. These include:

• Indigenous Peoples, particularly those belonging to migratory or semi-nomadic communities, may have ancestral or seasonal attachments to the land.

• The geographic areas used by many Indigenous Peoples are often large and may involve land and water resources for which they have no clear title or legal tenure.

• The resettlement of some communities may mean they are no longer physically located within the project area, but many people still have strong attachments and use of these areas. Project impacts experienced by Indigenous Peoples often go beyond direct physical impacts on lands and waters and can include impacts on cultural, spiritual or heritage resources. For example, an Indigenous community may place great spiritual or cultural importance on a geographic feature, such as a waterfall or unusual rock formation, which may not appear to others to have any particular significance.

• Indigenous Peoples who do not live in the project-affected area may still be impacted by the project as a result of their use of areas or resources, or a traditional connection with the lands and water to be affected. The mere act of developing and affecting the landscape is

counter to the worldview of many Indigenous communities and, depending on their ancestral connection to a particular location, may generate effects on health and well-being.

- Indigenous Peoples who live in areas indirectly affected by a project may still be impacted by the project, and if their rights are at risk, their consent will need to be sought.

The process of identifying the Indigenous Peoples can be assisted through desktop research such as reviews of legislation, government websites, Indigenous organisation websites, publications, and through discussions with governments, Indigenous organisations, NGOs and university researchers. When conducting a desktop study, it may be useful for developers to triangulate their data by cross-checking multiple data sources to ensure consistency. Helpful resources include checklists developed by the African Development Bank, the International Work Group for Indigenous Affairs, and Survival International. Given the above, it is important to develop an initial understanding of potential project impacts, so that Indigenous Peoples potentially impacted by a development can be identified early in the planning process. Since this identification typically takes place well before an impact assessment is advanced and fully informed, the determination of whether Indigenous Peoples' rights are impacted, and to what extent, can be made with greater certainty as engagement with communities proceeds, and the environmental and socio-economic studies provide additional information.

4.2.2 Indigenous Peoples and ethnic minorities

Many Indigenous Peoples are also ethnic minorities, but ethnic minorities are not always Indigenous. The distinction is sometimes confusing and contentious, since some of the attributes of both social groups can be similar, especially with regard to their vulnerability and marginalisation.

Ethnic minorities are a group of people who have a different ethnicity, religion, language or culture to that of the majority of people in the place where they live. The concept of ethnicity is rooted in the idea of societal groups, marked especially by shared

nationality, tribal affiliation, religious faith, shared language, or cultural and traditional origins and backgrounds. Countries may have ethnic minorities living in particular regions, who may be relics of historical social migrations or changes in national boundaries. In some countries it is fairly clear which groups are Indigenous Peoples and which are not, whereas in others it can be less clear. Often the distinguishing feature is that Indigenous Peoples have a long-standing affiliation with the land and natural resources that can be traced back over a considerable time.

The situation of Indigenous Peoples in Africa, and of Historically Underserved Traditional Local Communities in the Sub-Saharan Africa, deserves special attention. In a 2017 report, *Extractive Industries, Land Rights and Indigenous Populations/ Communities' Rights,* the International Work group for Indigenous Affairs (IWGIA) and the African Commission on Human and Peoples' Rights (ACHPR) concluded that "the concept of indigenous identity is highly contested in Africa", and that the term 'Indigenous Peoples'

"may have to be modified in Africa. A term such as 'vulnerable ethnic minorities' *(VEM) is concluded to reflect the situation of* 'those particular groups who have been left on the margins of development […], whose cultures and ways of life are subject to discrimination and contempt'.*"*

An African Development Bank[2] report provides additional details regarding this issue, presents case studies, and gives an initial list of Indigenous Peoples.

For the purposes of hydropower good practice, ethnic minorities should be treated as per the guidance for Indigenous Peoples, in the case where as a community they have the same characteristics of extreme vulnerability and marginalisation.

4.2.3 Mapping stakeholders

The identification of Indigenous Peoples can best be undertaken as part of the stakeholder mapping associated with a project's overall communication and consultation process. The stakeholder mapping includes relevant stakeholders regarding the topic of Indigenous Peoples, and will be used to identify

the most appropriate engagement strategies between the project and each stakeholder. It is part of developing the engagement plan for the preparation stage.

A developer should think about prioritising stakeholders depending on what interests or influence they might have and the degree to which they may be potentially affected by the project. However, it may not be possible (or necessary) to engage with all identified groups at the same level throughout the project. An analysis of potential stakeholders should assist in this prioritisation by assessing the importance of the project from each potential stakeholder's perspective.

Stakeholders that may be involved in engagement with Indigenous Peoples issues include representatives of:

- potentially affected Indigenous communities;

- host communities where Indigenous communities live;

- potentially affected Indigenous Peoples associations;

- groups or marginalised Indigenous individuals within another socio-culturally affected population;

- government institutions representing Indigenous Peoples;

- government institutions responsible for approving Indigenous Peoples studies, land rights and plans; and

- local NGOs working with Indigenous Peoples.

Some factors that can assist in determining the appropriate scale, regularity and forms of engagement for the various communities and stakeholders include:

- potential impacts on Indigenous Peoples' rights through physical, biophysical, resource use, socio-economic and heritage resource pathways (see Table 2.4 for examples of potential impacts of hydropower projects on Indigenous Peoples);

- engagement obligations mandated by law or arising from previous agreements between the developer and a specific community;

- Indigenous rights or interests in the project area;

- communities who may have influence over the project;

- communities who have expressed interest in the project or similar projects completed by the developer in the past;

- geographic proximity to the project, taking into account seasonal attachment to the land and migratory or semi-nomadic communities;

- communities whose safety could be impacted due to their use of a downstream waterway affected by the project; and

- the significant role played by Indigenous Peoples regarding natural resources management, both aquatic and terrestrial.

It is important to keep in mind that identifying stakeholders is a dynamic process, and that both stakeholders and their interests may change over time. For example, as potential project impacts are assessed with greater certainty through the planning process, additional affected Indigenous communities may be identified. Indigenous Peoples whom a developer understands to be unaffected may still indicate an interest in the project. In the latter situation, a developer should offer to engage with the interested Indigenous Peoples, but probably at a lower scale of engagement than those processes undertaken with impacted communities. Alternatively, Indigenous Peoples originally identified during this initial assessment may indicate that they are not interested in participating in an engagement programme once contact is made (for discussion on this situation, refer to Section 4.4.3). A developer should always be prepared to modify its list of stakeholders, and/or the scale of engagement it is employing, as the project progresses and new information becomes available.

4.3 Understanding context for the Indigenous Peoples

4.3.1 Assessing the legal context and funders' requirements regarding Indigenous Peoples

An important step in engagement with Indigenous Peoples is to understand the context in which the Indigenous Peoples are recognised and treated. Every country is unique in its recognition of and arrangements with respect to Indigenous Peoples and their rights. A developer will need to be knowledgeable about the national, regional and local laws, regulations and policies specific to the project area and Indigenous Peoples, as well as funders' requirements and the expectations of the Hydropower Sustainability Assessment Protocol. There may be countries that do not officially recognise certain peoples as 'Indigenous', even when they meet the Hydropower Sustainability Tools definition. In such cases, these peoples will be treated as Indigenous for the purposes of reviewing a project under the HSAP or HESG.

In some Latin American countries, engagement with Indigenous Peoples is legally designated as the responsibility of the government. In such a case, the developer may still prepare many of the actions in this guide while working with the government and complying with national legislation.

The legal context and rights analysis will contribute to the assessment of Indigenous Peoples' rights and vulnerabilities in a given national legislative context, and to ensuring that the project activities meet any legal requirements related to Indigenous Peoples. This analysis is necessary whether the impacted Indigenous population exists as communities separate from non-Indigenous communities, or if they are intermixed with the non-Indigenous population.

The analysis should consider:

- national, regional and local legislation regarding officially recognised Indigenous Peoples and ethnic minorities;

- legal requirements for the preparation of Indigenous Peoples studies and engagement;

- impacts on human rights;

- government responsibilities regarding Indigenous Peoples' land and rights;

- government bodies that need to be involved in the engagement with Indigenous Peoples;

- non-governmental organisations that are involved in the engagement with Indigenous Peoples;

- ancestral and seasonal uses of the land and associated rights; and

- land ownership/tenure and legal status.

Land areas that need to be included in the legal and rights analysis with respect to land ownership and tenure are:

- Indigenous Peoples' defined and titled land areas where Indigenous Peoples exert a level of management authority;

- areas where government agencies maintain jurisdiction for managing Indigenous Peoples' interests; and

- 'Real or Traditional' Indigenous areas based on actual and traditional resource use and customary rights.

The usage of these areas is frequently disputed by non-Indigenous Peoples and government. There may be no legal requirement for a developer to consider these areas, but including these areas is beneficial for the developer in terms of reducing project risks, increasing project acceptance, and complying with requirements associated with lenders and the Hydropower Sustainability Tools.

The analysis of the Indigenous Peoples' legal context should summarise legislation applicable to Indigenous Peoples and their rights regarding the likely affected communities and Indigenous groupings present in the project area. It can be prepared as a desktop study using the following sources of information:

- Early stage studies;

- government agencies with responsibilities regarding Indigenous Peoples;

- recent environmental and social impact assessments / Indigenous impact assessments of similar projects;

- national legislation databases;

- NGOs or CSOs working with Indigenous Peoples; and

- if applicable, the International Labour Organisation (ILO) website may provide information on issues regarding the transposition of the convention 169 on Indigenous Peoples into the national legislation.

An environmental and social lawyer or an expert legal consultant is likely to be the most appropriate to undertake this analysis. Research can be undertaken via telephone and the internet, in-house documents and government publications. If the information cannot be retrieved, it may require visits to government agencies.

Funding entities may have specific project-associated requirements that may affect Indigenous Peoples (e.g. development banks' policies, and Equator Principles relating to Indigenous Peoples). Many funders' requirements align well with the considerations presented in this guide.

4.3.2 Understanding local context

Once Indigenous Peoples whose rights may be at risk have been identified, developing some knowledge about the communities and the local context prior to initiating engagement is valuable in designing the initial and subsequent engagement activities. This should include an initial identification of potential community risks and opportunities arising from the project. The information gathered will be confirmed, corrected and/or expanded when the engagement with Indigenous Peoples begins and the developer can learn directly from the communities themselves.

Indigenous Peoples' history and lived experience with past development projects, whether hydropower or other sectors, or with other types of community disturbances and stressors, can provide valuable contributions to project planning activities. A developer should work to understand this past to the best of their ability, before initial contact with Indigenous Peoples is made. When engaging with communities, a developer should show sensitivity to the history of the community, and be prepared to devote early engagement activities to discussing and understanding what the community has experienced.

When gathering contextual and other background on Indigenous Peoples in the project area of influence, developers should look out for potential legacy issues. Legacy issues are defined in the Hydropower Sustainability Tools as *"impacts of previous projects that are unmitigated or not compensated with a similar good or service, or long-standing issues with a present (existing) project, or pre-existing issues in the present location of a new project"*. Because of past negative experiences, Indigenous Peoples may be wary of any new project proposed, and may not trust information provided by a developer. This can create serious challenges when attempting to engage them regarding a new project, or when a new company acquires an operating plant.

Where feasible, efforts should be made to address legacy issues, particularly if the issues resulted from previous actions of the developer. Often, an important first step in addressing negative legacy issues is the process of acknowledging the experiences of the impacted peoples. These learnings may also highlight potential cumulative impacts, the awareness of which may positively influence engagement, assessment and impact-mitigation strategies.

The local community and local context research should also seek to gain an understanding of Indigenous communities' governance, both internal (e.g. how decisions are taken, processes, actors, etc.) and external (government, etc.). As Indigenous internal decision-making processes are often collective and democratic, representatives may only be facilitators or transmitters of the communities' opinion, and thus Indigenous engagement may not only focus on the Indigenous leaders. An understanding of how decisions are made by the local communities is important knowledge for the developer to factor into engagement strategies and their expectations on project timing. How decisions

are recorded and how information on decisions is retained over time are important, given that the developer will need to be able to show evidence that agreements and consent have been achieved.

This research on local context is often primarily a desktop activity, which will be limited based on what information is publicly available and the developer's own records of past interactions. Some ways of undertaking this research include:

- Review of historical community information, past experiences with development projects, and any past interactions between the developer and the community. Referring to historical information related to the project or locality can flag risks, including historical grievances that can then be prioritised and managed.

- Development of socio-economic fact sheets that can be used by project staff and external consultants working in the proposed project area. Descriptions of the social and cultural dimensions of an area may include information on:

  – population numbers and mapped locations;

  – cultural values and perceptions (including customs, taboos, forbidden practices, sacred sites);

  – demographic characteristics and trends (e.g. migrations) of the local population;

  – the status of women, economic livelihoods (permanent, seasonal, migrant labour, unemployment), land tenure and delimitation, land and water use (both within and outside the land where they live), and control over natural resources;

  – social organisation and power dynamics, including vulnerable or potentially disadvantaged groups;

  – levels of literacy and health care; and

  – ability to access technical information.

In carrying out this initial research, it may be helpful to connect with government authorities and/or other organisations that have local knowledge. Government authorities often have long-established relationships with communities and other local and national stakeholder groups. In addition, non-governmental organisations or community-based organisations, or Indigenous Peoples' associations, are often valuable sources of local knowledge. They may be helpful sounding boards for engagement design, conduits for consulting with sensitive groups, and partners in planning, implementing and monitoring various project-related programmes.

Once contact has been made with the Indigenous Peoples, interactions with the communities will enable the developer to determine the community's broad views regarding the future they want to build, and their priorities. This can be done by independent or consultant anthropologists and sociologists, or by direct interactions, such as through participative workshops.

4.4 Planning and implementing Indigenous Peoples' engagement

4.4.1 Elements of good-faith consultation

As described in Section 3.2.3, good-faith consultation carried out through an appropriate engagement process is an essential part of good practice when engaging with Indigenous communities. Good-faith consultation at the most basic level means that the parties are open to changing their positions when necessary, and to agreeing beforehand on the consultation and negotiation procedures.

The project should support meaningful voluntary Indigenous participation and capacity-building opportunities in a project's engagement process. This is done by providing engagement opportunities as early as feasible during pre-planning, and continuing such opportunities throughout the planning, assessment, regulatory and subsequent phases. It is important to ensure that engagement activities are provided during

critical phases such as site and route selection, environmental and social impact assessment (the phase in which Indigenous People can contribute the most), construction, and operation.

Indigenous Peoples should be asked to contribute to specific decisions that are determined on a project-by-project basis, depending on the potential project impacts on Indigenous communities, and the local context of the project area. The level of influence Indigenous Peoples will have, and the decisions they are being asked to contribute to, should be proportionate to the level of rights at risk, and be clearly defined to the participating communities at the outset of the project. Being transparent about engagement objectives from the very first interaction with Indigenous Peoples helps to manage expectations and focus stakeholder input.

Effective engagement requires input from Indigenous Peoples on how they want to engage. This is an important step for encouraging stakeholder support for the process, which will impact the success of engagement activities. It is also particularly important to develop a community engagement plan when working cross-culturally, as the developer's assumptions on engagement strategies may turn out to be inappropriate or ineffective within a different cultural context. A good example is the consultation protocol designed by the Munduruku people of the Amazon River Basin, which outlined how the Brazilian government should conduct a culturally appropriate process of FPIC.

A developer should present the community with a range of options for engagement that the developer thinks would work for their purposes, but they should also remain open to suggestions made by the community. The level of detail and formality of a community engagement plan will depend on the level of participation of each individual community. A community engagement plan developed with a community that may be substantially impacted by a project should include more detail than one with a community that is only minimally impacted or interested in it. A community engagement plan should define roles and responsibilities and help align the different expectations regarding the project.

This approach to engagement planning will help a community become well informed about the project, encourage broad participation, increase the likelihood of constructive relationships, and facilitate the community in reaching decisions.

The following subsections describe the various aspects of such a good-faith engagement process.

4.4.2 Indigenous Peoples' selection of representatives

Engagement should be with self-selected community representatives, i.e. individuals chosen by the Indigenous community, who are usually community members. Representatives could be from potentially affected Indigenous communities, elders and leaders (both male and female), Indigenous Peoples associations, government institutions representing Indigenous Peoples and/or responsible for approving Indigenous Peoples studies and plans, and/or local NGOs working with Indigenous Peoples.

If representatives are chosen from outside an Indigenous community, it is important to establish how the community has endorsed a person or group as a representative. Such outside community representatives are typically individuals who are trusted by the communities and have a better familiarity with negotiations or project development, such as lawyers or government officials.

A challenge in some countries is that the community representatives/leaders may be government appointments who are not generally accepted by the community and who, in reality, are representatives of government, not the community. In such a case, one approach is for the project to request, perhaps strongly, that the community have a process to specially select a set of representatives (perhaps a committee) who have the specific function of representing the community in relation to the project. A specially selected group of representatives allows the developer to be assured that sub-groups are included, such as with respect to gender, age, locations, vulnerability, livelihood activities, etc. (further discussed below). If that is not feasible, a modification is for these specially selected representatives to work alongside the government-chosen representative with regard to the project.

While the use of and dependence on representatives is typically required for a number of practical reasons (e.g. logistics for setting up meetings, having a central point of contact), it is important to recognise that broader engagement strategies may still be needed to capture the range of concerns and interests held by different internal stakeholders/ groups. This will ensure that the assessment process covers the full range of perspectives held by the Indigenous Peoples, and that all concerned parties have an opportunity to be heard and have their concerns addressed.

Different representatives may be put forward for different issues: for example, female community leaders may speak on behalf of women's issues. The extensive involvement of women in community engagement and decision processes can help make the consultations more inclusive and balanced. Often this is needed to counterbalance the gender biases and obstacles present in the developer or operator team and the community. However, care must be taken to address such issues in a constructive and encouraging manner, rather than alienating the community: that is, a gender balance should not be dictated or imposed upon Indigenous Peoples. Other sub-groups with different perspectives that would require their own representatives may include young people, elders, and various resource users (e.g. hunters, fishers, gatherers, farmers).

In some circumstances, ambiguity exists about which Indigenous representatives are to be engaged, in the light of the multiple spheres of Indigenous community and organisations that may be affected by particular projects. Also, in some instances, Indigenous representative institutions may be weakened by historical factors. In such cases, Indigenous Peoples should be given the opportunity and time, with appropriate support from governments and/or the developer, to organise themselves to define the representative institutions through which they will engage in consultations. Such representative institutions could make use of existing organisations such as regional or national Indigenous Peoples' associations, government institutions, and/or local NGOs working with Indigenous Peoples, as mentioned above. Other alternatives could be to form institutions dedicated to representing each community, or one institution to represent the set of communities

affected by the project. The formation of such institutions to represent a community can be very helpful during the phase of the management and implementation of project benefits. A singular institution to represent multiple communities has a number of benefits, such as:

- the developer or operator not having to deal with conflicting positions put forward by different communities, but instead one consistent position which was determined jointly by the communities in the institution's internal process;

- reduced risk of communities being aggrieved due to a sense of not being treated equally by the developer; and

- potential cost efficiencies derived from the common use of technical and legal advisors, and from at least some of the consultation and negotiation meetings and processes being common.

A disadvantage of such an approach is the risk that the concerns and positions of one or more communities may not be put forward adequately by the joint institution, or that the communities believe that this is the case.

4.4.3 How to adapt the process to Indigenous Peoples' customs and needs

Indigenous Peoples may have particular communication and consultation needs and preferences that relate to timing, culturally appropriate methods, and modes for two-way dialogue. The developer should seek guidance from Indigenous communities on how they would prefer to be consulted and how long they need to decide on project issues as a community. The developer should endeavour to provide adequate information regarding the intent and scope of a project's engagement programme and process. The developer will also try to develop a common understanding with Indigenous communities or organisations regarding the purpose, objectives and outcomes of the engagement process. Developers should look out for autonomous protocols and guidance documents developed by communities

to provide clarity on how they would like to be consulted, such as the consultation protocol designed by the Munduruku people of the Amazon River basin.

Great care is needed in planning the initial contact with Indigenous Peoples, as it can lay the foundation for all future interactions on the project. In addition to being respectful and knowledgeable about the local customs, history and legal status, the project proponent should ensure that local entry protocols are followed when determining whom to make contact with, and how to ask permission to enter and engage with the community (see Section 4.4.7).

One approach is to employ, with the approval of the community, a local anthropologist from a university or research centre to live with the Indigenous People for a sustained period (e.g. three to six months). This can assist in building the code of customs, drafting a comprehensive Indigenous Peoples baseline study, preparing for the ESIA, and it can also facilitate engagement planning and processes.

It is likely that some communities may be reluctant to participate in project consultations and impact assessments. Such reluctance may be the result of many factors, including a lack of capacity to meaningfully participate, an unwillingness to participate for various reasons, or a fear that participating implies acceptance or support of the project. Understanding the rationale for why a community is apprehensive about participating is important, so that efforts can be made to develop an acceptable engagement framework and to gain their trust in the process.

Indigenous People may be unwilling to participate because they are in fact apathetic about the project. It is also possible that those Indigenous Peoples who have expressed no interest are actually withholding support because of distrust, or perhaps because of a negative legacy of poor prior consultations and projects. In such cases it is incumbent on the developer to attempt to demonstrate the trustworthiness of their consultation, and to convince them that the consultation is in good faith and that ultimately the community will benefit. The developer should take care that these trust-building efforts do not involve

handouts of cash or resources, as this can set a tone for the relationship that is all about handouts, which can be very difficult to later shift.

Various suggestions for how to engage effectively with the Indigenous communities are provided throughout this guide. If, despite the developer's ongoing best efforts, a community will not engage and the developer decides to proceed regardless, the developer can try to determine mitigation and other measures related to the community. The developer would need to be able to clearly demonstrate to regulators, financiers and others, that without a doubt it had undertaken all reasonable efforts towards the community. However, if developer proceeds without community engagement, this risks the project not being accepted, and could erode social licence or even jeopardise the project's viability.

Another factor why communities may be reluctant to participate in consultations is that formal processes for communications and engagement may be unfamiliar and threatening for the Indigenous Peoples. Engagement processes need to recognise and accommodate the culture of the community. Issues that will need to be considered in the design of engagement processes may include:

- duration and protocols necessary for the community decision-making process (see Section 4.4.5);

- language barriers (e.g. use interpreters and material in the Indigenous Peoples' language);

- use of oral media (e.g. record meetings);

- levels of literacy for written material (e.g. use picture books instead of written text for the portion of the community that cannot read);

- suitable locations for meetings (e.g. preferably in the communities);

- inclusion of children and family members (e.g. through supports such as day care);

- flexibility regarding time frames and logistics;

- avoidance of cultural taboos and meetings during times of cultural activity;

- appropriate dress and attire;

- how meetings proceed and who speaks when;

- how agreements are recorded and signed off; and

- the limited negotiation expertise or experience of representatives chosen by the affected Indigenous Peoples when discussing options.

In its Good Practice Guide: Indigenous Peoples and Mining (Second Edition), the International Council on Mining and Metals provides a good overview of appropriate engagement tools that may be used when working with Indigenous Peoples.

The developer may need to invest in capacity building for the communities, with the agreement of the communities, in order to enable effective engagement, and for them to fully understand what they are being asked to sign. This may take place through the development of community representatives or providing the communities with the resources to engage, such as legal representation, as well as engineering, environmental, socio-economic and financial advice.

The Miel project in Colombia found that using picture books is very effective for the community members who are not literate. Refer to the IFC publication "Capturing Hydropower's Promise: Case Studies on Local Benefit Sharing in Hydropower Projects".

It is also important for a developer to respect and encourage internal processes for reviewing and discussing a project. For example, many Indigenous Peoples tend to function more through general assemblies or internal deliberation processes than through representation, even though they have community leaders. Possible approaches are to:

- set up a joint developer–Indigenous Peoples' forum at the outset of the project, comprising representatives of both parties, aimed at developing a joint approach for carrying out different elements of the project (e.g. impact assessment, mitigation, benefits and monitoring);

- use a third-party facilitator to set up a forum and assist in implementing its functions.

An example of using this two-party approach is explained in the Hydro Quebec ESR project case study (available at https://www.hydropower.org/indigenous-peoples).

An example of using this third-party approach with a facilitator is explained in the UT-1 case example (available at https://www.hydropower.org/indigenous-peoples).

The initial establishment of such a forum may take time, but it is likely to save time and money thereafter for the lifetime of the project. However, it will require the developer in the Early stage (or very early in the Preparation stage) to proceed with a thorough scoping to identify the potential Indigenous Peoples that will be involved in the project.

A developer may wish to seek preliminary approval of the planned Indigenous engagement process, to ensure that the engagement strategy is acceptable to the lender, as well as to the Indigenous community and the developer.

4.4.4 How to establish two-way communication and feedback processes

The developer should seek to provide a variety of mechanisms to communicate and receive feedback and to engage in ongoing dialogue, as this will assist in building understanding and trust. This may include efforts to select mechanisms, venues and events that encourage maximum participation, free exchange of views, opportunities for informal engagement, and ensuring that information can be accessed in local languages. It may also include, where appropriate and feasible, funding for community members to facilitate timely and efficient communications (e.g. transportation, translation, community process, legal and advisor costs), and to contribute to the development of a positive community relationship. Providing cash to the communities or their representatives to participate in engagement opportunities should be reasonably limited and controlled, as it may be counterproductive.

ESIAs and management plans and other relevant project information should be publicly disclosed and easily accessible to all project-affected communities. Technical information should be provided in an easily understood form, and any misinformation should be quickly identified and corrected. Feedback received should be documented and reported on, including how participants' feedback has influenced the project. The owner/operator should keep a record of the source, date and nature of issues raised, and how and when each was addressed and resolved.

Project engagement or development activity schedules may need to be adjusted in response to issues and concerns. A commitment to a minimum time within which feedback will be provided by the project proponent, and ensuring that such timing commitments are consistently met, can help ensure regular contact with the community and assist in enhancing trust. Demonstrating consistent delivery of small promises and processes will help remove doubts and uncertainties about the future delivery of bigger commitments and agreements.

One-way communication is usually the proponent providing information to stakeholders, but not asking for or receiving feedback in any systematic way. Possible two-way methods[1] for engagement include the following: surveys, focus groups, meetings with selected community representatives, public meetings and hearings, public comments
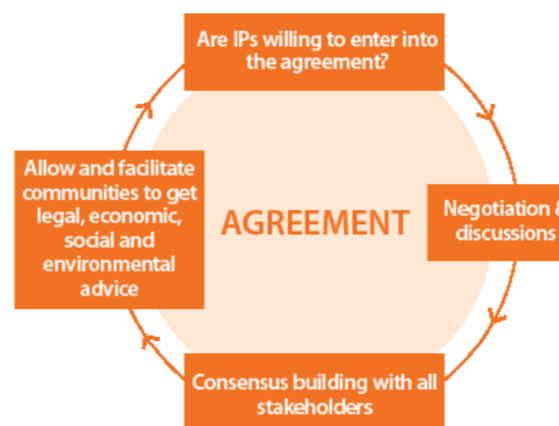
on impact assessment documents, interactive participation in workshops, negotiation, mediation, focus groups, participatory decision-making processes, co-management processes, partnerships and joint ventures. Combining different methods is recommended, as this helps to determine the opinions of different sub-groups and increases participation.

As well as agreeing on how engagement, consultation and decision-making will take place, a 'disputes procedure' or a 'requests and grievance redress procedure' should be developed at a relatively early stage, preferably one based on locally accepted approaches. A disputes procedure is a mutually agreed two-way resolution mechanism allowing both the Indigenous Peoples and the developer to raise concerns or disputes and seek resolution. Relevant management plans should clearly state the process by which the Indigenous Peoples can self-identify and raise issues. Mechanisms to raise concerns and resolve complaints and grievances should be designed and agreed with the involvement of the Indigenous Peoples, to ensure they are culturally appropriate. Responsibilities should be clear, and effectiveness should be monitored (see Sections 4.9 and 4.10).

4.4.5 Ensuring sufficient time in the engagement schedule

The proponent should ensure that sufficient time is allowed to enable indigenous communities or groups to fully participate in the engagement process, understand issues, and have the opportunity to voice their concerns, including opportunities to identify benefits. Internal mechanisms available for the rest of the community to access information on issues under negotiation and project aspects may be limited, especially if there is a poor level of literacy in the community, as frequently occurs. Community processes may take a long time, due to the use of traditional decision-making customs which often involve widespread and lengthy internal discussions prior to reaching community consensus or decisions. Accordingly, a developer should build extra time into scheduled engagements, in order to work with affected Indigenous Peoples.

1   AccountAbility (2015) Stakeholder engagement Standard AA1000SES 2015; available at: https://www.accountability.org/standards/aa1000-stakeholder-engagement-standard/

Indigenous Peoples in a manner which allows for the growth and development of community and representative capacity, so that engagement can be meaningful. The overall project development schedule should also include contingencies to address delays arising from prolonged engagement and good-faith negotiations regarding the Indigenous Peoples' rights at risk.

This need to allow extra time for community engagement and processes is a significant challenge for projects, given the increased capital costs inherently associated with development schedule increases, and the desire to provide power to consumers as early as possible. On the one hand, providing additional time in a project schedule to accommodate Indigenous Peoples' engagement, and providing financial resources to support the Indigenous Peoples' processes, will benefit the project by enabling the Indigenous Peoples to have sufficient confidence in the project and its benefits. Indigenous consent for the project reduces the risks of project stoppages and major delays. On the other hand, the expenses associated with lengthened project schedules and assigning resources to the Indigenous engagement can incur large costs for the project. Some suggestions for making the process as efficient and effective as possible are provided in Section 4.7.2.

4.4.6 Using personnel with appropriate skills and training

In general, effective Indigenous engagement during project development requires the developer to utilise staff with appropriate professional expertise, such as Indigenous language and culture experts, and anthropologists. The staff need sensitivity to and experience of working with Indigenous Peoples, and be capable of working respectfully with them. The developer should ensure that all staff interacting with the Indigenous Peoples, including technical staff (e.g. engineers, geologists, drillers) and management, undertake cultural awareness training (ideally provided by the Indigenous community), and follow through on practising the principles. Furthermore, engagement is facilitated if the staff members are familiar with participatory methodologies and community engagement.

Professionals who may be involved in the assessment and management of Indigenous issues and rights at risk include archaeologists, social anthropologists, environmental anthropologists, human rights lawyers, economists, sociologists, rural development experts, agronomists and Indigenous language specialists. These experts are usually not members of the Indigenous communities that are the subject of the assessment. In some cases, these experts may act as representatives for Indigenous Peoples in engagement or participatory processes, often through organisations such as social NGOs or appointed Indigenous councils.

Hiring staff from the local community culture and background, and training them to be the engagement staff, can assist greatly in the communication, relationships and negotiations. Ideally, the developer experts and professionals would be able to communicate in a language the community can understand and be comfortable with, but often this is not practical. Where interpreters are required, the quality of their interpretation should be demonstrated and assured, as they need to have the confidence of the community.

During the preparation stage, the baseline study may be contracted entirely separately from the impact assessment, or undertaken under the same contract with the same team. However, given that the baseline study forms the foundation for the overall assessment, it is best to maintain the same team from the start of the baseline study to the conclusion of the impact assessment. Employing a different team to undertake the assessment may mean that community trust needs to be rebuilt for this component of the work – something that takes a great deal of time and energy. A new impact assessment team may also struggle to fully appreciate the context in which the project is being developed because they did not have the opportunity to personally participate in the earlier baseline work. This may have a negative impact on the final impact assessment, and on the acceptability and effectiveness of the proposed mitigation and enhancement measures.

Negotiation of agreements with Indigenous Peoples requires the involvement of those involved with the plans, plus the assistance of experienced facilitators, mediators and lawyers. It is best if such expertise is

available to both the developer and the Indigenous communities.

Engagement planning should be mindful of the need for long-term relationships, and consider which roles and individuals might provide continuity across the different project life-cycle stages. Often by the operation stage, many of the developer's staff and contractors have moved on, and no one has their insights into the understanding of the local Indigenous community.

Cultural awareness and sensitivity training are important for project staff who are implementing plans, or otherwise interacting with or affecting the Indigenous Peoples. This is applicable in the implementation and operation stages of a project, as well as the preparation stage. A frequent problem occurs with construction or operating staff interacting disrespectfully with Indigenous community members or Indigenous staff from those communities. This can occur both in the workplace and outside it. Frequently the Indigenous Peoples are discriminated against, the subject of derision, and even physically abused. The developer or operator needs to ensure that the cultural awareness and sensitivity training is not only provided but also adhered to. The company needs to make clear its commitment to respectful treatment of the Indigenous Peoples, and have a system of monitoring and enforcement as required. Importantly, the above applies not just to staff of the developer and operators, but also to staff from construction and other contractors.

4.4.7 Initiating contact

The initial contact with Indigenous Peoples is an important step that can lay the foundation for all future interactions on the project. This initial contact is assumed to be made in the preparation stage, but it is often preferable to make it in the early stage, especially if there are significant site exploration activities in that early stage (the initial contact is best made prior to any exploration activity). In addition to being respectful and knowledgeable about the local customs, history and legal status, some other considerations when making initial contact include:

• Follow local entry protocols when determining whom to make contact with, to ask permission

to enter the community. Typically, if a community has elected representatives or a commonly accepted traditional leader or chief, these would be the appropriate first point of contact for a developer.

• Use language appropriate for the Indigenous Peoples and provide interpreters as appropriate.

• Choose a venue and meeting format where Indigenous Peoples feel most comfortable. For example, some Indigenous Peoples may prefer meeting with representatives only, while others may prefer an open 'community meeting' style. Achieving such comfort is usually best achieved by discussing with the community representatives how to hold an initial contact meeting.

• Ensure that qualified and experienced staff (e.g. with an anthropology background and familiarity with Indigenous Peoples) join the technical teams involved in the preliminary investigation's field visit. If this is unfeasible, the technical team has to be briefed precisely about the considerations when making initial contact. All too frequently, initial contact has been made by staff such as geologists and civil engineers who are undertaking preliminary investigations, but without the cultural sensitivities required.

• To the extent possible, some of the staff who attended initial meetings should also participate in future meetings. This may help to encourage the development of relationships between representatives. If meeting with community leaders, it may be beneficial and a sign of respect if a senior staff member also attends the initial meeting.

• Be able to report, in good faith, that no decisions have been made as to whether to pursue a project, and that the Indigenous input will be very important in making these decisions.

• Do not expect decisions at the initial engagement. Communities should be allowed time to consider the information provided. An initial meeting might highlight future decision requirements and their likely timing throughout the project development cycle, or this may be agreed as a focus of a future meeting.

4.4.8 Engaging with Indigenous Peoples in the Preparation stage

An initial Indigenous Peoples engagement plan, prepared at the beginning of the preparation stage and implemented throughout that entire phase, is advantageous to ensure that engagement processes are well-considered and well-informed. Subsequent engagement plans would be developed later for the implementation and operation stages. Good practice requires documentation at each stage of engagement with the Indigenous Peoples, which can take the form of progress reports on engagement plans, consultation reports, records of consultation, grievance records, feedback reports, etc.

Feedback provided by the community should be well and fairly considered, and the developer should report back, in a timely manner, how that information was used. Indigenous engagement may result in differences of opinion which will need to be explored in good faith, with a mutually agreeable solution sought. For example, an Indigenous community may anticipate a significant project effect, where a developer does not. The developer should avoid approaches that are heavy with technical information, delivered in a style or manner that is difficult for the community to question or counter. There may not be a resolution of differences of opinion at the assessment stage. However, one solution may be to monitor the perceived project effects during implementation and/or operation stages, and a plan and commitment to mitigate any unexpected project effects that are found.

Ensuring that communities and relevant sub-groups are informed, at every stage of the project, of how their input is being used, is fundamental for maintaining trust. Showing that diverse opinions have been meaningfully considered will assist in the development of a defensible project. .

Box 1: Checklist of elements in the Preparation Stage Engagement Plan

☐ Definition of engagement goals and timelines.

☐ Description of deliverables and/or decisions that require input from Indigenous Peoples, and associated timelines.

☐ The legal context and funding entities' requirements with respect to Indigenous Peoples and engagement in the project area (see Section 4.3.1).

☐ Identification of Indigenous communities to engage (see Sections 2.1 and 4.2).

☐ Identification of community processes for self-selecting representatives, including who will speak for the community, and how this may differ depending on the activity (see Section 4.4.2).

☐ Internal/cultural mechanisms of inclusion, participation and decision-making in the community (see Section 4.4.3).

☐ Identification and analysis of other stakeholders who may have responsibilities with respect to Indigenous Peoples, and how they should be engaged (see Section 4.2.3).

☐ Plan and timeframe for engagement activities to produce deliverables and reach mutual agreements and decisions, and assign responsibilities for implementation.

☐ Use of culturally appropriate tools and strategies to encourage broader community participation.

☐ Cultural awareness strategy for technical staff (project owner, developer, operator, contractors, subcontractors, relevant major suppliers) during each project life-cycle stage.

☐ Include relevant communication and engagement requirements in non-environmental and social documents (e.g. specifications for preliminary studies) and within the Project CSR Policy.

☐ Processes for raising issues, getting feedback, and grievance mechanisms (see Section 4.10).

☐ Reporting and disclosure of information in the preparation stage, including forms of recording discussions and agreements (see Section 4.8.1).

☐ Resources and budget for implementing the plan in the preparation stage, including technical, legal and community resources required by Indigenous Peoples to effectively engage in the project.

☐ Review and update the timing and responsible entity.

Box 2: Checklist of actions and considerations while implementing the Preparation Stage Engagement Plan

☐ All participants agree on and follow the rules for engagement, ensuring two-way communication and participation.

☐ Provide enough information in language understandable to the Indigenous Peoples, and provide enough time to process the information.

☐ Respect their cultural traditions for opening and closing consultation events, inviting participants, and setting places to hold consultation and participation events.

☐ Keep a contact database of participants in each activity, their preferred method of communication, and their responses.

☐ Keep records of engagement and outputs, in a manner that will be easily retrievable over time.

☐ Ensure that all engagement records show how any concerns or issues raised were resolved, and demonstrate that the resolutions were clearly communicated back to the source.

☐ Consider using different methods to invite participation, e.g. telephone calls and personal visits, and organise engagement activities considering the availability of key participants.

☐ Provide regular information and status updates, e.g. on construction activities or the effectiveness of management plans.

☐ Identify and gradually implement tangible activities that demonstrate the project benefit-sharing strategy.

☐ Include an evaluation of the implementation results, to assess how to improve the results. Ensure that the lessons learned are utilised to update the engagement plan.

☐ Conduct updating of the plan as the project proceeds through the stages, and as new information becomes available.

4.4.9 Engaging with Indigenous Peoples in the Implementation and Operation stages

Box 3: Checklist of items that can be contained in Engagement Plan during Implementation and Operation

☐ Update the information included in the Preparation Stage Plan.

☐ Study the opportunities to generate economic added value for the Indigenous People through direct and indirect employment.

☐ Organise the engagement activities related to labour opportunities (e.g. public information) and social influx management.

☐ Include, within contracts, specifications for the owner, contractor(s) and subcontractor(s) regarding Indigenous Peoples' employment, accommodation, transport, health and safety.

☐ Decide timing of when specific communications are going to be prepared and how, e.g. with sufficient time before the filling of the reservoir.

☐ Ensure project information disclosure, and information on when, how and who will provide regular updates to the Indigenous Peoples on the project construction; progress of implementation plans and processes; issues arising, and responses.

☐ Identify special communication and consultation requirements related to project milestones, for example the filling of the reservoir or start of operations. This could involve community celebrations and/or ceremonies.

☐ Identify special communication and consultation requirements related to irregular or emergency events, for example spills or releases, maintenance shutdowns, landslips, or cofferdam or dam breaks.

☐ Involve Indigenous Peoples in implementing measures and monitoring that are related to environmental issues, impact minimisation and benefit maximisation.

☐ Identify and respond to unexpected impacts, emerging cumulative impacts (e.g. other development activities or pressures on water or land resources), or new benefits opportunities.

☐ Design periodic engagement activities to discuss specific issues of concern with different community sub-groups.

☐ Decide when, how and who will track conformance with the plan, and compliance with any legal requirements on communication and engagement with the Indigenous Peoples.

☐ Learn lessons from implementing the initial management plan.

☐ Assign roles and responsibilities in implementing all activities.

4.5 Assessing Indigenous Peoples' rights at risk

4.5.1 Establishing a baseline

A baseline study will cover a wide range of topics related to the existing biophysical and socio-economic environment. It also provides the 'without the project' scenario, to compare to the 'with project' scenario, and as a starting point for an impact assessment. The baseline study can be reported in a separate document from the assessment, or as an integral front-end to the assessment. This guide focuses on those components of the baseline study specific to Indigenous Peoples. These Indigenous components are in addition to the general baseline information requirements which are outlined in the Environmental and Social Assessment and Management How-to Guide.

> The Nam Theun 2 case study is an example of a thorough consultation and baseline study which facilitated creation of a comprehensive development plan for the people in the project area, as well as the impact assessment (available at https://www.hydropower.org/indigenous-peoples).

Box 4: Checklist of items to include in the baseline study

☐ Undertake an assessment of the rights, risks and vulnerabilities, and any cultural sensitivities and needs, specifically of Indigenous Peoples in the project-affected community, using local knowledge and expertise, and that of others.

☐ Recognition of the legal frameworks relevant to and primary issues being raised by the Indigenous communities in the country or region.

☐ A full description of the social and economic situation relevant to the Indigenous communities, including demographic information, details of living standards and livelihoods, and the rights, risks and vulnerabilities specific to these communities.

☐ Identify natural resource uses and their roles in the livelihoods of the Indigenous People, which may be based on non-monetary economies.

☐ Identify land use, ancestral or traditional use territories, land tenure and resource use of the Indigenous People, noting these may not be officially recognised but based on customary use.

☐ Consider important social and cultural practices and resources distinct to the Indigenous communities, such as migrations, resource harvesting activities, festivals and traditions, rituals, culturally significant sites, and flora or fauna used in traditional medicines.

☐ Analysis of the social and governance structures within the Indigenous communities, the degree of social cohesion, internal and external conflict triggers, the leadership situation, and decision-making processes.

☐ Take into account the socio-political setting and community institutions;

To be meaningful, a baseline study and subsequent impact assessment need to be undertaken with the cooperation and engagement of Indigenous community representatives, and include information from local knowledge and expertise (see Section 4.5.3). This information is gained through a legitimate engagement consultation process (see Sections 4.4 and 4.5.1). Examples of this are 'ethno-mapping' carried out by Indigenous communities, or joint mapping through a participatory process.

The involvement of the Indigenous community needs to start very early to obtain Indigenous support. For example, discussing with the Indigenous community leaders the intention to undertake baseline field studies in the Indigenous areas prior to entering those lands would prevent the creation of opposition right at the outset, and a negative initial impression of the project that may be hard to later overcome.

The developer needs to be aware of seasonal and rapidly changing baseline elements, e.g. migrant communities or economic/social upheaval from political developments. The baseline study may incorporate these types of changes in its discussion of trends and future environmental conditions without the project in place. Alternatively, the baseline study may need to be updated if such changes occur, especially if the baseline study is undertaken significantly before the project impact assessment or project implementation.

The process of preparing the baseline should create opportunities for potentially affected Indigenous Peoples to be involved and to share their own Indigenous and local knowledge. This will be important to the development of a comprehensive baseline, and also so that the Indigenous People can truly feel they are part of the project. Indigenous Peoples can provide an enhanced understanding of the history of a particular land base and community, their long-term occupancy and use of a project area, and insight into their distinct cultural worldview and knowledge system. It is recommended that the fieldwork be carried out with the direct involvement of the Indigenous community for collecting both environmental and social data (e.g. planning and monitoring of the fieldwork, employment of community members on the collection team).

These are critical for understanding how a community may be affected by a development, and the issues that are of greatest concern to a community. Examples of areas where Indigenous Peoples can contribute to a baseline study include:

- Identification of the area of project influence that should be studied in the baseline.

- Identification of the key issues to be addressed in the baseline, including those of importance to Indigenous Peoples. In general, a baseline study typically focuses on those aspects of the environment that are highly valued by people, are key to ecosystem functioning or provide an indication of ecosystem functioning, have the potential to be affected by a project, and/or must be studied by law. This type of focus is required because it is not feasible to study every aspect of the environment. Aspects include: an identification of access or migration routes; organisational structure and leadership in the community; and areas of importance for their resources, species, traditional medicine, livelihoods and culture.

- A description of past and present environmental and social conditions and assets. Indigenous Peoples often have long-standing oral histories that extend back many generations. This knowledge can help provide an understanding of past historical conditions, in the absence of written studies and reports.

- An understanding of land management systems and/or past actions that have shaped a community's activity on the land.

- An understanding of how trends and conditions may develop in the future without the project.

- Assistance in determining the locations of field studies. Indigenous Peoples have typically relied on the lands and waters surrounding their communities for many generations, and have a strong understanding of the species that inhabit these areas.

- An understanding of the impact of previous projects or stressors (e.g. recreational or commercial fishing or hunting businesses, climate change), and how this has influenced

the current environment, and may influence the future environment. This includes past actions that have affected a community's social well-being and culture (e.g. colonial experiences), to provide a sense of how a community may be affected as the result of a future project, the nature of appropriate management measures, and any legacy issues that may need to be addressed.

In practice, the baseline study may be contracted entirely separately from the impact assessment, or undertaken under the same contract. However, given that the baseline study forms the foundation for the overall assessment, it is best to maintain the same team from start of the baseline study to the conclusion of the impact assessment. Employing a different team to undertake the assessment may mean that community trust needs to be rebuilt for this component of the work – something that takes a great deal of time and energy. A new impact assessment team may also struggle to fully appreciate the context in which the project is being developed, because they did not have the opportunity to personally participate in the earlier baseline work. This may have a negative impact on the final impact assessment, and on the acceptability and effectiveness of the proposed mitigation and enhancement measures.

4.5.2 Conducting an impact assessment

The impact assessment for a proposed project relies upon the information compiled in the baseline study and the development of a detailed project description. It presents an assessment of potential project effects (positive and negative) and benefits during project construction and operation. To do this successfully, an impact assessment will cover a range of topics relevant to the project, including biophysical and social aspects.

The good practice principles and requirements for impact assessments are similar to those for a baseline study (see Section 4.5.1). If a project has the potential to affect Indigenous Peoples' rights, the impact assessment needs to include a specific focus on these communities, along with a substantive assessment of how the project may potentially impact these communities. The

assessment must consider issues of concern to Indigenous communities, and provide a recognition of the legal frameworks relevant to these Indigenous Peoples.

Aspects of the impact assessment more specifically focused on Indigenous Peoples are likely to mirror those already presented in the baseline study, and may include the impacts on:

- rights, risks and vulnerabilities
- cultural sensitivities and needs
- commercial, domestic and traditional resource access and use
- customary traditions
- land tenure
- migration practices
- livelihood and livelihood strategies
- living standards
- health and safety situation
- heritage and cultural practices and sensitive areas
- community institutions
- gender roles
- sub-groups within the community that warrant special attention (e.g. women, elders or minorities)
- the Indigenous community, from interaction between project workers and community members

There can be a number of practical challenges and barriers to the assessment of Indigenous Peoples' rights at risk. The ability or willingness of the Indigenous community to participate in an impact assessment may be influenced by factors such as the following: previous experience with development projects or government interventions; legal recognition and land tenure status; cultural

differences that create challenges for information exchange; consultation and agreement to plans; and the level of community organisation for representation and decision-making.

As with the baseline study, a comprehensive impact assessment will integrate local knowledge and expertise gathered through a meaningful consultation process with each community. Section 4.5.3 provides some suggestions on working with Indigenous Peoples to integrate their knowledge and input into assessments, the final project design, and its implementation.

> The Xanxere project in Brazil demonstrates the benefits to the project of Indigenous Peoples' early and continuing involvement in the assessment Terms of Reference and studies, as well as in project design. The project even hired a company from the Indigenous Peoples to undertake the social and economic studies (available at https://www.hydropower.org/indigenous-peoples).

Note that many Indigenous Peoples have a very holistic view of the world, and do not separate the past, present and possible future environments. This means it is likely that a study team will receive information relevant to the baseline study, the impact assessment, the project description and the management plan throughout the entire process. A flexible approach is required so that this information can be incorporated as it is received, and relevant aspects are updated accordingly.

4.5.3 Incorporating Indigenous knowledge

Good practice requires that Indigenous knowledge is utilised in the assessment of Indigenous Peoples' rights at risk. It is a valuable input for the baseline study, the overall project ESIA process, project planning, the development of management plans, and ultimately for monitoring.

Indigenous knowledge is knowledge that is held by and unique to an Indigenous culture or community. It is a living body of knowledge that is cumulative and dynamic, and has adapted over time to reflect changes in the social, economic, environmental, spiritual and political spheres of the

knowledge holders. It often includes knowledge about the land and its resources, spiritual beliefs, language, mythology, culture, laws, customs and medicines. Indigenous Peoples have extensive experience and unique knowledge of lands, water, animals, plants and their use by members (e.g. where farming and fishing is good, fish spawn, animals migrate, and rare plants are found). This knowledge, when respectfully used by a developer and with the communities' permission, enables a greater understanding of how a project may affect the people and the environment as it is built and operated.

It is important throughout the various processes to respect that Indigenous Peoples have their own 'Indigenous knowledge', and that it is proprietary. Therefore, the Indigenous Peoples have the right to decide if and how it will be shared. The access to and availability of this information should be treated with the utmost respect, and it should only be used in a manner agreed by the community.

> The Hydro Quebec ESR project is an example of thorough Indigenous involvement in the baseline and impact assessment studies (available at https://www.hydropower.org/indigenous-peoples).

The following guiding principles may assist in documenting and incorporating Indigenous knowledge into assessment and management plans:

- Developers need to work with Indigenous Peoples to determine the most appropriate way to document and incorporate Indigenous knowledge.
- Give equal weight and respect to the knowledge, values and worldviews held by Indigenous Peoples and by the scientific community.
- Ensure that methods used allow for the participation of not just community leadership but the community as a whole, including various sub-groups of the populations (e.g. resource harvesters and users, elders, young people, women, etc.).

- Ensure that Indigenous knowledge is visible in assessment documents.

- Ensure that the Indigenous Peoples who have shared their knowledge maintain authority and control over the knowledge, including how it is presented publicly.

- Ensure that Indigenous knowledge is collected using defensible methods, to ensure that the information presented represents the shared body of knowledge held by community knowledge holders, instead of an outlier perspective.

- Acknowledge areas where Indigenous and scientific knowledge may differ, and proceed using a precautionary approach.

- Have draft materials reviewed by Indigenous Peoples, to ensure that their knowledge and values have been accurately presented.

- Include Indigenous knowledge in baseline studies and in action plans, through participatory land and water-use mapping and planning.

- Clearly acknowledge and demonstrate an understanding of the importance of Indigenous knowledge, and indicate how this knowledge may influence the project. This will make Indigenous Peoples more comfortable about sharing their traditional knowledge.

- Support the Indigenous Peoples, when required, in obtaining legal recognition of their knowledge, especially if it may be used for commercial purposes.

In addition to the technical team hired by a developer, Indigenous Peoples may require resources to fully participate in the baseline study, impact assessment and development of management plans. This could include funding to cover travel and meeting costs; the hiring of local interpreters, lawyers and staff to assist in compiling and documenting local Indigenous knowledge; and access to outside expertise, to assist in developing and reviewing draft materials.

4.6 Adaptive management of impacts and opportunities

4.6.1 Managing issues adaptively

Management of Indigenous Peoples' issues must deal with every project impact (biophysical and socio-economic) that was identified by the impact assessment as affecting or having a significant potential to affect the Indigenous Peoples' communities and their rights (see Section 3.2.2). Measures to mitigate issues that may affect Indigenous Peoples should ideally be self-identified and incorporate the insight and input of local Indigenous Peoples. For example, mitigation measures from the experience of hydropower projects globally include:

- impact avoidance measures through siting and design choices (e.g. location and extent of access roads and transmission lines, and extent of the inundation area);

- impact mitigation measures (e.g. dedicated downstream flow regimes, reservoir operating rules, flood management rules, water quality and sediment management measures);

- protection of and respect for cultural practices and resources (e.g. creation of protected areas with special use permits for Indigenous Peoples);

- agreed arrangements for moveable and immoveable physical cultural resources; health risk prevention and management;

- inclusion of benefit-sharing commitments as part of the concession or other agreement for both implementation and operation;

- support for rituals and traditions; and

- ensured access to and quality of natural resource-based livelihoods.

To the degree possible, the measures should have quantitative objectives and targets, and where that is not feasible, qualitative ones. The plans should have provisions for monitoring and evaluating each of the impacts, and the success of the measures, detection methods and locations. This will alert developers to the likelihood of not meeting objectives, and provide clearly defined triggers for action. As part of adaptive management, the plans should stipulate the remedial processes and responsible parties, if monitoring and evaluation indicate a significant deviation from the objectives and targets.

As part of supporting adaptive management, the plans should include a schedule and describe the processes that need to be followed to implement each measure. The plans should clearly allocate roles and responsibilities for performing and funding each of the activities, including the actual measures themselves, monitoring, evaluations, and remedial processes, if any. The funding and resources provided for developing and implementing the measures should be reasonably adequate. Responsibilities may fall under the government or other stakeholders.

The responsibilities for monitoring, issues identification and follow-up may be handed over to government agencies or other entities over time (for instance, a forum or committee formed by the main stakeholders, including the operator and Indigenous community representatives, can be set up to be responsible for monitoring, issues identification and follow-up). Regardless of who has direct responsibility, it is a good practice expectation that the owner/operator of a mature hydropower facility will remain engaged with Indigenous communities through agreed mechanisms (see the Stakeholder Engagement criterion), on issues that evolve over time in relation to the hydropower operations and activities.

The plan will also outline the processes to be undertaken to monitor, report, evaluate, review and proactively respond to change, as well as plans for dealing with any ongoing unanticipated issues as they may arise. Adaptive management is an important part of managing potential impacts, and requires a review process of proposed measures to ensure that the objective is achieved. If this is not possible, additional measures will have to be formulated during the implementation of the plan. To facilitate adaptability, management plans should be flexible and not overly prescriptive. Third parties can have roles to play in adaptive management, including monitoring, evaluating progress, concurring that a course change is needed, and follow-up monitoring to ensure the objectives are met.

4.6.2 How to develop a plan for managing impacts

A management plan for issues of concern and relevance to Indigenous Peoples is sometimes referred to as an Indigenous Peoples Management Plan or an Indigenous Peoples Plan. The first step in developing this plan is to clearly state how the potential impacts – which the biophysical and socio-economic impact assessments identified as being of concern and relevance to Indigenous Peoples – will be managed. This information usually forms the bulk of the content of the plan. In addition to the typical inclusions in an ESMP, an Indigenous Peoples Plan would include components such as:

- the insight and input of local Indigenous Peoples, in order to understand sensitive natural features and social issues in proximity to the project, which could potentially be affected negatively or positively by project activities;

- the major activities, milestones and indicators related to Indigenous Peoples and their concerns;

- specific requirements for the major projects plans (e.g. Resettlement Plan, Biodiversity Action Plan, Environmental Health and Safety plans, Labour Management Plan), and as part of the overall Project Environmental and Social Policy;

- Indigenous Peoples' cultural awareness;

- processes and programmes to support communities in coping with change (e.g. rituals to celebrate the old and the new);

- a company Indigenous Peoples Policy, and specifications for employees on how to report or deal with Indigenous Peoples' concerns;

- specifications for primary suppliers and contractors on how to report or deal with Indigenous Peoples' issues;

- plans and arrangements to deal with the influx of construction workers, worker

accommodations and recreation time, and associated health and security issues; and

• educational, recreational and cultural support commitments.

4.6.3 How to provide positive opportunities

The Indigenous Peoples Plan should seek to maximise positive opportunities for the communities. The developer first needs to ensure that all negative project impacts are avoided, minimised, managed and compensated (the impact mitigation hierarchy), and then consider opportunities for additional benefits that go beyond the above. These positive opportunities can be embedded within impact mitigation, compensation, offsets, or benefit-sharing strategies and plans, and in general demonstrate the developer's intent to ensure that Indigenous Peoples are better off than before the development.

Positive opportunities can be achieved in various ways:

• Project design is modified to result in improved environmental parameters compared to pre-project (e.g. reduced sedimentation in forebay for drinking-water supply), or enhanced transportation (e.g. unpassable rapids made passable, or an access road routed to give the community enhanced access).

• Provision of infrastructure additions or improvements beyond those required by the project, such as enhanced road or water access, enhanced clean water or electricity supply, and improved schools, medical facilities and housing.

• Opportunities for business contracting on the project, during implementation or operation.

• Modification of construction practices and procedures to provide employment, training and capacity-building benefits. This is achieved through inclusion of training prior to and during the project, pre-construction employment, Indigenous preferences for employment and contracting, and direct negotiation of contracts with Indigenous contractors/suppliers. Similar

modifications can be made for the operation stage.

• Delivery of social programmes (e.g. educational, health, well-being).

• Livelihood improvement programmes.

• Provision of direct financial benefits (e.g. royalties, project equity returns, or cash payments other than compensation).

• Development of treaties or formal agreements to give greater security to the Indigenous Peoples over the long term.

• Improved policy or institutional capacities at the government level, to better address Indigenous issues.

> For example, the Nam Theun 2 case study aimed to lead the affected Indigenous Peoples out of poverty. It succeeded in doubling their pre-settlement income, and provided many other benefits (available at https://www.hydropower.org/indigenous-peoples).

The process for identifying and maximising opportunities would typically arise from a review of information during the impact assessment, from Indigenous community input and continuous engagement, and from consideration by topic experts. Establishing benefit-sharing mechanisms and providing these positive impacts are very likely to fundamentally change the affected Indigenous community. These community benefits may be a powerful tool to build trust, contribute to local development and reduce risks to the plan.

Initiatives that may involve relatively modest investments at the hydropower project scale may well be very important at the local community scale. In addition, modest investment during the early stage will consolidate the positive image of the developer, as well as testing, at a small scale, the effects of benefit-sharing activities. A number of examples are listed under the guidelines for Project Benefits and for Project-Affected Communities and Livelihoods, and any of these could be tailored specifically to fit the interests, rights, requirements and needs of the Indigenous Peoples in the project area. A full description of benefit sharing is provided

in the How-to Guide on Benefit Sharing, as well as in the IFC's *Capturing Hydropower's Promise: Volume 1 Guide to Local Benefit Sharing in Hydropower Projects*.

4.7 Achieving consent

4.7.1 Key issues and questions

As detailed in Section 2.2, under international human rights law and in the hydropower sustainability tools, Free Prior and Informed Consent (FPIC) is viewed as the objective of consultation with Indigenous Peoples, and entails more than a mere right to be informed and heard. The principles of consultation and consent are designed to build a dialogue in which governments, developers and Indigenous Peoples work together in good faith towards consensus, and try in earnest to arrive at a mutually satisfactory agreement.

Does 'Consent' give Indigenous Peoples a veto right on proceeding with a project?

The FPICs requirement does not provide Indigenous Peoples, strictly speaking, with an absolute veto power, but rather establishes the need to frame consultation procedures in order to make every effort to build consensus.

Typically, if there is no consent for a project which impacts Indigenous Peoples, the project will not meet the good practice requirements of a HSAP or HESG assessment. However, there could be an unusual and extreme situation where the developer can be demonstrated to have made every reasonable effort to reach consensus with the Indigenous Peoples following the best approaches and accommodations, with no significant residual negative impacts anticipated and with positive community benefits, but the Indigenous community refuses to enter into agreements and opposes the project. In this case, assessors would investigate with the community their reasons for opposing, and considering the principles of proportionality, would judge how to proceed with the scoring. Regardless of the scoring, if the developer decides to go ahead with the project, they will still bear the risks associated with Indigenous opposition and lack of 'social licence'.

Does 'Consent' require the unanimity of all community members?

In the case where a determination is made that FPIC is required, reaching agreement or getting consent does not require unanimity in the Indigenous community, nor does it grant individuals or groups veto rights over a project. For example, even in cases with overwhelming agreement and support for a project in an Indigenous community, there can still be opposition from individual community members or groups, despite FPIC being considered achieved.

Box 5: How to respond if anti-dam entities' activists lobby the Indigenous community

The potential benefits of hydroelectric developments can be viewed with a great deal scepticism and concern, both within and outside affected Indigenous communities. It is common for NGOs and others to involve Indigenous Peoples in raising awareness of these concerns through anti-dam campaigns. These efforts can be particularly problematic for developers when there is a legacy of past projects in the region, which may have proceeded with limited engagement with affected communities, undelivered commitments, or have caused major impacts that have been left unaddressed. A potentially affected Indigenous community needs to gain trust that the new development will minimise impacts, be respectful of the Indigenous Peoples and their needs, treat them fairly, deliver on promises, and overall, yield benefits to the community. The most effective approach for the developer to achieve this trust is to carefully follow the measures listed above, ensure that there is sufficient time for trust to be built, and to honour commitments made during the planning process. In extremely contentious cases where there is initially a high degree of distrust, use of a credible independent facilitator may be helpful.

Is 'Consent' always required from Indigenous People in the area of a project?

Ordinarily, consent for a project will not be required if the project impacts are not significant to Indigenous Peoples and do not pose risks to their rights. However, good-faith consultation is required and needs to be demonstrated for this determination.

Is 'Consent' always required for the whole project?

For projects not entirely within Indigenous territories, consent could be sought, at a minimum, over the portion of the project that will affect their rights, and not with respect to the entire project. For example, if the proposed hydropower project construction includes a borrow pit or road that might impact an Indigenous Peoples' sacred site, and there are no other perceptible impacts, then consultation be sought with the objective of achieving consent for the construction of that pit or road. At the level of good practice, other aspects of the project would not, necessarily, require consent from the affected community. (It should be noted that in a HSAP assessment and at the level of proven best practice (rather than good practice), consent is to be achieved for the entire project, irrespective of the principle of proportionality.)

Consent for the whole project proceeding is required when the project is substantially within the Indigenous territories and has a potential for significant impact on the rights of the Indigenous People. In addition, consent for the entire project is always required when the project will result in the community's relocation from its traditional territories, or in cases involving the storage or disposal of toxic waste within Indigenous lands.

4.7.2 How to achieve Indigenous Peoples' consent for a project

A developer may think that achieving consent from the Indigenous Peoples impacted by a project is formidable, involving great difficulties. There is no formula or prescription for achieving consent. The difficulty and likelihood of this outcome will vary by project and depend on the specific circumstances of the project. This guide provides throughout its

various sections a general approach to working with the Indigenous Peoples in a manner most likely to achieve consent. The following is a brief description of an overall approach which is likely to assist in achieving consent: some items have been discussed elsewhere in the guide and are included here for completeness and emphasis.

1. Throughout the process, interact with the Indigenous Peoples in an approach that is respectful, culturally appropriate, involves acting in good faith, and involves a two-way communication and consultation process that is mutually agreed upon. Be careful to directly and openly provide information on project plans, project impacts, options for accommodation, and potential benefits. It is critical to foster a positive relationship.

2. Start early in the project process: undertake preparation for the initial interaction, which preferentially should occur prior to any investigation or exploratory activity, to avoid starting with a negative reaction and bias.

3. To the degree feasible, involve the Indigenous community in a meaningful manner regarding decisions such as axis location; structural siting; road, quarry and transmission routing; impact assessment; management measures; operating plans; and community benefit arrangements. The less the project is presented as a fait accompli (i.e. as a fully decided-upon project with no flexibility on arrangements and timing) and the more the Indigenous Peoples understand that their concerns and input are being meaningfully addressed, the greater the likelihood they will consent as a community.

4. Provide the Indigenous community with a reasonable level of support for their internal processes, and enable them to access external expertise and capability when required.

5. Designate an internal project function or group dedicated to leading and coordinating the interaction with the Indigenous community. This group would be a consistent liaison and communication link with the community, and be available to the community to raise issues and maintain the relationship.

6. Indigenous Peoples frequently need more time than the developer expects, to undertake their internal community consultations and customary decision-making processes. Although project schedules are preferably as short as possible from the perspective of cost and meeting needs, it is usually helpful to give the Indigenous processes as much time as practically possible.

7. Follow the mitigation hierarchy and prioritise avoiding and minimising impacts, rather than mitigating and compensating.

8. To the degree that is practical, maximise the benefits to the Indigenous Peoples so that the project is an overall net benefit to the community (even if there still are undesirable negative impacts).

9. Provide enforceable commitments for the construction and operation stages regarding impacts and benefits, so that the community has confidence in the outcomes.

10. Consider utilising a consultation and negotiation process facilitated by an independent third party.

11. Ensure that the engagement and project negotiation strategy adequately assesses the degree of accommodation that will be required regarding community issues. A frequent difficulty is that projects inadvertently underestimate the degree of accommodation required, or deliberately understate anticipated accommodation requirements as a 'low ball' negotiating strategy.

12. Ensure that the project's resources to engage with communities are adequately supplied, sufficiently staffed, and have the required professional and relationships skills.

4.8 Demonstrating evidence of good practice, consent and agreements

4.8.1 Documenting Indigenous Peoples processes and outcomes

Documentation of the engagement process and outcomes regarding the Indigenous Peoples will assist the developer and operator in meeting the Stakeholder Engagement and Stakeholder Support criteria.

It is important that the developer maintains a complete, detailed and accurate chronological record of the entire consultation and engagement process, as set out in the initial Indigenous Peoples engagement plan and the implementation and operation engagement plans. Who holds the records is important to consider, as they need to be in a form that is easily retrievable by the communities into the future.

Record-keeping is about more than consultation records and grievance registers. The importance of record-keeping is often not recognised at the time of activity implementation, yet the records are highly important over time, when questions arise as to what exactly was committed to, and to what standard or extent. If there is a commitment to, for instance, building a road or a school for an

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Box 6: Sharing a What-You-Told-Us Document

One approach for sharing the consultation record is to prepare a special document specifically for the purpose of soliciting such feedback (these documents are sometimes called 'What You Told Us'). The community understands that the consultation is being recorded and that at some appropriate later date the record will be shared with the community for the express purpose of verifying that the record is accurate, and so they are aware of what the developer understands from the consultation. This strategy assists in building mutual confidence in the process and shared trust. The contents of the document would include the various types of information described above in this section.

Indigenous community, then as well as records of engagement on these commitments, the design, size, capacity and standard of the benefit should be well documented and signed off as agreed. Appropriate authorities need to approve the standards for built infrastructure, and confirm that it was delivered as per the design. Community asset designs and final inspections should all be properly labelled, signed and dated, as clearly indicated in as-built drawings.

Records specifically documenting consultation should include all efforts to (successfully and unsuccessfully) engage, documenting:

- which community representatives and members were consulted;

- what information was provided to and received from the community;

- what issues the communities raised; and

- how the developer responded.

Examples of information provided to the communities might include:

- notification letters and confirmation of receipt of delivery;

- meetings attendance lists;

- a copy of the plain-language package that may include presentations, maps, website info, newsletters; and

- a copy of the completed record of consultation log sent to each Indigenous community following the engagement process.

Information received from the community should also be recorded. This may include verbal comments, letters, reports, emails, registers of calls and issues, etc. Letters of no concern from communities who are not affected would also be recorded.

This information assists the developer in ensuring that the consultation was sufficiently thorough, with follow-ups being undertaken as appropriate, and provides a body of material to draw upon

when undertaking the studies and developing the management and monitoring plans. The records also assist in demonstrating to the communities what transpired during the consultations if disputes occur, and provide evidence to regulators and others that the consultation was adequate. Such evidence is necessary for assessments under the HSAP and HESG sustainability assessment tools. Such records work in a complementary manner with records of commitments and their implementation, such as the compliance matrix.

Consultation records can also include information such as:

- gender, age and livelihood of the members;

- membership in community sub-groups;

- timing;

- location;

- type of engagement (workshop, open house, meeting, etc.);

- information regarding the notifications of sessions;

- names of Indigenous representatives notified;

- methods of notification; and

- details of the contact or attempt to contact, e.g. no response, details of conversation (issues discussed or issues raised), or any other type of response.

One approach to documenting Indigenous engagement is to prepare a consultation report describing what has been done, and including a comprehensive record of consultation. The report should describe how the engagement was implemented. The records of consultation should include summaries of the entire range of engagement processes, such as community consultation meetings, public hearings, documentation shared, newsletters, written and verbal feedback from the community, etc. Given that basic good practice in engagement requires two-way engagement and consultation, the records should provide two-way examples. These could

include changes in the plans or designs (if this is relevant to the issues raised), or the incorporation of issues raised in the ESIA, showing how those have been considered.

Records of consultations can take diverse formats, depending on the activities set out in the initial engagement plan for the preparation phase. Records of consultation are best prepared concurrent with the consultation meetings or immediately afterwards, so that the meeting's discussion and feedback is accurately captured. Assistants may be asked to sign a participants list that is added to the records. Timely preparation of the record can assist in planning the next stages of work and undertaking follow-up by communicating Indigenous issues/concerns raised to the developer, to ensure that these issues/concerns are considered. Such follow-up can be triggered because it was requested by the community, agreed to in the meeting, or decided by the developer after the meetings, based on the meeting outcomes.

A technique that is frequently useful in ensuring the accuracy of records and greater buy-in from the communities is to share the records in some manner with the communities, for their review and feedback regarding accuracy and completeness. Other mechanisms for information exchange (e.g. newsletters, websites) should also include feedback mechanisms to contribute to the record. Such a review or feedback process can at times assist in clarifying and resolving issues, or at other times in identifying issues that the developer or operator thought were resolved, but in fact are not. Indigenous perspectives on a development may also assist in the tailoring of methods for subsequent rounds or engagement events with the specific community.

A compliance matrix, or an Environmental–Social Register or equivalent, is another important and commonly used constituent in demonstrating international good practice. It is a concise matrix that captures the formal commitments and expectations of all involved stakeholders (e.g. government, Indigenous Peoples, the developer or operator), forms the framework for delivery of all management plan actions, underpins monitoring programmes, and documents any other matters that must be demonstrated to have been fully met. It summarises the distribution of

responsibility among stakeholders. It is applied as a legal, monitoring and communication document at all phases of the project, and is continually updated. Evidence of adherence to commitments could be obtained through, for example, internal monitoring and reports, government inspections, expressions of community support and acceptance, or independent review. Variations to commitments should be well justified, documented, and approved and agreed by the Indigenous Peoples or by relevant authorities

4.8.2 Demonstrating consent and agreement

The FPIC outcome is the agreement or set of agreements, and thorough documentation of how the agreement was achieved. As described in Sections 3.2.3 and 3.2.4, consultations and negotiations should be undertaken in good faith. The process on how to engage with the Indigenous Peoples to achieve such agreements is discussed in Sections 4.4 and 4.7.2.

Agreements are a recorded understanding between the developer and the Indigenous communities or other agreed entities. A formal agreement is one in which the commitments are recorded, documented, witnessed and publicised, with mutual parties present and fully engaged.

The evidence for expression of stakeholder support could include the following: community surveys, signatures on plans, records of meetings, video/audio records, public hearing records, public statements, court decisions, etc. The evidence may also be in the form of a contract, a Memorandum of Understanding, a letter of intent, minutes of a meeting, a joint statement of principles, or an operating licence granted by a relevant regulator with the legal mandate to represent Indigenous Peoples, or with the direct involvement and support of the Indigenous Peoples.

Given that Indigenous Peoples have cultures, traditions and languages different from the mainstream population and often have high rates of illiteracy, special consideration must be given to accepting a variety of forms of evidence to confirm support. Recollections of community elders can be accepted as evidence, but would need

supplementary forms acknowledged by and easily accessible to the counterparties to the agreements. Important records of agreement can be in the forms of photos with thumbs up, photos of handshakes, thumbprints on documents witnessed and signed by community leaders, etc.

A very clear evidence of support would be a statement of consent, support, concurrence or commitment to not oppose the project, or a statement that a community feels overall better off with the project than without it. This could, for example, be in a formal impact–benefit agreement, a consent agreement or other project agreement, or in the form of a verifiable statement by legitimate community representatives.

Any agreements with Indigenous Peoples need to be signed off in some manner by legitimate representative(s) of the community. The community representative must be someone selected by and confirmed by the community in a legitimate process. The legitimate representative need not be a community member, and can be someone such as a legal representative elected or designated by the community (see Section 4.4.2). The signing off can consist of physical signatures on the documents, or by some other verifiable means. For example, witnessed fingerprints are valid if the Indigenous Peoples' representatives cannot write and this approach is accepted by the other signatory parties.

Negotiation of the agreements requires the involvement of those involved with the plans, and often the assistance of experienced facilitators, mediators and lawyers. It is best if such expertise is available to both the developer and the Indigenous communities, given the challenges in understanding legal documents. The developer should support the Indigenous Peoples' need for such expertise if they cannot do so.

The agreements should be publicly disclosed. Public disclosure involves the public being informed that the agreement has been reached, and the agreement is made available through some form of document distribution, or by public posting or upon request. Exceptions for portions of the agreements could include proprietary information, commercially or financially sensitive information, personal information, or Indigenous knowledge. For example, an agreement with a family which

includes personal information would not need to be publicly disclosed. The developer should be able to demonstrate the legitimacy of the reasons for non-disclosure. The process for the publication of agreements and dissemination of information can be contained in the relevant agreement or engagement plan. This requirement could be fulfilled with a process that enables Indigenous Peoples and key stakeholders to access the agreements, and culturally appropriate activities and materials to present the contents of the agreement (e.g. presentations, focus groups, community meetings).

4.8.3 Structuring of agreed arrangements between the project and the Indigenous Peoples

The comprehensiveness, complexity and form of the arrangements between the Indigenous Peoples and the project, and the associated agreements, will depend on the circumstances. These include factors such as the significance of impacts, number of Indigenous communities and individuals, preferences of the Indigenous communities, willingness and ability of the developer, precedence in the region, and national laws and regulations. The overall arrangements between the project and the Indigenous Peoples can be structured in various ways, such as:

*   **Process and Monitoring Agreement**. This is an arrangement in which Indigenous Peoples and the project agree on a process of consultation, issue-raising and monitoring of potential impacts, but in which it is anticipated that there are no expected discernible impacts on the Indigenous Peoples. Should the monitoring indicate the presence of an unexpected impact, the arrangement would include a process for dealing with the issue.

*   **Impact Management Agreement**. This is an arrangement in which there is agreement on the engagement process, and on what the Indigenous impacts are and how they are to be managed.

*   **Impact Management and Benefits Agreement**. In addition to the above, this

enables benefits from the project to be made available to the Indigenous Peoples. These benefits could include those inherently associated with a project, such as enhanced transportation access to the communities, but more importantly would include benefit sharing, in which the project undertakes proactive measures to provide a range of potential benefits.

*   **Impact Management and Benefits with Process Co-management Partnership**. In addition to the above, this enables the process of consultation, Indigenous Peoples' impact assessment, mitigation and benefit sharing to be undertaken as a partnership or collaboration between the project and Indigenous Peoples, with the Indigenous Peoples having a major role in such partnership activities.

*   **Project Co-ownership and Co-management Partnership**. In addition to the above, this involves the Indigenous Peoples' more direct role in the management of the project itself, and in the distribution of the project's benefits. This arrangement could include some form of joint ownership by the community of the project, and a role for the community in the governance and operation of the project. This may or may not require any direct financial investment by the community. The direct provision of benefits from the project to the Indigenous Peoples community occurs through means such as:

    –   Royalty payments that are fixed or varying over time.

    –   Royalty payment based directly or indirectly on production from the project, or its use of water.

    –   Share of gross or net income from the project. Some regulatory contexts require hydropower projects to pay royalties from the start of the operation phase. This may or may not require an agreement with the Indigenous Peoples community on how the royalties will be used. This regulatory royalty system should demonstrate that royalties (or part of them) are reinvested in the Indigenous Peoples communities, to be considered as benefits.

–   Preferential access for the Indigenous community or its members to purchase common or preferred shares in the company holding the project. This may involve discounted prices for the shares, risk reduction measures, or favourable financing arrangements. An example is Nepal, where local communities' preferential access to shares is a national legal requirement.

> The case study of the Hydro-Québec project Eastmain-1-A/Sarcelle/Rupert Hydroelectric Project is an example of an Impact Benefits Agreement covering the Preparation, Implementation and Operation Stages of the project (available at https://www.hydropower.org/indigenous-peoples).

The Process and Monitoring type of arrangement is uncommon, but can occur when the Indigenous Peoples are on the periphery of the project and they have concerns about potential risks which the project expects will not occur. Impact Management structures are increasingly unlikely and have been overtaken by Impact Management and Benefit structures, due to the currently prevalent expectations and requirements that projects should not only prevent and mitigate impacts, but also provide benefits.

A more comprehensive arrangement that involves some form of partnership and collaboration should satisfy a broader range of Indigenous Peoples' priorities, such as having a role in and influence on activities and processes that affect them. This would be in addition to and potentially complement other priorities, such as the prevention and mitigation of impacts, community infrastructure and services improvements, employment, training and business opportunities. In addition, the element of partnership and collaboration tends to give the Indigenous Peoples greater confidence and trust in the outcomes.

4.9 How to develop a monitoring plan

A monitoring plan is required by the Hydropower Sustainability Tools for the implementation and operation stages, and it is recommended to plan for it during preparation.

Monitoring plans are required to determine whether identified biophysical and socio-economic impacts occur as predicted in the assessments, whether they are more or less severe, and whether there are additional impacts. Monitoring results will indicate whether management measures are effective. This will require a review or evaluation process of collected monitoring information.

The monitoring plan and management plan should be undertaken in the context of adaptive management, wherein outcomes during implementation and operation are monitored, and measures are taken or modified if required when the outcomes differ from those predicted (see Section 4.6.1). Either the management plan or the monitoring plan should specify the adaptive management processes.

Monitoring plans provide arrangements to monitor key parameters which were identified in the assessment phase as being particularly important and/or uncertain. Monitoring and adaptive management planning are especially useful for situations where there are differences between the developer and community's understandings and expectations of future impacts, or the effectiveness of management measures.

The Jirau Case Study is an example of where impacts on the Indigenous Peoples are not expected from a project, but monitoring is undertaken (with the involvement of the Indigenous People) during the implementation and operation stages to evaluate whether this expectation is accurate (available at https://www.hydropower.org/indigenous-peoples).

The plans should identify the monitoring indicators or parameters and targets; the time span for the monitoring; its frequency, location, monitoring technique, responsibilities, measurement metrics and possibly criteria for acceptability; and costs. For example, the project could monitor how many Indigenous Peoples benefit from employment by the project. Records would be updated on a monthly basis and show whether any employment targets have been reached.

Two examples of adaptive management are provided in the Wuskwatim project. Water quality, particularly total suspended solids

(TSS), was monitored downstream during construction of the cofferdams. If the TSS had been measured as above the acceptable level, the cofferdam construction techniques would have been modified to reduce the entry of TSS. A second example concerns a difference between the predictions of scientists and Indigenous knowledge as to whether the project would affect caribou, a local mammal species. It was agreed with the local Indigenous Peoples that this difference would be managed by monitoring the caribou, and if impacts began to occur, additional measures would be undertaken to prevent the impacts (available at https://www.hydropower.org/indigenous-peoples).

It is good practice to include in the plan provisions to periodically analyse and report on the results of monitoring. This will help the development team to evaluate whether the measures are effective or whether additional measures are required. Development of the monitoring plan should be closely coordinated with the management plans. It is also good practice to monitor and record grievances, which can be done, for example, by preparing an Excel log of queries information such as the date received, contact person, description of complaint, who followed-up and when, action undertaken, whether the issue is closed or pending, and date and method of communication back to the complainant on the resolution and closure.

4.10 Responding to issues and grievances

Basic good practice requires processes that enable Indigenous Peoples to raise issues and get feedback. This will require implementing ways to hear community concerns and handle grievances and complaints during preparation, implementation and operation. The mechanisms to be employed in the preparation phase should usually be described in the initial Indigenous Peoples engagement plan. Plans for implementation and operation should also describe the mechanisms to be used.

There are issues and grievances that are heard in the preparation stage as a result of working together through the engagement plan, and later there are issues and grievances that arise at

the work site during construction and operation. There may be queries that require input from third parties or specialists preparing the studies. Where a grievance is passed to a third party for resolution, it is important to recognise that the ultimate responsibility for grievance resolution lies with the developer or operator (or government, in cases that are clearly specified in a grievance procedure), including such cases where the third party fails to reach an acceptable resolution.

Some particularly important considerations related to Indigenous Peoples' grievances include:

- Mechanisms to raise concerns and resolve complaints and grievances should be designed and agreed with the involvement of the Indigenous Peoples, to ensure they are culturally appropriate.

- Ways for Indigenous Peoples to raise concerns and complaints should be well chosen and ensure ease and comfort of access, e.g. complaint boxes at strategic locations, such as at dedicated community offices, local authorities' offices or main project offices; telephone hotlines; regular visits of project staff to communities; postal and online grievance filing forms.

- Regular and ad hoc face-to-face meeting opportunities for raising issues and concerns can be helpful in any stage of a project.

- Issues and resolutions should be disclosed to potentially affected communities in ways that are readily accessible and understandable, considering language, culture, etc. This can be in the form of leaflets, website links, posters in administrative offices and public places, community information boards, etc.

- The mechanism may need to provide legal or other supports to help the Indigenous People understand the issues and responses.

- Mechanisms should offer confidentiality options and the option to hold discussions with someone of the same gender.

- The mechanism should involve a two-way process to ensure that the Indigenous People

are aware of and, preferably, accept the resolution of a grievance being resolved and closed.

- Clear frameworks for what is a legitimate grievance, and how and to whom (developer, government) it is raised, need to be established and agreed with the community through their leaders/representatives and with government. This will create a consistent and trustworthy process, and reduce the risk of a grievance mechanism being used as an endless welfare request avenue.

It is good practice to identify a central point for coordination of the system that facilitates the development and implementation of the grievance mechanism, administers its resources, and redirects queries or concerns to specialists if required. This function requires dedicated resources and a budget. This central coordination point could also be an ongoing liaison function for the implementation and operation stages. There may be a tendency for operators to be less focused on contact with the community during construction and operation, compared to the preparation stage. Hence, a schedule of minimum contact is useful to counteract this. At least during the construction stage, a liaison officer should be present at the job site.

4.11 A checklist for building trust and a shared vision of the future with Indigenous Peoples

The characteristics of a successful relationship with Indigenous Peoples when developing a hydropower project are:

- **True good-faith negotiations**: Effective engagement requires good-faith negotiations on the part of both the project and the Indigenous communities. Both sides need to be respectful of each other, listen, make key concessions and follow through on commitments, which builds mutual respect and trust.

- **Communicate regularly**: Regular interactions between the project and Indigenous Peoples, through formal and informal channels, assist in cultivating a strong relationship.

- **Recognise and bridge cultural differences**: Project staff and Indigenous Peoples generally have major cultural differences which need to be bridged by both sides. Project processes need to respect the culture, including through cultural awareness training, use of language, appropriate communication materials, consultation and decision processes and timelines, mitigation measures and benefits. The process and outcomes should respect the Indigenous Peoples' spiritual and social priorities, as well as their economic and environmental ones. Staff, consultants and contractors must have a strong awareness of the cultural issues.

- **Do not put all Indigenous Peoples in the same box**: Depending on factors such as their marginalisation, vulnerability, legal recognition, and size, the project impacts on Indigenous Peoples will vary. The principle of proportionality should be applied, taking the local context, scale and proportion into account.

- **Adopt a Human Rights-based approach**: Depending on the country of implementation, the legal recognition and level of protection of Indigenous Peoples by the government may vary significantly. A strong legal-based approach recognising both international (ILO169) and national law will facilitate the process and commitments with governments. A project agreement or a Resettlement Action Plan or some other form of agreement can improve the legal recognition of Indigenous Peoples through formalising ownership, access and/or use of natural resources.

- **Inclusive community representation**: Encourage community representation in negotiations and consultations that is broadly representative of community elements, such as elders, women, young people, resource harvesters, farmers, breeders, and more marginalised sub-groups.

- **Align interests**: Indigenous Peoples will more readily support the project if it aligns with their interests, such as environmental protection and mitigation, compensation, employment and business opportunities, infrastructure enhancements, long-term benefits, community health, and a role in the issues that affect them. Indigenous Peoples will engage and collaborate if the project assists in solving their problems.

- **Early engagement and alignment with communities**: Consult with and obtain input from communities, beginning early in a new project. Early consultations result in better alignment with community priorities and concerns, but require expectation management.

- **Do not start any exploratory activity prior to first contact**: In many cases, for entry into the Indigenous People's territory, an authorisation from the Indigenous community is necessary.

- **Invest the necessary time and money**: Indigenous community processes typically involve comprehensive internal consultation and are consensus-oriented, involve long time-frames, and frequently require external support and community capacity-building. The project needs to accommodate the necessary time requirements and provide financial support for external experts and facilitators, as well as building the community's capacity to engage effectively in the process and implement measures and programmes.

- **Invest in mixed-cultural understanding**: Start in the early stage to build and improve project staff and contractors' relationships with the Indigenous Peoples. Do not be limit this approach to Indigenous Peoples' representatives, anthropologists, sociologists or consultants, but extend it to project management, field staff, workers and subcontractors.

- **Consider using independent facilitation**: Many Indigenous communities do not have an autonomous government structure, nor the experience or capacity required for the engagement process. Capacity building may not be sufficient, and use of a credible independent facilitator could be of major assistance. Facilitation could be provided by a local/national Indigenous organisation or NGO, or an Indigenous issues expert or firm teaming up with national Indigenous scholars or experts.

- **Project developer's senior management support**: Middle management must be empowered to engage in the negotiations without having to continually resort to obtaining guidance or approvals during the negotiations, or to resolve issues. Continuity of project and Indigenous community staff is a major asset.

- **Monitoring and measuring results**: Ongoing monitoring of outcomes and careful implementation of a grievance process enables adaptive management if the plans and programmes are not working, or if circumstances change.

- **If there are legacy issues, deal with them upfront**: Acknowledging issues from previous projects or from earlier in the process will help to lay a foundation of trust. This in turn will foster a positive relationship, which is important for reaching a mutually acceptable arrangement and agreement.

The characteristics of successful engagement between Indigenous Peoples and a project when operating in the long term:

- **Adopt a long-term perspective**: Aim for a long-term, positive ongoing community and stakeholder relationship (not just during problem periods).

- **Continue communicating regularly**: Regular interactions through formal and informal channels will assist in resolving issues that arise, and maintain support for the project.

- **Follow through on commitments**: Be careful to follow through on all the various commitments and monitor implementation, to maintain the relationship with the community and the project's social licence.

- **Address feedback and grievances**: Address grievances in a timely manner and ensure issues are resolved, especially those associated with concerns that commitments are not being met, or new and unexpected issues.

5

Conclusions

This How-to Guide has provided an overview of the international good practice approach taken by developers when developing or operating a project which may impact the rights of Indigenous Peoples.

As communities that are often among the most marginalised and vulnerable segments of the population, Indigenous Peoples historically have been disadvantaged and maltreated by a wide variety of activities and projects, including hydropower projects. There is an increasing recognition that Indigenous Peoples have special individual and collective rights and interests. This guide introduces and explains a right unique to Indigenous Peoples, that of Free, Prior and Informed Consent (FPIC), and details how a project can meet the good practice requirement for Indigenous Peoples' consent.

This guide describes the good practice requirements for each life-cycle stage of a hydropower project, and provides approaches and suggestions on how to meet these requirements. While a major element of these approaches is for the project developer and operator to form a respectful relationship and engagement with the Indigenous Peoples, good practice also requires project actions that clearly protect the rights of the Indigenous Peoples and provide a series of specified outcomes.

Project developers and operators need to be aware of and sensitive to the fact that Indigenous Peoples' situations, characteristics and requirements vary greatly from area to area. There is no standardised approach that applies in all circumstances. The guide provides a variety of approaches and suggestions to help projects customise their approach to the individual communities impacted. Two guides developed by other organisations, which also provide excellent approaches and suggestions regarding the interactions between resource projects and Indigenous communities, are RESOLVE's "The Practice of FPIC: Insights from the FPIC Solutions Dialogue", and ICMM's "Good Practice Guide: Indigenous Peoples and Mining".

The good practices outlined in the guide will help to ensure that hydropower is a resource that protects the rights of Indigenous Peoples, enhances their economic and social well-being, and ideally leads to Indigenous Peoples seeing hydropower as being positive and welcome in their lives.

Annex 1
Bibliography

Boakye, B, Cascadden, M, Kuschminder, J, Szoke-Burke, S & Werker, E (2018). *Implementing the Ahafo Benefit Agreements: Seeking Meaningful Community Participation at Newmont's Ahafo Gold Mine in Ghana*. Canadian International Resources and Development Institute (CIRDI) Report. 2018-003 (https://cirdi.ca/?research=implementing-the-ahafo-benefit-agreements-seeking-meaningful-community-participation-at-newmonts-ahafo-gold-mine-in-ghana)

Brown, M & Robertson, K. *Benefit Sharing Agreements in British Columbia: A Guide for First Nations, Businesses, and Governments*. http://www.woodwardanddeveloper.com/wp-content/uploads/pdfs/4487_benefit_sharing_final_report_-_updated.pdf

Forest Peoples Programme (2017). *A Community Guide to IFC Performance Standard 7 on Indigenous Peoples*. https://www.forestpeoples.org/sites/default/files/documents/ifi-ps7-english-web_0.pdf

Gibson, G & O'Faircheallaigh, C (2010). *Impact Benefit Agreement (IBA) Community Toolkit*. Walter & Duncan Gordon Foundation. https://namati.org/wp-content/uploads/2015/05/IBA_toolkit_March_2010_low_resolution.pdf

IAIA (International Association of Impact Assessment) (1999). *Principles of Environmental Impact Assessment Best Practice*. https://www.iaia.org/uploads/pdf/PrincIndigenous Peopleles%20of%20IA%2019.pdf

IAIA (2012). *Respecting Indigenous Peoples and Traditional – International Best Practices, Knowledge*. https://www.iaia.org/uploads/pdf/SP9_Indigenous_Peoples_Traditional_Knowledge.pdf

IAIA (2013). *International Principles For Social Impact Assessment*. https://www.iaia.org/uploads/pdf/IAIA-SIA-International-Principles.pdf

IFC (2012). *Performance Standards and Social and Environmental review Procedures – Standard 7 – Indigenous Peoples*: IFC. https://www.ifc.org/wps/wcm/connect/3274df05-7597-4cd3-83d9-2aca293e69ab/PS7_English_2012.pdf?MOD=AJPERES&CVID=jiVQI.D

IFC. (2009). *Addressing Grievances from Project-Affected People*. Good Practice Note Number 7. September 2009. Washington, D.C.: IFC. https://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/sustainability-at-ifc/publications/publications_gpn_grievances

IFC (2007). *Stakeholder Engagement: A Good Practice Handbook for Companies Doing Business in Emerging Markets*. Washington, D.C.:IFC. https://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/sustainability-at-ifc/publications/publications_handbook_stakeholderengagement__wci__1319577185063

IFC (2020). *Capturing Hydropower's Promise: Volume 2 Case Studies on Local Benefit Sharing in Hydropower Projects*. https://commdev.org/publications/capturing-hydropowers-promise-case-studies-on-local-benefit-sharing-in-hydropower-projects/

IFC (2021). *Capturing Hydropower's Promise: Volume 1 Guide to Local Benefit Sharing in Hydropower Projects*. https://commdev.org/publications/capturing-hydropowers-promise-case-studies-on-local-benefit-sharing-in-hydropower-projects/

IFC (2018). *ESIA AND CIA Cumulative Impact Assessment Workshop*. https://www.ifc.org/wps/wcm/connect/27b8fefd-d95b-41a0-9cde-206b4bdaf92d/2.+EIA+and+CIA+Nepal+Workshop_Alonso.pdf?MOD=AJPERES&CVID=m4Em1BC

IFC. (2017). *Environmental and Social Impact Assessment Guidelines for Hydropower Projects in Myanmar*. https://www.ifc.org/wps/wcm/connect/f6ee0e54-469e-435f-95ea-3e03a6c94ef2/Myanmar+HPP+ESIA+Guidelines+V8+for+consultation.pdf?MOD=AJPERES&CVID=lPFz09i

IFC. *Good Practice Handbook on Cumulative Impact Assessment Six-Step Approach*. https://www.ifc.org/wps/wcm/connect/032d12a4-33c9-4da1-bd95-8288f740eb4f/3.+GPH_Steps_Cardinale.pdf?MOD=AJPERES&CVID=m4EmBvU

IHA (2012). *Jirau Assessment*. https://www.hydrosustainability.org/published-assessments/jirau

IHA (2019). *Hydropower How-to Guide on Benefit Sharing*. https://www.hydropower.org/publications/hydropower-benefit-sharing-how-to-guide

IHA (2020). *How-to Guide on Hydropower Resettlement*. https://www.hydropower.org/publications/how-to-guide-hydropower-resettlement

IHA (2020). *Hydropower Sustainability Assessment Protocol*. https://www.hydrosustainability.org/assessment-protocol

IHA (2020). *Hydropower Sustainability Environmental, Social and Governance Gap Analysis Tool*. https://www.hydrosustainability.org/esg-tool

IHA. *Hydropower Sustainability Guidelines on Good International Industry Practice*. https://www.hydrosustainability.org/hydropower-sustainability-guidelines

International Council on Mining and Metals (2010). *Good Practice Guidance on Health Impact Assessment*. https://www.icmm.com/en-gb/guidance/health-safety/health/guidance-hia

International Council on Mining and Metals (2015). *Good Practice Guide: Indigenous Peoples and Mining*. https://www.icmm.com/website/publications/pdfs/social-and-economic-development/9520.pdf

International Working Group for Indigenous Affairs (IWGIA) (2014). *Land Rights of Indigenous Peoples in Africa*. https://www.iwgia.org/images/documents/popular-publications/land-rights-of-indigenous-peoples-in-africa.pdf

Lawyers' Association for Human Rights of Nepalese Indigenous Peoples (2020). *Free, Prior, And Informed Consent Protocol By Communities Affected By The Eib Funded 220 Kv Marsyangdi Corridor In Nepal*. https://www.iwgia.org/images/publications/new-publications/2020/FPIC_protocol_Nepal.pdf

Nisichawayasihk Cree Nation. (1996). *Northern Flood Implementation Agreement*. https://www.ncncree.com/about-ncn/our-history/northern-flood-agreement/

Podlasly, M & von der Porten, S (2019). *The Role of Indigenous Peoples in Major Project Development: Paths for Indigenous Participation in Electricity Infrastructure*. First Nations Major Project Coalition. https://static1.squarespace.com/static/5849b10dbe659445e02e6e55/t/5d279f23bfceb4000114c6ff/1562877756904/MPC+-+Final+v.11.pdf

RESOLVE (2021). *The Practice of FPIC: Insights from the FPIC Solutions Dialogue*. http://www.fpicdialogue.org

UNICEF (2014). *Overview: Data Collection and Analysis Methods in Impact Evaluation*. https://www.unicef-irc.org/publications/pdf/brief_10_data_collection_analysis_eng.pdf

World Bank (2017). *Better hydro: Compendium of case studies* (Especially case study 13. Indigenous Peoples). Keeyask, Canada. http://documents.worldbank.org/curated/en/247261519658051630/pdf/Better-Hydro-Compendium-of-Case-Studies-2017.pdf

World Bank (2018). *Environmental & Social Framework for Indigenous Peoples Operations ESS7: Indigenous Peoples/ Sub-Saharan African Historically Underserved Traditional Local Communities*. http://documents1.worldbank.org/curated/en/972151530217132480/pdf/ESF-Guidance-Note-7-Indigenous-Peoples-English.pdf

Annex 2

Project examples

From assessments using the Hydropower Sustainability Assessment Protocol

Project	Assessment	Management	Stakeholder engagement	Compliance
Jirau 3,750 MW Implementation stage Brazil	Indigenous territories are located significant distances away from the Jirau project, and will not experience direct impacts of the project, so the identification of issues with free, prior and informed participation was not warranted for the EIA study. The risk of induced impact on indigenous territories will be monitored through the emergency plans being implemented under the Support Program.	Measures for issues that may affect Indigenous Peoples have been developed with extensive participation of indigenous communities. Participation has met the requirements of 'free, prior and informed consent': discussions have been held freely; discussions have been held prior to the implementation of the emergency plans and development programs; and indigenous leaders and community meetings are informed on the project and the support program.	Feedback provided in the working group meetings is immediate and thorough. The support program developed to address the risk of indirect impacts on indigenous territories directly concerns indigenous groups.	The project is in compliance with the requirements of the International Labour Organisation Convention C169 concerning Indigenous and Tribal Peoples, which Brazil ratified in 2002.

Project	Assessment	Management	Stakeholder engagement	Compliance
Kabeli-A 37.6 MW Preparation stage Nepal	The social studies identified Indigenous Peoples in the project area, assessed their social, economic, cultural and institutional characteristics, sensitivities and vulnerabilities, analysed their interests, attitudes and expectations, and developed mitigations to address project-induced impacts.	The Social Action Plan (SAP) includes processes to anticipate and respond to emerging risks and opportunities during the implementation, including four rounds of consultation for SAP implementation, monitoring and evaluation, and assigned social staff on site as well as a grievance mechanism. The IVCDP stipulates that a detailed implementation plan will be developed jointly with the Indigenous Peoples.	Meetings gave the opportunity for affected Indigenous Peoples to raise issues and concerns on how the project may affect them, and propose ideas for how to mitigate those effects; many of those recommendations have been incorporated into the SAP.	Major negative impacts on the community are related to land acquisition, loss of forest, loss of fishing, construction-related impacts, impact to cremation activities and cultural-heritage sites. Programmes described in the management section will address these impacts. The IVCDP will promote employment and livelihoods of the affected Indigenous Peoples through various programmes.

Project	Assessment	Management	Stakeholder engagement	Compliance
Keeyask 695 MW Preparation stage Canada	The involvement of the project affected First Nations described above under basic good practice has been undertaken with the free, prior and informed participation of the Keeyask Cree Nations themselves as evidenced by their own Environmental assessments and the co-operation as parts of the Keeyask Hydropower Limited Partnership (KHLP) in all project planning. The KCNs' own assessments focus on their spiritual attachment to "Askiy", the word used to describe all animate and inanimate parts of nature, their interrelatedness to each other. Everything and everyone on Askiy is sacred, a fact that governs the Cree approach to resource management.	The Adverse Effects Agreements (AEAs) contain programmes for e.g.: resource-access (e.g. access to fish from water bodies unconnected to the Nelson river); community and commercial centres; Cree language; land/environmental stewardship; gravesite restoration; traditional life/knowledge (e.g. wilderness access for youth, school programmes etc.); crisis centres and counselling services; oral histories and cultural sustainability. There is some variation between the individual AEAs, responding to each First Nation's priorities.	Feedback has been thorough and timely throughout the process, exemplified by e.g. the summaries of rounds 1 and 2 of the Public Involvement Programme (PIP) on the partnership's web site and examples of communication given in the EIS. In the KCN, the future-development teams provide the most direct feedback mechanism. The Joint Keeyask Development Agreement (JKDA) contains a well-defined dispute-resolution process.	The range of programmes have been identified in close co-operation with the project-affected indigenous communities and respond well to their concerns and priorities. The opportunities in training, employment and business have a high probability of creating a net positive impact on the concerned communities. In the long term, the AEAs and mitigation programmes will help strengthening the KCN culture, traditional knowledge and practices.

Project	Assessment	Management	Stakeholder engagement	Compliance
Teesta-V 510 MW, Operation stage India	The intensity of socio-cultural, economic and health impacts was predicted for seven different work areas of the project, based on factors such as man-months of culturally different workers, proportion of indigenous people, and previous exposure. Opportunities for employment and contracting with the project were expected to be more relevant for Nepalis, while Lepcha and Bhutia could run the risk of losing Nepali labourers on their farms.	There are no rules for preferential treatment of Indigenous Peoples in this regard, and their requests are handled through the regular channels, which allow for free, prior and informed participation.	Indigenous people themselves select priority projects to be requested from NHPC. One indigenous group (Save Dzongu) has issued a 'ban' on villages accepting grants from NHPC, as part of its opposition to hydropower projects; however this does not seem to affect relations with indigenous groups in the Teesta-V area of influence.	Because some commitments may have been made verbally or formulated vaguely, however, it is difficult to determine with certainty that all of them have been kept by NHPC.
Trevallyn 96 MW Operation stage Australia	Identification of issues affecting Aboriginal people is managed through Hydro Tasmania's companywide Memorandum of Understanding with the Tasmanian Aboriginal Land and Sea Council (TALSC). TALSC responded to a survey carried out as part of the Cataract Gorge review. A broader range of organisations were consulted during the preparation of the Cataract Gorge Conservation Management Plan and a questionnaire survey undertaken.	Hydro Tasmania agreed a Memorandum of Understanding with TALSC in 2007, and communicated this publicly in Hydro Tasmania's cultural heritage programme newsletter, which is distributed to external stakeholders and available on Hydro Tasmania's external website.	Hydro Tasmania has links with the Tasmanian Aboriginal Centre, through they are not formalized. These organisations are consulted with as part of Hydro Tasmania's broader stakeholder consultation processes.	Processes and objectives concerning Trevallyn's impacts on aboriginal heritage are in place.

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