

ENVIRONMENTAL AND SOCIAL MANAGEMENT SYSTEM

ESS 7: INDIGENOUS PEOPLES AND TRADITIONAL LOCAL COMMUNITIES

**INDIGENOUS PEOPLES
AND LOCAL
TRADITIONAL
COMMUNITIES**



MAR FUND'S ESMS

ENVIRONMENTAL AND SOCIAL MANAGEMENT SYSTEM

ESS 7: INDIGENOUS PEOPLES AND TRADITIONAL LOCAL COMMUNITIES

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“ESS 7: Indigenous Peoples and Traditional Local Communities” is part of MAR Fund’s Environmental and Social Management System (ESMS). Therefore, ESS 1 should be read and understood in conjunction with the other 9 Safeguards and the other documents that are part of the ESMS.

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GLOSSARY

AFD	Agence Française de Développement ¹
BMZ	Bundesministerium für Wirtschaftliche Zusammenarbeit und Ent-wicklung ²
EbA	Ecosystem-based Adaptation
CAPEX	Capital Expenditure
CSO	Civil Society Organization
CTF	Conservation Trust Fund
Due Diligence	Environmental and Social Due Diligence
EIA	Environmental Impact Assessment
ERP	Emergency Response Plans
ESAP	Environmental and Social Commitment Plan
Escazú Agreement	Regional Agreement on Access to Information, Public Participation, and Justice in Environmental Matters in Latin America and the Caribbean
ES	Environmental and Social
ESDD	Environmental and Social Due Diligence
ESIA	Environmental and Social Impact Assessment
ESMF	Environmental and Social Management Framework
ESMP	Environmental and Social Management Plan
ESMS	Environmental and Social Management System
ESPF	Environmental and Social Performance Framework
ESSQ	Environmental and Social (ES) Screening Questionnaire
ESS	Environmental and Social Safeguards

¹ French Development Agency

² Federal Ministry for Economic Cooperation and Development of the Federal Republic of Germany.

FB	Fundación Biosfera
FCG	Fundación para la Conservación de los Recursos Naturales y Ambiente en Guatemala
FC–Measures	Financial Cooperation Measures
FFEM	Fonds français pour l’environnement Mondial ³
FI	Financial Intermediary
FMCN	Fondo Mexicano para la Conservación de la Naturaleza
FPIC	Free, Prior, and Informed Consent
GCF	Green Climate Fund
GEF	Global Environment Facility
GHG	Greenhouse gas
GMO	Genetically Modified Organism
H&S	Health & Safety
IDB	Inter–American Development Bank
IFC	International Financial Corporation
ILO	International Labour Organisation
ISPM	International Standard for Phytosanitary Measures
IUCN	International Union for Conservation of Nature
JMP	WHO/UNICEF Joint Monitoring Programme for Water Supply, Sanitation and Hygiene
KfW	Kreditanstalt für Wiederaufbau ⁴
LGBTQ+	Lesbian, gay, bisexual, transgender, queer (or sometimes questioning) and others. + represents other sexual identities including pansexual and Two–Spirit.
MAR	Mesoamerican Reef
MAR Fund	Mesoamerican Reef Fund
NAP	National Adaptation Plans
NDC	National Determined Contributions
NGO	Non–Governmental Organization

³ French Facility for Global Environment.

⁴ Reconstruction and Credit Corporation of the Federal Republic of Germany.

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OH&S	Occupational Health & Safety
PACT	Protected Areas Conservation Trust
PPE	Personal Protective Equipment
PS	Performance Standards
RfP	Request for Proposals
SEA	Sexual Exploitation and Abuse
SECF	Stakeholder Engagement and Communication Framework
SECP	Stakeholder Engagement and Communication Plan
SGBV	Sexual and Gender-Based Violence
SIA	Social Impact Assessment
The Policy	MAR Fund's Environmental and Social Policy
ToR	Terms of Reference
UN	United Nations
UNDP	United Nations Development Programme
UNEP	United Nations Environmental Programme
UNFCCC	United Nations Framework Convention on Climate Change
UN Protocol	United Nations Protocol on Allegations of Sexual Exploitation and Abuse Involving Implementing Partners
WASH	Water, Sanitation, and Hygiene

1 ESS 7: INDIGENOUS PEOPLES AND TRADITIONAL LOCAL COMMUNITIES



1.1 INTRODUCTION

1. The “**ESS 7: Indigenous Peoples and Traditional Local Communities**” (ESS 7) articulates the provisions of the following internationally recognised safeguards and standards that are relevant and pertinent to MAR Fund’s context and operations:
 - The IDB’s ESPS 7 Indigenous Peoples
 - The World Bank’s ESS 7 Indigenous Peoples / Sub-Saharan African Historically Underserved Traditional Local Communities.
 - The IFC’s PS 7 Indigenous Peoples
 - The IUCN’s Standard on Indigenous Peoples
2. To the effects of MAR Fund’s ESMS, the term Indigenous Peoples and Local Traditional Communities mirrors the World Bank’s definition of “*Indigenous Peoples/Saharan African Historically Underserved Traditional Local Communities*”¹.
3. The term is used in a generic sense to refer exclusively to “a distinct social and cultural group possessing the following characteristics:
 - Self-identification as members of a distinct indigenous social and cultural group and recognition of this identity by others; and
 - Collective attachment to geographically distinct habitats, ancestral territories, or areas of seasonal use or occupation, as well as to the natural resources in these areas;
 - Customary cultural, economic, social, or political institutions that are distinct or separate from those of the mainstream society or culture; and

¹ ESS 7 *Indigenous Peoples/Saharan African Historically Underserved Traditional Local Communities* [2016. “World Bank Environmental and Social Framework.” World Bank, Washington, DC.] License: Creative Commons Attribution CC BY 3.0 IGO.

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- A distinct language or dialect, often different from the official language or languages of the country or region in which they reside”.

- Indigenous Peoples² and Local Traditional Communities may be referred to in the MAR Region by such terms as original peoples (*pueblos originarios*), autochthonous peoples (*pueblos autóctonos*), residents of indigenous counties (*comarcas*) or reserves (*resguardos*), or any other formally recognized indigenous peoples in Latin America³.

- 4. The term may also include communities or groups of Indigenous Peoples and Local Traditional Communities who, “during the lifetime of members of the community or group, have lost collective attachment to distinct habitats or ancestral territories in the project area, because of forced severance, conflict, government resettlement programs, dispossession of their land, natural disasters, or incorporation of such territories into an urban area”⁴.

- 5. MAR Fund is fully supportive of the positive relationship between Indigenous Peoples and Local Traditional Communities and biodiversity, recognizes their essential role in conservation, and strives to work with them in the efforts to crystalize MAR Fund’s vision of a thriving Mesoamerican Reef system that sustains, and is supported by, society within a regenerative economy. MAR Fund also recognizes that Indigenous Peoples’ and Local Traditional Communities’ lands are a fundamental element of the MAR region’s biodiversity⁵.

1.1.1 OBJECTIVES

- 6. The objectives of the ESS 7 are the following:
 - Respect the human and collective rights, culture, and livelihoods of indigenous peoples and traditional local communities in all projects approved by the MAR Fund.

² Indigenous Peoples in the MAR Region may include, among others, Caribbean Creole, Garifuna, Kakchikel, Jacatleco, Mam y Q’eqchi’, Chuj, Garifuna, Ixil, Miskitu, Mopan, Motozintleco, Yucatec Maya, Pocomam, and Xinca.

³ IDB Environmental and Social Policy Framework (IDB ESPF), ESMS 7: Indigenous Peoples.

⁴ ESS 7 *Indigenous Peoples/Saharan African Historically Underserved Traditional Local Communities* [2016. “World Bank Environmental and Social Framework.” World Bank, Washington, DC.] License: Creative Commons Attribution CC BY 3.0 IGO.

⁵ This refers to lands owned or governed by Indigenous Peoples’ and Local {Traditional} Communities, with or without legal recognition. (WWF, UNEP-WCMC, SGP/ICCA-GSI, LM, TNC, CI, WCS, EP, ILC-S, CM, IUCN. The State of Indigenous Peoples’ and Local Communities’ Lands and Territories: A technical review of the state of Indigenous Peoples’ and Local Communities’ lands, their contributions to global biodiversity conservation and ecosystem services, the pressures they face, and recommendations for actions Gland, Switzerland (2021))

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- Recognize and support the activities and conservation efforts of indigenous peoples and traditional local communities.
- Ensure an adequate Free, Prior, and Informed Consent (FPIC) process of Indigenous Peoples and Traditional Local Communities when required.
- Avoid environmental and social risks and adverse impacts to Indigenous Peoples and Traditional Local Communities. When total avoidance is not possible, minimize these risks and adverse impacts, and mitigate remaining impacts.
- Recognize, respect, and preserve traditional knowledge and ensure fair and equitable sharing of benefits arising from the use of genetic resources.

1.1.2 SCOPE OF APPLICATION

7. The applicability of the ESS 7 is decided during the environmental and social due diligence, following the ESS 1, with the support of the ESSQ tool. The ESS 7 shall be applied when the Due Diligence determines one or more of the following situations:
 - The project will be implemented with or by Indigenous Peoples and Traditional Local Communities.
 - The project carries the risk of adversely affecting Indigenous Peoples and Traditional Local Communities, including or not limitations on their access to Natural Resources or critical cultural resources.
 - Indigenous Peoples and Traditional Local Communities inhabit the project area.
 - The project includes access to, and use of, traditional knowledge associated with genetic resources.
 - The project includes the use of cultural heritage over which Indigenous Peoples and Traditional Local Communities have customary rights for commercial or any other economic benefit.

1.2 REQUIREMENTS

8. The participation of Indigenous Peoples and Traditional Local Communities in the project, or their presence in the project location, is determined with the Stakeholder Analysis conducted by the grantee, as per the ESS 1.
9. When the participation of Indigenous Peoples and Traditional Local Communities in the project, or their presence in the project location, is established, the grantee shall carry out either a meaningful consultation process or a Free, Prior, and Informed Consent (FPIC) process, as needed (*see § 21 below*).

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10. The grantees executing projects that include the formulation or update of the management plan of a Protected Area where Indigenous Peoples and Traditional Local Communities live or have their livelihoods must be vigilant as not to impinge on the lands owned, or claimed, by Indigenous Peoples, impact territory under traditional use by indigenous Peoples; affect indigenous Peoples' access to resources unless the project satisfies the requirements set forth in this Safeguard. When formulating or modifying protected area management plans, grantees shall be vigilant of not disempowering Indigenous Peoples and Traditional Local Communities, including violating their rights or creating the conditions to remove them from their lands.

1.2.1 MEANINGFUL CONSULTATION WITH INDIGENOUS PEOPLES AND LOCAL TRADITIONAL COMMUNITIES

11. Meaningful consultation is a good faith dialogue between the grantee and Indigenous Peoples and Traditional Local Communities. This process seeks to enable Indigenous Peoples and Traditional Local Communities to effectively express their views and concerns about the risks and impacts of the proposed project.
12. The meaningful consultation process shall be conducted in a culturally sensitive manner, in the language most commonly used by the concerned Indigenous Peoples and Traditional Local Communities, and in close coordination with their indigenous local authorities and customary representatives' bodies and organisations.
13. The grantee shall comprehensively communicate to the Indigenous Peoples and Traditional Local Communities the purpose of the proposed project, its sub-grants, and components, the environmental and social risks and impacts and opportunities, the anticipated schedule and budget, and any other relevant elements.
14. To achieve effective communication, the grantee should use communication media responsive to the culture, capacities, and customs of the Indigenous Peoples and Traditional Local Communities concerned.
15. The views, concerns, and proposals of the Indigenous Peoples and Traditional Local Communities concerned should be taken seriously into consideration by the grantee, as they will inform the proposed activity. This material should be summarized and presented with the proposal.
16. Notwithstanding that the consultation process should be carried out by the traditions of Indigenous Peoples and Traditional Local Communities, such process shall not allow discrimination based on gender or sexual orientation nor reinforce pre-existing gender-based inequalities. The grantees are obligated to ensure the participation of indigenous

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women and people of diverse gender identities and sexual orientation in the meaningful consultation process by accommodating their needs and providing specific spaces for participation.

17. Indigenous Peoples and Traditional Local Communities must be meaningfully consulted at least twice: first, during proposal preparation, to improve the proposal, and second, at the end of proposal preparation, to be informed of the results of the meaningful consultation process and the final proposal document. The grantees will document these consultations and keep written and audiovisual records available to the MAR Fund. The output of the consultation may be summarized by an Act of Minutes of the meeting.
18. The grantees will keep the Indigenous Peoples and Traditional Local Communities informed about the development of the project and will offer different options for them to participate in the activities of the project.
19. The grantees will accommodate the reasonable requirements that interested Indigenous Peoples and Traditional Local Communities may have for participation in the project.
20. The grantees should follow the additional guidance on this aspect of the ESS 10 Stakeholder Engagement, including requirements for information disclosure.

1.2.2 FREE, PRIOR, AND INFORMED CONSENT

21. FPIC is required in the following cases:
 - The project includes the direct participation of Indigenous Peoples and Traditional Local Communities (i.e., they conduct or actively participate in the sub-activities, they are the direct beneficiaries of, or receive funds from, the project).
 - The project takes place in the territory where Indigenous Peoples and Traditional Local Communities live or have their livelihood (it could be land or sea).
 - The project imposes access restrictions to natural resources or to critical cultural resources to Indigenous Peoples and Traditional Local Communities (in this case, the ESS5 also applies)
 - The project includes the use of traditional knowledge of Indigenous Peoples and Traditional Local Communities, especially traditional knowledge related to genetic resources.
 - The project supports the use of, or the generation of economic benefit from, the cultural heritage of Indigenous Peoples and Traditional Local Communities (In this case ESS 8 may also apply).

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22. The FPIC must satisfy all the requirements of the meaningful consultation with Indigenous Peoples and Traditional Local Communities presented in *section 9.2.1 Meaningful Consultation with Indigenous Peoples and Local Traditional Communities* as well as the following requirements. (All other Activities, that do not demand FPIC, require meaningful consultation process).
23. Indigenous Peoples and Traditional Local Communities provides their consent voluntary, independently decided upon, without coercion or intimidation or manipulation. It is Free.
24. Indigenous Peoples and Traditional Local Communities may abstain from providing their consent; in such a case the project requiring the FPIC must not be approved.
25. Indigenous Peoples and Traditional Local Communities may withdraw the consent previously provided. If they decide to do so, they must communicate their decision in the same way used to provide their FPIC. In that case, if the project is already approved and in implementation, the grantee may continue implementing the project's activities that were originally covered by the FPIC but cannot extend, increase, or otherwise enhance them. If the project is approved but not yet in implementation, the grantee may present alternatives to the concerned Indigenous Peoples and Traditional Local Communities to regain their FPIC. In this latter case, and only when technically viable, the grantee may also propose to MAR Fund feasible modifications to the project to circumvent the sub-activities that required FPIC. If the project is not yet approved when the Indigenous Peoples and Traditional Local Communities withdraw their FPIC, it must not be approved.
26. Indigenous Peoples and Traditional Local Communities' consent is provided prior approval of the project and ideally before it is submitted to MAR Fund.
27. For the consent to be *informed* Indigenous Peoples and Traditional Local Communities must have clear, consistent, culturally appropriate, transparent information about the project, delivered in their languages, available in their locations, easily accessible without barriers.
28. The grantees will inform the concerned Indigenous Peoples and Traditional Local Communities about their rights under the law of Mexico, Belize, Guatemala, or Honduras, as the case may be. They also need to inform of the requirements set forth by this Safeguard, including their right to decline consent.
29. During the due diligence process it will be established whether the proposed project requires a fit-for-purpose ESIA and the formulation of an ESMP or just an Environmental and Social Site Risk Assessment and an ESCOP (See more information about this topic in sections *3.3.5 Procedures related to the ESIA and 3.3.6 Procedures related to the ESCOP*). In either case, the grantee, or any third-party organization retained by the grantee to carry

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out this process, must engage with the concerned Indigenous Peoples and Traditional Local Communities to work collaboratively to identify with them the environmental and social risks and adverse impacts of the proposed project, and the required mitigation measures.

30. The resulting ESMP or ESCOP, and the ESAP, must be disclosed to the concerned Indigenous Peoples and Traditional Local Communities in a culturally appropriate manner. Sufficient time and resources shall be provided to allow for effective participation, discussion, and decision making.
31. Indigenous Peoples and Traditional Local Communities representatives must participate in the execution of the environmental and social measures and requirements that may be included in the ESMP or the ESCOP and in the ESAP as well.
32. The grantees will make their best efforts to involve Indigenous Peoples and Traditional Local Communities' representatives in the monitoring of the environmental and social performance of the project. The grantees will periodically inform the concerned Indigenous Peoples and Traditional Local Communities of the environmental and social performance of the project.
33. The grantees must create a Grievance Mechanism (required by the ESSs 1 and 10) that is culturally appropriate for the concerned Indigenous Peoples and Traditional Local Communities. The Grievance Mechanism must be operational during the FPIC process and throughout the implementation of the project.
34. The grantees shall document the FPIC process and keep written and audiovisual records available to MAR Fund.

** ** END OF ESS 7 ** **
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