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EFFECTIVE ENGAGEMENT WITH INDIGENOUS PEOPLES:

USAID DEMOCRACY, HUMAN RIGHTS, AND GOVERNANCE SECTOR GUIDANCE DOCUMENT

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CONTENTS

HOW TO USE THIS GUIDANCE[1]

The United States Agency for International Development (USAID) has designed this guidance document to provide a practical tool to assist USAID missions and operating units (OUs) in their efforts to more effectively engage and partner with Indigenous Peoples in democracy, human rights, and governance (DRG) program activities. Consideration of Indigenous Peoples' own, self-determined development priorities through well-structured communication, consultation, and engagement strategies helps foster local solutions to local problems as envisioned in the Journey to Self-Reliance (p. 32). Effective engagement that empowers Indigenous Peoples to exercise their rights and participate in decision-making processes that affect them is vital in promoting "inclusive and accountable democracies to advance freedom, dignity, and development" as envisioned in the USAID Strategy on Democracy, Human Rights and Governance.

This DRG sector guidance for effective engagement with Indigenous Peoples incorporates desktop research on DRG challenges facing Indigenous Peoples, applicable international standards, and program experiences in which Indigenous Peoples were beneficiaries, partners, or otherwise affected by USAID DRG activities. Interviews with USAID development professionals working in the DRG sector provide additional insights and illustrations on the application of DRG principles and practices in the field. This DRG specific guidance is one of eight sectoral toolkits on how USAID may engage effectively with Indigenous Peoples, drawing from USAID's Policy on Promoting the Rights of Indigenous Peoples (PRO-IP). The other toolkits offer guidance for effective engagement with Indigenous Peoples in the following sectors: Biodiversity, Energy and Infrastructure, Agriculture and Food Security, Education, Global Health, Sustainable Landscapes, and Enhancing Livelihoods through Economic Opportunity.

The PRO-IP recognizes that development programming has not always considered the needs and identity of Indigenous Peoples, who in many contexts remain marginalized, discriminated against, disproportionately affected by armed conflict, and located in isolated areas without adequate access to infrastructure and basic services. Consistent with the principles set forth in the policy framework supporting countries in their Journey to Self-Reliance, the PRO-IP aims to ensure that USAID effectively engages and partners with Indigenous Peoples to safeguard against unintended harm and empower Indigenous Peoples to exercise their rights, participate in decision-making processes that impact them, and practice self-determined development. DRG programming provides crucial elements necessary to improve Indigenous Peoples' lives in a sustainable way. Poor governance, weak institutions, and entrenched power dynamics lead to political and economic exclusion generally. For Indigenous Peoples, countries' undemocratic governance at the national level, corrupt institutions and those governments' inability to manage conflict can pose severe threats that put in jeopardy the survival of Indigenous Peoples' institutions and cultures. Core DRG activities – protecting and promoting human rights, building inclusive and accountable institutions and civil society organizations, and strengthening the legal framework for expanding economic opportunity – are vital to achieving the objectives of the PRO-IP and essential to improving the lives of Indigenous Peoples in a sustainable manner.

This DRG sector guidance document is intended to be used together with other USAID planning and programming tools, including USAID's new Social Safeguard Toolkit (Social Impact Assessment Framework, Screening Tool, Sample Social Impact Assessment Statement of Work, Consultation Handbook, and Inclusive Development Analysis) and Environmental Impact Assessment process. Strong democratic institutions, respect for human rights, and participatory accountable governance are crucial elements for improving Indigenous Peoples' lives in a sustainable way. This guidance encourages building

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[1] To access references, use the electronic version of the document with hyperlinks embedded.

understanding of social, cultural, environmental, and legal issues affecting Indigenous Peoples in order to deepen the impact of USAID DRG programming, avoid adverse impacts, and mitigate the risk of conflict.[2] This guidance document identifies the areas of intersection between Indigenous Peoples and the DRG sector, explores some of the key development and program challenges, and offers lessons learned and best practices related to DRG activities to help better engage with Indigenous Peoples and define activities to better meet their needs in each of the phases of the DRG program cycle.

INTRODUCTION: USAID, DRG, AND INDIGENOUS PEOPLES

The broad consensus of the international community recognizes that Indigenous Peoples are equal to all other Peoples, while recognizing the right of all peoples to be different, to consider themselves different, and to be respected as such. As set forth in the United Nations Declaration on the Rights of Indigenous Peoples, Indigenous Peoples have the right to participate in the political, economic, social, and cultural life of their nations and to be free from violence, stigma, and discrimination, while also having the right to autonomy and self-government in matters relating to their internal and local affairs. Indigenous Peoples' governance systems, traditional knowledge, and adaptation strategies have provided insights relevant to the development of participatory democratic institutions and approaches, which have been applied in nation-building efforts, natural resources management, and sustainable development policy.

Nevertheless, Indigenous Peoples are among the most disadvantaged and vulnerable groups in nearly every country where they reside. Many of the world's more than 370 million Indigenous People face multiple forms of political, social, and economic exclusion, discrimination, and oppression. In nearly every country in which USAID works, Indigenous Peoples lag the general population on all development indicators: They suffer from higher levels of poverty, have less access to education and healthcare, and have shorter lifespans.

Indigenous Peoples in many countries where USAID works are excluded not only from political processes regarding matters of national policy but also from decisions directly affecting them, their lands, and their resources. Inadequate legal protections leave them vulnerable to disruptions of

IDENTIFYING INDIGENOUS PEOPLES

The context and circumstances of Indigenous Peoples varies in the different countries and regions where USAID works. In some countries, Indigenous Peoples constitute a small minority within the population, while in others they are the majority. In some countries, Indigenous Peoples have legal recognition and are able to maintain their distinct identities, spiritual practices, and customary relationships with their lands, yet in others their very survival is at risk. The terminology used to describe them also varies, with many countries refusing to acknowledge them as Indigenous Peoples.

Recognizing this variation, USAID does not have a single, standardized definition of Indigenous Peoples. Instead, USAID (like other international and inter-governmental organizations) identifies Indigenous Peoples based on a set of criteria which may be present depending on the region or country in which Indigenous Peoples are located. These criteria include: self-identification as distinct social and cultural group; recognition of this identity by others; historical continuity with pre-colonial and/or pre-settler societies; collective attachment to territories and their natural resources; distinct language or dialect; and/or resolve to maintain and reproduce their ancestral environments and systems as distinctive peoples and communities.

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[2]   Challenges faced by Indigenous Peoples (e.g., issues of discrimination based on age, sexual orientation, ability, gender, ethnicity, gender-based violence, and land rights violations) are also faced by non-indigenous vulnerable groups. The prevalence of these issues is high among Indigenous Peoples and may unevenly affect individuals within a People. The potential for and impacts of exclusion, marginalization, and jeopardy are typically, but not always, higher for Indigenous Peoples. In this guidance, gender, conflict and land rights are cross-cutting themes while other types of vulnerability, such as age discrimination, are beyond the scope.

their traditional governance systems, the denial of their land rights, and forced removal or relocation. Given their remote locations and/or their limited access to legal resources and justice system mechanisms, Indigenous Peoples have few options available for challenging official decisions, policies, or actions. Too often, when Indigenous Peoples speak out through protests, they face violent responses from police, private security, or military forces. Due to a lack of state presence in many of the areas where they reside, Indigenous Peoples, their lands, and resources are at risk of being exposed to corruption, organized crime, trafficking in persons, forced displacement and armed conflict.

USAID's DRG sector promotes efforts to build strong democratic institutions, respect for human rights, and participatory accountable governance. USAID assists in the development of program activities that foster inclusive participation, transparency, nondiscrimination, human rights, and integrated, cross-sectoral approaches to governance that empower citizens and enhance accountability. As part of its commitment to inclusive development, DRG sector program activities should consider the unique disadvantages Indigenous Peoples face, as well as the contributions they can make toward the achievement of development objectives. As acknowledged in USAID's Policy on Promoting the Rights of Indigenous Peoples, "engaging Indigenous Peoples as authentic partners in the development process is critical in preventing and resolving conflicts, enhancing democratic governance and human rights, reducing poverty and sustainably managing the environment."

CHALLENGES/KEY ISSUES

USAID programs in many countries have engaged Indigenous Peoples in DRG activities that seek to foster inclusive, democratic institutions, improve government responsiveness and accountability, and promote human rights. This section draws attention to the challenges associated with Indigenous Peoples' efforts to participate in national and local political processes, defend their rights, and practice self-determined development. Following this section of challenges are sections summarizing lessons learned and identifying best practices.

Consultation and engagement with Indigenous Peoples are vital in building participatory, representative, and inclusive political processes, yet obstacles to engagement may arise from the applicable legal frameworks, patterns and practices of discriminatory treatment, or lack of capacity or political will. The result is that Indigenous Peoples are often excluded from decisions related to matters directly affecting them.

- In some countries where USAID works, Indigenous Peoples lack a recognized legal status, thereby making it difficult to effectively identify, engage, and consult with Indigenous Peoples, which inhibits the opportunities to develop policies and programs that address their specific needs.

    - In some contexts, states have refused to acknowledge that Indigenous Peoples reside within state territories (p.17-20).

- Even in countries where the duty to consult with Indigenous Peoples on matters that affect them is established under the principle of free, prior, and informed consent (FPIC), consultation is often inadequate or misused. Meaningful consultation or consent can be thwarted by a number of factors, including limited institutional support for these processes; knowledge gaps of participants; consultation being dominated by technical discussions that can limit participation, create power imbalances, and cause distrust; the absence of an effective regulatory framework to enforce agreements; and that consultation may take place in a context of threats and coercion.

- In Colombia, despite the incorporation of FPIC into national law through the adoption of the 1991 Constitution, significant challenges remain. Even though efforts were made to incorporate FPIC into administrative processes for assessing the environmental impacts of infrastructure and extractive industry activities, there is still no regulatory framework for conducting the FPIC process. The absence of a regulatory framework has led to confusion, speculation, corruption, and delay. FPIC processes suffer due to challenges associated with establishing legitimate community representation. Government entities are called upon to certify whether Indigenous Peoples are in the territory. Overlapping claims, inaccurate land registries, such as the failure to recognize collective title or ancestral territory can bring conflict and introduce uncertainty. Additionally, as the government determines which representational bodies are eligible for consultation, communities sometimes object to the legitimacy of the consultation body.

- In the absence of the factors needed for meaningful consultation, states, or those they delegate to undertake consultation duties, may ignore consultation or undermine the purpose of consultation by claiming to have consulted when they have instead employed outcome driven processes, often referred to as "check the box" consultation. Such check the box processes have been described as "pseudo-democratic instruments through which authorities legitimize already-taken policy decisions"(p. 831). Rather than creating the opportunity for obtaining consent in the form of a collective decision reached through a customary decision-making process as required under FPIC, these outcome-driven mechanisms delegitimize the consultation process and can lead to controversy and conflict throughout the project's development.

  - Despite an emerging understanding that FPIC represents a key criterion in establishing a "social license to operate," states often delegate their consultation duties to project developers or other parties with direct interests in proceeding with the proposed project. This approach contradicts experience suggesting (p. 70) that obtaining consent is more likely when consultation duties are delegated to objective and independent agents.

  - Although international standards call for communities themselves to determine their representatives and the extent of participation in consultation, projects often selectively consult with groups who are seen as sympathetic or easily swayed by economic considerations in order to assert that formal consultation has been undertaken. These "divide and conquer" tactics not only undermine the intent of FPIC requirements, but also create tensions or heighten existing division among different groups of Indigenous Peoples, often on matters where mobilizing around a unified position may be vital to protect their institutions, lands, resources, and means of survival.

  - Divisions created by contemporary consultation practices often exacerbate those already caused by historical, political, and economic factors. As the FPIC process is intended to seek a collective community decision, actions that exclude certain portions of the community, such as women, youth, or perceived opponents of the project, undermine prospects for consensus (p. 95).

- The ability to effectively engage Indigenous Peoples in inclusive DRG sector development activities can be affected by Indigenous Peoples' limitations in capacity, cultural differences, and internal political strife. These internal challenges can hinder the ability of Indigenous Peoples to act effectively through their own institutions and make them more vulnerable to divide and conquer policies.

- In countries where national laws recognize Indigenous Peoples, other aspects of the legal framework may contradict or limit their application, while lack of political will and limited capacity can also leave Indigenous Peoples excluded from legislative and administrative measures

that affect them. These [obstacles can undermine Indigenous Peoples' ability to protect their land and resource use rights and infringe upon their self-governance of internal and local affairs](#).

- The Philippines enacted reforms to protect indigenous ancestral territories and promote indigenous self-management within those territories. The 1997 Indigenous Peoples' Rights Act recognizes possession of their ancestral domain and protects the right to self-determination. Despite some progress in establishing guidelines for carrying out FPIC through memorandums of agreement (MOAs) between indigenous groups and companies regarding the use of ancestral lands, government and business [representatives routinely ignore those guidelines, and indigenous communities have protested projects imposed on them in their territories without their consent.](#) As land titling and FPIC processes are generally paid for by businesses, these records may be inaccurate or biased and not serve to protect Indigenous Peoples' interests. In the face of predatory resource extraction practices and state impunity, Indigenous Peoples in the Philippines have been defrauded in the land licensing process, have had their homes demolished and have been forced from their lands. [The Philippines had the highest number of killings of environmental defenders in the world](#) in 2018, including indigenous environmental defenders defending their lands and protesting unauthorized resource extraction. They have been met with repression, violence, and criminalization, including being tagged as communist supporters exposing them to the risk of also being the subject of military operations.

- Peru's national Indigenous Peoples' consultation law gives indigenous communities the right to be consulted about development on their lands. By participating in consultation processes under this law, Indigenous Peoples in Peru have obtained greater awareness of their rights and more confidence in expressing their views. Yet, the law and implementing legislation make it clear that the state maintains the final decision, while indigenous leaders have demanded the right to prior informed consent (FPIC). As Indigenous Peoples become more assertive of those rights, consultation may not serve its intended purpose of [preventing or resolving conflict](#) but could even escalate conflict. At least one study indicates that in Peru, not only is this legal framework for consultation contested, but that the preconditions for participatory and accountable governance are missing. As a result, state institutions and public sector officials have no means "of [justly balancing the diverse interests at stake (p. 814)](#)." Some indigenous communities in Peru remain in what has been described as "a permanent state of protest."

Indigenous Peoples are often located in remote areas lacking access to services and the presence of state institutions, and where government officials lack capacity to respond to the diverse needs of ethnic communities who may not speak the official state language. Geographic distances, communication challenges, and procedural obstacles can limit not only opportunities for consultation with Indigenous Peoples on matters that directly affect them, but also impede their participation in national-level processes, programs and services.

- Even where reforms are put into place to make services available to them, Indigenous Peoples may have significant difficulties meeting [procedural requirements to be eligible to receive governmental services and exercise the right to vote](#). Indigenous Peoples in many parts of the world lack the birth certificates needed to receive the identification cards necessary for voting and/or to access government services. Making the journey to administrative centers that register and issue official documents can be extremely difficult for Indigenous Peoples who may need to travel long distances and/or from areas lacking road access or other means of safe or reliable transportation to the locations where such governmental services are available.

- In Paraguay, USAID assisted in providing boat transportation for indigenous groups living in areas with limited or no road access (and accessible only by river) so they could obtain identification cards that would provide them access to government services. As USAID considers providing such logistical assistance, missions and OUs should keep in mind that USAID guidance calls for addressing the reasonable accommodation needs of persons with disabilities. While boat transportation provided Indigenous Peoples who lacked road access, the opportunity to reach governmental services, and other emergency and climate related factors can also disrupt existing mechanisms to access governmental services. During this activity in Paraguay, for example, an extended period of heavy rains and flooding entirely cut off some indigenous communities from the existing roads network and impeded their ability to reach governmental administrative centers for months.

- In Guatemala, the situation of Indigenous People is still imprecise. There is a lack of data, even in the latest National Census, the results are not accurate, and the Census estimated 45 percent of the population is from Mayan origin. However, other sources estimated the number to be at 60 percent. There is a gap in the access to information to really estimate the living situation of the majority of Indigenous Peoples in Guatemala.

National, local, and traditional institutions can overlap in areas where Indigenous communities are located, causing inconsistencies or gaps in local governance, service delivery, dispute resolution, and justice administration. Often governance activities overlook the need to strengthen the governance capacity of Indigenous Peoples' organizations and institutions.

- The manner in which these overlapping or competing institutions interact can greatly influence whether local development plans are inclusive, and whether the formal political system fosters or impedes Indigenous Peoples' governance of their lands and territories.

  – In Guatemala, for example, some municipal governments and indigenous community *consejos* operate as parallel systems with some degree of coordination. Furthermore, in many parts of the Western Highlands, national and departmental governments lack legitimacy and, in some cases, are simply absent. In many instances, national governance structures conflict with a wide range of local ones—both state and para-state. Means for conciliating local and state governance mechanisms are lacking.

  – In Uganda, representational structures of parish and village administrative units have allowed one dominant ethnic group to obtain representation to the exclusion of other ethnic groups.

  – Meanwhile in Mali, territorial village structures have become more formalized by mapping of traditional community boundaries, yet pastoralists do not reside within such boundaries. As a result, this mapping process has diminished pastoralists' role and influence in local governance and has restricted their access to some of the lands they once relied upon.

- To fully exercise democratic values, Indigenous Peoples need not only to have a national government that allows for their voices to be heard and to legally recognize them as Indigenous Peoples, but they also need to have very strong, highly skilled, deeply institutionalized organizations and institutions that are able to lead, administer, and govern the territories, lands, and communities effectively.

  – In Panama, indigenous territories (known as "*Comarcas*") were established as independent, self-governing political and administrative units. Indigenous Peoples elect their own local leaders and manage their own internal affairs through their traditional authorities, meaning

there are both traditional authorities and public or official authorities. Territorial laws contain provisions regarding the relationship between traditional and public authorities. [The territorial regime and self-governance system have allowed traditional authorities from each Indigenous Peoples' territory to maintain and develop their own consent and decision-making processes (pp. 62-63)](#). Yet, territorial self-governance has been hindered due to [deficiencies in the official demarcation of territory, the lack of protection of the territories from intrusions by state and outside private actors (pp. 37-40)](#), as well as insufficient capacity-building to ensure effective self-governance of the territories.

- Colombia recognizes the rights of Indigenous Peoples to political and administrative autonomy, land tenure, education, and health. Colombia has established indigenous territorial reserves, called *resguardos*, where traditional indigenous authorities exercise their right of self-governance. Yet, even though indigenous traditional governments are recognized exercising authority like that of local governments, including with respect to their access to public funds, recent surveys indicate that only eight out of the 800 *resguardos* have been certified to manage public funds.

- An [academic study focused on DRG program experiences (p. 75)](#) found that engaging traditional leaders in local service delivery and governance activities can lead to greater citizen participation and more accountable institutions. Anecdotal examples of leaders directing resources away from communities and their intended purposes, however, highlight the importance of assessing the accountability and representation of that leadership. Appropriate mechanisms for effective and accountable collaboration with traditional community leadership are emerging but are largely untested. DRG programs have a breadth of experience engaging indigenous organizations and institutions that represent and/or assist traditional communities in interest-based advocacy, service delivery, and/or program implementation activities. Unless program consultation involves all voices within and among indigenous institutions and communities, the programs risk creating or exacerbating conflicts by assigning roles, responsibilities, or authority inconsistent with established functions and capacities within and among indigenous communities and associations.

DRG rule of law programs promote greater access to justice for marginalized populations, including Indigenous Peoples; however, significant obstacles impede Indigenous Peoples from access to effective institutions to receive their complaints, investigate their allegations, or provide appropriate remedies.

- Barriers to access to justice can result from lack of coordination or conflict between national justice systems and customary justice systems. The UN Declaration on the Rights of Indigenous Peoples indicates that [national constitutions and legal provisions should recognize the role of indigenous justice systems, within an overall framework for the protection and promotion of international human rights standards](#). Clarity in the distribution of jurisdictional responsibilities is vital, as is training and coordination for effective implementation.

- Panama's Criminal Procedures Code provides broad jurisdiction for indigenous judges to exercise "indigenous law" within their territories *Comarcas*, subject to certain specified subject matter exceptions (homicide, drug-related and organized crime, and crimes against public administration or the national economy).

- While improved collaboration and coordination between indigenous and non-indigenous justice systems could lead to providing effective access to justice and protection of human rights, intercultural dialogue between indigenous and formal justice system operators frequently falters before points of agreement can be found. For instance, former UN Special Rapporteur on the Rights of Indigenous Peoples, [Victoria Tauli-Corpuz, pointed out that formal justice system](#)

operators tend to have anecdotal examples of mistakes in the application of jurisdiction and penalties in certain specific cases to justify condemning indigenous justice systems. Such biases can impede national efforts to promote understanding and build capacity for coordination between state and indigenous justice authorities.

- In Guatemala, one of the biggest challenges is to provide access to justice in indigenous languages. The Ministry of Education has registered 22 Mayan languages spoken actively in different regions of the country. Even though a National Association of Mayan Lawyers was created in 2004, the appointment of judges and civil service staff to different justice institutions depends on the will and internal process of such institutions.

- In the Philippines, focus group discussions involving 230 human rights advocates in 15 locations concurred that all marginalized sectors in the Philippines experience challenges in accessing justice. Nearly seven out of 10 participants stressed, however, that Indigenous Peoples were the most vulnerable, with the least access to justice. Barriers to accessing justice include:

  - *Inadequate access to legal services*: Few lawyers in the Philippines serve rural areas. Indeed, in many countries professional services remain predominantly located in urban areas without adequate reach into more remote or rural locations where Indigenous Peoples reside. Additionally, in countries such as the Philippines, Brazil, and Colombia, lawyers and indigenous rights defenders have been killed for bringing attention to abusive and unjust actions associated with development projects in indigenous areas (see further discussion below regarding human rights). Emerging public interest law groups and civil society groups are unable to fill the gap in services, especially when local professionals may curtail their already limited services if they perceive such services may jeopardize their own safety.

  - *Lack of financial resources*: For populations that commonly rely on a daily subsistence income, paying legal and other related costs is unrealistic. Even if legal services were provided for free, members of indigenous communities often cannot afford either the transportation costs to attend hearings or to conference with their attorneys and cannot afford the loss of their income during the time periods spent away from work. The lack of financial resources discourages many from asserting their rights and pursuing cases.

  - *Lack of awareness of rights and justice mechanisms*: As in other countries, many Indigenous Peoples in the Philippines do not understand the rights guaranteed by their national constitution. They may not be aware of the applicable laws that operationalize those rights, or the procedural mechanisms available to address their specific issues or concerns.

  - *Weak institutional integrity and distrust of the legal system*: Indigenous communities, like other vulnerable communities, express mistrust of the law. Having had few if any positive experience with the justice system, many Indigenous Peoples view the legal system as stacked to protect the powerful.

Corruption not only constrains economic opportunity, but is also a tool used by elites to establish, maintain, and strengthen monopolies and further entrench political powers. The remoteness of indigenous communities and their limited access to state authorities responsible for providing protection and bringing perpetrators to account leave Indigenous Peoples particularly vulnerable in the face of corruption and criminal activities associated with predatory resource exploitation schemes. Moreover, misuse of indigenous intellectual property can pose risks for food supply chains, traditional healing practices, and ecosystem

sustainability.

- Reports have documented how powerful elites in Malaysia's Sarawak state unlawfully exploited the lands and resources [of Indigenous Peoples](#) through kickbacks to state officials for timber and palm plantation licenses that enabled these elites to avoid compliance with laws protecting the ancestral lands of Indigenous Peoples, with devastating consequences to forest lands in the region.

- The former UN Special Rapporteur on the Rights of Indigenous Peoples, following her visit to Guatemala in May 2018, recommended to the State of Guatemala in her report, the continuity of the International Commission against Impunity in Guatemala (CICIG) and the support to the Public Ministry, for the investigation of acts of corruption in the registration and ownership of land, and the dispossession of ancestral lands of indigenous communities. The CICIG has since been terminated; however, support to the Public Ministry could assist in their investigation into corruption, thereby affecting the development of Indigenous Peoples and the entire population.

- Indigenous Peoples' spiritual practices and traditional livelihoods can be destroyed by natural resource development. Although the Prey Lang forest in Cambodia was designated a conservation area, illegal extraction of minerals, logging, and clearing of land for rubber plantations has left the [Kuy Indigenous People unable to carry out their traditional livelihood activities that depend on non-timber forest products](#).

- The unique and traditional knowledge of Indigenous Peoples is often exploited by outsiders, without compensation, for a variety of purposes. A United Nations study concluded that, unresolved intellectual property issues may present an access problem for the historical holders of traditional medicinal knowledge as, "increasingly, it appears that knowledge of traditional medicine is being [appropriated, adapted, and patented by scientists and industry, with little or no compensation to its original custodians](#), and without their informed consent" ([UNCTAD 2000](#)). The World Health Organization (WHO) [Traditional Medicine Strategy 2014-2023](#) calls for state action to prevent the misappropriation of indigenous traditional knowledge by adopting or amending national intellectual property legislation and by establishing national strategies that protect traditional knowledge. In many parts of the world, Indigenous Peoples remain vulnerable to the theft of their intellectual property rights without any legal remedies.

  – The United Nations [Human Development Report (2004)](#) cited a March 2000 study that concluded that 7000 patents had been granted inappropriately for unauthorized use of indigenous traditional knowledge or medicinal plants to emphasize that developing countries, let alone Indigenous Peoples, lack the resources "[to challenge false patents in foreign jurisdictions (P. 86)](#)."

  – Indigenous Peoples' knowledge has been exploited for use by traffickers in the illegal wildlife trade. In a recent conference on the topic, a representative from the Alliance of Indigenous Peoples of the [Congo Basin Forest pointed out how Indigenous Peoples were often drawn into illicit activity by those higher up the chain because of their special skills and knowledge](#). In the Philippines, individuals from indigenous communities are paid highly for providing traffickers with knowledge of protected wildlife, such as sea turtles, that can bring adverse impacts on indigenous communities, for instance, by depleting resources they may depend on for food, medicine, or ceremonial purposes.

Indigenous Peoples continue to face serious human rights abuses on a day-to-day basis in many countries where USAID works.

- [ILO Convention No. 169](#) specifically guarantees Indigenous and tribal Peoples the right to "enjoy the full measure of human rights and fundamental freedoms without hindrance or

discrimination," and reiterates that the provisions of the Convention apply "without discrimination to male and female members of these populations."

- Continuing assimilation policies, marginalization, dispossession of land, forced removal or relocation, denial of land rights, trafficking in persons (bonded labor and internally displaced persons), adverse environmental, health, and economic impacts of large-scale development, abuses by military forces, private security companies, organized crime, and armed conflict are among the host of human rights abuses faced by Indigenous Peoples around the world.

  – Indigenous Peoples express that disregard of their concerns stems from systemic discrimination and outright racism from the state and its authorities. The UN World Conference on Racism has called attention to discrimination against Indigenous Peoples by highlighting studies showing that many national laws enacted to protect Indigenous Peoples were "discriminatory in concept," or "routinely disregarded by the dominant community." The World Conference on Racism reiterated that the comprehensive "Study of the Problem of Discrimination Against Indigenous Populations" by UN Special Rapporteur Martinez Cobo documented that despite evidence to the contrary, some governments denied that Indigenous Peoples existed within their borders and others denied the existence of discrimination. The Martinez Cobo study concluded that the ongoing discrimination against Indigenous Peoples threatened their existence.

- Indigenous Peoples advocating to protect access to their lands, forests, and rivers have been killed for bringing attention to abusive and unjust actions associated with agricultural, energy, and infrastructure projects as well as natural resources exploitation.

  – In its July 2019 report, Global Witness reported an average of three environmental defenders murdered per week in 2018 protecting their lands from invasion by mining, logging, and agribusiness interests. In addition to killings, governments target indigenous defenders through laws and policies that seek to stifle dissent by criminalizing and intimidating them. The Philippines was the most dangerous country for environmental defenders in 2018, followed by Colombia, India, Brazil, Guatemala, and Mexico.

  – The Inter-American Commission on Human Rights, published a press release on October 31, 2018, expressing their concern over the increase on the attacks and intimidations against human rights defenders in Guatemala. Most victims were defenders of Indigenous Peoples' rights, who opposed mining projects, and were involved in land tenure conflicts. The IACHR called on the State of Guatemala to take action to protect the lives of those standing up to defend human rights and Indigenous Peoples' rights.

  – According to the Colombia National Indigenous Organization, between August 2018 and October 2019, Indigenous Peoples in Colombia suffered more than 23,000 human rights violations, including forced displacement, detentions, and killings.

  – 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 large-scale projects involving extractive industries, agribusiness, infrastructure, hydroelectric dams, and logging. The United Nations Department of Economic and Social Affairs identified "the use of legislation and the justice system to penalize and criminalize social protest activities and legitimate demands made by indigenous organizations and movements in defense of their rights" to be "one the most serious shortcomings in human rights protection in recent years."

- – Global Witness reports that with the deaths of 30 people protecting their lands in 2018, the Philippines is the "worst affected country" but that while violations of the human rights of Indigenous Peoples in the Philippines has intensified, it is not new. The vulnerability of Indigenous Peoples in the Philippines to loss of access to ancestral lands is longstanding, but the climate of corruption, violence, and scapegoating of Indigenous Peoples defending their rights has allowed outside interests to operate with impunity.

- – Global Witness reports: "Indigenous people who have lived on land for generations are often forced from their homes by large corporations with global connections or investors. Often, these crimes are aided by the people and institutions meant to prevent them. The Philippines Army especially, has been linked to numerous killings of defenders, working in collusion with powerful private interests. Meanwhile, the country's legal system is used to criminalize and intimidate land and environmental defenders, while officials who are complicit in these crimes go unpunished."

- – Indigenous Peoples in the Philippines have faced intimidation, harassment, and even detention for social protest activities. The Philippines Department of Justice declared some 600 individuals as "terrorists and outlawed organizations." Among the individuals named was the former UN Special Rapporteur for Indigenous Peoples, Victoria Tauli Corpuz. The inclusion of Ms. Tauli-Corpuz on this list was generally considered as an act of retaliation for her public comments regarding the situation of Indigenous Peoples in the Philippines. UN officials denounced the incident as "intimidation and harassment of people who are peacefully defending their rights."

- – The scapegoating of Indigenous Peoples has also been employed by both private and paramilitary actors. In the Democratic Republic of the Congo, Indigenous Peoples and pastoralists have been attacked after being falsely labeled "terrorists" by local religious leaders and paramilitary groups and have been blamed as the source of the problem in local land conflicts. A report by former UN Special Rapporteur Victoria Tauli Corpuz described the common use of defamation and smear campaigns against Indigenous Peoples that portray them as members of criminal gangs, guerrillas, terrorists, and threats to national security.

- If not approached through an inclusive, integrated approach, challenges Indigenous Peoples face with respect to unaccountable governance, exclusion, discrimination, and neglect can have cross-cutting effects, particularly regarding indigenous women, security of land tenure, and heightened risks of social and violent conflict. Fostering inclusive development focused on local solutions and ownership is one of the foundational operational principles of the Agency in USAID's Program Cycle Operational Policy (ADS 201).

Indigenous women face acute barriers to their political participation and representation and the realization of their rights. In addition to their exclusion from leadership and representation in national bodies, indigenous women face specific challenges and complexities with respect to their roles in indigenous governance systems.

- Customary governance and land systems often provide women with different rights than men. Although indigenous community tenure systems often incorporate both communal and individual rights within their governance structures, in many contexts indigenous women are not recognized as rights' holders by customary land systems or the state. Patriarchal stereotypes and discriminatory gender norms within indigenous communities often consider decision-making and leadership responsibilities to be within the sole dominion of men. Moreover, in some indigenous communities, customary justice mechanisms may put indigenous women at risk,

particularly where traditional notions of preserving community harmony can perpetuate gender-based violence.

- Indigenous Peoples' knowledge and understanding 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 further acknowledges that women in developing countries are more vulnerable with respect to their land and resource rights, with particularly acute impacts on indigenous women.

- In Guatemala, there are extreme social inequalities regarding land ownership: 78 percent of the cultivable land is distributed to 1.7 percent of the farms; and indigenous women make up only 7.8 percent of the landowners. Moreover, inheritance rights are still limited to men in many rural areas. In addition, married women are disqualified from accessing legal property through government programs of the Land Fund (FONTIERRAS), perpetuating land ownership gaps among men and women.

- Although many countries have taken steps to reform marital and property rights laws, the implementation and enforcement of new legislation can be inconsistent, and awareness of such laws may not reach remote indigenous communities.

  – The Kenyan Constitution establishes gender equality and eliminates gender discrimination in law as well as in customs and practices related to land and property. It also recognizes the authority of informal justice institutions and traditional leaders as the primary arbiters of disputes at the community level. The traditional, informal justice system is designed to restore social harmony, yet the underlying local norms and practices are not favorable for women. The resolution of land disputes, for example, generally begins with reconciliation efforts at the family and community level. Yet women's land disputes frequently arise from an internal family conflict. In seeking to address these matters within the community, family members are often strident adversaries and women bringing complaints may be perceived to be the disruptors of family and social harmony. Adverse resolutions can have consequences that leave women economically vulnerable or devastated.

- Building leadership and promoting participation of indigenous women requires sensitivity to their economic and social status in their communities, and the challenges associated with cultural practices. Indigenous women's economic activities are more commonly based in subsistence activities from the land, and they are less likely than men to be employed in the labor force. The predominantly subsistence-based economic activities of indigenous women can leave them behind as it may result in gaps in education and language skills. Women also have family care responsibilities and are exposed to the risk of gender-based violence and the effects of multiple types of discrimination (e.g. ethnicity, gender, poverty).

  – United Nations estimates suggest that more than one in three indigenous women experience rape during their lifetime. A study of violence against women in Bangladesh from 2014 to June 2017 found 297 reported cases of violence against indigenous women and girls, but that none of the cases had been properly prosecuted and no perpetrators punished.

The influx of migrants relocating to Indigenous territories for jobs in logging, mining, and infrastructure projects creates additional risks unique to indigenous women and youths including gender-based violence, prostitution, bonded labor, and human trafficking.

- In Peru, indigenous women and youth are the most vulnerable to trafficking of persons, especially in areas where resource extraction is taking place.

- The U.S. State Department's Human Trafficking Report describes the vulnerability of indigenous girls and women to sex and labor trafficking, and that indigenous men, women, and children are victims of human trafficking as forced labor in domestic work, mining, ranching, and agriculture. In Paraguay, the International Labor Organization estimates that of Paraguay's indigenous population of 88,000, at least [8,000 Indigenous Persons are directly involved in forced labor or at risk of becoming forced laborers due to debt bondage (p.5)](). The 2019 State Department reported the civil society organizations in [Paraguay alleged police involvement in trafficking activities, including taking bribes from massage parlors and brothels (pp. 375, 377).]() In the remote Amazon border regions of Peru and Colombia, criminal traffickers have used the vulnerability and remoteness of indigenous communities to target indigenous girls for prostitution.

- Indigenous youth also face unique challenges associated with language, literacy, or education barriers, a lack of strong voice or platform within their communities/countries, and a lack of adequate skills and training. These obstacles may evolve into pressures leading to their migration to urban areas in search of higher paying jobs or may make them more susceptible to recruitment by gangs and/or extremist organizations.

- In Guatemala, migration generates a different effect for Indigenous Peoples, especially women. World Bank research revealed that, as men in southeastern Guatemala migrate, their partners face greater responsibilities in agricultural production. The challenge is that agricultural extension services and technical assistance generally fail to reach women in rural areas, despite the expansion of their roles in this domain.

The lack of recognition of Indigenous Peoples' customary land rights, asymmetries in judicial systems, and inconsistent human rights records threaten the ability of Indigenous Peoples to sustain themselves in their traditional territories.

- Land tenure security and the consolidation of land rights are fundamental to the self-determination rights of Indigenous Peoples. USAID has increased investment in strengthening tenure and related resource rights for Indigenous Peoples in recognition that regulations dealing with land and resource management are of direct relevance to the issues of self-management and self-reliance of indigenous communities. Yet denial of indigenous land rights is commonplace.

  – Even in countries that have a somewhat robust judicial system, the asymmetry in capacity and wealth frequently puts Indigenous Peoples at a disadvantage. Other sectors with resources to obtain legal representation and expertise have successfully used the functioning legal system to achieve their objectives. This has included actions that may use the legal system to evict Indigenous Peoples from their ancestral land.

  – In the Philippines, legal recognition of Indigenous Peoples' ancestral domain enabled Indigenous Peoples to establish sustainable development protection plans. Yet, overlapping and often conflicting tenure instruments create uncertainty, which has been exploited by well-resourced interests. The ancestral domain of many indigenous groups is frequently located in territories rich in natural resource that pit the rights of Indigenous Peoples against what commercial interests promote as the broader Filipino development agenda. Multiple government agencies with responsibility for enforcing land ownership and leasing instruments can create confusion and impede action to ensure compliance. The functioning system puts Indigenous Peoples at a disadvantage, and yet this disadvantage has been further intensified by corrupt practices, violence and impunity.

– In many countries where USAID works, [private investments in lands where Indigenous Peoples reside](#) can pose serious tenure threats and undermine Indigenous Peoples' land rights. National programs to attract investment may serve to legitimize takings of land that were carried out during periods of armed conflict or under de facto rule. The tensions and inconsistencies associated with these programs may present significant public relations concerns and conflict with the "do no harm" principle, particularly in circumstances where reports have shown Indigenous Peoples are forced to work as bonded labor on lands to which they previously held customary title.[3]

– Even where Indigenous Peoples have surface rights (to land for shelter, forestry, agriculture, grazing, and other activities), those rights may be contested as governments and licensees may hold rights to sub-surface resources, such as minerals and fossil fuels. Accessing those sub-surface rights can trigger conflicts and pose significant threats to Indigenous Peoples' livelihoods. In many places, encroachment on traditional land and natural resources [increases Indigenous Peoples' vulnerabilities](#) by undermining their livelihood, shelter, and identity. [Experience suggests that the more valuable the natural resource, the more difficult it can be to navigate competing interests](#) while ensuring equitable access rights; conflicts can erupt, especially when high-value resources are at stake.

– Land conflicts in Guatemala have different origins. Historical land conflicts are a consequence of colonization, and civil war. Others result from the lack of legal certainty about property, possession, or tenure, the overlapping rights to a given property, the alteration of borders and boundary markers, and claims of historical rights made by Indigenous communities and Peoples. In recent decades, land occupations have increased, creating criminalization of Indigenous Peoples due to "invasions," where they are looking for a place to live and cultivate food in order to survive. And [other land conflicts are part of the new dynamics involving mining, hydroelectric, and agricultural projects affecting ancestral lands](#).

Contested land and resource rights, asymmetries in judicial systems, and lack of transparency pose significant governance challenges for Indigenous Peoples and often fuel the conditions for social conflicts that can evolve into and/or intersect with armed conflict and other civil conflicts.

- A [study of civil conflicts around the world since 1990 (p. 30)](#) found that disputed land rights were at the heart of most conflicts.

- When managing conflicts with Indigenous Peoples, [OUs and implementers may have difficulty identifying leadership for effective engagement and partnership in conflict avoidance and mitigation efforts (p. 75)](#).

Given their remote locations and the lack of state presence or services in their regions, Indigenous Peoples may often be exposed to organized crime, violent extremism, or armed insurgency.

- In the absence of state presence, the remote areas where some Indigenous Peoples reside or rely upon for subsistence are at risk of becoming sites for illicit drug production, drug and wildlife trafficking, and illegal resource extraction activities. These unauthorized, illegal activities increase the presence of outside forces and alter community dynamics. In addition to coercion and abuses committed against Indigenous Peoples by outside actors and criminal organizations,

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[3]   Source: Informal discussions USAID Human Rights Program/Colombia; Context discussion USAID DRG/Paraguay interview.

there are also examples of police or military responses to those criminal activities that do collateral harm to Indigenous Peoples and their lands.

- In a variety of countries in which USAID operates, indigenous communities have faced incursions and occupations by insurgent and military forces or have been displaced from their territories due to armed conflict and violence. As post-conflict societies initiate peacebuilding and stabilization processes, land restitution often becomes a prevalent issue, with many programs designed to restore and formalize indigenous rights to dispossessed land. Failure to implement effective land restitution programs, conflict resolution processes, and other peace-building measures can contribute to the expansion of conflict and, in some contexts, become a driver of [violent extremism](#).

DRG sector experiences and good practices engaging with Indigenous Peoples should be built into USAID design methods and learning.

- To enable OUs to form a more comprehensive understanding of the gap between Indigenous Peoples and other populations better, program design and implementation should engage in assessments and focus group discussions with potential indigenous beneficiaries to ensure that context, needs, and constraints are better understood. At a minimum, a "do no harm" ethos should be employed. Similarly, evaluations should ensure that indigenous perspectives have been heard and provide recommendations for improving opportunities for indigenous benefits.

  – USAID/Indonesia has provided support directly to [indigenous ethnic communities](#) and promoted data integration.

  – USAID/Colombia has been working for nearly 20 years with Indigenous Peoples and Afro-Colombian communities through sectoral initiatives and stand-alone activities. In 2018, USAID/Colombia launched a local empowerment strategy ([Annual Program Statement](#)) for strengthening ethnic communities, including Indigenous Peoples and Afro-Colombian communities, to contribute to Colombia's journey to self-reliance.

  – USAID/Guatemala has an [Indigenous Peoples' Engagement Strategy](#) that identifies program objectives and indicators: the objectives (Indigenous Peoples' perspectives included in government interventions; participation of indigenous women in positions of influence; increased communication of Indigenous Peoples' issues through different media enhanced) are tracked by indicators quantifying the number of initiatives led by indigenous groups that advocate for Indigenous Peoples' rights; number of facilitated conversations to increase understanding/awareness of indigenous rights and issues; number of women in elected positions; and number of initiatives that support empowerment of indigenous women.

  – The USAID/Guatemala engagement strategy also includes USAID learning components, such as "USAID staff understanding of Indigenous Peoples' culture, history, and societal systems increased; capacity of USAID staff to address Indigenous issues in programming increased."

  – DRG sector experts interviewed for this guidance indicated significant enthusiasm for USAID learning activities that would facilitate peer-to-peer exchanges of specific details as to what has been done in other missions and contact people familiar with those activities. Even where the country and regional context may be different, the considerations and perspectives provide valuable insight on effectively engaging Indigenous Peoples in program activities.

LESSONS LEARNED: USAID CASE STUDIES

The following USAID programs provide important lessons learned for working with Indigenous Peoples in this sector.

TABLE 1. INCLUSION FOR PEACE ACTIVITY – COLOMBIA (2016-2020)

Program Overview: The Inclusion for Peace Activity (IPA) promotes the social and economic inclusion of Afro-Colombian and indigenous communities that have been disproportionately affected by the conflict as a means to advance peace and reconciliation in Colombia. The program objectives are to: 1) Enhance the capacity of Government of Colombia (GOC) entities to respond to the needs of conflict-affected ethnic communities and improve ethnic communities' capacity to participate in peacebuilding and decision-making processes; 2) Increase access to economic opportunities including increased formal employment opportunities for Afro-Colombians and Indigenous Peoples, business development or strengthening existing enterprises, and increasing agricultural production in the rural sector; and 3) Promote ethnic awareness and inclusion through cultural and communications activities to foster respect for ethnic diversity among the broader Colombian society and preserve cultural heritage.

Theory of Change	Activities	Implementation Challenges	Successes	Lessons Learned
If, through inclusive processes, formal and informal institutions appropriately respond to the needs of ethnic communities affected by conflict, and support awareness raising activities that promote cultural heritage and understanding of the challenges these communities have faced, then ethnic communities will be empowered to become active participants in the reconciliation process and Colombian society will be more aware and respectful of ethnic diversity.	• IPA developed tailored approaches for engagement of ethnic communities through public policy strengthening initiatives while improving the government's institutional understanding of and capacities to guarantee the rights of Afro-Colombian and Indigenous Peoples as well as their access to public resources. • The activity works with GOC institutions and civil society to support the implementation of the peace agreements as they relate to ethnic communities.	• Human rights violations and insecurity in project areas, such as Tumaco, and the heightened risks facing lesbian, gay, bisexual, transgender, and intersex (LGBTI) activists and indigenous and Afro-Colombian leaders in various IPA territories present ongoing challenges for the implementation of IPA's activities. • Harmonizing communities' human rights and interests with the priorities and interests of national, regional, and local governments has proved to be a challenge. • Ensuring that communities, local organizations, and institutions incorporate IPA strategies to ensure their	• Establishing strategic public-private partnerships to increase scope and reach of IPA's activities and assure sustainability of the initiatives. • IPA's education strategy to facilitate access of ethnic youth to higher education for promoting economic inclusion and social mobility of ethnic population. • Enhancing capacities of both government (GOC) to respond to conflict-affected ethnic communities' needs, and ethnic organizations and traditional authorities to actively participate in decision-making processes and policies and program implementation, including supporting the implementation of the peace	• IPA was able to effectively harmonize the needs and interests of communities and government officials by adopting an implementation strategy with constant feedback and dialogue between all three actors: communities, governments, and IPA. Local coordination and relevant communication were also key to overcoming challenges related to planning and implementation of project strategies. • To address issues affecting LGBTI members of Afro-Colombian and indigenous communities, IPA promoted activities that engaged the broader community in sensitization and dialogue in "safe spaces" while also

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Theory of Change	Activities	Implementation Challenges	Successes	Lessons Learned
	• IPA also partners with public entities to strengthen their capacity to develop and implement plans that safeguard the rights of ethnic groups, including prior consultation processes. • IPA supports cultural heritage awareness and communications campaigns to increase awareness and respect for ethnic diversity. The activity partners with ethnic communities to preserve cultural heritage and builds awareness and recognition of Afro-Colombian and indigenous cultures among the broader Colombian society. • IPA promotes inclusive income generation and job placement activities both in urban and rural	sustainability was also an implementation challenge.	agreements as they relate to ethnic communities. • Directly supporting women's organizations or organizations of individuals with diverse sexual orientations and gender identities to implement initiatives related to ethnic cultural heritage, productive activities, and/or consolidating women and LGBTI leadership. • Developing activities targeted to women and girls (grounded in a "do no harm" approach), particularly victims of gender-based violence (GBV) or those at risk of becoming victims of GBV. These activities included efforts to address women's differential needs, including facilitating self-paced community-level cultural changes in gendered roles and attitudes towards women; improving GBV victims' access to education, health care, legal representation, and institutional assistance (in	supporting LGBTI community-based organizations and advocates. IPA provided capacity-building to an LGBTI coalition, which produced campaigns to reduce discrimination and violence against non-binary gender identities and sexual orientations. The project worked alongside the LGBTI population with a participatory action research methodology to promote self-empowerment strategies and transform current realities of exclusion, violence, and oppression.

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Theory of Change	Activities	Implementation Challenges	Successes	Lessons Learned
	areas establishing strategic public-private partnerships and working directly with the communities to promote small scale business, food security, and productive initiatives; and access to employment opportunities through vocational training and psycho-social support. • IPA improves access of ethnic youth to higher education to promote economic inclusion and social mobility of ethnic population. • IPA provides capacity building to more than 100 ethnic organizations, bolstering their organizational and administrative capacity.		coordination with USAID's Human Rights Program). • Building the capacity of community-based organizations addressing violence against ethnic women and girls; and training leaders to advocate for and support women and girls who are victims of GBV. • Developing support networks for GBV victims and working to improve the response and support for GBV victims. • IPA offered financial, economic, and professional development to ethnic women at the municipal and regional levels. IPA identified and engaged women who were "culture carriers" in their communities to generate buy-in and assist with dissemination of key knowledge and information.	

TABLE 2: INDONESIA CIVIL SOCIETY SUPPORT AND STRENGTHENING PROGRAM (CSSP) – INDONESIA (1999-2004)				
Program Overview: CSSP built up strong, influential, and self-sustaining groups of [Indonesian civil society organizations](#) (CSOs), indigenous including indigenous constituents and stakeholders, to the point where they can work in selected regions as well as nationally on policy reform and democratic policy making and practice. The program empowered indigenous groups and networks to address a range of key issues by raising them in a measured, constructive way with government, parliament, and the broader community, and ensuring that they are resolved in an open, democratic, and inclusive manner. In each of the six regions CSSP's CSO partners, including indigenous partners, focused on resolving a set of issues in a selected field – local governance, human rights, natural resource management, and conflict prevention.				
Theory of Change	**Activities**	**Implementation Challenges**	**Successes**	**Lessons Learned**
By strengthening the advocacy, monitoring, and management capacities of CSOs, including indigenous groups, so they can effectively address human rights and democratic governance objectives, CSSP can contribute to a more vibrant and democratic civil society in Indonesia.	• CSSP increased human rights' skills and capacities as well as community participation in local governance by improving the capacity of and giving other support to local CSOs, including *adat* or indigenous groups. • Several CSOs supported by the CSSP focused on aspects of village-level development including the development of *adat* (indigenous) institutions. For example, the Yayasan Rumpun Bambu Indonesia (YRBI), an Acehnese organization focused on using indigenous institutions to reduce, resolve, and prevent conflicts around natural resources in coastal areas. • With support from CSSP, indigenous leaders increased their awareness of how to protect indigenous rights, and how	• The project faced challenges associated with deciding how many CSOs to focus on, including which indigenous groups, and which regions/ locations in Indonesia should be included. • The project also had initial difficulties determining which specific fields of civil society activities to concentrate on, given the wide range of issues related to human rights, democratic governances, and other focus areas.	• The project contributed to a growth of human rights awareness among civil society members, including indigenous members, and formal recognition from the GOI on issues of human rights violations • As a result of the project, data on human rights abuses in Aceh was distributed and made accessible to citizens and CSOs elsewhere in Indonesia and abroad. • In Papua, CSSP contributed to an expanded recognition of human rights, an improved environment for democratic governance, and a greater role for CSOs, including indigenous stakeholders, in resolving conflicts and expanded opportunities for marginalized Papuan communities. • CSSP successfully strengthened key human	• From early on in the project, CSSP encouraged USAID to assist only those CSOs working on one or two clearly defined public policy issues, including issues affecting Indigenous Peoples, that were consistent with USAID's concerns and priorities. In this way, CSSP believed, it could help build CSO capacity for effective advocacy in a better-defined and more manageable way than if its efforts were spread too thin across too wide a range of policy issues. • By the end of the project, local and grassroots CSOs demonstrated a willingness to work in networks and coalitions, including regional and national groups of *adat* or Indigenous Peoples' activists. • CSSP saw the importance of critically thinking about

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Theory of Change	**Activities**	**Implementation Challenges**	**Successes**	**Lessons Learned**
	to maintain indigenous systems of land and natural resource management. The project increased support for indigenous leaders in their efforts to maintain indigenous governance systems. • CSSP provided assistance in Aceh within the following thematic areas: (1) advocacy for, and protection of, human and civil rights of local citizens; (2) addressing the special needs of women and children as victims of the conflict; and (3) empowerment of local communities (including Indigenous Peoples) in participatory management of local natural resources. The project set up human rights monitoring and advocacy programs in order to increase awareness of human rights and increase political space		rights CSOs in Papua, including indigenous organizations, as well as CSOs working to bring about more open, accountable local governance. • In Aceh, CSSP has contributed to increased protection and awareness of human rights, increased political space for civil society participation; and strengthened advocacy capacity of a core group of Acehnese CSOs and their extensive partner networks. As a result, reporting and investigation of human rights violations have increased significantly, including in indigenous areas. • The majority of CSSP's civil society partners are increasingly engaged in policy dialogue, ranging from human rights abuses in Aceh to strengthening	and determining exactly which technical skills the target CSOs need. This required moving rapidly to identify target CSOs and then equally rapidly surveying their needs; it prioritized skill building around operational issues (e.g. financial management) as well as sectoral skills-building including skills in local governance, human rights, land rights, and legislative drafting. • Throughout the project life cycle, CSSP kept in mind the need to give partner CSOs support not just for projects but also for long-term institutional capacity-building. • Drawing from this experience and from the successive adjustments made to CSSP's work plans, it became clear that the most productive civil society strengthening

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Theory of Change	**Activities**	**Implementation Challenges**	**Successes**	**Lessons Learned**
	for civil society participation. • CSSP's grants program focused on key thematic areas relevant to Indigenous Peoples in various regions. In East Kalimantan, the grants program promoted transparent, participatory local governance, including observation of labor rights and Indigenous People's needs; in Papua, the focus was on human rights protection, conflict prevention, and the support of indigenous communities and institutions. • A coalition of human rights groups carried out an important and highly sensitive program to expand respect for human rights on all sides of Aceh's conflict. With support from the CSSP, Koalisi and its constituent members worked to provide a		*adat* institutions in Papua and piloting village governance in East Java. • In addition, more than a dozen local branches of national CSOs are addressing regional human rights and conflict resolution concerns, such as Koalisi NGO HAM in Aceh (Coalition of Human Rights Organizations in Aceh) and SKP in Papua (Coalition of Human Rights Organizations in Papua). • CSSP's support to CSOs also contributed to: (1) effective monitoring of violations that served as a check against human rights abuses; (2) increased reporting of human rights violations by victims and their families, illustrating the growing confidence of civil society in asserting their rights; and (3) increased numbers of legal	activities focus carefully on key players and on clearly understood, resolvable problems in specific geographical locations.

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	support structure for citizens of Aceh whose human rights are violated. Koalisi further aims to serve as a pressure group and coalition builder committed to bring an end to the pervasive human rights abuses that have characterized Acehnese society during the last decade. • CSSP supported a range of other activities in indigenous areas in both the human rights and village governance fields, among them a series of regional human rights training workshops and training courses.		challenges of human rights violations.	

BEST PRACTICES

Consistent with the DRG sector's commitment to inclusive and integrated programming, DRG sector activities promote inclusivity and participation to overcome the political exclusion of Indigenous Peoples, ideally as partners in co-creating program design, implementation workplans, and monitoring and evaluation efforts.[4] These DRG Sector Guidelines should be viewed as a starting point for effective engagement and should be applied in conjunction with USAID's PRO-IP and other USAID planning and programming tools, including USAID's Social Impact Assessment Toolkit, which includes the Consultation Handbook providing additional guidance and a framework for effective consultation, consistent with international best practices and human rights norms.

USAID's approach to supporting countries in their Journey to Self-Reliance emphasizes the fundamental importance of partnership in achieving self-reliance. Effective partnerships are an important part of advancing self-reliance and are often necessary to support sustained improvement in development results. A successful partnership will ensure that USAID coordinates with project counterparts as equals and grounds all interactions in mutual respect, common vision, shared contribution, and joint accountability in achieving shared goals.

Consultation is intended to inform communities of planned activities and to obtain their feedback and input for the design. International standards on free, prior, and informed consent and other relevant consultation standards can be found in key instruments, such as the International Labour Organization Convention 169 – Indigenous and Tribal Peoples Convention (1989), the United Nations Declaration on the Rights of Indigenous Peoples, and international "soft" law guidance documents, such as the Voluntary Guidelines on the Responsible Governance of Tenure (2012). The Secretariat of the Convention on Biological Diversity has published the Akwé: Kon Voluntary Guidelines, which was designed in conjunction with indigenous organizations to offer specific procedural recommendations for each stage in the engagement process.

In accordance with best practices, USAID should use consultations to determine if a community is interested in and/or able to more fully partner with USAID in the design, co-design, and/or implementation of a project's activities. If so, USAID should work with the community to build a plan for that engagement. The PRO-IP emphasizes the following considerations relevant to DRG programming affecting Indigenous Peoples:

- DRG program activities should elevate the role of Indigenous Peoples, communities, and organizations in determining and managing their own development. This objective aims to deepen two-way communication between development practitioners (USAID and implementing partners) and Indigenous Peoples through ongoing, culturally appropriate consultations over the life of an intervention.

- Recognition of Indigenous Peoples' institutions and building their capacities is key to empowering them. Promoting Indigenous Peoples' self-management serves to revitalize and strengthen their internal mechanisms and governance systems.

    - USAID missions and OUs should include support for capacity building for Indigenous Peoples' organizations by including this focus as a component of a broader activity. Such activities should be designed to address priorities identified by Indigenous Peoples' organizations' themselves.

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[4]   USAID Report to Congress on the development of the PRO-IP.

- Missions and other OUs should also make every effort to provide direct grants to carry out activities in their territories and/or activities from which they will benefit (best practices include work with Indigenous Peoples to ensure they have the necessary financial and programmatic management structures to receive direct grants or sub-awards). For example, the USAID/Philippines Access to Justice program includes a component to provide sub-grants directly to Indigenous Peoples and their advocates to strengthen self-advocacy and Indigenous Peoples' partnerships with legal services organizations.

- USAID has had success with programs that support Indigenous Peoples' territorial self-management. USAID supported recognition in law for customary land rights (Liberia) and for the titling of indigenous lands (Colombia).

- In Indonesia, USAID has supported Indonesia's *adat* (indigenous) communities in advocating for a new law regulating and protecting their rights and protecting customary-based natural resources management.

- As Indigenous Peoples' exclusion and marginalization is a product of the national legal frameworks, policy implementation, social and cultural dynamics, and communications and logistical challenges, program creativity is necessary to promote inclusivity.

  - When pursuing mechanisms to enhance the presence of (and representation by) Indigenous Peoples in national and regional governance systems (through voting rights, access to justice, municipal and national legislatures, and policy-making committees) consultation and engagement ensure that program goals are aligned with Indigenous Peoples' goals.

  - USAID/Peru has supported the use of native language radio programming to overcome difficulties communicating in remote locations and use of more graphically oriented visual communication to overcome language and literacy challenges. In meetings with indigenous groups, incorporating indigenous traditional dynamics has proven effective, as has the development of training materials based on practical exercises and role playing.

  - In Paraguay, USAID commissioned boat transportation to provide indigenous citizens access to administrative service centers to register to vote and access governmental services.

- When engaging with traditional authorities and governance systems, USAID program experience and the good practices guidelines from the United Nations on partnering with Indigenous Peoples emphasize the importance of establishing a culturally sensitive approach to programming that takes into account the norms and practices of particular indigenous cultures and incorporating those practices into policy and program design and implementation.

  - Guidance from Indigenous Peoples themselves is essential, recognizing that they are the experts in matters that affect them.

  - USAID program experience suggests program activities that engage traditional leaders in ways that emphasize their existing capacities (e.g., resolving disputes, managing land) rather than new areas (program or services delivery) and suggests that implementation include components to enhance community accountability mechanisms and the responsiveness of community leaders to meet community needs.

  - Umbrella organizations or trusted non-governmental organizations can play important roles in building trust and effective communications.

- Integrated approaches to empowering Indigenous Peoples require corollary efforts to build the capacity of the public sector to engage with Indigenous Peoples. As discussed in the lessons

learned section above, the [Inclusion for Peace Activity](#) in Colombia was designed to close economic social inclusion gaps by building the capacity of the government to respond to the different needs of ethnic communities. As a result, targeted government agencies, such as the Truth Commission, which is charged with implementing sections of Colombia's Peace Agreements, had increased capacity to respond to the needs of Afro-Colombian and Indigenous Peoples affected by armed conflict.

- USAID missions and OUs should consider developing specific strategies and approaches that address the issues pertinent to the locations in which they operate.

  – [USAID/Guatemala's Indigenous Peoples Engagement Strategy](#) presents a compelling model that other missions should follow and tailor to fit their geographical contexts. The strategy is designed to dovetail with the USAID/Guatemala's strategy to create innovative and substantive partnerships between indigenous entities, government, and the private sector; increase awareness, knowledge, and recognition of Indigenous Peoples' rights, culture, history, and knowledge systems; and increase the participation of Indigenous women and men in development interventions through USAID, implementing partners, and others.

- USAID/Colombia has also established clear strategies for engagement with Indigenous Peoples, including strategies for co-creating activities and [annual program statements](#) for direct awards in collaboration with Afro-Colombian and indigenous organizations.

Address gender considerations.

- Engagement should be culturally sensitive and account for gender roles and generational relationships within indigenous communities and groups. 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.

  – USAID's [Gender Integration Toolkit](#) describes approaches taken by programs to address women's rights in customary courts and the efforts to support civil society organizations, "including faith-based organizations and traditional leaders, to develop dialogue, education, and advocacy programs aimed both at reducing acceptance of gender-based violence and discrimination."

- Unintended gender-related consequences of an activity must be documented, and efforts must be made to put viable solutions in place.

Conflict sensitivity – managing competing claims and competing rights.

- A commitment to a [conflict-sensitive approach](#) can help organizations better plan for how their projects will interact with conflict dynamics, ensuring that program activities do not exacerbate underlying grievances.

- Differentiated approaches are generally required for each context so that the historical narrative and any conflicting visions can be considered. The FPIC consultation process is the best opportunity to bring these into play (throughout program design and implementation in order to gather specific community objectives). This approach has been highlighted through USAID's Conflict Management and Mitigation program as well as through USAID/Peru's Multi-Stakeholder Engagement in Peacebuilding in Mining and Extractive Activities.

  – These experiences also indicated that transparency is vital in avoiding conflicts involving Indigenous Peoples. Information must be shared, and community engagement should continue throughout the project to identify and address grievances as they arise and before

they escalate. Indigenous Peoples are particularly vulnerable to conflict given their decreased access to natural resources, land allocation, unequal distribution of benefits, and pre-existing conflicts in the community.

- USAID OUs may encounter challenges where more than one indigenous group claims customary ownership over an area, or where there are disputes among groups over boundaries. Experience cautions against being tempted to favor the most supportive and cooperative group, which could result in legitimate claimants possibly being excluded from discussions and negotiations and increase tensions and opposition to the project.

  - As discussed, in the Community Engagement Guide on how to engage competing land claims, 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).

  - USAID/Peru developed programs that first focused on strengthening the capacity of indigenous communities in the Amazon to manage their internal conflicts and then supported efforts to develop a common agenda to negotiate effectively with the government of Peru at local and regional level as well as the extractive industries (which are in their communities).

  - Ensure program engagement in conflict mitigation activities stays neutral as to outcome. Provide conflict sensitivity training.

- When there are competing interests between project developers and Indigenous Peoples, dialogue mechanisms should determine whether the project is compatible with indigenous circumstances. Such dialogue is best facilitated by "reputable objective and independent agents, rather than by the proponent [or] the government." This engagement needs to consider cultural values and respect for sacred sites, as well as harms to livelihood, and community integrity. The UN Business Guide to the Declaration on the Rights of Indigenous Peoples calls on the private sector to respect indigenous rights and undertake voluntary actions that promote and advance rights through strategic investments, partnerships, and other mechanisms. For Indigenous Peoples to be able to accept such opportunities, however, it is also critical that business and development organizations support activities that help build indigenous financial and management capacity.

Where violent extremism presents risks of armed and/or civil conflict, experience indicates that political drivers of extremism can be responsive to DRG program approaches.

- While general DRG approaches may have indirect effects on countering violent extremism, DRG interventions targeting at-risk communities directly can have positive influence in enhancing the legitimacy of institutions and in broadening dialogue to include voices of marginalized groups.

  - DRG activities can directly address poorly governed or ungoverned areas by building confidence between local communities and government, through assisting legitimate government representatives in consultation sessions.

  - Where Indigenous Peoples are involved, cultural drivers, as well as historical, social, and economic factors, should be actively considered and not ignored or avoided. In order to understand and show respect for indigenous customs, engage indigenous leaders or other groups in supporting alternative voices.

Do no harm, as a principle.

- Putting into practice the principle of "do no harm" requires a [comprehensive understanding of the linkages](#) among land tenure, gender, and generational dynamics affecting various indigenous communities.

    - The PRO-IP contains an operating principle entitled *Safeguard Indigenous Peoples' Rights and Well-being*, which states that "sustained stakeholder engagement and consultation helps both USAID and Indigenous Peoples' communities identify potential impacts of a proposed project or activity. This is crucial to formulating ways in which to safeguard against potential harm."

    - The [USAID Issue Brief on Tenure and Indigenous Peoples](#) states "assistance to Indigenous Peoples through strengthening tenure security requires attention to issues and limiting factors with which Indigenous Peoples identify when they produce their own long-term plans for development. Therefore, development efforts should address the specific needs of Indigenous Peoples while ensuring that well-intentioned initiatives do not inadvertently harm these communities."

Resources and tools to facilitate responsible investment and conduct of third parties engaging with Indigenous Peoples or in indigenous territories.

- USAID's [Operational Guidelines for Responsible Land-Based Investment](#) provides key guidance on conducting due diligence, stakeholder engagement and mapping, and contract negotiations. The Operational Guidelines highlight how various international standards and performance standards call for the private sector to recognize, respect, and protect the land and resource rights of local communities, Indigenous Peoples, and others who hold legitimate rights to these assets. The Guidelines state that "when a project fails to take adequate account of local land and resource rights, it can impose significant costs on local people, and on the project. It can inadvertently lead to costly delays, work stoppages, protests, and, in some cases, violence. Investors can face legal actions and suffer financial, brand, or reputational harm."

- Displacement of Indigenous Peoples from their lands raises special concerns and should be avoided. OUs 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](#).

- Additional safeguards come into play in the case of [uncontacted Indigenous Peoples](#).

    - Safeguards of uncontacted Indigenous Peoples are contained in national law or by international obligations. For example, with respect to uncontacted Indigenous Peoples in Paraguay, the judgments of the Inter-American Court of Human Rights in the cases of *Yakye Axa Indigenous Community v. Paraguay* and *Sawhoyamaxa Indigenous Community v. Paraguay* instruct that when the territorial rights of these Indigenous Peoples and the natural resource exploitation rights of non-Indigenous actors conflict, the territorial rights of Indigenous Peoples take precedence over economic interests and interests defined by the state.

    - The United Nations Human Rights Council's [Draft Guidelines on the Protection of Indigenous Peoples in Voluntary Isolation](#) and in Initial Contact of the Amazon Basin and El Chaco ("Draft Guidelines") call for the development of policies toward uncontacted Indigenous Peoples that at minimum provide: "(a) The guarantee of self-determination; (b) The guarantee of protection and respect for their lands, territories, and resources; (c) The protection and safeguarding of health; (d) Participation, consultation, and free, prior, and informed consent of the Peoples affected." The core principle under the Draft Guidelines to safeguard Indigenous Peoples in isolation is the recognition of their "right to remain isolated

as an expression of their right to self-determination." The Draft Guidelines call for developing policies for ensuring that "outsiders do not encroach on their territories," including "design of contingency plans that promote development and economic activities outside these Peoples' territories, and even outside buffer zones."

- Human rights implications must be assessed. The 2018 report by the UN Special Rapporteur on Indigenous Peoples identifies a pattern of abuse against Indigenous Peoples' speaking out against agriculture, infrastructure, and energy projects. The report 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 murders of human rights defenders.

  - The Voluntary Guidelines on the Responsible Governance of Tenure call on businesses to respect the human rights of local people and recommends pursuing alternate projects or not moving forward with an investment if it risks violating these rights.

  - USAID missions and OUs should conduct due diligence to ensure project activities will not violate or be complicit in violating Indigenous Peoples' rights.

  - Under the "do no harm" principles, given the human rights climate in the Philippines, USAID has had to carefully balance its support for capacity building to empower Indigenous Peoples to assert rights with the security concerns under which participation in protests can cause Indigenous Peoples to become targets of violence. These activities build awareness of the judicial protections available, the value of heading off conflicts before violence erupts and broader efforts to thwart impunity.

DRG sector experiences and good practices engaging with Indigenous Peoples should be built into USAID learning and performance indicators.

- To enable OUs to form a more comprehensive understanding of the gap between Indigenous Peoples and other populations better, program activities should gather disaggregated data (disaggregated by indigenous identity) during all monitoring and evaluation.

  - USAID/Indonesia has provided support directly to indigenous ethnic communities and promoted data integration.

  - USAID/Guatemala has an Indigenous Peoples' Engagement Strategy that identifies program objectives and indicators: the objectives (Indigenous Peoples' perspectives included in government interventions; participation of indigenous women in positions of influence; increased communication of Indigenous Peoples' issues through different media enhanced) are tracked by indicators quantifying the number of initiatives led by indigenous groups that advocate for Indigenous Peoples' rights; number of facilitated conversations to increase understanding/awareness of Indigenous rights and issues; number of women in elected positions; number of initiatives that support empowerment of indigenous women.

  - The USAID/Guatemala engagement strategy also includes USAID learning components, such as "USAID staff understanding of Indigenous Peoples' culture, history, and societal systems increased; capacity of USAID staff to address Indigenous issues in programming increased."

  - DRG sector experts interviewed for this guidance indicated significant enthusiasm for USAID learning activities that would facilitate peer-to-peer exchanges of specific details as to what has been done in other missions and contact people familiar with those activities. Even where the country and regional context may be different, the considerations and perspectives provide valuable insight on effectively engaging Indigenous Peoples in program activities.