

Comparative Analysis of Fiji's Legal Framework and Involuntary Resettlement Safeguards in the ADB Safeguard Policy Statement

(A) <i>ADB Safeguard Policy Statement</i>	(B) <i>Corresponding Provisions in National Policy and Legal Instruments¹</i>	(C) <i>Extent of Equivalence² Review comments</i>	(D) <i>Recommendations</i>
Involuntary Resettlement Safeguards			
Objectives: To avoid involuntary resettlement wherever possible; to minimize involuntary resettlement by exploring project and design alternatives; to enhance, or at least restore, the livelihoods of all displaced persons in real terms relative to pre-project levels; and to improve the standards of living of the displaced poor and other vulnerable groups.			
Key element (1): Avoid involuntary resettlement wherever possible	<p>Environment Management Act 2005 (EMA 2005) Section 27(2) In examining a development proposal, the approving authority must take into account-... (c) whether there exist any technically or economically feasible measures that would prevent or mitigate any adverse environmental or resource management impact;...</p> <p><u>Schedule 2</u> Part 3 - Development Proposals that May Not Require The EIA Process or an EIA Report ...3. A person or agency undertaking emergency action under this Part must make all reasonable efforts to consult with the Department and to incorporate in the emergency action measures that will reduce, mitigate or avoid adverse environmental effect.</p> <p>Section 2 ... "significant environmental or resource management impact", in relation to a development proposal, means an impact on the environment, either in the context of the setting of the proposed development or in the context of the intensity of the proposed development's effect on the environment, and includes, but is not limited</p>	<p>No equivalence</p> <p>The EMA 2005 and the EIA Process Regulations 2007 provide for avoiding, minimizing and mitigating adverse environmental impacts, but do not address social impacts generally or involuntary resettlement specifically.</p> <p>The EIA Process Regulations 2007 mention social aspects of EIA only once, in the context of public involvement in the scoping phase, where the public may be involved in order to "allay fears in the community or improve the social acceptability of the project".</p>	<p>Amend the EMA 2005, the EIA Process Regulations 2007 and the Environment Impact Assessment (EIA) Guidelines 2008 (EIA Guidelines 2008) to stipulate that involuntary resettlement is a potential project impact which must be avoided wherever possible.</p> <p>In particular, amend Schedule 2 of the EMA 2005 to include development proposals that would require involuntary resettlement.</p>

¹ Fiji's legislation beginning with laws enacted in 2009 is available online: <http://www.fiji.gov.fj/>, "Fiji Laws" tab. All text is direct citation from the official versions of the policy documents and legal instruments except where otherwise indicated by annotation. Legally-binding provisions are cited in Column B; policy provisions and other non-legally binding measures are cited in Column C.

² "Full Equivalence" denotes that the national legal instruments are in complete harmony with the corresponding ADB Safeguard Objective, Scope and Trigger, Policy Principle or Key Element thereof. "Partial Equivalence" denotes that the national legal instruments are in partial harmony with the corresponding ADB Safeguard Objective, Scope and Trigger, Policy Principle or Key Element; and "No Equivalence" denotes that no legal requirement can be found that corresponds to the particular ADB Safeguard Objective, Scope and Trigger, Policy Principle or Key Element. It is intended that the referenced text of the national policy documents and legal instruments be sufficiently clear to demonstrate the findings of Full Equivalence or No Equivalence without further explanation, except in those instances where an explanation would appear necessary and is given. A finding of Partial Equivalence normally requires the explanation provided. In some cases, there may be full equivalence for one issue, but only partial equivalence or no equivalence for one or more of the other issues governed by a particular legal instrument. In such cases, the degree of equivalence for each issue is indicated.

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	<p>to-</p> <p>(a) the degree to which public health and safety are affected;...</p> <p>(c) the degree to which effects on the environment are likely to involve controversy;</p> <p>(d) the degree to which unique or unknown risks are taken;</p> <p>(e) the degree to which a precedent for future action is created;...</p> <p>(h) the degree to which a cultural, traditional...resource may be threatened;...</p> <p>(k) the extent to which one aspect of use of a resource may conflict or contrary with another aspect of use of that resource;...</p> <p>Environment Management (EIA Process) Regulations 2007 (EIA Process Regulations 2007)</p> <p>Regulation 6(1) Upon receipt of an application in due form for screening of a proposal, the approving authority must determine whether the proposal...is likely to cause significant environmental or resource management impact...</p> <p>(3) A determination under subregulation (1) must be in writing and must – ...</p> <p>(f) determine whether the proposal will have – ...</p> <p>(i) no significant impacts;</p> <p>(ii) impacts that will be mitigated to the point of insignificance by the conditions normally attached to an approval;...</p> <p>Regulation 24(1) The EIA report on a proposal is based on the EIA study. It should – ...</p> <p>(c) identify the potential impact of the proposal on the surrounding environment and suggest possible mitigation measures;...</p> <p>Regulation 25(1) An EIA report on a proposal must, to the extent appropriate, include –...</p> <p>(g) a statement of the mitigation action proposed in respect of any adverse impacts identified under paragraph (e);...</p>		
Key element (2): Minimize involuntary resettlement by exploring project and design alternatives	See Objectives, Key element 1.	No equivalence See Objectives, Key element 1.	Amend the EMA 2005, the EIA Process Regulations 2007 and the EIA Guidelines 2008 to stipulate that, when a proposed project would involve involuntary resettlement, the project

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			proponent must explore project and design alternatives to minimize it.
Key element (3): Enhance, or at least restore, the livelihoods of all displaced persons in real terms relative to pre-project levels	No corresponding legal provision.	No equivalence	Amend the EMA 2005, the EIA Process Regulations 2007 and the EIA Guidelines 2008 to explicitly incorporate the requirement that any project that displaces people must provide for enhancing, or at least restoring, the livelihoods of all displaced persons in real terms relative to pre-project levels.
Key element (4): Improve the standards of living of the displaced poor and other vulnerable groups.	No corresponding legal provision.	No equivalence	Amend the EMA 2005, the EIA Process Regulations 2007 and the EIA Guidelines 2008 to incorporate the requirement that any project that displaces people must provide for improving the standards of living of the displaced poor and other vulnerable groups.
Scope and Triggers: The involuntary resettlement safeguards cover physical displacement (relocation, loss of residential land, or loss of shelter) and economic displacement (loss of land, assets, access to assets, income sources, or means of livelihoods) as a result of (i) involuntary acquisition of land, or (ii) involuntary restrictions on land use or on access to legally designated parks and protected areas. It covers them whether such losses and involuntary restrictions are full or partial, permanent or temporary.			
	State Acquisition of Lands Act 1940 amended as of 1998 Notice of intention to take lands 5.-(1) Subject to the provisions of section 8, whenever the acquiring authority determines that any lands are required for a public purpose, the acquiring authority shall give not less than thirty days written notice to every person having any interest in such lands which would be affected by the taking of possession or acquisition of the lands that,	Partial equivalence Safeguards provided in the State Acquisition of Lands Act include for loss of land, crops, trees, and other unspecified related losses, and for relocating residence or business.	Amend the EMA 2005 to explicitly identify involuntary resettlement as a potential project impact that would trigger the full EIA process.

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	<p>upon the expiry of such period of notice, the acquiring authority intends compulsorily to take possession of or to acquire such lands.</p> <p>(2) The notice referred to in subsection (1) shall specify clearly the land intended to be taken possession of or acquired and shall further be published in the Gazette.</p> <p>Matters to be considered in determining compensation</p> <p>12. In determining the amount of compensation to be awarded for land acquired under this Act-</p> <p>(a) the Court shall take into consideration-</p> <p>(i) the market value of the land at the date of the notice of intention to take such land;</p> <p>(ii) the damage sustained by the person interested, by reason of the taking of any standing crops or trees which may be on the land at the time of taking possession thereof;</p> <p>(iii) the damage, if any, sustained by the person interested, at the time of taking possession of the land, by reason of severing such land from his other land;</p> <p>(iv) the damage, if any sustained by the person interested, at the time of taking possession of the land, by reason of the acquisition injuriously affecting his other property, real or personal, in any other manner, or his earnings;</p> <p>(v) if, in consequence of the acquisition of the land, the person interested is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change;</p> <p>(b) but the Court shall not take into consideration-</p> <p>(i) the degree of urgency which has led to the acquisition;</p> <p>(ii) any disinclination of the person interested to part with the land acquired;</p> <p>(iii) any damage sustained by him which, if caused by a private person, would not render such person liable to a suit;</p> <p>(iv) any increase to the value of land acquired likely to accrue from the use to which it will be put when acquired;</p> <p>(v) any increase to the value of the other land of the person interested likely to accrue from the use to which the land acquired will be put; or</p> <p>(vi) any outlay or improvements on or disposal of the land acquired, commenced, made or effected after the date of the notice of the intention to take such land.</p> <p>[i Taukei] Land Trust Act 1940 amended as of 2011 [i Taukei] land alienable only to Crown</p>	<p>They do not cover loss of assets other than crops and trees, loss of income sources and means of livelihoods, or restrictions on access to protected areas.</p>	<p>Amend the EIA Process Regulations 2007 and the EIA Guidelines 2008 to explicitly stipulate that, in the event a project involves involuntary resettlement, the project must prepare a resettlement plan that covers physical displacement, economic displacement, and involuntary restrictions, whether those impacts are full or partial, permanent or temporary.</p>

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	5.-(1) [i Taukei] land shall not be alienated by [i Taukei] owners whether by sale, grant, transfer or exchange except to the Crown, and shall not be charged or encumbered by [i Taukei] owners, and any [i Taukei] to whom any land has been transferred heretofore by virtue of a native grant shall not transfer such land or any estate or interest therein or charge or encumber the same without the consent of the Board. (2) All instruments purporting to transfer, charge or encumber any [i Taukei] land or any estate or interest therein to which the consent of the Board has not been first given shall be null and void.		
Policy Principle 1: Screen the project early on to identify past, present, and future involuntary resettlement impacts and risks. Determine the scope of resettlement planning through a survey and/or census of displaced persons, including a gender analysis, specifically related to resettlement impacts and risks.			
Key element (1): Screen the project early on	<p>EMA 2005 Section 27(1) An approving authority must-</p> <p>(a) examine every development proposal received by it; and (b) determine whether the activity or undertaking in the development proposal is likely to cause significant environmental or resource management impact...</p> <p>(3) Any determination under subsection (1) must be submitted as soon as practicable to the EIA Administrator...</p> <p>(4) If the approving authority determines that the activity or undertaking will cause a significant environmental or resource management impact, the development proposal must be subject to the EIA process and the approving authority must-</p> <p>(a) for a proposal set out in Part 1 of Schedule 2, send it to the Department for processing by the EIA Administrator; (b) for a proposal set out in Part 2 of Schedule 2, process the proposal; or (c) for a proposal set out in Part 3 of Schedule 2, send it to the EIA Administrator to determine whether an EIA is required....</p> <p><u>Schedule 2</u> Part 1, [Development Proposals that Are to Be] Approved by the EIA Administrator Part 2, [Development Proposals that Are to Be] Approved by Approving Authority Part 3, Development Proposals that May Not Require the EIA Process or an EIA Report</p> <p>EIA Process Regulations 2007 Regulation 4(1) Every proponent of a development proposal must apply</p>	<p>Partial equivalence</p> <p>The EIA regime requires early screening, but does not require screening for social impacts generally or involuntary resettlement specifically.</p> <p>The EIA Guidelines 2008, which do not appear to be legally binding, specify that screening is the first step in the EIA process.</p>	Amend the EIA Process Regulations 2007 and the EIA Guidelines 2008 to explicitly stipulate that, when a proposed project would involve involuntary resettlement, the EIA screening process must include screening for resettlement as a potential project impact.

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	<p>for screening of the proposal in accordance with these Regulations and section 27 of the Act.</p> <p>Regulation 6(1) Upon receipt of an application in due form for screening of a proposal, the approving authority must determine whether the proposal is subject to the EIA process, that is to say, whether it is likely to cause significant environmental or resource management impact, taking into account the matters set out in section 27(2) of the Act.</p> <p>Schedule 1 (Regulation 45) Forms Form: EMA/EIAP 1 EIA Screening Application (Regulation 4)</p>		
Key element (2): Identify past, present, and future involuntary resettlement impacts and risks	No corresponding legal provision.	No equivalence	Amend the EMA 2005, the EIA Process Regulations 2007 and the EIA Guidelines 2008 to explicitly stipulate that, in the event a project involves involuntary resettlement, the EIA report must identify past, present, and future involuntary resettlement impacts and risks.
Key element (3): Determine the scope of resettlement planning through a survey and/or census of displaced persons, including a gender analysis, specifically related to	No corresponding legal provision.	No equivalence	Amend the EMA 2005, the EIA Process Regulations 2007 and the EIA Guidelines 2008 to explicitly stipulate that, in the event a project involves involuntary resettlement, the project proponent must determine the scope of resettlement planning through a survey and/or census of displaced

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resettlement impacts and risks			persons, including a gender analysis, specifically related to resettlement impacts and risks.
Policy Principle 2: Carry out meaningful consultations with affected persons, host communities, and concerned nongovernment organizations. Inform all displaced persons of their entitlements and resettlement options. Ensure their participation in planning, implementation, and monitoring and evaluation of resettlement programmes. Pay particular attention to the needs of vulnerable groups, especially those below the poverty line, the landless, the elderly, women and children, and Indigenous Peoples, and those without legal title to land, and ensure their participation in consultations. Establish a grievance redress mechanism to receive and facilitate resolution of the affected persons' concerns. Support the social and cultural institutions of displaced persons and their host population. Where involuntary resettlement impacts and risks are highly complex and sensitive, compensation and resettlement decisions should be preceded by a social preparation phase.			
Key element (1): Carry out meaningful consultations with affected persons, host communities, and concerned nongovernment organizations	<p>State Acquisition of Lands Act 1940 amended as of 1998 Notice of intention to take lands 5.-(1) Subject to the provisions of section 8, whenever the acquiring authority determines that any lands are required for a public purpose, the acquiring authority shall give not less than thirty days written notice to every person having any interest in such lands which would be affected by the taking of possession or acquisition of the lands that, upon the expiry of such period of notice, the acquiring authority intends compulsorily to take possession of or to acquire such lands. (2) The notice referred to in subsection (1) shall specify clearly the land intended to be taken possession of or acquired and shall further be published in the Gazette.</p> <p>EMA 2005 Section 34(1) When the preparation of an EIA assessment is completed, a public hearing must be conducted by the proponent within the vicinity of the area of the proposed development. (2) Where the Government is the proponent, the Ministry responsible for the development must establish a committee to be responsible for undertaking consultations with all interested parties.</p> <p>EIA Process Regulations 2007 Regulation 4(1) Every proponent of a development proposal must apply for screening of the proposal in accordance with these Regulations and section 27 of the Act.... (3) The application must include –... (g) a statement as to what public consultations have been held on the proposal, if any;</p>	<p>No equivalence</p> <p>The EMA 2005 and the EIA Process Regulations 2007 have general requirements for public comment on a proposed project, but the EIA legal regime does not address involuntary resettlement as a potential project impact.</p> <p>The State Acquisition of Lands Act requires notification that land will be compulsorily acquired, but does not require that land holders be given an opportunity to comment or object. The Act offers that possibility only for persons whose land is acquired for a public emergency.</p>	<p>See Scope and Triggers.</p> <p>Amend the EIA Process Regulations 2007 and EIA Guidelines 2008 to explicitly stipulate that, when a project involves involuntary resettlement, the project proponent must carry out meaningful consultations with affected persons, host communities, and concerned nongovernment organizations.</p>

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	<p>(h) an indication of public response to the proposal, as evidenced by such consultations or otherwise.</p> <p>Regulation 18(1) The processing authority may if it considers appropriate involve the public in the scoping exercise to gather information that is likely to benefit the planning of the development proposal. In particular, public participation should be sought in order to - ... (c) allay fears in the community or improve the social acceptability of the project;...</p> <p>(2) Public participation in scoping involves discussions with the proponent, the approving authority (if not the processing authority), scientific institutions, local community leaders and others to include all the possible issues and concerns raised by these various groups.</p> <p>(3) The processing authority may in writing require the proponent to convene one or more scoping meetings, at times and locations determined by the processing authority and convenient for those likely to wish to take part.</p> <p>Regulation 20(1) In the case of a major development proposal, if the TORs are prepared by the proponent's own EIA consultant, the proponent must convene at least one meeting at which draft TORs are presented for discussion and participants can propose additions to or deletions from them.</p> <p>(2) ...the processing authority may if it considers it necessary require the proponent to convene one or more meetings to discuss the draft TORs on the proposal.</p> <p>Regulation 23(4) Pursuant to and in accordance with section 34 of the Act – (a) the proponent must conduct one or more public consultations during the EIA study on a proposal; (b) a Ministry that is a proponent must establish a committee to undertake consultations on the proposal.</p> <p>Regulation 28(2) The processing authority may, and in respect of a major development proposal must, give notice of the publication of a report... (3) If notice is given under subregulation (2) it must set out –... (c) how the community can participate in identifying the issues of concern by commenting on the report;...</p>		

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	and Regulation 30(1) The processing authority must require the proponent to conduct public consultations on the review of an EIA report by way of one or more review meetings, at times and places determined by the processing authority and convenient for those likely to wish to take part. (2) At least one of the review meetings must be held in the vicinity of the area of the proposed development, in compliance with section 34(1) of the Act.		
Key element (2): Inform all displaced persons of their entitlements and resettlement options	See Scope and Triggers.	No equivalence The State Acquisition of Lands Act requires notification that land will be compulsorily acquired and lists issues to be taken into account in determining compensation, but does not require informing displaced persons of their entitlements and resettlement options.	Amend the EMA 2005, the EIA Process Regulations 2007 and the EIA Guidelines 2008 to explicitly stipulate that, in the event a project involves involuntary resettlement, the project proponent must inform all displaced persons of their entitlements and resettlement options. Amend the State Acquisition of Lands Act to explicitly stipulate that when land will be compulsorily acquired, the acquiring authority must inform all displaced persons of their entitlements and resettlement options.
Key element (3): Ensure the participation of displaced persons in planning, implementation, and monitoring	No corresponding legal provision.	No equivalence	Amend the EMA 2005, the EIA Process Regulations 2007 and the EIA Guidelines 2008 to explicitly stipulate that, in the event a project involves involuntary resettlement, the project

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and evaluation of resettlement programmes			proponent must ensure the participation of displaced persons in planning, implementation, and monitoring and evaluation of resettlement programmes.
Key element (4): Ensure the participation in consultations of vulnerable groups, especially those below the poverty line, the landless, the elderly, women and children, and Indigenous Peoples, and those without legal title to land	No corresponding legal provision.	No equivalence	Amend the EMA 2005, the EIA Process Regulations 2007 and the EIA Guidelines 2008 to explicitly stipulate that, in the event a project involves involuntary resettlement, the project proponent must ensure the participation in consultations of vulnerable groups, especially those below the poverty line, the landless, the elderly, and women and children.
Key element (5): Establish a grievance redress mechanism to receive and facilitate resolution of the affected persons' concerns	<p>Constitution 2013 15.— (2) Every party to a civil dispute has the right to have the matter determined by a court of law or if appropriate, by an independent and impartial tribunal.</p> <p>State Acquisition of Lands Act 1940 amended as of 1998 Damages and compensation 7.-(4) The acquiring authority shall pay all costs reasonably incurred by any other party in connection with the proceedings before the Court under the provisions of this and section 6 and including any appeal not made unreasonably or frivolously from any decision of the Court or the Court of Appeal given for those purposes.</p>	<p>No equivalence</p> <p>The Constitution generally guarantees the right to access the courts in civil cases, but not in administrative cases.</p> <p>The EMA 2005 and the EIA Process Regulations 2007 do not require project proponents to establish a project-specific grievance mechanism.</p> <p>The State Acquisition of Lands Act specifies that an acquiring authority must pay the costs of any other party for an appeal against an award or</p>	Amend the EMA 2005, the EIA Process Regulations 2007 and the EIA Guidelines 2008 to stipulate explicitly that, when a project involves involuntary resettlement, project design must ensure that there is a project-specific, culturally-appropriate, and gender-inclusive grievance redress mechanism.

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		damages or compensation, but does not explicitly provide for appeals.	
Key element (6): Support the social and cultural institutions of displaced persons and their host population	No corresponding legal provision.	No equivalence	Amend the EMA 2005, the EIA Process Regulations 2007 and the EIA Guidelines 2008 to explicitly stipulate that, in the event a project involves involuntary resettlement, the project must prepare a resettlement plan that provides for supporting the social and cultural institutions of displaced persons and their host population.
Key element (7): Where involuntary resettlement impacts and risks are highly complex and sensitive, compensation and resettlement decisions should be preceded by a social preparation phase .	No corresponding legal provision.	No equivalence	Amend the EMA 2005, the EIA Process Regulations 2007 and the EIA Guidelines 2008 to explicitly stipulate that, in the event a project involves involuntary resettlement and involuntary resettlement impacts and risks are highly complex and sensitive, compensation and resettlement decisions should be preceded by a social preparation phase.
Policy Principle 3: Improve, or at least restore, the livelihoods of all displaced persons through (i) land-based resettlement strategies when affected livelihoods are land based where possible or cash compensation at replacement value for land when the loss of land does not undermine livelihoods, (ii) prompt replacement of assets with access to assets of equal or higher value, (iii) prompt compensation at full replacement cost for assets that cannot be restored, and (iv) additional revenues and services through benefit sharing schemes where possible.			
Key element (1): Improve, or at least restore, the	Constitution 2013 27.—(1) Every person has the right not to be deprived of property by the State other than in accordance with a written law referred to in	Partial equivalence The Constitution and the State	Amend the EMA 2005, the EIA Process Regulations 2007 and

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<p>livelihoods of all displaced persons through land-based resettlement strategies when affected livelihoods are land based, where possible, or cash compensation at replacement value for land when the loss of land does not undermine livelihoods</p>	<p>subsection (2), and no law may permit arbitrary acquisition or expropriation of any interest in any property.</p> <p>(2) A written law may authorise compulsory acquisition of property—</p> <p>(a) when necessary for a public purpose; and</p> <p>(b) on the basis that the owner will be promptly paid the agreed compensation for the property, or failing agreement, just and equitable compensation as determined by a court or tribunal, after considering all relevant factors, including—</p> <p>(i) the public purpose for which the property is being acquired;...</p> <p>(iii) the market value of the property;</p> <p>(iv) the interests of any person affected by the acquisition; and</p> <p>(v) any hardship to the owner.</p> <p>28.—(1) The ownership of all <i>iTaukei</i> land shall remain with the customary owners of that land and <i>iTaukei</i> land shall not be permanently alienated, whether by sale, grant, transfer or exchange, except to the State in accordance with section 27.</p> <p>Any <i>iTaukei</i> land acquired by the State for a public purpose after the commencement of this Constitution under section 27 or under any written law shall revert to the customary owners if the land is no longer required by the State.</p> <p>The ownership of all Rotuman land shall remain with the customary owners of that land and Rotuman land shall not be permanently alienated, whether by sale, grant, transfer or exchange, except to the State in accordance with section 27.</p> <p>Any Rotuman land acquired by the State for a public purpose after the commencement of this Constitution under section 27 or under any written law shall revert to the customary owners if the land is no longer required by the State.</p> <p>The ownership of all Banaban land shall remain with the customary owners of that land and Banaban land shall not be permanently alienated, whether by sale, grant, transfer or exchange, except to the State in accordance with section 27.</p> <p>Any Banaban land acquired by the State for a public purpose after the commencement of this Constitution under section 27 or under any written law shall revert to the customary owners if the land is no longer required by the State.</p> <p>State Acquisition of Lands Act 1940 amended as of 1998 Power to acquire land 3. Subject to the provisions of the Constitution and the other provisions</p>	<p>Acquisition of Lands Act provide for cash compensation but not for land-based compensation.</p>	<p>the EIA Guidelines 2008 to explicitly include in the EIA process a requirement that, in the event of involuntary resettlement, project proponents must prepare a resettlement plan that provides for restoring the livelihoods of all displaced persons through land-based resettlement strategies when affected livelihoods are land-based, where possible, or cash compensation at replacement value for land when the loss of land does not undermine livelihoods.</p> <p>Amend the State Acquisition of Lands Act and any implementing regulations and procedures to explicitly enable the option of compensation in land as well as the option of cash compensation for persons whose livelihoods are land-based and whose land has been acquired for any public purpose.</p>

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	<p>of this Act, an acquiring authority may acquire any lands required for any public purpose, paying such consideration or compensation as may be agreed upon or determined under the provisions of this Act.</p> <p>(2) An acquisition under this section must not proceed unless the necessity for the acquisition is such as to provide reasonable justification for the causing of any resultant hardship to a person having an interest in the lands.</p> <p>Application to Court</p> <p>6.-(1) The acquiring authority shall not compulsorily acquire any land unless he has applied to the Court and has obtained therefrom an order authorising such acquisition.</p> <p>(2.) In the event of an acquiring authority compulsorily taking possession of any land he shall within thirty days of so entering into possession apply to the Court for an order authorising such taking of possession.</p> <p>(3) The Court shall not grant an order...unless it is satisfied that the taking of possession or acquisition is necessary or expedient for a public purpose.</p> <p>(4) If the taking of possession or the acquisition is for a purpose referred to in paragraph (c) of the definition of "public purpose" in section 2, the Court must also take into account whether the need to ensure the preservation of the heritage of the State at a cost that is justifiable outweighs any hardship to a person having an interest in the land.</p> <p>Damages and compensation</p> <p>7.-(1) An acquiring authority shall pay damages to all persons owning the property or having any other interest or right therein that would be affected by the taking of possession or acquisition thereof in respect of the taking of possession prior to the application to the Court under the provisions of subsection (2) of section 6 in a case where the Court does not grant the order for which application has been made.</p> <p>(2) Adequate compensation for the taking of possession or the acquisition of property where an order has been granted by the Court under the provisions of section 6 shall be paid to the persons entitled thereto within thirty days of such order being granted.</p> <p>(3) If no agreement has been concluded with any person claiming to be entitled as to the amount or manner of payment of compensation referred to in this section within thirty days of the grant of the order of the Court, the acquiring authority shall, immediately upon the expiry of such period of thirty days, apply to the Court for the determination of those matters in relation to such claimant including where necessary any</p>		

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	question as to the entitlement of such claimant to compensation.		
Key element (2): Improve, or at least restore, the livelihoods of all displaced persons through prompt replacement of assets with access to assets of equal or higher value	No corresponding legal provision.	No equivalence	Amend the EMA 2005, the EIA Process Regulations 2007 and the EIA Guidelines 2008 to explicitly stipulate that, in the event a project involves involuntary resettlement, the project must prepare a resettlement plan that provides for improving, or at least restoring, the livelihoods of all displaced persons through prompt replacement of assets with access to assets of equal or higher value.
Key element (3): Improve, or at least restore, the livelihoods of all displaced persons through prompt compensation at full replacement cost for assets that cannot be restored	No corresponding legal provision.	No equivalence	Amend the EMA 2005, the EIA Process Regulations 2007 and the EIA Guidelines 2008 to explicitly stipulate that, in the event a project involves involuntary resettlement, the project must prepare a resettlement plan that provides for improving, or at least restoring, the livelihoods of all displaced persons through prompt compensation at full replacement cost for assets that cannot be restored.
Key element (4): Improve, or at	State Acquisition of Lands Act 1940 amended as of 1998 Government exonerated upon payment	No equivalence	Amend the EMA 2005, the EIA Process

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least restore, the livelihoods of all displaced persons through additional revenues and services through benefit sharing schemes where possible	15. The payment to any person to whom any consideration or compensation shall be paid or the payment into Court of any compensation upon a decision of the Court shall effectually discharge the acquiring authority from seeing to the application or being answerable for the misapplication thereof...	The State Acquisition of Lands Act explicitly stipulates that payment of compensation relieves the acquiring authority of accountability.	Regulations 2007 and the EIA Guidelines 2008 to explicitly stipulate that, in the event a project involves involuntary resettlement, the project must prepare a resettlement plan that provides for improving, or at least restoring, the livelihoods of all displaced persons through additional revenues and services through benefit sharing schemes where possible.
Policy Principle 4: Provide physically and economically displaced persons with needed assistance, including the following: (i) if there is relocation, secured tenure to relocation land, better housing at resettlement sites with comparable access to employment and production opportunities, integration of resettled persons economically and socially into their host communities, and extension of project benefits to host communities; (ii) transitional support and development assistance, such as land development, credit facilities, training, or employment opportunities; and (iii) civic infrastructure and community services, as required.			
Key element (1): Provide physically and economically displaced persons, if there is relocation, with secured tenure to relocation land, better housing at resettlement sites with comparable access to employment and production opportunities, integration of resettled persons economically and	Town Planning Act 1946 consolidated 1978 Powers relating to authorised development 10.- (3) Where the requirements of any order under this section will involve the displacement of persons residing in any premises, it shall be the duty of the local authority in so far as there is not other residential accommodation suitable to the reasonable requirements of those persons available on reasonable terms, to secure the provision of such accommodation to the satisfaction of the Director, in advance of the displacement. Provisions supplementary to section 12 13.-(1) Notwithstanding the provisions of subsection (1) of section 38, any land which has been acquired under the provisions of section 12 or of sections 8, 9 or 10 shall be dealt with in accordance with the interests of the proper planning of the area, as determined by the Director: Provided that- (a) land which has been compulsorily acquired under section 12 shall be dealt with for the particular purpose in the interests of the proper planning of the area for which such land was acquired; (b) where premises are required for the purpose of demolition, the	Partial equivalence The Town Planning Act 1946 requires providing replacement housing for displaced persons in urban areas.	Amend the EMA 2005, the EIA Process Regulations 2007 and the EIA Guidelines 2008 to explicitly stipulate that, in the event a project involves involuntary resettlement, the project must prepare a resettlement plan that provides physically and economically displaced persons, if there is relocation, with better housing at resettlement sites with comparable access to employment and production opportunities, integration of resettled persons

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socially into their host communities, and extension of project benefits to host communities	<p>carrying out of which will involve the displacement of persons residing in such premises, it shall be the duty of the local authority in so far as there is not other residential accommodation suitable to the reasonable requirements of those persons available on reasonable terms, to secure the provision of such accommodation, to the satisfaction of the Director in advance of the displacement.</p> <p>Utilization of acquired land 38.-(1) Land which has been acquired under the provisions of this Act shall be dealt with in accordance with the scheme: Provided that dwelling-houses which are acquired for the purpose of demolition under the scheme shall not be evacuated until suitable accommodation for all residents therein is available to the satisfaction of the Director.</p>		economically and socially into their host communities, and extension of project benefits to host communities.
Key element (2): Provide physically and economically displaced persons with transitional support and development assistance , such as land development, credit facilities, training, or employment opportunities	No corresponding legal provision.	No equivalence	Amend the EMA 2005, the EIA Process Regulations 2007 and the EIA Guidelines 2008 to explicitly stipulate that, in the event a project involves involuntary resettlement, the project must prepare a resettlement plan that provides physically and economically displaced persons with transitional support and development assistance, such as credit facilities, training, or employment opportunities.
Key element (3): Provide physically and economically displaced persons with civic infrastructure	No corresponding legal provision.	No equivalence	Amend the EMA 2005, the EIA Process Regulations 2007 and the EIA Guidelines 2008 to explicitly stipulate that, in the event a project involves involuntary resettlement, the project

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and community services			must prepare a resettlement plan that ensures that physically and economically displaced persons will have access to civic infrastructure and community services.
Policy Principle 5: Improve the standards of living of the displaced poor and other vulnerable groups, including women, to at least national minimum standards. In rural areas provide them with legal and affordable access to land and resources, and in urban areas provide them with appropriate income sources and legal and affordable access to adequate housing.			
Key element (1): Improve the standards of living of the displaced poor and other vulnerable groups, including women, to at least national minimum standards	No corresponding legal provision.	No equivalence	Amend the EMA 2005, the EIA Process Regulations 2007 and the EIA Guidelines 2008 to explicitly stipulate that, in the event a project involves involuntary resettlement, the project must prepare a resettlement plan that provides for improving the standards of living of the displaced poor and other vulnerable groups, including women, to at least national minimum standards.
Key element (2): In rural areas provide them with legal and affordable access to land and resources	No corresponding legal provision.	No equivalence	Amend the EMA 2005, the EIA Process Regulations 2007 and the EIA Guidelines 2008 to explicitly stipulate that, in the event a project involves involuntary resettlement, the project must prepare a resettlement plan that provides for ensuring that the displaced poor and

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			other vulnerable groups in rural areas have access to resources.
Key element (3): in urban areas provide them with appropriate income sources and legal and affordable access to adequate housing	<p>Town Planning Act 1946 consolidated 1978 Powers relating to authorised development</p> <p>10.- (3) Where the requirements of any order under this section will involve the displacement of persons residing in any premises, it shall be the duty of the local authority in so far as there is not other residential accommodation suitable to the reasonable requirements of those persons available on reasonable terms, to secure the provision of such accommodation to the satisfaction of the Director, in advance of the displacement.</p> <p>Provisions supplementary to section 12</p> <p>13.- (1) Notwithstanding the provisions of subsection (1) of section 38, any land which has been acquired under the provisions of section 12 or of sections 8, 9 or 10 shall be dealt with in accordance with the interests of the proper planning of the area, as determined by the Director: Provided that-</p> <p>(a) land which has been compulsorily acquired under section 12 shall be dealt with for the particular purpose in the interests of the proper planning of the area for which such land was acquired;</p> <p>(b) where premises are required for the purpose of demolition, the carrying out of which will involve the displacement of persons residing in such premises, it shall be the duty of the local authority in so far as there is not other residential accommodation suitable to the reasonable requirements of those persons available on reasonable terms, to secure the provision of such accommodation, to the satisfaction of the Director in advance of the displacement.</p> <p>Utilization of acquired land</p> <p>38.- (1) Land which has been acquired under the provisions of this Act shall be dealt with in accordance with the scheme: Provided that dwelling-houses which are acquired for the purpose of demolition under the scheme shall not be evacuated until suitable accommodation for all residents therein is available to the satisfaction of the Director.</p>	<p>Partial equivalence</p> <p>The Town Planning Act requires local authorities to provide displaced persons with suitable residential accommodation when it is otherwise not available on reasonable terms.</p>	<p>Amend the EMA 2005, the EIA Process Regulations 2007 and the EIA Guidelines 2008 to explicitly stipulate that, in the event a project involves involuntary resettlement, the project must prepare a resettlement plan that provides for ensuring that the displaced poor and other vulnerable groups in urban areas have access to appropriate income sources and legal and affordable access to adequate housing.</p>
Policy Principle 6: Develop procedures in a transparent, consistent, and equitable manner if land acquisition is through negotiated settlement to ensure that those people who enter into negotiated settlements will maintain the same or better income and livelihood status.			
Key element (1):	No corresponding legal provision.	No equivalence	Amend the EMA 2005,

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Develop procedures in a transparent, consistent, and equitable manner if land acquisition is through negotiated settlement		In January 2015, a Land Acquisition and Resettlement Plan was prepared for an ADB-funded Transport Infrastructure Investment Sector Project. ³ That plan includes a Comparison of ADB and World Bank Requirements and Fiji Laws on Land Acquisition Measures which notes that: the Department of Lands has procedures for land acquisition through negotiated settlement or purchase.” Those procedures were not available for this assessment.	the EIA Process Regulations 2007 and the EIA Guidelines 2008 to explicitly provide transparent procedures for negotiated settlements when land is compulsorily acquired for a project.
Key element (2): Ensure that those people who enter into negotiated settlements will maintain the same or better income and livelihood status	No corresponding legal provision.	No equivalence	Amend the EMA 2005, the EIA Process Regulations 2007 and the EIA Guidelines 2008 to explicitly include in the EIA process a requirement that, in the event of involuntary resettlement, project proponents must prepare a resettlement plan that includes mechanisms to ensure that those people who enter into negotiated settlements will maintain the same or better income and livelihood status.
Policy Principle 7: Ensure that displaced persons without titles to land or any recognizable legal rights to land are eligible for resettlement assistance and compensation for loss of nonland assets.			
	No corresponding legal provision.	No equivalence	Amend the EMA 2005,

³ FIJI: Transport Infrastructure Investment Sector Project. Land Acquisition and Resettlement Plan.
<http://www.fijiroads.org/sites/default/files/Land%20Acquisition%20and%20Resettlement%20Plan.pdf>

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		See Policy Principle 6, Key element 1. A project-specific Land Acquisition and Resettlement Plan includes a Comparison of ADB and World Bank Requirements and Fiji Laws on Land Acquisition Measures which notes that “[c]ustomary rights for Fijian people/Indigenous People stipulate that individuals without formal title are also protected” but also states that “[t]here is nothing in the FIJI Laws to address the issue of displaced persons without land title or legal land rights.”	the EIA Process Regulations 2007 and the EIA Guidelines 2008 to explicitly stipulate that, in the event a project involves involuntary resettlement, the project must prepare a resettlement plan that provides for ensuring that displaced persons with any recognizable land rights are eligible for resettlement assistance and compensation for loss of non-land assets.
Policy Principle 8: Prepare a resettlement plan elaborating on displaced persons’ entitlements, the income and livelihood restoration strategy, institutional arrangements, monitoring and reporting framework, budget, and time-bound implementation schedule.			
	No corresponding legal provision.	No equivalence	Amend the EMA 2005, the EIA Process Regulations 2007 and the EIA Guidelines 2008 to explicitly stipulate that, in the event a project involves involuntary resettlement, the project must prepare a resettlement plan that elaborates on displaced persons’ entitlements, the income and livelihood restoration strategy, institutional arrangements, monitoring and reporting framework, budget, and time-bound implementation schedule.
Policy Principle 9: Disclose a draft resettlement plan, including documentation of the consultation process in a timely manner, before project appraisal, in an accessible place and a form and language(s) understandable to affected persons and other stakeholders. Disclose the final resettlement plan and its updates to			

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affected persons and other stakeholders.			
Key element (1): Disclose a draft resettlement plan, before project appraisal, in an accessible place and a form and language(s) understandable to affected persons and other stakeholders	No corresponding legal provision.	No equivalence	Amend the EMA 2005, the EIA Process Regulations 2007 and the EIA Guidelines 2008 to explicitly stipulate that, in the event a project involves involuntary resettlement, the project must prepare a resettlement plan and must disclose a draft of that plan, before project appraisal, in an accessible place and a form and language(s) understandable to affected persons and other stakeholders.
Key element (2): Disclose the final resettlement plan and its updates to affected persons and other stakeholders.	No corresponding legal provision.	No equivalence	Amend the EMA 2005, the EIA Process Regulations 2007 and the EIA Guidelines 2008 to explicitly stipulate that, in the event a project involves involuntary resettlement, the project must prepare a resettlement plan and must disclose the final resettlement plan and its updates to affected persons and other stakeholders.
Policy Principle 10: Conceive and execute involuntary resettlement as part of a development project or programme. Include the full costs of resettlement in the presentation of project's costs and benefits. For a project with significant involuntary resettlement impacts, consider implementing the involuntary resettlement component of the project as a stand-alone operation.			
Key element (1): Conceive and execute	No corresponding legal provision.	No equivalence	Amend the EMA 2005, the EIA Process Regulations 2007 and

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involuntary resettlement as part of a development project or programme			the EIA Guidelines 2008 to explicitly stipulate that involuntary resettlement should in most cases be conceived and executed as part of a development project or programme.
Key element (2): Include the full costs of resettlement in the presentation of project's costs and benefits	No corresponding legal provision.	No equivalence	Amend the EMA 2005, the EIA Process Regulations 2007 and the EIA Guidelines 2008 to explicitly stipulate that, in the event a project involves involuntary resettlement, the project must include the full costs of resettlement in the presentation of a project's costs and benefits.
Key element (3): For a project with significant involuntary resettlement impacts, consider implementing the involuntary resettlement component of the project as a stand-alone operation	No corresponding legal provision.	No equivalence	Amend the EMA 2005, the EIA Process Regulations 2007 and the EIA Guidelines 2008 to explicitly stipulate that, for a project with significant involuntary resettlement impacts, the project proponent must consider implementing the involuntary resettlement component of the project as a stand-alone operation and document the rationale for deciding whether or not to do that.
Policy Principle 11: Pay compensation and provide other resettlement entitlements before physical or economic displacement. Implement the resettlement plan under close supervision throughout project implementation.			
Key element (1):	Town Planning Act 1946 consolidated 1978	Partial equivalence	Amend the EMA 2005,

(A) ADB Safeguard Policy Statement	(B) Corresponding Provisions in National Policy and Legal Instruments¹	(C) Extent of Equivalence² Review comments	(D) Recommendations
<p>Pay compensation and provide other resettlement entitlements before physical or economic displacement</p>	<p>Powers relating to authorised development</p> <p>10.- (3) Where the requirements of any order under this section will involve the displacement of persons residing in any premises, it shall be the duty of the local authority in so far as there is not other residential accommodation suitable to the reasonable requirements of those persons available on reasonable terms, to secure the provision of such accommodation to the satisfaction of the Director, in advance of the displacement.</p> <p>Provisions supplementary to section 12</p> <p>13.-(1) Notwithstanding the provisions of subsection (1) of section 38, any land which has been acquired under the provisions of section 12 or of sections 8, 9 or 10 shall be dealt with in accordance with the interests of the proper planning of the area, as determined by the Director: Provided that-</p> <p>(a) land which has been compulsorily acquired under section 12 shall be dealt with for the particular purpose in the interests of the proper planning of the area for which such land was acquired;</p> <p>(b) where premises are required for the purpose of demolition, the carrying out of which will involve the displacement of persons residing in such premises, it shall be the duty of the local authority in so far as there is not other residential accommodation suitable to the reasonable requirements of those persons available on reasonable terms, to secure the provision of such accommodation, to the satisfaction of the Director in advance of the displacement.</p> <p>Utilization of acquired land</p> <p>38.-(1) Land which has been acquired under the provisions of this Act shall be dealt with in accordance with the scheme: Provided that dwelling-houses which are acquired for the purpose of demolition under the scheme shall not be evacuated until suitable accommodation for all residents therein is available to the satisfaction of the Director.</p> <p>State Acquisition of Lands Act 1940 amended as of 1998</p> <p>Application to Court</p> <p>6.-(1) The acquiring authority shall not compulsorily acquire any land unless he has applied to the Court and has obtained therefrom an order authorising such acquisition.</p> <p>(2.) In the event of an acquiring authority compulsorily taking possession of any land he shall within thirty days of so entering into possession</p>	<p>The Town Planning Act requires providing replacement housing prior to displacement.</p> <p>The State Acquisition of Lands Act allows land to be taken before acquiring a court authorizing the acquisition and requires payment of compensation only after the court order is issued.</p> <p>See Policy Principle 6, Key element 1. A project-specific Land Acquisition and Resettlement Plan includes a Comparison of ADB and World Bank Requirements and Fiji Laws on Land Acquisition Measures which notes that: the Department of Lands has procedures that provide for 75% of compensation to be paid before construction and 25% after construction. Those procedures were not available for this assessment.</p>	<p>the EIA Process Regulations 2007 and the EIA Guidelines 2008 to explicitly stipulate that, in the event a project involves involuntary resettlement, the project must prepare a resettlement plan that establishes mechanisms for providing resettlement entitlements before physical or economic displacement.</p> <p>Amend the State Acquisition of Lands Act and Department of Lands procedures to explicitly stipulate that, in the event of compulsory acquisition of land resulting in involuntary resettlement, the acquiring authority must pay compensation and provide other resettlement entitlements before physical or economic displacement.</p>

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	<p>apply to the Court for an order authorising such taking of possession. (3) The Court shall not grant an order referred to in either of subsections (1) or (2) unless it is satisfied that the taking of possession or acquisition is necessary or expedient for a public purpose.</p> <p>Damages and compensation 7.-(2) Adequate compensation for the taking of possession or the acquisition of property where an order has been granted by the Court under the provisions of section 6 shall be paid to the persons entitled thereto within thirty days of such order being granted.</p>		
Key element (2): Implement the resettlement plan under close supervision throughout project implementation	No corresponding legal provision.	No equivalence	Amend the EMA 2005, the EIA Process Regulations 2007 and the EIA Guidelines 2008 to explicitly stipulate that, in the event a project involves involuntary resettlement, project design must provide for implementing the resettlement plan under close supervision throughout project implementation.
Policy Principle 12: Monitor and assess resettlement outcomes, their impacts on the standards of living of displaced persons, and whether the objectives of the resettlement plan have been achieved by taking into account the baseline conditions and the results of resettlement monitoring. Disclose monitoring reports.			
Key element (1): Monitor and assess resettlement outcomes, their impacts on the standards of living of displaced persons, and whether the objectives of the resettlement plan have been achieved by	No corresponding legal provision.	No equivalence	Amend the EMA 2005, the EIA Process Regulations 2007 and the EIA Guidelines 2008 to explicitly stipulate that, in the event a project involves involuntary resettlement, project design must provide for monitoring and assessing resettlement outcomes, their impacts on the standards of living of displaced persons, and

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taking into account the baseline conditions and the results of resettlement monitoring			whether the objectives of the resettlement plan have been achieved by taking into account the baseline conditions and the results of resettlement monitoring.
Key element (2): Disclose monitoring reports	No corresponding legal provision.	No equivalence	Amend the EMA 2005, the EIA Process Regulations 2007 and the EIA Guidelines 2008 to explicitly stipulate that, in the event a project involves involuntary resettlement, monitoring reports must be disclosed.