

Written Submission on Asian Development Bank's (ADB) September 2023 Draft Environmental and Social Framework (ESF)

Submission from Zo Indigenous Forum
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Draft ESS 7: Indigenous Peoples

Given the endorsement of the Country Safeguard System (CSS) in identifying Indigenous Peoples (IPs), it is imperative for ADB to integrate the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) into its policy. This is particularly crucial in regions where certain governments, especially in Asia, do not acknowledge the existence of Indigenous Peoples, their land ownership, or customary rights. The failure to recognize IP land rights has led to tensions and conflicts arising from development activities proceeding without the consent of IPs, with governments asserting that IPs have no rights over the land.

In establishing criteria for identifying and implementing the IPs policy, ADB should align itself with internationally agreed-upon laws such as UNDRIP 2007 and ILO 169, ensuring the right to self-identification for Indigenous Peoples. The concept of Free, Prior and Informed Consent (FPIC) should not be considered a one-time process but an ongoing one. It requires the full and effective participation of Indigenous Peoples in project design, implementation, and monitoring and evaluation.

Respect for the traditional land-holding systems of Indigenous Peoples is paramount. Indigenous Peoples often own or use their land traditionally, based on customary practices. While some Indigenous Peoples may lack legal title to land as defined by the host country's laws, recognizing existing customary land tenure systems is essential. Instead of converting customary use to communal and/or individual ownership rights, which would disrupt the IPs' land-holding system, the existing customary land tenure systems should be acknowledged. If, after receiving comprehensive project information, IPs agree and compensation is offered, their consent should be considered valid even if they lack a government-issued land certificate.

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