**Joint submission on the “Development of the GCF’s Environmental and Social Safeguards, Stage 3 – Proposed ESS Standards, full draft”**

On behalf of the following organisations:

* **Indigenous Peoples’ International Centre for Policy Research and Education - Tebtebba Foundation**
* **Center for the Indigenous Peoples Autonomy and Development - CADPI**
* **Nepal Federation of Indigenous Nationalities - NEFIN**
* **Pastoralists Indigenous Non Governmental Organisations’ Forum - PINGO’s Forum**
* **International Work Group for Indigenous Affairs – IWGIA**
* **Forest Peoples Programme**

*27 November 2022*

Submitted by:

Full name: Stefan Thorsell

Title/Position: Climate Advisor

Organization/Affiliation: International Work Group for Indigenous Affairs - IWGIA

Phone: +45 5373 2842

Email: [st@iwgia.org](mailto:st@iwgia.org)

Organization’s Focal Point: Stefan Thorsell, Climate Advisor

Shape

Description automatically generated with low confidenceText

Description automatically generated with medium confidence

This submission seeks to provide the input and feedback necessary to ensure that the final environmental and social safeguards (ESS) of the Green Climate Fund (GCF) protect, promote and safeguard the collective rights of Indigenous Peoples including self-determination, self-governance, territorial and cultural rights, as well as human rights of affected communities more generally.

The draft we have reviewed at this third stage of the process is the first full version of the proposed ESS text. We acknowledge the GCF’s efforts to ensure real and meaningful consultation throughout the process. We also recognise the current draft as a genuine attempt to cover all elements required to ensure effective environmental and social safeguarding in all GCF-financed activities.

That said, we cannot help but look at the draft ESS with some dismay. We have, for years, pushed for the GCF to adopt its *own* safeguards. However, the current draft shows that the approach taken of retaining the “basic structure and thematic content” of the interim ESS has restrained the process and obstructed the development of safeguards that are truly fit-for-purpose for GCF’s mission and activities. We find that the current draft relies too much on the original IFC Performance Standards while having new language and elements added without necessarily ensuring that the resulting safeguards are coherent and comprehensive enough to protect indigenous peoples’ rights. This is unfortunate as it leaves the draft ESS open for interpretation, allows for potentially dangerous loopholes, and fails to meet all the necessary international standards.

We think it is important for the GCF to provide greater clarity on the fundamental importance of ensuring that human rights are central to all assessments of risks and impacts and the corresponding avoidance, prevention and mitigation measures. We very much welcome the requirement for accredited entities “to respect human rights, avoid infringement on the human rights of others, and address adverse human rights risks and impacts caused by their business activities” and to assess human rights impacts as part of ESIAs (ESS1 para 20). However, we feel that merely suggesting human rights due diligence may be appropriate in high-risk circumstances or when a human rights lens “would be useful” lacks clarity and falls far below the standard set in the UN Guiding Principles on Business and Human Rights and guidance provided by human rights monitoring bodies. We have therefore suggested that human rights should be more explicitly addressed throughout the ESSs in the context of impact and risk assessments, and that human rights due diligence should always be required alongside environmental and social due diligence. As such, we recommend the adoption of environmental, social and human rights impact assessments (ESHIAs) rather than merely ESIAs.

The GCF’s own ESSs should use straightforward and simple language that is easy to understand and not open to interpretation. They should be a real driver of a paradigm shift which puts human rights and environmental integrity at the centre of the GCF activities. In this regard, it might be informative to look at the process for the development of the UNDP Social and Environmental Safeguards (SES), the point of departure for which was also taken from the IFC Performance Standards, but the end result is a set of safeguards more fit-for-purpose, up-to-date and concise than the current draft GCF ESS.

Overall, we see the need for a full revisiting of the entire draft ESS – and indeed of the process of developing safeguard standards that are closely attuned to the GCF’s specific mission and operations. Recognising that this recommendation is unlikely to be acted upon at this stage in the current process, we sincerely hope that the inputs and text edits proposed in this submission will be thoroughly considered in order to ensure best possible safeguarding within the framework of the current process.

Finally, we greatly appreciate the opportunity to provide this input into the GCF ESS review and remain at your disposal for any clarifications for further information you may require.

*On the following pages, the column to the right offers suggested edits i.e. new text in bold red and deletions in strikethrough. The column to the right offer explanatory comments.*

|  |  |
| --- | --- |
| 1 Introductory text to all ESS |  |
| 3. GCF respects human rights**, including the collective rights of indigenous peoples,** in connection with the projects it finances. Accredited entities will be required to respect human rights, avoid infringement on the human rights of others, and address adverse human rights risks and impacts caused by their business activities. All activities will be designed and implemented in a manner that will respect, promote, protect and fulfill universalrespect for, and observance of, **the** human rights **and fundamental freedoms1** for allrecognized by the United Nations. **GCF activities, programmes and projects are required to be informed by human rights analysis, including from the UN human rights mechanisms (the relevant human rights treaty bodies, the Universal Periodic Review process and Special Procedures.** The application of robust environmental and social due diligence will be **conducted through a human rights lens**, so that the supported activities do not cause, promote, contribute to, perpetuate, or exacerbate adverse human rights impacts.  **1** Human Rights are described in international standards aimed at securing dignity and equality for all. Every human being is entitled to enjoy them without discrimination. As a minimum, relevant human rights are those expressed in the International Bill of Human Rights – meaning the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights and the principles concerning fundamental rights set out in the International Labour Organisation’s Declaration on Fundamental Principles and Rights at Work | - The suggested new sentence is from the UNDP SES, para. 13 (“Programming principles”).  - We suggest deletion of footnote 1 which could be interpreted as restricting which human rights are included. While we appreciate that the footnote specifies that these are the “minimum” human rights that must be respected, we are concerned that some will view these are the only ones that must be respected. This also contradicts the GCF’s Environmental and Social Policy, which states “All activities supported by GCF will be designed and implemented in a manner that will promote, protect and fulfil universal respect for, and observance of, human rights for all recognized by the United Nations” without any further specification or restriction. This language should be echoed in the ESSs. "  - Affirming the requirement for AEs to implement activities in a manner that will respect, promote, protect and fulfill human rights addresses the need to do good and not only do no harm. |
|  |  |
| 1 ESS1 Assessment and Management |  |
| 3. This ESS will be implemented in a risk-based manner. This approach will require that environmental and social requirements and processes are commensurate with the level of risk that GCF-financed activities pose to the environment**,** and communities **and indigenous peoples**, and meeting the relevant ESSs. |  |
| 1.2 Objectives ● To incorporate environmental and social considerations into the project life-cycle, in ways that improve environmental and social outcomes and generate co-benefits**2** to the environment and the communities **and**, including indigenous peoples, that depend on it  ● To identify and evaluate environmental and social risks, impacts and dependencies of the project.  ● To adopt a mitigation hierarchy to anticipate and avoid, or where avoidance is not possible, minimize**3**, reduce and mitigate risks and adverse impacts, and where residual impacts remain, compensate/offset or remedy for risks and impacts to workers, affected communities**4**, and the environment.  ● To promote improved environmental and social performance through the effective use of management systems.  **3** Acceptable options to minimize will vary and include: abate, rectify, repair, and/or restore impacts, as appropriate. The risk and impact mitigation hierarchy is further discussed and specified in the context of ESS2 to ESS8 inclusive, where relevant. **Under ESS7, FPIC is required for all activities that may impact indigenous peoples - including for any related mitigation measures to address adverse impacts.**  **4** Affected communities are typically defined across the industry as “local communities that are affected by the project”. **Indigenous peoples, and peoples who share similar economic, social and cultural characteristics with them, form a separate category under international law as addressed in ESS7.** | - It is somewhat contradictory to say that indigenous peoples are included in communities and leads to confusion in the 3rd objective. Replacing "including" with "and" would address this here.  - Indigenous peoples are not mentioned in this objective as currently worded and it appears to only apply to local communities. If the intent is to include indigenous peoples in this objective, then it needs to clearly state, either in the text or footnote, that that their FPIC is required in the case of adverse impacts and also for the mitigation measures to address those impacts,  - It should also be made clear that indigenous peoples are a separate category from affected or local communities, and that activities that may impact indigenous peoples require their FPIC in accordance with ESS7.  - If this objective does not apply to indigenous peoples due to the requirement to obtain their FPIC (as without FPIC adverse impacts that cannot be avoided are not permitted), then it is important to make that point explicitly in the text or in footnote by stating in footnote 3 that "In the case of indigenous peoples, under ESS7, FPIC is required for impacts and for any mitigation measures to address adverse impacts, and therefore without FPIC a mitigation plan cannot be based on unavoidable adverse impacts" |
| 8. Associated facilities will meet the requirements of the ESSs as follow**9**:  (a) To the extent Entities control or have influence over the associated facilities: (i) they are required to comply with the requirements of applicable ESSs with respect to such facilities, to the extent of its control or influence; and (ii) if the associated facilities are financed by another MDB, bilateral development organization or development finance institution, Entities may agree with GCF to apply the requirements of such other agencies to the associated facilities, provided that such requirements will enable the project to achieve objectives and outcomes equivalent to those achieved with the application of the ESSs **and are satisfactory to the affected communities and indigenous peoples** .  (b) If the Entities do not control or have influence over the associated facilities, they will identify the environmental and social risks and impacts the associated facilities may present to activities, as well as potential mitigation measures that are within the Entities’ control**. These impacts will be disclosed in FPIC processes related to the GCF funded activities under ESS7**. Entities are required to demonstrate, to GCF’s satisfaction, the extent to which it does not exercise control or have influence over the associated facilities by providing details of the relevant considerations, which may include legal, regulatory and institutional factors. | - Regarding (a): Does this not undermine the integrity of the review process, if for example other agencies still reply on IFC ESSs or their equivalent which the GCF is radically reworking in this review process? What checks are there to ensure that the standards are aligned and/or that the entities safeguards are acceptable to the affected communities or indigenous peoples? As mentioned earlier the UNDP standards offer a good example of where an AE has a higher standard than the current GCF ESSs, but there may be other AEs who have weaker, IFC based standards.  - Regarding (b): Surely the impact of the construction of such associated facilities has to be factored into the decision as to whether or not the GCF financed activities should proceed or not, given that these facilities would not be constructed were it not for the GCF financed activities and are necessary for those GCF financed activities to proceed? In the case of indigenous peoples, it would be necessary to address the potential impacts which such associated facilities may generate in an FPIC process as otherwise the indigenous peoples would not be fully informed about the potential cumulative impact on their rights, well-being and survival of the GCF financed activities to which they were being asked to consent. |
| 11. Accredited entities will consider diverse cross-sectional groups historically disadvantaged, such as women, people of diverse sexual orientations and gender identities, persons with disabilities, people of colour, and indigenous and other traditional peoples. Where individuals, groups, or communities are identified as disadvantaged or **in** vulnerable **situations10**, Entities will propose and implement differentiated measures **in accordance with a human rights-based approach** so that **the particular rights of these groups are respected, and** adverse impacts do not fall disproportionately on them and they are not disadvantaged in sharing development benefits and co-benefits resulting from the project.  **10** Vulnerable p**P**eople **in vulnerable situations** are people or groups of people who**se rights and interests** may be more adversely affected by project impacts than others by virtue of characteristics such as their gender, gender identity, sexual orientation, religion, ethnicity, indigenous status, age (including children, youths and the elderly), physical or mental disability, literacy, political views, or social status. Vulnerable i**I**ndividuals and/or groups **in vulnerable situations** may also include, but are not limited to, people in vulnerable situations, such as people living below the poverty line, the landless, single-headed households, natural resource dependent communities, migrant workers, refugees, internally displaced people, or other displaced persons who may not be protected through national legislation and/or public international law. Vulnerable is used interchangeably with marginalized and disadvantaged. These people can be one or several subgroups of the affected community or affected people. Affected communities and affected people should not be assumed to be vulnerable. | - It is not the people who are vulnerable by their nature, but the situations in which they find themselves that render them vulnerable.  - The second sentence is insufficient given that the particular rights and realities of certain groups, such as indigenous peoples, require that they be engaged through distinct processes that go beyond ensuring adverse impacts are not disproportionate and that they have an equal share in the benefits. For example, it is necessary to respect indigenous peoples' right to self-government and to territorial control, rights which do not arise in the context of communities that lack collective governance or customary land tenure systems. We therefore suggest insert "so that the particular rights of these groups are respected..." |
| 1.4.1 Environmental and Social Assessment 15. Entities will carry out an environmental and social assessment of GCF-financed activities to assess the environmental**,** and social **and human rights** risks, impacts, co-benefits and dependencies of the project throughout the project life cycle**13**. |  |
| 16. The scope of the environmental and social assessment **the environmental, social and human rights assessment** process will be consistent with good international industry practice **and applicable international UN standards on environmental protection, respect for human rights and sustainable development14**, and will be based on current and/or recent information, and environmental and social baseline data, including gender **and ethnicity** disaggregated data, at an appropriate level of detail, and will be proportionate to the potential risks, impacts and benefits (positive outcomes) of the activity. All relevant direct**15**, indirect**16**and cumulative**17** environmental**,** and social **and human rights** risks, impacts and co-benefits (positive impacts or co-benefits), including those specifically identified in ESSs 2–10, will be assessed in an integrated way throughout the activity life cycle, and quantified.  **14** Defined as the exercise of professional skill, diligence, prudence, and foresight that would reasonably be expected from skilled and experienced professionals engaged in the same type of undertaking under the same or similar circumstances globally or regionally. **In the case of indigenous peoples and local communities with customary tenure systems the “*Akwé: Kon* Voluntary guidelines for the conduct of cultural, environmental and social impact assessments regarding developments proposed to take place on, or which are likely to impact on, sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities” are recognized as international good practice.**  **17** The cumulative impact of the project is the incremental impact of the project when added to impacts from other relevant past, present and reasonably foreseeable developments**, including associated facilities,** as well as unplanned but predictable activities enabled by the project that may occur later or at a different location. Cumulative impacts can result from individually minor but collectively significant activities taking place over a period of time. The environmental and social assessment**The environmental, social and human rights assessment** will consider cumulative impacts that are recognized as important on the basis of scientific concerns and/ or reflect the concerns of project-affected parties. The potential cumulative impacts will be determined as early as possible, ideally as part of project scoping **and should be addressed in FPIC processes under ESS7**.  **18** For greenfield developments or large expansions with specifically indentified **identified** physical elements, aspects, and facilities that are likely to generate potential significant environmental or social impacts, the client will conduct a comprehensive Environmental and Social Impact Assessment, including an examination of alternatives, where appropriate. | - Re. footnote 14: As Human Rights bodies, such as the UN Special Rapporteur on the rights of indigenous peoples and the Inter American Court have affirmed that the Akwé: Kon CBD guidelines are good practice in the case of indigenous peoples, it would be good to cite them in the footnote as doing so gives some concrete substance to an otherwise rather imprecise notion of "international good practice".  - Re. footnote 17: Reference to cumulative impacts as including impacts of associated facilities is important, especially in the context of seeking FPIC. |
| 17. Contextual risks at the country level, such as the prevailing political economy, are outside of Entities’ control and may impact Entities’ ability to meet the ESSs. A contextual risk assessment should be part of the environmental and social assessment **the environmental, social and human rights assessment** process for GCF-financed activities, which will also include stakeholder engagement as an integral part of the assessment, in accordance with ESS 9. |  |
| 18. Entities, in consultation with GCF, will identify and use appropriate methods and tools to carry out the assessment, which might include, as appropriate (and described in Annex 1), a combination of the following**18**: **participatory** environmental**,** and social **and human rights** impact assessment (ESIA); ESMP; environmental**,** and social **and human rights** management framework (ESMF); regional or sectoral ESIA; strategic environmental and social assessment (SESA), or**, where human rights impacts are not fully addressed in ESIAs and SESA, that** **separate** Human Rights Impact Assessment **(HRIA) be conducted**. Specific features of a project may require the Entity to utilize specialized methods and tools for assessment, for example a Cultural Heritage Management Plan. Where the project is likely to have sectoral or regional impacts, a sectoral or regional EIA will be required. | - Where indigenous peoples are involved, the criteria for ESIAs under IHRL is that they be carried out with full, effective and meaningful participation of the concerned indigenous peoples.  - The inclusion of "Human Rights Impact Assessment" is very welcome and important. However, the "or" is unclear here - is it saying either a SESA or a HRIA and if so why as they address two different purposes? The human rights impacts should be assessed along with environmental and social impacts at the ESIA stage, either through an environmental, social and human rights impact assessment (i.e. ESHRIA) or through an ESIA and a HRIA. The safeguards should ensure that human rights are fully and adequately considered at all stages, in accordance with international standards and good practice related to state and non-state actors. Given that respect for human rights is fundamental to the realisation of the GCF objectives, human rights impacts need to be assessed and monitored throughout the lifecycle. It cannot be assumed that this will happen in a normal ESIA process, as existing practice demonstrates that this is not the case. For this reason, it is important that assessment of human rights impact be explicitly addressed as part of ESIAs, or that a HRIA be conducted in parallel. |
| 20. Entities have broader responsibilities for respecting, protecting and promoting human rights. This includes assessment of potential adverse human rights impacts as part of the ESIA or other assessments**dedicated Human Rights Impact Assessments (HRIA)**. Any such human rights **impacts** should be managed in alignment with the United Nations Guiding Principles on Business and Human Rights (UNGPs) **which affirm that business enterprises should carry out human rights due diligence to identify, prevent, mitigate and account for how they address their impacts on human rights,20** and a summary of any assessment of human rights risks and impacts will be disclosed by Entities in environmental and social reports as established in GCF Information Disclosure Policy. In high-risk circumstances**If In accordance with the UNGPs affirmation of a heightened requirement to conduct human rights due diligence where the nature of business operations or operating contexts pose significant risk to human rights, specific human right due diligence will always be required for activities impacting on indigenous peoples in accordance with ESS7.**, and/or when a “human rights” lens would be useful because of the context and the nature of the issues, it may be appropriate for Entities to complement its environmental and social risks and impacts identification process with specific human rights due diligence as relevant to the particular activity. | - We suggest deleting “adverse” as all human rights impacts should be assessed as the determination of whether the impact is adverse, and the extent to which it may cause harm, has subjective dimensions to it e.g. in the case of indigenous peoples an outsider cannot assess if the impact of an activity on their cultural or spiritual practice is "adverse" or not and therefore he/she could neglect to include certain impacts that are important to the concerned peoples.  - Following on from the previous comment on HRIAs, it would be clearer throughout the ESS if the impact assessments were referred to environmental, social and human rights impact assessments (ESHRIAs), as saying that "the ESIA or other assessments" includes an assessment of human rights impacts lacks clarity and fails to capture the fundamental importance that has to be given to ensuring that any potential human rights impacts are identified, through fully participatory processes and adequately consulted with the concerned communities, and in the case of indigenous peoples their FPIC is obtained to such impacts on their rights, well-being and territories. Otherwise, the safeguards would not be safeguarding human rights and could serve to legitimize human rights violations.  - Disclosing only "summary" of assessment of human rights impacts is contrary to the underlying "know and show" principles underpinning the UNGPs and to the principles of transparency and accountability that underpin IHRL more broadly. It also begs the question as to why the rights holders not have full access to human rights impact assessments? In the case of indigenous peoples this is necessary for informed consent to be granted, as otherwise the consent could be deemed void due to withholding of information required for a fully informed decision to be reached. Such partial disclosure of information only further distorts the very power imbalances that FPIC seems to rectify.  - The Information Disclosure Policy states in para 17 that "Funding proposals relating to projects and programmes that do not have any significant environmental or social impact (i.e. Category C project or Category l-3) shall not require any additional advance information disclosure." This ESS or ESS7 should be clear that projects impacting on indigenous peoples will never fall into that category given the profound impacts and risks which activities in or near their lands and resources can have on their cultural and physical integrity.  - We suggest deleting “high risk circumstances” as it is unclear what these are and who determines this, when and how i.e. is the decision based on an assessment by the Entity itself, by the affected communities or peoples, or by the GCF of the outcome of the ESIA? It is also unclear what "high risk circumstances" means here. The UNGP refers to situations where "the nature of business operations or operating contexts pose significant risk to human rights". As those criteria are met in the context of GCF funded activities impacting on indigenous peoples, this should be made clear somewhere in this ESS or ESS7.  - We suggest deleting the last sentence which refers to “specific human rights due diligence” as merely suggesting that such due diligence "may be appropriate" in "high risk circumstances" falls short of the UNGP requirements for both business enterprises and for State actors.  The UNGPs state that business should always conduct human rights due diligence (HRDD)  UNGP 15: *"In order to meet their responsibility to respect human rights, business enterprises should have in place policies and processes appropriate to their size and circumstances, including: A human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights"*  UNGP 17: *"In order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, business enterprises should carry out human rights due diligence. The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed. Human rights due diligence: (a) Should cover adverse human rights impacts that the business enterprise may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships;"*  UNGP 4 addressing the State and Business Nexus states: *"States should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, or that receive substantial support and services from State agencies such as export credit agencies and official investment insurance or guarantee agencies, including, where appropriate, by requiring human rights due diligence." The guidance clarifies that to fulfil their duty to protect in contexts where there is a high risk to human rights, States should "require human rights due diligence by the agencies themselves and by those business enterprises or projects receiving their support".*  As the operating entity under the financial mechanism of the UNFCCC, the requirement on business actors to always ensure HRDD, and the duty under IHRL of States to require HRDD in situations where there is high risk to human rights, are both relevant to the GCF and the entities which it funds. |
| 21. Where the project involves specifically identified physical elements, aspects, and facilities that are likely to generate impacts or co-benefits, environmental and social risks, impacts and co-benefits will be identified in the context of the project’s area of influence. This area of influence encompasses, as appropriate:  ● The area likely to be affected by: (i) the activity**21** and the Entities’ activities and facilities that are directly owned, operated or managed (including by contractors) and that are a component of the activity;**22** (ii) impacts from unplanned but predictable developments caused by the activity that may occur later or at a different location; (iii) indirect activity impacts on biodiversity or on ecosystem services upon which affected communities’ livelihoods **such as indigenous peoples** are dependent **on**, or (iv) project dependencies on biodiversity, nature and ecosystem services **(v) impacts on the relationship which indigenous peoples have with their lands, territories and resources, including those which may extend beyond the location of the physical elements**.  ● Associated facilities, as per paragraph 11 and 12.  ● Cumulative impacts**23** that result from the incremental impact, on areas or resources used or directly impacted by the activity, from other existing, planned or reasonably defined developments at the time the risks and impacts identification process is conducted. |  |
| 24. Where the project involves specifically identified physical elements, aspects and facilities that are likely to generate environmental and social impacts, the identification of risks and impacts will take into account the findings and conclusions of related and applicable plans, studies, or assessments prepared by relevant government authorities or other parties that are directly related to the activity and its area of influence.**24** These include master economic development plans, country or regional plans, feasibility studies, alternatives analyses, and cumulative, regional, sectoral, or strategic environmental assessments where relevant. The risks and impacts identification will take account of the outcome of the engagement process with **any** affected communities **or indigenous peoples**as appropriate. | - The wording "as appropriate" here creates ambiguity and does not appear to add anything. Suggest removing it and adding the word "any", as if there are affected communities they should be taken into account, and if there are none then it becomes irrelevant. For the sake of clarity the addition of "or indigenous peoples" is also suggested. |
| 26. Accredited entities will be required to undertake environmental**,** and social **and human rights** due diligence on all the activities proposed for GCF financing. The purpose of the due diligence of the accredited entities is to ensure that the activities proposed for GCF financing comply with their environmental and social safeguards standards pursuant to the ESS standards of GCF and GCF ESP **and related obligations under international human rights law**. If the accredited entities are acting in an intermediary function, they will require that the executing entities undertake the same level of due diligence on component subprojects to fulfil the requirements described in GCF ESP and GCF ESS and will conduct the necessary due diligence and oversight to ensure that these requirements are fulfilled, in line with ESS10 on financial intermediaries. | - The ESS objective of ensuring respect for internationally recognized human rights needs to be more explicit here, to a) achieve the goals of the ESS in accordance with the GCP policies, including the indigenous peoples' policy, b) for consistency across this and other ESSs and c) to fulfil the independent responsibilities of the GCF and of AEs to respect human rights and to demonstrate that they are doing so. |
| 1.4.2 Environmental and Social Management Systems and Frameworks 27. Accredited entities, in coordination with other responsible government agencies and third parties as appropriate **26**, will make sure an ESMS appropriate to the nature and scale of the activity and commensurate with the level of its environmental**,** and social **and human rights** risks, impacts and co-benefits is established and maintained throughout the life of the activity**27**. The objective of such a management system is to integrate the implementation of environmental**,** and social **and human rights** requirements into a streamlined and coordinated process, and to embed it in the Entities main operational activities. The ESMS will incorporate the following elements: (i) policy; (ii) environmental**,** and social **and human rights** assessment; (iii) environmental and social management plans (including emergency preparedness and response plan if required**28** and any other plans relevant to the activity as described in section [1.4.4;](#_heading=h.1fob9te) (iv) organizational capacity and competency; (v); stakeholder engagement**29**; and(vii) monitoring and reporting procedures.  **27** The ESMS will allow meaningful and inclusive multi-stakeholder consultation and engagement throughout the lifecycle of activities taking into account the particular **rights and** situations of vulnerable and marginalised groups and individuals that are affected or potentially affected by GCF-financed activities. |  |
| 28. The ESMS and associated plans and procedures will be appropriate to the accredited entities’ role as implementing entity (which may include a project execution role), an intermediary entity, or both, maintaining or improving on the environmental and social management system on which its accreditation was approved. When accredited entities are acting in an implementing and/or execution role, GCF and accredited entities will consider the need to adapt the ESMS approved at accreditation stage so as to allow for such ESMS to be appropriate to the nature and scale of the activity as outlined in this section. When accredited entities are acting in an intermediary role (see ESS10 for the requirements of a FI ESMS), they will also ensure an activity-specific ESMS aligned with this ESS is developed and implemented by execution or implementation. In the event that such implementation parties are government institutions, accredited entities and the implementation parties will consider whether governments’ environmental and social framework (ESF**30**) can be used for the assessment, development and implementation of the activity, provided that such framework is considered capable to address the risks and impacts and potential co-benefits of the activity, and enable to activity to achieve objectives consistent with GCF ESSs. The ESF will be consistent with the content of the ESMS describe**d** above (policy, environmental**,** and social **and human rights** assessment through an ESIA which is appropriate to the nature and scale of the activity, environmental and social management plans, adequate organizational capacity and competency to implement the specific activity, stakeholder engagement procedures, and monitoring and reporting procedures).  **30** The Borrower’s ES Framework will include those aspects of the country’s policy, legal and institutional framework, consisting of its national, subnational, or sectoral implementing institutions and applicable laws, regulations, rules and procedures and implementation capacity relevant to the environmental**,** and social **and human rights** risks and impacts of the project . Where there are inconsistencies or lack of clarity within the Borrower’s ES Framework as to relevant authorities or jurisdiction, these will be identified and discussed with the Borrower . The aspects of the Borrower’s existing ES Framework that are relevant will vary from project to project, depending on such factors as the type, scale, location and potential environmental**,** and social **and human** risks and impacts of the project and the role and authority of different institutions**. Relevant jurisprudence of human rights bodies, and the views of rights holders such as indigenous peoples should inform any assessment of national government’s ES Framework.** |  |
| 31. Entities will make reasonable efforts to identify risks associated with its primary suppliers**31**. Where entities can reasonably exercise control over its primary suppliers, they will seek co-benefits for positive environmental and social impacts and will integrate identified measures into the activity design. In such cases, the environmental and social assessment**the environmental, social and human rights assessment** process will also consider whether the primary suppliers are likely to be associated with environmental and social risks and impacts. If this is the case, the Entity will adopt and implement a supply chain management system commensurate to the complexity of these supply chains and associated environmental**,** and social **and human rights** risks and impacts appropriate for the nature and scale of the project. The management system will include processes for taking action to address and manage environmental**,** and social **and human rights** risks, impacts and co-benefits identified during the supply chain assessment or ongoing monitoring, taking into account: (a) whether Entities caused or contributed to the risks and impacts; (b) Entities’ leverage over the supplier**32**; (c) how crucial the relationship is to entities; (d) the severity of the risks and impacts, and; (e) whether terminating the relationship with the supplier would have adverse consequences **for the impacted rights holders**. When it is necessary to prioritize actions, Entities should start with the most severe risks and impacts, taking into account their scale, scope and irremediability. As necessary, Entities will establish an action plan to address serious human rights impacts in its supply chain and to eliminate such practices within a reasonable time frame**, determined in conjunction with the impacted rights holders**, including the option for shifting supply chains to suppliers that demonstrate compliance with ESSs. Requirements for labour standards in the supply chain are outlined in ESS2; requirements for supply chains for living natural resources are defined in ESS6. | - “Reasonable time frame”: How is the prioritization to be determined if the impacted rights holders are not involved? |
| 1.4.3 Policy 34. Accredited entities will establish an overarching policy defining the environmental**,** and social **and human rights** objectives and principles that guide the project to achieve sound environmental and social performance**33**. The policy provides a framework for the environmental**,** and social **and human rights** assessment and management process, and specifies that the project (or business activities, as appropriate) will comply with the applicable laws and regulations of the jurisdictions in which it is being undertaken, including those laws implementing host country obligations under international law**34**.**, as well as the independent responsibility of the accredited entities to respect human rights.** The policy should be consistent with the principles of the ESS. **These overarching policies of accredited entities should also comply with GCF policies, such as the Indigenous Peoples’ Policy.** Under some circumstances, entities may also subscribe to other internationally recognised standards, certification schemes, or codes of practice and these too should be included in the policy. The policy will indicate who, within the entities’ organization, will ensure conformance with the policy and be responsible for its execution (with reference to an appropriate responsible government agency or third party, as necessary). Entities will communicate the policy to all levels of its organization. .  **34** An example of this is the International Bill of Human Rights and international human rights treaties and instruments adopted afterwards**, including those addressing groups in vulnerable situations**. | - As with business enterprises under the UN Guiding Principles on Business and Human Rights, Accredited Entities have an independent responsibility to respect human rights irrespective of the existence of national laws that aim to give effect to host country obligations. |
| 36. Depending on the nature and scale of the project, these plans may consist of some documented combination of operational procedures, practices, plans, and related supporting documents (including legal agreements such as evidence of permits required for the activity) that are managed **and assessed** in a systematic way.**35** The plans may apply broadly across the Entities’ organization, including contractors and primary suppliers over which the organization has control or influence, or to specific sites, facilities, or activities. Entities will seek opportunities for positive environmental and social impact, and the mitigation hierarchy to address identified risks and impacts will favor the avoidance of impacts over minimization, and, where residual impacts remain, compensation/offset, and remedy, wherever technically**36** and financially feasible.**37**  **36** Technical feasibility is based on whether the proposed measures and actions can be implemented with commercially available skills, equipment, and materials, taking into consideration prevailing local factors such as climate, geography, demography, infrastructure, security, governance, capacity, and operational reliability. **In the case of indigenous peoples their FPIC must be obtained for such impacts in line with ESS7** | - As the example provided in the footnote mentions government managed resettlement activities, presumably these are assessed in accordance with the ESSs and the states’ obligations under international human rights law, as in such activities for example indigenous peoples' FPIC must be obtained. This raises the broader question as to how the ESS protects against legacy harms whereby lands of indigenous peoples have been declared as protected areas without their consent in the past (in breach of indigenous peoples' land and self-determination rights) and then become subject to applications for GCF funding? This should be explicitly addressed in the context of obtaining FPIC. The policy should ensure that there is no perverse incentive (e.g. in the form of benefits or compensation) provided to landowners who have acquired indigenous lands without their consent. Such lands should be deemed ineligible for GCF funding. |
| 37. Where the identified risks and impacts cannot be avoided, Entities will identify mitigation and performance measures and establish corresponding actions to ensure the project will operate in compliance with applicable laws and regulations, **including international human rights law,** and meet the requirements of ESS1 through ESS10. The level of detail and complexity of this collective management program and the priority of the identified measures and actions will be commensurate with the project’s risks and impacts, and will take account of the outcome of the engagement process with affected communities**, and the collective tenure protection and** of the **FPIC processes with indigenous peoples under ESS7,** as appropriate. |  |
| 40. In some cases, activity details are not fully identified at the time the A**a**ctivity is approved by GCF, and therefore the risks, impacts and co-benefits cannot be determined until the program or subproject details have been characterised. In these circumstances, Entities will ensure a “framework” level ESMS (Environmental and Social Management Framework or ESMF) is developed. The ESMF will set out the principles, rules, guidelines and procedures to assess and manage the environmental**,** and social **and human rights** risks, impacts and co-benefits. ESMF can also be used in exceptional circumstances, duly justified by the Entity and agreed by GCF, where it is determined **and agreed with potentially affected indigenous peoples** that environmental and social assessment of identified Project activities may be conducted using a phased approach. Indicative outline of ESMF is presented in section [1.5.1.5.](#_heading=h.2et92p0) | - Further clarity is needed here as how indigenous peoples could assess the potential cumulative impacts of these future project activities when making decisions to give or hold consent to initial project activities. |
| 42. Personnel within the entity’s organization with direct responsibility for the activity’s environmental and social performance will have the knowledge, skills, and experience necessary to perform their work, including current knowledge of the host country’s regulatory requirements**,** and the applicable requirements of ESS1 through ESS10 **and the human rights frameworks pertaining to all potentially impacted groups**. Personnel will also possess the knowledge, skills, and experience to implement the specific measures and actions required under the ESMS and the methods required to perform the actions in a competent and efficient manner. |  |
| 43. The process of identification of risks, impacts and co-benefits will consist of an adequate, accurate, and objective evaluation and presentation, prepared by competent professionals. For projects posing potentially significant adverse impacts, **or potentially impacting on indigenous peoples**, or where technically complex issues are involved, Entities may be required to involve external experts to assist in the risks and impacts identification process, even further in future management and monitoring of activities. | - This requirement should always be trigged in projects which impact on the lands and resources of indigenous peoples due to the potential significance of such impacts for the cultural identity and self-determination of the peoples concerned.  - What is meant by “even further” in the last clause? |
| 1.4.6 Monitoring and Reporting 44. Entities will monitor the environmental**,** and social **and human rights** performance of GCF-financed activities. This monitoring is intended to: (i) determine whether the project is being implemented in accordance with GCF ESP and these ESSs, and (ii) learn lessons, allocate resources and identify opportunities for continuous improvement. Monitoring requirements will be proportional to the nature of the project and its environmental**,** and social **and human rights** risks and impacts. Monitoring will address:  ● Any significant environmental**,** and social **and human rights** risks and impacts identified during the environmental**,** and social **and human rights** assessment process;  ● Relevant parts of the ESS as identified during project assessment process and subsequent monitoring;  ● Actions specified in the ESMP or ESCAP;  ● Grievances received from workers and external stakeholders, and how they were resolved;  ● Any regulatory monitoring and reporting requirements; and  ● Any monitoring and reporting required by other parties (for example, off-takers, financiers, certification bodies). |  |
| 45. Entities will undertake all necessary measures to ensure participatory monitoring **[add FN]** through the involvement of communities, local stakeholders, indigenous peoples and civil society organizations in all the stages of the life cycle of activities.  **FN Indigenous peoples, in the exercise of their territorial control may also conduct their own autonomous monitoring of activities. Financial and technical assistance should be available for this if requested.** | - As proposed in para 18 above, impact assessments must also be participatory in nature. Proposed to add a footnote noting that:  "Indigenous peoples, in the exercise of their territorial control may also conduct their own autonomous monitoring of activities. Financial and technical assistance should be available for this if requested." |
| 1.4.7 Environmental and Social Corrective Action Plan 52. GCF-financed activities will be designed to meet the ESSs from the outset. When activity details are not fully identified at the time when it is approved by GCF, or if GCF’s environmental and social due diligence concludes that an activity does not meet GCF’s ESP and ESS, the entities will be required to adopt an ESCAP which will include a series of technically and financially feasible and cost-effective **human rights consistent** measures to achieve compliance of these facilities or activities with the ESSs within a time frame acceptable to GCF. In the ESCAP, GCF and the entity will agree the specific corrective and preventive actions, mitigation measures and implementation time frame, which the entity undertakes to implement to manage the environmental and social risks and impacts of the project in accordance with the ESSs. **Consultations will be held with affected communities and with indigenous peoples in relation to the ESCAP and FPIC obtained where required under ESS7.** The ESCAP will form part of the financing agreements and include, as necessary, obligations of the entity to support the implementation of the ESCAP. |  |
| 54. Entities will review the status of implementation of the ESCAP as part of its monitoring and reporting, and will notify GCF promptly of any proposed changes to the scope, design, implementation or operation of the project that are likely to cause an adverse change in the environmental**,** or social **or human rights** risks or impacts of the project. Entities will carry out, as appropriate, additional assessment and stakeholder engagement in accordance with the ESSs, and propose changes, for approval by GCF, to the ESCAP and relevant management tools, as appropriate, in accordance with the findings of such assessments and consultation**, with FPIC obtained and independently verified in cases where such changes may impact on indigenous peoples**. The updated ESCAP will be disclosed by Entities as part of their environmental and social reporting to GCF. | - "as approriate" is repeated in the sentence and it is unclear what it implies in either context |
| 1.5 Annexes1.5.1 Annex 1. Environmental, and social and human rights assessment 1.5.1.1 General  55. The different methods and tools used by Entities to carry out the environmental and social assessment**the environmental, social and human rights assessment** and to document the results of such assessment, including the mitigation measures to be implemented, will reflect the nature and scale of the project**38**. These can include, as appropriate, a combination of the following:  a) Environmental**,**  and Social **and Human Rights** Impact Assessment (ESIA). Environmental**,** and social **and human rights** impact assessment (ESIA) is an instrument to identify and assess**, through a participatory process,** the potential environmental and social **and human rights** impacts of a proposed project, evaluate alternatives, and design appropriate mitigation, management, and monitoring measures.  b) Environmental and Social Audit. Environmental and social audit is an instrument to determine the nature and extent of all environmental**,** and social **and human rights** areas of concern at an existing project or activities. The audit identifies and justifies appropriate measures and actions to mitigate the areas of concern, estimates the cost of the measures and actions, and recommends a schedule for implementing them. For certain projects, the environmental**,** and social **and human rights** assessment may consist of an environmental or social audit alone; in other cases, the audit forms part of the environmental and social assessment**the environmental, social and human rights assessment**.  c) Hazard or Risk Assessment. Hazard or risk assessment is an instrument for identifying, analyzing, and controlling hazards associated with the presence of dangerous materials and conditions at a project site. A hazard or risk assessment for projects involving certain inflammable, explosive, reactive, and toxic materials will be required when they are present in quantities above a specified threshold level. For certain projects, the environmental and social assessment**the environmental, social and human rights assessment** may consist of the hazard or risk assessment alone; in other cases, the hazard or risk assessment forms part of the environmental and social assessment**the environmental, social and human rights assessment**.  d) Cumulative Impact Assessment. Cumulative impact assessment is an instrument to consider cumulative impacts of the activity in combination with impacts from other relevant past, present and reasonably foreseeable future developments as well as unplanned but predictable activities enabled by the project that may occur later or at a different location.  e) Social and Conflict Analysis. Social and conflict analysis is an instrument that assesses the degree to which the project may (a) exacerbate existing tensions and inequality within society (both within the communities affected by the project and between these communities and others); (b) have a negative effect on stability and human security; (c) be negatively affected by existing tensions, conflict and instability, particularly in circumstances of war, insurrection and civil unrest. Such an analysis gathers information on stakeholders, conflict dynamics, root and proximate causes, triggers, and peace capacities and takes into account gender, underrepresented groups and power relationships.  f) Contextual Risk Assessment. Contextual risk assessments are used to understand the broader political economy and dynamics of human interaction within the activity area of influence as well as regional or national concerns. It gathers information on social, cultural, political and economic factors which may have a bearing on social conflict, inclusion, discrimination, intimidation, violence including sexual exploitation, abuse and harassment, gender-based violence, limitations to meaningful consultation and free speech, limitations on the enjoyment of human rights, human rights abuses, formal and informal power and influence structures, corruption and the rule of law. It provides insight into the potential for such negative forces to distort stakeholder engagement; to exacerbate social inequality; and to compromise the potential for project benefits to be received by project affected people in an equitable manner.  g) Environmental and Social Management Plan (ESMP). Environmental and social management plan (ESMP) is an instrument that details (a) the measures to be taken during the implementation and operation of a project to eliminate or offset adverse environmental**,** and social **and human rights** impacts, or to reduce them to acceptable levels; and (b) the actions needed to implement these measures .  h) Environmental and Social Management Framework (ESMF). Environmental and social management framework (ESMF) is an instrument that examines the risks and impacts when a GCF-financed activity consists of a program and/or series of subprojects, and the risks, impacts and co-benefits cannot be determined until the program or subproject details have been identified. The ESMF sets out the principles, rules, guidelines and procedures to assess the environmental**,** and social **and human rights** risks and impacts. It contains measures and plans to reduce, mitigate and/or offset adverse risks and impacts, provisions for estimating and budgeting the costs of such measures, and information on the agency or agencies responsible for addressing project risks and impacts, including on its capacity to manage environmental**,** and social **and human rights** risks and impacts. It includes adequate information on the area in which subprojects are expected to be sited, including any potential environmental and social vulnerabilities of the area; and on the potential impacts that may occur and mitigation measures that might be expected to be used.  An indicative outline of the expected structure and content of an ESMF is presented in section [1.5.1.5](#_heading=h.2et92p0).  i) Regional ESIA. Regional ESIA examines environmental**,** and social **and human rights** risks and impacts, and issues, associated with a particular strategy, policy, plan, or program, or with a series of projects, for a particular region (e.g. an urban area, a watershed, or a coastal zone); evaluates and compares the impacts against those of alternative options; assesses legal and institutional aspects relevant to the risks, impacts and issues; and recommends broad measures to strengthen environmental and social management in the region . Regional ESIA pays particular attention to potential cumulative risks and impacts of multiple activities in a region but may not include the site-specific analyses of a project, in which case Entities must develop supplemental information.  j) Sectoral ESIA. Sectoral ESIA examines environmental**,** and social **and human rights** risks and impacts, and issues, associated with a particular sector in a region or across a nation; evaluates and compares the impacts against those of alternative options; assesses legal and institutional aspects relevant to the risks and impacts; and recommends broad measures to strengthen environmental and social management in the region. Sectoral ESIA also pays particular attention to potential cumulative risks and impacts of multiple activities. A sectoral ESIA may need to be supplemented with project and site-specific information .  k) Strategic Environmental and Social Assessment (SESA). Strategic environmental and social assessment (SESA) is a systematic examination of environmental and social risks and impacts, and issues, associated with a policy, plan or program, typically at the national level but also in smaller areas. The examination of environmental and social risks and impacts will include consideration of the full range of environmental and social risks and impacts incorporated in ESS1 through 10. SESAs are typically not location-specific. They are therefore prepared in conjunction with project and site-specific studies that assess the risks and impacts of the project.  l) Due diligence of human rights. Due diligence of human rights is the process Entities can **must** use to identify, prevent, mitigate and be accountable for any adverse human rights impacts its activities have. This will commence with scoping of activities, the human rights context, and stakeholders. The baseline will be characterized. Impacts that are caused, contributed to or directly linked to the Entity’s activities need to be identified. Impact severity should be established to see the order in which they will need to be addressed. The next step is to develop a strategy for preventing and addressing impacts, beginning with those which are most severe. Entities will need to monitor the mitigation measures to understand their effectiveness for preventing and addressing the impacts. Access to remedy will need to be provided, for instance through effective grievance mechanisms along with judicial means. **In terms of implementation, these steps can be integrated into existing processes around environmental and social due diligence, provided they adequately, transparently and exhaustively address human rights impacts or they can be conducted in parallel through standalone human rights due diligence and human rights impact assessments.** | - Re. point 55. a): Human rights impacts need to be explicitly mentioned here, even if the title of ESIAs is not changed. There is no mention of the participatory nature, something which is necessary in context of indigenous peoples' rights as affirmed by human rights bodies.  - Re. point 55. l): This needs to be reflected in the ESS itself and not only a definition in the Annex. At present it is only mentioned as a possible requirement in the context of high-risk circumstance in para 20, which would be woefully inadequate for a safeguard such as this. It should be clear and explicit that human rights impacts are either assessed as part of ESIA processes or if that is not done then parallel HRIAs are conducted within the framework of human rights due diligence (HRDD). The entity cannot choose IF it conducts HRDD, it can only choose if that is done by integrating human rights assessments into its existing impact assessments and environmental and social due diligence processes or by establishing parallel processes that are dedicated to assessing, avoiding, preventing, mitigating, monitoring and addressing human rights impacts. |
| 57. Entities should initiate the environmental**,** and social **and human rights** assessment as early as possible in the process of evaluating the activity. Entities will consult with GCF as early as possible so the environmental**,** and social **and human rights** assessment is designed from the outset to meet the requirements of the ESSs. |  |
| 58. The environmental**,** and social **and human rights** assessment will be closely integrated with the project’s economic, financial, institutional, social, and technical analyses so that environmental**,** and social **and human rights** considerations are taken into account in project selection, siting, and design decisions. Entities will take measures to ensure that when individuals or entities are engaged to carry out environmental**,** and social **and human rights** assessment, any conflict of interest is avoided. The environmental**,** and social **and human rights** assessment will not be carried out **through a participatory process** by the consultants who prepare the engineering design, unless the Borrower can demonstrate that no conflict of interest exists and such consultants include qualified environmental and social specialists. Those undertaking environmental**,** and social **and human rights** assessments will be suitably qualified and competent to undertake such assessments, utilise appropriate local**, indigenous**, regional and international knowledge and expertise to be able to ensure a robust assessment, and have sufficient appreciation of this ESSs. **Where affected communities or indigenous peoples wish to conduct aspects of impact assessments themselves financial and technical assistance should be available to enable this.** |  |
| 59. When Entities have completed or partially completed environmental and social assessment prior to the Bank’s **GCF’s** involvement in a project, the environmental and social assessment**the environmental, social and human rights assessment** is subject to the Bank’s **GCF’s** review to ensure that it meets the requirements of the ESSs. If appropriate, the Borrower **Entity** is required to conduct additional work, including public consultation and disclosure**, obtaining the FPIC of indigenous peoples**, to bring the environmental**,** and social **and human rights** assessment to that level. |  |
| 1.5.1.2 Indicative outline of ESIA  60. Where an environmental**,** and social **and human rights** impact assessment is prepared as part of the environmental and social assessment, it will include the following:  a. Executive Summary. Concisely discusses significant findings and recommended actions.  b. Legal and Institutional Framework. Analyzes the legal and institutional framework for the project, **including international law obligations of states,** within which the environmental**,** and social **and human rights** assessment is carried out. Compares Entities’ existing environmental and social framework and the ESSs and identifies the gaps between them. Identifies and assesses the environmental and social requirements of any co-financiers.  c. Project Description. Concisely describes the proposed project and its geographic, environmental, social, **human rights** and temporal context, including any offsite investments that may be required (e.g. dedicated pipelines, access roads, power supply, water supply, housing, and raw material and product storage facilities), as well as the project’s primary suppliers. Through consideration of the details of the project, indicates the need for any plan to meet the requirements of ESS1 through ESS10. Includes a map of sufficient detail, showing the project site and the area that may be affected by the project’s direct, indirect, and cumulative impacts.  d. Baseline Data. Sets out in detail the baseline data that is relevant to decisions about project location, design, operation, or mitigation measure. This should include a discussion of the accuracy, reliability, and sources of the data as well as information about dates surrounding project identification, planning and implementation. Identifies and estimates the extent and quality of available data, key data gaps, and uncertainties associated with predictions. Based on current information, assesses the scope of the area to be studied and describes relevant physical, biological, and socioeconomic **and human rights** conditions,  including any changes anticipated before the project commences. Takes into account current and proposed development activities within the project area but not directly connected to the project  e. Environmental and Social **and human rights** Risks, Impacts and co-benefits. Takes into account all relevant environmental**,** and social **and human rights** risks, impacts and co-benefits of the activity. This will include the environmental**,** and social **and human rights** issues identified in ESS2 to ESS10, and any other environmental**,** and social **and human rights** risks and impacts or opportunities arising as a consequence of the specific nature and context of the project.  f. Mitigation Measures. Identifies mitigation measures and significant residual negative impacts that cannot be mitigated and, to the extent possible, assesses the acceptability of those residual negative impacts. Identifies differentiated measures so that adverse impacts do not fall disproportionately on the disadvantaged or vulnerable. **Ensures that indigenous peoples FPIC has been obtained in accordance with ESS7** Assesses the feasibility of mitigating the environmental and social **and human rights** impacts; the capital and recurrent costs of proposed mitigation measures, and their suitability under local conditions; and the institutional, training, and monitoring requirements for the proposed mitigation measures. Specifies issues that do not require further attention, providing the basis for this determination.  g. Analysis of Alternatives. Systematically compares feasible alternatives to the proposed project site, technology, design, and operation (including the “no project alternative) in terms of their potential environmental**,** and social **and human rights** impacts. Assesses the alternatives’ feasibility of mitigating the environmental**,** and social **and human rights** impacts; the capital and recurrent costs of alternative mitigation measures, and their suitability under local conditions; and the institutional, training, and monitoring requirements for the alternative mitigation measures. For each of the alternatives, quantifies the environmental**,** and social **and human rights** impacts to the extent possible, and attaches economic values where feasible **and acceptable to the rights holders**.  h. Design Measures. Sets out the basis for selecting the particular project design proposed and specifies the applicable EHSGs or if the ESHGs are determined to be inapplicable, justifies recommended emission levels and approaches to pollution prevention and abatement that are consistent with GIIP.  i. Key Measures and Actions for the Environmental and Social Corrective Action Plan (ESCAP). Summarizes key measures and actions and the timeframe required for the project to meet the requirements of the ESSs **including those under international human rights standards**. This will be used in developing the ESCAP.  j. Appendices. Example of appendices can be: i) List of the individuals or organizations that prepared or contributed to the environmental and social **and human rights** assessment, **including the degree of participation of the concerned rights holders in its preparation** ii) References setting out the written materials both published and unpublished, that have been used, iii) Record of meetings, consultations and surveys with stakeholders, including those with affected people and other interested parties**, and the FPIC of concerned indigenous peoples**. The record specifies the means of such stakeholder engagement that were used to obtain the views of affected people and other interested parties, iv) Tables presenting the relevant data referred to or summarized in the main text, v) List of associated reports or plans. |  |
| 62. The content of the ESMP will include the following:  a. Mitigation. The ESMP identifies measures and actions in accordance with the mitigation hierarchy that reduce potentially adverse environmental**,** and social **and human rights** impacts to acceptable levels and introduce measures to enhance opportunities for environmental and social co-benefits. The plan will include compensatory and remedial measures, if applicable. Specifically, the ESMP:  – Identifies and summarizes all anticipated adverse environmental**,** and social **and human rights** impacts (including those involving indigenous peoples or involuntary resettlement), and opportunities to achieve co-benefits;  – Describes—with technical details—each mitigation and enhancement measure, including the type of impact to which it relates and the conditions under which it is required (e.g. Continuously or in the event of contingencies), together with designs, equipment descriptions, and operating procedures, as appropriate;  – Estimates any potential environmental and social impacts and co-benefits of these measures; and  – Takes into account, and is consistent with, other plans required for the project (e.g. For involuntary resettlement, indigenous peoples, or cultural heritage).  b. Monitoring. The ESMP identifies monitoring objectives and specifies the type of monitoring, with linkages to the impacts assessed in the environmental and social assessment**the environmental, social and human rights assessment** and the mitigation and enhancement measures described in the ESMP**39**. Specifically, the monitoring section of the ESMP provides (a) a specific description, and technical details, of monitoring measures, including the parameters to be measured, methods to be used, sampling locations, frequency of measurements, detection limits (where appropriate), and definition of thresholds that will signal the need for corrective actions; and (b) monitoring and reporting procedures to (i) ensure early detection of conditions that necessitate particular mitigation measures, and (ii) furnish information on the progress and results of mitigation.  c. Capacity Development and Training. To support timely and effective implementation of environmental and social project components and mitigation measures, the ESMP draws on the environmental and social assessment**the environmental, social and human rights assessment** of the existence, role, and capability of responsible parties on site or at the agency and ministry level. Specifically, the ESMP provides a specific description of institutional arrangements, identifying which party is responsible for carrying out the mitigation, enhancement and monitoring measures (e.g. for operation, supervision, enforcement, monitoring of implementation, remedial action, financing, reporting, and staff training). To strengthen environmental and social management capability in the agencies responsible for implementation, the ESMP recommends the establishment or expansion of the parties responsible, the training of staff and any additional measures that may be necessary to support implementation of mitigation and enhancement measures and any other recommendations of the environmental and social assessment**the environmental, social and human rights assessment**.  d. Implementation Schedule and Cost Estimates. For all three aspects (mitigation, enhancement, monitoring, and capacity development), the ESMP provides (a) an implementation schedule for measures that must be carried out as part of the project, showing phasing and coordination with overall project implementation plans; and (b) the capital and recurrent cost estimates and sources of funds for implementing the ESMP . These figures are also integrated into the total project cost tables.  e. Integration of ESMP with Project. Entities’ decision to proceed with an activity, and GCF’s decision to support it, are predicated in part on the expectation that the ESMP (either stand alone or as incorporated into the ESCAP) will be executed effectively. Consequently, each of the measures and actions to be implemented will be clearly specified, including the individual mitigation, enhancement and monitoring measures and actions and the institutional responsibilities relating to each, and the costs of so doing will be integrated into the project’s overall planning, design, budget, and implementation. |  |
| 1.5.1.5 Indicative outline of Environmental and Social Management Framework  64. Environmental and social management frameworks (ESMF) describes the roles and responsibilities and the processes to manage environmental and social risks and impacts including, where appropriate transboundary risks and impacts, including screening, preparation, implementation and monitoring of subprojects. The content of the ESMF will include the following:  a. Executive Summary. Concisely discusses activity background, policy and institutional framework, and main procedures for identifying and managing activity and sub-project risks and opportunities.  b. Project Description. Using the information available at the moment of writing the ESMF, this chapter describes the expected activities and subprojects, and the geographic, environmental, social, and temporal contexts. Includes a map of sufficient detail, showing the expected site of known activities and the proposed site for the proposed project.  c. Legal and Institutional Framework. Presents the national legal and institutional framework, and identifies and assesses the environmental and social requirements for the activity as per GCF ESSs (including those of any co-financiers), and identifies potential gaps between national and ESSs policies and E&S requirements.  d. Baseline Data. Sets out the baseline data that is relevant to decisions about project location, design, operation, or mitigation measure. Based on current information, assesses the scope of the area to be studied and describes relevant physical, biological, and socioeconomic conditions, including any changes anticipated before the project commences. Takes into account current and proposed development activities within the project area but not directly connected to the project.  e. Environmental and Social Risks, Impacts and co-benefits. Describes the process and methodology to be used to identify and assess risks, impacts and co-benefits, and describes, based on the information available (project description and baseline data) all relevant environmental**,** and **social and human rights risks**, impacts and co-benefits of the activity. This will include the environmental and social issues identified in ESS2 to ESS10.  f. Mitigation Measures. Identifies expected mitigation measures as well as, when possible, estimates significant residual negative impacts that cannot be mitigated. When possible, identifies the institutional, training, and monitoring requirements for the proposed mitigation measures.  g. Monitoring, reporting and evaluation of the ESMF. Describes the procedure to monitor and report on E&S issues to GCF (and other financing partners when relevant). When possible, monitoring parameters (indicators) are described. The chapter also explains the methodology to evaluate the effectivity of the management measures in place.  h. Institutional arrangements and capacity for ESMF implementation. Describes institutional arrangements for activity implementation, identifying which party is responsible for carrying out the mitigation, enhancement and monitoring measures (e.g. for operation, supervision, enforcement, monitoring of implementation, remedial action, financing, reporting, and staff training), the existing capacity within stakeholders to fulfil their roles, and identifies potential requirements for capacity development and training.  i. Stakeholder engagement, disclosure and grievances mechanism. Describes the provisions for stakeholder consultation and information disclosure, including stakeholder identification and engagement methodology, as well as the principles for establishing a grievances mechanism, in line with GCF ESS. |  |
|  |  |
| 1 ESS2 Labor and Working Conditions |  |
| 1.3 Scope of Application 3. The applicability of this ESS is established during the environmental and social risks, impacts and co- benefit identification process**5**. The implementation of the actions necessary to meet the requirements of this ESS are managed through an Entity’s ESMS, the elements of which are outlined in ESS1. Implementation of this Standard must also consider requirements related to human rights, gender equality, and stakeholder engagement.  **5** In conducting the environmental and social assessment**the environmental, social and human rights assessment** and depending on the significance of the potential issues in the project relating to labor and working conditions, the views of representative workers’ and employers’ organizations may be sought. |  |
|  |  |
| 1 ESS4 Community Health, Safety, and Security |  |
| 1. Environmental and Social Standard 4 (ESS4) recognizes that project activities, equipment, and infrastructure can increase community exposure to risks and impacts. In addition, communities that are already subjected to impacts from climate change may also experience an acceleration and/or intensification of impacts due to project activities. While acknowledging the public authorities’ role in promoting the health, safety, and security of the public, this ESS addresses Entities’ responsibility to avoid or minimize the risks and impacts to community health, safety, and security that may arise from project related-activities, with particular attention to vulnerable groups. This ESS acknowledges that climate change and natural hazards can increase the health and safety risk to workers and communities at different stages of the activity, including both routine and non-routine circumstances. In some situations, to understand address climate change risks and impacts, modelling, scenario building, and stress testing may be required. In conflict and post-conflict areas, the level of risks and impacts described in this Standard may be greater. The risks that a project could exacerbate an already sensitive local situation and stress scarce local resources should not be overlooked as it may lead to further conflict. Projects and programmes will take into account the principles of humanity (alleviating suffering), impartiality (basing decisions on needs rather than characteristics), neutrality (not taking sides) and operational independence (not following other’s objectives) in taking actions. Balancing these principles can be undertaken by will include recognizing dilemmas, exploring options, describing trade-offs and selecting actions to minimize conflict risks. Assessment tools which help inform how projects may need to deal with or can contribute to conflict include social and conflict analysis and contextual risk assessment. (These and other methods are described in Annex 1 of ESS1.) | - Risks also arise as a result of failure to obtain community consent in the context of land use changes and the use of guards to ensure that indigenous peoples or local communities with customary land tenure do not enter their territories. |
| 1.4 Requirements 6. Entities will engage with affected communities in scoping and the environmental and social assessment**the environmental, social and human rights assessment** required through ESS1 to identify and evaluate the risks and impacts to their health, safety, well-being and security. |  |
| 9. This Standard covers community health, safety, well-being and security which has interlinkages with other ESS items, including but not limited to labour management, pollution prevention, natural resource management, land acquisition and resettlement, indigenous peoples and other cultural heritage systems. Entities will need to identify the best way to manage these interlinkages through the environmental and social assessment**the environmental, social and human rights assessment** and ESMS requirements detailed in ESS1. |  |
| 31. When Entities directly retain security personnel, they will assess human rights risks to those within and outside the activity site or facilities posed by the security arrangements. Entities will make documented reasonable inquiries to ensure that those providing security are not implicated in past abuses. Entities will also make sure that the security staff or contractors are trained adequately in the use of force and appropriate conduct toward workers, local community and the rights of people. | - An initial question in the context of conservation projects in lands of indigenous peoples or communities with customary tenue arrangements should be why security is required in the first place and if this is not a manifestation of an underlying rights violation. Entities should therefore have to justify the presence of security and the views of the concerned communities should be obtained as to the implications of these groups on their rights and well-being. In the case of indigenous peoples, the presence of security guards/forces in their lands should require FPIC. |
|  |  |
| 1 ESS5 Land Acquisition, Restrictions on Land Use, and Involuntary Resettlement |  |
| 1.1 Introduction 1. Environmental and Social Standard 5 (ESS5) addresses impacts of activity-related land acquisition**1**, including restrictions on land use**2** and access to assets and natural resources, which may cause physical displacement (relocation, loss of land**3** or shelter) and/or economic displacement (loss of land, assets or restrictions on land use, assets and natural resources leading to loss of income sources or other means of livelihood**4**). Resettlement refers to both of these impacts and the processes to mitigate and compensate these impacts**for them**. Resettlement is considered “involuntary” when affected people or communities do not have the right to refuse land acquisition or restrictions on land use, other assets and natural resources, even if compulsory acquisition is used only as a last resort after a negotiated process. |  |
| 2. Unless properly managed, involuntary resettlement may result in long-term hardship and impoverishment for the resettlement affected people and communities, as well as environmental damage and adverse socio- economic impacts in areas to which they have been displaced. For these reasons, involuntary resettlement should be avoided. However, where involuntary resettlement is unavoidable, it should be minimized and appropriate measures to mitigate adverse impacts on displaced people and host communities**5** should be carefully planned and implemented. **For activities that may lead to displacement and resettlement of indigenous peoples, ESS7 shall apply.** **ESS 5 shall be interpreted in a manner consistent with the requirements of ESS7. The requirements of ESS7, such as the need to obtain FPIC from indigenous peoples, will always dominate where the provisions of ESS5 are weaker. Consequently,** Consistent with ESS7,resettlement of indigenous peoples requires **their** free, prior and informed consent. The government often plays a central role in the land acquisition and resettlement process, including the determination of compensation, and is therefore an important third party in many situations. Close collaboration and coordination among government agencies and the affected people can result in more effective, efficient, equitable and timely implementation of those activities, as well as the introduction of innovative approaches to improving the livelihoods of those affected by resettlement. Experience also demonstrates that the direct involvement of Entities in resettlement activities can result in more cost-effective, efficient, and timely implementation of those activities, as well as in the introduction of innovative approaches to improving the livelihoods of those affected by resettlement. To help avoid expropriation and eliminate the need to use governmental authority to enforce relocation, Entities are encouraged to use negotiated settlements meeting the requirements of this ESS, even if they have the legal means to acquire land without the seller’s consent. |  |
| 3. The application of this ESS is consistent with the universal respect for, and observance of, human rights and freedoms**6**, specifically**including** the right to private property, the right to adequate housing**7** and to the continuous improvement of living condition**s and the collective rights of indigenous peoples**. |  |
| 7. This ESS also applies to any physical displacement or economic displacement carried out by Entities or a government for purposes relevant to the project before GCF’s involvement. Where displacement has already occurred prior to the involvement of GCF, an audit will be conducted to identify: (i) any gaps of past activities against this ESS**, and ESS7 in the case of indigenous peoples**; and (ii) the corrective actions that may be required to ensure compliance with this ESS **and ESS7**. An environmental and social corrective action plan (ESCAP) will describe all activities to reach compliance with this ESS in the form of a time-bound plan, including a budget, implementation arrangements, allocation of roles and responsibilities, and implementation schedule. |  |
| 1.4.1 General 9. At an early stage of the environmental and social assessment**the environmental, social and human rights assessment** process outlined in ESS 1, Entities will identify if any physical and/or economic displacement is likely to be caused by the activity and assess the likelihood of any future additional land and resource needs. |  |
| 14. Eviction can be carried out **Any evictions that may be associated with project activities shall occur only** in exceptional circumstances **and must be carried out lawfully with full justification and meet all of the following criteria** when in full compliance with: (i) **full compliance with** the provisions of international human rights instruments**14**; and (ii) **authorized by** national law.**; (iii) undertaken solely for the purpose of promoting the general welfare; (iv) are reasonable and proportional, and (v) follow due process standards and are regulated so as to ensure full and fair compensation and rehabilitation. The protection provided by the requirements herein applies to all affected persons and groups, irrespective of whether they hold title to home and property under domestic law**:  ● The rights to information and to meaningful consultation and participation are respected at all stages of the process**. In the case of indigenous peoples, FPIC is required for resettlement; evictions and involuntary relocation are not permitted**;  ● Legal and other remedies are available at all times;  ● Evictions do not result in homelessness; and  ● Adequate compensation is provided before the eviction takes place. | - It must be specified that resettlements of indigenous peoples cannot take place under any circumstances if the Entities do not obtain their free, prior, and informed consent.  - The criteria outlined in the existing text lack all the specificity necessary in the context of forced evictions. The suggested new text is from UNDP SES 5 on Displacement and Resettlement and serves to fill that gap. See also UNEP SS 6.1. |
| 1.4.4 Negotiated Settlements 15. Entities will seek to acquire land rights through negotiated settlements even if it has the legal means to gain access to the land without the consent of the seller. **To this end, effective and informed consultations will be required with affected populations and good faith efforts to secure negotiated settlements that are independently verified by credible third parties.** Negotiated settlements help avoiding or minimizing expropriation and administrative or judicial delays associated with formal expropriation, and to the extent possible to reduce the impacts on affected people associated with formal expropriation. Negotiated settlements can usually be achieved by providing fair and appropriate compensation to affected people or communities. Where the resettlement affected communities or people are unlikely to be aware of market values, Entities should consider providing funding to them so they can hire their own experts to advise on negotiations if necessary. |  |
| 1.4.7 Socio-Economic Surveys 21. Entities will carry out socio-economic surveys to describe the baseline circumstances of resettlement affected people where the project may entail physical and/or economic displacement. Such surveys will use a combination of quantitative and qualitative methods and will be designed to facilitate further social and economic monitoring of the circumstances of resettlement affected people. Socio-economic baseline surveys will:  ● Establish a social and economic profile of the affected communities and people with a disaggregation of data by gender and age;  ● Identify sources of livelihoods that are affected and their significance to the overall livelihoods of resettlement affected people;  ● Identify land tenure regimes in the affected area;  ● Identify any gender issues that may affect the land acquisition and resettlement process; and  ● Identify relevant factors of vulnerability and establish a list of vulnerable groups.  ● **it is important to understand relationships between indigenous peoples and other local communities in the area** |  |
| 23. Entities will carry out an inventory**16** of affected assets, including land, structures, crops, communal amenities and natural resources to establish the basis for further valuation of such assets. **Entities should clarify the tenure rights and relationships of potentially affected persons to affected lands and resources, including recognition of customary rights and collective or communal forms of land tenure.** | - This requirement is important in the context of communities with customary tenure systems. It is touched on in fn 18 below, but should be more explicit in the standard. |
| 24. Entities will establish a cut-off date for eligibility**17** either: (i) as foreseen in applicable legislation; or (ii) using the end date of the census or of the inventory (whichever is the latest). Entities will inform resettlement affected people of the cut-off date at regular intervals. Information regarding the cut-off date will be well documented and will be disseminated throughout the area at regular intervals in written and non-written forms (as appropriate) and in relevant local languages. This will include posted warnings that people settling in the area after the cut-off date may be subject to removal. Entities are not required to compensate or assist opportunistic settlers who encroach on the project area after the cut-off date, provided the cut-off date has been clearly established and made public. The cut-off date for eligibility will be valid either: (i) for the period foreseen in national laws; or (ii) for a reasonable **and culturally appropriate** time period from the census or inventory date. Where a longer period elapses between the cut-off date and compensation of the affected land by Entities, the census, inventory and resulting valuation will be updated. |  |
| 26. Entities will acknowledge that there may be non-economic and cultural assets that cannot be valued in the above manner and cannot be replaced. The resettlement plan will need to describe such assets and identify the management measures, also in alignment with ESS8 as applicable. | - Involuntary resettlement may result not only in socio-economic and environmental impacts. It is important to include that resettlement, especially for indigenous peoples, may also result to cultural and spiritual erosion and disenfranchisement. Often, the cultural and spiritual impacts are difficult (if at all) so management measures must be agreed with communities and indigenous peoples. |
| 27. Resettlement affected people may be classified as follows:   1. Persons who have formal legal rights to the land (including customary and traditional rights recognized under national **or international** laws) or assets; 2. Persons who do not have formal legal rights to land or assets, but who have a claim to land or assets that is recognized or recognizable under national **or international** laws**18**; or 3. Persons who have no recognizable legal right or claim to the land or assets they occupy or use. | - National laws frequently fail to recognize customary land tenure and as a result lead to violations of internationally recognized land rights. The GCF should always apply the highest standard whenever there is a conflict between national and international law. |
| 30. Entities will provide resettlement assistance**20** to all physically displaced people and livelihood improvement or restoration assistance to all economically displaced people. Entities’ obligations pertaining to compensation for property and assets affected by resettlement are as follows for each of the three categories of eligibility classification described above in Section 1.4.10:  ● Category (a) Provide compensation (in-kind or in-cash) at full replacement cost for their legally held property **under national or international law**,**21** and other assets at full replacement cost affected by resettlement.  ● Category (b) Provide legal support for affected people to obtain recognition of their claim to land so that they can further be provided with compensation for their legally held property at full replacement cost, similar to category (a), and cover the cost of this recognition process.  ● Category (c) Provide compensation for any structures or developments on land (including crops and trees), loss of income sources and other means of livelihood. | -See comment under para 27 above |
| 1.4.14 Stakeholder Engagement 42. Meaningful consultation with resettlement affected people and communities, including host communities**25**, will be organised by Entities throughout the process of resettlement planning and implementation in accordance with principles and processes outlined in ESS9, and will be supported by disclosure of relevant information, as follows:  ● Disclosure of relevant information to, and meaningful consultation with, affected people and communities will take place during the consideration of alternative project designs;  ● Resettlement and livelihood improvement or restoration will include options and alternatives from which affected people and communities may choose;  ● Meaningful consultation will take place throughout the planning, implementation, monitoring, and evaluation of the land acquisition and resettlement process, including livelihood improvement or restoration;  ● Additional provisions apply to consultations with displaced indigenous peoples, in accordance with ESS7**, including the requirement of FPIC for resettlement**;  ● Consultation during the planning phase with all relevant resettlement affected groups and stakeholders, including men and women, and vulnerable groups will be documented in the resettlement plan required by this ESS; and  ● Consultation during the implementation and monitoring phases will be documented. |  |
| 1.4.15 Resettlement and Livelihood Restoration Planning and Implementation 47. To address the risks and impacts identified in the environmental and social assessment**the environmental, social and human rights assessment**, Entities will prepare a resettlement framework policy or resettlement plan proportionate to the risks and impacts associated with the GCF-financed activity. A resettlement framework policy will be used to help understand and plan management of land acquisition and resettlement risks and impacts in the early planning phase when specific detailed design may not be available and for when impacts may occur in different locations or at different times. A resettlement plan will be produced when there is more certainty on the design and activities are more known. A resettlement framework policy can be produced without resettlement fieldwork whereas a resettlement plan requires a census and survey of the people, property and assets identified as being impacted. Annex 1 of this ESS provides details on the contents of the resettlement policy framework and resettlement plans. |  |
| 60. Specifically, women’s land rights will be promoted and protected through individual and joint titling of relocation land to the extent permitted by national legislation. Where land is held on a collective or community basis, as for indigenous peoples **who have provided their FPIC**, the ability of individual women to access, use, manage and control lands within collective systems will be supported. | - Given that para 58 is in the context of displacement that cannot be avoided, it seems important to explicitly mention FPIC or ESS7 |
| 1.4.19 Government Coordination 70. Land acquisition, restrictions on land use, and resettlement may involve responsibilities of the government even where GCF-financed activities are involve private sector parties or the GCF-financed resources are privately owned. When land acquisition, restrictions on land use and resettlement involve responsibilities of the government, Entities will: (i) engage the responsible government agencies early in the project development process to explore ways and means to reach compliance with this ESS **and ESS7 where indigenous peoples are involved**; (ii) seek to play an active role in land acquisition and resettlement planning, implementation and monitoring; and (iii) collaborate with the responsible government agency, to the extent permitted by the agency, to achieve outcomes that are consistent with the objectives of this ESS. In addition, where government capacity is limited, Entities will support the government’s efforts in the processes of addressing land acquisition, land use restrictions, and resettlement. |  |
| 71. Entities are responsible for identifying gaps between local legislation and government practice with the requirements of this ESS (i.e. compensation rates, eligibility of informal occupiers, or consultation and disclosure among others) **and ESS7 where indigenous peoples are involved**. When gaps are identified, Entities will take responsibility for bridging these gaps in a manner that is acceptable to the government and to GCF. |  |
| A.1.1 Resettlement Plan 75. The scope of requirements and level of detail of the resettlement plan vary with the magnitude and complexity of resettlement. The plan is based on up-to-date and reliable information about  (a) the proposed project and its potential impacts on the displaced persons and other adversely affected groups,  (b) appropriate and feasible mitigation measures, and  (c) the legal and institutional arrangements required for effective implementation of resettlement measures. Minimum elements of a resettlement plan: […]  ● Community participation. Involvement of displaced persons (including host communities, where relevant):  (a) a description of the strategy for consultation with, and participation of, displaced persons in the design and implementation of the resettlement activities;  (b) a summary of the views expressed and how these views were taken into account in preparing the resettlement plan;  (c) a review of the resettlement alternatives presented and the choices made by displaced persons regarding options available to them; and  (d) institutionalized arrangements by which displaced people can communicate their concerns to project authorities throughout planning and implementation, and measures to ensure that such vulnerable groups as indigenous peoples, ethnic minorities, the landless, and women are adequately represented **and FPIC of indigenous peoples has been obtained in accordance with ESS7**. |  |
| Additional planning requirements where resettlement involves physical displacement: 76. When project circumstances require the physical relocation of residents (or businesses), resettlement plans require additional information and planning elements. Additional requirements include:  […]  ● Consultation on relocation arrangements. The plan describes methods of consultation with physically displaced persons on their preferences regarding relocation alternatives available to them, including, as relevant, choices related to forms of compensation and transitional assistance, to relocating as individual households families or with pre-existing communities or kinship groups, to sustaining existing patterns of group organization, and for relocation of, or retaining access to, cultural property (e.g., places of worship, pilgrimage centers, cemeteries).**In contexts involving indigenous peoples, the plan should describe the independently verified FPIC process that authorizes the displacement and accepts the relocation arrangements.** |  |
| A.1.2 Resettlement Framework 78. The purpose of the resettlement framework is to clarify resettlement principles, organizational arrangements, and design criteria to be applied to subprojects or project components to be prepared during project implementation. Once the subproject or individual project components are defined and the necessary information becomes available, such a framework will be expanded into a specific plan proportionate to potential risks and impacts. Project activities that will cause physical and/or economic displacement will not commence until such specific plans have been finalized.  The resettlement policy framework covers the following elements:  ● a brief description of the project and components for which land acquisition and resettlement are required, and an explanation of why a resettlement policy framework rather than a resettlement plan is being prepared;  ● principles and objectives governing resettlement preparation and implementation**, including the requirement for FPIC of indigenous peoples under ESS7**;  ● a description of the process for preparing and approving resettlement plans;  ● estimated displacement impacts and estimated numbers and categories of displaced persons, to the extent feasible;  ● eligibility criteria for defining various categories of displaced persons;  ● a legal framework reviewing the fit between borrower laws and regulations and this ESS’s requirements and measures proposed to bridge any gaps between them;  ● methods of valuing affected assets;  ● organizational procedures for delivery of compensation and other resettlement assistance, including, for projects involving private sector intermediaries, the responsibilities of the financial intermediary, the government, and the private developer;  ● a description of the implementation process, linking resettlement implementation to civil works;  ● a description of grievance redress mechanisms;  ● a description of the arrangements for funding resettlement, including the preparation and review of cost estimates, the flow of funds, and contingency arrangements;  ● a description of mechanisms for consultations with, and participation of, displaced persons in planning, implementation, and monitoring; and  ● arrangements for monitoring by the implementing agency and, if required, by third-party monitors. |  |
|  |  |
| 1 ESS6 Biodiversity Conservation and Sustainable Management of Living Natural Resources |  |
| 1.1 Introduction 1. Environmental and Social Standard 6 (ESS6) recognizes that protecting, conserving and enhancing biodiversity, maintaining ecosystem services, and sustainably managing living natural resources are fundamental to sustainable development. **Through this ESS the GCF seeks to strengthen effective governance and decision-making systems affecting biodiversity and ecosystems, including strengthening the rights of affected indigenous peoples, local communities and women to sustainable use of resources.** The requirements set out in this ESS have been guided by the Convention on Biological Diversity, which defines biodiversity as “the variability among living organisms from all sources including, inter alia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are a part; this includes diversity within species, between species, and of ecosystems.” | - Recognizing this linkage between the rights of indigenous peoples, local communities and women and strengthening governance systems related to biodiversity and ecosystem is necessary in this ESS, as reflected in the UNDP's ESS1 on Biodiversity Conservation. Its absence is particularly notable here as otherwise the reference to sustainable development and the CBD are consistent with the UNDP policy, and the linkage between SD, HRs and BD is a logical one to make in an environmental and social safeguard address biological conservation and sustainable management of natural resources. |
| 3. Ecosystem services valued by humans are often underpinned by biodiversity. Impacts on biodiversity can therefore often adversely affect the delivery of ecosystem services **and the enjoyment of human rights**. This ESS6 addresses how Entities can sustainably manage and mitigate impacts on biodiversity and ecosystem services throughout the project’s lifecycle. |  |
| 1.2 Objectives ● To protect, conserve and enhance biodiversity.  ● To maintain the benefits from ecosystem services.  ● To promote the sustainable management of living natural resources through the adoption of practices that integrate conservation needs and development priorities  ● **To ensure the fair and equitable sharing of the benefits from the utilization of genetic resources**  ● **To respect, preserve, maintain and encourage knowledge, innovations and practices of indigenous peoples and local communities relevant for the conservation and sustainable use of biodiversity and their customary use of biological resources** | - The first three objectives are exactly those in the UNDP SES1. These two objectives are also in that UNDP SES, so it is unclear why they have been excluded here, especially given that they flow from Art 8j and 10c of the CBD as well as jurisprudence of international human rights bodies. |
| 1.3 Scope of Application 4. The applicability of this ESS is established during the environmental and social assessment**the environmental, social and human rights assessment** process. The implementation of the actions necessary to meet the requirements of this ESS is managed through the Entities’ ESMS, the elements of which are outlined in ESS 1. |  |
| 6. The risks and impacts identification process as set out in ESS1 should consider direct and indirect activity- related impacts and cumulative impacts on biodiversity and ecosystem services and identify any significant residual impacts. This process will consider relevant threats to biodiversity and ecosystem services, especially focusing on habitat loss, degradation and fragmentation, invasive alien species, overexploitation, hydrological changes, nutrient loading, and pollution. It will also take into account the differing values attached to biodiversity and ecosystem services by affected communities**, indigenous peoples** **[add FN]** and, where appropriate, other stakeholders. Where Paragraphs 13–19 are applicable, the Entities should consider project-related impacts across the potentially affected landscape or seascape.  **FN All consultations with indigenous peoples addressed in this ESS will meet the requirements of ESS7.** | - We suggest adding a reference to indigenous peoples here and a clarificatory footnote that says: "All consultations with indigenous peoples addressed in this ESS will meet the requirements of ESS7." Doing so would avoid the need to say that each and every time there is a reference to consulting with indigenous peoples. |
| 8. As a matter of priority, the Entities should seek to avoid impacts on biodiversity and ecosystem services. When avoidance of impacts is not possible, measures to minimize impacts and restore biodiversity and ecosystem services should be implemented. **Affected communities are involved and consulted on activities that may affect their ecosystem services and in the case of indigenous peoples their FPIC will be required where impacts on biodiversity and ecosystem services result in impacts on their rights as per ESS7.** Given the complexity in predicting project impacts on biodiversity and ecosystem services over the long term, the Entities should adopt a practice of adaptive management in which the implementation of mitigation and management measures are responsive to changing conditions and the results of monitoring throughout the project’s lifecycle. | - This important point about consultations with affected communities is made in the UNDP ESS1. The cross reference to ESS7 is also needed for clarity and consistency of the ESSs and in light of the potentially profound impact which impacts on biodiversity and ecosystem services can have for these peoples' rights, survival and well-being |
| 11. For the protection and conservation of biodiversity, the mitigation hierarchy includes biodiversity offsets, which may be considered only after appropriate avoidance, minimization, and restoration measures have been applied.**2** A biodiversity offset should be designed and implemented to achieve measurable conservation outcomes**3** that can reasonably be expected to result in no net loss and preferably a net gain of biodiversity; however, a net gain is required in natural and critical habitats**,**. **with biodiversity offsets only considered in exceptional circumstances in critical habitats.** **If a net gain is not possible then alternative designs to avoid the adverse Impacts on biodiversity will be explored.** The design of a biodiversity offset must adhere to the “like-for-like or better” principle**4** and must be carried out in alignment complementary and mutually reinforcing" the UNDRIP with best available information and current practices. When an Entity is considering the development of an offset as part of the mitigation strategy, external experts with knowledge in offset design and implementation must be involved. | - It would be good to add a footnote that states that  In the context of indigenous peoples, the notion of “critical habitats” is particular relevant in light of a) the unique economic, spiritual and cultural nature of the relationship they have with their lands, b) the importance of their traditional knowledge for the maintenance of the biodiversity in their lands and c) the fact that a disproportionate percentage of the world’s biodiversity is found in their lands. |
| 13. This ESS applies to those areas of modified habitat that include significant biodiversity value**7**, as determined by the risks and impacts identification process required in ESS1. The Entities will minimize impacts on such biodiversity and implement mitigation measures as appropriate. | - Why does the ESS only apply to areas of "significant biodiversity value" in these habitats? |
| 16. Entities will not significantly convert or degrade**8** natural habitats, unless all of the following are demonstrated:  ● No other viable alternatives**9** within the region exist for development of the project on modified habitat;  ● Consultation has established the views of stakeholders, including affected communities which may include**and** indigenous peoples**, including indigenous peoples** that seasonally use or occupy the area, with respect to the extent of conversion and degradation;**10** and  ● Any conversion or degradation is mitigated according to the mitigation hierarchy, and the mitigation has considered the views of stakeholders **and obtained the FPIC of indigenous peoples in accordance with ESS7**. |  |
| 21. Projects will not be implemented in areas of critical habitat unless all of the following are demonstrated:  ● No other viable alternatives within the region exist for development of the project on modified or natural habitats that are not critical;  ● Stakeholders are consulted in accordance with the requirements in ESS9 **and in the case of indigenous peoples ESS7**;  ● The project does not lead to measurable adverse impacts on those biodiversity values for which the critical habitat was designated, and on the ecological processes supporting those biodiversity values;**15**  ● The project does not lead to a net reduction in the global and/or national/regional population**16** of any Critically Endangered or Endangered species over a reasonable period of time;**17** and  ● A robust, appropriately designed, and long-term biodiversity monitoring and evaluation program (BMEP) is integrated into the Entities’ management program. |  |
| 1.4.2.4 Legally Protected and Internationally Recognized Areas  24. In circumstances where a proposed project is located within a legally protected area**20** or an internationally recognized area,**21** or where the project affects such areas indirectly, the Entities will meet the requirements of Paragraphs 14 through 23 of this ESS, as applicable. In addition, the Entities will:  ● Demonstrate that the proposed development in such areas is legally permitted;  ● Act in a manner consistent with any government recognized management plans for such areas;  ● Consult protected area sponsors and managers, affected communities, indigenous peoples **(in accordance with ESS7)** and other stakeholders on the proposed project, as appropriate; and  ● Implement additional programs, as appropriate, to promote and enhance the conservation aims and sustainable management of the area.**22** |  |
| 1.4.3 Management of Ecosystem Services 30. Where a project is likely to adversely impact ecosystem services, as determined by the risks and impacts identification process, the Entities will conduct a systematic review to identify priority ecosystem services. Priority ecosystem services are two-fold: (i) those services on which project operations are most likely to have an impact and, therefore, which result in adverse impacts to affected communities **and indigenous peoples**; and/or (ii) those services on which the project is directly dependent for its operations (e.g., water). When affected communities are likely to be impacted, they should participate in the determination of priority ecosystem services in accordance with the stakeholder engagement process as defined in ESS1 **and also ESS7 in the case of indigenous peoples**. |  |
| 32. With respect to impacts on priority ecosystem services of relevance to affected communities **or indigenous peoples** and where the Entities have direct management control or significant influence over such ecosystem services, adverse impacts should be avoided. If these impacts are unavoidable, the Entities will minimize them and implement mitigation measures that aim to maintain the value and functionality of priority services**, subject to indigenous peoples’ FPIC in accordance with ESS7**. With respect to impacts on priority ecosystem services on which the project depends, Entities should minimize impacts on ecosystem services and implement measures that increase resource efficiency of their operations (as described in ESS 3) together with measures to maintain the value and functionality of those services. Additional provisions for ecosystem services are included in ESS 4, 5, 7, and 8.**24** |  |
| 35. Projects involved in large-scale commercial farming, including breeding, rearing, housing, transport, and slaughter of animals for meat or other animal products will employ Good International Industry Practice (GIIP) in animal welfare, animal husbandry techniques, with due consideration for human health, religious and cultural principles **and respect for human rights, including the collective rights of indigenous peoples under ESS7 and the rights of other affected communities with customary tenure systems**. Projects involved in industrial-scale commercial forest harvesting operations must be either certified under an independent and credible forest certification system or adhere to a time-bound phased action plan for achieving certification to such a system. Industrial scale commercial forest harvesting must not convert critical or natural habitat. |  |
| 37. Credible globally, regionally, or nationally recognized standards for sustainable management of living natural resources are those which (i) are objective and achievable; (ii) are founded on a multi-stakeholder consultative process; (iii) encourage step-wise and continual improvements; and (iv) provide for independent verification or certification through appropriate accredited bodies for such standards **and (v) ensure respect for human rights of affected communities and indigenous peoples**.**26** |  |
| 1.4.6 Supply Chain 40. Where Entities are purchasing primary production (especially but not exclusively food and fiber commodities) that is known to be produced in regions where there is a risk of significant conversion of natural and/or critical habitats, systems and verification practices will be adopted as part of the Entities’ ESMS to evaluate its primary suppliers.**27** The systems and verification practices will (i) identify where the supply is coming from and the habitat type of this area; (ii) provide for an ongoing review of the Entities’ primary supply chains; (iii) limit procurement to those suppliers that can demonstrate that they are not contributing to significant conversion of natural and/or critical habitats **and related human rights impacts** (this may be demonstrated by delivery of certified product, or progress towards verification or certification under a credible scheme in certain commodities and/or locations); and (iv) where possible, require actions to shift the Entities’ primary supply chain over time to suppliers that can demonstrate that they are not significantly adversely impacting these areas. The ability of the Entities’ to fully address these risks will depend upon the Entities’ level of management control or influence over its primary suppliers. |  |

|  |  |
| --- | --- |
| 1 ESS7 Indigenous Peoples |  |
| 1.1 Introduction 1. Environmental and Social Standard 7 (ESS7) recognizes that indigenous peoples, have identities**,** and aspirations **and rights** that are distinct from mainstream groups in national societies and are disadvantaged by traditional models of mitigation, adaptation and development. indigenous peoples groups may pursue their own concept and way of human development; trying to maintain distinct group identity, beliefs, customs, worldviews and more. They can exercise control and management of lands, territories and natural resources historically used or occupied **or otherwise acquired** with which they maintain a special connection, which predates those who colonized the land where the collective was originally found and possibly dispossessed. |  |
| 2. In many instances, indigenous peoples are among the most economically marginalized and vulnerable segments of the population. The economic, social and legal status of indigenous peoples frequently limit their capacity to defend their rights to, and interests in, land, territories and natural and cultural resources, and may restrict their ability to participate in and benefit from development initiatives and climate change actions. In many cases, they do not receive equitable access to project benefits, or benefits are not devised or delivered in a form that is culturally appropriate, and they are not always adequately consulted about **or their consent obtained for** the design or implementation of activities that would profoundly affect their lives or communities. Affirmative action may therefore be needed and wanted by them **to** strengthen their capacity to defend their rights to, and interests in, lands and resources, and to allow them to participate in, and benefit from, development processes **on their own terms**. | - In terms of structure, it doesn't feel good that this ESS starts off with the vulnerability of indigenous peoples, painting them as vulnerable, needing protection. It might be better to start off with what IPs bring to the table in climate mitigation and adaptation (paragraph) 4 and then build on to say that despite their contribution, IPs unfortunately are among the most vulnerable because of historical discrimination, etc.) |
| 3. Indigenous peoples are often closely tied **collectively** to their lands, waters, territories and related natural resources**1** and ecosystem services. For their lifeways as a whole, their worldviews, knowledge, **practices,** science, and spirituality are interconnected with nature and ecosystem they live in. They **have and continue to** can **typically** play a**n important** stewardship role with regards to natural resources. Awareness of customary management regimes and support for their improvement is essential from a perspective of environmental sustainability.  **1** Examples include marine and aquatic resources**,** **forests**timber, and non-timber forest products, medicinal plants, hunting and gathering grounds, and grazing and cropping areas. **Indigenous peoples’ conceptions of ownership upon which their rights are based do not compartmentalize “natural resources” in the same way as western property rights models do. For example, the soil and subsoil are not differentiated and as a result many indigenous peoples also claim inherent rights over subsoil resources under their customary laws. A similar logic would apply to carbon that is stored within their forests. As a result, a heightened onus exists to obtain indigenous peoples’ FPIC for an activity that impact on their forests or seek to regulate and trade in the carbon which they contain.** Natural resource assets, as referred to in this ESS, are equivalent to provisioning ecosystem services as described in ESS6. | - It is a little unclear what this text in the footnote (no 1): "Natural resource assets, as referred to in this ESS, are equivalent to provisioning ecosystem services as described in ESS6" means. |
| 4. Indigenous peoples have invaluable and critical contributions to make to climate change mitigation and adaptation. Yet they are also facing serious threats to the realization of their rights from climate change actions. The importance of engaging with indigenous peoples in climate change policies and actions has been recognized by the Conference of the Parties (COP) to the United Nations Framework Convention on Climate Change (UNFCCC), including in the Cancun Agreement (decision 1/CP.16). The preamble of the Paris Agreement also acknowledges that Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on, inter alia, the rights of indigenous peoples. The COP decision adopting the Paris Agreement (decision 1/CP.21) recognized the need to strengthen practices and efforts of local communities and indigenous peoples related to addressing and responding to climate change and operationalized the local communities and indigenous peoples platform to help do this. | - In terms of structure, this paragraph should come before Para 2. |
| 5. Indigenous peoples are particularly vulnerable if their lands**, territories**  and resources are transformed, encroached upon, or significantly degraded. Their languages, cultures, **identity,** religions, spiritual beliefs, and institutions may **inevitably** also come under threat. As a consequence, indigenous peoples may be**are** more vulnerable to the adverse impacts associated with project development than non-indigenous communities **as their physical and cultural survival and their right to self-determination are often profoundly affected**. This vulnerability may include loss of identity, culture, and natural resource-based livelihoods, as well as exposure to impoverishment and diseases. |  |
| 6. This ESS requires anticipation and avoidance of any adverse impacts on indigenous peoples’ rights, interests and well-being, and when avoidance is not possible**, and FPIC to such impacts is obtained,** to minimize, mitigate and/or compensate appropriately and equitably for such impacts, in a consistent way and to improve outcomes over time. **Where FPIC is not obtained and/or is not independently verified the associated activities will not be funded.** |  |
| 7. GCF-financed activities **for which FPIC is obtained** can create opportunities for indigenous peoples to participate in, and benefit from project-related activities that may help them fulfil their **self-determination based right to and** aspiration for economic**,** and social **and cultural** development. Furthermore, indigenous peoples may play a role in sustainable development by promoting and managing activities and enterprises as partners in development. Government often plays a central role in the facilitation of indigenous peoples’ issues, and Entities should collaborate with the responsible authorities in managing the risks and impacts of their activities **provided those authorities act in full compliance with international law as it pertains to the rights of indigenous peoples**.**2**  2 In addition to meeting the requirements under this ESS, Entities must comply with applicable national law **and** , including those laws implementing host country obligations under international law | - Important to add “their self-determination based right” as all main human rights treaty bodies have repeatedly affirmed that indigenous peoples have the right to self-determination by virtue of which they have the right to economic, social and cultural development. This right which is also affirmed in UNDRIP and by regional and national courts, is more than an aspiration and so we suggest that it be reworded.  - The footnote is a little unclear as "including" adds nothing to the requirement and does not address the reality that in many cases states have not enacted laws to give effect to their international obligations, for this reason we suggest rewording as below.  -The qualification at the end is important as governments are all too often the source of indigenous rights violations. This needs to be recognized in a safeguard that addresses those rights as otherwise it can serve to sanction rights violations. A central *raison d'etre* for safeguards is to address this implementation gap between IHRL obligations and state and corporate practice. As the GCF is the funding entity there is reason to differentiate between rights violations that arise as a result of state action or inaction and rights violations that arise as a result of non-state entity practice. |
| 8. The rights of indigenous peoples are affirmed by international human rights instruments, including binding treaties and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) **which is used by human rights treaty bodies as an authoritative interpretative guide for these treaties.** The application of this standard is consistent with the **rights,** principles **and obligations** set forth in UNDRIP; International Labour Organization (ILO) Convention 169 and the International Covenant on Economic, Social and Cultural Rights; the International Convention on the Elimination of All Forms of Racial Discrimination; the outcome document of the high-level plenary meeting of the United Nations General Assembly, known as the World Conference on Indigenous Peoples; and the International Covenant on Civil and Political Rights**.** | - These instruments establish specific rights which go beyond general principles. So saying principles alone fails to capture the import of international human rights law. We therefore suggest adding rights and obligations.  - Treaties are always binding and therefore the word is redundant. |
| 1.2 Objectives ● **To recognize and foster full respect for indigenous peoples’ human rights as recognized under Applicable Law (national law and obligations under international law, whichever is the higher standard), including but not limited to their rights to self-determination, their lands, territories and resources** and territories**, traditional livelihoods and cultures.**  ● To support and promote the rights, welfare, positive contributions and leadership of indigenous peoples to climate change mitigation and adaptation, based on their traditional knowledge systems, lifeways, livelihoods, sustainable resource management systems and practices, in a manner that is accessible, rights-based, gender-responsive, culturally appropriate and inclusive;  ● To enable the critical role of indigenous peoples to ensure more effective, sustainable and equitable climate change results, outcomes and impacts and to enable them to be active leaders and participants in the process;  ● To enable indigenous peoples present in, or with collective attachment to, the areas where activities are implemented (or activities proposed for financing will be implemented) to be fully informed and consulted about, and have opportunities to actively participate in, project design and the determination of project implementation arrangements;  ● To provide a framework to **ensure respect for and protect indigenous peoples’ rights by** anticipat**ing**e and avoid**ing** any adverse impacts of its activities on indigenous peoples’**their** rights, interests and well-being, and when avoidance is not possible**,** **and verifiable FPIC has been obtained for the activities,** to minimize, mitigate and/or compensate appropriately and equitably for such impacts;  ● To pay particular attention to the different challenges faced by women and girls and other groups within indigenous communities, and to promote the participation and leadership of women in activities, given their role as traditional knowledge holders and custodians of cultural and spiritual heritage and values;  ● To enable and further **the** realiz**ation of**e full respect for the rights, dignity, aspirations, identity, culture, lifestyle, autonomy, protagonism, and natural resource-based livelihoods of indigenous peoples and territory management in the whole spectrum of **GCF** activities and initiatives, following the **rights and** principles set forth in the applicable international and regional instruments**, including those specifically** relating to the **collective** rights of indigenous peoples and individuals**3**, such as UNDRIP and ILO Convention 169;  ● To promote and respect indigenous peoples’ collective rights to own, use, develop and control the lands, territories, and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those that they have otherwise acquired;  ● **To promote greater control and management by indigenous peoples over GCF funded activities affecting them, including their lands, resources and territories, ensuring alignment of those activities with indigenous peoples’ distinct vision and self-determined**identified **development priorities.**  ● To recognize, respect and preserve the culture, knowledge and practices of indigenous peoples, and to provide them with an opportunity to adapt to changing conditions in a manner and in a timeframe acceptable to them;  ● To foster full respect of as well as promote and preserve indigenous peoples’ cultural and spiritual heritage and values, traditional **indigenous** knowledge, natural and economic resource management systems and practices, occupations and livelihoods, customary institutions and overall well-being;  ● To recognize and effectively apply the **self-determination based** principle of free, prior and informed consent, as described in this ESS **and under international human rights law**;  ● To establish and maintain continuing engagement based on fully informed consultation and effective participation of the indigenous peoples, including indigenous women, youth, elders and knowledge holders, affected by the activities throughout their implementation;  ● To ensure that all grievance mechanisms associated with activities are effective in addressing issues raised by indigenous peoples and are accessible, fair, transparent and culturally appropriate; and  ● To recognize and operationalize indigenous peoples’ equitable access to the benefits of activities. | - This overarching objective to recognize and foster full respect for indigenous peoples’ human rights is affirmed in the UNDP standard 6 on indigenous peoples and captures what should also be the overriding objective for the GCF's safeguard standard on indigenous peoples. It would be good to add this here and perhaps include the following in a footnote  "Conflicts between applicable international and national legal standards governing indigenous peoples’ rights should be resolved in favour of the more stringent standard."  - A similar objective regarding promoting greater control and management by indigenous peoples is also included in UNDP SES 6 but addressing UNDP projects. |
| 1.3 Scope of Application 9. The application of this standard is to be consistent with the requirements of the GCF Indigenous Peoples Policy (IP Policy) **and by extension IHRL instruments such as the UNDRIP**. If there is any future inconsistency between this ESS and the GCF IP Policy, the GCF IP Policy will prevail on the basis that it represents the policy governing a specific subject matter compared with the standard. |  |
| 10. The applicability of this ESS is established during the **project scoping/screening activity and subsequently in the** environmental and social risks, impacts and co- benefits identification process. | - An initial project scoping or screening exercise (even prior to conduct of the ESIA) should identify if indigenous peoples may potentially be impacted and their FPIC required for their participation in an ESIA. |
| 11. The implementation of the actions necessary to meet the requirements of this ESS is managed through Entities’ ESMS, the elements of which are outlined in ESS1. |  |
| 12. This ESS will apply to indigenous peoples as characterized in the following paragraphs. |  |
| 13. In this ESS, the term “indigenous peoples” is used in a generic sense to refer to a distinct social and cultural group with their collective and prerogative rights as being equal to all other peoples entitled to enjoy and exercise their **collective and** individual human rights without discrimination. Indigenous peoples possess 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, or areas of seasonal use or occupation as well as to the natural resources in these areas;  ● Customary cultural, economic, social, **legal** or political institutions that are distinct separate from those of the mainstream society or culture; and  ● A distinct language or dialect, often different from the official language or languages of the country or region in which they reside. This includes a language or dialect that has existed but does not exist now due to impacts that have made it difficult for a community or group to maintain a distinct language or dialect.  **3** Including but not limited to, UNDRIP, ILO Convention No. 169, the International Covenant on Economic, Social and Cultural Rights, and the International Convention on the Elimination of All Forms of Racial Discrimination |  |
| 14. This ESS will take into account commonly accepted and applied criteria for identifying indigenous peoples, respecting self-identification as indigenous or tribal as a fundamental criterion for determining the application of this ESS. **The recognition of their rights arises from the characteristics, realities, histories, customary laws and needs of these groups and applies irrespective of the nomenclature used by the states in which they reside to identify them.** In some countries, such groups are re**cognized**ferred to as indigenous peoples **in accordance with their self-identification as such**. In other countries, **governments**they **and others** may be referred to **them** by other terms, such as “indigenous peoples and local communities”, “local communities”, “sub-Saharan African historically underserved traditional local communities”, “indigenous and/or ethnic minorities”, “Afro-descendent communities of South America and the Caribbean”, “original peoples”, “autochthonous peoples”, “residents of indigenous counties or reserves”, “ethnic groups”, “aboriginals”, “hill tribes”, “vulnerable and marginalized groups”, “minority nationalities”, “scheduled tribes”, “first nations”, “tribal groups”, “pastoralists”, “hunter-gatherers”,’ “nomadic groups” or “forest dwellers”**, among others**. Regardless of which terminology is used, the requirements of this ESS will apply to all such groups. **[Add FN]**  **FN****Under international human rights law, other groups, such as afro-descendant peoples and local communities with customary land tenure systems, who share social, cultural and economic characteristics with indigenous peoples (that differ from characteristics of other sections of the national community), and who maintain a special relationship with their ancestral territories, and “regulate themselves, at least partially, by their own norms, customs, and/or traditions”, also trigger the requirement for FPIC and require protection of their customary tenure and governance systems.** | - As it is true that indigenous people are not recognized by governments in many parts of the world, it is important to state that the ESS7 applies regardless of the terminology used by States as self-identification is fundamental. To clarify that its scope applies it would be good to add a clarificatory footnote explaining that:  -Indigenous peoples are distinct groups from afro-descendant peoples or local communities. It is therefore clearer to remove those categories from the list and add a footnote that explains that similar rights are vested in those groups that have similar characteristics to indigenous peoples. Text for this footnote is suggested. |
| 15. This ESS applies . whenever indigenous peoples are present in, have, or had a collective attachment or right to areas where GCF-financed activities will be implemented., This includes indigenous peoples who have lands in their possession, or who, during the lifetime of members of the community or group, have lost collective attachment to distinct habitats or ancestral territories in the project area because of forced severance, conflict, government resettlement programs, dispossession of their lands, natural disasters, or incorporation of such territories into an urban area**,4** **but who still maintain their collective attachment to and claims over those lands.** A group, or members of a group, that lead a nomadic or transhumant way of life, live in mixed or urban communities and/or only visit their traditional lands on a seasonal basis may also experience forced severance. Neither their present mode of living nor this forced severance renders such a group ineligible for application of this ESS. In addition to pastoralists, this ESS applies to indigenous peoples who seasonally migrate outside of their territories for economic and social purposes, including hunting and gathering and participating in spiritual ceremonies. | - This logic of limiting recognition to “during the lifetime of member of the community or group” would serve to justify the disposition of many indigenous peoples throughout the world of their lands, including those who have had favourable decisions of international human rights bodies and regional human rights courts to have restitution of their lands taken from them without their consent but where the state has failed to implement these decisions (for example in Brazil and Costa Rica). It also applies in contexts where national constitutions and legislation recognise the right of these peoples to their lands but where those lands are held by others and the state has failed to return them to the legally rightful owners. Establishing a logic that collective rights over lands are lost if those who held the lands have deceased it at odds with the international framework addressing indigenous peoples' rights which for example under UNDRIP requires that states address historical injustices, also addressed by human rights treaty and charter bodies. It is also inconsistent with the logic followed by states such as New Zealand in the Waitangi Tribunal and in land claim agreements in Canada, or in the jurisprudence of the Constitutional Court of Colombia. |
| 16. This ESS applies to transborder people, for instance regional projects involving two or more countries or border areas where indigenous peoples are present. For instance, in such cases, project or programme will adopt measures to address adverse impacts of the project that might affect transborder peoples. Among others, measures will include consultation**,** and good faith negotiation processes **and FPIC**, legal security and territorial control programs, and other culturally appropriate programs related to rights and priorities in health, freedom of movement, dual nationality (within the context of the applicable legal obligations and commitments), and cultural, social, and economic integration between the affected peoples. |  |
| 17. This ESS applies regardless of whether indigenous peoples are affected positively or negatively, and regardless of the significance of any such impacts. The application of this ESS is not limited by the absence of legal recognition or identification of indigenous peoples by a state. It will also not be limited by the legal status of titling of indigenous lands, resources and territories. This ESS applies irrespective of the presence or absence of discernible economic, political or social vulnerabilities, although the nature and extent of vulnerability will be a key variable in designing plans to promote equitable access to benefits or to mitigate adverse impacts. |  |
| 18. Entities may be required to seek inputs from competent professionals to ascertain whether a particular group is considered as indigenous peoples for the purpose of this ESS **and under IHRL**. Such inputs from competent professionals should prioritize **the views of** indigenous peoples themselves. | - It was not clear what the sentence is saying, so this suggested edit may not have capture its intent. In general, if there is doubt about the existence of an indigenous people, other indigenous peoples and indigenous organizations can act as sources of information and the views of indigenous peoples should carry a heavy weight in any such determination. The experts chosen should also be acceptable to indigenous peoples in the country. |
| 1.4 Requirements1.4.1 General 1.4.1.1 Avoidance of Adverse Impacts |  |
| 19. Entities will identify, through **initial project scoping/screening and subsequently** an environmental and social assessment process, all communities of indigenous peoples within the area of influence who may be affected by the activity, as well as the nature and degree of the expected direct and indirect economic, social, cultural (including cultural heritage**5** ), **human rights** and environmental impacts on them. |  |
| 20. Adverse impacts on indigenous peoples will be avoided to the maximum possible extent **and impacts will only be acceptable where FPIC to them has been obtained**. Where alternatives have been systematically explored to consider feasible alternative project designs to avoid adverse impacts, and adverse impacts are unavoidable, the Entity will **be required to obtain FPIC for those impacts and to** minimize, and compensate for th**em**ese impacts in a culturally appropriate manner proportionate to the nature and scale of such impacts and the form and degree of vulnerability of the affected indigenous peoples. The appropriate mitigation measures to minimize impacts and for appropriate compensation will **require FPIC and** be determined with the full and effective participation of affected indigenous peoples, including indigenous women, youth, the elderly and disabled people. |  |
| 21. Entities’ proposed actions will be contained in a time-bound plan, **that has been negotiated and agreed with indigenous peoples**, such as an indigenous peoples plan, or **where acceptable to the concerned indigenous peoples,** a broader community development plan with separate components for indigenous peoples.**6** |  |
| 22. Entities will assess the potential risks of fuelling or generating ethnic conflicts that affect indigenous peoples, stimulated by activities curtailing resource use or promoting conflicting cultural practices as well as inequitable or culturally inappropriate benefits provided by activities which can lead to alienation or inter- or intra-community conflicts. |  |
| 23. When situations arise in which activities may potentially affect remote groups with limited external contact, also known as peoples “in voluntary isolation”, “isolated peoples” or “in initial contact”, Entities will **recognize that their decision to remain in isolation is an exercise of their right to self-determination and will refrain from conducting any activities that may affect their rights and well-being. They will** respect the prerogative of the indigenous peoples to live freely according to their culture and avoid contact. Entities will take all appropriate measures to recognize, respect and protect their lands**,** and territories **and resources**, environment, health and culture, as well as measures to avoid all undesired contact with them as a consequence of the GCF-financed activities. The aspects of the activities that w**c**ould result in such undesired contact **or impact on their enjoyment of their rights now or in the future** will not be processed further. Entities will collaborate with responsible governments agencies **and national and regional indigenous peoples organizations** to regulate the territories of the uncontacted peoples and establish buffer zones, **restrict**limit access to such territories, and develop the necessary monitoring and emergency response measures, **mandating** making avoidance of contact a priority, and mitigating any other risks and impacts on indigenous peoples in isolation and initial contact. | - A number of points arise in relation to “The aspects of the activities that would result in such undesired contact” that need further reflection. The first is that no activity should take place in their territories as their self-determination decision to remain in isolation is a manifestation of withholding consent to any activities that could impact on them or their lands, territories and resources. As there cultural and physical survival as peoples depends on this there can be no derogation from the duty to respect their decision. As a result, their territories should be protected from access by all outsiders. Secondly, these peoples have the freedom now and, in the future to decide what to do with their territories. As a result, no decisions can be taken that place limitations on that right (as consent cannot be sought or obtained for this). Inclusion of their territories in carbon markets is therefore ethically and legally questionable as it a) places potential restrictions on their right to self-determination by limiting their freedom to take decisions over those territories in the future, |
| 1.4.1.2 Participation and Consent |  |
| 24. To promote the effective design of GCF-financed activities, to **ensure recognition of and respect for indigenous peoples’ self-determination, territorial and cultural rights while also** build**ing** local project support or ownership or buy-in, and to reduc**ing**e the risk of delays or controversies, Entities will undertake an engagement process with indigenous peoples **aimed at ensuring their full and effective participation in decision-making and obtaining their FPIC to proposed activities**. This engagement process will commence as soon as is feasible **in the planning process** and prior to the commencement of any activities that may affect their rights or interests and will carry on throughout the life of the project. This engagement process includes stakeholder analysis and engagement planning **(including but not limited to those in ESS9)**, disclosure of information, and meaningful consultation in local language(s) and in a culturally appropriate and gender-**responsive** and inter-generationally inclusive manner in accordance with the customs, norms, and values of the affected people and through their chosen representatives. | - This logic of reducing risk was all framed from the point of view of the project proponent and not from the groups whose rights, interests and well-being have to be safeguarded. It therefore needs to reference those rights in order to avoid inappropriately framing indigenous peoples as a means to an end. |
| 25. For indigenous peoples, the process of meaningful consultation will also:  ● Involve indigenous peoples’ representative bodies and organizations (e.g., councils of elders, village councils or chieftains) and, where appropriate, other community members including indigenous women and youth. For activities that have a regional or national scope, it must be carefully evaluated **in conjunction with indigenous peoples** whether meaningful consultation can only be carried out with indigenous peoples organizations or legitimate representatives at the relevant national or regional levels. **Depending on the nature of the measure, m**Meaningful consultations may require that consultations be carried out at a local level in addition to at the regional and national levels identified in the stakeholder analysis and engagement planning.  ● Include indigenous **FPIC and** consultation protocols**7** when they exist**, or facilitate their development by indigenous peoples should they wish to do so prior to taking any decisions**.  ● Begin as early as possible in the activity **planning** or project design and development process and will provide sufficient time for indigenous peoples’ decision-making processes**, including the time they may need to agree internally on those processes**. **In accordance with their right to self-determination, each indigenous people will decide on the nature of its own** I**i**nternal decision-making processes are generally but not always collective in nature. **Depending on the process chosen by the people,** T**t**here may be internal dissent and decisions may be challenged by some in the community **or they may require consensus of the community**. The consultation process will, therefore, allow sufficient time for internal deliberations and decision-making processes to reach conclusions. The consultation process will be free of external manipulation, interference, coercion and intimidation.  ● Allow for indigenous peoples’ effective and legitimate participation in the design of activities that could potentially affect them either positively or negatively**, this includes participation in the conduct of ESIAs**;  ● Take into account the interests of community members who are particularly affected and marginalized, especially women, youth, indigenous persons with disabilities and the elderly, including being cognizant of traditional cultural approaches that may exclude segments of the community from the decision-making process. Additionally, spaces should be created to allow for their direct participation in consultation and **to empower them to input** in**to** the decision-making process.  ● Recognize community heterogeneity, taking into account that indigenous peoples may live in mixed communities with non-indigenous peoples; and communities of indigenous peoples are multi-vocal such that consultations and participation must be multigenerational and inclusive of gender, and excluded groups (within the communities of indigenous peoples).  ● Assess the capacity of the indigenous peoples to engage**,** and consider and implement effective communication and capacity-building programs to enhance the effectiveness of the process with indigenous peoples. This should include the possibility and availability of resources to ensure adequate preparation and participation in the process. **It should also include access to technical and legal assistance by indigenous peoples in order to address information and power imbalances in consultation processes.**  ● **Give full respect and due consideration to indigenous peoples’ knowledge and recognize that consultation processes are based on respect and engagement of equals and consist of a two-way flow of information and understanding, in which the Entity should learn from indigenous peoples.**  **7** Indigenous consultation protocols are specific instruments and initiatives established **autonomously developed** by each indigenous peoples to ensure the respect for their rights within the framework of consultation **and FPIC** processes. | - It is unclear what “are generally but not always collective in nature” means and what type of decision taken by a people would not be collective in nature. Is it referring to consensus, or is it referring to collective decision-making processes that do not involve voting by individuals? Regardless the primary point is that each people must be free to decide its own decision-making process in accordance with its own rules, customs and laws.  - As worded the sentence “Additionally, spaces should be created to allow for their direct participation in consultation and in the decision-making process” appeared to say that the Entity could interfere in the process through which indigenous peoples take their decisions, and so was problematic. The entity may decide to consult with a broad spectrum of the community, and in so doing empower them to make their voices heard, but it cannot interfere with or impose a decision-making process on an indigenous people. It could however conclude that groups within the community have concerns about impact on their rights of the activities that have not been adequately addressed in the FPIC process and that these concerns need to be addressed by the entity to ensure that the activity does not impact negatively on their rights. |
| 26. Meaningful consultation will include an understanding and respect for any relevant customary laws **and practices** including customary systems of decision making. The process will allow for effective participation of indigenous peoples in the design of project activities or mitigation measures that could potentially affect them either positively or negatively **and will provide them with culturally appropriate input and information necessary for taking FPIC decisions**. |  |
| 27. Entities and indigenous peoples will agree on appropriate engagement and consultation **and FPIC seeking** processes as early as possible, commensurate with the scale of impact and vulnerability of the communities. This will be done through framework documents or plans that identify representatives of indigenous peoples, the agreed consultation process and protocols **(with the opportunity for indigenous peoples to develop their own autonomous FPIC protocols where they wish)**, the reciprocal responsibilities of parties to the engagement process, and agreed avenues of recourse in the event of an impasse occurring. Entities will document support for the agreed process from the indigenous peoples. |  |
| 28. Indigenous peoples may be**are** particularly vulnerable to the loss of, alienation from or exploitation of their land and access to natural and cultural resources **and have distinct collective self-determination based rights in relation to those lands, territories and resources**.**8** In recognition of **these rights and** this vulnerability, in addition to the General Requirements of this ESS, Entities will obtain the free prior and informed consent of the affected communities of indigenous peoples in the circumstances described in Paragraphs 29-36 of this ESS **and in accordance with IHRL**. Free, prior and informed consent applies to project design, implementation, and expected outcomes related to impacts affecting the communities of indigenous peoples. When any of these circumstances apply, Entities will engage external indigenous peoples experts**, acceptable to the concerned peoples,** to assist in the identification of the project risks and impacts. |  |
| 29. There can be different **There is no single on-size fits all** definitions of free, prior and informed consent. Free prior and informed consent **is premised on the right to self-determination, non-discrimination and territorial control. It** builds on and expands the process of meaningful consultation described in ESS1 and will be established through good faith negotiation between Entities and the affected indigenous peoples. Indeed, free prior and informed consent should be a self-determined and indigenous peoples-led process **and decision** aligned with their right to self-determination and autonomy. Where indigenous peoples have developed their own free prior and informed consent protocols**, or wish to do so prior to the initiation of consultations seeking their consent,** for activities affecting their lands, territories, and natural resources, these should be **respected as a core** part of the project approach to obtaining free prior and informed consent for the GCF financed activity. **Where protocols do not exist, or the concerned peoples do not seek to develop them, the Entity should consult with indigenous peoples to develop the rules governing their engagement with indigenous peoples as the process to seek and obtain FPIC.** Entities will document: (i) the mutually accepted process between Entities and affected indigenous peoples, and (ii) evidence of agreement between the parties as the outcome of the negotiations **iii) who participated in the process and who the representatives of the community were iv) who provided the independent verification of the FPIC process**. | - The language as originally worded could be read as if entities could define/determine that FPIC consists of and comply with ESS 7 even if it would be a violation of indigenous peoples' human rights. The standard should be clear that "Free, prior, and informed consent" is the consent entities must acquire to proceed with their projects (it is an autonomous decision of indigenous peoples taken in accordance with their own customary decision-making practices). A "free, prior, and informed consent process" is what entities must undertake in order to gain the consent. |
| 30. Free, prior and informed consent (FPIC) does not necessarily require unanimity. FPIC should be viewed as a process that both allows and facilitates indigenous peoples to build and agree upon a collective position with regard to the proposed development cognizant that individuals and groups within the affected communities may retain differing views on various issues pertaining to the proposed development. Such collective “community consent” should derive from the group of affected communities as a whole, representing their view regarding the proposed development. Thus, a free prior and informed consent agreement captures the affected communities’ broad agreement**decision, taken through their own freely determination process,** on the legitimacy of the **proposed activity and the** engagement process **regarding it with them**and the decisions made. | - The idea of "broad agreement" used here is overly general and therefore somewhat problematic (as pointed out by the IFC Compliance Advisory Ombudsman). It is up to each people to decide what FPIC means for them. For some that might correspond to the notion of a broad agreement while for others it might be much closer to a consensus of all. This is not something which IHRL prescribes (and it has deliberately avoided doing so as that would be contrary to the right to self-determination and consent) and therefore should not be something a GCF safeguard prescribes. |
| .4.2 Circumstances Requiring Free, Prior, and Informed Consent |  |
| 31. The free, prior and informed consent of indigenous peoples will be required in the circumstances identified in this section. **As explained by EMRIP, FPIC is “a manifestation of indigenous peoples’ right to self-determine their political, social, economic and cultural priorities” and “operates fundamentally as a safeguard for the collective rights of indigenous peoples”.** There **While, there** is no universally accepted definition of free, prior and informed consent**,** .**“[a]t a very general level, FPIC may be understood as the right of indigenous peoples to approve or reject certain proposed actions that may affect them and that the [good faith and effective] process for reaching such a decision must possess certain characteristics”.** Free, prior and informed consent is **therefore** a process and an outcome, with both needing to be documented. Free, prior and informed consent will be an iterative process, requiring indigenous peoples’ consent before a proposal for GCF financing is considered by the GCF Board, on the basis of their own independent deliberations and decision-making process. The i**I**ndigenous peoples’ consent will be based on adequate information **on the potential impacts and benefits of an activity,** to be provided in a timely **and** manner, in a culturally appropriate manner, in a local language **of the people’s choosing** **with information presented in a format** that is understood by them, **and is obtained**  **through their representative institutions** and through a process of transparent and inclusive consultations, including with women and youth, and **that is** free of coercion or intimidation. **As explained by the UN Permanent Forum on Indigenous Issues, “consent refers to the collective decision made by the rights-holders and reached through the customary decision-making processes of the affected peoples or communities. Consent must be sought and granted or withheld according to the unique formal or informal political-administrative dynamic of each community.” There is therefore no “one size fits all” form of FPIC as the decision-making is a function of each peoples customary laws and practices and the internal process through which each indigenous people makes and communicates its FPIC decision must be determined autonomously by the people themselves. Consequently, depending on the particular people’s rules, practices and customary laws, their decision to grant or withhold f**Free, prior and informed consent **may**does not **necessarily** require unanimity and may be achieved even when individuals or groups within or among affected indigenous peoples explicitly disagree. | - See “Free, prior and informed consent: a human rights-based approach Study of the Expert Mechanism on the Rights of Indigenous Peoples” UN Doc. A/HRC/39/62 paras 13 & 14.  - Sentence “at a general level…” is from the Guidance Note UNDP Social and Environmental Standards Standard 6: Indigenous Peoples  - Based on the above additions, the paragraph could be split after “their own independent deliberations and decision-making process”, i.e. start a new paragraph with the sentence "Indigenous peoples' consent will be..."  - While the criteria of inclusiveness is important, the GCF cannot dictate to indigenous peoples how to make their decisions, and as UNDRIP affirms, consultation to obtain FPIC are to be held through their representative institutions.  Sentences from “Report of the International Workshop on Methodologies Regarding Free Prior and Informed Consent E/C.19/2005/3, endorsed by the UNPFII at its Fourth Session in 2005”  - It may frequently be the case that unanimity is not required, however, it is not always the case as each people will have its own modality for determining how internal consensus is reached as part of their FPIC decision-making process. It is not for the GCF or any outsider to define how that process will work. It is important to stress that given that FPIC is an exercise of autonomous decision-making the process has to be defined by and under the control of the people themselves. The cited UNPFII report and the 2018 EMRIP report on FPIC both stress this point. |
| 32. Entities will:  ● Describe how the activities proposed for GCF financing will be consistent with applicable law and obligations of the state directly applicable to the activities under relevant international treaties and agreements, particularly with regard to **obtaining** a transparent and inclusive free, prior and informed consent **through a transparent and inclusive process** during project and programme design, implementation, and expected outcomes related to the risks **to** and impacts affecting the**on the rights of** communities of indigenous peoples;  ● Describe the involvement of indigenous peoples**, their representative institutions**, **and community members** including women, girls, and youth, in the design and implementation of the GCF-financed activities, and provide detailed outcomes of the consultation process of **with** the indigenous peoples; and  ● Provide documented evidence of the mutually accepted **consultation and FPIC seeking** process within the GCF-financed activities between the implementing Entities and the **legitimate representatives of the** affected communities**indigenous peoples**, and **where FPIC is granted,** evidence of an agreement between the parties that was the outcome of the negotiations **and evidence of independent verification of the FPIC process**. |  |
| 33. Free, prior and informed consent builds on and expands the process of meaningful consultation defined above **in paragraph 26** and is established **sought** through good-faith negotiations between Entities and affected indigenous peoples, at the conclusion of which the latter arrive at a **self-determined** decision, in accordance with their cultural traditions, customs**, laws** and practices. It does not require unanimity and may be achieved even when individuals or groups within or among indigenous peoples explicitly disagree. Entities will need to acknowledge that legacy of landownership and use may affect indigenous peoples’ trust and interest in holding meaningful consultations and negotiating an agreement, requiring **acknowledgement of any on-going rights violations and steps to ensure that land rights are strengthened, including through de-facto recognition of those land rights. They will use their leverage to encourage relevant state actors to ensure land rights protection and redress, and will provide** more time for the **consent seeking** **and decision-making** process**es** and outcome. As part of the assessment process, each Entity will review and where feasible and appropriate provide **access to independent** legal or other assistance for defending indigenous peoples’ rights and interests under the circumstances requiring free, prior and informed consent.**9** Entities will also use appropriately trained staff or qualified, independent indigenous peoples experts to assist in conduc**t**ing and documenting good faith negotiations and free, prior and informed consent | - This “It does not require unanimity and may be achieved even when individuals or groups within or among indigenous peoples explicitly disagree” is repeating the same sentence above and so redundant. In addition, it excludes the word "may" and so is factually incorrect and problematic as this will not always be the case and to state that it will is at odds with the self-determination basis of FPIC and the fact that the decision-making process it protects is based on each individual indigenous people's rules, practices and customary laws.  - The additional sentence on land rights is necessary as in many cases there are on-going violations of land rights that render it extremely challenging for indigenous peoples to enter into consultations and to give FPIC in a meaningful way. This is because FPIC is a safeguard for those land rights, and if they are violated, FPIC cannot function as an effective safeguard. Addressing this reality requires going beyond merely providing for more time in the process of consultation. It requires that entities recognise these on-going rights violations and negotiate with indigenous peoples on the basis of their inherent rights over their lands, irrespective of the formal status of those lands and ensure that they are in no way profiting or benefiting from those land rights violations. |
| 1.4.2.1 Impacts on Lands and Natural Resources Subject to Traditional Ownership or Under Customary Use or Occupation |  |
| 34. Where the activities proposed to be financed by GCF may require the establishment of legally recognized rights to lands and territories, Entities working with the states and the affected indigenous peoples will prepare a plan to ensure the legal recognition of such property rights in accordance with applicable law and obligations of the state directly applicable to the activities under relevant international treaties and agreements, customs, traditions and land tenure systems of the indigenous peoples. As much as possible, the g**G**ranting of legal title to indigenous peoples will be granted on a collective or community basis **in accordance with the customary land tenure of the concerned peoples and international law obligations of the state**, not an individual basis, in a manner recognized by relevant national law.Where the activities proposed to be financed by GCF are located on **or near**, or develop natural resources on, land subject to traditional ownership or tenure, including but not limited to collective ownership or under the customary use or occupation of indigenous peoples, and potential adverse impacts, including loss of access to assets or resources, or restrictions on land use, can be expected, Entities will take the following steps and seek the free, prior and informed consent of the indigenous peoples. The need for free, prior and informed consent will extend to **all** instances and situations in accordance with domestic legislation and applicable **under** international instruments**,** such as **potential impacts on lands, territories and resources,** removal **relocation as a result of the**prior to the extraction of natural resources, removal of cultural, intellectual, religious or spiritual property, prior to the adoption of legislative or administrative measures that may affect indigenous peoples, prior to the storage or disposal of hazardous materials on the land or territory of indigenous peoples, prior to accessing genetic resources or **indigenous** traditional knowledge associated with them. | - The reference to “in accordance with domestic legislation” or “in a manner recognised by relevant national law” could be interpreted to limit the obligations under international law and so it is suggested to delete it in both instances in this paragraph. The use of the notion of “Applicable law” in the UNDP standard addresses this risk by referring to whichever is the higher standard between national law and obligations of the state under international human rights law.  - Activities near indigenous peoples’ lands (as well as those “on” their lands) can have profound impacts on their rights, well-being and survival. For example, the construction of a road can open up their lands to illegal logging and mining, extractive industry projects near their lands can cause environmental, light, noise contamination impacting profoundly on subsistence livelihoods. Social issues can arise as a result of any development activities near their lands and can have cumulative impacts that can result in the denial of their cultural rights, something in relation to which States have no margin of appreciation. See for example the 2013 report of the UN Special Rapporteur on the Rights of indigenous peoples clarifying this point.  - The wording “including but not limited to collective ownership” seems redundant and not to offer anything additional to the previous clause as customary tenure regimes can include both collective and individual rights, with the latter nested within the former.  - The paragraph could be split starting at “Where the activities proposed…” |
| 35. For **As part of** free, free prior and informed consent **processes**, Entities will prepare an indigenous peoples**’** engagement plan and/or indigenous peoples plan with the following content:  ● Document efforts to avoid and otherwise minimize the area of land subject to traditional ownership, use, or occupation proposed for the activities;  ● Document efforts to avoid and otherwise minimize impacts on natural resources subject to traditional ownership, use, or occupation;  ● Identify and review all property interests, tenure arrangements and traditional resource usage prior to purchasing, leasing or, as a last resort, **and only** **where FPIC has been obtained and independently verified,** undertaking land acquisition;  ● Assess and document the indigenous peoples’ land and resource use without negatively affecting any**respecting and reinforcing** indigenous peoples’ land claims **and ensuring that these claims are no way negatively impacted by the proposed activity**.**10** The assessment of land and natural resource use will be gender inclusive and specifically consider women’s role in the management and use of these resources;  ● Ensure that affected indigenous peoples are informed of and understand (i) their land rights under applicable law and **the** obligations of the state directly applicable to the activities under relevant **national and** international **law, including** treaties**,** and agreements **and other instruments**; (ii) the scope and nature of the activities proposed for GCF-financing; and (iii) the potential impacts of the activities proposed for GCF-financing; and  ● Where activities promote commercial development of their land or natural resources, afford due process**, including FPIC,** and offer compensation together with culturally appropriate sustainable development opportunities to indigenous peoples at least equivalent to that to which any landowner with full legal title to the land would be entitled, including:  – Providing fair lease arrangements or, **only** where **FPIC for the activity has been obtained and** land acquisition is necessary and unavoidable, providing land-based compensation that is comparable to the land acquired from the indigenous peoples **and is acceptable to them** or compensation in kind in lieu of cash compensation where feasible. The **nature,** amount and quality of the compensation will be coordinated with, consulted on and consented to by the indigenous peoples;  – Ensuring continued access to natural resources, identifying the equivalent replacement resources **acceptable to the concerned peoples**, or, as a last option, **and only where FPIC has been obtained,** providing compensation and identifying alternative livelihoods if project development results in the loss of access to or the loss of natural resources independent of project land acquisition. Enabling indigenous peoples to share equitably in the benefits to be derived from the commercial development of the land or natural resources where Entities intends to utilize land or natural resources; and  – Providing affected indigenous peoples with access, usage, and transit on land the GCF-financed activities are developing.  **10** While this ESS requires substantiation and documentation of the use of such land, Entities should also be aware that the land may already be under alternative use, as designated by the host government. **Where this has not been subject to FPIC, recognition of indigenous peoples right to restitution should be a prerequisite for any activities on those lands.** | - Note that UNDRIP Art 8 states that States must prevent "Any action which has the aim or effect of dispossessing [indigenous peoples] of their lands, territories or resources"  - Is this saying that Entities must be aware where there are lands over which indigenous peoples have claims but which the state has not recognised?  - The issue touched on in footnote 10 of State using lands claimed by indigenous peoples needs to be further addressed if those land and resource uses have not been subject to FPIC and consequently constitute violations of indigenous peoples' rights.  - What does “compensation in kind” mean other from providing comparable land that is acceptable to the concerned peoples? |
| 1.4.2.2 Relocation of Indigenous Peoples from Lands and Natural Resources Subject to Traditional Ownership or Under Customary Use or Occupation |  |
| 36. GCF will avoid funding activities that may involve physical displacement of indigenous peoples (i.e. relocation, including relocation needed as a result of loss of shelter), whether full or partial and permanent or temporary, or economic and occupational displacement (i.e. loss of assets or access to assets that leads to loss of income sources or means of livelihood) as a result of the activities. GCF will not finance activities that would result in the involuntary resettlement of indigenous peoples**.**  except in exceptional circumstances w**W**here resettlement or displacement is unavoidable to achieve the project or programme objective**,** . T**t**his will only be permitted if the physical displacement meet **all of** the following criteria:  ● Free, prior and informed consent has been obtained;  ● The relocations are authorized by national law;  ● The relocations are carried out in a manner consistent with the obligations of the state directly applicable to the activities under relevant international **law instruments, including** treaties and agreements;  ● The relocations are **necessary,** reasonable and proportional as determined by GCF and Entities as part of their **human rights** due diligence;  ● The relocations follow standards of due process consistent with the GCF ESS standards and pursuant to other applicable policies of GCF and Entities, including those related to involuntary resettlement policy requirements **with no prejudice to the requirement for FPIC**;  ● The relocations are regulated so as to ensure full and fair compensation and rehabilitation as well as right of return, if applicable.  ● The resettlement component will result in direct benefits to the affected indigenous peoples relative to their prior situation  ● Customary rights will be fully recognized and fairly compensated; and,  ● Compensation options will include land-based resettlement. In the case of land-based compensation, the replacement land should be of equal or higher value, provide security of tenure and other legal status, and be of equivalent or better characteristics and location **and be acceptable to the concerned peoples**. |  |
| 37. No forced eviction of affected indigenous peoples will be allowed. |  |
| 38. The Accredited Entities will consider, disclose, and present for stakeholder consultation feasible project design alternatives and livelihood restoration measures that may be distinct from the components of the GCF-financed activities and that are designed to avoid the resettlement, relocation or displacement of indigenous peoples from communally held or attached land and natural resources subject to traditional ownership or customary use or occupation. For any relocation of indigenous peoples, Entities will meet the requirements of ESS5 **in addition to the requirements, such as FPIC, stipulated in this ESS**. |  |
| 1.4.2.3 Cultural Heritage |  |
| 39. Where the activities proposed for GCF financing may potentially impact cultural heritage which includes but is not limited to natural areas with cultural and/or spiritual value, such as sacred groves, sacred bodies of water and waterways, sacred mountains, sacred trees, sacred rocks, burial grounds and sites, as well as the non-physical expressions of culture, such as traditions, language, identity, , ceremonial, or spiritual aspects of indigenous peoples lives, priority will be given to the avoidance of such impacts. Where significant negative impacts are unavoidable, the Entity will obtain the free, prior and informed consent of the affected indigenous peoples in order for those project activities to proceed. | - Why is this qualification of “significant” required when it is not included in UNDRIP? Also, how would this significance be determined in practice given the subjective nature of the impact which only indigenous peoples can assess? Therefore, we suggest removing this. |
| 40. Where the activities proposed for GCF financing propose to use the cultural heritage for commercial **or other** purposes, Entities will inform the affected indigenous peoples of (i) their rights under applicable law and **the** obligations of the state directly applicable to the activities under relevant international **law, including** treaties and agreements; (ii) the scope and nature of the proposed commercial development and use; (iii) the potential consequences of such development and use; and that **will** (iv) seeks and obtains their free, prior and informed consent. Entities will ensure that the indigenous peoples share equitably in the access to benefits derived from the commercial development of such cultural heritage, consistent with the customs**, laws** and traditions of the indigenous peoples. |  |
| 1.4.3 Grievance Redress Mechanism |  |
| 41. Any **impacts on indigenous peoples’ rights arising from GCF funded activities or associated facilities** issue raised **addressed** in this ESS will be deemed as relevant and thereby considered appropriate for the project’s or programme’s grievance redress mechanism. All GCF-financed activities affecting indigenous peoples will establish an effective grievance redress mechanism at the project level to address indigenous peoples’ project-related concerns. The mechanism will be designed in consultation with the affected or potentially affected communities of indigenous peoples **and should give consideration to their customary laws and practices**. The mechanism will facilitate the resolution of grievances promptly through an accessible, fair, transparent and constructive process. It will also be culturally appropriate and readily accessible, at no cost to the affected communities, and without retribution to the individuals, groups, or communities that raised issues or concerns. |  |
| 42. Where feasible and suitable for the project, the grievance mechanism will utilize existing formal or informal grievance mechanisms, **including indigenous peoples’ own customary dispute resolution mechanisms and legal systems, if deemed appropriate by the concerned indigenous peoples,** supplemented as needed with project-specific arrangements. The mechanism will not prejudice the access to judicial or administrative remedies that may be available through the state systems, acknowledging that these localized systems may provide more robust information and better reflect the context of the issues on the ground. It will also not impede access to the GCF independent Redress Mechanism or the another of Entities' grievance redress mechanism. |  |
| 43. The grievance mechanism will follow the requirements stated in ESS 9, including the “effectiveness criteria” for non-judicial grievance mechanisms outlined in Article 31 of the United Nations Guiding Principles on Business and Human Rights. |  |
| 44. This mechanism will consider customary laws, law and obligations of the state directly applicable to the activities under relevant international treaties and agreements, **customary international law**, dispute resolution mechanisms, **customary law** and justice systems of indigenous peoples as appropriate and be able to use **engage** independent experts **where requested by the concerned peoples**. The mechanism will not preclude the option to use the accountability mechanisms of GCF and those of the Accredited and Executing Entities, ensuring that users are provided with the necessary financial and technical support to access such mechanisms. The project or programme level grievance redress mechanism will communicate that the GCF Independent Redress Mechanism and the Secretariat’s indigenous peoples focal point will be available for assistance at any stage, including before a claim has been made. |  |
| 45. During project implementation, Entities will bring to the immediate attention of GCF any conflicts between indigenous peoples and Entities that remain unresolved despite having gone through an activity- or project- related grievance redress mechanism |  |
| 1.4.4 Mitigation and Development Benefits |  |
| 46. The aim of the ESS is to provide a structure for ensuring that activities are developed and implemented in such a way that fosters full respect, promotion, and safeguarding of indigenous peoples**’ rights** so that they benefit in a culturally appropriate manner and do not suffer harm or adverse effects from the design and implementation of GCF-financed activities. |  |
| 47. Entities, with the full and effective participation **and FPIC** of the indigenous peoples, will identify measures to mitigate environmental and social risks and impacts in alignment with the mitigation hierarchy described in ESS1 and other relevant policies of GCF that set prioritized steps for limiting adverse impacts through avoidance, minimization, restoration and compensation as well as opportunities for culturally appropriate and sustainable development benefits. The scope of the environmental and social assessment**the environmental, social and human rights assessment**s and mitigation will include cultural impacts as well as physical impacts. Entities will be aware of customary management regimes and **will recognize the important role they play in conservation and where requested by indigenous peoples,** support their improvement **development** as required from a perspective of environmental sustainability, and these will be integrated into planned processes and activities. Entities will ensure the timely delivery of agreed measures to the indigenous peoples. |  |
| 48. **Indigenous peoples’ FPIC will be obtained for** T**t**he determination, delivery, and distribution of compensation and shared benefits to indigenous peoples **which** will take account of**give due consideration to** the**ir** institutions, rules and customs of these indigenous peoples, **their** capacities and gender equality. Some countries have**Where** legislative requirements for benefit sharing plans or agreements, and in such situations **exist**, the laws must be followed**adherence with them** and **production of** the required documents must be produced.**will not place limitations on indigenous peoples’ enjoyment of fair and equitable benefit sharing.**  For any benefit-sharing arrangement, the affected indigenous peoples will have an active role in its design, and they will have access to the resource (or the benefits derived from it) based on mutually agreed terms. |  |
| 49. Eligibility for compensation can either be individually or collectively based, or be a combination of both**,** to be determined in consultation **and agreement** with affected indigenous peoples.**11** Entities will ensure **with the FPIC of**, in agreement with the local community, that **the** affected indigenous peoples **that they** are fairly compensated for any loss of livelihood incurred as a result of project-related activities. When calculating compensation, Entities will meet the requirements of ESS5 and take into consideration the adverse effects of the project on customary **indigenous peoples’** livelihoods**12** including nomadic/transhumant practices, as well as family life of indigenous peoples, with specific consideration of women’s wage and non-wage subsistence activities**, and the impact on the concerned people’s social and cultural fabric**. This will be undertaken in co-operation with **the indigenous peoples themselves through their** **appointed**indigenous peoples’ representatives and experts. The provisions of this paragraph also apply in cases where Entities has to pay compensation to local or regional government bodies. | - We suggest replacing “customary livelihoods” with "indigenous peoples' livelihoods" as any limitations to their livelihoods should be compensated irrespective of whether these are deemed to be "customary" livelihoods or not  - Impacts on lands and resources affect more than just indigenous peoples' livelihoods and can affect their entire mode of existence. Compensation should therefore reflect such harms.  -What is meant by the sentence “The provisions of this paragraph also apply in cases where Entities has to pay compensation to local or regional government bodies”? |
| 50. Mutually acceptable and legally feasible mechanisms for transferring the compensation and/or resources **to indigenous peoples** will be developed. Where compensation occurs on a collective basis, to be determined in consultation with affected indigenous peoples, mechanisms that promote the effective distribution of compensation to all eligible members of the group, or collective use of compensation in a manner that benefits all members of the group, including women, youth, the elderly and persons with disabilities, will be defined and implemented **in conjunction with the concerned indigenous peoples**. Entities will provide assistance to enable the establishment of appropriate management and governance systems that ensure effective distribution of compensation to all eligible members or collective use of compensation in a manner that benefits all members of the group |  |
| 51. Various factors including, but not limited to, the nature and context of the GCF-financed activities and the vulnerability of the affected indigenous peoples will determine how affected indigenous peoples will benefit from the activities. Identified opportunities will aim to address the goals and preferences of the affected indigenous peoples, including improving their standard of living and livelihoods in a culturally appropriate manner, recognizing and strengthening the role of women in the project**activities**, and fostering the long-term sustainability of the natural resources on which they depend. Efforts to promote, protect and enhance local, indigenous, and traditional knowledge and practices will be assessed. Development benefits |  |
| 52. Where implicit factors exist that exclude indigenous peoples and individuals from **face barriers to the enjoyment of fair and equitable** project benefits, such as employment opportunities, on ethnic grounds, **or discrimination** on ethnic grounds, the project activities will include such corrective measures as: (i) informing indigenous peoples’ organisations and individuals of their rights under labour, social, financial, and business legislation and of the recourse mechanisms available; (ii) appropriate and effective information dissemination, training, and measures to eliminate barriers to benefits and resources such as credit, employment, business services, health services and education services, and other benefits generated or facilitated by the project; and (iii) granting to indigenous workers, entrepreneurs, and beneficiaries, the same protection afforded under national laws to other individuals in similar sectors and categories, taking into account gender issues and ethnic segmentation in goods and labour markets, as well as linguistic factors. | - If it is referring to discrimination then access to an effective grievance mechanism to address issues of de-facto discrimination would seem important to mention, as informing them of their rights and providing them with training would not address this. |
| 53. Where GCF-financed activities are designed to provide benefits only to indigenous peoples, Entities will proactively engage with the relevant indigenous peoples to ensure their ownership, buy-in**, FPIC** and participation in the design, implementation, equitable benefit sharing, monitoring and evaluation of activities. Entities will consult with the indigenous peoples as to the cultural appropriateness of proposed services or facilities and will seek to identify and address any economic, social or capacity constraints (including those relating to gender, the elderly, youth and persons with disabilities) that may limit opportunities to benefit from, or participate in, the project. When indigenous peoples are the sole, or constitute the overwhelming majority of, beneficiaries of GCF-financed activities, the elements of the indigenous peoples plan (IPP) will be included in the overall design and the environmental and social management plans in relation to environmental**,** and social **and human rights** due diligence of the GCF-financed activities. The preparation of a standalone IPP or IPP framework will not be necessary. |  |
| 54. When indigenous peoples are not the only beneficiaries of the activities proposed for GCF financing, the planning documents and procedures may vary in form and presentation and **but** will meet the requirements of this ESS regardless of form and presentation**irrespective of this**. Entities will design and implement GCF-financed activities in a manner that provides affected indigenous peoples with **fair and** equitable access to project benefits. The concerns or preferences of indigenous peoples will be addressed through meaningful consultation, including a process to seek and obtain their free, prior and informed consent and documentation will summarize the consultation results and describe how indigenous peoples’ issues have been addressed in the design of the GCF- financed activities. Arrangements for ongoing consultations during implementation and monitoring will also be described. |  |
| 55. Entities will prepare a time-bound plan, such as an IPP, setting out the measures or actions proposed. In some circumstances, a broader integrated community development plan will be prepared, addressing all beneficiaries of the GCF-financed activities and incorporating necessary information relating to the affected indigenous peoples. A community development plan may be appropriate in circumstances where other people, in addition to the indigenous peoples, will be affected by the risks and impacts of the GCF-financed activities, where more than one indigenous peoples**’** group is to be included, or where the regional or national scope of a programmatic project incorporates other population groups. Entities will retain qualified experts, preferencing competent indigenous peoples**’** experts, with relevant and appropriate technical expertise to prepare the IPP or the community development plan. |  |
| 56. Any plan involving mitigation and benefits for indigenous peoples will systematically assess differentiated impacts of a project with respect to gender and different generations and will include actions to address these impacts on the different groups in the community. The level of detail and the scope of the plans will vary according to the specific project and nature and scope of project activities. |  |
| 1.4.5 Government Coordination of Indigenous Peoples Issues |  |
| 57. Accredited and Executing Entities will collaborate with all responsible government agencies to achieve outcomes that are consistent with the objectives of this ESS. Where government has a defined role in the facilitation of indigenous peoples**’** issues in relation to the project, Entities will collaborate with the responsible government agency, to the extent feasible and permitted by the agency, to achieve outcomes that are consistent with the objectives of this ESS. In addition, where government capacity is limited, Entities will play an active role during planning, implementation, and monitoring of activities to the extent permitted by the agency. **If it is not possible to guarantee that the processes and outcomes associated with government facilitated activities are consistent with the standards affirmed in this ESS then the activities will not proceed. The GCF is ultimately accountable to its Board and respective donor(s) for the sound use of financial resources channeled through GCF accounts and must ensure the quality of its support. Implementation of the ESS is therefore integral to GCF’s quality assurance responsibilities.** | - The addition of a sentence of this nature “If it is not possible to guarantee…” is necessary as otherwise the entire standard is undermined by this last paragraph.  - The second sentence “The GCF is ultimately accountable…” is about the GCF being ultimately responsible for the implementation of the standard is taken from UNDP's SES on indigenous peoples in relation to the same issue of working with national governments on the standard implementation. |
|  |  |
| ESS8 Cultural Heritage |  |
| 1.1 Introduction 1. **Cultural heritage is central to individual and collective identity and memory, providing continuity between the past, present and future. Cultural heritage reflects and expresses people’s constantly evolving values, beliefs, knowledge, traditions and practices.** Environmental and Social Standard 8 (ESS8) recognizes the importance of cultural heritage for current and future generations **and its crucial role within the sustainable development process through enhancing social cohesion, diversity, well-being and the quality of life;** in **supporting cultural rights by protecting the heritage of minorities and indigenous peoples; fostering socio-economic regeneration; enhancing the appeal and creativity of cities and regions; boosting long-term tourism benefits; and enhancing sustainable practices**. Consistent with the Convention Concerning the Protection of the World Cultural and Natural Heritage and the UNESCO Convention for the Safeguarding of Intangible Cultural Heritage as well as the United Nations Declaration on the Rights of Indigenous Peoples, t**T**his ESS aims to ensure that Entities protect **and safeguard** cultural heritage in the course of developing GCF-funded activities **in a manner consistent with UNESCO Cultural Heritage conventions, the United Nations Declaration on the Rights of Indigenous Peoples, and other relevant international and national legal instruments**. | - The suggested additions are from UNDP SES 4 on Cultural Heritage.  - We suggest to refer to the whole set of UNESCO Cultural Heritage conventions (as UNDP SES 4 does), which would be a lot more inclusive. The World Heritage Convention only relates to a very limited type of tangible heritage (namely heritage "sites" of outstanding universal value). One could include a list of relevant conventions in a footnote. For a list see the UNDP SES 4. |
| 1.2 Objectives ● To protect cultural heritage from the adverse impacts of project activities and support its preservation **and safeguarding**.  ● To promote the equitable sharing of benefits from the use of cultural heritage.  ● To address cultural heritage as an integral aspect of sustainable development.  ● To promote meaningful **effective** consultation with stakeholders **and rightsholders** regarding cultural heritage.  ● **To ensure respect for the cultural rights of communities and groups who rely on cultural heritage for longstanding cultural purposes and the maintenance of distinct cultural identities.** | - For intangible heritage, "safeguarding" is the appropriate term to use. See the 2003 Convention, Art. 2(3). |
| 1.3 Scope of Application 2. The applicability of this ESS is established during the environmental and social risks, impacts and co- benefit identification process. The implementation of the actions necessary to meet the requirements of this ESS are managed through Entities’ Environmental and Social Management Systems (ESMS), the elements of which are outlined in ESS1. During the activity life-cycle, Entities will consider potential project impacts to cultural heritage and will apply the provisions of this ESS. |  |
| 3. For the purposes of this ESS, cultural heritage refers to (i) tangible forms of cultural heritage, such as tangible moveable or immovable objects, property, sites, structures, or groups of structures, **human settlements and landscapes** having archaeological (prehistoric), paleontological, historical, cultural, artistic, and religious values; (ii) unique natural features or tangible objects that embody cultural values, such as sacred groves, rocks, lakes, and waterfalls; and (iii) Intangible cultural heritage, **also referred to as living heritage,** which includes practices, representations, expressions, knowledge, **oral literature, craft and artistic** skills **--** as well as the instruments, objects, artifacts and cultural spaces associated therewith, **--** that communities and groups (and in some cases individuals) recognise as part of their cultural heritage, as transmitted from generation to generation and constantly recreated by **peoples**, communities and groups in response to their environment, their interaction with nature and their history, and provides them with a sense of identity and continuity, **thus enabling the transmission and preservation of cultural heritage between generations** and promoting respect for cultural diversity and human creativity**1**. Because intangible cultural heritage takes many forms it can be challenging for Entities to ensure that all its relevant forms are identified and considered during the environmental and social assessment**the environmental, social and human rights assessments** **which should include a participatory evaluation of cultural heritage impacts**. **Tangible and intangible heritage may be recognized and valued at the local, regional, national, or global level.** |  |
| 4. Requirements with respect to tangible forms of cultural heritage are contained in Paragraphs 6–22. For requirements with respect to specific instances of intangible forms of cultural heritage described in Paragraph 3 (iii) see Paragraph 22. | - The draft lacks a paragraph on requirements regarding intangible cultural heritage. Paragraph 22 only deals with proposed use of cultural heritage for commercial purposes, not with requirements regarding the safeguarding of intangible heritage.  A suggested paragraph on the safeguarding of intangible heritage is included below (taken from UNDP SES4, para. 14).  - Also, paragraph 22 should not be described here as relating to intangible heritage only, as the same principles must apply to proposed use of tangible heritage of communities. |
| 5. The requirements of this ESS apply to cultural heritage regardless of whether or not it has been legally protected or previously disturbed. Tangible and intangible cultural heritage of indigenous peoples and should be **identified,** assessed**, and treated** in line with this ESS and with ESS7, which may require, under certain circumstances, free prior and informed consent. |  |
| 1.4 Requirements1.4.1 Protection of Cultural Heritage in Project Design and Execution 6. In addition to complying with applicable law on the protection of cultural heritage, including national law implementing the host country’s obligations under the Convention Concerning the Protection of the World Cultural and Natural Heritage, Entities will identify and protect cultural heritage by ensuring that internationally recognized **standards and good** practices for the protection, field-based study, **inventorying** and documentation of cultural heritage are implemented. |  |
| 7. Entities will avoid impacts on cultural heritage**, taking into consideration potential direct, indirect, irreversible and cumulative risks and impacts from project activities**. **Where appropriate, they will conduct a Heritage Impact Assessment.** When avoidance of impacts is not possible, **– ensuring that all viable and feasible alternatives have been explored --** Entities will identify and implement measures to address impacts on cultural heritage in accordance with the mitigation hierarchy**2**. Where the chance of impacts to significant cultural heritage has been identified, Entities will develop a Cultural Heritage Management Plan **with the effective participation of the communities or groups who have developed, use, or have used within living memory, the cultural heritage for longstanding cultural purposes**.**3** | - The suggested additions in this paragraph are from UNDP SES4, para. 7.  - Who makes the judgment whether a particular cultural heritage is “significant”? |
| 8. Where the risk and identification process determines that there is a chance of impacts to cultural heritage, Entities will retain **engage** competent professionals to assist in the identification**,**  and protection **and safeguarding** of cultural heritage. The removal of nonreplicable cultural heritage is subject to the additional requirements of Paragraph 16**18** below. In the case of critical cultural heritage, the requirements of Paragraphs 19-21 will apply. |  |
| 1.4.1.1 Provisions for specific types of cultural heritage:  *Archaeological sites and material*  9. Archaeological sites comprise any combination of structural remains, artifacts, human or ecological elements and may be located entirely beneath, partially above, or entirely above the land or water surface. Archaeological material may be found anywhere on the earth’s surface, singly or scattered over large areas. Such material also includes burial areas, human remains and fossils. |  |
| 10. Where there is evidence or high probability of past human activity in the area of the project, the entity will conduct desk-based research and field surveys to document, map and investigate archaeological remains. **Where ancestral territories of indigenous peoples are affected by project activities, Entities will ensure that the requirements of ESS7 are followed and that the free, prior and informed consent of indigenous peoples is obtained before any archaeological research, field surveys, documentations and investigations are conducted and before any archaeological sites are disturbed.** Entities will document the location and characteristics of archaeological sites and materials discovered during the project life cycle and provide such documentation to the national or subnational cultural heritage authorities**, including representative bodies and organizations of affected indigenous peoples**. | - Given the provisions of the UNDRIP (Art. 11), a qualifier regarding Indigenous peoples is necessary. |
| 11. Entities will determine, in consultation with cultural heritage experts **and**, **where applicable, affected indigenous peoples**, whether archaeological material discovered during the project life cycle requires: (a) documentation only; (b) excavation and documentation: or (c) conservation in place and will manage the archaeological **sites and** material accordingly. **Any transfer of archaeological material to another location will be conducted in consultation with and agreement of project-affected people and appropriate national partners, in accordance with good international practice.** The entity will determine ownership and custodial responsibility for **discovered** archaeological material in accordance with **international standards and** national and subnational law, and until such time as custody has been transferred, will arrange for identification, conservation, labelling, secure storage, and accessibility to enable future**for** study and analysis. | - The suggested new sentence is from UNDP SES 4, para. 16. |
| *Movable cultural heritage*  12. Movable cultural heritage includes such objects as: historic or rare books and manuscripts; paintings, drawings, sculptures, statuettes, and carvings; modern or historic religious items; historic costumes, jewellery and textiles; fragments of monuments or historic buildings; archaeological material; and natural history collections such as shells, flora, or minerals. Discoveries and access resulting from a project may increase the vulnerability of cultural objects to theft, trafficking, or abuse. Entities will take measures to guard against theft and illegal trafficking of movable cultural heritage items affected by the project and will notify relevant authorities of any such activity. |  |
| 13. Entities, in consultation with relevant cultural heritage authorities, will identify movable cultural heritage objects that may be endangered by the project and make provisions for their protection throughout the project life cycle. The entity will inform religious or secular authorities**, customary owners,** or other custodians with responsibility for overseeing and protecting the movable cultural heritage objects of the schedule for project activities and alert them regarding the potential vulnerability of such items. |  |
| ***Landscapes and natural features with cultural significance***  **13bis. Entities identify through research and consultation with affected persons and communities the landscape elements and natural features with cultural significance, the people that value such elements and features, and individuals or groups with authority to represent and negotiate regarding their location, protection, and use. Where the lands and territories of indigenous peoples are affected by project activities, Entities will ensure that the requirements of ESS7 are followed and compliance is independently verified. Landscapes and natural features derive much of their significance from their location and their holistic environmental context, and often can only be protected by preservation in situ. Entities preserve physical and visual integrity of landscapes by considering appropriateness and effect of project activities (e.g. infrastructure) proposed for the location within sight range. In cases where natural features can physically be relocated and cannot be preserved in situ, their transfer to another location is conducted with participation and agreement of project-affected people that enables continuation of traditional practices associated with the landscape elements and natural features.** | - Section 1.4.1.1. on specific types of cultural heritage should also include a paragraph on "Landscapes and natural features with cultural significance" (as in UNDP SES4 on Cultural Heritage and the World Bank ESS8). The suggested language is taken from UNDP SES4, para. 18 and from the UNDP Targeted Guidance for SES4.  - It would also be good to include a paragraph on "Built heritage" as in UNDP SES 4 and World Bank ESS 8. |
| ***Intangible Cultural Heritage***  **13ter. Entities ensure respect for the dynamic and living nature of intangible cultural heritage and the right of communities, groups and, where applicable, individuals to continue the practices, representations, expressions, knowledge and skills necessary to ensure the viability of their intangible cultural heritage. Where projects may involve or affect intangible cultural eritage, they will ensure the meaningful participation of concerned parties in identifying risks and impacts to their intangible cultural heritage -- including its decontextualization, commodification and misrepresentation -- and in determining appropriate mitigation and safeguarding measures. This includes in the identification, inventorying, documentation, research, preservation, protection, promotion, enhancement, transmission, and revitalization of the various aspects of such heritage. In order to ensure effective identification of potential cultural heritage impacts, Entities should consider providing support for independent community-led cultural heritage assessments.** | - There should also be a paragraph on intangible cultural heritage. The language is from UNDP SES 4, para. 14. |
| 1.4.1.2 Chance Find Procedures  14. Entities will **be** responsible for siting and designing the activities to avoid significant adverse impacts to cultural heritage. The environmental and social assessment**The environmental, social and human rights assessment** process should determine whether the proposed location of a project is in areas where cultural heritage is expected to be found, either during construction or operations. Specific mitigation to address known cultural heritage should be developed in line with the requirements in Paragraphs 16-21. To address potential unknown cultural heritage, as part of Entities’ ESMS, they will develop provisions for managing chance finds**4** through a chance find procedure**5**, developed in line with **international good practice and** national law, which will be applied in the event that cultural heritage is subsequently discovered. Entities will not disturb any chance find further until an assessment by competent professionals is made and actions consistent with the requirements of this ESS are identified. |  |
| 1.4.1.3 Consultation  15. Where a GCF-funded activity may affect cultural heritage, Entities will consult with**ensure that meaningful, effective consultations are undertaken with** affected communities**, groups and individuals** who **have developed,** use, or have used within living memory, the cultural heritage for longstanding cultural purposes. This will include the owners and/or customary owners/custodians of the cultural heritage **and in the case of indigenous peoples will require mutually agreed FPIC procedures for any activity or investment that may affect their cultural heritage**. Entities will consult with the affected communities to identify cultural heritage of importance, and to incorporate into the decision-making process the views of the affected communities on such cultural heritage **and the appropriate steps for its preservation and safeguarding**. Records of such consultations will be made publicly available as quickly as is feasible and in a manner that does not compromise the security, safety, or well-being of stakeholders **and rightsholders**. Consultation will also involve the relevant national or local regulatory agencies that are entrusted with the protection of cultural heritage. Stakeholder engagement will be undertaken in line with the polices set out in ESS7. **Where the cultural heritage of indigenous peoples may be affected by project activities, Entities will ensure that the requirements of ESS7 are followed.** |  |
| 1.4.1.4 Community Access  16. **GCF-funded projects avoid restricting access to cultural heritage sites and to the cultural and natural spaces and places of memory necessary for creating, maintaining, and transmitting intangible cultural heritage. In the case of indigenous peoples, proposals to deny or limit freedoms of access shall be subject to the core standard of FPIC in line with ESS7**. Where the project site contains cultural heritage or prevents **a project nevertheless disrupts or restricts** access to previously accessible cultural heritage sites **or spaces** being used by, or that have been used by, affected communities within living memory for long- standing cultural purposes, Entities will, based on consultations under Paragraph 15, allow **ensure** continued access to the cultural site**s and spaces.** or  **If necessary, Entities** will provide an alternative access route, subject to overriding health, safety, and security considerations. | - The suggested new sentence is from UNDP SES 4, para. 10. |
| **1.4.1.4bis. Confidentiality and restricted access by communities**  **16bis. Together with stakeholders and rightsholders affected by GCF-funded activities, Entities will determine whether disclosure of information regarding cultural heritage would compromise or jeopardize its safety or integrity or endanger sources of information. In such cases, sensitive information may be withheld from public disclosure. If communities affected by project activities hold the location, characteristics, or traditional use of cultural heritage in secret, then the project will support measures to maintain confidentiality and to respect customary practices of communities that limit access to specific aspects of their cultural heritage.** | - After Paragraph 16, a paragraph on Confidentiality and restricted access by communities should be included (as in the UNDP Social and Environmental Standard 4). The suggested language is based on UNDP SES 4, para. 11. A similar paragraph is in World Bank ESS 8. |
| 1.4.1.5 Removal of Replicable Cultural Heritage  17. Where Entities have encountered tangible cultural heritage that is replicable**6** and not critical, they will apply mitigation measures that favour avoidance. Where avoidance is not feasible, Entities will apply a mitigation hierarchy as follows:  ● Minimize adverse impacts and implement restoration measures, in situ, that ensure maintenance of the value and functionality of the cultural heritage, including maintaining or restoring any ecosystem processes**7** needed to support it;  ● Where restoration in situ is not possible, restore the functionality of the cultural heritage, in a different location, including the ecosystem processes needed to support it;  ● The permanent removal of historical and archaeological artifacts and structures is carried out according to the principles of Paragraphs 6 and 7 above; and  ● Only w**W**here minimization of adverse impacts and restoration to ensure maintenance of the value and functionality of the cultural heritage are demonstrably not feasible, and where the affected communities are using the tangible cultural heritage for long-standing cultural purposes, compensate for loss of that tangible cultural heritage. The level of compensation will be agreed between Entities, affected community and national or subnational cultural heritage authority. |  |
| 1.4.1.6 Removal of Non-Replicable Cultural Heritage  18. Most cultural heritage is best protected by preservation in its place, since removal is likely to result in irreparable damage or destruction of the cultural heritage. Entities will not remove any nonreplicable cultural heritage,**8** unless all of the following conditions are met:  ● There are no technically or financially feasible alternatives to removal;  ● The overall benefits of the project conclusively outweigh the anticipated cultural heritage loss from removal; and  ● Any removal of cultural heritage is conducted using the best available technique. | - Who makes the judgment whether project benefits “conclusively outweigh” the anticipated cultural heritage loss from removal? |
| 1.4.1.7 Critical Cultural Heritage**;**  19. Critical cultural heritage consists of one or both **all** of the following types of cultural heritage: (i) the internationally recognised heritage of communities who use, or have used within living memory the cultural heritage for long-standing cultural purposes; or (ii) legally protected cultural heritage areas, including those proposed by host governments for such designation**; (iii) cultural heritage that is used by a people or community for long-standing cultural purposes, where the loss or damage of such heritage could endanger the livelihoods, or cultural, ceremonial, or spiritual purposes that define the identity and community of the affected people or community; or (iv) cultural heritage of indigenous peoples**. | - This is very unclear. What is "internationally recognised heritage of communities” supposed to refer to? Apparently not recognition under the World Heritage Convention, since that is covered under point (ii) on "legally protected cultural heritage areas" (see fn. 9). Is it supposed to refer to intangible cultural heritage recognized under the 2003 Convention? Or areas recognized by FAO as Globally Important Agricultural Heritage Systems? IFC Guidance Note 8 of the International Finance Corporation also does not provide any clarity on this.  - In any case, if an element of cultural heritage is important for a particular community and is being used for long-standing cultural purposes, it seems very arbitrary to make the level of protection provided to it depended on any sort of "international recognition". E.g., why should sacred sites of indigenous peoples that are “internationally recognized heritage” be treated any different and deserve a higher level of protection than sacred sites that are not internationally recognized?  - The language of the text in the suggested new point (iii) is from IFC Performance Standard 8.  - In accordance with the UNDRIP, as well as the GCF Indigenous Peoples Policy (para. 63) and ESS7 (para. 39), Entities must obtain the FPIC of indigenous peoples where a project may negatively impact their cultural heritage. Consequentially the cultural heritage of indigenous peoples should always be considered as critical cultural heritage and should be listed here. Hence the suggested new point (iv). |
| 20. Entities should not remove, significantly alter, or damage critical cultural heritage. In exceptional circumstances when impacts on critical cultural heritage are unavoidable, Entities will ensure that affected communities are fully consulted about the reasons for the impacts and the mitigation proposed. The consultation should use a good faith negotiation process that results in a documented outcome. Entities will retain external experts to assist in the assessment and protection of critical cultural heritage. **Where the cultural heritage of indigenous peoples is concerned, Entities will ensure that the requirements of ESS7 are followed and that the free, prior and informed consent of the affected indigenous peoples is obtained.** |  |
| 21. Legally protected cultural heritage areas**9** are important for the protection and conservation of cultural heritage, and additional measures are needed for any projects that would be permitted under the applicable national law in these areas. In circumstances where a proposed project is located within **or otherwise affects** a legally protected area or a legally defined buffer zone, Entities, in addition to the requirements for critical cultural heritage cited above, will meet the following requirements:  ● Comply with defined international, national or local cultural heritage regulations or **and** the protected area management plans;  ● Consult the **and cooperate with** protected area sponsors and managers, local communities**, indigenous peoples** and other key stakeholders **and rightsholders** on the proposed project in line with the requirements of ESS9 **and ESS7**; and  ● Implement additional programs, as appropriate, to promote and enhance the conservation aims of the protected area.  ● **A Heritage Impact Assessment may be necessary, particularly for sites with an international designation such as World Heritage sites.**  **9** Examples include world heritage sites and nationally **and sub-nationally** protected areas. | - The suggested new bullet is from UNDP Social and Environmental Standard 4, para. 15. |
| 1.4.2 Project’s Use of Cultural Heritage 22. Where a project proposes to **integrate and/or** use the cultural heritage, including knowledge, innovations, or practices of local communities for commercial **or other** purposes,**10** Entities will **engage in meaningful effective consultations and** inform these communities of (i) their rights under national **and international** law; (ii) the scope and nature of the proposed commercial development; and (iii) the potential consequences of such development**integration and use**. **Where a project proposes commercial use of cultural heritage by relevant communities as an option for them to consider (including alternative livelihood development), Entities will ensure that communities are informed of their rights and the options available to them.** Entities will not proceed with such commercialization unless it**they** (i) enters into a process of ICP as described in ESS1 and which uses a good faith negotiation process that results in a documented outcome and**;** (ii) provides for fair and equitable sharing of benefits from commercialization of such knowledge, innovation, or practice, consistent with their customs and traditions**; (iii) provide appropriate mitigation and safeguarding measures per the mitigation hierarchy**. **Entities will seek to ensure that any such commercialization does not distort the meaning and purpose of the community’s cultural heritage.** Consistent with ESS7, the use of the cultural heritage of indigenous peoples for commercial purposes will require free, prior and informed consent. | - The suggested additions to this paragraph are from UNDP Social and Environmental Standard 4, paras. 12-13 |
|  |  |
| 1 ESS9 Stakeholder Engagement and Information Disclosure |  |
| 7. Entities will identify and engage with stakeholders as an integral part of the project’s design and implementation, project’s environmental and social assessment process, ESMS and the ESMP as outlined in ESS1. This ESS will also be read in conjunction with the requirements in ESS2 regarding engagement with workers and with ESS4 regarding engagement on emergency preparedness and response. In the case of projects involving involuntary resettlement or economic displacement, affecting indigenous peoples or having an adverse impact on cultural heritage, Entities will also apply the special disclosure and consultation requirements, including where relevant free, prior and informed consent, as foreseen in ESS5, **ESS6,** ESS7 and ESS8. | - ESS6 is included as ESS6 should refer to the FPIC requirement under ESS7 in cases where decisions are made regarding activities with impacts on biological diversity and ecosystem services that result in impacts on indigenous peoples’ enjoyment of their rights or their cultural or physical survival. See the suggested revisions to ESS6 above. |
| 1.4 Requirements 8. Entities will undertake all necessary measures to ensure that the communities affected or potentially affected by the activities (including vulnerable and marginalised groups and individuals) are properly consulted in a manner that facilitates the inclusion of local **and indigenous** knowledge in the design of the activities, provides them with opportunities to express their views on risks, impacts and mitigation measures related to the activities, and allows Entities to consider and respond to their concerns. In ensuring the meaningful and effective consultation and participation of the affected communities and vulnerable populations, Entities will align their stakeholder engagement processes to best practices and standards and will make publicly available the relevant information on the activities. |  |
| 10. Entities will be required to provide all genders, including from vulnerable groups, with equal and equitable opportunity to be fully and effectively engaged in consultations and decision-making during project preparation, implementation and evaluation. This includes involvement in any free, prior and informed consent process undertaken with indigenous peoples **as outlined in ESS7**. |  |
| 11. GCF will require that Entities undertake all necessary measures to ensure that the communities affected or potentially affected by the activities (including vulnerable and marginalised groups and individuals) are properly consulted in a manner that facilitates the inclusion of local knowledge in the design of the activities, provides them with opportunities to express their views on risks, impacts and mitigation measures related to the activities, and allows the Entities to consider and respond to their concerns. In ensuring the meaningful and effective consultation and participation of the affected communities and vulnerable populations, Entities will align their stakeholder engagement processes to best practices and standards and will make publicly available the relevant information on the activities according to the requirements of GCF’s most current Environmental and Social Policy. | - This is exactly the same text as para 8 above and therefore should be deleted. |
| 14. Accredited Entities will develop and implement a Stakeholder Engagement Plan (SEP) that is scaled to the project risks and impacts and development stage, and be tailored to the characteristics and interests of the affected communitiesor**and indigenous peoples in accordance with ESS7**. Where applicable, the SEP will include differentiated measures to allow the effective participation of those identified as disadvantaged or vulnerable. When the stakeholder engagement process depends substantially on community representatives,**24** Entities will make every reasonable effort to verify that such persons do in fact represent the views of affected communities and that they can be relied upon to faithfully communicate the results of consultations to their constituents. |  |
| 16. The SEP will include provisions for stakeholder engagement and accountability if there are changes, at any stage of the project life cycle, which result in significant changes to the environmental or social risks and impacts. Entities will disclose to stakeholders how **what** these **changes are and how they** are being mitigated and if there are significant adverse risks and impacts on affected parties, Entities will be required to carry out additional consultation **and in the case of indigenous peoples seek and obtain FPIC in accordance with ESS7** . | - It should ne specified that entities will not only disclose to stakeholders how changes and associated risks are being mitigated, but also what exactly those changes to the environmental or social risks and impacts are so stakeholders are informed at every point of the project life cycle. |
| 18. In cases where the exact location of the project is not known, but it is reasonably expected to have significant impacts on local communities **or indigenous peoples**, Entities will prepare a stakeholder engagement framework, as part of its ESMS, outlining general principles and a strategy to identify affected communities**, indigenous peoples** and other relevant stakeholders and plan for an engagement process compatible with this ESS that will be implemented once the physical location of the project is known. Once the project location is identified, Entities will report back to the GCF. The SEP will be amended to reflect the location and relevant documents will be disclosed to stakeholders directly in a timely manner. |  |
| 1.5.3 Disclosure of Information 20. Disclosure of relevant project information helps affected communities and other stakeholders understand the risks, impacts and opportunities of the project **and to take informed decisions in relation to them**. Entities will provide affected communities **and indigenous peoples** with access to relevant information**25** on:  ● The purpose, nature, **location** and scale of the project; the duration of proposed project activities; the risks to, and potential impacts on, stakeholders **and their human rights** and proposed mitigation plans highlighting potential risks and impacts that might disproportionately affect vulnerable and disadvantaged groups currently or over time and differentiate measures to mitigate these;  ● The envisaged stakeholder engagement process, if any, and opportunities and ways in which stakeholders can participate, the grievance mechanism; and  ● The time and venue of any envisaged public consultation meetings, and the process by which meetings are notified, summarized, and reported**, and if or how these relate to consultations with indigenous peoples required under ESS7**. | - Required disclosures should also include the physical/geographic location of the project. This is particularly important for indigenous peoples because their territories are often underspecified and activities carried out encroach on their lands beyond the project scope.  - Proposed benefits to the communities from the project should also be disclosed at the outset to allow for fully informed decisions and for negotiations to take place throughout the stakeholder engagement process. |
| 22. Entities will disclose project information that helps stakeholders (individuals and groups) to understand the risks, impacts and opportunities of the project. If the communities may be affected by adverse environmental or social impacts form the project the Entity is responsible for disclosing the purpose, nature and scale of the project, duration of activities, risks to and potential impacts with regards to environment, worker health and safety, public health and social impact. | - This is repeating points made in para 20. |
| 23. For mandatory disclosure, reports will be available in both English and the relevant local language (if not English). The reports will be available on the Entity’s website as well as in locations convenient to affected people. | - What does "relevant local language" mean here and throughout the document - for example if the affected community speaks a different language from the majority population? Presumably this is referring to the national language? |
| 25. Entities will undertake a process of meaningful consultation in a manner that provides opportunities to project-affected people and other relevant stakeholders to express their views on project risks, impacts, and mitigation measures, and on access to potential opportunities and development benefits, and allows Entities to consider, respond to, and be accountable to project-affected people. It will carry out meaningful consultation on an ongoing basis as issues, impacts, and potential opportunities and development benefits evolve. The extent and degree of engagement required by the consultation process should be commensurate with the project’s risks and adverse impacts**,** and with the concerns raised by project-affected people and other relevant stakeholders**, and with the human rights of the affected people**. |  |
| 27. For GCF-financed activities with potentially significant adverse impacts on project-affected people, Entities will conduct an informed consultation and participation (ICP) process **that will build upon the steps outlined above in Consultation and will result in the affected communities’ informed participation**. **ICP involves a more in-depth exchange of views and information, and an organized and iterative consultation, leading to the Entity’s incorporating into their decision-making process the views of the affected communities on matters that affect them directly, such as the proposed mitigation measures, the sharing of development benefits and opportunities, and implementation issues. The consultation process should (i) capture people’s views, if necessary through separate forums or engagements, and (ii) reflect people’s different concerns and priorities about impacts, mitigation mechanisms, and benefits, where appropriate. Entities will document the process, in particular the measures taken to avoid or minimize risks to and adverse impacts on the affected communities, and will inform those affected about how their concerns have been considered.** Where the scope of application of the GCF indigenous policy (IPP) and ESS 7 is relevant, Entities are required to adhere to the requirements of the IPP and ESS7, particularly in relation to meaningful consultation and free, prior and informed consent. | - To avoid repetition and improve the flow, this text should be moved from para. 29 below and that paragraph deleted. |
| 28. Entities will tailor **their**its consultation process to the language preferences of the affected communities, their decision-making process, and the needs of disadvantaged or vulnerable groups. Where children are stakeholders, child-friendly consultation process should apply the nine basic requirements for effective and ethical participation. If Entities have already engaged in such a process, they will provide adequate documented evidence of such engagement. | - What is “nine basic requirements for effective and ethical participation” referring to?  - The last sentence is also unclear. If Entities have engaged in such a process when? |
| 29. For projects with potentially significant adverse impacts on affected communities, Entities will conduct an informed consultation and participation (ICP) process that will build upon the steps outlined above in Consultation and will result in the affected communities’ informed participation. RICP involves a more in-depth exchange of views and information, and an organized and iterative consultation, leading to the Entity’s incorporating into their decision-making process the views of the affected communities on matters that affect them directly, such as the proposed mitigation measures, the sharing of development benefits and opportunities, and implementation issues. The consultation process should (i) capture people’s views, if necessary through separate forums or engagements, and (ii) reflect people’s different concerns and priorities about impacts, mitigation mechanisms, and benefits, where appropriate. Entities will document the process, in particular the measures taken to avoid or minimize risks to and adverse impacts on the affected communities, and will inform those affected about how their concerns have been considered. | - See comment to para. 27. |
| 1.6.2 Grievance Mechanism for Affected Communities 34. Where there are affected communities, Entities will establish a grievance mechanism**, in consultation and cooperation with the concerned communities,** to receive and facilitate resolution of affected communities’ concerns and grievances about Entities environmental and social performance. It will be disclosed at the project level and to communities in appropriate languages and manners as described in Paragraph 20. Any issue raised about an Entities GCF-financed **activities** in this ESS will be deemed as relevant and thereby considered appropriate for the grievance redress mechanism. **Stakeholder should be fully informed of the nature of grievances that can be addressed through the GRM and of all alternative avenues available to them to raise their grievances.** It should seek to resolve concerns promptly, using an understandable and transparent consultative process that is culturally appropriate and readily accessible, and at no cost and without retribution to the party that originated the issue or concern. Entities will inform the affected communities about the mechanism in the course of the stakeholder engagement process. **Where indigenous peoples are concerned, grievance mechanisms should give due consideration to their customary laws, practices and legal systems and be developed in conjunction with them.** | - It should be clarified/elaborated on what sorts of issues will be appropriate to bring before a GRM, as communities have historically and frequently brought complaints that were dismissed as falling outside the purview of the GRM.  - Also, Entities must disclose to stakeholders information on what issues may be brought to the GRM and what cannot so that stakeholders can engage the correct mechanism/tribunal from the outset. |
| 35. The scope, scale and type of grievance redress mechanism required for the project- and programme- level will be proportionate to the nature and scale of the potential risks and impacts of the project or activity. The grievance redress mechanism will include the following:  ● Different ways in which people can submit their grievances, and taking into account language barriers/limitations and the need for anonymity if a complainant fears retaliation or submission by an authorized representative or civil society organization;  ● Provision to keep complainants’ identities confidential, especially in instances where the complainants fear retaliation;  ● Provision for interpretation/translation to overcome language barriers/limitations;  ● A log where grievances are registered in writing and maintained as a publicly available database. The database should include information about the complaint and the resolution of the complaint **(including any complaints deemed ineligible to be addressed under the mechanism)**, including the remedy**27** provided, taking into consideration that complainants’ identities can be kept anonymous if requested. This database should also be shared with the GCF independent redress mechanism;  ● Publicly advertised procedures, identifying the means for submitting grievances, setting out the length of time users can expect to wait for acknowledgment, response, and resolution of their grievances, descriptions of the transparency of the procedures, and the governing and decision-making structures; **such procedures must not obstruct indigenous peoples’ capacity to submit grievances and should be culturally appropriate and consented to by the affected communities and peoples.**  ● A monitoring and reporting resources and procedures for the use and implementation of the mechanism itself, as well as measures to effectively address the grievances.  ● An appeal process to which unsatisfied grievances may be referred when the resolution of grievance has not been achieved;  ● Information about other available grievance mechanisms, including the GCF independent redress mechanism and Entity’s grievance mechanisms; and  ● Measures in place to protect complainants from retaliation.  **27** Remedy” refers to restitution, **or compensation where restitution is not possible,** rehabilitation, satisfaction, and guarantees of non-repetition. **Where the peoples and communities concerned express a preference for compensation in money or in kind they shall be so compensated under appropriate guarantees**. The use of offsetting for human rights impacts is considered inappropriate. |  |
|  |  |
| 1 ESS10 Financial Intermediaries |  |
| 11. Accredited entities will comply with any exclusions in the legal agreement and apply relevant national **and international** law for all FI subprojects. In addition, the FI will apply the relevant requirements of the ESSs to any FI subproject that involves resettlement (unless the risks or impacts of such resettlement are minor), adverse risks or impacts on indigenous peoples **(in which case FPIC will be required under ESS7)** or significant risks or impacts on the environment, community health and safety, labor and working conditions, biodiversity or cultural heritage. | - ESS 7 requirements for indigenous peoples should apply to any subproject that involves resettlement, even if the risks or impacts are minor, as indigenous peoples may not be relocated without FPIC. Indeed any subproject involving indigenous peoples should apply the ESSs, not just those with adverse risks or impacts.  - Why is the qualification “unless the risks or impacts of such resettlements are minor” added in the case of FIs? Who will determine if this risk/impact is minor and what is the threshold? We suggest removing the qualification as it is a potentially significant loophole in the safeguards for what could be a major issue. Also as noted below it is never applicable in the case of indigenous peoples as ESS7 and its FPIC requirement is absolute in relation to resettlement (reflecting international human rights law on this subject). |
| 12. An Entity may be required to adopt and implement additional or alternative environmental**,** and social  **and human rights** requirements, depending on the nature of the FI, its activities, the sector or countries of operation, and the environmental**,**  and social **and human rights** risks and impacts of the potential FI subprojects**7**. |  |
| 1.4.1.1 Environmental**,** and social **and human rights** policy  14. The environmental and social policy of accredited entities will be endorsed by the FI’s senior management and will include organizational commitments, objectives, and metrics with regard to the FI’s environmental**,** and social **and human rights** risk management. The policy will clearly state applicable requirements for FI subprojects, and will include the following:  a. All FI subprojects will be prepared and implemented in accordance with relevant environmental**,** and social national and local laws and regulations **and in accordance with international human rights law standards**;  b. All FI subprojects will be screened against exclusions in the legal agreement**8**;  c. All FI subprojects will be screened for environmental**,** and social **and human rights** risks, impacts and potential co- benefits, including to indigenous peoples;  d. All FI subprojects which involve resettlement (unless the risks or impacts of such resettlement are minor), adverse risks or impacts on indigenous peoples or significant risks or impacts on the environment, community health and safety, labor and working conditions, biodiversity or cultural heritage will apply relevant requirements of the ESSs**9**. | - See comments to paragraph 11 above. |
| 1.4.1.2 Environmental and social procedures  15. Accredited entities acting as FI will put in place and maintain clearly defined environmental**,** and social **and human rights** procedures which reflect and implement the FI’s Environmental and Social Policy. The procedures will be proportionate to the nature of the FI and the level of potential environmental and social risks, impacts and co- benefits associated with the FI subprojects**10**. |  |
| 16. The environmental and social procedures will include mechanisms to:  a. Screen all FI subprojects against any exclusions in the legal agreement;  b. Screen, review and categorize the environmental and social **and human rights** risk of proposed subprojects in accordance with GCF categories of activities involving investments through financial intermediation functions or delivery mechanisms involving financial intermediation  c. Require that all FI subprojects are assessed, prepared and implemented to meet **applicable** national **and international** law and, in addition, where an FI subproject involves resettlement (unless the risks or impacts of such resettlement are minor), adverse risks or impacts on indigenous peoples or significant risks or impacts on the environment, community health and safety, labor and working conditions, biodiversity or cultural heritage, the relevant requirements of the ESSs are applied**11**;  d. Ensure that the measures needed to satisfy the requirements of (c) above are set out in the legal agreement between the accredited entities acting as FI and the sub-borrower or investee company;  e. Monitor and regularly update environmental**,** and social **and human rights** information on FI subprojects, including by site visits and by requiring subprojects report regularly to the accredited entities acting as FI on their environmental**,** and social **and human rights** performance in a manner satisfactory to the accredited entities;  f. If the risk profile of an FI subproject increases significantly, apply relevant requirements of the ESSs**12** and document these appropriately;  g. Monitor the environmental**,** and social **and human rights** risk of the FI portfolio. | - See comments to paragraph 11 above. |
| 17. As part of the environmental and social procedures, accredited entities acting as FIs will develop and adopt a categorization system for subprojects with clearly defined risk categories**13** in a manner consistent with the accreditation framework of GCF, as described in GCF ESP**14**. The categorization system will take into account (i) the nature and magnitude of environmental**,** and social **and human rights** risks and impacts of subprojects; (ii) sectoral, geographical and context (including political context which might pose a risk for accredited entities to fulfil the ESSs); and (iii) type of financing. The risk categorization will inform the scope and nature of the FI’s environmental**,** and social **and human rights** due diligence and risk management of its subprojects. Such categorization system will allow for a systematic aggregation and analysis of risk at the portfolio level. |  |
| 18. As part of its environmental**,** and social **and human rights** risk categorization system, the FIs will categorize any subproject which involves resettlement (unless the risks or impacts of such resettlement are minor **or ESS7 applies**), adverse risks or impacts on indigenous peoples or significant risks or impacts on the environment, community health and safety, labor and working conditions, biodiversity or cultural heritage, as high or substantial risk. |  |
| 1.4.1.3 Organizational capacity and competency  19. Accredited entities acting as FI will develop and maintain organizational capacity and competency for implementing the ESMS and environmental**,** and social **and human rights** procedures with clearly defined roles and responsibilities. They will designate a representative of the Entity’s senior management to have overall accountability for environmental**,** and social **and human rights** performance of subprojects. The representative will: (a) designate a staff member to be responsible for day-to-day implementation of the ESMS, including the environmental**,** and social **and human rights** procedures; (b) ensure that adequate resources are available for management of and training in environmental**,** and social **and human rights** issues; and (c) ensure that adequate technical expertise, either in-house or external expert support, is available to carry out due diligence and manage the environmental and social**, and human rights**  risks of the FI subprojects**, including in-depth knowledge of indigenous peoples’ rights where their rights are impacted**. |  |
| 20. Accredited entities will ensure that the requirements of this ESSs are clearly communicated to all relevant personnel**15** and ensure that relevant personnel have the necessary knowledge and capabilities**16** for managing environmental**,** and social **and human rights** risks in accordance with the ESMS. |  |
| 1.4.1.4 Stakeholder Engagement  21. Accredited entities acting as FI will require the FI subproject to conduct stakeholder engagement in a manner proportionate to the risks, impacts and potential co-benefits of the FI subproject, and which reflects the type of FI subprojects it will finance. The relevant provisions of ESS9**, including the requirement to trigger ESS7 where indigenous peoples are impacted,** will be included in the Entities’ environmental and social procedures. |  |
| 22. Accredited entities acting as FI will put in place a system for dealing with external communication on environmental**,** and social **and human rights** matters along the activity life-cycle, and will respond to such enquiries and concerns in a timely manner. | - This needs elaboration - is this a grievance redress mechanism or something else? |
| 23. Accredited entities will publish their corporate environmental**,** and social **and human rights** policy and ESMS on their website, and will list the link to any publicly available environmental**,** and social **and human rights** impact assessment (ESIA) reports for Category A and high risk Category B subprojects (or equivalent categorization) which they finance. **Given their** **elevated risk of human right impacts, all projects potentially impacting on indigenous peoples should fall into Category A.** Accredited entities will also publicly disclose information on the environmental**,** and social **and human rights** risks of any subproject and the proposed mitigation measures to address such risks, subject to applicable regulatory constraints, market sensitivities or consent of the sponsor of the subproject. Communication on environmental**,** and social **and human rights** performance will be maintained during subproject implementation (including, when available, the disclosure of environmental**,** and social **and human rights** monitoring reports assessing compliance of the activities with the ESS). |  |
| 1.4.1.5 Monitoring and Reporting to GCF  24. Accredited entities acting as FI will monitor the environmental**,** and social **and human rights** performance of the FI subprojects in a manner proportionate to the risks and impacts of the FI subprojects, and will promptly notify GCF of any significant accidents or incidents associated with subprojects. If the risk profile of a subproject increases significantly, Entities will notify GCF and will apply relevant requirements of the ESSs in a manner agreed with GCF. |  |
| 25. Accredited entities will submit, in a form agreed with GCF, annual environmental**,** and social **and human rights** reports on the implementation of its ESMS, as well a compliance with ESSs as well as the environmental**,** and social **and human rights** performance of its portfolio of subprojects. |  |