**Indigenous Peoples Inputs[[1]](#footnote-1) to the Green Climate Fund Environmental and Social Management System**

The following is a preliminary analysis of sections of the draft ESMS that are more relevant and pertinent for Indigenous Peoples. It should be recalled that Tebtebba and Forest Peoples Programme, together with a large group of IPOs and support organizations, provided initial feedback for the establishment of an ESMS at the Green Climate Fund, in a submission in February 2016, while also supporting the CSO submission.

The submission spelled out the key elements of a rights-based ESMS for the GCF. Firstly, a robust ESMS needs to be anchored to a solid human rights-based approach that acknowledges, risks and opportunities for indigenous peoples, indigenous peoples’ vulnerabilities and positive contributions to the Fund’s goals. The GCF Social and Environmental Policy should be based on highest standards and relevant UN commitments and IP Policy should be developed and adopted that would include, among others, the following components:

* a legal framework, including applicable international Human Rights Standards such as UNDRIP;
* FPIC and full and effective participation of indigenous peoples;
* recognition of contribution of traditional knowledge and livelihoods;
* capacity building for Secretariat and NDAs.

The ESMS submission also calls for the development and adoption of specific guidance on FPIC and full and effective participation of and consultation with Indigenous Peoples

For the full text see: <http://www.forestpeoples.org/sites/fpp/files/news/2016/02/Indigenous%20Peoples'%20Submission%20to%20the%20GCF%20ESMS.pdf>

The following are our initial comments on the draft ESMS document.

**1)   the document intends to go beyond a “do-no-harm” approach but does not clarify how to “do-good” and does not acknowledge the role and positive contribution of IPs traditional knowledge and livelihoods to effective adaptation and mitigation.**

The first thing that comes up as a positive development is that the draft in fact does not limit itself to a do-no-harm approach but rather also hints to contribute to a do-good approach by specifying that one of the goals is to contribute to the “improvement of environmental and social outcomes” Nevertheless at a further reading of the whole document, it seems that such an acknowledgement of the “do-good “component is not properly followed up. As a matter of fact, the whole document is characterized by a "do-no-harm" implementation, risk prevention and management, while it does not envisage any  indicator, criteria or procedures to ensure and assess the "do-good" component, in the specific criteria to assess effective pursuit of improved environmental and social outcomes.  Such a limited approach is also evident when the document only refers to the purpose of the Environmental and Social Policy's goal of giving “*due consideration to vulnerable populations*”, while no acknowledgement of the potential deriving from community-based adaptation and mitigation.  It is understandable that such a document, that is related to a Environmental and Social Management System, cannot realistically delve into the positive contributions of Indigenous Peoples Traditional Knowledge and livelihoods, and hence offers a narrow definition of maximized benefits (that somehow need to be spelled out: biodiversity conservation, land tenure, sustainable livelihoods, among others). Nevertheless, such a narrow approach offers a solid reason for a self-standing IP Policy whose purpose would be that of enabling the GCF to develop a “vision” on the connection between IPs and climate change, and on how IPs can contribute to the GCF stated goals, while preventing any harm that the GCF operations might do to IPs.

**2)    there is no reference to a rights-based approach, and some of the proposals on a common approach between ESS and GCF standards risk lowering the bar**

Differently from what called for in the FPP-Tebtebba submission on the ESMS, the paper does not specify the adoption of a rights-based approach, although it includes a human rights standard of “do-no-harm”. A rights-based approach cannot be limited to that component and needs to be characterized throughout the document. Furthermore,  when dealing with scope and application, it propose a common approach – that *“will achieve the same level of environmental and social protection as the GCF policy*” . It should be noted that at this stage the ESMS does not envisage a new set of ESS, in fact the current Interim ESS taken from the IFC performance standards will still apply. These standards are not necessarily the most advanced and best available (in the case of FPIC for instance) hence the risk of referring to the GCF as benchmark might in fact  lower IE standards that in some cases might be higher (UN Agencies’ for instance). Hence it is suggested that the approach be reformulated to specify that in case of conflict between the GCF and IE standards, the highest and most stringent standard would apply.

In terms of compliance with applicable laws, the ESMS states that “*GCF would not support projects that do not comply with applicable laws, including national laws and obligations of the country directly applicable to the project, under relevant international treaties and agreements*.” This sentence is not clear, and leaves too many loopholes based on national legislation that in many cases, for instance in the case of IPs, does not internalize international obligations that are “directly applicable to the project”. As regards IPs, this is further evidence of the need of an IP Policy, that spells out clearly the international obligations, covenants, and treaties on IP rights that States, IEs and the GCF are expected to respect, as well as IP related standards for the private sector. Furthermore, the exclusive focus on project contradicts other statements made in the draft ESMS according to which the ESMS would apply to all activities supported by the Fund, including readiness for instance. As it stands now the draft ESMS risks ruling out the need to ensure that also programmes and plans such as readiness plans, and other activities of the GCF that are not necessarily to be considered as projects, comply with national laws and applicable international obligations.

The risk of not taking into due account the best practices already developed and applied on mitigation and adaptation is evident also in the language on REDD+. As a matter of fact, the draft ESMS calls for "*Consistency with UNFCCC REDD-plus safeguards. The environmental and social requirements of the GCF will be consistent with the guidance and safeguards for policy approaches and positive incentives on issues related to REDD-plus."*

Such language excludes from consideration all the standards and guidance that have been piloted and applied on REDD+ on the basis of the Cancun Safeguards, among others the REDD+ SE standards and the UNREDD’s that as regards IPs are the most advanced. So, some placeholder is needed here to refer to the policies and guidance and further operationalization of the Cancun Safeguards. Explicit reference and/or benchmarking to UNREDD and other upper level standards on IP rights can be made in the ESMS Manual or in the specific paper on Results Based Finance/REDD+ currently under development. Furthermore, it should be pointed out that as regards monitoring of compliance to REDD+ Safeguards, the Safeguards Information System envisaged at UNFCCC level, refers only to Parties’ monitoring “systems” and modalities, and not to qualitative assessments of safeguard compliance.

To that regard, and on a positive note, it should also be that the ESMS suggests the possibility of recurring to additional guidance tools to assess projects, but these should be listed and referred to at least in the ESMS handbook/manual that will be developed on the basis of the ESMS, and the GCF as well might recur to these. The draft ESMS states that “*The entities may use a variety of tools and studies to complement and strengthen further the assessment of projects. These form part of commonly accepted assessment tools such as strategic impacts assessment, regional impacts assessment, cumulative impacts assessment, and other specialized studies as may be required under specific ESS standards. The GCF may recommend additional tools and planning instruments as may be necessary to meet the national requirements and international commitments of countries.”*

**3. the sections on Indigenous Peoples are welcome as well as reference to the UNDRIP and FPIC, but need to be better clarified and spelled out**

While this specific paragraph is welcome, the fact that it is anchored to non-committing text is reason for concern. As a matter of fact, according to the current draft, the GCF will **seek to ensure** that (emphasis added)

*“All GCF financed activities will* ***aim*** *to avoid* ***adverse*** *impacts on indigenous peoples, promote benefits and opportunities, foster respect for the culture, and the people and preserve the indigenous culture, knowledge and practices, and will support the full and effective participation of IPs.  Design and implementation of activities will be consistent with the rights and commitments set forth in the UNDRIP, including FPIC”.*

“**Will seek to ensure**” and “**aims to avoid**” hint to a discretionary character of this principle that in fact would create too many legal loopholes and in fact conflict with the mandatory character of the interim ESS standard on IPs. Also the use of the term “**adverse**” risks creating excessive flexibility in compliance obligations, and needs to be clearly specified. What is adverse? Who defines what is an “adverse impact”?

Furthermore, as it stands now, the text does not acknowledge the positive contribution of indigenous peoples’ traditional knowledge and livelihoods to adaptation and mitigation. Additionally, it correctly refers to FPIC, but the key issue is that until the Interim ESS are in place, the FPIC requirements contained therein do not align with international standards, including UNDRIP. So there is a need to dedicate some specific language on FPIC and what is the applicable standard and when FPIC would be applied. Somehow this can be done in the Indigenous Peoples Policy but in the interim the Adaptation Fund’s list of cases when FPIC is required could be used a starting point. And at later stage, once the ESMS and the Indigenous Peoples Policy are approved a specific guidance on participation of indigenous peoples and FPIC should be developed and adopted. Such guidance could also be included in the planned Environmental and Social Policy of the GCF that will complement the ESMS together with a manual for ESMS.

Better language is also needed with reference to screening of potential impacts on IPs. (para 48 page 20). As it stands now the text reads as follows:

*“screening projects for potential impact on indigenous peoples, consistent with the objectives and requirements of the ESS standard on IPs. Where there are potential impacts on IPs the GCF will require the entities to prepare an indigenous peoples development plan or an IP Planning framework. Scope and extent of plans will be proportional to the “vulnerability” of IPs   and extent of impacts in customary rights of use and access to land and natural resources, socioeconomic status, cultural integrity, indigenous knowledge and skills and overall welfare”*

This language is also welcome but again there are some unclear aspects. What are the categories of impacts on IPs that would trigger the requirement to prepare an IP Development Plan or a IP Planning Framework? There is a limited list in the second part of the para, what might be needed is an appendix listing a broader spectrum, to be developed with the direct contribution of IPs. And again, the ESS standard on IPs (notably IFC PS) does not necessarily reflect the best standard available especially as regards climate change related projects and programmes. Finally, there is also an issue of consistency along the project cycle, since a project that would be assessed now on the basis of the Interim ESS might then have to be assessed monitored and evaluated using the new ESS that are likely to be developed and adopted in the coming few years. This is why on a precautionary basis, it would be indeed better to resort to the “higher standard” between GCF and IE’s.

As regards FPIC, it is also referred to when the draft ESMS deals with stakeholder engagement plan at page 23: *“Stakeholder engagement plan that describes the disclosure of information, meaningful consultation, and informed participation and in certain circumstances, FPIC as required in the ESS standards”*. Again the current interim ESS standard on FPIC does not align to international best practice.

And then when it says: *“(...) For activities affecting indigenous peoples, this engagement will be supported by the objectives and requirements of the ESS standard on indigenous peoples, including with respect to free, prior and informed consent. There is no universally accepted definition of free, prior and informed consent”.*

Again, reference to FPIC is welcome, while the specification that there is no universally accepted definition of FPIC seems redundant if not counterproductive, since it does not ensure a coherent and consistent application of FPIC in GCF projects, leaving too much space for discretion and choice between FPIC, Broad Community Support or Free Prior Informed Consultation. Again, the Interim ESS on FPIC lists a limited set of modalities to implement FPIC.  Such a list needs to be updated for instance by using the list provided by the Adaptation Fund. As regards FPIC, for instance, according to the AF ESM the IE will have to

*1)Describe how the project/programme will be consistent with UNDRIP, and particularly with regard to Free, Prior, Informed Consent (FPIC) during project/programme design, implementation and expected outcomes related to the impacts affecting the communities of indigenous peoples.*

*2) Describe the involvement of indigenous peoples in the design and the implementation of the project/programme, and provide detailed outcomes of the consultation process of the indigenous peoples.*

*3) Provide documented evidence of the mutually accepted process between the project/programme and the affected communities and evidence of agreement between the parties as the outcome of the negotiations. FPIC does not necessarily require unanimity and may be achieved even when individuals or   groups within the community explicitly disagree.*

*4) Provide a summary of any reports, specific cases, or complaints that have been made with respect to the rights of indigenous peoples by the Special Rapporteur and that are relevant to the project/programme. This summary should include information on subsequent actions, and how the project/programme will specifically ensure consistency with the UNDRIP on the issues that were raised".*

**4. information disclosure and stakeholder engagement standards will have to be tailored to the particular status of Indigenous Peoples**

As to information disclosure and stakeholder engagement, the reference to the need to ensure a culturally appropriate process and also publish documents in local languages is welcome. However, given the specificity of IPs is we recommend that a dedicated “Indigenous Peoples Consultation and Engagement guidance” be developed that could also include guidance on FPIC or that these elements be properly addressed in the ESMS Manual and the IP Policy.

The draft ESMS states as follows*: “Stakeholder engagement and disclosure. The ESMS of the GCF ensures that there is broad multi-stakeholder support and participation in planning and implementing GCF -financed activities, including measures to manage environmental and social risks and impacts. The process to build  support will be inclusive, gender-responsive, culturally appropriate and supported by the disclosure of relevant information;*

**6. Modalities to screen, assess and manage risks appear vague and need to be better specified.**

 In some parts the ESMS draft seems to be too vague and discretional when dealing with screening and risk categorization referring to “**sensitivity**” of communities for instance:

*“screening and risk categorization is proportional to nature, scale, and location of project and its environmental and social risks --- ad the “sensitivity” of the receiving environments and communities*

Or when in various occasions when dealing with managing environmental and social risks it refers various times to the fact that issues will be addressed but does not specify how and when and how to assess, and in particular what are the risks to assess and whether and how indigenous peoples can be engaged in developing participatory risk assessment and categorization.

7. **IRM draft ToRs inconsistent with IRM section in ESMS**

The proposed text on IRM included welcome language according to which also potentially affected parties can seek redress and also widens the trigger for recourse beyond non-compliance with safeguards. We welcome this, and suggest that the IRM ToRs are revised accordingly.

*“At GCF level, the IRM will address grievances by people who may or have been affected by the adverse impacts through the failure of GCF funded activities to implement its operational policies including ESS”*

1. *these inputs have been incorporated in the overall CSO submission to the GCF* [↑](#footnote-ref-1)