

**Comparative Analysis of Papua New Guinea’s Legal Framework and ADB Safeguard Policy Statement:
Indigenous Peoples**

(A) ADB Safeguard Policy Statement	(B) Corresponding Legal Provisions	(C) Extent of Equivalence¹	(D) Recommended Gap-filling Measures
<p>Scope and Triggers: (Definition of Indigenous Peoples) The term Indigenous Peoples is used in a generic sense to refer to a distinct, vulnerable, social and cultural group possessing the following characteristics in varying degrees: (i) self-identification as members of a distinct indigenous cultural group and recognition of this identity by others; (ii) collective attachment to geographically distinct habitats or ancestral territories in the project area and to the natural resources in these habitats and territories; (iii) customary cultural, economic, social, or political institutions that are separate from those of the dominant society and culture; and (iv) a distinct language, often different from the official language of the country or region.A group that has lost collective attachment to geographically distinct habitats or ancestral territories in the project area because of forced severance remains eligible for coverage under this policy.</p>			
<p>Key Element (1) Self-identification as members of a distinct indigenous cultural group and recognition of this identity by others</p>	<p>Constitution 1975² 5. Papua New Guinean ways. We declare our fifth goal to be to achieve development primarily through the use of Papua New Guinean forms of social, political and economic organization. We accordingly call for— (1) a fundamental re-orientation of our attitudes and the institutions of government, commerce, education and religion towards Papua New Guinean forms of participation, consultation, and consensus, and a continuous renewal of the responsiveness of these institutions to the needs and attitudes of the People; and (2) particular emphasis in our economic development to be placed on small-scale artisan, service and business activity; and (3) recognition that the cultural, commercial and ethnic diversity of our people is a positive strength, and for the fostering of a respect for, and appreciation of, traditional ways of life and culture, including language, in all their richness and variety, as well as for a willingness to apply these ways dynamically and creatively for the tasks of development; and (4) traditional villages and communities to remain as viable units of Papua New Guinean society, and for active steps to be taken to improve their cultural, social, economic and ethical quality.</p> <p>Environment Act 2000 amended up to 2014 5. Matters of National Importance.</p>	<p>Full equivalence</p>	

¹ “Full Equivalence” denotes that Papua New Guinea’s (PNG) legal requirement(s) are in complete harmony with the corresponding ADB Safeguard Objective, Scope and Trigger, Policy Principle or Key Element thereof. “Partial Equivalence” denotes that PNG’s legal requirement is in partial harmony with the corresponding ADB Safeguard Objective, Scope and Trigger, Policy Principle or Key Element; and “No Equivalence” denotes that no PNG legal requirement can be found that corresponds to the particular ADB Safeguard Objective, Scope and Trigger, Policy Principle or Key Element.

² The 1975 Constitution of PNG has been amended at least 40 times; the most recent amendment available for this assessment was done in 2014. The text cited in this assessment is from the official version of the Constitution consolidated through amendment 22. Subsequent amendments appear to have been adopted as laws. Those amendments are cited separately in this assessment.

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	<p>All persons exercising powers and functions under this Act shall recognise and provide for the following matters of national importance:-</p> <p>(a) the preservation of Papua New Guinea traditional social structures; and</p> <p>(b) the maintenance of sources of clean water and subsistence food sources to enable those Papua New Guineans who depend upon them to maintain their traditional lifestyles;...</p> <p>Land Act 1996</p> <p>2. Interpretation.</p> <p>(1) In this Act, unless the contrary intention appears -...</p> <p>"citizen" includes -...</p> <p>(c) a customary kinship group; and</p> <p>(d) a customary descent group; and</p> <p>(e) a customary local group or community;...</p> <p>Land Titles Commission Act 1962</p> <p>4. Definitions.</p> <p>(1) In this Act, unless the contrary intention appears-...</p> <p>"native" includes a customary kinship group, customary descent group and customary local group or community;...</p>		
<p>Key Element (2)</p> <p>Collective attachment to geographically distinct habitats or ancestral territories in the project area and to the natural resources in these habitats and territories</p>	<p>See Scope and Triggers, Key element 1.</p>	<p>Full equivalence</p>	
<p>Key Element (3)</p> <p>Customary cultural...institutions that are separate from those of the dominant society and culture</p>	<p>Constitution 1975</p> <p>Sch. 1.2.2. Meaning of certain expressions.</p> <p>(1) In this Constitution or an Organic Law-...</p> <p>"custom" means the customs and usages of indigenous inhabitants of the country existing in relation to the matter in question at the time when and the place in relation to which the matter arises, regardless of whether or not the custom or usage has existed from time immemorial;</p> <p>Environment Act 2000 amended up to 2014</p> <p>5. Matters of National Importance.</p> <p>All persons exercising powers and functions under this Act shall recognise and provide for the following matters of national importance:-</p>	<p>Full equivalence</p>	

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	(a) the preservation of Papua New Guinea traditional social structures; and (b) the maintenance of sources of clean water and subsistence food sources to enable those Papua New Guineans who depend upon them to maintain their traditional lifestyles;...		
<p>Key Element (4) Customary... economic... institutions that are separate from those of the dominant society and culture</p>	<p>Constitution 1975 5. Papua New Guinean ways. We declare our fifth goal to be to achieve development primarily through the use of Papua New Guinean forms of social, political and economic organization. We accordingly call for—... (2) particular emphasis in our economic development to be placed on small-scale artisan, service and business activity;...</p> <p>Environment Act 2000 amended up to 2014 5. Matters of National Importance. All persons exercising powers and functions under this Act shall recognise and provide for the following matters of national importance:-... (b) the maintenance of sources of clean water and subsistence food sources to enable those Papua New Guineans who depend upon them to maintain their traditional lifestyles;...</p>	Full equivalence	
<p>Key Element (5) Customary... social, institutions that are separate from those of the dominant society and culture</p>	<p>Constitution 1975 1. Integral human development. We declare our first goal to be for every person to be dynamically involved in the process of freeing himself or herself from every form of domination or oppression so that each man or woman will have the opportunity to develop as a whole person in relationship with others. We accordingly call for—... (6) development to take place primarily through the use of Papua New Guinean forms of social and political organization.</p> <p>Schedule 2. Sec. 18. Adoption, etc., of Certain Laws. Part 1.—Custom. Sch.2.1. Recognition, etc., of custom. (1) Subject to Subsections (2) and (3), custom is adopted, and shall be applied and enforced, as part of the underlying law. (2) Subsection (1) does not apply in respect of any custom that is, and to the extent that it is, inconsistent with a Constitutional Law or a statute, or repugnant to the general principles of humanity.</p> <p>Environment Act 2000 amended up to 2014 5. Matters of National Importance. All persons exercising powers and functions under this Act shall recognise and provide for the following matters of national importance:-</p>	Full equivalence	

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	<p>(a) the preservation of Papua New Guinea traditional social structures;...</p> <p>(b) the maintenance of sources of clean water and subsistence food sources to enable those Papua New Guineans who depend upon them to maintain their traditional lifestyles;...</p> <p>Land Act 1996 2. Interpretation. (1) In this Act, unless the contrary intention appears - ... "citizen" includes - ... (c) a customary kinship group; and (d) a customary descent group; and (e) a customary local group or community;...</p>		
<p>Key Element (6) Customary...political institutions that are separate from those of the dominant society and culture</p>	<p>See Scope and Triggers, Key element 5.</p>	<p>Full equivalence</p>	
<p>Key Element (7) A distinct language, often different from the official language of the country or region</p>	<p>Constitution 1975 2. Equality and participation. We declare our second goal to be for all citizens to have an equal opportunity to participate in, and benefit from, the development of our country. We accordingly call for—... (11) all persons and governmental bodies to endeavour to achieve universal literacy in Pisin, Hiri Motu or English, and in "tok ples" or "ita eda tano gado"; and...</p> <p>5. Papua New Guinean ways. We declare our fifth goal to be to achieve development primarily through the use of Papua New Guinean forms of social, political and economic organization. We accordingly call for— (3) recognition that the cultural, commercial and ethnic diversity of our people is a positive strength, and for the fostering of a respect for, and appreciation of, traditional ways of life and culture, including language, in all their richness and variety, as well as for a willingness to apply these ways dynamically and creatively for the tasks of development;...</p>	<p>Full equivalence</p>	
<p>Key Element (8) A group that has lost collective attachment to geographically distinct habitats or ancestral territories in the project area because of forced</p>	<p>No corresponding legal provision.</p>	<p>No equivalence</p>	<p>Amend the Environment Act and the EIA Act to explicitly require social impact assessment to identify groups with distinct ethnic and cultural identities in a proposed</p>

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severance remains eligible for coverage under this policy.			project's area of influence who have been displaced from customary lands in the past and ensure that project safeguards apply to them.
Policy Principle 1: Screen early on to determine (i) whether Indigenous Peoples are present in, or have collective attachment to, the project area; and (ii) whether project impacts on Indigenous Peoples are likely.			
<p>Key element (1): Early screening to determine whether Indigenous Peoples are present in, or have collective attachment to, the project area.</p>	<p>Environment Act 2000 amended up to 2014</p> <p>50. Notice to Undertake Environmental Impact Assessment. (1) Where the Director - (a) receives a permit application under Section 60 in relation to a proposed level 3 activity; or (b) has determined that a permit amendment application is made in respect of a major amendment under Section 71(5)(a), he shall serve a notice on the applicant requiring the applicant to undertake an environmental impact assessment in relation to the proposed activity. (2) Where the Director receives a permit application under Section 60 in relation to a proposed level 2 activity which - (a) may result in serious environmental harm; or (b) may have a significant negative impact on a matter of national importance, or both, he shall notify the applicant - (c) that the activity is not accepted as a level 2 activity; and (d) that he requires the applicant to undertake an environmental impact assessment in accordance with this Part in relation to the proposed activity, and advise the Minister to amend the Regulation under Section 42(5) so that the proposed activity is a specified instance of a level 3 activity. (3) Where a notice has been served on an applicant under this section, an application for an environment permit may not be approved in relation to the activity unless an environmental impact assessment has been completed and the Minister has given an approval in principle under Section 59 to the activity.</p> <p>52. Inception Report. (1) Prior to submitting an environmental impact statement, an applicant shall submit an inception report listing the proposed issues to be covered by the environmental impact statement.</p> <p>60. Application for a Permit. (1) An application for an environmental permit shall be made by the person or body who is carrying out or responsible for the activities conducted at the place named in the application.</p> <p>62. Application in Relation to Level 3 Activities.</p>	<p>Partial equivalence</p> <p>The Environment Act requires screening, but does not require screening for potential impacts on groups with distinct ethnic and cultural identities.</p>	<p>Amend the Environment Act, the EIA Act, the Guidelines for Environmental Inception Reports and the Guidelines for EIA and EIS to explicitly require that screening determine whether there are groups with distinct ethnic and cultural identities in a proposed project's area of influence who would be impacted by the project.</p>

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	<p>(1) Where an application for an environment permit relates to a level 3 activity (other than an existing activity), the application shall not be approved until an environmental impact assessment has been conducted in relation to the proposed activity in accordance with Division 3 (Environmental Impact Assessment) and the Minister's approval in principle has been obtained.</p> <p>Environment (Prescribed Activities) Regulation 2002 amended up to 2004</p> <p>2. Level 1 Activity. Level 1 activity is an activity that is not prescribed as Level 2 or Level 3 activity.</p> <p>3. Level 2 Activity. (1) An activity listed in Schedule 1 is a Level 2 activity for the purposes of the Act. (2) An activity that falls into a Level 2 activity is further classified into Category A activity or Category B activity for the purposes of the Act.</p> <p>4. Level 3 Activity. An activity listed in Schedule 2 is a Level 3 activity for the purposes of the Act.</p> <p>5. Amalgamation Of Permit Applications. Where an activity involves two or more categories of Level 2 or Level 3 activity or both, an application for a permit in relation to that activity shall identify all the categories of Level 2 or Level 3 activity that are relevant to the application. Schedule 1 – . Level 2 Activities Schedule 2 – . Level 3 Activities</p>		
<p>Key element (2): Early screening to determine whether project impacts on Indigenous Peoples are likely.</p>	<p>See Policy Principle 1, Key element 1.</p>	<p>Partial equivalence</p> <p>See Policy Principle 1, Key element 1.</p>	<p>See Policy Principle 1, Key element 1.</p>
<p>Policy Principle 2: Undertake a culturally appropriate and gender-sensitive social impact assessment or use similar methods to assess potential project impacts, both positive and adverse, on Indigenous Peoples. Give full consideration to options the affected Indigenous Peoples prefer in relation to the provision of project benefits and the design of mitigation measures. Identify social and economic benefits for affected Indigenous Peoples that are culturally appropriate and gender and intergenerationally inclusive and develop measures to avoid, minimize, and/or mitigate adverse impacts on Indigenous Peoples.</p>			

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<p>Key element (1): Undertake a culturally appropriate and gender-sensitive social impact assessment or use similar methods to assess potential project impacts, both positive and adverse, on Indigenous Peoples.</p>	<p>Environment Act 2000 amended up to 2014 Being an Act to provide for and give effect to the National Goals and Directive Principles and in particular –... (b) to regulate the environment impacts of development activities in order to promote sustainable development of the environment and the economic, social and physical well-being of people by safeguarding the life-supporting capacity of air, water, soil and ecosystems for present and future generations and avoiding, remedying and mitigating any adverse effects of activities on the environment;...</p> <p>Part 2. – Objects and General Environmental Duty. 4. Objects. The objects of this Act are –... (d) to ensure that proper weight is given to both long-term and short-term social, economic, environmental and equity considerations in deciding all matters relating to environmental management, protection, restoration and enhancement;...</p> <p>52. Inception Report. (1) Prior to submitting an environmental impact statement, an applicant shall submit an inception report listing the proposed issues to be covered by the environmental impact statement.</p> <p>Guideline for Preparation of Environmental Inception Report DEC Publication: GL-Env/01/2004. 1st January 2004 Introduction This Information Guideline is intended to assist prospective proponents of development activities in Papua New Guinea to meet their legal obligations under Section 52 of the Environment Act 2000 (the “Act”). The Act requires a person or company that intends to carry out a proposed Level 3 activity to prepare and submit an Environmental Inception Report. This requirement should be fulfilled prior to carrying out a detailed Environmental Impact Assessment and submitting an Environmental Impact Statement.</p> <p>Content of the Environmental Inception Report The applicant should provide detail answers to all areas below that are relevant to the particular proposal. 1. Introduction. Include information on the proposed development activity and its objectives. Provide description of the activity and anticipated bio-physical and socioeconomic impacts as well as potential benefits to be derived from the project.</p> <p>7. Socio-Economic Issues.</p>	<p>Full equivalence</p>	

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	<p>Provide details of all socio-economic issues and their mitigatory measures. At this planning stage of the proposed activity, certain aspects that need to be identified now and then covered more fully in the Environmental Impact Assessment process and documented in the subsequent Environmental Impact Statement are –...</p> <ul style="list-style-type: none"> ▪ define the different “local community” groups that may be affected by the project and should be included in the consultation/negotiation process (e.g., “land/resource owners” versus “downstream” communities). <p>For ease of differentiation, these socio-economic impacts should be separated into two distinct groups (Group A & Group B) to make it clear which impacts will occur as a direct or indirect result of the project. This also assists in the delineation of what mitigative measures can be reasonably addressed under a DEC approval and what areas are the responsibilities of other levels of Government (i.e., National, Provincial and Local Level Governments)....</p> <p>Group (B) Impacts Group (B) impacts are secondary socio-economic effects that are reasonably expected to manifest themselves and are normally best handled by the responsible National, Provincial or Local Level Government agencies.</p> <p>Examples of these issues are -</p> <ul style="list-style-type: none"> ▪ social structure... ▪ migration and population issues,... ▪ historical and cultural issues, etc. 		
<p>Key element (2): Assessment process gives full consideration to options the affected Indigenous Peoples prefer in relation to the provision of project benefits and the design of mitigation measures.</p>	<p>See Policy Principle 2, Key element 1 and Policy Principle 3, Key element 1.</p>	<p>No equivalence</p> <p>The Guidelines for preparing environmental inception reports require describing potential project benefits, but there does not appear to be a legal requirement to consider the options that affected groups with distinct ethnic and cultural identities prefer in relation to project benefits and the design of mitigation measures.</p>	<p>Amend the Environment Act, the EIA Act, the Guidelines for Environmental Inception Reports and the Guidelines for EIA and EIS to stipulate explicitly that the EIA process must give full consideration to options affected groups with distinct ethnic and cultural identities prefer in relation to the provision of project benefits and the design of mitigation measures.</p>

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<p>Key element (3): Assessment process identifies social and economic benefits for affected Indigenous Peoples that are culturally appropriate and gender and intergenerationally inclusive.</p>	<p>See Policy Principle 2, Key element 1 and Policy Principle 3, Key element 1.</p>	<p>No equivalence</p> <p>There does not appear to be a legal requirement for project design to identify social and economic benefits for affected groups with distinct ethnic and cultural identities that are culturally appropriate and gender and inter-generationally inclusive.</p>	<p>Amend the Environment Act, the EIA Act, the Guidelines for Environmental Inception Reports and the Guidelines for EIA and EIS to stipulate explicitly that the EIA process must identify social and economic benefits that are culturally appropriate and gender and inter-generationally inclusive for affected groups with distinct ethnic and cultural identities.</p>
<p>Key element (4): Project preparation process develops measures to avoid, minimize, and/or mitigate adverse impacts on Indigenous Peoples.</p>	<p>Environment Act 2000 amended up to 2014</p> <p>2. Interpretation. In this Act, unless the contrary intention appears –... “environment” includes – (a) ecosystems and their constituent parts including people and communities and including human-made or modified structures and areas;...</p> <p>4. Objects. The objects of this Act are –... (e) to avoid, remedy or mitigate any adverse effects of activities on the environment...</p> <p>6. How the Object of this Act Is To Be Achieved. (2) The process described in Subsection (1) is to be achieved by – (f) requiring persons carrying out activities which cause environmental harm which cannot be adequately reduced or remedied through avoidance or mitigation to pay an environment offset".</p> <p>Guideline for Preparation of Environmental Inception Report DEC Publication: GL-Env/01/2004. 1st January 2004 Content of the Environmental Inception Report The applicant should provide detail answers to all areas below that are relevant to the particular proposal....</p> <p>7. Socio-Economic Issues. Provide details of all socio-economic issues and their mitigatory measures.</p>	<p>Full equivalence</p>	

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	<p>Guideline for Conduct of Environmental Impact Assessment & Preparation of Environmental Impact Statement DEC Publication: GL-Env/02/2004. 1st January 2004 Introduction. The developer must submit an Environmental Impact Statement that provides a full documentation of all environmental and social issues and committing to the employment of relevant mitigation measures in relation to the development activity.</p>		
<p>Policy Principle 3: Undertake meaningful consultations with affected Indigenous Peoples communities and concerned Indigenous Peoples organizations to solicit their participation (i) in designing, implementing, and monitoring measures to avoid adverse impacts or, when avoidance is not possible, to minimize, mitigate, or compensate for such effects; and (ii) in tailoring project benefits for affected Indigenous Peoples communities in a culturally appropriate manner. To enhance Indigenous Peoples' active participation, projects affecting them will provide for culturally appropriate and gender inclusive capacity development. Establish a culturally appropriate and gender inclusive grievance mechanism to receive and facilitate resolution of the Indigenous Peoples' concerns.</p>			
<p>Key element (1): Affected Indigenous Peoples communities and organizations are consulted in a meaningful manner.</p>	<p>Constitution 1975 2. Equality and participation. We declare our second goal to be for all citizens to have an equal opportunity to participate in, and benefit from, the development of our country. We accordingly call for— (1) an equal opportunity for every citizen to take part in the political, economic, social, religious and cultural life of the country; and... (5) equal participation by women citizens in all political, economic, social and religious activities; and (6) the maximization of the number of citizens participating in every aspect of development; and (7) active steps to be taken to facilitate the organization and legal recognition of all groups engaging in development activities; and... (9) every citizen to be able to participate, either directly or through a representative, in the consideration of any matter affecting his interests or the interests of his community; and... 5. Papua New Guinean ways. We declare our fifth goal to be to achieve development primarily through the use of Papua New Guinean forms of social, political and economic organization. We accordingly call for— (1) a fundamental re-orientation of our attitudes and the institutions of government, commerce, education and religion towards Papua New Guinean forms of participation, consultation, and consensus, and a continuous renewal of the responsiveness of these institutions to the needs and attitudes of the People;... 11. Constitution, etc., as Supreme Law. (1) This Constitution and the Organic Laws are the Supreme Law of Papua New Guinea, and, subject to Section 10 (construction of written laws) all acts (whether legislative, executive or judicial) that are inconsistent with them are, to the extent of the inconsistency, invalid and</p>	<p>Partial equivalence The Constitution is directly effective but the Preamble is not a substantive provision. It is therefore not clear whether PNG interprets the provision in the National Goals and Directive Principles which guarantees that every citizen should be able to participate in considering any matter affecting his interests or the interests of his community as applying as if it were law. Under the Environment Act, consultation is mandatory only for level 3 projects.</p>	<p>Amend the Environment Act, the EIA Act, the Guidelines for Environmental Inception Reports and the Guidelines for EIA and EIS to stipulate explicitly that the EIA process must ensure that affected groups with distinct ethnic and cultural identities are consulted in a meaningful manner.</p>

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	<p>ineffective.</p> <p>(2) The provisions of this Constitution and of the Organic Laws are self-executing to the fullest extent that their respective natures and subject- matters permit.</p> <p>Environment Act 2000 amended up to 2014</p> <p>4. Objects. The objects of this Act are –...</p> <p>(i) to...ensure that consultation occurs in relation to decisions under this Act with persons and bodies who are likely to be affected by them;...</p> <p>54. Assessment. (4) The Director for the purposes of assessing a proposed activity under this section may take all or any of the following courses of action: and</p> <p>(a) require any person to provide him with such information as is specified in that requirement; and</p> <p>(b) call a conference of interested persons to discuss the application;</p> <p>(c) require the applicant to undertake further investigations; and</p> <p>(d) appoint a committee to conduct a public inquiry and report its findings to the Director; and</p> <p>(e) make such other enquiries as he thinks fit...</p> <p>61. Application in Relation to Level 2 Activities. (1) Where the Director is satisfied that an application for an environment permit to carry out a level 2 activity received under Section 60 is made in respect of an activity which will not result in serious environmental harm or have a significant negative impact on a matter of national importance, he shall notify the applicant -</p> <p>(a) that the activity is accepted as a level 2 activity; and</p> <p>(b) whether the prescribed notification, referral and consultation is required for the assessment of the application;...</p> <p>64. Notification, Referral and Consultation Requirements. (1) The Regulation shall provide for notification, referral and consultation requirements in relation to applications for environment permits.</p> <p>(2) The requirements shall be -</p> <p>(a) mandatory for applications for environment permits to carry out level 3 activities and for major amendments to environment permits; and</p> <p>(b) at the discretion of the Director for applications for environment permits to carry out level 2 activities and for minor amendments to environment permits.</p> <p>Guideline for Conduct of Environmental Impact Assessment & Preparation of Environmental Impact Statement DEC Publication: GL-Env/02/2004. 1st January 2004</p>		

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	1. Executive Summary or Overview of Proposal ...Information provided in the Executive Summary shall concisely describe the following - <ul style="list-style-type: none"> ▪ details of consultation program undertaken by the applicant, including degree of public interest... 		
Key element (2): The scope of consultations includes design, implementation and monitoring of measures to avoid or otherwise minimize, mitigate or compensate for adverse impacts.	See Policy Principle 3, Key element 1.	Partial equivalence Consultation is required at the design stage only.	Amend the Environment Act, the EIA Act, the Guidelines for Environmental Inception Reports and the Guidelines for EIA and EIS to stipulate explicitly that the scope of consultations includes design, implementation and monitoring.
Key element (3): The Scope of consultations includes tailoring project benefits for affected Indigenous Peoples communities in a culturally appropriate manner.	See Policy Principle 3, Key element 1. Guideline for Conduct of Environmental Impact Assessment & Preparation of Environmental Impact Statement DEC Publication: GL-Env/02/2004. 1st January 2004 1. Executive Summary or Overview of Proposal ...Information provided in the Executive Summary shall concisely describe the following -... <ul style="list-style-type: none"> ▪ description of all benefits to be derived from the project... 2. Purpose of the Development ...This section shall include but not limited to the following -... <ul style="list-style-type: none"> ▪ detail the economic benefits to the...local community being impacted. Guideline for Preparation of Environmental Inception Report DEC Publication: GL-Env/01/2004. 1st January 2004 Content of the Environmental Inception Report The applicant should provide detail answers to all areas below that are relevant to the particular proposal. 1. Introduction. ...Provide description of the...anticipated...socioeconomic impacts as well as potential benefits to be derived from the project.	No equivalence The Guidelines for preparing inception reports and EIS require a description of potential project benefits, but there does not appear to be a legal requirement for consultation to include tailoring project benefits for affected distinct ethnic and cultural groups in a culturally appropriate manner.	Amend the Environment Act, the EIA Act, the Guidelines for Environmental Inception Reports and the Guidelines for EIA and EIS to stipulate explicitly that the scope of consultations includes tailoring project benefits in a culturally appropriate manner for affected groups with distinct ethnic and cultural identities.
Key element (4): Enhance Indigenous Peoples' active participation in projects affecting them will provide for culturally	No corresponding legal provision.	No equivalence	Amend the Environment Act, the EIA Act, the Guidelines for Environmental Inception Reports and the Guidelines for EIA and EIS to stipulate

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appropriate and gender inclusive capacity development.			explicitly that project design must ensure that affected groups with distinct ethnic and cultural identities will actively participate in projects and that the projects will provide for culturally appropriate and gender inclusive capacity development.
Key element (5): Establish a culturally appropriate and gender inclusive grievance mechanism to receive and facilitate resolution of the Indigenous Peoples' concerns.	<p>Environment Act 2000 amended up to 2014 87. Compensation. (13) Where either party is aggrieved by a determination of the Director, they may appeal to the National Court.</p> <p>Land Titles Commission Act 1962 31B. Dispute As To Customary Land, etc. (1) Where a matter before the Commission involves a dispute as to whether any land is or is not customary land, the National Court may, at any time before a decision has been given and on the application of any party to the proceedings before the Commission, order that the matter be removed into the National Court.</p>	<p>Partial equivalence</p> <p>The Environment Act and the Land Titles Commission Act provide for grievance redress only in the case of disputes over compensation for loss of use of, or damage to, land in general and customary land in particular.</p>	Amend the Environment Act, the EIA Act, the Guidelines for Environmental Inception Reports and the Guidelines for EIA and EIS to stipulate explicitly that project design must include a culturally appropriate and gender inclusive grievance mechanism to receive and facilitate resolution of the concerns of affected groups with distinct ethnic and cultural identities.
Policy Principle 4: Ascertain the consent of affected Indigenous Peoples communities to the following project activities: (i) commercial development of the cultural resources and knowledge of Indigenous Peoples; (ii) physical displacement from traditional or customary lands; and (iii) commercial development of natural resources within customary lands under use that would impact the livelihoods or the cultural, ceremonial, or spiritual uses that define the identity and community of Indigenous Peoples. For the purposes of policy application, the consent of affected Indigenous Peoples communities refers to a collective expression by the affected Indigenous Peoples communities, through individuals and/or their recognized representatives, of broad community support for such project activities. Broad community support may exist even if some individuals or groups object to the project activities.			
Key element (1): Consent of affected Indigenous Peoples communities is required for project activities that would include commercial development of cultural resources and	<p>Notification of Preparatory Work on Level-2 and Level-3 Activities. DEC Publication: IB-ENV/01/2004. 1st January 2004. Information Required 10. Status of Negotiations with Relevant Landowner/Resource Owner Groups. Provide details of negotiations (if any) that has taken place between the proponent and the land/resource owners.</p>	<p>No equivalence</p> <p>The Notification requires providing information on any negotiations generally, but there does not appear to be any legal requirement to secure the consent of</p>	Amend the Environment Act, the EIA Act, the Guidelines for Environmental Inception Reports, the Guidelines for EIA and EIS, and the Notification of Preparatory Work on Level-2 and Level-3 Activities to explicitly

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knowledge of Indigenous Peoples.		affected groups with distinct ethnic and cultural identities for project activities that would include commercial development of their cultural resources and traditional knowledge.	stipulate that consent of affected groups with distinct ethnic and cultural identities is required for project activities that would include commercial development of their cultural resources and traditional knowledge.
<p>Key element (2): Consent of affected Indigenous Peoples communities is required for project activities that would include physical displacement of Indigenous Peoples from traditional or customary lands.</p>	<p>See Policy Principle 4, Key element 1.</p> <p>Constitution 1975 54. Special Provision in Relation to Certain Lands. Nothing in Section 37 (protection of the law) or 53 (protection from unjust deprivation of property) invalidates a law that is reasonably justifiable in a democratic society that has a proper regard for human rights and that provides— (a) for the recognition of the claimed title of Papua New Guinea to land where— (i) there is a genuine dispute as to whether the land was acquired validly or at all from the customary owners before Independence Day; and (ii) if the land were acquired compulsorily the acquisition would comply with Section 53(1) (protection from unjust deprivation of property); or (b) for the settlement by extra-judicial means of disputes as to the ownership of customary land that appear not to be capable of being reasonably settled in practice by judicial means; or (c) for the prohibition or regulation of the holding of certain interests in, or in relation to, some or all land by non-citizens.</p> <p>Organic Law on Provincial Governments and Local-level Governments 1998 Part I. – Preliminary. Division 1. – General Principles of Provincial Governments and Local-level Governments. 1. General Principles. (6) All levels of government and governmental bodies shall recognise traditional land rights and other rights and shall ensure that adequate compensation is made for the loss of such rights.</p> <p>Land Act 1996 10. Acquisition of Customary Land by Agreement. (1) Subject to Section II, customary land shall be acquired in accordance with this section and shall be authenticated by such instruments and in such manner as are approved by the Minister. (2) The Minister, on behalf of the State, may acquire customary land on such terms and conditions as are agreed on between him and the customary landowners.</p>	<p>Full equivalence</p>	

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	<p>(3) Subject to Subsection (4), the Minister shall not acquire customary land unless he is satisfied, after reasonable inquiry, that the land is not required or likely to be required by the customary landowners or by persons on whom the land will or may devolve by custom.</p> <p>(4) Where the Minister is satisfied, after reasonable inquiry, that any customary land is not required or likely to be required for a certain period but is of the opinion that the land may be required after that period, he may lease that land from the customary landowners for the whole or a part of that period.</p> <p>Part XX. - Special Provisions Relating to Customary Land.</p> <p>132. Disposal of Customary Land. Subject to Sections 10 and 11. a customary landowner has no power to sell, lease or otherwise dispose of customary land or customary rights otherwise than to citizens in accordance with custom and a contract or agreement made by him to do so is void.</p> <p>133. Declaration of Customary Land. (l) The Minister may, by notice in the National Gazette, declare any Government land or trust land to be customary land and thereupon the land shall for all purposes be deemed to be customary land. (2) In relation to any land the subject of notice under Subsection (l), the land shall, for the purpose of the determination of its ownership, be deemed always to have been customary land. (3) Where the Minister makes a declaration that any trust land is customary land under this section - (a) any trust under which the land was held is determined; and (b) the Custodian for Trust Land - (i) is divested of the duties and responsibilities of the trust; and (ii) is not liable for compensation or damages as a result of the determination of the trust.</p> <p>134. Protection of Interests of Customary Landowners. In connection with any proceedings, matter or thing under this Act, it is the duty of the Custodian for Trust Land to take such action - (a) as seems to him necessary or desirable; or (b) as is ordered by the National Court or the Land Titles Commission, to establish, further or protect the interests of customary landowners.</p> <p>Environment Act 2000 amended up to 2014</p> <p>87. Compensation. (1) Subject to this section, the holder of a permit is liable to pay compensation to...any person with customary rights in...any private land in relation to their several interests, in respect of entry on the land, or occupation of the land by the holder.</p>		

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<p>Key element (3): Consent of affected Indigenous Peoples communities is required for project activities that would include commercial development of natural resources within customary lands under use that would impact the livelihoods or the cultural, ceremonial, or spiritual uses that define the identity and community of Indigenous Peoples.</p>	<p>See Policy Principle 4, Key element 1.</p> <p>Environment Act 2000 amended up to 2014 5. Matters of National Importance. All persons exercising powers and functions under this Act shall recognise and provide for the following matters of national importance:-... (d) the recognition of the role of land-owners in decision-making about the development of the resources on their land;...</p>	<p>No equivalence</p> <p>There does not appear to be any legal provision that requires the consent of affected groups with distinct ethnic and cultural identities for project activities that would include commercial development of natural resources within their customary lands.</p>	<p>Amend the Environment Act, the EIA Act, the Guidelines for Environmental Inception Reports, and the Guidelines for EIA and EIS to explicitly stipulate that consent of affected groups with distinct ethnic and cultural identities is required for project activities that would include commercial development of natural resources within customary lands that would impact their livelihoods or cultural, ceremonial, or spiritual uses that define their identity and community.</p>
<p>Policy Principle 5: Avoid, to the maximum extent possible, any restricted access to and physical displacement from protected areas and natural resources. Where avoidance is not possible, ensure that the affected Indigenous Peoples communities participate in the design, implementation, and monitoring and evaluation of management arrangements for such areas and natural resources and that their benefits are equitably shared.</p>			
<p>Key element (1): Project design avoids, to the maximum extent possible, any restrictions on Indigenous Peoples' access to, and physical displacement of Indigenous Peoples from, protected areas and natural resources.</p>	<p>See Policy Principle 2, Key element 4 and Policy Principle 4, Key element 3.</p>	<p>No equivalence</p> <p>There does not appear to be any legal provision that requires projects to avoid restricting access by groups with distinct ethnic and cultural identities to natural resources or protected areas.</p>	<p>Amend the Environment Act, the EIA Act, the Guidelines for Environmental Inception Reports, and the Guidelines for EIA and EIS to explicitly stipulate that project design must avoid restricting access by groups with distinct ethnic and cultural identities to natural resources or protected areas.</p>
<p>Key element (2): Where avoidance is not possible, project designs ensure that the affected Indigenous</p>	<p>No corresponding legal provision.</p>	<p>No equivalence</p>	<p>Amend the Environment Act, the EIA Act, the Guidelines for Environmental Inception Reports, and the Guidelines</p>

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Peoples communities can participate in the design, implementation, and monitoring and evaluation of management arrangements for such protected areas and natural resources.			for EIA and EIS to explicitly stipulate that project design must ensure that affected groups with distinct ethnic and cultural identities can participate in the design, implementation, and monitoring and evaluation of management arrangements for protected areas and natural resources to which a project restricts their access.
Key element (3): Where avoidance is not possible, project designs ensure that affected Indigenous Peoples communities share equitably in project benefits.	No corresponding legal provision.	No equivalence	Amend the Environment Act, the EIA Act, the Guidelines for Environmental Inception Reports, and the Guidelines for EIA and EIS to explicitly stipulate that project design must ensure that affected groups with distinct ethnic and cultural identities share equitably in project benefits.
Policy Principle 6: Prepare an Indigenous Peoples plan (IPP) that is based on the social impact assessment with the assistance of qualified and experienced experts and that draw on indigenous knowledge and participation by the affected Indigenous Peoples communities. The IPP includes a framework for continued consultation with the affected Indigenous Peoples communities during project implementation; specifies measures to ensure that Indigenous Peoples receive culturally appropriate benefits; identifies measures to avoid, minimize, mitigate, or compensate for any adverse project impacts; and includes culturally appropriate grievance procedures, monitoring and evaluation arrangements, and a budget and time-bound actions for implementing the planned measures.			
Key element (1): When Indigenous Peoples communities are present in the project area, or are likely to be affected by project activities, an Indigenous Peoples Plan (IPP) is prepared.	Environment Act 2000 amended up to 2014 2. Interpretation. In this Act, unless the contrary intention appears –... “environment” includes – (a) ecosystems and their constituent parts including people and communities and including human-made or modified structures and areas;... [following (e)] "environment management plan" means a plan to manage the environmental risks of an activity by - (a) identifying the risks of the activity and the measures which will be taken to mitigate the risks; and	Partial equivalence Under the Environment Act, ‘environment’ includes people and communities, so it is possible that an environment management plan might include provisions for safeguards for affected	Amend the Environment Act, the EIA Act, the Guidelines for Environmental Inception Reports, and the Guidelines for EIA and EIS to explicitly stipulate that, when groups with distinct ethnic and cultural identities are present in a project’s area of influence or are likely to

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	<p>(b) providing for internal and external monitoring and reporting, contingency planning and plans for corrective action; and</p> <p>(c) any other measure necessary or desirable for managing the environmental risks of the activity;...</p> <p>66. Conditions of Environment Permits.</p> <p>(1) Where a permit application has been approved, an environment permit may be granted subject to conditions as the Director considers necessary, including but not limited to conditions containing requirements to do all or any of the following:...</p> <p>(d) preparation and carrying out of an environment management plan;...</p>	groups with distinct ethnic and cultural identities.	be affected, the project proponent must prepare an Indigenous Peoples Plan or equivalent.
<p>Key element (2): The IPP is based on social impact assessment and is prepared by qualified experts.</p>	No corresponding legal provision.	No equivalence	Amend the Environment Act, the EIA Act, the Guidelines for Environmental Inception Reports, and the Guidelines for EIA and EIS to explicitly stipulate that an Indigenous Peoples Plan or the equivalent must be based on social impact assessment and must be prepared by qualified experts.
<p>Key element (3): The IPP draws on indigenous knowledge and participation by the affected Indigenous Peoples communities.</p>	No corresponding legal provision.	No equivalence	Amend the Environment Act, the EIA Act, the Guidelines for Environmental Inception Reports, and the Guidelines for EIA and EIS to explicitly stipulate that an Indigenous Peoples Plan or the equivalent must draw on indigenous knowledge and participation by affected groups with distinct ethnic and cultural identities.
<p>Key element (4): The IPP includes a framework for continued consultation</p>	No corresponding legal provision.	No equivalence	Amend the Environment Act, the EIA Act, the Guidelines for Environmental Inception

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with the affected Indigenous Peoples communities during project implementation.			Reports, and the Guidelines for EIA and EIS to explicitly stipulate that an Indigenous Peoples Plan or the equivalent must include a framework for continued consultation during project implementation with the affected groups with distinct ethnic and cultural identities.
Key element (5): The IPP includes specific measures to ensure that Indigenous Peoples communities receive culturally appropriate benefits.	No corresponding legal provision. See Policy Principle 2, Key elements 2 and 3.	No equivalence	Amend the Environment Act, the EIA Act, the Guidelines for Environmental Inception Reports, and the Guidelines for EIA and EIS to explicitly stipulate that an Indigenous Peoples Plan or the equivalent must include specific measures to ensure that affected groups with distinct ethnic and cultural identities receive culturally appropriate benefits.
Key element (6): The IPP identifies measures to avoid, minimize, mitigate, or compensate for any adverse project impacts.	No corresponding legal provision.	No equivalence	Amend the Environment Act, the EIA Act, the Guidelines for Environmental Inception Reports, and the Guidelines for EIA and EIS to explicitly stipulate that an Indigenous Peoples Plan or the equivalent must identify measures to avoid, minimize, mitigate, or compensate for any adverse project impacts.
Key element (7): The IPP includes a	No corresponding legal provision.	No equivalence	Amend the Environment Act, the EIA Act, the

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culturally appropriate grievance redress mechanism.			Guidelines for Environmental Inception Reports, and the Guidelines for EIA and EIS to explicitly stipulate that an Indigenous Peoples Plan or the equivalent must include a culturally appropriate grievance redress mechanism.
Key element (8): The IPP includes arrangements for monitoring during project implementation and for evaluation of results.	No corresponding legal provision.	No equivalence	Amend the Environment Act, the EIA Act, the Guidelines for Environmental Inception Reports, and the Guidelines for EIA and EIS to explicitly stipulate that an Indigenous Peoples Plan or the equivalent must include arrangements for monitoring during project implementation and for evaluation of results.
Key element (9): The IPP includes a budget and time-bound plan for implementing all required actions.	No corresponding legal provision.	No equivalence	Amend the Environment Act, the EIA Act, the Guidelines for Environmental Inception Reports, and the Guidelines for EIA and EIS to explicitly stipulate that an Indigenous Peoples Plan or the equivalent must include a budget and time-bound plan for implementing all required actions.
Policy Principle 7: Disclose a draft IPP, including documentation of the consultation process and the results of the social impact assessment in a timely manner, before project appraisal, in an accessible place and in a form and language(s) understandable to affected Indigenous Peoples communities and other stakeholders. The final IPP and its updates will also be disclosed to the affected Indigenous Peoples communities and other stakeholders.			

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<p>Key element (1): A draft IPP (including documentation of consultations with Indigenous Peoples communities and social impact assessment results) is publicly disclosed in a timely manner before project appraisal.</p>	<p>See Policy Principle 3, Key element 1 and Policy Principle 6, Key element 1.</p> <p>Guideline for Conduct of Environmental Impact Assessment & Preparation of Environmental Impact Statement DEC Publication: GL-Env/02/2004. 1st January 2004 10. Confidential Information. ...Such information would be classified as “confidential information” and excluded from the Environmental Impact Statement before the document is made available for public review.</p>	<p>No equivalence</p> <p>The Environment Law refers to notification and consultation requirements and the Guideline for conducting EIA and preparing EIS implies that an EIS must be made available for public review, but the legal regime does not appear to have any requirement for disclosing an EIS or any other document associated with the EIA process.</p>	<p>Amend the Environment Act, the EIA Act, the Guidelines for Environmental Inception Reports, and the Guidelines for EIA and EIS to explicitly stipulate that a draft Indigenous Peoples Plan or the equivalent, including documentation of consultations with affected groups with distinct ethnic and cultural identities and social impact assessment results must be publicly disclosed in a timely manner before project appraisal.</p>
<p>Key element (2): The disclosed draft IPP is accessible to, and in a form and language(s) understandable to, affected Indigenous Peoples communities and other stakeholders.</p>	<p>Guideline for Conduct of Environmental Impact Assessment & Preparation of Environmental Impact Statement DEC Publication: GL-Env/02/2004. 1st January 2004 1. Executive Summary or Overview of Proposal Note: The summary should not be more than five pages in length and be written in English, Tok Pisin and the relevant Local Dialect.</p>	<p>No equivalence</p> <p>The Guideline for conducting EIA and preparing EIS implies that an EIS must be made available for public review, but the legal regime does not appear to have any legal requirement for doing so.</p>	<p>Amend the Environment Act, the EIA Act, the Guidelines for Environmental Inception Reports, and the Guidelines for EIA and EIS to explicitly stipulate that a draft Indigenous Peoples Plan or the equivalent must be accessible to, and in a form and language(s) understandable to, affected groups with distinct ethnic and cultural identities and other stakeholders.</p>
<p>Key element (3): The final IPP (and any subsequent updates) also are disclosed to affected Indigenous Peoples communities and other stakeholders.</p>	<p>No corresponding legal provision.</p>	<p>No equivalence</p>	<p>Amend the Environment Act, the EIA Act, the Guidelines for Environmental Inception Reports, and the Guidelines for EIA and EIS to explicitly stipulate that the final</p>

(A) ADB Safeguard Policy Statement	(B) Corresponding Legal Provisions	(C) Extent of Equivalence ¹	(D) Recommended Gap-filling Measures
			Indigenous Peoples Plan or the equivalent must be disclosed to affected groups with distinct ethnic and cultural identities and other stakeholders.
Policy Principle 8: Prepare an action plan for legal recognition of customary rights to lands and territories or ancestral domains when the project involves (i) activities that are contingent on establishing legally recognized rights to lands and territories that Indigenous Peoples have traditionally owned or customarily used or occupied, or (ii) involuntary acquisition of such lands.			
<p>Key element (1): Prepare an action plan for legal recognition of customary rights to lands and territories or ancestral domains when the project involves activities that are contingent on establishing legally recognized rights to lands and territories that Indigenous Peoples have traditionally owned or customarily used or occupied.</p>	<p>Land Titles Commission Act 1962 4. Definitions. (2) For the purposes of this Act, a person who is partly descended from an aboriginal inhabitant of Papua New Guinea and who, by virtue of that descent, acquires rights by custom to or in respect of customary land shall be deemed to be a native in relation to those rights.</p> <p>42. Ownership of Customary Land for Certain Purposes. (1) Subject to the Subsection 2, for the purposes of the Commission, in relation to the ownership of customary land— (a) no account shall be taken of, or reference made to, persons other than persons living at the relevant date; (b) living persons who, under custom, are regarded as owners of customary land shall be treated as the beneficial owners of that land by custom; and (c) without otherwise limiting the discretion of the Commission to inquire into and determine the existence of custom relating to land, where a native exercises a customary right to exclude others from land and that right is recognized and not disputed by other natives, that fact is prima facie evidence that the land is customary land owned by that first-named native. (2) Nothing in Subsection (1) shall operate or be taken to operate so as to defeat any customary rights which exist or may come into existence in favour of any person.</p> <p>Land Act 1996 Part XX. - Special Provisions Relating to Customary Land. 133. Declaration of Customary Land. (1) The Minister may, by notice in the National Gazette, declare any Government land or trust land to be customary land and thereupon the land shall for all purposes be deemed to be customary land. (2) In relation to any land the subject of notice under Subsection (1), the land shall, for the purpose of the determination of its ownership, be deemed always to have been customary land. (3) Where the Minister makes a declaration that any trust land is customary land under this section -</p>	<p>Irrelevant</p> <p>According to the Land Titles Commission Act, customary law determines customary land rights.</p>	<p>None required</p>

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	(a) any trust under which the land was held is determined; and (b) the Custodian for Trust Land - (i) is divested of the duties and responsibilities of the trust; and (ii) is not liable for compensation or damages as a result of the determination of the trust.		
Key element (2): Prepare an action plan for legal recognition of customary rights to lands and territories or ancestral domains when the project involves involuntary acquisition of such areas.	See Policy Principle 8, Key element 1.	Irrelevant See Policy Principle 8, Key element 1.	See Policy Principle 8, Key element 1.
Policy Principle 9: Monitor implementation of the IPP using qualified and experienced experts; adopt a participatory monitoring approach, wherever possible; and assess whether the IPP's objective and desired outcome have been achieved, taking into account the baseline conditions and the results of IPP monitoring. Disclose monitoring reports.			
Key element (1): Monitor implementation of the IPP using qualified and experienced experts.	See Policy Principle 6, Key element 1. Environment Act 2000 amended up to 2014 66. Conditions of Environment Permits. (1) Where a permit application has been approved, an environment permit may be granted subject to conditions as the Director considers necessary, including but not limited to conditions containing requirements to do all or any of the following:... (c) ...at the cost of the permit holder...carrying out a specified monitoring programme and reporting on its progress;...	Partial equivalence It is possible that a condition of approval of an environmental permit might be an EMP, and that an EMP might include safeguards for groups with distinct ethnic and cultural identities. If that is the case, monitoring the EMP might also be required.	Amend the Environment Act, the EIA Act, the Guidelines for Environmental Inception Reports, and the Guidelines for EIA and EIS to explicitly stipulate that qualified and experienced experts must monitor implementation of an Indigenous Peoples Plan or the equivalent.
Key element (2): Include arrangements for participatory monitoring whenever possible.	No corresponding legal provision.	No equivalence	Amend the Environment Act, the EIA Act, the Guidelines for Environmental Inception Reports, and the Guidelines for EIA and EIS to explicitly stipulate that an Indigenous Peoples Plan or the equivalent must include

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			arrangements for participatory monitoring.
Key element (3): Assess whether IPP objectives and desired outcomes are achieved, taking into account baseline conditions and monitoring results.	No corresponding legal provision.	No equivalence	Amend the Environment Act, the EIA Act, the Guidelines for Environmental Inception Reports, and the Guidelines for EIA and EIS to explicitly require assessing whether the objectives and desired outcomes of an Indigenous Peoples Plan or the equivalent are achieved, taking into account baseline conditions and monitoring results.
Key element (4): Monitoring reports are disclosed.	No corresponding legal provision.	No equivalence	Amend the Environment Act, the EIA Act, the Guidelines for Environmental Inception Reports, and the Guidelines for EIA and EIS to explicitly require disclosing monitoring reports.