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EFFECTIVE ENGAGEMENT WITH INDIGENOUS PEOPLES: USAID ENERGY AND INFRASTRUCTURE SECTOR GUIDANCE DOCUMENT

JANUARY 2019

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HOW TO USE THIS GUIDANCE

USAID has designed this energy and infrastructure sector guidance document to provide a practical tool for USAID missions and operating units to more effectively engage and partner with indigenous peoples in energy and infrastructure sector activities. Consideration of indigenous peoples' own development priorities and their participation in development design and implementation processes can help to mitigate adverse impacts on their communities, avoid conflict that could delay or derail projects and lead to better outcomes. Well-structured communication and consultation processes that engage indigenous peoples in energy and infrastructure program design, implementation, monitoring and evaluation are vital to advance program objectives while accounting for indigenous peoples' needs, capacities and interests.

This energy and infrastructure sector guidance document is based upon desktop research on international standards and implementation experiences, as well as interviews with USAID development professionals working in the sector. This guidance complements and is informed by USAID's Indigenous Peoples Programming Guidance [Policy]. It is intended to be integrated with other USAID planning and programming tools, including [Inclusive Development Analysis](#), [Environmental Assessment](#), and dialogue mechanisms set forth in the Indigenous Peoples Consultation Handbook and [Stakeholder Engagement](#) guidance.¹

INTRODUCTION

USAID promotes and supports efforts in developing countries to create the policy, legal and regulatory frameworks necessary to attract private investment in energy, increase energy efficiency and expand access. USAID assists in the development of effective and sustainable energy and infrastructure services that will provide a foundation for achieving broader economic and social development goals.

Indigenous peoples are among the most [disadvantaged and vulnerable groups](#) in nearly every country where they reside. Indigenous peoples represent approximately 5 percent of the global population, but account for about 15 percent of the world's extreme poor. They often live in remote regions and depend on their lands and natural resources for their sustenance. Their cultural identity, spiritual practices and governance systems are also tied to their traditional knowledge and relationship with the ecosystems they inhabit. Yet national laws in countries where indigenous peoples reside may not recognize them, land tenure and access to natural resources may not be formally established or adequately enforced and indigenous peoples frequently face exclusion, negative stereotyping and discrimination.

Although indigenous peoples may depend upon and have special ties to lands where renewable resources are located, they may not have access to information regarding proposed energy or infrastructure projects and they may be disregarded in stakeholder analysis. When indigenous peoples are engaged in project development, the consultation process may be inadequate for expression of their views, priorities or concerns. Because indigenous peoples are often excluded or inadequately engaged in the project development process, they also tend to be excluded from the resulting benefits. Indeed, indigenous peoples tend to disproportionately suffer the adverse impacts of energy and infrastructure projects, which can impede their access to lands and resources, contaminate water sources, harm

¹ USAID Indigenous Peoples Programming Guidance (Policy) and Consultation Handbook are in draft form as of January 2019.

habitat for subsistence and undermine their cultural integrity. In many parts of the world, when indigenous peoples bring attention to the threatened or actual harm they may suffer from the development of energy and infrastructure projects, they have been targets of intimidation, harassment and violence.

Although negative experiences leave indigenous peoples skeptical of, or even hostile to, energy and infrastructure development, [indigenous peoples have shown openness to discussions](#) about energy and infrastructure development in ways that are beneficial to them and respectful of their rights. USAID energy and infrastructure program experiences have offered important lessons by engaging indigenous peoples and incorporating their concerns in the project design phase and by integrating indigenous peoples into project implementation and monitoring. USAID's support for this approach is part of a global counter-trend where new forms of engagement, collaboration and partnership between indigenous peoples and the energy and infrastructure sector are emerging. This engagement can mitigate harms to indigenous peoples, lead to improved benefit-sharing, reduce potential for conflict and project disruption and delays and help build capacity for indigenous peoples to play more empowered role in energy and infrastructure development.

CHALLENGES/ KEY ISSUES

Deficient stakeholder engagement and consultation processes can marginalize, exclude or discount indigenous peoples' interests, which can fuel distrust, heighten polarization and disenfranchise

- The principle of [Free, Prior Informed Consent \(FPIC\)](#) as summarized in the [United Nations Declaration on the Rights of Indigenous Peoples \(UNDRIP\)](#) calls for consultation and cooperation "with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources." In practice, however, prior consultation is often difficult to achieve. Siting determinations for renewable energy projects, for example, require testing which may take a year or more to obtain sufficient data.
- Consultation processes with indigenous peoples are often not triggered until well into the project planning process, and sometimes not until years after initial stakeholder engagement discussions and preliminary negotiations with developers. Best practices are often not followed in these discussions. For example, promised benefits to the community may be overstated, project plans may be misrepresented (e.g., by beginning as an agricultural project, then later shifting to energy production activities), or the input of community representatives may be skewed through bribery or coercion.
- Mismanagement of relations prior to and during consultation, failure to tailor consultations to indigenous peoples' styles of consensus-building and group decision-making and paying inadequate attention to land rights and cultural traditions can exacerbate tensions, discount the depth of indigenous peoples' opposition and lead to outcomes favoring other competing interests.

- Inadequate or manipulated consultation processes can intensify indigenous peoples' opposition to projects. The consultation process for [run-of river hydroelectric plants](#) in Chile downplayed potential adverse impacts on indigenous peoples and failed to fully consider land tenure, collective rights and cultural traditions. This consultation process contributed to the opposition of the Mapuches in Chile, who organized protests and litigated their claims; the court agreed that the consultations had been inadequate.
- National energy and infrastructures laws may include elements that conflict with laws regarding indigenous peoples' rights, which leads to energy and infrastructure projects that favor development interests. In Mexico, for example, a new [national energy policy](#) asserts that subsurface oil exploration is a 'social interest' that can override surface land rights of indigenous peoples. These types of legal provisions can be misused to limit or ignore consultation requirements and can lead to widespread opposition from affected indigenous peoples' communities and conflict.
- Energy and infrastructure project implementers often approach indigenous peoples' communities with proposals that condition delivery of basic services, including education and health, upon acceptance of projects. Energy and infrastructure project proponents have pursued consultation when indigenous peoples have unambiguously expressed their opposition. [Manipulation of consultation outcomes has been addressed by the UN Special Rapporteur on the Rights of Indigenous Peoples](#), which has pointed out that fundamental rights of freedom of speech and assembly include the right of indigenous peoples to express opposition and to refuse consultation on proposed projects without suffering reprisals or retaliation.
- Past negative experiences have resulted in strong indigenous peoples' opposition to renewable energy development in some regions. In Oaxaca, Mexico, for example, highly polarized opposition to renewable energy development by indigenous peoples emerged even before renewable energy project testing began. When energy companies avoid projects that indigenous peoples oppose, the determination is seen as a concession to indigenous peoples' interests.

Indigenous peoples are often excluded from the distribution of benefits associated with energy and infrastructure projects

- Energy and infrastructure projects can create adversarial relationships between indigenous peoples and business as two [divergent views of development](#) collide. Under the most common prevailing model, states seek to encourage private investment to promote development, while indigenous peoples assert their rights to protect, use and manage their lands according to their own worldview. Both the commercial and the indigenous visions of land use may be protected by local constitutions and law. Yet power imbalances, discrimination and patterns of exclusion can bar indigenous peoples from enjoying the benefits of either vision.
- Project benefits generally fall into three categories: (1) payment for land use (rent); (2) payment for damages associated with a project; and (3) social benefits. Significant issues often arise around social benefits, including the type of benefit, the value provided and how broadly benefits are distributed.
- Even when indigenous peoples are highly motivated to engage in community-based renewable energy efforts, they may face difficulties obtaining resources or attention to their needs. When indigenous peoples' communities have expressed interest in accessing financing and building partnerships, the lending requirements under the prevailing business approach and the level of

assets indigenous communities can pledge may be incongruent. This dissonance can thwart these potential partnerships before they begin. Additionally, without a meaningful track record, indigenous communities are often unable to put forward eligible bids for energy production opportunities.

Adverse impacts of energy and infrastructure projects can be significant, including the loss of access to agricultural land and water used for hunting, fishing, grazing and for cultural and ceremonial purposes

- Energy development can pose [environmental and economic risks](#) for indigenous peoples' communities when not properly mitigated. For indigenous peoples, significant environmental impacts often include the loss of biodiversity and critical ecosystem services, including water for fisheries or to support agriculture; grazing, hunting and foraging areas; erosion or flooding; and access to or destruction of ceremonial or cultural sites. Indigenous peoples are often not adequately compensated for these losses. [Wind projects in Oaxaca](#), Mexico, for example, have been thwarted by widespread protests by members of indigenous communities and affiliated organizations, who allege that their land rights were not fully respected and that they received unfair compensation.

Adverse impacts of energy and infrastructure projects have gender implications that disproportionately impact indigenous women

- When indigenous peoples lose access to land and resources, female-headed households tend to be hurt most. Women's economic activities are more commonly based in subsistence activities from the land and they are not as likely as men to be employed in the labor force. For these reasons, indigenous peoples' decisions about land can [differ across gender lines](#) and women's perspectives may be neglected in stakeholder engagement and consultation processes. The [USAID Gender Equality and Female Empowerment Policy](#) acknowledges that women in developing countries are more vulnerable with respect to their land and resource rights.
- Women face additional [health and security risks](#) as communities experience an influx of men migrating to indigenous territories for jobs on energy and infrastructure projects. These risks include gender-based violence, prostitution and human trafficking.

Disputes over land rights can lead to wider conflicts and human rights violations

- A [study of civil conflicts around the world since 1990](#) found that disputed land rights were at the heart of most conflicts.
- The UN Special Rapporteur on the Rights of Indigenous Peoples issued a [2018 report](#) that described an alarming pattern of intimidation, criminalization, and violence perpetrated against indigenous peoples as they defend their traditional lands against energy and infrastructure projects. The Rapporteur found that as indigenous peoples take actions to advocate for their rights through protests and other political actions:

"Defamation and smear campaigns are often directed through social media against indigenous peoples, their leaders and communities, accusing them of being anti-development and acting against the national interest. Hate speech based on racism and discrimination fuels such discourse. In the worst cases, social media portray indigenous peoples as members of criminal gangs, guerrillas, terrorists and threats to national security.... Multiple, broad and ill-defined criminal charges are often brought, including

trespassing, usurpation, conspiracy, kidnapping, coercion, disturbance of public order and incitement of crime.... [as a result of these charges, indigenous peoples are made vulnerable] to forced evictions and removal from the lands they rely upon for their livelihoods, social and cultural cohesion and spiritual traditions."

- In [Brazil](#), the national legislature has actively sought to diminish indigenous land rights to undermine efforts to advocate for the protection of lands that will be flooded by the planned construction of hydroelectric dams.
- Conflicts over development projects can lead to violence and human rights abuses, as witnessed by the death of indigenous environmental activist Berta Cáceres in 2016 following her [opposition to the Agua Zarca hydropower project](#) in Honduras.
- [Indigenous peoples advocating to protect access to lands, forests and rivers have been killed](#) for bringing attention to abusive and unjust actions associated with energy and infrastructure projects. In a report on [human rights defenders killed worldwide in 2017](#), 67 percent of defenders killed in 27 countries were engaged in the defense of land, environmental and indigenous peoples' rights associated with large-scale infrastructure, energy and extractive industry projects. Approximately 80 percent of the killings took place in four countries: Brazil, Colombia, Mexico and the Philippines.
- Uncertainty and disputes over land rights pose risks to all stakeholders, especially where land governance is weak, land rights are not documented or where lands subject to pre-existing claims may nonetheless be offered by governments for sale or lease. [Failing to account for these land tenure risks](#) and subsequent disputes poses financial, operational, legal or reputational risks for the private sector.
- As disputes escalate, private companies may bear extraordinary operational costs, as often government forces and private guards are brought in to provide security. Delayed or abandoned projects can be costly to the private sector and their investors. Indigenous communities, however, may face irreparable, non-compensable harms from highly conflictive project development.

LESSONS LEARNED

The following USAID programs provide important lessons learned for working with indigenous peoples in this sector.

TABLE I. THE POWER AFRICA TRANSACTIONS AND REFORMS PROGRAM/COMMUNITY ENGAGEMENT WITH THE KENYA ELECTRICITY GENERATING COMPANY²

Program Overview: Power Africa has operated since 2013 to unite technical and legal experts, the private sector and governments to work in partnership to increase access to electricity in focus countries. Power Africa pools the resources of more than a dozen bilateral and multilateral development agencies, with nearly 150 private sector partners and African national governments, including Kenya, Liberia, Nigeria and Tanzania. The Transactions and Reforms Program supports Power Africa by providing institutional and transaction support; assisting small-scale projects, rural electrification and mini-grids; and strengthening regulations in electricity transmission and distribution.

| Theory of Change | Activities | Enabling Environment | Implementation Challenges | Successes | Lessons Learned |
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| <ul style="list-style-type: none"> Power Africa seeks to add more than 30,000 megawatts (MW) of cleaner, more efficient electricity generation capacity and 60 million new home and business connections in targeted countries. In its Kenya program, the Kenya Electricity Generating Company (KenGen) encountered power project challenges | <ul style="list-style-type: none"> The Transactions and Reforms Program provides technical assistance, capacity building, and transaction advisory support services. It also performs tasks related to power sector reform, utility commercialization, and institutional support to the Power Africa Coordinator's Office. | <ul style="list-style-type: none"> The Constitution of Kenya contains numerous provisions regarding public participation and civil society plays an important role in advocacy on public interest matters. Advocacy has highlighted fundamental rights | <ul style="list-style-type: none"> Initial challenges included lack of community engagement, which led to delays and terminations of some power projects. Specific challenges included identification and recognition of indigenous | <ul style="list-style-type: none"> The program and KenGen have explored a novel peer-to-peer exchange of experiences with indigenous peoples and their respective counterparts from New Zealand to enhance community engagement. (Power companies in New Zealand have extensive experience engaging with indigenous communities due to a New Zealand law | <ul style="list-style-type: none"> Power Africa has seen effective community engagement play a vital role in providing accuracy and transparency in the land acquisition component of energy projects. Stakeholder engagement helps ensure fairness in compensation and/or other benefits shared with affected communities, and to understand and manage |

² This project is ongoing as of January 2019.

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| <p>from communities, including indigenous communities, due to inadequate buy-in that resulted in electrification project delays and terminations.</p> <ul style="list-style-type: none"> KenGen sought and received technical support from the Transactions and Reforms Program to develop a new community engagement strategy. | <ul style="list-style-type: none"> In Kenya, the Program provided technical assistance services to KenGen on community engagement, which included the development of KenGen's Guide to Community Engagement for Power Projects in Kenya and training and mentoring programs to implement the guidance. | <p>and objectives relevant to community engagement in power generation activities including: access to information; ownership, control and access to collective (community) and personal resources/assets (especially land rights); gender equality; and community benefit sharing from the</p> | <p>land rights, and competing land claims.</p> <ul style="list-style-type: none"> Patriarchal cultural norms hindered women's involvement in programming, requiring improved integration of cultural considerations into the community engagement process. | <p>requiring energy companies to incorporate community engagement with the indigenous Maori population or any other parties who may be affected).</p> <ul style="list-style-type: none"> Executives from KenGen and a Maasai tribe discussed best practices in community engagement, studied the model of partnership developed over decades in New Zealand, and ultimately created a new Community Engagement Strategy for KenGen that | <p>community grievances. Based on its experiences and lessons learned through the community engagement in Kenya, Power Africa produced its Community Engagement Guide to promote practical approaches for maintaining and obtaining a “social license” in energy development projects.</p> <ul style="list-style-type: none"> The Kenya-New Zealand collaboration has led to positive impacts on the sustainable development of energy resources in |

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| | | exploitation of natural resources. | <ul style="list-style-type: none"> Additional challenges included community resource divisions and the limited ability of communities to pay for their own legal representation (or mobilize available resources for legal representation). | <p>can be applied to future energy projects.</p> <ul style="list-style-type: none"> The Maori group from New Zealand worked closely with Maasai community leaders to set up a project management unit and develop a 30-year strategic vision for the community, including commercial ventures and social development goals. A multi-disciplinary team of KenGen staff, with the support of the Transactions and Reform Program Community Engagement Advisor, held feedback sessions | <p>Kenya and the protection of local indigenous cultures. KenGen's positive experience with indigenous community engagement with the Maasai and their counterparts from New Zealand has helped Power Africa demonstrate to business leaders that environmental and social impact analysis can be effective in cutting costs and speeding project delivery.</p> |

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| | | | | <p>with KenGen staff throughout the country, including at headquarters and several geothermal and hydropower plants. Discussions with community representatives were also held separately at significant KenGen operation areas.</p> | |

TABLE 2. USAID/MEXICO COMMUNITIES AND RENEWABLE ENERGY PROJECT³

Project Overview: USAID/Mexico’s renewable energy program supports the "Communities and Renewable Energy" project to contribute to the reduction and prevention of social conflicts and resistance to renewable energy projects in Mexico. The project identifies and promotes best practices for the participatory and inclusive planning and development of renewable energy projects; contributes to strengthening the legal, institutional and public policy framework; and strengthens capacities in all sectors to reduce existing asymmetries.

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| <p>Renewable energy development in Mexico has given way to social conflict that arises from a variety of causes, including:</p> <ul style="list-style-type: none"> • Structural problems, such as poverty, inequality, exclusion, conflicting visions of development and lack of representation; • Project dynamics, such as poor project communication, lack of information and/or information that is inaccessible or opaque; | <ul style="list-style-type: none"> • Develop a diagnostic of social conflict in renewable energy projects in Mexico • Design, implement and monitor a state-level replicable model for participatory and inclusive assessment for the development of renewable energy projects • Identify social license mechanisms in project development and develop inclusive, equitable and gender-oriented practices | <ul style="list-style-type: none"> • Prior to 2013, conventional and renewable large-scale energy projects were proposed and developed under the authority of the Federal Commission of Electricity (CFE) without any legal framework to address the projects’ social impacts. • Energy reforms proposed in 2013 recognized the social impacts of energy projects and created two instruments to address them: (1) indigenous consultation and (2) the Social Impact Assessment. • Deficiencies associated with the use of these instruments, | <ul style="list-style-type: none"> • The participatory and inclusive assessment has helped identify the different visions and stances around the development of large-scale renewable energy projects in Yucatan. The assessment has been shared with the stakeholders, including the Ministry of Energy, Yucatán government authorities, community representatives, and other local stakeholders. • This assessment is expected to identify best practices and instruments to carry out | <ul style="list-style-type: none"> • Consultation with indigenous communities must take place before, or simultaneous to, engaging with the private sector. Where consultations with indigenous communities happened late in the process, the community may perceive the process as being driven by the private corporations rather than the community interests. • The presence of drug cartels or traffickers in the impacted area can complicate stakeholder engagement processes and outcomes, given their influence on the community, developer and local government. |

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| <ul style="list-style-type: none"> • Institutional limitations (lack of resources, impunity, and illegitimacy); and • A weak public policy framework (absence of participation mechanisms or feedback processes). <p>The project seeks to address sources of conflict to transform them into positive outputs to increase social inclusiveness in renewable energy development by contributing to participatory, inclusive, and transparent</p> | | <p>however, have undermined their purpose.</p> <ul style="list-style-type: none"> • Under the indigenous consultation instrument, the results of the consultation may be disregarded on a determination that a project is in the interest of "public utility" or "social interest and public order", which is open to the interpretation and discretion of a judge. The "public utility" or "social interest and public order" standard introduces considerable uncertainty and has resulted in determinations allowing for the expropriation of land and resources. | <p>dialogue with indigenous communities in Yucatan, and therefore enhance the consultation processes. Project partners implement capacity-building efforts for community leaders, private companies, and government.</p> | <ul style="list-style-type: none"> • Lack of basic information on the location of indigenous communities and their socio-economic profile impedes stakeholder engagement and consultation processes. |

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| <p>processes for the development of renewable energy projects.</p> <p>The project is part of a larger effort to adjust national policy instruments to prevent social conflicts from arising, boosting benefits, mitigating negative impacts, and reducing non-technical risks of renewable energy projects.</p> | | <ul style="list-style-type: none"> • All indigenous consultations carried out thus far have ended in conflict or lawsuits, raising strong concerns about the relevance of the instrument among the private sector, communities, social movements, NGOs, and academics. • The Social Impact Assessment instrument still lacks official guidance on fundamental conceptual elements and is not clear on when such an assessment should be carried out. Economic implications can also make social issues very complex to address. | | |

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| | | <ul style="list-style-type: none"> • Core challenges remain unresolved, including: inequality and poverty; diversity of opinions within and between communities, the private sector and government in these projects; the increase in social unrest and loss of legitimacy since energy reform in 2013; the perception that social protest is being criminalized; and the persistence of human rights violations, especially against the indigenous population, women and those defending their community's land and natural resources. | | |

BEST PRACTICES

IMPROVE STAKEHOLDER ENGAGEMENT

- USAID has made the [inclusion of stakeholders in decision making processes](#) a common practice for project design, implementation and evaluation, as well as for the purposes of environmental and social impact assessment. Experience in the energy and infrastructure sector has led to valuable insights as to the value of an accessible, inclusive and transparent stakeholder engagement process, as well as awareness of the risks, conflicts and harms that may result without effective engagement.
- The [USAID Environmental Compliance Factsheet on stakeholder engagement](#) includes specific guidance on stakeholder engagement in the environmental and social impact assessment (ESIA) process.
 - USAID operating units and partners need to determine whether a group is indigenous in order to fully understand their rights before engaging them as project stakeholders. Where information is inconsistent or uncertain, USAID's Indigenous Peoples Programming Guidance recommends consulting with the USAID Advisor for Indigenous Peoples Issues. USAID's [Guide to Community Engagement for Power Projects in Kenya](#) suggests that to properly identify indigenous peoples, developers or implementing partners should recruit professionals that are respected by indigenous peoples, particularly the communities in question.
 - With regard to indigenous peoples, USAID's [Stakeholder Engagement guidance](#) states that "stakeholder engagement should proceed with an understanding of the indigenous peoples' context including their governance institutions; practices; customary rights to self-determination; their spiritual and cultural heritage; their historical discrimination; their unique, and at times, vulnerable status; their recognition under international law, as well as any special legal status under national legislation/policy."
 - Additionally, for indigenous peoples, the principle of FPIC calls for the consent of affected indigenous peoples. In this respect, stakeholder engagement is a process for

STAKEHOLDER ENGAGEMENT

[USAID's Stakeholder Engagement Guidance](#) identifies the following as best practices:

Make information accessible by using mechanisms that reach interested and affected participants, and ensure it is easy to understand (including with respect to cultural, religious and linguistic considerations);

Ensure the process is inclusive of all relevant stakeholders and accounts for vulnerable groups and gender considerations; and

Affirm transparency by providing stakeholders timely updates on project progress, changes, and how their feedback has been incorporated into the project development process.

participation and input, while FPIC should lead to an agreement. Consultation processes provide important opportunities for indigenous peoples to contribute local and traditional knowledge, promote the use of appropriate technologies and consider the interrelationship among environmental, cultural and social elements and reduce potential for conflict. In recent years, USAID experiences in energy and infrastructure sector has seen improved engagement with indigenous peoples lead to improved outcomes.

- A [2013 report of the UN Special Rapporteur on Indigenous Peoples](#) discussed examples of indigenous peoples and energy companies establishing joint mechanisms to measure and address project impacts on natural and cultural resources. These mechanisms include arrangements for the direct participation of the indigenous peoples concerned in impact studies, the design of prevention and mitigation measures and in participatory monitoring during the life of the project. These mechanisms ensure continual dialogue between indigenous peoples and companies that can strengthen indigenous confidence in the projects and build more effective, respectful relationships. That report contrasts these positive, consensual indigenous peoples-industry negotiation and partnership approaches with the more common approach, under which indigenous peoples can be ignored, pressured or intimidated in the consultation process.
 - The Special Rapporteur further explains that when private companies enter direct negotiations with indigenous peoples about proposed activities, those companies should consult with indigenous peoples in accordance with the consultation standards applicable to states, while also ensuring that power imbalances are identified and that measures are taken to address those imbalances.

ENHANCE SHARING OF PROJECT BENEFITS

- In the Philippines, Chile and New Zealand, many [geothermal systems lie in areas inhabited by indigenous peoples](#) who have a special cultural or spiritual connection with these natural resources. These countries show that there are various ways of involving indigenous communities in the process of developing geothermal power plants. Depending on historic, social and legal circumstances, this engagement can be through a combination of national legislation and the sharing of royalties.
- The [UN Business Guide to the Declaration on the Rights of Indigenous Peoples](#) calls on companies not only to respect indigenous rights, but also to take voluntary actions that promote and advance rights through strategic investments, partnerships and other mechanisms. While energy and infrastructure projects may offer some form of social program benefits to affected indigenous communities, those benefits are usually not commensurate with the profits earned by the developer or the potential harm to the community. The [UN Special Rapporteur notes better practices](#) can be implemented, including agreements in which indigenous peoples are guaranteed a percentage of profits from an energy operation or other income stream, and are provided means of participation in certain management decisions. For indigenous peoples to be able to accept such opportunities, however, it is critical that business and development organizations support activities that help indigenous peoples build their financial and management capacity.

Benefit Sharing Mechanisms

Each of the most common mechanisms for benefit sharing contain their own advantages, disadvantages and best practices. For further guidance, the [Benefit Sharing and Sustainable Hydropower: Lessons from Nepal](#) report distills various benefit-sharing mechanisms into the following five categories and provides detailed assessments of each based on practices to date:

- The royalty mechanism allows the government to collect royalties from projects and distribute this funding through local governments.
- Equity investment lets power companies provide indigenous peoples in the area with a percentage of the publicly held shares in the company (resulting in potential profit-sharing, but also cost- and risk-sharing).
- Support for local livelihoods includes employment and training through local hiring and training programs.
- Investment in community development and local infrastructure, which can take diverse forms, including rural electrification and irrigation, as well as contributions to schools, health posts and the creation of local institutions such as women's groups and savings cooperatives.
- Environmental enhancement activities, which go beyond project mitigation measures, provide protection and improvement to environmental features to complement project sustainability and natural resources that indigenous peoples depend upon for their livelihoods.

MANAGE COMPETING CLAIMS AND COMPETING RIGHTS

- [Power Africa's Guide to Community Engagement for Power Projects in Kenya](#) points out the challenging situation in which more than one group may claim customary ownership over an area, or where there may be disputes between groups over boundaries. Experience cautions against favoring the most supportive and cooperative group. Such a response could result in legitimate claimants possibly being excluded from discussions and negotiations, which could increase tensions between relevant groups and intensify opposition to the project.
 - The best practice in these cases is to adopt an inclusive approach and assume that claims from different groups are valid until otherwise demonstrated.
 - Where there are conflicts and disagreements among groups, it is valuable to find ways to assist in resolving these differences (e.g., by helping to identify or fund a mediator).
- When there are competing interests between project developers and indigenous peoples, mechanisms of dialogue should determine whether the project is compatible with indigenous circumstances. This engagement needs to consider cultural values and respect for sacred sites, as well as harms to livelihood and community integrity. [Wind project examples](#) demonstrate that lands may continue to be used for farming, grazing livestock or other indigenous activities without interfering with proposed development projects. Compensation arrangements such as leases can be negotiated and accompanying energy infrastructure shared or directed to benefit affected indigenous communities.

CONDUCT CONFLICT-SENSITIVE ENGAGEMENT

- Transparency is vital in avoiding conflicts involving indigenous peoples. Information must be shared regarding [project planning](#), energy services, tariffs and management as well as the community's role and responsibilities. [Community engagement](#) should continue throughout the project to identify and address grievances as they arise and before they escalate. Indigenous peoples are particularly vulnerable as the common sources of conflict in energy and infrastructure projects are decreased access to natural resources, land allocation, unequal distribution of benefits and pre-existing conflicts in the community.

RECOGNIZE LAND AND NATURAL RESOURCE RIGHTS

- USAID's [Land Tenure Energy and Infrastructure Issue Brief](#) points out that in acquiring lands for project investments, promoting engagement in a due diligence process that ensures respect for legitimate local land rights can increase the likelihood of project success.
- The Philippines offers an example of a legislative approach that recognizes indigenous land rights and governance principles in the context of geothermal resources in indigenous regions. The Indigenous Peoples Rights of Act of 1997 confers certain preferential rights to indigenous peoples over their ancestral domains and all resources found therein. The Act sets up a mechanism whereby any agreement for the exploitation of natural resources must receive prior certification by the national indigenous peoples' organization showing that the activity does not overlap with indigenous ancestral territory. Otherwise, affected indigenous peoples should be consulted pursuant to a FPIC consultation process.

EXAMINE GENDER CONSIDERATIONS

- Community engagement should be culturally sensitive. In traditional indigenous cultures where norms may limit the participation of women, cultural sensitivity must be balanced by the principle of gender equality. In these instances, it is essential to design engagement approaches that provide for the meaningful participation of women within the specific cultural context.

ENSURE EMPOWERMENT AND SELF-DETERMINATION

- The [UN Special Rapporteur on Indigenous Peoples](#) has applauded arrangements under which indigenous peoples initiate and control energy development and resource extraction in their own territories, in accordance with their own development priorities. This practice is gaining ground in countries where the relevant business and technical capacities have been developed.

MITIGATING RISKS OF ADVERSE IMPACTS ON INDIGENOUS PEOPLES

This Energy and Infrastructure Sector Guidance should be applied in conjunction with USAID's Indigenous Peoples Programming Guidance [Policy] and other USAID planning and programming tools (including [Inclusive Development Analysis](#), [Environmental Assessment](#), and dialogue mechanisms set forth in the Indigenous Peoples Consultation Handbook and [Stakeholder Engagement](#)) to facilitate a collaborative framework for comprehensively engaging indigenous communities in the assessment, design, implementation and evaluation of USAID-supported strategies, programs and projects that affect their lands, lives and livelihoods. These tools provide guidance on the necessary engagement of indigenous peoples in each phase of the energy and infrastructure program cycle as well as safeguard mechanisms to mitigate risks of adverse impacts that may arise as energy and infrastructure projects are implemented.

These mechanisms reflect the standards and understandings set forth in the [UNDRIP](#), calling for consultation and cooperation with indigenous peoples to obtain FPIC before approving any project that would affect indigenous lands, territories or other resources. These standards of engagement have also been incorporated into World Bank and International Finance Corporation safeguards addressing indigenous peoples' rights. A consultation process consistent with FPIC is required when indigenous peoples are present in or have a collective attachment to the project area and there is: (1) risk of adverse impacts on the human rights, means of subsistence and/or culture of indigenous peoples; (2) potential for adverse impacts on land, natural resources and sacred sites (whether the land is under traditional ownership title or based on customary use and occupation); or (3) a threat that might result in the need to relocate from those lands.

Engagement with indigenous peoples will take different forms based on the specific context for each mission and program, and considering the unique experiences and challenges facing indigenous peoples. That engagement will also evolve over time to reflect indigenous peoples' strategies and processes to adapt their development objectives to changing conditions and emerging opportunities. Indigenous peoples are not only distinct from other populations, but they are themselves culturally and socio-economically diverse. Engagement must be sensitive to political and historical developments, the existence of cultural biases, stereotypes that foster continued marginalization and decision-making and enforcement processes that neglect indigenous peoples' views; undermine their governance structures; and permit intrusions upon their lands, resources and fundamental rights.

The global renewable energy policy network, REN21, [recommends](#) use of the "[the Akwé: Kon Voluntary Guidelines](#)", published by the Secretariat of the Convention on Biological Diversity and designed in conjunction with indigenous peoples' organizations to offer specific procedural recommendations for each stage in the engagement process.

[AKWÉ: KON VOLUNTARY GUIDELINES](#)

These guidelines set forth ten steps when developing an impact assessment of a project affecting indigenous and local communities:

1. Notification and public consultation of the proposed development (project) by the proponent.
2. Identification of indigenous and local communities and relevant stakeholders likely to be affected.
3. Establishment of effective mechanisms for indigenous and local community participation, including vulnerable groups (women, elderly, etc.).
4. Establishment of an agreed process for recording the views and concerns of the affected groups.
5. Establishment of a process whereby local and indigenous communities may have the option to accept or oppose the project.
6. Identification and provision of sufficient human, financial, technical and legal resources for effective indigenous and local community participation in all phases of impact assessment procedures.
7. Establishment of an environmental management or monitoring plan, including contingency plans regarding possible adverse cultural, environmental and social impacts resulting the project.
8. Identification of actors responsible for liability, redress, insurance and compensation.
9. Conclusion, as appropriate, of agreements or action plans on mutually agreed terms between the proponent of the project and the affected indigenous and local communities for the implementation of measures to prevent or mitigate any negative impacts.
10. Establishment of a review and appeals process

Careful analysis should be taken to ensure compliance with USAID and other safeguard mechanisms designed to mitigate impacts and compensate for damages. Support for actions prohibited by the [UNDRIP](#) should be avoided. These include [actions](#) that could deprive indigenous peoples of their cultural integrity, cultural values or ethnic identities; intend or effect to dispossess indigenous peoples of their lands, territories or resources; cause forced population transfer; cause forced assimilation or integration; or develop propaganda designed to promote or incite racial or ethnic discrimination directed against indigenous peoples. [USAID's Operational Guidelines for Responsible Land-Based Investment](#) sets forth best practices related to the due diligence and structuring of land-based investments, with the goal of reducing risks and facilitating responsible projects that benefit both the private sector and local communities. Additionally, operating units and partners can find guidance for project design and for all stages of the program cycle in the [Guidelines on Compulsory Displacement and Resettlement in USAID Programming](#).

[The August 2018 report](#) by the UN Special Rapporteur on Indigenous Peoples identifies a pattern of abuse in the energy and infrastructure sector, cited numerous examples where the private sector and

governments have forced indigenous peoples from their lands and where indigenous peoples defending their lands have resulted in the killings of human rights defenders. USAID missions and operating units should conduct due diligence to ensure project activities will not violate or be complicit in violating indigenous peoples' rights.

To promote effective engagement and avoid escalation of conflict, USAID's Power Africa has promoted its community engagement process as integral to project development and a best practice in the energy sector. The [Power Africa Community Engagement Guide](#) notes that in many situations, engaging indigenous peoples involves considerable complexity that demands review by an expert with knowledge of indigenous concerns. For instance, as demonstrated in the 2017 ruling by the African Court on Human and Peoples Rights in the case of the Ogiek of Kenya, even where indigenous peoples may not be formally recognized by national law, they still have the right to special protections based on their status. These rights are also linked to their traditional territories and resources, the boundaries of which may not be delineated and may be actively disputed. Expert guidance, whether provided by professional staff within the USAID mission, external consultants or through consultation with the USAID Advisor on Indigenous Peoples Affairs, saves time, costs and reduces risk of harm.

USAID's indigenous peoples' assessments and consultation processes must lead to practices that ensure that project partners, grantees, contractors and subcontractors meet their responsibilities to indigenous peoples in energy and infrastructure program implementation. Additional resources for safeguarding indigenous peoples include the following:

- The [International Finance Corporation Performance Standards on Environmental and Social Sustainability](#) (IFC 2012)
 - These standards and guidelines apply to many types of energy and infrastructure projects and highlight the importance of respecting and strengthening local land rights through effective due diligence, assessments, and community consultations. Principle 7 provides specific standards with respect to indigenous peoples.
- [The EO100™ Standard for Responsible Energy](#)
 - The EO100 Standard for Responsible Energy provides performance standards for energy development projects as informed by consultation with the energy industry, international non-governmental organizations focused on energy and indigenous communities affected by development projects. Principle 4 articulates the following standards regarding indigenous peoples: "To ensure that energy development projects recognize and promote the human rights, dignity, aspirations, culture, and livelihoods of Indigenous Peoples; to identify, manage and/or mitigate adverse impacts of projects on communities of Indigenous Peoples; to promote the generation of project-related benefits and opportunities for Indigenous Peoples; and to ensure FPIC of affected Indigenous Peoples."
- Indicators for Infrastructure Projects that include Indigenous Peoples
 - Power Africa has developed a [Guide to Community Engagement for Power Projects in Kenya](#), which includes a number of project indicators that can be used to develop an inclusive framework for engaging indigenous peoples in project design and development, and for monitoring impact.

Although many standards and guidelines emphasize the principle of “do no harm”, many of these processes are intended to lead to win-win outcomes for local land users, project developers and indigenous peoples to advance energy and infrastructure sector activities that create opportunities for economic growth and serve as critical foundations for achieving broader development goals.