

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

(A) ADB Safeguard Policy Statement	(B) Corresponding Provisions in National Policy and Legal Instruments ¹	(C) Extent of Equivalence ² Review comments	(D) Recommendations
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	Environmental Impact Assessment Regulations 1989 (EIA Regulations 1989) 1.3 Definition. ... (b) "Effects" means: ... (2) ... Effects and impacts as used in these regulations have the same meaning. Effects may be ... cultural, economic, social, ... whether direct, indirect, or cumulative. (j) "Mitigation" means: (1) Avoiding the impact altogether by not taking a certain action or parts of an action. (2) Minimizing impacts by limiting the degree or magnitude of the action and its implementation. (3) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment. (4) Reducing or eliminating the impact over time by preservation or	Partial equivalence The national EIA Regulations 1989 specify that displacing a large number of people is considered a significant project impact. Kosrae State Development Projects Regulations 2014 do not specifically identify displacing or relocating people as a significant impact requiring an EIS, but do stipulate that an EIS must identify socio-cultural impacts that cannot be avoided. The Pohnpei State Code was not	Amend the EIA Regulations 1989, the Kosrae Development Projects Regulations 2014, and the state codes and any regulations that govern EIA and/or development in Chuuk, Pohnpei and Yap States to explicitly stipulate that displacing or relocating people is a potential project impact which must be avoided wherever possible.

¹ National and state legislation and selected regulations are available online from the Legal Information System of the Federated States of Micronesia: <http://www.fsmlaw.org/fsm/index.htm>. "A strong presumption exists under FSM law for deferring land matters to local land authorities." *Kapas v. Church of Latter Day Saints*, 6 FSM Intrm. 56, 60 (App. 1992). This analysis therefore includes provisions from both national and state constitutions and laws. There are four states in the Federated States of Micronesia: Chuuk, Kosrae, Pohnpei, and Yap. The Chuuk, Kosrae, Pohnpei, and Yap State Constitutions and the Chuuk, Kosrae, and Yap State Codes have provisions on state acquisition of land and compensation. Pohnpei's State Code is not available on the website of the Legal Information System of the Federated States of Micronesia. Selected state regulations available online do not include any that govern state acquisition of land. All text is direct citation from the official versions of the legal instruments except where otherwise indicated by annotation.

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>maintenance operation during the life of the action. (5) Compensating for the impact by replacing or providing substitute resources or environments.</p> <p>Part IV. Initial Assessment. 4.3 Content. An initial assessment shall contain in brief form:...</p> <p>(c) An identification of environmental impact by use of the checklist provided in appendix B; (d) A discussion of ways to mitigate the significant impacts identified, if any;... (f) A determination by the project proponent...as to whether the project...(2) was found to have potentially significant impacts that will be mitigated to the point of insignificance;...</p> <p>Part VI. Contents of Environmental Impact Assessment Statement Environmental Impact Assessment Statements shall contain the information outlined in this part. The recommended format for EIA Statements is as follows: 6.1 Summary. ...The summary shall stress...how to mitigate the significant impacts.</p> <p>Appendix A Examples of Significant Impacts A project will normally have a significant impact on the environment if it will:...</p> <p>17. Displace a large number of people.</p> <p>Appendix B Initial Assessment Environmental Checklist 10. Population. Will the proposed project result in: a. Relocation...of the human population of an area?</p> <p>Kosrae Island Resource Management Authority Regulations For Development Projects amended to 2014 (Kosrae Development Projects Regulations 2014) 1.4 Definitions. As used herein, unless the context otherwise requires,</p>	<p>available for this analysis.</p> <p>The Yap State Code does not include social aspects in its definition of 'environment'.</p> <p>The draft Chuuk State Code does not address social impacts in general or involuntary resettlement as a potential project impact in particular.³</p>	

³ The website of the Legal Information System of the Federated States of Micronesia states that the Chuuk State Code available on the website is a 2001 draft that is updated through 2004. There is no indication that it is in force.

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	<p>the term:..</p> <p>(k) ...Effects and impacts as used in these regulations have the same meaning. Effects may be...cultural, economic, social...whether direct, indirect, or cumulative.</p> <p>(v) "Mitigation" means the reduction of adverse effects of a proposed action by considering the following in sequential order:</p> <p>(1) Avoiding the impact altogether by not taking a certain action or parts of an action (ie. building in another location or not at all);</p> <p>(2) Minimizing impacts by limiting the degree or magnitude of the action and its implementation (ie. scaling down a project size or impact);</p> <p>(3) Rectifying the impact by repairing, rehabilitating or restoring the affected environment (ie. return impacted area to original state or close to it.</p> <p>(4) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action by monitoring and taking corrective measures (ie. repair siltation screens and continually implement ways to reduce impacts);</p> <p>and if none of the others are possible:</p> <p>(5) Compensating for the impact by replacing or providing substitute resources or environments (ie. repair lost function and values of impacted areas).</p> <p>(ee) "Significant impact" is defined in the context of considering the harmful results of a development project on the human and natural environment.</p> <p>In determining whether an impact is significant, the following criteria may be considered:</p> <p>(1) The number of people affected;</p> <p>(2) The duration of an effect (short and long-term);...</p> <p>(5) The relationship to other components of the project or other projects in the region; and</p> <p>(6) The intensity of severity of an impact (irreversible and cumulative).</p> <p>4.1 Decision to Conduct EIS. ...The preparation of an EIS will be required if one or more of the following criteria are applicable to a project proposal:</p> <p>(a) It is reasonably foreseeable that the project will cause a significant environmental impact on:...</p> <p>▪ Social...resources...</p>		

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	<p>▪ Human...welfare...</p> <p>Part 5 Contents of Environmental Impact Statements The recommended format for the EIS is as follows:...</p> <p>5.4 Environmental Impacts of the Proposed Project, Including Alternatives...This section shall:...</p> <p>(d) Identify any significant environmental impacts, either direct or indirect, that cannot be avoided, including:...</p> <p>(3) Socio-cultural impacts...</p> <p>(e) Include appropriate mitigation measures to minimize the significant environmental impacts...</p>		
<p>Key element (2): Minimize involuntary resettlement by exploring project and design alternatives</p>	<p>See Objectives, Key element 1.</p> <p>EIA Regulations 1989 Part III. EIA Process. 3.2 Components of the EIA Process. The environmental impact assessment process is made up of three sequential elements: Identification, Prediction, and Evaluation. (a) Identification. This involves the initial work of characterizing the proposed project and its alternatives, characterizing the existing environment, and developing a reasonable scope for the study. (b) Prediction. During this phase, the potential impacts selected for study are analyzed and quantified for each of the alternatives. (c) Evaluation. This is the culmination of the EIA based on the previous two steps, in which the predicted impacts are summed and compared for...alternatives considered.</p> <p>Part VI. Contents of Environmental Impact Assessment Statement Environmental Impact Assessment Statements shall contain the information outlined in this part. The recommended format for EIA Statements is as follows: 6.1 Summary. ...The summary shall stress...the choice among alternatives...</p> <p>Kosrae Development Projects Regulations 2014 5.4 Environmental Impacts of the Proposed Project, Including Alternatives. The EIS shall present the environmental impacts of the proposed project and alternatives in comparative form, thereby defining</p>	<p>Partial equivalence</p> <p>See Objectives, Key element 1.</p> <p>The national EIA Regulations 1989, the Kosrae State Development Projects Regulations 2014, and the Yap State Code require consideration of alternatives, but the Yap State Code does not include social aspects in its definition of 'environment'.</p>	<p>Amend the EIA Regulations 1989, the Kosrae Development Projects Regulations 2014, and the state codes and any regulations that govern EIA and/or development in Chuuk, Pohnpei and Yap States to explicitly require project proponents to explore project and design alternatives to minimize displacing or relocating people when it cannot be avoided.</p>

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	<p>the issues and providing a clear basis for choice among options by the reviewers. This section shall:</p> <p>(a) Rigorously explore and objectively evaluate all reasonable alternatives that might reduce environmental degradation or use natural resources more efficiently, including the alternative of no action;</p> <p>(b) Describe each alternative in sufficient detail so that the reviewers can evaluate their comparative merits;</p> <p>(c) Identify the project proponent's preferred alternative or alternatives;...</p> <p>Yap State Code §1509. Environmental impact studies. ...(c) The environmental impact statement shall include, but not limited to, statements certifying:...</p> <p>(2) That alternatives to the proposed action have been given consideration;</p> <p>(3) That any adverse environmental effects which cannot be avoided by adopting reasonable alternatives are justified by other substantial benefits to the state...</p>		
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 EIA Regulations 1989, the Kosrae Development Projects Regulations 2014, and the state codes and any regulations that govern EIA and/or development in Chuuk, Pohnpei and Yap States to explicitly incorporate the requirement that any project that displaces or relocates 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	No corresponding legal provision.	No equivalence	Amend the EIA Regulations 1989, the

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standards of living of the displaced poor and other vulnerable groups.			Kosrae Development Projects Regulations 2014, and the state codes and any regulations that govern EIA and/or development in Chuuk, Pohnpei and Yap States to incorporate the requirement that any project that displaces or relocates 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.			
	<p>See Objectives, Key element 1 and Policy Principle 3, Key elements 1 and 3.</p> <p>Chuuk State Constitution⁴ Article XI General Provisions Section 2. The power to take an interest in land may only be exercised by the State Government for a specified purpose of general public interest, as prescribed by statute. Negotiations with the owner for voluntary lease, sale, or exchange shall be fully exhausted and just compensation shall be fully tendered before a taking may occur. The Legislature shall provide for access to the courts to ensure the good faith of the negotiations, the reasonable necessity of the acquisition, and the adequacy of the compensation tendered. Upon the termination of the public use for which an interest in land is involuntarily acquired, the State Government shall return and quit claim the land to the owner or the owner's successor.</p> <p>Constitution of the State of Kosrae⁵</p>	<p>Partial equivalence</p> <p>See Objectives, Key element 1 and Policy Principle 3, Key elements 1 and 3.</p> <p>The safeguards provided by national and state constitutions and statutes cover loss of land and certain improvements on land.</p>	<p>Amend the Kosrae Development Projects Regulations 2014, and the state codes and any regulations that govern EIA and/or development in Chuuk, Pohnpei and Yap States to explicitly identify displacing or relocating people as a potential project impact that would trigger the full EIA process.</p> <p>Amend the EIA Regulations 1989, the Kosrae Development Projects Regulations</p>

⁴ The website of the Legal Information System of the Federated States of Micronesia indicates that 14 proposed amendments to the state Constitution were to be voted on in 2005. There is no indication that those amendments were adopted.

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	<p>Article XI Land and the Environment Section 5. The State Government may acquire interests in private land for a public purpose without the consent of the interested parties. The acquisition may occur upon payment of fair compensation and the State Government's showing that the land and the interest are highly suited to their intended use, that it has made a good faith effort to gain the consent of the interested parties, and that it has made every reasonable effort to avoid substantial hardship to the interested parties in consideration of their personal circumstances. Procedures for the acquisition shall be prescribed by law and shall include the payment by the State Government to the interested parties of the attorney costs and reasonable attorney's fees incurred in connection with the acquisition proceedings.</p> <p>Constitution of Pohnpei Article 12 Land Section 6. Acquisition of Land for Public Purposes. The power to take interests in land may be exercised by the Government of Pohnpei for public purposes. No taking shall occur until after consultation with the local government concerned, good faith negotiation with the owners of such interests, which shall include the offer to exchange the land for land of comparable value, or a payment of just compensation.</p> <p>Constitution of the State of Yap amended 2006 Section 11. The Legislature may provide by general law for the taking of private property for a public purpose. The general law shall provide for just compensation, good faith negotiations for lease or purchase and consultation with appropriate local government prior to the taking, and the manner of the taking.</p> <p>Yap State Code §105. Reservation of power. The power[] of eminent domain...granted to the Legislature by Secretarial Order No. 2969, as amended, is reserved by the Legislature for future enactment of laws pursuant to said Order.</p>		<p>2014, and the state codes and any regulations that govern EIA and/or development in Chuuk, Pohnpei and Yap States to explicitly stipulate that, in the event a proposed project would involve displacing or relocating people, the project proponent 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>
Policy Principle 1: Screen the project early on to identify past, present, and future involuntary resettlement impacts and risks. Determine the scope of			

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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	EIA Regulations 1989 1.2 Purpose. ...these regulations are designed to: (a) Integrate the EIA process into early planning of projects to insure timely consideration of environmental factors and to avoid delays... Part IV. Initial Assessment. 4.3 Content. An initial assessment shall contain in brief form:... (c) An identification of environmental impact by use of the checklist provided in appendix B; Appendix B Initial Assessment Environmental Checklist 10. Population. Will the proposed project result in: a. Relocation...of the human population of an area? Kosrae Development Projects Regulations 2014 Part 2 Initial Environmental Impact Assessment 2.1 Purposes. ... (c) Facilitate environmental assessment early in the design of a project...	Partial equivalence See Objectives, Key element 1. The EIA Regulations 1989 and the Kosrae Development Projects Regulations 2014 require early screening.	Amend the state codes and any regulations that govern EIA and/or development in Chuuk, Pohnpei and Yap States to explicitly stipulate that, when a proposed project would involve displacing or relocating people, the EIA screening process must include screening for resettlement as a potential project impact.
Key element (2): Identify past, present, and future involuntary resettlement impacts and risks	No corresponding legal provision.	No equivalence	Amend the EIA Regulations 1989, the Kosrae Development Projects Regulations 2014, and the state codes and any regulations that govern EIA and/or development in Chuuk, Pohnpei and Yap States to explicitly include in the EIA/development approval process a requirement that, in the event a proposed project would displace or relocate people,

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			project proponents must identify past, as well as present and future, involuntary resettlement impacts and also identify 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 resettlement impacts and risks	No corresponding legal provision.	No equivalence	Amend the EIA Regulations 1989, the Kosrae Development Projects Regulations 2014, and the state codes and any regulations that govern EIA and/or development in Chuuk, Pohnpei and Yap States to explicitly include in the EIA/development approval process a requirement that, in the event a proposed project would displace or relocate people, project proponents must 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.
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.			

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<p>Key element (1): Carry out meaningful consultations with affected persons, host communities, and concerned nongovernment organizations</p>	<p>EIA Regulations 1989 Part V. Comprehensive Environmental Impact Assessment. 5.2 EIA Procedures and Public Involvement. When the project proponent determines that an EIA Statement will be required for a project, it shall follow the procedures contained in this section.... (a) Upon determining that an ETA [sic] will be required for a project, the project proponent shall send a notice that an ETA [sic] is being conducted to all public agencies responsible for resources affected by the project, and/or having jurisdiction by law with respect to the project, or to any person or organization that may be concerned with the impacts of the project. This notice shall request comments on the proposed scope for the ETA [sic]... (d) After completing the draft ETA [sic] Statement, copies shall be provided to...persons having special interest or expertise with respect to any environmental impact involved and any others notified pursuant to subpart 5.2(a)... (f) The project proponent shall provide at least a 30 day period for public agencies and the general public to review and comment on a draft ETA [sic] Statement. The project proponent shall grant a reasonable extension of the comment period if the request is justified and received before the close of the comment period. (g) A public hearing on the draft EIA Statement shall be held if the project proponent or Secretary determines it would facilitate public involvement or it is anticipated that there will be substantial controversy. Adequate notice shall be given of all public hearings in a timely manner. (h) The project proponent and Secretary shall evaluate comments received from persons who reviewed the draft EIA Statement or attended a public hearing...</p> <p>Part VI. Contents of Environmental Impact Assessment Statement Environmental Impact Assessment Statements shall contain the information outlined in this part. The recommended format for EIA Statements is as follows: 6.5 Organizations and Persons Consulted. The EIA Statement shall contain...a listing of organizations and persons who were consulted.</p> <p>Kosrae Development Projects Regulations 2014 3.7 Public Information Meeting. The Program Office reviews the application and determines if a public information meeting is needed</p>	<p>Partial equivalence</p> <p>See Objectives, Key element 1.</p> <p>Under the EIA Regulations 1989, a project proponent must notify anyone who may be concerned with the impacts of a project that they may submit comments, and must also provide opportunity to comment on a draft EIA, but a public hearing on a draft EIA is discretionary.</p> <p>The Kosrae Development Projects Regulations 2014 provide for consultation if a project will have a significant impact, but displacing or relocating people is not identified as a significant impact and consultation is discretionary, not mandatory.</p> <p>Yap State requires making an EIA available to the public, but does not provide for consultation.</p>	<p>Amend the EIA Regulations 1989, the Kosrae Development Projects Regulations 2014, and the state codes and any regulations that govern EIA and/or development in Chuuk, Pohnpei and Yap States to make public consultations mandatory in the event a proposed project would displace or relocate people. Such consultations must involve all affected persons, including host communities, and concerned nongovernment organizations.</p>

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	<p>whenever it is reasonably foreseeable that a project will result in a significant impact to the environment. KIRMA will ensure that all affected persons will have the opportunity to provide input, written or oral, for the project.</p> <p>Yap State Code⁶ Title 18. Conservation & Resources Division 4: Environmental Protection Chapter 15: Environmental Quality Protection §1509. Environmental impact studies. (a) ...Copies of the environmental impact assessment study shall be made available to the...public for inspection and copying.</p>		
<p>Key element (2): Inform all displaced persons of their entitlements and resettlement options</p>	<p>See Policy Principle 2, Key element 1.</p> <p>FSM Code 2014 Title 56 Government Property Acquisition Chapter 2 Real Property Acquisition § 202. Property-acquisition procedures—Negotiations. In acquiring real property the Government will, to the greatest extent practicable: (1) make every reasonable effort to acquire real property expeditiously through negotiation; (2) before the initiation of negotiations, have the real property appraised</p>	<p>Partial equivalence</p> <p>The FSM Code 2014 provides for negotiating with property owners who are to be displaced, “to the greatest extent practicable”.</p> <p>The Chuuk State Code (2001 Draft) contains relevant provisions.⁷</p>	<p>Amend the EIA Regulations 1989, the Kosrae Development Projects Regulations 2014, and the state codes and any regulations that govern EIA and/or development in Chuuk, Pohnpei and Yap States to explicitly include in the</p>

⁶ The version of the Yap State Code available on the website of the Legal Information System of the Federated States of Micronesia is a draft unofficial version of the 1987 Code, updated through Yap State Law (YSL) 5-23. As of 2000, the 1987 Code was being updated by the Yap State Code Commission.

⁷ The relevant provisions of the draft Chuuk State Code are:

Title 24. Land Management
 Chapter 11 Public Lands and Condemnation
 Subchapter B Condemnation
 § 1550. Appearance or answer; waiver of defenses.
 After proper service:

(1) If a defendant has no objection or defense to the taking of his property, he may serve a notice of appearance designating the property in which he claims to be interested. Thereafter, he shall receive notice of all proceedings affecting it; or
 (2) If a defendant has any objection or defense to the taking of this property, he shall serve his answer within 20 days after the service of notice upon him. The answer shall identify the property in which he claims to have an interest, state the nature and extent of the interest claimed, and state all his objections and defenses to the taking his property. A defendant waives all defenses and objections not so presented, but at the trial of the issue of just compensation, whether or not he has previously appeared or answered, he may present evidence as to the amount of the compensation to be paid for his property, and he may share in the distribution of the award. No other pleading or motion asserting any additional defense or objection shall be allowed.

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	and give the owner or his representative an opportunity to accompany the appraiser during the inspection of the property; (3) before the initiation of negotiations, establish an amount which is believed to be just compensation for the real property, and make a prompt written offer to acquire the property for that amount....		EIA/development approval process a requirement that, in the event a proposed project would displace or relocate people, project proponents 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 and evaluation of resettlement programmes	No corresponding legal provision.	No equivalence	Amend the EIA Regulations 1989, the Kosrae Development Projects Regulations 2014, and the state codes and any regulations that govern EIA and/or development in Chuuk, Pohnpei and Yap States to explicitly include in the EIA/development approval process a requirement that, in the event a proposed project would displace or relocate people, project proponents must ensure the participation of displaced persons in planning, implementation, and monitoring and evaluation of resettlement programmes.
Key element (4): Ensure the participation in	No corresponding legal provision.	No equivalence	Amend the EIA Regulations 1989, the Kosrae Development

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<p>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</p>			<p>Projects Regulations 2014, and the state codes and any regulations that govern EIA and/or development in Chuuk, Pohnpei and Yap States to explicitly include in the EIA/development approval process a requirement that, in the event a proposed project would displace or relocate people, project proponents must ensure the participation in consultations of vulnerable groups, especially those below the poverty line, the landless, the elderly, women and children, and those without legal title to land</p>
<p>Key element (5): Establish a grievance redress mechanism to receive and facilitate resolution of the affected persons' concerns</p>	<p>Constitution of the Federated States of Micronesia amended 1990 Article XI Judicial Section 11. Court decisions shall be consistent with this Constitution, Micronesian customs and traditions, and the social and geographical configuration of Micronesia. In rendering a decision, a court shall consult and apply sources of the Federated States of Micronesia.</p> <p>EIA Regulations 1989 Part VII. Appeal from Agency Action. Appeals from determinations of the Secretary shall be taken pursuant to procedures set forth in the Federated States of Micronesia Administrative Procedures Act...</p> <p>Code of the Federated States of Micronesia 2014 Edition (FSM Code 2014) Title 17 Administrative Procedure</p>	<p>Partial equivalence</p> <p>The EIA Regulations 1989, the FSM Code 2014, and the Kosrae Development Projects Regulations 2014 provide for administrative appeals but there is no provision for a project-specific grievance redress mechanism for project-affected persons.</p> <p>The Chuuk State Constitution provides for access to the courts in cases involving government taking of private land and the Chuuk State Code (2001 Draft) contains provisions</p>	<p>Amend the EIA Regulations 1989, the Kosrae Development Projects Regulations 2014, and the state codes and any regulations that govern EIA and/or development in Chuuk, Pohnpei and Yap States to explicitly include in the EIA/development approval process a requirement that, in the event a proposed project would displace</p>

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	<p>§ 108. Hearings. (1) Any person aggrieved by agency action is entitled to a hearing before the highest administrative official of the department or office of which the agency is a part. Hearings shall be initiated by the submission of a petition to such administrative official.</p> <p>Chuuk State Constitution Article XI General Provisions Section 2. ...The Legislature shall provide for access to the courts to ensure the good faith of the negotiations, the reasonable necessity of the acquisition, and the adequacy of the compensation tendered...</p> <p>Kosrae Development Projects Regulations 2014 Part 3 Development Review Permit Process 3.10 Appeal Process. The project proponent can appeal KIRMA's decision to impose permit conditions or to disapprove a permit application by stating in writing, within 30 days of KIRMA's action, the</p>	relevant to disputes over compensation. ⁸	or relocate people, project proponents must include a project-specific grievance redress mechanism.

⁸ The relevant provisions of the draft Chuuk State Code are:

Title 24. Land Management

Chapter 11 Public Lands and Condemnation

Subchapter B Condemnation

§ 1537. Arbitration of compensation disputes.

Arbitration of compensation shall be:

(1) When the government does not agree to pay the sum demanded or the parties or any of them do not accept the deposit made by the government, either before or after the settlement of the question of title, the sum to be paid by the government shall be determined by arbitration...

(4) The award shall be determined by a majority of the arbitrators after viewing the property involved and considering such evidence concerning the value of the property as may be submitted by interested parties.

(5) The award shall be made within one month after the arbitrators have entered upon their duties, or have been called on to act by notice in writing from any party unless the court shall set a different time. The chairman of the arbitrators shall, within the time limit for the award, file the determination of the amount of the award with the court, enclosed in a sealed cover endorsed with the names of the parties to the arbitration. The court shall open the award and forward a copy of the same to the parties.

(6) The decision of the arbitrators shall be final if notice of appeal is not served within the time limited by law.

§ 1538. Appeal.

Appeals from arbitration shall be taken by the following:

(1) Decisions of the arbitrators or Claims Board may be appealed to the trial division of the Chuuk State Supreme High Court by any person or by the government....

(4) Following its decision, the court shall enter an order that upon the payment of the required sum of the government shall be the lawful owner of the property. The order shall bind all persons.

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	reasons for the appeal. The Authority will review the project in light of these concerns and make a final decision within 30 days.		
Key element (6): Support the social and cultural institutions of displaced persons and their host population	No corresponding legal provision.	No equivalence	Amend the EIA Regulations 1989, the Kosrae Development Projects Regulations 2014, and the state codes and any regulations that govern EIA and/or development in Chuuk, Pohnpei and Yap States to explicitly include in the EIA/development approval process a requirement that, in the event a proposed project would displace or relocate people, project proponents must prepare a resettlement plan that provides for supporting the social and cultural institutions of displaced persons and their host populations.
Key element (7): Where involuntary resettlement impacts and risks are highly complex and sensitive, compensation and resettlement decisions should be preceded by a social	No corresponding legal provision.	No equivalence	Amend the EIA Regulations 1989, the Kosrae Development Projects Regulations 2014, and the state codes and any regulations that govern EIA and/or development in Chuuk, Pohnpei and Yap States to explicitly include in the EIA/development approval process a

(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>
preparation phase.			requirement that, in the event of highly complex and sensitive involuntary resettlement, project proponents must carry out a social preparation phase before developing any plans for resettlement and compensation.
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 livelihoods of all displaced persons through land-based resettlement strategies when affected livelihoods are land based, where possible, or cash compensation at	FSM Code 2014 Title 56 Government Property Acquisition Chapter 1 Eminent Domain § 103. Definitions. As used in this chapter, the following terms shall have the meanings set forth below: (1) "Eminent domain" is the right of the central Government or a district legal entity as may be provided for by district law in accordance with the provisions of this chapter to condemn property for public use or purposes and to appropriate the ownership and possession of such property for such public use upon paying the owner a just compensation to be ascertained according to the law. (2) "Public use" shall be construed to cover any use determined by the High Commissioner to be a public use.	Partial equivalence Pohnpei State is the only jurisdiction that constitutionally makes compensation in land an option, as well as cash compensation. The Constitutions of Chuuk, Kosrae and Yap States, as well as the FSM Code 2014, provide for cash compensation. The Chuuk State Code (2001 Draft) contains provisions relevant to cash compensation. ¹⁰	Amend the FSM Code 2014 to explicitly require the government to offer to persons whose land is being taken the option to exchange the land being taken for land of comparable value, as well as the option of cash compensation. Amend the EIA Regulations 1989, the Kosrae Development Projects Regulations

¹⁰ The relevant provisions of the draft Chuuk State Code are:

Title 24. Land Management

Chapter 11 Public Lands and Condemnation

§ 1506. Eminent Domain.

The government of the State of ~~Truk~~ Chuuk may take by judicial powers any land, or interest therein with the State of ~~Truk~~ Chuuk when necessary or advantageous for public purposes. Payment of fair and adequate compensation shall be made to those deprived of their land or interest therein by such taking.

§ 1531. Complaint; Declaration of taking before judgment; Deposit.

The procedure for the complaint; and deposit shall be:

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replacement value for land when the loss of land does not undermine livelihoods	<p>§ 105. Failure of parties to appear at proceedings. In the event of the failure of any of the parties specified in section 104 of this chapter to appear in the proceedings, the Court shall, nevertheless, proceed to fix the amount of compensation and order that the amount be paid by the Government, without interest, to the rightful claimants on demand at any time within seven years from the date of the final judgment.</p> <p>§ 108. Establishment of value of land. (1) Upon a prima facie showing by the Attorney General or the District attorney that the property desired to be purchased by the Government is for public use, the Court must hear the parties, and establish a fair value for the land....</p> <p>§ 110. Final judgment. The record of the final judgment in the proceedings shall state the particular land or interest in land which the Government has acquired</p>		2014, and the state codes and any regulations that govern EIA and/or development in Chuuk, Pohnpei and Yap States to explicitly include in the EIA/development approval process a requirement that, in the event a proposed project would displace or relocate people, project proponents must prepare a resettlement plan that provides for restoring

(1) When the Governor desires to acquire any land easement right-of-way, or other property interest, he may file a complaint in the trial division of the Chuuk State Supreme Court ~~high court~~ and, at any time before judgment, may file a declaration of taking signed by the People's Attorney, declaring that the lands or other property rights described in the complaint are taken for the use of the government. The declaration of taking shall contain, or have annexed thereto:...

(e) A statement of the sum of money estimated by the government to be just compensation for the land to be taken.

(2) When the government desires to enter into the possession of the property immediately after the service of notice, the notice shall state any damage sustained by the occupant, lessee, lessor or owner of such property by reason of the immediate occupancy by the government which shall be included in the compensation to the aggrieved parties. When the required notice has not been given and the government desires to enter into the possession of the property at any time during the proceedings and before the rights of the parties and the amount of compensation are determined, the complaint shall also specify the date upon which the government enters into the possession of the property.

(3) Along with the declaration of taking, the government shall deposit in the court, to the use of the persons entitled thereto, the amount of the estimated compensation stated in the declaration.

(4) Upon the application of the parties in interest, the court may order that the money deposited in the court, or any part thereof, be paid forthwith or on account of the just compensation to be awarded in the proceeding. If the compensation finally awarded for the lands, or any parcel thereof, shall exceed the amount of the money so received by any person entitled, the court shall enter judgment against the government for the amount deficiency. If the compensation finally awarded to defendant is less than the amount which has been paid to him, the court shall enter judgment against him and in favor of the government for the over payment.

§ 1532. Vesting of title, and of right to compensation.

Upon the filing of the declaration of taking and the deposit...the right to just compensation for the lands shall vest in the persons entitled thereto.

§ 1533. Determination and award of compensation.

Just compensation shall be ascertained and awarded in the court proceeding and established by the judgment of the court. The judgment shall include as part of the just compensation awarded, interest at the rate of three percent per annum on the amount finally awarded as the value of the property as of the date of taking, from said date to the date of payment; but interest shall not be allowed on so much thereof as shall have been paid into the court...

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	<p>and the compensation to be paid to the defendants and the Clerk of Courts shall issue a certificate of title in accordance with the judgment.</p> <p>Chapter 2 Real Property Acquisition § 202. Property-acquisition procedures—Negotiations. In acquiring real property the Government will, to the greatest extent practicable:...</p> <p>(2) before the initiation of negotiations, have the real property appraised and give the owner or his representative an opportunity to accompany the appraiser during the inspection of the property; (3) before the initiation of negotiations, establish an amount which is believed to be just compensation for the real property, and make a prompt written offer to acquire the property for that amount. In no event will the just compensation offered be less than the Government's approved appraisal of the fair market value of such property. At the time the Government makes an offer to purchase real property, the owner of that property will be provided with a written statement of the basis for the amount estimated to be just compensation.</p> <p>§ 203. Property valuation. In determining just compensation for the property any increase or decrease of the fair market value caused by the public improvement for which the property is acquired prior to the date of valuation will be disregarded (other than that caused by physical deterioration).</p> <p>§ 204. Government actions required before owner surrenders property. (3) If the acquisition of only part of the property will leave its owner with an uneconomic remnant, offer to acquire that remnant.</p> <p>Chuuk State Constitution Article XI General Provisions Section 2. The power to take an interest in land may only be exercised by the State Government for a specified purpose of general public interest, as prescribed by statute....just compensation shall be fully tendered before a taking may occur. The Legislature shall provide for access to the courts to ensure...the adequacy of the compensation tendered.</p> <p>Constitution of the State of Kosrae Article XI Land and the Environment Section 5. The State Government may acquire interests in private land</p>		<p>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>

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	<p>for a public purpose without the consent of the interested parties. The acquisition may occur upon payment of fair compensation...Procedures for the acquisition shall be prescribed by law and shall include the payment by the State Government to the interested parties of the attorney costs and reasonable attorney's fees incurred in connection with the acquisition proceedings.</p> <p>Kosrae State Code⁹ Chapter 36. State Acquisition of Private Land Section 6.3601. Initiation of Court Action. At the Governor's direction, the Attorney General initiates an action to acquire an interest in private land on behalf of the State by: (1) Filing with the Court a complaint naming the State of Kosrae as plaintiff and naming as defendants all interested parties which are all persons holding or claiming legal interest in the land or interest sought by the State. The complaint contains...the State's determination of fair compensation to the defendants for the interest sought...</p> <p>Section 6.3602. Procedure. The Kosrae State Court Rules of Civil Procedure govern the procedure for actions brought under this chapter except:...</p> <p>(4) The costs of an action brought under this chapter, including costs incurred by the Court in the valuation of an interest in land, are paid by the State.</p> <p><u>Section 6.3603. Trial.</u> (1) Except upon a motion showing extraordinary circumstances, the issues at the trial of an action brought under this chapter are limited to the following:...</p> <p>(d) The reasonableness of the State's efforts to avoid substantial hardship to the interested parties in consideration of their personal circumstances; and (e) The fairness of the compensation offered to each defendant for the interest in land sought by the State.</p> <p>(2) The State is entitled to a presumption in its favor on each [of] the trial issues with regard to any defendant who fails to timely respond to the State's written request</p>		

⁹ The version of the Kosrae State Code available on the website of the Legal Information System of the Federated States of Micronesia is an unofficial version, as updated by the legislative counsel staff of the Kosrae State Legislature on the basis of Kosrae State Law 7-166.

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	<p>(3) Where ownership of the interest in land to be acquired by the State is in dispute and substantial hardship is not found as to any defendant involved in the dispute, the Court may establish the fair compensation for the interest...</p> <p>Section 6.3604. Valuation of Land. The Court uses any available equitable means of determining the fair value of the interest in land to be acquired by the State.</p> <p>Constitution of Pohnpei Article 12 Land Section 6. Acquisition of Land for Public Purposes. The power to take interests in land may be exercised by the Government of Pohnpei for public purposes. No taking shall occur until after...good faith negotiation with the owners of such interests, which shall include the offer to exchange the land for land of comparable value, or a payment of just compensation.</p> <p>Constitution of the State of Yap amended 2006 Section 11. The Legislature may provide by general law for the taking of private property for a public purpose. The general law shall provide for just compensation...</p>		
<p>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</p>	No corresponding legal provision.	No equivalence	<p>Amend the EIA Regulations 1989, the Kosrae Development Projects Regulations 2014, and the state codes and any regulations that govern EIA and/or development in Chuuk, Pohnpei and Yap States to explicitly include in the EIA/development approval process a requirement that, in the event a proposed project would displace or relocate people, project proponents must prepare a resettlement plan that</p>

(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>
			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.
<p>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</p>	<p>FSM Code 2014 Title 56 Government Property Acquisition Chapter 2 Real Property Acquisition § 205. Property-acquisition procedures—Government conduct proscribed. (1) In acquiring real property, to the greatest extent practicable the Government will not:... (b) if acquired property is rented to the former owner or tenant for a short term or subject to termination by the Government on short notice, charge a rent that is more than the fair rental value of the property to a short term occupant... § 206. Interest in improvements. In acquiring any interest in real property the Government will acquire at least an equal interest in all building structures or other improvements located on that real property which will be removed or which will be adversely affected by the completed project. § 207. Payments for improvements by tenants. (1) In the case of the building structure or other improvements owned by the tenant on real property acquired for a project to which this chapter applies the Government will, subject to subsection (2) of this section, pay the tenant the larger of: (a) the fair market value of the improvement (as established by the government's appraiser), assuming its removal from the property; or (b) the enhancement to the fair market value of the real property. (2) Payments will also be made for improvements that are damaged as well as those which must be removed. (3) A payment may not be made to a tenant under subsection (1) of this section unless; (a) the tenant, in consideration for the payment, assigns, transfers, and releases to the Government all his rights, title, and interest in the improvements; (b) the owner of the land involved disclaims any interest in the</p>	<p>Partial equivalence</p> <p>The FSM Code 2014 provides for compensation for buildings and other improvements, but does not provide for compensation for other assets that cannot be replaced.</p> <p>The Constitution of Kosrae provides generally that, in the case of taking land, the government must make every reasonable effort to avoid substantial hardship to the interested parties in consideration of their personal circumstances, but does not guarantee compensation for assets that cannot be replaced.</p>	<p>Amend the EIA Regulations 1989, the Kosrae Development Projects Regulations 2014, and the state codes and any regulations that govern EIA and/or development in Chuuk, Pohnpei and Yap States to explicitly include in the EIA/development approval process a requirement that, in the event a proposed project would displace or relocate people, project proponents 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.</p>

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	<p>improvements; or (c) the payment is not duplicated by any payment otherwise authorized by law or regulation.</p> <p>§ 208. Expenses incidental to transfer of title. As soon as possible after real property has been acquired, the Government shall reimburse the owner for: (1) recording fees, taxes, and similar expenses incidental to conveying the real property to the agency; and (2) the penalty cost for prepayment of any preexisting recorded mortgage entered into in good faith and encumbering the real property.</p> <p>Constitution of the State of Kosrae Article XI Land and the Environment Section 5. The State Government may acquire interests in private land for a public purpose without the consent of the interested parties. The acquisition may occur upon payment of fair compensation and the State Government's showing that...it has made every reasonable effort to avoid substantial hardship to the interested parties in consideration of their personal circumstances....</p>		
<p>Key element (4): Improve, or at least restore, the livelihoods of all displaced persons through additional revenues and services through benefit sharing schemes where possible</p>	No corresponding legal provision.	No equivalence	<p>Amend the EIA Regulations 1989, the Kosrae Development Projects Regulations 2014, and the state codes and any regulations that govern EIA and/or development in Chuuk, Pohnpei and Yap States to explicitly include in the EIA/development approval process a requirement that, in the event a proposed project would displace or relocate people, project proponents must prepare a resettlement plan that provides for improving,</p>

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			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 socially into their host communities, and extension of project benefits to host	FSM Code 2014 Title 56 Chapter 3 Relocation Assistance § 302. Definitions. As used in this chapter: (1) “Agency” means any department, agency, or instrumentality of the Trust Territory ¹¹ or of a political subdivision of the Trust Territory, or any department, agency, or instrumentality of two or more political subdivisions of the Trust Territory. (2) “Business” means any lawful activity, excepting a farm operation, conducted primarily: (a) for the purchase, sale, lease, and rental of personal and real property, and for the manufacture, processing, or marketing of products, commodities, or any other personal property; (b) for the sale of services to the public; or (c) by a nonprofit organization. (3) “Displaced person” means any person who, on or after the effective date of this chapter, moves from real property or moves his personal property from real property, as a result of the acquisition of such real property in whole or in part, or as the result of the written order of the acquiring agency to vacate real property for a program or project undertaken by an agency, and, solely for the purpose of sections 303, 304, and 308 of this chapter, as a result of the acquisition of or as the result of the written order of the acquiring agency to vacate other real property, on which such person conducts a business or farm operation, for such program or project.	Partial equivalence The FSM Code 2014 provides for comparable, rather than better, replacement housing and reasonable access to places of employment. Neither the FSM Code 2014 nor the state codes provide for any of the requirements of this key element.	Amend the EIA Regulations 1989, the Kosrae Development Projects Regulations 2014, and the state codes and any regulations that govern EIA and/or development in Chuuk, Pohnpei and Yap States to explicitly include in the EIA/development approval process a requirement that, in the event a proposed project would displace or relocate people, project proponents must prepare a resettlement plan that provides physically and economically displaced persons with secured tenure to relocation land, better housing at resettlement sites with

¹¹ The islands in the Federated States of Micronesia were part of a United Nations Trust Territory that became fully self-governing in free association with the United States in 1990. See The United Nations and Decolonization: <http://www.un.org/en/decolonization/selfdet.shtml>

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communities	<p>(4) "Farm operation" means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including copra, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.</p> <p>(5) "Person" means any individual, partnership, corporation, or association.</p> <p>§ 306. Replacement housing for homeowners.</p> <p>(1) In addition to payments otherwise authorized by this chapter, the agency shall make an additional payment not in excess of \$15,000 to any displaced person who is displaced from a dwelling actually owned and occupied by the displaced person for not less than 180 days prior to the initiation of negotiations for the acquisition of the property.</p> <p>(2) The additional payment shall include the following elements:</p> <p>(a) the amount, if any, which when added to the acquisition cost of the dwelling acquired, equals the reasonable cost of a comparable replacement dwelling which is a decent, safe, and sanitary dwelling according to contemporary community standards and adequate to accommodate such displaced person, reasonably accessible to public services and places of employment, and available on the private market. All determinations required to carry out this paragraph shall be determined by regulations issued pursuant to section 310 of this chapter;</p> <p>(b) the amount, if any, which will compensate the displaced person for any increased interest costs which the person is required to pay for financing the acquisition of a comparable replacement dwelling. The amount shall be paid only if the dwelling acquired was encumbered by a bona fide mortgage which was a valid lien on the dwelling for not less than 180 days prior to the initiation of negotiations for the acquisition of the dwelling. The amount shall be equal to the excess in the aggregate interest and other debt service costs of that amount of the principal of the mortgage on the replacement dwelling which is equal to the unpaid balance of the mortgage on the acquired dwelling over the remainder term of the mortgage on the acquired dwelling reduced to discounted present value. The discount rate shall be determined by regulations issued pursuant to section 310 of this chapter; and</p> <p>(c) reasonable expenses incurred by the displaced person for evidence of title, recording fees, and other closing costs incident to the purchase of the replacement dwelling, but not including prepaid expenses.</p> <p>(3) The additional payment authorized by this section shall be made only to a displaced person who purchases and occupies a replacement</p>		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.

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	<p>dwelling which is decent, safe, and sanitary according to contemporary community standards not later than the end of the one year period beginning on the date on which he receives final payment of all costs of the acquired dwelling, or on the date on which he moves from the acquired dwelling, whichever is the later date.</p> <p>§ 307. Replacement housing for tenants and certain others. (1) In addition to amounts otherwise authorized by this chapter, an agency shall make a payment to or for any displaced person displaced from any dwelling not eligible to receive a payment under section 306 of this chapter, which dwelling was actually and lawfully occupied by the displaced person for not less than 90 days prior to the initiation of negotiations for acquisition of such dwelling. (2) The payment shall be either: (a) the amount necessary to enable the displaced person to lease or rent, for a period not to exceed four years, a decent, safe, and sanitary dwelling according to contemporary community standards and adequate to accommodate the person in areas not generally less desirable in regard to public utilities and public and commercial facilities, and reasonably accessible to his place of employment, but not to exceed \$4,000; or (b) the amount necessary to enable the person to make a down payment (including incidental expenses described in section 306(2)(c) of this chapter) on the purchase of a decent, safe, and sanitary dwelling according to contemporary community standards and adequate to accommodate such person in areas not generally less desirable in regard to public utilities and public and commercial facilities, but not to exceed \$4,000 except that if the amount exceeds \$2,000, the person must equally match any amount in excess of \$2,000 in making the down payment.</p>		
<p>Key element (2): Provide physically and economically displaced persons with transitional support and development assistance, such as land</p>	<p>FSM Code 2014 Title 56 Chapter 3 Relocation Assistance § 303. Relocation payments for actual moving and related expenses. If an agency acquires real property for public use, it shall make fair and reasonable relocation payments to displaced persons and businesses as required by this chapter for: (1) actual reasonable expenses in moving himself, his family, business, farm operation, or other personal property; (2) actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, but not to exceed</p>	<p>Partial equivalence</p> <p>The FSM Code 2014 provides for specified transitional support.</p> <p>The state codes do not provide for any of the requirements of this key element.</p>	<p>Amend the EIA Regulations 1989, the Kosrae Development Projects Regulations 2014, and the state codes and any regulations that govern EIA and/or development in Chuuk, Pohnpei and Yap States to explicitly include in the</p>

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development, credit facilities, training, or employment opportunities	<p>an amount equal to the reasonable expenses that would have been required to relocate such property, as determined by the agency; and (3) actual reasonable expenses in searching for a replacement business or farm.</p> <p>§ 304. Displaced person's option to receive moving and dislocation allowances. Any displaced person eligible for payments under section 303 of this chapter who is displaced from a dwelling and who elects to accept the payments authorized by this section in lieu of the payments authorized by section 303 of this chapter may receive a moving expense allowance, determined according to a schedule established by the agency, not to exceed \$300, and a dislocation allowance of \$200.</p> <p>§ 305. Displaced person's option to receive payment based on business earnings. (1) Any displaced person eligible for payment under section 303 of this chapter, who is displaced from his place of business or from his farm operation and who elects to accept the payment authorized by this section in lieu of the payment authorized by section 303 of this chapter, may receive a fixed payment in an amount equal to the average annual net earnings of the business or farm operation, except that such payment shall not be less than \$2,500 nor more than \$10,000. (2) In the case of a business no payment shall be made under this section unless the agency is satisfied that the business: (a) cannot be relocated without a substantial loss of its existing patronage; and (b) is not a part of a commercial enterprise having a least one other establishment not being acquired by the agency, which is engaged in the same or similar business. (3) For purposes of this section, the term "average annual net earnings" means one-half of any net earnings of the business or farm operation before Federal, State, and local income taxes during the two taxable years immediately preceding the taxable year in which the business or farm operation moves from the real property acquired for such project, or during such other period as the agency determines to be more equitable for establishing such earnings, and includes any compensation paid by the business or farm operation to the owner, his spouse, or his dependents during such period.</p> <p>§ 308. Relocation assistance advisory programs.</p>		EIA/development approval process a requirement that, in the event a proposed project would displace or relocate people, project proponents must prepare a resettlement plan that provides physically and economically displaced persons with transitional support and development assistance, such as land development, credit facilities, training, or employment opportunities.

(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>
	<p>(1) Whenever the acquisition of real property for a program or project undertaken by an agency will result in the displacement of any person on or after the effective date of this chapter, the agency shall provide a relocation assistance advisory program for displaced persons which shall offer the services prescribed in subsection (2) of this section. If the agency determines that any person occupying property immediately adjacent to the real property acquired is caused substantial economic injury because of the acquisition, it may offer the person relocation advisory services under the program.</p> <p>(2) Each relocation assistance program required by subsection (1) of this section shall include such measures, facilities, or services as may be necessary or appropriate in order to:</p> <p>(a) determine the needs of displaced persons, business concerns, and nonprofit organizations for relocation assistance;</p> <p>(b) assist owners of displaced businesses and farm operations in obtaining and becoming established in suitable business locations or replacement farms;</p> <p>(c) supply information concerning programs of the Federal, State, and local governments offering assistance to displaced persons and business concerns;</p> <p>(d) assist in minimizing hardships to displaced persons in adjusting to relocation; and</p> <p>(e) secure, to the greatest extent practicable, the coordination of relocation activities with other project activities and other planned or proposed governmental actions in the community or nearby areas which may affect the carrying out of the relocation program.</p>		
<p>Key element (3): Provide physically and economically displaced persons with civic infrastructure and community services</p>	<p>FSM Code 2014 § 309. Assurance of availability of standard housing. Whenever the acquisition of real property for a program or project undertaken by an agency will result in the displacement of any person on or after the effective date of this chapter, the agency shall assure that, within a reasonable period of time prior to displacement, there will be available in areas not generally less suitable in regard to public utilities and public and commercial facilities and at rents or prices within the financial means of the families and individuals displaced, dwellings which are decent, safe, and sanitary according to contemporary community standards and which are equal in number to the number of and available to displaced persons who require dwellings and which are reasonably accessible to the places of employment of said persons, except that regulations issued pursuant to section 310 of this chapter may prescribe situations when these assurances may be waived.</p>	<p>Partial equivalence</p> <p>The FSM Code 2014 provides for specified civic infrastructure.</p> <p>The state codes do not provide for any of the requirements of this key element.</p>	<p>Amend the EIA Regulations 1989, the Kosrae Development Projects Regulations 2014, and the state codes and any regulations that govern EIA and/or development in Chuuk, Pohnpei and Yap States to explicitly include in the EIA/development approval process a requirement that, in the event a proposed</p>

(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>
			project would displace or relocate people, project proponents must prepare a resettlement plan that provides physically and economically displaced persons with 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 EIA Regulations 1989, the Kosrae Development Projects Regulations 2014, and the state codes and any regulations that govern EIA and/or development in Chuuk, Pohnpei and Yap States to explicitly include in the EIA/development approval process a requirement that, in the event a proposed project would displace or relocate people, project proponents 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.

(A) ADB Safeguard Policy Statement	(B) Corresponding Provisions in National Policy and Legal Instruments¹	(C) Extent of Equivalence² Review comments	(D) Recommendations
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 EIA Regulations 1989, the Kosrae Development Projects Regulations 2014, and the state codes and any regulations that govern EIA and/or development in Chuuk, Pohnpei and Yap States to explicitly include in the EIA/development approval process a requirement that, in the event a proposed project would displace or relocate people, project proponents must prepare a resettlement plan that provides physically and economically displaced persons in rural areas with legal and affordable access to land and resources.
Key element (3): in urban areas provide them with appropriate income sources and legal and affordable access to adequate housing	See Policy Principle 4, Key element 1.	Partial equivalence See Policy Principle 4, Key element 1.	Amend the EIA Regulations 1989, the Kosrae Development Projects Regulations 2014, and the state codes and any regulations that govern EIA and/or development in Chuuk, Pohnpei and Yap States to explicitly include in the EIA/development approval process a requirement that, in the event a proposed

(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>
			project would displace or relocate people, project proponents must prepare a resettlement plan that provides physically and economically displaced persons in urban areas with appropriate income sources and legal and affordable access to adequate housing.
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): Develop procedures in a transparent, consistent, and equitable manner if land acquisition is through negotiated settlement	FSM Code 2014 Title 56 Government Property Acquisition Chapter 2 Real Property Acquisition § 202. Property-acquisition procedures—Negotiations. In acquiring real property the Government will, to the greatest extent practicable: (1) make every reasonable effort to acquire real property expeditiously through negotiation; (2) before the initiation of negotiations, have the real property appraised and give the owner or his representative an opportunity to accompany the appraiser during the inspection of the property; (3) before the initiation of negotiations, establish an amount which is believed to be just compensation for the real property, and make a prompt written offer to acquire the property for that amount.... § 205. Property-acquisition procedures—Government conduct proscribed. (1) In acquiring real property, to the greatest extent practicable the Government will not:.... (d) defer negotiations...; or (e) take any course of action to compel an owner to agree to a price for his property. Chuuk State Constitution Article XI General Provisions Section 2. ...Negotiations with the owner for voluntary lease, sale, or	Full equivalence	

(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>
	<p>exchange shall be fully exhausted...shall be fully tendered before a taking may occur. The Legislature shall provide for access to the courts to ensure the good faith of the negotiations...</p> <p>Constitution of the State of Kosrae Article XI Land and the Environment Section 5. ...The acquisition may occur upon...the State Government's showing that...it has made a good faith effort to gain the consent of the interested parties, and that it has made every reasonable effort to avoid substantial hardship to the interested parties in consideration of their personal circumstances. Procedures for the acquisition shall be prescribed by law...</p> <p>Kosrae State Code Section 6.3601. Initiation of Court Action. At the Governor's direction, the Attorney General initiates an action to acquire an interest in private land on behalf of the State by:...</p> <p>(2) Filing with the Court a Statement of Compliance showing the State's compliance with the requirements of Title 11, Section 11.103. The Statement of Compliance contains:...</p> <p>(a) A summary of the State's efforts to Identify and contact all interested parties and any information or belief the State has regarding unknown or uncontacted interested parties;</p> <p>(b) A summary of the State's effort to acquire the interest in private land with the consent of the interested parties, including efforts to avoid substantial hardship to the interested parties in consideration of their personal circumstances...</p> <p><u>Section 6.3603. Trial.</u> (1) Except upon a motion showing extraordinary circumstances, the issues at the trial of an action brought under this chapter are limited to the following:...</p> <p>(c) The State's good faith in its efforts to gain the consent of the interested parties;...</p> <p>Constitution of Pohnpei Article 12 Land Section 6. Acquisition of Land for Public Purposes. ...No taking shall occur until after...good faith negotiation with the owners of such interests...</p>		

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	Constitution of the State of Yap amended 2006 Section 11. ...The general law shall provide for...good faith negotiations for lease or purchase...prior to the taking, and the manner of the taking.		
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 EIA Regulations 1989, the Kosrae Development Projects Regulations 2014, and the state codes and any regulations that govern EIA and/or development in Chuuk, Pohnpei and Yap States to explicitly include in the EIA/development approval process a requirement that, in the event a proposed project would displace or relocate people, project proponents must prepare a resettlement plan that ensures that physically and economically displaced persons 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 EIA Regulations 1989, the Kosrae Development Projects Regulations 2014, and the state codes and any

(A) ADB Safeguard Policy Statement	(B) Corresponding Provisions in National Policy and Legal Instruments ¹	(C) Extent of Equivalence ² Review comments	(D) Recommendations
			regulations that govern EIA and/or development in Chuuk, Pohnpei and Yap States to explicitly include in the EIA/development approval process a requirement that, in the event a proposed project would displace or relocate people, project proponents must prepare a resettlement plan that ensures that physically and economically displaced persons without titles to land or any recognizable legal rights to land 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 The EIA Regulations 1989 specify that displacing a large number of people is a significant project impact, but do not require preparing a resettlement plan in such cases. See Objectives, Key element 1.	Amend the EIA Regulations 1989, the Kosrae Development Projects Regulations 2014, and the state codes and any regulations that govern EIA and/or development in Chuuk, Pohnpei and Yap States to explicitly include in the EIA/development approval process a requirement that, in the

(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>
			event a proposed project would displace or relocate people, project proponents 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 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 See Policy Principle 8. The Kosrae Development Projects Regulations 2014 require assessment of social impacts and require disclosing a draft EIS, but there is no explicit requirement to consider involuntary resettlement as a project impact and no requirement to prepare and disclose a resettlement plan.	Amend the EIA Regulations 1989, the Kosrae Development Projects Regulations 2014, and the state codes and any regulations that govern EIA and/or development in Chuuk, Pohnpei and Yap States to explicitly include in the EIA/development approval process a requirement that, in the event a proposed project would displace or relocate people, project proponents must prepare and disclose a draft resettlement plan, before

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			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 See Policy Principle 8 and Policy Principle 9, Key element 1.	Amend the EIA Regulations 1989, the Kosrae Development Projects Regulations 2014, and the state codes and any regulations that govern EIA and/or development in Chuuk, Pohnpei and Yap States to explicitly provide that, in the event a proposed project would displace or relocate people, the project proponent must disclose a 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 involuntary resettlement as part of a development project or programme	No corresponding legal provision.	No equivalence	Amend the EIA Regulations 1989, the Kosrae Development Projects Regulations 2014, and the state codes and any regulations that govern EIA and/or development in Chuuk, Pohnpei and Yap States to explicitly include in the

(A) ADB Safeguard Policy Statement	(B) Corresponding Provisions in National Policy and Legal Instruments¹	(C) Extent of Equivalence² Review comments	(D) Recommendations
			EIA/development approval process a requirement to conceive and execute involuntary resettlement 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 EIA Regulations 1989, the Kosrae Development Projects Regulations 2014, and the state codes and any regulations that govern EIA and/or development in Chuuk, Pohnpei and Yap States to explicitly include in the EIA/development approval process a requirement to include the full costs of resettlement in the presentation of 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 EIA Regulations 1989, the Kosrae Development Projects Regulations 2014, and the state codes and any regulations that govern EIA and/or development approval in Chuuk, Pohnpei and Yap States to explicitly require project proponents to document the alternative of implementing the involuntary resettlement

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			component of a project as a stand-alone operation and to justify the choice of the alternative selected.
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): Pay compensation and provide other resettlement entitlements before physical or economic displacement	FSM Code 2014 Title 56 Government Property Acquisition Chapter 1 Eminent Domain § 111. Immediate possession procedure—Generally. (1) In the event the Government desires to enter into immediate possession of the property, the Government shall file a declaration of taking and pay a sum of money which is considered to be the fair value of the property to the Clerk of Courts... (3) Payment to the Clerk of Courts in accordance with this section shall entitle the Government to take immediate possession of the land. § 112. Immediate possession procedure—Possession after proceedings commenced. (1) In the event the Government determines that it requires immediate possession of the property after eminent domain proceedings have been commenced, but before the rights of the parties and the amount of compensation are determined, a declaration of taking shall be filed in the	Partial equivalence The FSM Code 2014 and the Chuuk and Kosrae Constitutions provide for paying compensation before displacement. The Chuuk State Code (2001 Draft) contains provisions relevant to payment of compensation. ¹²	Amend the state codes and any regulations that govern EIA and/or development approval in Chuuk, Kosrae, Pohnpei and Yap States to explicitly include in the EIA/development approval process a requirement that, in the event a proposed project would displace or relocate people, project proponents must prepare a resettlement plan that provides for paying

¹² The relevant provisions of the draft Chuuk State Code are:

Title 24. Land Management

Chapter 11 Public Lands and Condemnation

Subchapter B Condemnation

§ 1545. Order for distribution of deposit.

Following the filing of the complaint, the court may order such distribution of any deposit of the estimated compensation for the property taken as the facts warrant.

§ 1557. Deposit; distribution.

Distribution of deposit:

(1) The government shall deposit with the court the money required by this Chapter.

(2) The court and attorneys shall expedite the proceedings for the distribution of the money so deposited and for the ascertainment and payment of just compensation.

(3) If the compensation finally awarded to any defendant exceeds the amount which has been paid to him on distribution of the deposit, the court shall enter judgment against the plaintiff and in favor of that defendant for the deficiency. If the compensation finally awarded to any defendant is less than the amount, which has been paid to him, the court shall enter judgment against him and in favor of the government for the overpayment.

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	<p>Court and a sum of money which is considered to be the fair value of the land shall be paid to the Clerk of Courts.</p> <p>Chapter 2 Real Property Acquisition § 204. Government actions required before owner surrenders property. (1) Before requiring any owner to surrender possession of any real property, the Government will, to the greatest extent practicable: (a) pay the agreed purchase price; or (b) deposit with the Court, for the benefit of the owner, an amount not less than the Government's approved appraisal of the fair market value of the property; or (c) pay the amount of the award of compensation in condemnation proceedings for the property.</p> <p>§ 205. Property-acquisition procedures—Government conduct proscribed. (1) In acquiring real property, to the greatest extent practicable the Government will not:.... (d) defer...deposit of funds in court for use of the owner...</p> <p>Chuuk State Constitution Article XI General Provisions Section 2.just compensation shall be fully tendered before a taking may occur.</p> <p>Constitution of the State of Kosrae Article XI Land and the Environment Section 5. ...The acquisition may occur upon payment of fair compensation...</p>		<p>compensation and providing other resettlement entitlements before physical or economic displacement.</p>
<p>Key element (2): Implement the resettlement plan under close supervision throughout project implementation</p>	<p>No corresponding legal provision.</p>	<p>No equivalence</p>	<p>Amend the EIA Regulations 1989, the Kosrae Development Projects Regulations 2014, and the state codes and any regulations that govern EIA and/or development in Chuuk, Pohnpei and Yap States to explicitly include in the EIA/development</p>

(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>
			approval process a requirement that, in the event a proposed project would displace or relocate people, project proponents must prepare a resettlement plan and implement that 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 taking into account the baseline conditions and the results of resettlement monitoring	No corresponding legal provision.	No equivalence	Amend the EIA Regulations 1989, the Kosrae Development Projects Regulations 2014, and the state codes and any regulations that govern EIA and/or development in Chuuk, Pohnpei and Yap States to explicitly include in the EIA/development approval process a requirement that, in the event a proposed project would displace or relocate people, project proponents must prepare a resettlement plan that includes commitments and mechanisms for monitoring and assessing resettlement outcomes, their impacts on the standards of living

(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>
			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.
Key element (2): Disclose monitoring reports	No corresponding legal provision.	No equivalence	Amend the EIA Regulations 1989, the Kosrae Development Projects Regulations 2014, and the state codes and any regulations that govern EIA and/or development in Chuuk, Pohnpei and Yap States to explicitly include in the EIA/development approval process a requirement that, in the event a proposed project would displace or relocate people, project proponents must prepare a resettlement plan that includes commitments and mechanisms for monitoring and for disclosing all monitoring reports.