



# Technical Assistance Consultant's Report

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Project Number: 44140  
Date: September 2012

## TA 7566-REG: Strengthening and Use of Country Safeguard Systems

Subproject: Country Safeguard Review (Papua  
New Guinea)

### REVISED FINAL REPORT

Prepared by Patricia Moore, International Legal Specialist

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Asian Development Bank

**STRENGTHENING COUNTRY SAFEGUARD SYSTEMS**

**TA No. 7566 (REG)**

**PNG: COUNTRY SAFEGUARDS REVIEW**

**Revised Final Report**

**Patricia Moore  
International Legal Specialist  
September 2012**

## ACRONYMS

ADB	Asian Development Bank
CBD	Convention on Biological Diversity
CSS	Country safeguards systems
DEC	Department of Environment and Conservation
EIA	Environmental impact assessment
EIR	Environmental inception report
EIS	Environmental impact statement
MEA	Multilateral environmental agreement
PNG	Papua New Guinea
RETA	Regional Technical Assistance

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## I. KNOWLEDGE SUMMARY

1. This study was contracted under Regional Technical Assistance (RETA) 7655: Strengthening Country Safeguards Systems, PNG: Country Safeguards Review. This RETA aims to strengthen PNG's country safeguards system (CSS) in the near term. It will support analysis of PNG's CSS and preparation of an action plan to enhance its capacity on environmental safeguards in the energy (hydropower and transmission) sector. The RETA is the first phase of TA support to strengthen CSS capacity. It is expected that the agreed consolidated action plan will form the basis for a next phase of TA.

2. The purpose of the legal analysis component of this RETA is to enhance understanding of gaps in policies and legislation that govern aspects of environmental safeguards, to highlight opportunities for improving PNG's country systems for environmental assessment, and to propose a plan to fill the gaps and take advantage of the opportunities. The Terms of Reference for the legal analysis are in Appendix 1.

3. This report presents, in its Appendixes:

- (i) the draft legal inventory;
- (ii) the draft Legal Analysis Matrix for PNG; and
- (iii) an action plan for implementing the recommendations in the Draft Legal Analysis Matrix.

4. The draft legal inventory that was the basis for the review includes a total of 45 documents. Thirty-four of those – including the Constitution – are legal instruments in force, of which 18 contain relevant provisions; one draft law was unavailable for review. Of 10 policy documents, seven – five of which are in effect and two of which are drafts – deal with issues that are relevant for CSS and three were unavailable for review. See Appendix 2.

5. The draft Legal Analysis Matrix illustrates that PNG law, regulations and guidelines are fully equivalent with 23 (33.3%) of the 69 key elements of ADB's environmental safeguards principles, including most of the basic components of environmental impact assessment. National laws and regulations are partially equivalent with 30 (43.5%), and not equivalent with 16 (23.2%). See Appendix 3.

6. The recommendations for bringing PNG law and regulations into full equivalence with ADB environmental safeguards principles are set out in the draft Legal Analysis Matrix and the proposed Action Plan, which is presented in Appendix 4. The proposed Action Plan recommends a comprehensive review of the Environment Act 2000 and its regulations with a view to ensuring that other laws and regulations are harmonized with the Act and its regulations. Responsibilities and timing for the activities proposed in the Action Plan will be determined when the consolidated Action Plan for both legal issues and capacity building is prepared.

## II. INTRODUCTION

7. The Asian Development Bank's (ADB) developing member countries (DMC) have developed country safeguards systems (CSS) according to their individual needs and capacities. Following the adoption of its Safeguard Policy Statement in June 2009, ADB initiated implementation of a RETA that aims to improve the implementation of environmental and social safeguards through strengthened CSS in DMCs. A preliminary assessment of CSS, carried out in five DMCs, identified common areas and gaps relative to ADB's safeguard requirements for Environmental Assessment. Filling these gaps requires changes to policy, law, regulations, and/or administrative rules and decrees, improved clarity of procedures, and capacity building to support these formal changes and their implementation. The ultimate objective is to enable ADB to selectively use each DMC's own CSS in lieu of ADB safeguards, once CSS are equivalent and acceptable.

8. RETA 7655 has two components: a legal analysis of country systems and an assessment of implementation capacity. This report deals with the legal analysis.

9. The outcome of RETA 7655 will be a common framework for strengthening the legal and regulatory framework and implementation capacity for environmental safeguard systems in the energy (hydropower and transmission) sector in PNG.

10. The scope of work assigned to the international legal specialist includes: an inventory of binding legal instruments and non-binding policy statements, guidelines and procedures; a matrix that sets out the elements of the legal analysis; and an action plan for implementing the recommendations resulting from the legal analysis that will be consolidated with the recommendations resulting from the assessment of implementation capacity. The Terms of Reference are in Appendix 1.

## III. OUTPUTS

11. The international legal specialist was responsible for three outputs:

- i. a legal inventory;
- ii. a Legal Analysis Matrix;
- iii. an Action Plan.

12. The legal inventory is attached as Appendix 1. It was developed in collaboration with the National Safeguard Specialist (Legal), with input from national lawyers and representatives of the national energy sector. It includes a total of 45 documents. Thirty-seven of those – including the Constitution – are legal instruments in force, of which 21 contain provisions relevant to environmental safeguards; one draft law was unavailable for review. Of 11 policy documents, eight – six of which are in effect and two of which are drafts – deal with issues that are relevant for CSS; four were unavailable for review.

13. The Legal Analysis Matrix, attached as Appendix 3, illustrates that PNG law and regulations are fully equivalent with 23 (33.3%) of the 69 key elements of ADB's environmental safeguards principles, partially equivalent with 30 (43.5%), and not equivalent with 16 (23.2%).

14. The key elements of ADB's Safeguard Policy Statement with which PNG law and regulations are fully equivalent are:

	<b>Key element</b>	<b>Cross-reference to Legal Analysis Matrix</b>
(i)	Ensure the environmental soundness and sustainability of projects	Key Element (1)
(ii)	Support the integration of environmental considerations into the project decision-making process	Key Element (1)
(iii)	Trigger environmental safeguards if a project is likely to have potential environmental risks	Scope and Triggers
(iv)	Screen as early as possible	Policy Principle 1, Key element (1)
(v)	Determine the appropriate extent and type of environmental assessment so that studies undertaken are commensurate with the potential risks	Policy Principle 1, Key element (2)
(vi)	Identify physical impacts	Policy Principle 2, Key element (4)
(vii)	Identify biological impacts	Policy Principle 2, Key element (5)
(viii)	Identify socio-economic impacts	Policy Principle 2, Key element (6)
(ix)	Identify impacts on physical cultural resources	Policy Principle 2, Key element (7)
(x)	Avoid adverse impacts	Operational Principle 4, Key element (1)
(xi)	Minimize and/or mitigate adverse impacts	Operational Principle 4, Key element (2)
(xii)	Implement the polluter pays principle	Operational Principle 4, Key element (13)
(xiii)	Carry out meaningful consultation with affected people and facilitate their informed participation	Policy Principle 5, Key element (1)
(xiv)	Facilitate the informed participation of affected people	Policy Principle 5, Key element (2)
(xv)	Ensure women's participation in consultation <i>(Full equivalence at the constitutional level. Partial equivalence at the level of the Environment Act.)</i>	Policy Principle 5, Key element (3)
(xvi)	Ensure that stakeholder views are made known to decision-makers and taken into account	Policy Principle 5, Key element (6)
(xvii)	Disclose a draft environmental assessment including the environmental management plan	Policy Principle 6, Key element (1)
(xviii)	Disclose a draft environmental assessment in a form and language understandable to affected people	Policy Principle 6, Key element (4)
(xix)	Monitor the effectiveness of the environmental management plan	Policy Principle 7, Key element (2)
(xx)	Disclose monitoring reports	Policy Principle 7, Key element (4)
(xxi)	No significant conversion or degradation without appropriate mitigation	Policy Principle 8, Key element (7)
(xxii)	Provide workers with safe and healthy working conditions	Operational Principle 10, Key element (1)
(xxiii)	Conserve physical cultural resources and avoid destroying or damaging them	Operational Principle 11, Key element (1)

15. PNG law and regulations are fully equivalent with most of the basic components of environmental impact assessment: screening; initial evaluation; assessment of impacts; public consultation; mitigation measures; and monitoring. At the policy level generally, there is clear direction that strategies and projects must consider environmental sustainability. Non-binding guidelines for the electricity industry go so far as to specify that keeping the environment “intact” should be the objective of all operations in the industry.

16. The key elements with which PNG law and regulations are partially equivalent are:

	<b>Key element</b>	<b>Cross-reference to Legal Analysis Matrix</b>
(i)	Identify indirect impacts	Policy Principle 2, Key element (1)
(ii)	Identify cumulative impacts	Policy Principle 2, Key element (2)
(iii)	Identify impacts in the context of the project’s area of influence	Policy Principle 2, Key element (8)
(iv)	Examine alternatives	Policy Principle 3, Key element (1)
(v)	Document the rationale for selecting a particular alternative	Policy Principle 3, Key element (2)
(vi)	Consider the no-project alternative	Policy Principle 3, Key element (3)
(vii)	Prepare an environmental management plan that includes the proposed mitigation measures	Operational Principle 4, Key element (5)
(viii)	Prepare an environmental management plan that includes the proposed monitoring requirements	Operational Principle 4, Key element (6)
(ix)	Prepare an environmental management plan that includes the proposed reporting requirements	Operational Principle 4, Key element (7)
(x)	Ensure women’s participation in consultation <i>(Full equivalence at the constitutional level. Partial equivalence at the level of the Environment Act.)</i>	Policy Principle 5, Key element (3)
(xi)	Involve non-governmental organizations (NGOs) in consultations	Policy Principle 5, Key element (4)
(xii)	Involve stakeholders early in the project preparation process	Policy Principle 5, Key element (5)
(xiii)	Continue consultations with stakeholders throughout project implementation	Policy Principle 5, Key element (7)
(xiv)	Disclose a draft environmental assessment, including the environmental management plan, in a timely manner prior to appraisal	Policy Principle 6, Key element (2)
(xv)	Disclose a draft environmental assessment in an accessible place	Policy Principle 6, Key element (3)
(xvi)	Disclose the final environmental assessment and its updates to affected people	Policy Principle 6, Key element (5)
(xvii)	Implement the environmental management plan	Policy Principle 7, Key element (1)
(xviii)	Document monitoring results, including development and implementation of corrective actions	Policy Principle 7, Key element (3)



	<b>Key element</b>	<b>Cross-reference to Legal Analysis Matrix</b>
(xix)	Do not implement project activities in critical habitats unless there are no measurable adverse impacts	Policy Principle 8, Key element (1)
(xx)	Do not implement project activities in critical habitats unless there is no reduction in the population of any recognized endangered species	Policy Principle 8, Key element (2)
(xxi)	Do not implement project activities in critical habitats unless any lesser impacts are mitigated	Policy Principle 8, Key element (3)
(xxii)	No significant conversion or degradation unless alternatives are not available	Policy Principle 8, Key element (5)
(xxiii)	Apply pollution prevention and control technologies and practices consistent with international good practices	Operational Principle 9, Key element (1)
(xxiv)	Adopt cleaner production processes	Operational Principle 9, Key element (2)
(xxv)	Adopt good energy efficiency practices	Operational Principle 9, Key element (3)
(xxvi)	Avoid pollution or, where avoidance is not possible, minimize or control the intensity of load of pollutant emissions and discharges, including direct and indirect greenhouse gas emissions	Operational Principle 9, Key element (4)
(xxvii)	Avoid pollution or, where avoidance is not possible, minimize or control waste generation	Operational Principle 9, Key element (5)
(xxviii)	Avoid pollution or, where avoidance is not possible, minimize or control release of hazardous materials	Operational Principle 9, Key element (6)
(xxix)	Avoid the use of hazardous materials subject to international bans or phaseouts	Operational Principle 9, Key element (7)
(xxx)	Establish preventive and emergency preparedness and response measures	Operational Principle 10, Key element (2)

17. Identification of cumulative impacts and project alternatives – including the no-project alternative – are among the significant safeguards issues on which PNG law and regulations are partially equivalent with the key elements of the ADB Safeguard Policy Statement. While there are provisions in the Environment Act 2000 requiring consultation during the EIA process, those requirements do not specify that consultation should begin early in the process and be continuous throughout it, nor that consultation should continue in the implementation phase and during environmental audits. The Constitution specifically guarantees equal participation of women, but statutes and policy do not. The Environment Act 2000 is not explicit on whether non-governmental organizations are to be included in consultations.

18. Preparation, disclosure, implementation and monitoring of an environmental management plan – referred to as an environmental management programme in the Environment Act 2000 – are aspects of the EIA process on which the Environment Act 2000 is inconsistent. Much more weight is given in the provisions of the Environment Act 2000 to preparation of transitional environmental improvement

plans, than to the development of environmental management programmes which are the basis for project implementation. The Act only indirectly requires disclosure of final environmental impact statements – as part of the information that must accompany a permit application.

19. The key elements with which there is no equivalence in PNG law and regulations are:

	<b>Key element</b>	<b>Cross-reference to Legal Analysis Matrix</b>
(i)	Identify induced impacts	Policy Principle 2, Key element (3)
(ii)	Assess potential trans-boundary impacts	Policy Principle 2, Key element (9)
(iii)	Assess potential global impacts, including climate change	Policy Principle 2, Key element (10)
(iv)	Use strategic environmental assessment	Policy Principle 2, Key element 11)
(v)	Offset adverse impacts	Operational Principle 4, Key element (3)
(vi)	Enhance positive impacts	Operational Principle 4, Key element (4)
Include the following in the environmental management plan:		
(vii)	Institutional arrangements	Operational Principle 4, Key element (8)
(viii)	Capacity building and trainings measures	Operational Principle 4, Key element (9)
(ix)	An implementation schedule	Operational Principle 4, Key element (10)
(x)	Cost estimates	Operational Principle 4, Key element (11)
(xi)	Performance indicators	Operational Principle 4, Key element (12)
(xii)	Establish a grievance redress mechanism	Policy Principle 5, Key element (8)
(xiii)	If a project is located within a legally protected area, implement additional programs to promote the conservation aims of the protected area	Policy Principle 8, Key element (4)
(xiv)	No significant conversion or degradation of natural habitats unless the overall benefits substantially outweigh the environmental costs	Policy Principle 8, Key element (6)
(xv)	Use field-based surveys that employ qualified and experienced experts during environmental assessment	Operational Principle 11, Key element (2)
(xvi)	Provide for the use of “chance find” procedures	Operational Principle 11, Key element (3)

20. Because the Environment Act 2000 was developed 11 years ago, it is not surprising that it does not require strategic environmental assessment, or assessment of potential global impacts of a project to be carried out at national level. The issue of offsetting adverse impacts has received much more emphasis as a component of international best practice in the years since the Environment Act 2000

was adopted. Several of the essential components of an environmental management plan are not included in the EIA/EIS Guideline.

21. The Legal Analysis Matrix is a useful tool for assessing the status of existing law and regulations on paper. The Matrix is not the tool, however, for analyzing the degree to which existing law and regulations are complied with and enforced. Such an analysis would be extremely valuable and would enable the preparation of an Action Plan that would comprehensively address not only the gaps on paper, but the gaps in practice.

22. The Action Plan, Appendix 4, recommends, in addition to the recommendation in paragraph 21, a comprehensive review and amendment of the Environment Act 2000 and its regulations, and harmonization of the Environment Act 2000 and its regulations and other laws and regulations that govern sectors whose activities create impacts on the environment. Responsibilities and timing for the activities proposed in the Action Plan will be determined when the consolidated Action Plan for both legal issues and capacity building is prepared.

23. ADB convened a workshop in Port Moresby on Thursday 11 November 2011 to present the draft results of the legal analysis and to introduce the next phase of the work under RETA 7566 – the assessment of implementation capacity. The agenda of the workshop and the list of participants are in Appendix 5.

24. In his opening remarks, Mr. Michael Bongro, among other things:

- (i) Outlined the scope of the mandate of the DEC, and in particular its responsibilities for environmental safeguards generally and EIA;
- (ii) Explained that the draft Conservation and Environment Protection Authority (CEPA) Act has been submitted to Cabinet. The Act will convert the DEC from a department of the Ministry to an autonomous Authority. The goal is for the CEPA to focus on policy and for operational issues to be devolved to local governments;
- (iii) Noted that the Cabinet has endorsed the DEC's submission to repeal the Environment (Amendment) Act 2010. The endorsement will subsequently be submitted to the Parliament for debate and eventual adoption.

25. Comments on the draft legal analysis included the following:

- (i) In practice, the monitoring plan is usually prepared after an approved project begins implementation;
- (ii) In practice, during the EIA peer review process, the DEC reviews the Conservation Areas Act Ch. No. 362, the Fauna (Protection and Control) Act Ch. No. 154 and Regulations, and other laws and regulations governing natural resources in the context of the EIA for each proposed project;
- (iii) Amendment of the Environment Act 2000 will affect all sectors, not only the energy/hydropower sector. In the event that a proposal will be made to amend the Environment Act 2000, there must also be a comprehensive review of the Acts governing all sectors that will be affected. In particular, all existing laws and regulations governing natural resources should be reviewed and harmonized with the amended Environment Act 2000;
- (iv) The Guideline for Conduct of Environmental Impact Assessment and Preparation of Environmental Impact Statement (EIS) require preparation of a summary of the EIS in two languages;

- (v) The Guideline for Preparation of Environmental Inception Report (EIR) and the Guideline for Conduct of Environmental Impact Assessment and Preparation of Environment Impact Statement are legally binding;
- (vi) The CSS review is in line with the review of aid effectiveness that the Planning Department is carrying out;
- (vii) One amendment in particular that needs to be made to the Environment Act 2000 is to require stakeholder consultation beginning with the notification phase;
- (viii) There needs to be a review of capacity to implement environmental safeguards;
- (ix) Offsets for climate change and for natural disasters need to be included in consideration of environmental impacts;
- (x) Social impact assessment needs to include recommendations for compensation for loss of land and/or resources;
- (xi) The Office of the State Solicitor should be involved from the beginning of all consultations on eventual amendments to the Environment Act;
- (xii) When the draft report on the legal analysis is finalized, ADB should send it directly to the DEC Secretary.

26. Following the workshop, the DEC Focal Point, Mr. Joe Katape, the DEC in-house counsel, Mr. Benjamin Passingan, and two other DEC staff reviewed the draft report with the International Legal Specialist. DEC requested that six draft laws and one draft guideline on environmental and health impact assessment be added to the legal inventory and included in the analysis.

27. The Legal Analysis Matrix that is attached as Appendix 3 to this report was revised based on comments from DEC and from the Office of the State Solicitor.

28. Multilateral environmental agreements (MEAs) to which PNG becomes a Party must be implemented in national law. The scope of this review did not include an analysis of compliance with MEAs, but DEC requested an overview of the MEAs to which PNG is a Party that may be relevant to CSS, which follows in paragraphs 29-35.

29. PNG is a Party to 16 MEAs and is a member of the Pacific Regional Environmental Programme (known by the acronym for its Secretariat – SPREP). See Appendix 6. Although PNG is not a Party to the Convention on Migratory Species, the country has signed three of the species-specific Memoranda of Understanding developed under the Convention: marine turtles, Pacific island cetaceans, and dugongs. In PNG, obligations under all international agreements, including MEAs, must be implemented by national legislation. MEA obligations related to environmental safeguards are partially implemented by national law in PNG.

30. Of the MEAs to which PNG is a Party, five contain obligations to carry out some form of EIA: the Convention on Biological Diversity (CBD) (Article 14); the Law of the Sea (Part XII, Section 4, Article 206); the Vienna Convention for the Protection of the Ozone Layer (Article 2(a)); the UN Fish Stocks Agreement (Article 5(d)); and the Cartagena Protocol to the CBD (Article 15).

31. The CBD establishes the most specific obligations related to environmental safeguards. Parties to the CBD assume the obligation to introduce requirements for EIA of projects that are likely to have significant adverse effects on biological diversity and to allow for public participation in the EIA process. PNG law meets this obligation. The CBD also obliges Parties to introduce strategic environmental

assessment (SEA) of policies and programmes that are likely to create significant adverse impacts on biodiversity. PNG has not yet implemented SEA.

32. The Law of the Sea requires assessment of the potential effects on the marine environment of activities which may cause substantial pollution or significant and harmful changes to the marine environment. The Guideline for EIA and Preparation of EIS (Section 6, Biological Environment) specifies that the EIS must provide detailed information on the terrestrial and aquatic ecology of the area of a proposed development activity, but does not specifically mention the marine environment. The Environment Act 2000 defines “water” to include the sea, so it is possible to interpret “aquatic” as including the marine environment. Given the discovery of mineral and other resources in the seabed in territorial waters, it would be advisable that the Environment Act 2000 and its Regulations and Guidelines be amended to include specific references to the marine environment and marine resources.

33. The Vienna Convention requires Parties to cooperate to assess the effects of human activities on the ozone layer and the effects on human health and the environment from modification of the ozone layer. One of the objects of the Environment Act 2000 (Article 4(c)) is to safeguard the life-supporting capacity of air. Releasing contaminants into air constitutes an activity for the purposes of the Environment Act 2000 (Article 41(1)(c)). Issues to be covered in the Inception Report include air emissions (Guidelines for Preparation of Environmental Inception Report, Section 6) and degradation of air quality (Section 7). The Guideline for Preparation of the EIS requires information on air quality and air dispersion (Section 6). There is no provision in existing PNG law that specifically requires assessment of the impact of a development activity on the ozone layer, in compliance with PNG’s obligation under the Vienna Convention.

34. The UN Fish Stocks Agreement requires Parties to assess the impacts of fishing, other human activities and environmental factors on target stocks and species belonging to the same ecosystem or associated with or dependent upon the target stocks. There are no specific requirements for assessments of the marine environment and marine resources (see paragraph 32).

35. The Cartagena Protocol on Biosafety requires Parties to carry out risk assessment to identify and evaluate the potential adverse effects of living modified organisms on the conservation and sustainable use of biological diversity in the likely potential receiving environment. PNG has prepared its National Biosafety Framework, which contains the elements of a draft Biosafety and Biotechnology Bill, including acknowledgment of the need for risk assessment, but does not yet have a law in effect for this purpose.

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#### **IV. APPENDIXES**

## APPENDIXES

<b>Number</b>	<b>Title</b>	<b>Cited on (page, para)</b>
1.	TERMS OF REFERENCE	2, 2
2.	LEGAL INVENTORY	2, 4 3, 12
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6.	MEAs TO WHICH PNG IS A PARTY	8, 27

## TERMS OF REFERENCE

### Legal Specialist

(international, 1.5 person-months, intermittent)

#### A. Background

1. Asian Development Bank (ADB) has approved a subproject for PNG Country Safeguards Review to be funded under TA 7566. A copy of the subproject proposal is attached. The subproject aims to strengthen PNG's country safeguards system (CSS) in the near term. It will support analysis of PNG's CSS and preparation of an action plan to enhance its capacity on environmental safeguards in the energy (hydropower and transmission) sector. This subproject is the first phase of TA support to strengthen CSS capacity. It is expected that the agreed upon action plan will form the basis for a next phase of TA.

2. The subproject requires 1.5 person months inputs of international legal specialist. The consultant should have a degree in law or equivalent qualification and at least ten years experience working with safeguard systems including experience in Asia and the Pacific. The consultant will have a good understanding of international best practices in environmental safeguards.

#### B. Scope of Work

3. **Legal Analysis.** The consultant will be primarily responsible for preparation of a legal analysis and an action plan to strengthen the legal and regulatory framework on environmental safeguard in the energy (hydropower and transmission) sector in accordance with ADB's *Guidance Note for Review of Country Safeguards Systems*. More specifically:

i) **Legal inventory.** Compile an inventory of relevant laws, decrees, regulations, administrative orders, and other mandates on environmental assessment and safeguards. Prepare an inventory of aspirational policy statements, such as those found in the Constitution, framework, or sector policies for their potential correspondence to ADB's Safeguard Policy Statement (SPS) objectives. Identify legal instruments in draft form such as bills and draft regulations, not as legally binding instruments, but as potential gap-filling measures to be considered for CSS strengthening. Complete the inventory after consultations with PNG legal experts to ensure the inventory is comprehensive and up-to-date.

ii) **Legal Analysis Matrix.** Prepare a thorough, rigorous and objective legal analysis using the SPS Objectives, Scope, and Triggers and Policy Principles as a benchmark for PNG's participating sector on legal instruments related to environmental safeguards. The legal analysis will: (i) employ a schematic approach that arranges text in key elements and terms that may have counterparts in PNG's legal framework; (ii) identify and quote corresponding provisions in the CSS legal framework<sup>1</sup>; (iii) characterize the extent of equivalence into one of three levels: "full equivalence", "partial equivalence", or "no equivalence"; and (iv) recommend measures that would provide greater coherence to those elements of the CSS that may be fully or partially equivalent to the SPS.

(iii) **Action Plan.** Prepare an action plan for strengthening legal and regulatory framework for country safeguards on environment for selected sector.

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<sup>1</sup> This can be done by keyword search and expert legal judgment. Treat aspirational policy statements separately in the legal analysis.



- (iv) Prepare a draft report on the legal analysis and associated action plan and present to the stakeholder workshop.
- (i) After review by the Government, ADB, and other stakeholders, prepare a final report on legal analysis and action plan.

**4. Consultation, Liaison, and Advice.** The consultant will:

- (i) Consult with relevant ADB staff, development partners (e.g. World Bank), participating government agencies and other stakeholders.
- (ii) Liaise with development partners and government agencies to promote coordination and consistency with respect to the approach and recommendations on the legal analysis.
- (iii) Liaise with other international and national safeguard specialists, particularly with the international environmental safeguard specialist to coordinate TA activities and reports.

**5. Dissemination.** The consultant will:

- (i) Undertake necessary consultations to inform and solicit input from stakeholders for the legal analysis.
- (ii) Actively participate and make presentations in workshops and seminars as part of dissemination activities.

**D. Deliverables**

The consultant will prepare an inception report within one month of the mobilization, a draft report on the legal analysis and recommendations on the CSS by 31 August 2011, and a final report on legal analysis and associated action plan by 31 November 2012.

**LEGAL INVENTORY**  
**of Policy and Legal Instruments related to Safeguards**  
**in the Energy and Hydropower Sectors in PNG**

	<b>Document</b>	<b>Relevant Provisions</b>
	<b><i>Legal Instruments</i></b>	
1	Constitution 1975, as amended	Yes
2	Companies Act 1997	No
3	Conservation Areas Act 1978	Yes
4	Crocodile Trade (Protection) Act 1974	No
5	Electricity Commission Privatization Act 2002	No
6	Electricity Industry Act 2000	No
7	Electricity Industry (Amendment) Act 2000	No
8	Electricity Supply Government Power Stations Act 1970	No
9	Electricity Supply Government Power Stations Regulation 2006	No
10	Employment Act 1978	No
11	Environment Act 2000	Yes
12	Environment Act Amendment 2010	Yes
13	Environmental Fees and Charges Regulation 2002	No
14	Environmental Permits Regulation 2002	Yes
15	Environmental Prescribed Activities Regulation 2002	Yes
16	Environment (Water Quality Criteria) Regulation 2002	No
17	Environment (Council's Procedure) Regulation 2002	Yes
18	Essential Services Act 2002	Yes
19	Fauna Protection and Control Act 1966	No
20	Guideline for Preparation of Environmental Inception Report 2004	Yes
21	Guideline for Conduct of Environmental Impact Assessment & Preparation of Environmental Impact Statement 2004	Yes
22	Independent Consumer and Competition Commission (ICCC) Act 2002	No
23	Independent Public Business Corporation of Papua New Guinea Act 2002	No
24	Industrial Safety, Health and Welfare Act 1961	Yes
25	Industrial Safety, Health and Welfare Regulation 1965	Yes
26	International Trade (Fauna and Flora) Act 2003	Yes
27	International Trade (Fauna and Flora) Regulation 2008	Yes

	<b>Document</b>	<b>Relevant Provisions</b>
28	Investment Promotion Act 1992	Yes
29	Land Act 1996	Yes
30	Land Registration Act 1981	No
31	Mining Act 1992	Yes
32	National Parks Act 1982	No
33	Notification of Preparatory Work on Level-2 and Level-3 Activities 2004	Yes
34	Oil and Gas Act 1998	Yes
35	Organic Law on Provincial and Local Level Governments 1998	Yes
36	Physical Planning Act 1989	Yes
37	Public Health Act 1973	No
38	Conservation and Environment Protection Authority Act	Draft law currently approved for submission to Parliament; text confidential and not available for review
<b><i>Policies, plans, strategies, manuals (not legally binding)</i></b>		
39	The National Strategic Plan: 2010 – 2050 (Vision 2050)	Yes
40	Development Strategic Plan 2010-2030	Yes
41	Medium Term Development Plan 2011-2015	Yes
42	Electricity Industry Policy May 2010	Yes
43	Climate-compatible development for Papua New Guinea, 2 <sup>nd</sup> draft, March 2010	Yes Confidential/not for public release, but available for review
44	National Biosafety Strategy and Action Plan (NBSAP) 2006	Yes
45	Environmental Health Impact Assessment National Guidelines for Papua New Guinea (undated)	Yes Draft
46	DEC Environment Act 2000 Operational Manual	Internal DEC document, not available for review.
47	Renewable Energy Policy	Working draft under consideration; text confidential and not available for review
48	Rural Electrification Policy	Working draft under development; text confidential and not available for review
49	Environment Policy 1976	Yes Not available for review

**LEGAL ANALYSIS MATRIX**  
for Papua New Guinea Country Safeguard Systems

(A) <b>ADB Safeguard Policy Statement</b>	(B) <b>Corresponding Provisions in National Policy and Legal Instruments<sup>2</sup></b>	(C) <b>Extent of Equivalence<sup>3</sup> Review comments</b>	(D) <b>Recommendations</b>
<b>Environmental Safeguards</b>			
<b>Objectives:</b> To ensure the environmental soundness and sustainability of projects and to support the integration of environmental considerations into the project decision-making process			
<b>Key Element<sup>4</sup> (1):</b>  Ensure the environmental <b>soundness and sustainability</b> of projects	<b>Constitution 1975</b> <b>[Fourth Directive Principle] 4. Natural resources and environment.</b> <i>We declare our fourth goal to be for Papua New Guinea's natural resources and environment to be conserved and used for the collective benefit of us all, and be replenished for the benefit of future generations.</i> <b>WE ACCORDINGLY CALL FOR—</b> (1) <b>wise use</b> to be made of our natural resources and the environment in and on the land or seabed, in the sea, under the land, and in the air, in the interests of our development and in trust for future generations; and (2) the <b>conservation and replenishment, for the benefit of ourselves and posterity, of the environment</b> and its sacred, scenic, and historical	<b>Full equivalence.</b> At the policy level and at the level of the Environment Act 2000.  The Environment Act 2000 provides for EIA in Articles 50-59, but there is no comprehensive implementing EIA Regulation. The Environment (Prescribed Activities) Regulation 2002 specifies and categorizes the activities that are subject to EIA, but does not establish a procedure for	The National Biodiversity Strategy and Action Plan (NBSAP) notes that: "The Environment Policy was articulated in 1976 and has not been revised for 30 years. No serious attempts have been made by the government to conduct a comprehensive review of

<sup>2</sup> All text is direct citation from the official versions of the policy documents and legal instruments except where otherwise indicated by annotation. Highlighted text is used to indicate key terms that demonstrate extent of equivalence. Legally-binding provisions are cited first, followed by citations to non-legally-binding policies and guidelines.

<sup>3</sup> "Full Equivalence" denotes that the national policy documents and 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 policy documents and 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 policy provision or 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.

<sup>4</sup> The SPS sets forth Objectives, Scope and Triggers, and Policy Principles for each ADB Safeguard (Environment, Involuntary Resettlement and Indigenous Peoples). In this matrix, some of the Policy Principles are further subdivided into "key elements" to facilitate the analysis where a particular Policy Principle is compound in nature. Distinctive aspects of each element may be highlighted in **bold** font.

<b>(A)</b> <b>ADB Safeguard Policy Statement</b>	<b>(B)</b> <b>Corresponding Provisions in National Policy and Legal Instruments<sup>2</sup></b>	<b>(C)</b> <b>Extent of Equivalence<sup>3</sup> Review comments</b>	<b>(D)</b> <b>Recommendations</b>
	<p>qualities; and (3) all necessary steps to be taken to give adequate protection to our valued birds, animals, fish, insects, plants and trees.</p> <p><b>Basic Social Obligations.</b> WE HEREBY DECLARE that all persons in our country have the following basic obligations to themselves and their descendants, to each other, and to the Nation:— ... (d) to protect Papua New Guinea and to <b>safeguard the national wealth, resources and environment</b> in the interests not only of the present generation but also of future generations;...</p> <p><b>Organic Law on Provincial Governments and Local-level Governments 1998 (OLPGLLG)</b> <b>Art. 117. NATIONAL ECONOMIC AND FISCAL COMMISSION.</b> (8) In addition to the functions as defined by Section 187H(1) of the Constitution, the Commission shall perform the following functions:— (a) in relation to economic and fiscal matters, shall—... (v) <b>carry out cost and benefit analysis on the development of all natural resources and the impact of such development on the national development</b> and make such analysis available to the National Executive Council;...</p> <p><b>Environment Act No. 64 of 2000 (EA) Preamble</b> Being an Act to provide for and give effect to the National Goals and Directive Principles and in particular – (a) to provide for protection of the environment in accordance with the Fourth National Goal and Directive Principle (National Resources and Environment) of the Constitution; and (b) <b>to regulate the environment impacts of development activities in order to promote sustainable development of the environment and the economic, social and physical well-being of people</b> by safeguarding the life-supporting capacity of air, water, soil and ecosystems for present and future generations and avoiding, remedying and mitigating any adverse effects of activities on the environment;...</p> <p><b>EA Art. 4 OBJECTS.</b> The objects of this Act are –</p>	<p>EIA to implement EA articles 50-59.</p> <p>DEC reports that its internal Operational Manual does establish a procedure to implement EA articles 50-59, but this document was not available for review.</p>	<p>the Environment Policy to make it more responsive to the emerging contemporary issues. The government has acknowledged this setback and is working towards a reformation of the Environment Policy.” The reform of the Environment Policy should be completed, incorporating all environmental safeguards.</p>

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	<p>...(e) to avoid, remedy or mitigate any adverse effects of activities on the environment by regulating in an integrated, cost-effective and systematic manner, activities, products, substances and services that cause environmental harm; and (f) to require persons engaged in activities which have a harmful effect on the environment progressively to reduce or mitigate the impact of those effects as such reductions and mitigation become practicable through technology and economic developments;...</p> <p><b>EA Art 5. MATTERS OF NATIONAL IMPORTANCE.</b> All persons exercising powers and functions under this Act shall recognise and provide for the following matters of national importance:- (a) the preservation of Papua New Guinea traditional social structures; and (b) the maintenance of sources of clean water and subsistence food sources to enable those Papua New Guineans who depend upon them to maintain their traditional lifestyles; and (c) the protection of areas of significant biological diversity and the habitats of rare, unique or endangered species; and (d) the recognition of the role of land-owners in decision-making about the development of the resources on their land; and (e) responsible and sustainable economic development.</p> <p><b>EA Art 7. GENERAL ENVIRONMENT DUTY.</b> (1) A person shall not carry out an activity that causes or is likely to cause an environmental harm unless the person takes all reasonable and practicable measures to prevent or minimise the environmental harm.</p> <p><b>EA Art. 44. OBLIGATION TO HAVE A PERMIT AND RIGHTS OF PERMIT HOLDERS.</b> (1) Subject to this section and Section 135, a person commits an offence where he carries out – (a) a level 2 or level 3 activity; or (b) a change in process, or expansion of works or plant in relation to an existing activity such that a level 2 or level 3 activity is carried out, without an environment permit.</p>		

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	<p><b>Physical Planning Act 1989</b>  <b>Art. 5.</b> CONSIDERATION OF PHYSICAL PLANNING MATTERS UNDER THIS ACT.  Where consideration is being given to a physical planning matter under this Act, the appropriate authority shall take into account such of the following matters as are of relevance to the matter under consideration:—  ...  (b) the impact on the environment and, where harm to the environment is likely to be caused, any means that may be employed to protect the environment or to reduce that harm;...</p> <p><b>Investment Promotion Act 1992 consolidated to No 3 of 2004</b>  <b>Article 1.</b> Purposes of Act.  The purposes of this Act are:—  ...(ea)[sic] to monitor the impact of investment and the activities of enterprises;...</p> <p><b>Article 3.</b> Interpretation.  "investment" means every kind of asset subject to the laws of Papua New Guinea and includes—  ...(e) business and analogous concessions conferred by law, including concessions to search for, cultivate, extract or exploit natural resources;...</p> <p><b><u>Policy Documents and Guidelines – Not legally binding</u></b>  <b>The National Strategic Plan 2010-2050 (NSP)</b>  3.8.6 The National Strategic Plan expects the <i>Government to achieve by 2015</i> the following outcomes if “our environmental management systems and practices are sustainable and world’s best”:  3.8.6.1 Sound policy and legal framework for sustainable management of natural resources;  3.8.6.2 Sound institutional framework for sustainable management of natural resources;  3.8.6.3 World class education, research and training framework for sustainable management of natural resources.</p>		

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	<p><b>Papua New Guinea Development Strategic Plan 2010-2030 (PNG DSP)</b>  <b>1.1. The broad objectives of the PNG DSP, 2010-2030</b>  <b>vi. Environment and climate change</b>  The <i>PNG DSP</i> will be pursued with consideration to environmental issues such that the health of the environment will not be compromised. Strategies under the extractive sectors as well as energy sectors are designed to be pursued with clear consideration for environment sustainability as well as addressing the issues of climate change in ways that best suit PNG's developmental needs.</p> <p><b>PNG DSP section 9.4 Monitoring and evaluation framework</b>  <b>Impact assessments and ex post evaluations</b>  Ongoing impact assessments, with beneficiary participation, and <i>ex post</i> evaluations of specific projects and programmes will supplement monitoring of the <i>PNG DSP</i>. Evaluations will strive to identify a traceable "results chain" from inputs through to impacts...and also clearly identify external and internal factors that contribute to the success or failure of a project or programme, and make recommendations for improvement.</p> <p><b>Papua New Guinea Medium Term Development Plan 2011-2015 (PNG MTDP) Section 8.3 Monitoring and evaluation within DNPM</b>  Periodic impact assessments, with various stakeholders, and post completion reviews of specific projects and programmes will be carried out to identify a traceable "result chain" from inputs through to impacts of each project and programme.</p> <p><b>Electricity Management Committee (EMC) Guideline, July 2008</b>  <b>Section 8.3 Strategic orientation</b>  ...(e) Environmentally sound projects: It should be the objective of the government to keep the environment intact in all operations in the electricity industry. Projects that are friendly to both the human and natural environment enable the government to achieve this objective. The health and well being of the human environment should never ever be compromised or traded-off for any other gains. Projects and operations that feature control measures on disturbances or damages to</p>		



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	<p>the natural environment may enable the government to reach a better trade-off between keeping the health of the natural environment and advancing economic gains or achieving other objectives of the government for the industry. <b>These will be assessed rigorously by the government.</b></p> <p><b>Environment Policy 1976 (EP)<sup>5</sup></b>  ...development must be economically, socially and ecologically sound...  ...non-renewable natural resources must be used wisely...  ...The ability of the environment to produce renewable resources must be recognized...</p>		
<p><b>Key Element (2):</b> Support the <b>integration</b> of environmental considerations into the project decision-making process</p>	<p><b>EA Art. 4. OBJECTS.</b> The objects of this Act are –  ...(d) to ensure that proper weight is given to both long-term and short-term social, economic, environmental and equity considerations in deciding all matters relating to environmental management, protection, restoration and enhancement;...</p> <p><b>EA Art. 6. HOW THE OBJECT OF THIS ACT IS TO BE ACHIEVED.</b>  (1) The protection of Papua New Guinea’s environment is to be achieved by a process of setting environmental objectives and providing the means to encourage and ensure their observance.  (2) The process described in Subsection (1) is to be achieved by –  ...(d) requiring proposed activities involving matters of national importance to undergo a process of public and detailed consideration of environmental implications through a process of environmental impact assessment;...</p> <p><b><u>Policy Documents – Not legally binding</u></b>  <b>EIP Section 4.2.1 Environment and Safety Regulation</b>  The technical regulator will enforce environmental and safety regulation in the electricity industry as an added component to its technical regulatory functions. This function will be carried out in close</p>	<p><b>Full equivalence.</b> At the policy level, the NBSAP specifically promotes linking and integrating impact assessment and other environmental safeguards into decision-making.</p> <p>At the level of legislation/regulations, reading EA articles 5(b)-(e) and 6(2)(d) together, activities that involve water resources, land and the natural resources found on land, biodiversity, and responsible and sustainable economic development (all matters of national importance) must go through EIA, including public consultation.</p>	

<sup>5</sup> The text of the Environment Policy 1976 was not available for review. References to it are taken from the National Biodiversity Strategy and Action Plan (NBSAP) 2006.

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	<p>consultation with the Department responsible for general environmental regulation – the Department of Environment and Conservation (DEC).</p> <p><b>National Biodiversity Strategy and Action Plan 2007 (NBSAP)</b>  <b>Section 6. In situ and Ex situ Biodiversity Conservation</b>  <b>Objectives</b>  ...• Linking development activities and EIA (application of EIA for resource management)  <b>Activities</b>  ...• Strengthening the EIA process through training  • Strengthen EIA through the implementation of the Environment Act 2000</p> <p><b>Section 7. Measures of sustainability in Biodiversity use and incentives and alternatives</b>  <b>Objectives</b>  • Develop mechanisms to incorporate biodiversity values into National Accounting and decision making at different levels of government...  • Create an integrated system of incentives and disincentives at the National and local level to encourage the conservation and sustainable use of biodiversity...</p> <p><b>Activities</b>  • Develop, document, and adopt standardised criteria and methodologies for economic valuation of biodiversity, tailored to the requirements of individual decision-making agencies...</p> <p><b>Section 8. Education and Public Awareness</b>  <b>Objectives</b>  ...• Ensure that development personnel, land-use planners, aid agencies and the national and provincial planning authorities have access to information about biodiversity....</p>		
<p><b>Scope and Triggers:</b> Environmental safeguards are triggered if a project is likely to have potential environmental risks and impacts.</p>			

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	<p><b>EA 46. RESTRAINT ON APPROVAL BY OTHER AUTHORITIES.</b>  (1) Other governmental authorities shall be restrained from issuing permits or licenses for level 2 or level 3 activities (other than existing activities) which would authorize the holder to carry out an activity which would cause environmental harm where to do so would be a breach of this Act until an environment permit in relation to the activity has been granted in accordance with this Act....  (3) Where a person applies for another kind of approval in respect of a level 2 or 3 activity, under the provisions of other legislation, the other governmental authority shall refer the application to the Director.</p> <p><b>EA Art. 50. NOTICE TO UNDERTAKE ENVIRONMENTAL IMPACT ASSESSMENT.</b>  (1) Where the Director receives a notification of intention to carry out preparatory work in relation to a proposed level 3 activity, he shall serve a notice on the proponent named in the notification requiring the proponent to undertake an environmental impact assessment in relation to the proposed activity.  (2) Where a proposed level 2 activity –  (a) involves an industrial or manufacturing process which has not previously been used in Papua New Guinea; or  (b) is specifically the subject of obligations under any international treaty, convention or instrument to which Papua New Guinea has ratified; or  (c) which poses a threat of serious environmental harm, the Minister may, on recommendation of the Council, determine that the activity relates to matters of national importance and require the Director to serve a notice on the proponent requiring him to undertake environmental impact assessment in relation to the proposed activity.</p> <p><b>Environment (Prescribed Activities) Regulation 2002 (EPAR)</b>  Schedule 1 lists Level 2 activities  Schedule 2 lists Level 3 activities</p> <p><b>Notification of Preparatory Work on Level-2 and Level-3 Activities (NPW) W2004</b>  The entire Notification deals with identifying potential environmental risks and impacts.</p>	<p><b>Full equivalence.</b></p>	

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	<p><b>Policy Document – Not legally binding</b>  <b>ion May 2010 (EIP)</b>  <b>Appendix B Institutional Roles in Policy Implementation</b>  <b>Conducting Environment Impact Assessment</b>            Electrification projects and activities that will entail a significant environment impact will require an Environment Impact Assessment (EIA). All electrification activities that will require an EIA will seek approval of the Department of Environment and Conservation (DEC).</p>		
<p><b>Policy Principle 1:</b> Use a screening process for each proposed project, as early as possible, to determine the appropriate extent and type of environmental assessment so that appropriate studies are undertaken commensurate with the significance of potential impacts and risks.</p>			
<p><b>Key element (1):</b>  Screen as early as possible</p>	<p><b>EA Art. 48. REGISTRATION OF INTENTION TO CARRY OUT PREPARATORY WORK.</b>            (1) A person who –            (a) proposes to carry out a level 2 or level 3 activity; or            (b) proposes to change the nature of a level 2 activity such that it becomes a level 3 activity, shall, in writing, register that intention with the Director at least <b>one month prior to commencing any preparatory work</b> in relation to the proposed activity.</p> <p><b>NPW</b>            The entire Notification deals with screening to identify the level of potential environmental risks and impacts.</p> <p><b>Guideline – Not legally binding</b>  <b>EMC Guideline Section 10.7 Stage 2. Project Vetting, Appraisal and Feasibility Assessment for Verification</b>            (a) The Secretariat immediately begins to check and verify the submission in terms of its relevance and coherence to a checklist of district and provincial plans, industry relevance, sustainability and <b>impacts</b>, etc. Where there is insufficient information, the Manager of the EMC Secretariat communicates with the proponent to fill the required information;...</p>	<p><b>Full equivalence.</b>            Assuming that registration of intent to carry out preparatory work is intended to be the screening phase of EIA, the EA does require screening a specified period in advance of beginning an activity.</p>	
<p><b>Key element (2):</b></p>	<p><b>EA Art. 52. INCEPTION REPORT.</b></p>	<p><b>Full equivalence.</b></p>	<p>To maintain full</p>

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Determine the appropriate extent and type of environmental assessment so that appropriate <b>studies are undertaken commensurate with the significance of potential impacts and risks.</b>	(1) Prior to submitting an environmental impact statement, a proponent must submit an inception report listing the issues to be covered by the environmental impact statement.  <b>Policy Document – Not legally binding</b> <b>PNG MTDP Section 5.6 Environment</b> The formulation of an environmentally sustainable economic growth policy is thus essential to ensure appropriate levels of impact assessment are conducted.	At the policy level, the need for two different levels of environmental assessment is recognized.  In what has become the international standard for EIA practice, “initial environmental examination” follows screening.  Assuming that the “inception report” required under EA Art. 52 is equivalent to “initial environmental examination” in the standard EIA process, these two levels of environmental assessment are provided for in the EA.	equivalence: Amend EA Art. 42 to add a new clause: (3) The Director shall, from time to time and through a process of consultation, review and amend the Regulations prescribing activity levels 1, 2 and 3 and the thresholds established for them.
<b>Policy Principle 2:</b> Conduct an environmental assessment for each proposed project to identify potential direct, indirect, cumulative, and induced impacts and risks to physical, biological, socioeconomic (including impacts on livelihood through environmental media, health and safety, vulnerable groups, and gender issues), and physical cultural resources in the context of the project’s area of influence. Assess potential trans-boundary and global impacts, including climate change. Use strategic environmental assessment where appropriate.			
<b>Key element (1):</b>  Identify <b>indirect</b> as well as direct impacts	<b>EIA/EIS Section 6. CHARACTERISTICS OF THE RECEIVING ENVIRONMENT</b> Social Environment ...Issues that may arise within and outside of the project area should be identified including whether this is a direct or indirect outcome of the physical, biological or socio-economic effects of the proposed development activity.	<b>Partial equivalence.</b> The EA does not refer to indirect impacts. The EIA/EIS refers to indirect outcomes of effects of the proposed activity.	To achieve full equivalence: 1. Amend EA Art. 51(1)(b) to specifically require identification of indirect impacts: (b) submission of an environmental impact statement in accordance with Section 53 that sets out the following with respect to the proposed activity in the project’s area of influence: (i) the physical and

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			biological environmental impacts; (ii) the indirect, induced and cumulative environmental impacts; (iii) the social and socio-economic impacts; (iv) the impacts on physical cultural resources; (v) an assessment of potential trans-boundary impacts; (vi) an assessment of potential global impacts, including climate change; (vii) alternatives, including the no-project alternative, to the project's location, design, technology and components and their potential environmental and social impacts, and provide the rationale for each alternative proposed;...
<b>Key element (2):</b>  Identify <b>cumulative</b> impacts	<b>EPAR Art. 5. AMALGAMATION OF PERMIT APPLICATIONS.</b> Where an activity involves two or more categories of Level 2 or Level 3 activity or both, an application for a permit in relation to that activity shall identify all the categories of Level 2 or Level 3 activity that are relevant to the application.  <b>Environment (Permits) Regulation 2002 (EPR)</b> <b>Art. 17. SINGLE APPLICATIONS</b> The Director may accept a single application for a permit from an applicant for –	<b>Partial equivalence.</b> EPAR regulates permit applications and provides for consolidating permit applications, but does not regulate the EIA process.  For Level 3 activities, permit applications can only be submitted once the EIA has been completed and accepted (see EA Art. 62), which	To achieve full equivalence, amend EA Art. 51(1)(b) as recommended for Policy Principle 2, Key element (1).

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	<p>(a) different activities carried out by the applicant; or (b) activities carried out by the applicant at different places.</p> <p><b>Policy Document – Not legally binding</b> <b>Climate-compatible development for Papua New Guinea, 2<sup>nd</sup> draft, March 2010 (CCD PNG)</b> <b>Section 3d. Capturing the opportunities: Priorities and next steps</b> ...The impact of decisions taken now on land use, energy mix, transport and LNG infrastructure are cumulative, so starting abatement activities early would increase their overall impact.</p>	<p>means that it possible that separate EIAs may be done without taking cumulative impacts into account.</p> <p>Under EPR Art. 17, the Director has discretion to accept a single permit application for two or more activities, but there is no reference to cumulative impacts. There is no mechanism in the EA or the regulations for identifying, for example, Level 1 activities that might have a cumulative effect equivalent to or even greater than a Level 2 or 3 activity.</p> <p>Because registration of preparatory work does not apply to a Level 1 activity and because the inception report phase of the EIA process is not regulated (see Policy Principle 1, Key Elements 1 and 2), there is potential that cumulative impacts will not be captured by the EIA process.</p>	
<p><b>Key element (3)</b></p> <p>Identify induced impacts</p>	<p><b>No corresponding policy provision or legal requirement.</b></p>	<p><b>No equivalence.</b></p>	<p>To achieve full equivalence, amend EA Art. 51(1)(b) as recommended for Policy Principle 2, Key element (1).</p>
<p><b>Key element (4)</b></p> <p>Identify physical impacts</p>	<p><b>EA Art. 51. ENVIRONMENTAL IMPACT ASSESSMENT.</b> (1) An environmental impact assessment shall involve the following:-... (b) submission of an environmental impact statement in accordance with Section 53 setting out the physical and social environmental impacts</p>	<p><b>Full equivalence.</b></p>	<p>See the Recommendation for Policy Principle 2, Key element (1), above.</p>

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	<p>which are likely to result from the carrying out of the activity</p> <p><b>EA Art. 61. ACCEPTANCE OF APPLICATIONS.</b> Subject to Section 62, where the Director is satisfied that an application for a permit contains an adequate description of the nature and extent of physical and social environmental impacts which are likely to result from the carrying out of the proposed activity, he may accept the application.</p> <p><b>Guideline for Preparation of Environmental Inception Report, DEC Publication: GL-Env/01/2004, 1st January 2004 (EIR)</b> CONTENT OF THE ENVIRONMENTAL INCEPTION REPORT The applicant should provide detail answers to all areas below that are relevant to the particular proposal.</p> <p>1. Introduction. ...Provide description of the activity and anticipated bio-physical and socioeconomic impacts as well as potential benefits to be derived from the project....</p> <p>6. Bio-physical Environmental Issues. Provide details of both on and off-site bio-physical environmental issues relating to the proposed activity and the mitigatory measures. For physical environment, cover -</p> <ul style="list-style-type: none"> <li>▪ Air emission,</li> <li>▪ Water extraction and wastewater discharge,</li> <li>▪ Land contamination, solid waste disposal, etc.,</li> <li>▪ Noise emission....</li> </ul> <p><b>Guideline for Conduct of Environmental Impact Assessment &amp; Preparation of Environmental Impact Statement, DEC Publication: GL-Env/02/2004, 1st January 2004 (EIA/EIS)</b> <b>Section 6. CHARACTERISTICS OF THE RECEIVING ENVIRONMENT</b> ...Physical Environment Provide details on the existing physical environment including data on ambient environmental quality of various segments of the environment. Information provided in this sub-section shall include but not limited to the following -</p> <ul style="list-style-type: none"> <li>▪ geomorphological, topographical and geological characteristics,</li> <li>▪ any natural or induced hazard in the area (e.g. flood,</li> </ul>		



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	<ul style="list-style-type: none"> <li>▪ earthquake, volcanic zone, etc.),</li> <li>▪ climatic regime (e.g. rainfall, temperature, etc.),</li> <li>▪ air quality and meteorological data set for air dispersion modeling, etc.,</li> <li>▪ seasonal surface water quality and hydrological information,</li> <li>▪ seasonal ground water quality and flow regime,</li> <li>▪ noise levels.</li> </ul>		
<p><b>Key element (5)</b></p> <p>Identify biological impacts</p>	<p><b>EIR</b>  <b>CONTENT OF THE ENVIRONMENTAL INCEPTION REPORT</b>  The applicant should provide detail answers to all areas below that are relevant to the particular proposal.  1. Introduction.  ...Provide description of the activity and anticipated bio-physical and socioeconomic impacts as well as potential benefits to be derived from the project....  6. Bio-physical Environmental Issues.  Provide details of both on and off-site bio-physical environmental issues relating to the proposed activity and the mitigatory measures....  For biological environment cover -</p> <ul style="list-style-type: none"> <li>▪ Flora (vegetation clearance),</li> <li>▪ Fauna (displacement of fauna, impacts, etc.)</li> </ul> <p><b>EIA/EIS Section 6.</b>  <b>CHARACTERISTICS OF THE RECEIVING ENVIRONMENT</b>  ...Biological Environment  Detail information should be provided on the existing biological environment and shall include but not limited to the following details -</p> <ul style="list-style-type: none"> <li>▪ presence of a protected area (Conservation Area or Wildlife Management Area), if any,</li> <li>▪ details of any special purpose areas (e.g., wetland area, etc.),</li> <li>▪ aquatic and terrestrial ecology of the area,</li> <li>▪ information on vulnerable (endangered) species,</li> <li>▪ other relevant biological information.</li> </ul> <p><b>International Trade (Fauna and Flora) Act 2003 Section 13B.</b>  Importation. (74)</p>	<p><b>Full equivalence.</b></p>	<p>See recommended amendment to EA Art. 51(1)(b), Policy Principle 2, Key element (1).</p>

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	<p>(1) A person shall not import a living exotic specimen without the written approval of the Management Authority.</p> <p>(2) The Management Authority shall not give written approval in respect of a living exotic specimen unless—</p> <p>(a) where the specimen is imported for use as a biological control agent—the Management Authority has assessed the likely impact of the importation of the specimen on other species of fauna or flora that are naturally occurring in Papua New Guinea and is satisfied that in all the circumstances the importation of the specimen is justified; or</p> <p>(b) in any other case—the Management Authority has assessed the risks associated with the proposed importation of the specimen and considers that the importation of the specimen will not be detrimental to the survival of other native species.</p> <p><b>International Trade (Fauna and Flora) Regulation 2008 Section 6.</b> Refusal to issue authorizations.</p> <p>(1) The Management Authority may refuse to issue an authorization—</p> <p>... (f) where the Management Authority considers that the issue of the Authorization would be detrimental to the conservation of the natural environment of Papua New Guinea or the survival of any species of fauna or flora in Papua New Guinea;...</p>		
<p><b>Key element (6)</b></p> <p>Identify <b>socioeconomic</b> impacts (including on livelihood through environmental <b>health and safety, vulnerable groups, and gender issues</b>)</p>	<p><b>EA Art. 4. OBJECTS.</b> The objects of this Act are –...</p> <p>(d) to ensure that proper weight is given to both long-term and short-term <b>social, economic, environmental and equity considerations</b> in deciding all matters relating to environmental management, protection, restoration and enhancement; ...</p> <p><b>EA Art. 51. ENVIRONMENTAL IMPACT ASSESSMENT.</b> (1) An environmental impact assessment shall involve the following:-</p> <p>(a) submission of an inception report in accordance with Section 52 setting out the issues to be covered in the environmental impact statement;</p> <p>(b) submission of an environmental impact statement in accordance with Section 53 setting out the physical and <b>social environmental</b> impacts which are likely to result from the carrying out of the activity</p>	<p><b>Full equivalence.</b></p>	<p>See the Recommendation for Policy Principle 2, Key element (1), above.</p>

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	<p><b>EA Art. 61. ACCEPTANCE OF APPLICATIONS.</b> Subject to Section 62, where the Director is satisfied that an application for a permit contains an adequate description of the nature and extent of physical and social environmental impacts which are likely to result from the carrying out of the proposed activity, he may accept the application.</p> <p><b>EIR</b> CONTENT OF THE ENVIRONMENTAL INCEPTION REPORT The applicant should provide detail answers to all areas below that are relevant to the particular proposal.</p> <p>1. Introduction. ...Provide description of the activity and anticipated bio-physical and socioeconomic impacts as well as potential benefits to be derived from the project.</p> <p><b>Section 7. Socio-Economic Issues.</b> Provide details of all socio-economic issues and their mitigatory measures. At this planning stage of the proposed activity, certain aspects that need to be identified now and then covered more fully in the Environmental Impact Assessment process and documented in the subsequent Environmental Impact Statement are –</p> <ul style="list-style-type: none"> <li>▪ delineation of project impact area,</li> <li>▪ distinguish differing levels of impact within the project area,</li> <li>▪ define the different “local community” groups that may be affected by the project and should be included in the consultation/negotiation process (e.g., “land/resource owners” versus “downstream” communities).</li> </ul> <p>For ease of differentiation, these socio-economic impacts should be separated into two distinct groups (Group A &amp; Group B) to make it clear which impacts will occur as a direct or indirect result of the project. This also assists in the delineation of what mitigative measures can be reasonably addressed under a DEC approval and what areas are the responsibilities of other levels of Government (i.e., National, Provincial and Local Level Governments). Group (A) Impacts Group (A) impacts are those that can be identified and addressed by the</p>		

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	<p>DEC approval process. They arise directly from adverse impacts upon the biophysical environment as caused by the development. Some of these issues include but not limited to -</p> <ul style="list-style-type: none"> <li>▪ degradation in air or water quality,</li> <li>▪ increased noise levels,</li> <li>▪ land contamination,</li> <li>▪ loss of food sources,</li> <li>▪ habitat loss, etc.</li> </ul> <p>Group (B) Impacts <i>Group (B)</i> impacts are secondary socio-economic effects that are reasonably expected to manifest themselves and are normally best handled by the responsible National, Provincial or Local Level Government agencies. Examples of these issues are -</p> <ul style="list-style-type: none"> <li>▪ social structure</li> <li>▪ law and order,</li> <li>▪ migration and population issues,</li> <li>▪ inadequate infrastructure concerns,</li> <li>▪ historical and cultural issues, etc.</li> </ul> <p><b>EIA/EIS</b> Section 6. CHARACTERISTICS OF THE RECEIVING ENVIRONMENT ...Social Environment This sub-section deals with the existing social structure and socio-economic data on the resource/land owners, Local Level Government, the Province and PNG as a whole. Issues that may arise within and outside of the project area should be identified including whether this is a direct or indirect outcome of the physical, biological or socio-economic effects of the proposed development activity. The outcome of the Social Impact Assessment process is the Social Impact Statement, which is included in this section of the Environmental Impact Statement that is submitted to DEC for assessment. Information provided in this sub-section shall include but not limited to the following details -</p>		

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	<ul style="list-style-type: none"> <li>▪ demographic information,</li> <li>▪ information on existing infrastructure,</li> <li>▪ information on public health issues (if applicable),</li> <li>▪ information on present economic status of the project area,</li> <li>▪ description of existing social services,</li> <li>▪ details of archaeological, historical, cultural or religious features of the project area under consideration, etc.</li> </ul>		
<p><b>Key element (7)</b></p> <p>Identify impacts on <b>physical cultural resources</b></p>	<p><b>Constitution 1975</b>  <b>[Fourth Directive Principle] 4. Natural resources and environment.</b>  ...WE ACCORDINGLY CALL FOR—...  ...(2) the conservation and replenishment, for the benefit of ourselves and posterity, of <b>the environment and its sacred, scenic, and historical qualities</b>;...</p> <p><b>EIA/EIS Section 6. CHARACTERISTICS OF THE RECEIVING ENVIRONMENT</b>  Social Environment  This sub-section deals with the existing social structure and socio-economic data on the resource/land owners, Local Level Government, the Province and PNG as a whole....  Information provided in this sub-section shall include but not limited to the following details -...</p> <ul style="list-style-type: none"> <li>▪ <b>details of archaeological, historical, cultural or religious features of the project area under consideration</b>, etc.</li> </ul> <p><b>Natural Cultural Property (Preservation) Act 1965</b>  <b>Art. 7. COMPULSORY ACQUISITION OF IMMOVABLES.</b>  The purpose of this Act and of the preservation of and protection of national cultural property generally is a public purpose within the meaning of the Land Act 1996.  <b>Art. 9. DESTROYING NATIONAL CULTURAL PROPERTY.</b>  (1) A person who, without lawful and reasonable excuse (proof of which is on him) wilfully destroys, damages or defaces any national cultural property, is guilty of an offence.  (2) A person who, by force, threats, fraud, misrepresentation, undue influence or in any other manner, obtains the destruction, damaging,</p>	<p><b>Full equivalence.</b></p>	<p>Also see the recommendation for Policy Principle 2, Key element (1).</p>

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	defacing, confiscation or yielding up of any national cultural property is guilty of an offence.		
<b>Key element (8)</b>  Identify impacts in the context of the <b>project's area of influence</b>	<b>EIA/EIS Section 6. CHARACTERISTICS OF THE RECEIVING ENVIRONMENT</b> Social Environment ...Issues that may arise within and outside of the project area should be identified including whether this is a direct or indirect outcome of the physical, biological or socio-economic effects of the proposed development activity.	<b>Partial equivalence.</b> The EA does not refer to impacts in a project's area of influence. The EIA/EIS calls for identifying social issues that may arise outside of the project area.	To achieve full equivalence, amend EA Art. 51(1)(b) as recommended for Policy Principle 2, Key element (1).
<b>Key element (9)</b>  Assess potential <b>trans-boundary</b> impacts	<b>No corresponding policy provision or legal requirement.</b>	<b>No equivalence.</b>	To achieve full equivalence, amend EA Art. 51(1)(b) as recommended for Policy Principle 2, Key element (1).
<b>Key element (10)</b>  Assess potential <b>global impacts, including climate change</b>	<b>No corresponding policy provision or legal requirement.</b>	<b>No equivalence.</b>	To achieve full equivalence, amend EA Art. 51(1)(b) as recommended for Policy Principle 2, Key element (1).
<b>Key element (11)</b>  Use <b>strategic environmental assessment</b> where appropriate	<b>No corresponding legal requirement.</b>  <b><u>Policy Document – Not legally binding</u></b> <b>PNG DSP 2010-2030</b> <b>Section 1.1. The broad objectives of the PNG DSP, 2010-2030</b> <b>vi. Environment and climate change</b> The <i>PNG DSP</i> will be pursued with consideration to environmental issues such that the health of the environment will not be compromised. <b>Strategies under the extractive sectors as well as energy sectors are</b>	<b>No equivalence.</b> At the policy level, the PNG DSP provides the basis for adopting strategic environmental assessment, but there is no legal requirement for its use.	To achieve full equivalence, amend the EA to define SEA and to require its use, specifying what it applies to, responsibilities for carrying it out, minimum requirements, and procedures for review

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	designed to be pursued with clear consideration for environment sustainability as well as addressing the issues of climate change in ways that best suit PNG's developmental needs.		and approval.
<p><b>Policy Principle 3.</b> Examine alternatives to the project's location, design, technology, and components and their potential environmental and social impacts and document the rationale for selecting the particular alternative proposed. Also consider the no project alternative.</p>			
<p><b>Key element (1):</b></p> <p>Examine alternatives to the project's location, design, technology, and components and their potential environmental and social impacts</p>	<p><b>EA Art 7. GENERAL ENVIRONMENT DUTY.</b>          ... (2) In determining what measures are required under Subsection (1) regard shall be given to the following matters:-...  <i>(d) the likelihood of successful application of the different measures that might be taken;</i> and  <i>(e) the financial implications of the different measures</i> as they would relate to the type of activity.</p> <p><b>EIR Section 9. Site Selection.</b>          Provide details if alternative sites were considered and why and how the proposed site was chosen.</p> <p><b>EIA/EIS Section 7. WASTE MINIMISATION, CLEANER PRODUCTION AND ENERGY BALANCE</b>          Information detailed in this section should include consideration of options associated with waste minimisation, cleaner production and energy balance and the ability of the proponent to employ these strategies in its proposed activity.          Detail information to be covered in this section shall include but not limited to -</p> <ul style="list-style-type: none"> <li>▪ details of other alternative "cleaner production" technologies or processes that has been considered,</li> <li>▪ information on the basis for choosing the proposed technology or process,</li> <li>▪ available technical background on the process chosen,</li> <li>▪ details of the Waste Minimisation Strategy developed for the proposal,</li> <li>▪ details of an "energy balance" for the proposal.</li> </ul>	<p><b>Partial equivalence.</b>          Examining alternatives is required at the level of a general obligation, but is not further regulated in the EA, in particular with respect to location, technology, or other project alternatives.</p> <p>Under the EIR, consideration of alternatives for project sites is discretionary. The EIA/EIS requires details of alternative technologies. Neither guideline specifically requires consideration of alternatives to individual project components.</p>	<p>To achieve full equivalence, amend EA Art. 51(1)(b) as recommended for Policy Principle 2, Key element (1).</p>

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<p><b>Key element (2):</b></p> <p>Document the rationale for selecting the particular alternative proposed</p>	<p><b>EA Art. 59. MINISTER MAY GRANT APPROVAL IN PRINCIPLE.</b>  ... (2) A decision of the Minister under Subsection (1)(a) or (b) <i>shall be in writing and shall give reasons for the decision.</i></p>	<p><b>Partial equivalence.</b>  EA Art. 59(2) read together with EA Art. 7(2)(d)-(e) can be interpreted to require decisions of the Minister to provide written justification for selecting a particular alternative in approving an EIA.</p> <p>It would be preferable for the EA to specifically require identification of alternatives as part of the EIA process and to require documentation of selection of alternatives in approving an EIA.</p>	<p>To achieve full equivalence, amend EA Art. 51(1)(b) as recommended for Policy Principle 2, Key element (1).</p>
<p><b>Key element (3):</b></p> <p>Also consider the <b>no project alternative</b></p>	<p><b>EA Art. 59. MINISTER MAY GRANT APPROVAL IN PRINCIPLE.</b>  (1) Subject to this section, where the Minister has received a recommendation from the Council under Section 58 in relation to the proposed activity, he shall within 28 days of such receipt, either –  (a) issue an approval in principle for the activity; or  (b) in any other circumstance - <b>refuse to approve the activity</b>....</p> <p><b>Conservation Areas Act 1978 (CAA)</b>  <b>Art. 34. APPROVAL MAY BE GRANTED.</b>  (1) The Minister may, after considering–</p>	<p><b>Partial equivalence.</b>  The EA does not identify the no-project alternative as an option of the EIA process.  Under EA Art. 59(3), the Minister’s refusal to approve an activity – which could be interpreted as a “no-project alternative” – immediately triggers EA Art. 24 and a Working Committee of the Environment Council is created to</p>	<p>To achieve full equivalence, amend EA Art. 51(1)(b) as recommended for Policy Principle 2, Key element (1).</p>



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	<p>(a) the application [for development approval] together with all material lodged under Section 32; and...</p> <p>(d) the impact or likely impact of the proposed development or alteration on the environment of the conservation area or of the area in respect of which a notice of recommendation under Section 12(1) has been given;...</p> <p>approve the application, or approve the application subject to conditions, or refuse to approve the application.</p>	<p>provide advice. The EPR does not specify a procedure to be followed once the Working Committee provides its advice. . DEC confirms that it has an internal administrative procedure that is followed once the Working Committee provides its advice.</p> <p>The CAA is similar to the EA in that it does not provide for a no-project alternative, nor does it provide for review or appeal of a decision by the Minister.</p>	
<p><b>Operational Principle 4:</b> Avoid, and where avoidance is not possible, minimize, mitigate, and/or offset adverse impacts and enhance positive impacts by means of environmental planning and management. Prepare an environmental management plan (EMP) that includes the proposed mitigation measures, environmental monitoring and reporting requirements, related institutional or organizational arrangements, capacity development and training measures, implementation schedule, cost estimates, and performance indicators. Key considerations for EMP preparation include mitigation of potential adverse impacts to the level of no significant harm to third parties, and the polluter pays principle.</p>			
<p><b>Key element (1):</b></p> <p><b>Avoid</b> adverse impacts where possible</p>	<p><b>EA Art. 4 OBJECTS.</b> The objects of this Act are – ...(e) to avoid, remedy or mitigate any adverse effects of activities on the environment by regulating in an integrated, cost-effective and systematic manner, activities, products, substances and services that cause environmental harm;</p> <p><b>EA Art. 7. GENERAL ENVIRONMENT DUTY.</b> (1) A person shall not carry out an activity that causes or is likely to cause an environmental harm unless the person takes all reasonable and practicable measures to prevent or minimise the environmental harm.</p>	<p><b>Full equivalence.</b></p>	
<p><b>Key element (2):</b></p> <p>Where avoidance is not possible,</p>	<p><b>EA Art. 1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.</b> ...(3) For the purpose of Section 53(1) of the Constitution – (a) purposes and the reason for which this Act permits – (i) protection of the environment from environmental harm; and</p>	<p><b>Full equivalence.</b> The definition of “permit” in EA Art. 2, read together with EA Art. 65, EA Art. 78, and EA Art. 82(d)(i), includes</p>	

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<p><b>minimize and/or, mitigate</b> adverse impacts to the level of <b>no significant harm to third parties</b></p>	<p>(ii) control, prevention and minimisation of the contamination of the environment; and  <b>(b)</b> the purposes specified in Section 85(1), are hereby declared to be public purposes and further required for a reason that is reasonably justified in a democratic society that has a proper regard for the rights and dignity of mankind, that is so declared and so described for the purposes of Section 53 of the Constitution.</p> <p><b>EA Art. 85. ACQUISITION OF LAND.</b>  (1) The following are declared to be public purposes for purposes of Section 53(1)(protection from unjust deprivation of property) of the Constitution and of the Land Act –...  <b>(c) construction of works for the generation of hydro-electric power; and</b>  <b>(d) conveyance of water or electricity;...</b></p> <p><b>EA Art. 4 OBJECTS.</b>  The objects of this Act are –  ...<b>(e)</b> to avoid, remedy or mitigate any adverse effects of activities on the environment by regulating in an integrated, cost-effective and systematic manner, activities, products, substances and services that cause environmental harm;</p> <p><b>EA Art. 65. CRITERIA FOR GRANT AND CONDITIONS OF PERMIT.</b>  (1) Subject to this section and Section 66, the Director may grant a permit where he is satisfied that –  <b>(a)</b> the activity which is the subject of the permit will be carried out in a manner which is consistent with all relevant Environmental Policies and the Regulations; and  <b>(b)</b> all reasonable steps will be taken to minimise any risk of environmental harm as a result of the activity; and  <b>(c)</b> the activity will not contravene any relevant environmental obligation under any international treaty, convention or instrument to which Papua New Guinea is a party and which has been ratified by the Parliament or any law of Papua New Guinea; and  <b>(d)</b> the applicant will abide by the conditions of the permit.</p> <p><b>EA Art. 78. INTERPRETATION.</b></p>	<p>permits for works to generate and distribute hydro-electric power.</p>	

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	<p>In this Part, unless the contrary intention appears, “permit” means a permit containing conditions that authorize the permit holder to –  (a) dam a river or stream; or  (b) divert water; or...  (f) take or use water; ...</p> <p><b>EA Art. 82. RIGHTS CONFERRED BY PERMIT RELATING TO WATER USE.</b>  Subject to any prescribed conditions or conditions endorsed on it, a permit confers on the holder for the purposes for which it was granted and in the area of land specified in the permit –...  (d) subject to the Electricity Industry Act (Ch 78) the right to operate and maintain the works constructed in pursuance of Paragraph (b) for –  (i) the generation and distribution of hydro electric power;...</p> <p><b><u>Policy Document – Not legally binding</u></b>  <b>PNG MTDP Section 5.6 Environment</b>  <b>DSP 2030 deliverables, 2011-2015</b>  Impact assessment conducted and sustainable development approach taken to minimise long term environmental damages</p>		
<p><b>Key element (3):</b>   <b>Offset</b> adverse impacts</p>	<p><b>No corresponding policy provision or legal requirement.</b></p>	<p><b>No equivalence.</b></p>	<p>To achieve full equivalence:  1. Amend EA Art.65(1)(b) as follows:  (b) all reasonable steps will be taken to minimise any risk of environmental harm as a result of the activity, including offsetting adverse impacts and enhancing positive impacts; and...</p> <p>2. Amend EA Art. 66 to specify that certain conditions are required</p>

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			<p>for all permits while other conditions may be imposed on a case-by-case basis.</p> <p>Non-negotiable conditions that should be required for all permits are:</p> <ol style="list-style-type: none"> <li>1. the taking of certain action to avoid adverse impacts where possible, minimise and/or mitigate adverse impacts that cannot be avoided, offset adverse impacts, and enhance positive impacts;</li> <li>2. preparation and carrying out of an environmental management programme that includes minimizing waste and controlling the generation of waste;</li> <li>3. provision of reports on any matter specified by the Director;</li> <li>4. preparation and lodgement of a plan for preventive and emergency preparedness and response measures to avoid, and where avoidance is not possible, to minimize, adverse impacts and</li> </ol>

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			<p>risks to the health and safety of local communities in relation to accidental release of contaminants or risk of other emergency;</p> <p>5. undertaking a monitoring programme and an environmental audit or investigation at periodic intervals and developing and implementing the indicated corrective actions;</p> <p>6. provision of information reasonably required by the Director for the administration and enforcement of the Act. These are adapted from EA Art. 66(1)(b)(d)(e)(g)(h)(i).</p> <p>Conditions that may be required on a case-by-case basis are:</p> <ol style="list-style-type: none"> <li>1. installation and operation of certain plant or equipment within a certain time;</li> <li>2. at the cost of the permit holder, installation of monitoring equipment, carrying out a specified monitoring programme and reporting on its</li> </ol>

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			<p>progress; 3. submission for approval and carrying out of an Environmental Improvement Plan; 4. lodgement of an environmental bond consistent with requirements established under Section 103; 5. conducting baseline studies or surveys and reporting the results prior to commencing operations; 6. rehabilitation of the affected area.</p> <p>These are the provisions in EA Art. 66(1)(a)(c)(f)(j)(k)(l).</p> <p>If the recommendation for Scope and Triggers is accepted, the EMP will be an environmental and social management plan (ESMP).</p>
<b>Key element (4)</b>  <b>Enhance positive impacts</b>	<b>No corresponding policy provision or legal requirement.</b>	<b>No equivalence.</b>	To achieve full equivalence, amend EA Art. 65(1)(b) and Art. 66(1) as recommended for Operational Principle 4, Key element (3).
<b>Key element (5):</b>	<b>EA Art. 6. HOW THE OBJECT OF THIS ACT IS TO BE ACHIEVED.</b>	<b>Partial equivalence.</b>	To achieve full

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<p><b>Prepare an environmental management plan (EMP)</b> that includes the proposed mitigation measures</p>	<p>(1) The protection of Papua New Guinea’s environment is to be achieved by a process of setting environmental objectives and providing the means to encourage and ensure their observance.  (2) The process described in Subsection (1) is to be achieved by –  ...(c) applying the environmental objectives to level 2 and level 3 activities by means of conditions in environment permits, and the negotiation of <b>environmental improvement plans and environmental management programmes</b>; ...</p> <p><b>EA Art. 4. NOTICE OF REQUIREMENT TO APPLY FOR PERMIT.</b>  (1) A person who is required to apply for a permit pursuant to a notice issued or served under Section 45(1) or (2) of the Act, shall where required by the Director, lodge <b>an environmental improvement plan</b> in accordance with Section 75 of the Act.  (2) The Director upon requiring a person to lodge <b>an environmental improvement plan</b> under Subsection (1), shall not accept the person’s application for a permit unless the person lodges <b>an environmental improvement plan</b> required of him.</p> <p><b>EA Art. 66. CONDITIONS OF PERMITS.</b>  (1) A permit may be issued subject to such conditions the Director considers are necessary or desirable, including but not limited to conditions containing requirements to do all or any of the following –  ...(d) preparation and carrying out an environmental management programme;  ...(2) In issuing a permit and fixing conditions, the Director shall ensure that the permit will require compliance with all relevant Environment Policies except where –...  (d) compliance with the approved <b>environmental improvement plan</b> is a condition of the permit.</p> <p><b>EA Art. 75. ENVIRONMENTAL IMPROVEMENT PLANS.</b>  (1) The Director may require a person to submit an environmental improvement plan setting out the steps by which it is proposed that an activity carried out by that person will achieve compliance with an Environment Policy, the Regulations or a standard or requirement imposed under this Act.</p>	<p>There is a fundamental inconsistency in the EA with respect to environmental management programmes and environmental improvement plans.</p> <p>According to the definition in EA Art. 2, an “environmental management programme” (EMP) is equivalent to the “environmental management plan” generally required as part of the EIA process.</p> <p>“Environmental improvement plans” (EIP) as defined in EA Art. 2 are transitional, for activities that were saved under the transitional provisions of the EA.</p> <p>EA Art. 66 differentiates between EMPs [clause (d)] and EIPs [clause (f)], but there is no article in the EA requiring submission of EMPs, while Art. 75 sets out detailed requirements for submission of EIPs.</p> <p>The EA sets out requirements for EIPs, but not for EMPs which, by definition, are more comprehensive. The EA contains more than 30 references to EIPs and only 3 references to EMPs.</p> <p>To be consistent with international best practice, EMPs should be prepared before a new project can receive a permit or, at the latest,</p>	<p>equivalence:</p> <ol style="list-style-type: none"> <li>1. Review all references in the EA and the EPR to EIPs and EMPs and rationalize the use of the terms with respect to the purpose of EMPs and EIPs and the use of the terms in the text of the EA and the EPR.</li> <li>2. Amend EA Art. 66 to as recommended for Operational Principle 4, Key element (3).</li> </ol>

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	<p><b>EPR Art. 4. NOTICE OF REQUIREMENT TO APPLY FOR PERMIT.</b>  (1) A person who is required to apply for a permit pursuant to a notice issued or served under Section 45(1) or (2) of the Act, shall where required by the Director, lodge an <b>environmental improvement plan</b> in accordance with Section 75 of the Act.  (2) The Director upon requiring a person to lodge an environmental improvement plan under Subsection (1), shall not accept the person's application for a permit unless the person lodges an <i>environmental improvement plan</i> required of him.</p> <p><b>EIA/EIS Section 8. ENVIRONMENTAL MANAGEMENT, MONITORING AND REPORTING</b>  Sufficient information on this section of the Environmental Impact Statement should be provided to enable DEC to anticipate possible environmental management, monitoring and reporting requirements for an Environment Permit.  Information listed should reflect the proponent's environmental policy (environment management system) and the translation of that policy to meet the requirements under this Section and Section 7 (POTENTIAL IMPACTS OF PROPOSAL) during different stages in the project life, from construction to decommissioning and closure.  Information detailed in this section shall include but not limited to the following -</p> <ul style="list-style-type: none"> <li>▪ details of information on plant operating conditions, including management and monitoring strategy,</li> <li>▪ information on socio-economic management and monitoring strategy,</li> <li>▪ mechanism and frequency for reporting monitoring results to DEC and other stakeholders, especially to directly affected stakeholder groups,</li> <li>▪ availability of contingency and/or emergency plans drawn up for the proposal,</li> <li>▪ details of Environment Improvement Plan,</li> <li>▪ details of Waste Minimisation and/or Management Plans,</li> <li>▪ information on potential rehabilitation issues and its strategies including Rehabilitation Plan.</li> </ul>	<p>before it begins implementation.</p> <p>DEC confirms that the preparation of an EMP is the subject of an ongoing dialogue between the proponent and DEC, during which DEC advises the proponent on what is required and when and how long it will take to assess the EMP before it is approved. The time frame for submission of an EMP varies depending on the nature of the project, keeping in mind the potential environmental harm associated with the project. This is briefly dealt with in the Operational Manual, which was not available for review.</p> <p>According to the EA definition, EIPs should have been prepared for projects that were ongoing at the time the EA came into force and should be prepared whenever there is a transition to a new environmental policy. There could also be a requirement to prepare EIPs on the basis of recommendations in the reports of environmental audits or investigations.</p> <p>The EIA/EIS specifically refers only to the environment improvement plan, but not to the environment management programme.</p>	



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<p><b>Key element (6):</b></p> <p>Prepare an environmental management plan (EMP) that <b>includes the proposed monitoring requirements</b></p>	<p><b>EA Art. 66. CONDITIONS OF PERMITS.</b> (1) A permit may be issued subject to such conditions the Director considers are necessary or desirable, including but not limited to conditions containing requirements to do all or any of the following – ... (g) undertaking an audit at periodic intervals;...</p> <p><b>EA Art. 74. ENVIRONMENTAL AUDITS AND INVESTIGATIONS.</b> (1) The Director may – (a) engage a person to conduct; or (b) direct a person to commission in relation to an activity the person is carrying out, an environmental audit or investigation and report on it to the Director within a specified time.</p> <p><b><u>Policy Document – Not legally binding</u></b> <b>DSP 2010-2030</b> <b>9.4 Monitoring and evaluation framework</b> <b><i>Impact assessments and ex post evaluations</i></b> Ongoing impact assessments, with beneficiary participation, and <i>ex post</i> evaluations of specific projects and programmes will supplement monitoring of the <i>PNG DSP</i>. Evaluations will strive to identify a traceable “results chain” from inputs through to impacts as shown in figure 9B, and also clearly identify external and internal factors that contribute to the success or failure of a project or programme, and make recommendations for improvement.</p>	<p><b>Partial equivalence.</b> Under the EA, environmental audits are at the discretion of the Director. The EA does not explicitly require monitoring as part of an EMP or EIP.</p> <p>DEC confirms that although it is not required in the EA or specified in the Operational Manual, in practice monitoring of the EMP is always a condition of the Environment Permit.</p>	<p>See Operational Principle 4, Key element (5).</p> <p>To achieve full equivalence, amend EA Art. 74 to make environmental audits and investigations mandatory: <b>74. ENVIRONMENTAL AUDITS AND INVESTIGATIONS.</b> (1) The Director shall– (a) engage a person to conduct; or (b) direct a person to commission in relation to an activity the person is carrying out, environmental audits or investigations and report on them to the Director within a specified time....</p>
<p><b>Key element (7):</b></p> <p>Prepare an environmental management plan (EMP) that <b>includes the proposed reporting requirements</b></p>	<p><b>EA Art. 66. CONDITIONS OF PERMITS.</b> (1) A permit may be issued subject to such conditions the Director considers are necessary or desirable, including but not limited to conditions containing requirements to do all or any of the following – ... (k) conducting baseline studies or surveys and <i>reporting</i> the results prior to commencing operations;... (3) Operational Procedures may specify the manner and form of any information or <i>report</i> required to be submitted under a condition fixed in accordance with this section.</p>	<p><b>Partial equivalence.</b> The EA makes reporting requirements discretionary, and does not explicitly require that reporting requirements are to be included in the EMP/environmental improvement plan. The EPR does not specify minimum requirements for an EMP/ environmental improvement plan.</p>	<p>See Operational Principle 4, Key element (5).</p>

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		DEC confirms that although reporting is not mandatory under the EA, nor specified in the Operational Manual, in actual practice it is always a condition of an Environment Permit.	
<b>Key element (8):</b>  Prepare an environmental management plan (EMP) that includes related <b>institutional or organizational arrangements</b>	<b>No corresponding policy provision or legal requirement.</b>	<b>No equivalence.</b>	See Operational Principle 4, Key Element (5).
<b>Key element (9):</b>  Prepare an environmental management plan (EMP) that includes related <b>capacity development and training measures</b>	<b>No corresponding policy provision or legal requirement.</b>	<b>No equivalence.</b>	See Operational Principle 4, Key Element (5).
<b>Key element (10):</b>  Prepare an environmental management plan (EMP) that	<b>No corresponding policy provision or legal requirement.</b>	<b>No equivalence.</b>	See Operational Principle 4, Key Element (5).

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includes an <b>implementation schedule.</b>			
<b>Key element (11):</b>  Prepare an environmental management plan (EMP) that includes <b>cost estimates.</b>	<b>No corresponding policy provision or legal requirement.</b>	<b>No equivalence.</b>	See Operational Principle 4, Key Element (5).
<b>Key element (12):</b>  Prepare an environmental management plan (EMP) that includes <b>performance indicators</b>	<b>No corresponding policy provision or legal requirement.</b>	<b>No equivalence.</b>	See Operational Principle 4, Key Element (5).
<b>Key element (13):</b>  Consider the <b>polluter pays</b> principle in environmental management planning	<b>EA Art. 9. RESPONSIBILITY FOR ENVIRONMENTAL HARM.</b> (1) Subject to Subsection (2), a person who causes environmental harm is responsible for the environmental harm. (2) Where environmental harm is caused or threatened at any place used in connection with an industrial or commercial activity, the occupier or person who is in effective control of activities carried out at that place shall be responsible for the environmental harm or threatened environmental harm except where – (a) the environmental harm or threatened environmental harm occurs as a result of force majeure or accident; and (b) the occupier or person in effective control of activities at the place took all reasonable and practicable measures to prevent or minimise the	<b>Full equivalence.</b>	

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	harm.		
<p><b>Policy Principle 5:</b> Carry out meaningful consultation with affected people and facilitate their informed participation. Ensure women’s participation in consultation. Involve stakeholders, including affected people and concerned nongovernment organizations, early in the project preparation process and ensure that their views and concerns are made known to and understood by decision makers and taken into account. Continue consultations with stakeholders throughout project implementation as necessary to address issues related to environmental assessment. Establish a grievance redress mechanism to receive and facilitate resolution of the affected people’s concerns and grievances regarding the project’s environmental performance.</p>			
<p><b>Key element (1):</b> Carry out <b>meaningful consultation</b> with <b>affected people</b> and <b>facilitate their informed participation</b>.</p>	<p><b>Constitution 1975</b>  <b>[Second National Goal and Directive Principles] Equality and participation</b>  <i>We declare our second goal to be for all citizens to have an equal opportunity to participate in, and benefit from, the development of our country.</i>  <b>WE ACCORDINGLY CALL FOR—</b>  ...<b>(6)</b> the maximization of the number of citizens participating in every aspect of development; ...</p> <p><b>[Fifth National Goal and Directive Principles] Papua New Guinean ways</b>  <i>We declare our fifth goal to be to achieve development primarily through the use of Papua New Guinean forms of social, political and economic organization.</i>  <b>WE ACCORDINGLY CALL FOR—</b>  (1) a fundamental re-orientation of our attitudes and the institutions of government, commerce, education and religion towards Papua New Guinean forms of <b>participation, consultation</b>, and consensus, and a continuous renewal of the responsiveness of these institutions to the needs and attitudes of the People; ...</p> <p><b>EA Art. 4. OBJECTS.</b>  The objects of this Act are –  ...(i) to regulate activities which may have a harmful effect on the environment in an open and transparent manner and <b>ensure that consultation occurs</b> in relation to decisions under this Act with persons and bodies who are likely to be affected by them;...</p>	<p><b>Full equivalence.</b></p>	

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	<p><b>EA Art. 55. PUBLIC REVIEW AND SUBMISSIONS.</b>  (1) The Director shall cause –  (a) any information provided in compliance with a requirement under Section 54(2)(a) to (d) inclusive; or  (b) any environmental impact statement submitted under this Division, to be made available for public review and shall determine the period within which, the extent to which and the manner in which governmental authorities or persons may make submissions to the Director or the Council in respect of that information or report.</p> <p><b>EPR Art. 11. CONFERENCE OF INTERESTED PARTIES.</b>  (1) The Director –  (a) upon receiving an objection in relation to an application for a permit which is not a frivolous, vexatious or irrelevant objection; and  (b) is of the opinion that there is a real risk that serious environmental harm may result from the carrying out of the proposed activity, may convene a conference within 21 days of the expiry of the period for making written representations under Section 10(1) and require the applicant to make a presentation regarding its application at that conference and invite any person who has submitted a representation to discuss the application.  (2) A conference convened under Subsection (1) shall be held at a location convenient to the site where the proposed activity is planned to be carried out unless the Director approves an alternative location.</p> <p><b><u>Policy Documents – Not legally binding</u></b>  <b>NSP 2010-2050 Section 3.5.6</b>  “Population, Citizen Participation, Total GDP, Total GDP Per Capita, GDP’s for Agriculture, Forestry, Fisheries and Eco-Tourism” will be the indicators used to monitor and evaluate the progress of the National Strategic Plan regionally and nationally (Table 2).</p> <p><b>EIP Section 4.4.5 Participation by Landowners</b>  Electricity service providers have the scope to establish arrangements that seek participation from the landowners. The Government will facilitate all arrangements that are aimed at involving participation from</p>		

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	the landowners in ventures with IPPs. Such participation can harness and draw the benefits from the industry to the landowners, and ascertain appropriate level of their involvement in business partnerships for enhanced security and reliability of electricity services in the industry.		
<b>Key element (2):</b> facilitate [the] <b>informed</b> participation [of affected people]	<p><b>Constitution 1975</b>  <b>[Second National Goal and Directive Principles] Equality and participation</b>  (9) every citizen to be able to participate, either directly or through a representative, in the consideration of any matter affecting his interests or the interests of his community;  <b>EA Art. 4. OBJECTS.</b>  The objects of this Act are –...  (i) to regulate activities which may have a harmful effect on the environment in an open and transparent manner and ensure that <b>consultation</b> occurs in relation to decisions under this Act with persons and bodies who are likely to be affected by them; ...</p> <p><b>EA Art. 18. OBJECTS OF THE COUNCIL.</b>  In carrying out its powers and functions under this Act, the Council shall pursue the following objectives:-...  (c) maximising Papua New Guinean <b>participation</b> in the wise use and development of the environment.</p> <p><b>EA Art. 51. ENVIRONMENTAL IMPACT ASSESSMENT.</b>  (1) An environmental impact assessment shall involve the following:-...  (c) assessment and <b>public review</b> of the environmental impact statement in accordance with Sections 54 and 55;...</p> <p><b>EA Art. 54. ASSESSMENT.</b>  (4) The Director may for the purposes of assessing a proposed activity under this section –...  (b) call a <b>conference of interested persons</b> to discuss the application; or...  (d) appoint a committee to conduct a <b>public inquiry</b> and report its findings to the Director; or  (e) take any or all of the courses of action set out in Paragraphs (a), (b),</p>	<b>Full equivalence.</b>	

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	<p>(c) and (d) inclusive or take such other investigations and inquiries as he thinks fit.</p> <p><b>EA Art 55. PUBLIC REVIEW AND SUBMISSIONS.</b>  (1) The Director shall cause –  (a) any information provided in compliance with a requirement under Section 54(2)(a) to (d) inclusive; or  (b) any environmental impact statement submitted under this Division, to be made available for <b>public review</b> and shall determine the period within which, the extent to which and the manner in which governmental authorities or persons may make submissions to the Director or the Council in respect of that information or report.  (2) The Director may give directions to the proponent requiring the proponent to –  (a) at his expense and to the satisfaction of the Director, make copies of any information or statement and advertise its availability for public review; and  (b) provide copies of that information or statement to such public authorities and persons and members of the public as the Director determines, at such price (if any) as the Director determines; and  (c) make a <b>public presentation</b> to persons who are likely to be affected by the carrying out of the activity.  (3) For the purposes of complying with this section, the Director may require the proponent to submit a proposed programme of public review for approval by him.  (4) The proponent may meet the cost of persons (including persons representing the Director) attending a public presentation in relation to the proposed activity, but the fact that a proponent has met such costs shall not place any obligation on a person to form a particular view of the proposal.  (5) Where any information relating to a manufacturing or industrial process or trade secret used in carrying on or operating any particular undertaking or equipment or information of a business or financial nature in relation to the proposed activity which is confidential to the applicant (in this section called “the confidential information”) is contained in any statement or report which is to be made available for public review under this section, the Director shall, before causing the statement or report to</p>		

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	<p>be made available for public review under Subsection (1), exclude the confidential information from that statement or report.</p> <p>(6) The Director may, at any time prior to accepting the environmental impact statement, refer any issues raised during the assessment and public review of the environmental impact statement back to the proponent and require the statement to be amended to address those issues.</p> <p><b>EPR Art. 10. NOTIFICATION OF APPLICATIONS.</b></p> <p>(1) Subject to Subsection (2) and (3), the Director shall upon acceptance of an application for a permit pursuant to Section 61 of the Act, within 28 days, publish a notice in a newspaper circulating nationally and a radio – broadcasting service (if any) which serves the province where the proposed activity is planned to be carried out, advising that any interested person may –</p> <p>(a) make written representations to the Director and furnish a copy of them to both the Director and the applicant within 21 days of the date of publication of the notice; and</p> <p>(b) view the application at such nominated places on payment of a prescribed fee.</p>		
<p><b>Key element (3):</b></p> <p>Ensure <b>women's participation</b> in consultation.</p>	<p><b>Constitution 1975</b> <b>[Second National Goal and Directive Principles] Equality and participation</b></p> <p>(5) equal participation by women citizens in all political, economic, social and religious activities;...</p> <p><b>EA Art. 4. OBJECTS.</b></p> <p>The objects of this Act are –...</p> <p>(d) to ensure that proper weight is given to both long-term and short-term social, economic, environmental and <b>equity</b> considerations in deciding all matters relating to environmental management, protection, restoration and enhancement; and...</p> <p>(g) to allocate the costs of environmental protection and restoration <b>equitably</b> and in a manner that encourages responsible use of, and reduced harm to, the environment;...</p>	<p><b>Full equivalence.</b> At the constitutional level.</p> <p><b>Partial equivalence.</b> At the level of the EA. The objectives of the EA include equity, but there is no explicit requirement to ensure women's participation in consultation.</p>	<p>To achieve full equivalence, amend EA Art. 55 as follows: <b>55. PUBLIC REVIEW AND SUBMISSIONS.</b></p> <p>(1) The Director shall cause – ...</p> <p>(b) any environmental impact statement submitted under this Division, <i>together with the corresponding environmental management programme to be submitted under Division 4</i>, to be made</p>



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			<p>available for public review at a place accessible to all stakeholders and in a form and language understandable to all stakeholders, and shall determine, in a manner which is consistent with all relevant Environment Policies and the Regulation, the period within which, the extent to which and the manner in which governmental authorities and persons may make submissions to the Director or the Council in respect of that information or environmental impact statement and environmental management programme. The Director shall facilitate the participation of all affected persons, including in particular women and members of vulnerable groups, in public review of environmental impact statements.</p> <p>This recommendation includes provisions that</p>

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			support full equivalence with Policy Principle 6, Key element (1).
<p><b>Key element (4):</b></p> <p>Involve stakeholders, including affected people <b>and concerned nongovernment organizations</b></p>	<p><b>Constitution 1975 [Second National Goal and Directive Principles] Equality and participation</b> (7) active steps to be taken to facilitate the organization and legal recognition of all groups engaging in development activities;</p>	<p><b>Partial equivalence.</b> EA Art. 55 on Public Review requires the participation of “persons”. EA Art. 2. INTERPRETATION, defines “person” to mean an individual or a corporation. If NGOs are registered in PNG as cooperative societies under the Co-operative Societies Act 1982, then under the definition of “person” in that Act – ‘ “person” includes a society and corporation not being a society when that corporation is approved by the Registrar’ – it is possible that some NGOs are “persons” for the purposes of the EA.</p>	<p>See the Recommendation for Policy Principle 5, Key element (3).</p>
<p><b>Key element (5):</b></p> <p><b>Involve stakeholders early</b> in the project preparation process</p>	<p><b>EA Art. 50. NOTICE TO UNDERTAKE ENVIRONMENTAL IMPACT ASSESSMENT.</b> ... (3) A notice under Subsections (1) and (2) must be served within the time fixed by the Director in the Operational Procedures.</p>	<p><b>Partial equivalence.</b> The time at which stakeholders are involved in the project preparation process is at the discretion of the Director.</p>	<p>The Operational Procedures were not available for review.</p>
<p><b>Key element (6):</b></p> <p>Ensure that stakeholder views and concerns are <b>made known to</b></p>	<p><b>EA Art. 57. REFERRAL TO COUNCIL.</b> Where the Director has accepted an environmental impact statement, he shall within 14 days of the date of acceptance refer the environmental impact statement to the Council together with –... (b) <b>any public submissions</b> and other information, in relation to the proposed activity.</p>	<p><b>Full equivalence.</b></p>	

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<b>and understood by decision makers and taken into account.</b>	<p><b>EA Art. 58. COUNCIL'S RECOMMENDATION.</b>  (1) Subject to this section, where the Council has received a referral under Section 57, it shall consider the statement, assessment report and <b>any public submissions</b>, reports and other information on the proposed activity and shall within 90 days –...  accept the environmental impact statement and make a recommendation to the Minister to approve the proposed activity in principle and specify the conditions to which the proposed activity should be subject if it is approved; or  (b) refuse to accept the environmental impact statement and advise the proponent to amend the statement and resubmit it to the Director.  (2) In making a recommendation to the Minister, the Council shall have regard to –...  (k) <b>any public submission</b> made, and views expressed at a presentation, hearing or conference; and...  (o) <b>public interest</b> in the proposed activity.</p>		
<b>Key element (7):</b>  <b>Continue consultations with stakeholders throughout project implementation as necessary to address issues related to environmental assessment</b>	<p><b>EA Art. 2. INTERPRETATION.</b>  ...“environmental audit or investigation” means a periodic documented evaluation of an activity which provides information on compliance and determines ways in which the carrying out of the activity may be improved to protect the environment;...</p> <p><b>EA Art. 74. ENVIRONMENTAL AUDITS AND INVESTIGATIONS.</b>  (1) The Director may –  (a) engage a person to conduct; or  (b) direct a person to commission in relation to an activity the person is carrying out, an environmental audit or investigation and report on it to the Director within a specified time....  (5) The Regulations may prescribe –  (a) the circumstance in which the public should have access to the results of an audit or investigation;...</p>	<b>Partial equivalence.</b> The EA provides for environmental audits during project implementation at the discretion of the Director, but does not require stakeholder consultation during the audits – only that stakeholders have access to the results.	To achieve full equivalence, amend the definition of “environmental audit or investigation” in EA Art. 2 as follows: ...“environmental audit or investigation” means a periodic documented evaluation of an activity, which <i>includes consultation with stakeholders</i> and provides information on compliance and determines ways in which the carrying out of the activity may be improved to protect the

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			environment;...
<p><b>Key element (8):</b></p> <p>Establish a <b>grievance redress mechanism</b> to receive and facilitate resolution of the affected people's concerns and grievances regarding the project's environmental performance.</p>	<p><b>EA Art. 68. REVIEW OF DIRECTOR'S DECISIONS.</b>  (1) A person who is dissatisfied with a decision of the Director under this Act in relation to an application made by that person or in relation to an activity carried on by that person may apply for a review of the decision by the Council....  (4) Where a person who was a party to a review before the Council is dissatisfied with a decision of the Council in relation to the review, he may appeal to the National Court on a question of law within 28 days of the Council's decision.</p> <p><b>Environment (Council's Procedure) Regulation 2002</b>  <b>Art. 10. APPLICATION FOR REVIEW OF DIRECTOR'S DECISION.</b>  An application for the review of a decision of the Director under Section 68 of the Act shall be in Form 1 of the Schedule.</p> <p><b>Art. 11. PROCEDURE FOR DETERMINING APPLICATION.</b>  (1) The Director shall, as soon as practicable after receiving an application for the review of a decision of the Director under Section 68(2) of the Act—  (a) give a copy each of the application referred to in Subsection (1) to each member of the Council; and  (b) place a copy of the application referred to in Subsection (1) on the register.  (2) The Council shall, at its next meeting after the Director has received an application for review referred to under Subsection (1), proceed to determine the application.  (3) The Director may make representations in writing or in person to the Council as to the basis on which the Directors decision was made, but shall not otherwise take part in the determination of the application.  (4) Where the Council is of the opinion that the applicant should be given an opportunity to make representations to the Council in person, it shall adjourn the determination of the application and notify the applicant of a time and place where the applicant may make representations to the Council.  (5) A determination by the Council under Section 68 of the Act shall be</p>	<p><b>No equivalence.</b>  EA Art. 68 provides for review of decisions to approve projects, but not for redress of grievances concerning environmental performance once a project has started.</p>	<p>To achieve full equivalence, amend EA Art. 74 to add a new clause (8) as follows:  <b>EA Art. 74. ENVIRONMENTAL AUDITS AND INVESTIGATIONS.</b>  ...;  (8) The Director shall establish a mechanism to redress grievances arising from the environmental and social performance of activities being carried out under a valid permit, regardless of whether such grievances are identified during the course of an environmental audit or investigation.</p>

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	in Form 2 of the Schedule and shall be registered on the register.		
<p><b>Policy Principle 6:</b> Disclose a draft environmental assessment (including the EMP) in a timely manner, before project appraisal, in an accessible place and in a form and language(s) understandable to affected people and other stakeholders. Disclose the final environmental assessment, and its updates if any, to affected people and other stakeholders.</p>			
<p><b>Key element (1):</b></p> <p>Disclose a draft environmental assessment including the EMP</p>	<p><b>EA Art. 55. PUBLIC REVIEW AND SUBMISSIONS.</b>  (1) The Director shall cause – ...  (b) any environmental impact statement submitted under this Division, to be made available for public review and shall determine the period within which, the extent to which and the manner in which governmental authorities or persons may make submissions to the Director or the Council in respect of that information or report.</p> <p><b>EIA/EIS Section 8. ENVIRONMENTAL MANAGEMENT, MONITORING AND REPORTING</b>  Sufficient information on this section of the Environmental Impact Statement should be provided to enable DEC to anticipate possible environmental management, monitoring and reporting requirements for an Environment Permit.  Information listed should reflect the proponent’s environmental policy (environment management system) and the translation of that policy to meet the requirements under this Section and Section 7 (POTENTIAL IMPACTS OF PROPOSAL) during different stages in the project life, from construction to decommissioning and closure.  Information detailed in this section shall include but not limited to the following -</p> <ul style="list-style-type: none"> <li>▪ details of information on plant operating conditions, including management and monitoring strategy,</li> <li>▪ information on socio-economic management and monitoring strategy,</li> <li>▪ mechanism and frequency for reporting monitoring results to DEC and other stakeholders, especially to directly affected stakeholder groups,</li> <li>▪ availability of contingency and/or emergency plans drawn up for the proposal,</li> </ul>	<p><b>Full equivalence.</b></p>	<p>See the recommendation for Policy Principle 5, Key element (3).</p>

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	<ul style="list-style-type: none"> <li>▪ details of Environment Improvement Plan,</li> <li>▪ details of Waste Minimisation and/or Management Plans,</li> <li>▪ information on potential rehabilitation issues and its strategies including Rehabilitation Plan.</li> </ul>		
<p><b>Key element (2):</b></p> <p>Disclose a draft environmental assessment in a <b>timely manner prior to appraisal.</b></p>	<p><b>EA Art. 55. PUBLIC REVIEW AND SUBMISSIONS.</b>  (1) The Director shall cause – ...  (b) any environmental impact statement submitted under this Division, to be made available for public review and shall determine the period within which, the extent to which and the manner in which governmental authorities or persons may make submissions to the Director or the Council in respect of that information or report.</p>	<p><b>Partial equivalence.</b>  The timing of disclosure of an environmental impact statement is at the discretion of the Director. The EIA/EIS does not specify the period for the public to make submissions.</p>	<p>See the recommendation for Policy Principle 5, Key element (3).</p>
<p><b>Key element (3):</b></p> <p>Disclose a draft environmental assessment in an <b>accessible place</b></p>	<p><b>EA Art. 53. ENVIRONMENTAL IMPACT STATEMENT.</b>  (1) An environmental impact statement must cover the issues set out in the approved inception report.</p> <p><b>EPR Art. 5. INFORMATION TO ACCOMPANY PERMIT APPLICATION.</b>  (1) Information required under Section 63 of the Act to accompany an application for a permit made under Section 60 of the Act, shall include –  (a) comprehensive details of the processes involved in carrying out the proposed activity; and  (b) a statement of the risks of environmental harm associated with the proposed activity; and  (c) a description of the sources and nature of any contamination which is likely to result from the carrying out of the proposed activity; and  (d) the steps which the applicant proposed to take to minimize or prevent any environmental harm as a result of the proposed activity; and  (e) a map of the site; and  (f) such other information as the Director may require.</p> <p><b>EPR Art. 10. NOTIFICATION OF APPLICATIONS.</b>  (1) Subject to Subsection (2) and (3), the Director shall upon acceptance</p>	<p><b>Partial equivalence.</b>  EA Art. 55 does not specify how a draft environmental impact statement is to be disclosed.</p> <p>The entire EIA/EIS guideline specifies the contents of an EIS but does not specify how it is to be disclosed.</p> <p>EPR Art. 10 requires publishing notice of an application for a permit in newspapers and broadcasting it by radio, but does not specifically require disclosure of the accompanying information/draft environmental impact statement.</p> <p>DEC confirms that its Operational Manual, which was not available for review, requires that the draft EIA be</p>	<p>See the recommendation for Policy Principle 5, Key element (3).</p>

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	of an application for a permit pursuant to Section 61 of the Act, within 28 days, publish a notice in a newspaper circulating nationally and a radio – broadcasting service (if any) which serves the province where the proposed activity is planned to be carried out, advising that any interested person may – ...(b) view the application at such nominated places on payment of a prescribed fee.	made available for review in an accessible place.	
<b>Key element (4):</b>  Disclose a draft environmental assessment in a <b>form and language(s) understandable</b> to affected people and other stakeholders	<b>EIA/EIS Section 1. EXECUTIVE SUMMARY OR OVERVIEW OF PROPOSAL</b> ...NOTE: The summary should not be more than five pages in length and be written in English, Tok Pisin and the relevant Local Dialect... .	<b>Full equivalence.</b>	See the recommendation for Policy Principle 5, Key element (3).
<b>Key element (5):</b>  <b>Disclose the final environmental assessment, and its updates if any,</b> to affected people and other stakeholders	<b>EA Art. 59. MINISTER MAY GRANT APPROVAL IN PRINCIPLE.</b> ...(4) The Regulations may prescribe the form in which the Minister's decision shall be recorded and the process for making the decision available to the public.  <b>EPR Art. 5. INFORMATION TO ACCOMPANY PERMIT APPLICATION.</b> (1) Information required under Section 63 of the Act to accompany an application for a permit made under Section 60 of the Act, shall include – (a) comprehensive details of the processes involved in carrying out the proposed activity; and (b) a statement of the risks of environmental harm associated with the proposed activity; and (c) a description of the sources and nature of any contamination which is likely to result from the carrying out of the proposed activity; and (d) the steps which the applicant proposed to take to minimize or prevent any environmental harm as a result of the proposed activity; and	<b>Partial equivalence.</b> The EA provides for making public the final decision, but not the final EIS.  The EPR indirectly requires disclosure of the EIS in stipulating the information that must accompany a permit application and providing that the public may review permit applications on payment of a fee.	To achieve full equivalence, amend EA Art. 59 as follows: <b>59. MINISTER MAY GRANT APPROVAL IN PRINCIPLE.</b> ...(4) The Regulations <i>shall</i> prescribe the form in which the Minister's decision shall be recorded and the process for making the decision, <i>the final environmental assessment, and the final environmental management programme</i>

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	<p>(e) a map of the site; and (f) such other information as the Director may require.</p> <p><b>EPR Art. 10. NOTIFICATION OF APPLICATIONS.</b> (1) Subject to Subsection (2) and (3), the Director shall upon acceptance of an application for a permit pursuant to Section 61 of the Act, within 28 days, publish a notice in a newspaper circulating nationally and a radio – broadcasting service (if any) which serves the province where the proposed activity is planned to be carried out, advising that any interested person may – ...(b) view the application at such nominated places on payment of a prescribed fee.</p>		<p>available to the public.</p> <p>Amend EPR Art. 5 as follows: <b>Art. 5. INFORMATION TO ACCOMPANY PERMIT APPLICATION.</b> (1) Information required under Section 63 of the Act to accompany an application for a permit made under Section 60 of the Act, shall include – (a) the final environmental impact assessment; (b) the final environmental management programme; (c) a map of the site; and (d) such other information as the Director may require.</p>
<p><b>Policy Principle 7:</b> Implement the EMP and monitor its effectiveness. Document monitoring results, including the development and implementation of corrective actions, and disclose monitoring reports.</p>			
<p><b>Key element (1):</b> <b>Implement the EMP</b></p>	<p><b>EA Art. 75. ENVIRONMENTAL IMPROVEMENT PLANS.</b> ...(2) Where the Director is satisfied that –... (b) the person submitting the plan will carry out the plan, he may approve the plan, subject to any conditions.</p>	<p><b>Partial equivalence.</b> The EA requires that the Director be satisfied that the person submitting the environmental improvement plan will actually implement it, but does not explicitly impose an obligation on the person submitting the plan to carry it</p>	<p>See Operational Principle 4, Key element (5) which recommends amending EA Art. 66(1) to stipulate that preparing and implementing an EMP is a mandatory permit</p>



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<p><b>Key element (2):</b></p> <p><b>Monitor effectiveness of EMP</b></p>	<p><b>EA Art. 66. CONDITIONS OF PERMITS.</b>  (1) A permit may be issued subject to such conditions the Director considers are necessary or desirable, including but not limited to conditions containing requirements to do all or any of the following – ... (c) at the cost of the permit holder, installation of monitoring equipment, <b>carrying out a specified monitoring programme</b> and reporting on its progress;...</p> <p><b>EA Art. 74. ENVIRONMENTAL AUDITS AND INVESTIGATIONS.</b>  ... (2) Without limiting the generality of Subsection (1), an audit or investigation may include – ...  (b) a review of the design and conduct of an <b>environmental monitoring programme</b>;...</p> <p><b>EIA/EIS Section 8. ENVIRONMENTAL MANAGEMENT, MONITORING AND REPORTING</b>  Sufficient information on this section of the Environmental Impact Statement should be provided to enable DEC to anticipate possible environmental management, monitoring and reporting requirements for an Environment Permit.  Information listed should reflect the proponent’s environmental policy (environment management system) and the translation of that policy to meet the requirements under this Section and Section 7 (POTENTIAL IMPACTS OF PROPOSAL) during different stages in the project life, from construction to decommissioning and closure.  Information detailed in this section shall include but not limited to the following -</p> <ul style="list-style-type: none"> <li>▪ details of information on plant operating conditions, including management and monitoring strategy,</li> <li>▪ information on socio-economic management and monitoring strategy,</li> <li>▪ mechanism and frequency for reporting monitoring results to DEC and other stakeholders, especially to directly affected stakeholder groups,...</li> </ul> <p><b>Policy Documents and Guidelines – Not legally binding</b></p>	<p>out.</p> <p><b>Full equivalence.</b></p>	<p>condition.</p> <p>Also see Operational Principle 4, Key element (5) which recommends amending EA Art. 66(1) to stipulate that carrying out a monitoring programme is a mandatory permit condition.</p>

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	<p><b>PNG DSP Section 6.6 Environment Strategies for sustaining the environment</b> Ongoing efforts are required to improve the legislative framework, together with monitoring and evaluation mechanisms in order to protect the environment.</p> <p><b>PNG DSP Section 6.9 Public Sector Management</b> Raising the standards of public sector management will also require: · developing monitoring and evaluation mechanisms to ensure that public institutions become accountable;...</p> <p><b>EMC Guideline Section 12.2 Performance Monitoring and Reporting</b> (a) Site Inspections and Monitoring ...The EMC Secretariat must ensure that there is a periodic site inspection with the relevant Government agencies, particularly the members of the EMC Technical Screening Committee which assess and provide briefs and reports on project implementation to the EMC.</p>		
<p><b>Key element (3):</b></p> <p><b>Document monitoring results, including the development and implementation of corrective actions</b></p>	<p><b>EA Art. 66. CONDITIONS OF PERMITS.</b> (1) A permit may be issued subject to such conditions the Director considers are necessary or desirable, including but not limited to conditions containing requirements to do all or any of the following –... (c) at the cost of the permit holder, installation of monitoring equipment, carrying out a specified monitoring programme and <b>reporting</b> on its progress;... (g) undertaking an audit at periodic intervals;...</p> <p><b>EIA/EIS Section 8. ENVIRONMENTAL MANAGEMENT, MONITORING AND REPORTING</b> Sufficient information on this section of the Environmental Impact Statement should be provided to enable DEC to anticipate possible environmental management, monitoring and reporting requirements for an Environment Permit. Information listed should reflect the proponent’s environmental policy (environment management system) and the translation of that policy to meet the requirements under this Section and Section 7 (POTENTIAL</p>	<p><b>Partial equivalence.</b> Documenting monitoring results is a permit condition that is discretionary with the Director. EA Art. 66 is not clear on whether reporting on the progress of a monitoring programme includes developing and implementing corrective actions.</p> <p>The EIA/EIS requires a monitoring strategy and a mechanism for reporting results, but does not specify that reporting includes developing and implementing corrective actions.</p> <p>DEC confirms that this is not provided in its internal Operational Manual, either, but that is the working practice.</p>	<p>See Operational Principle 4, Key element (5) which recommends amending EA Art. 66(1) to stipulate that carrying out an environmental audit or investigation and developing and implementing the indicated corrective actions is a mandatory permit condition.</p>

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	<p>IMPACTS OF PROPOSAL) during different stages in the project life, from construction to decommissioning and closure. Information detailed in this section shall include but not limited to the following -</p> <ul style="list-style-type: none"> <li>▪ details of information on plant operating conditions, including management and monitoring strategy,</li> <li>▪ information on socio-economic management and monitoring strategy,</li> <li>▪ mechanism and frequency for reporting monitoring results to DEC and other stakeholders, especially to directly affected stakeholder groups,...</li> </ul> <p><b>Policy Documents – Not legally binding</b> <b>PNG MTDP 2011-2015</b> PNG DSP 2030 Deliverable 2.2: Streamline Environment Protection Authority monitoring and compliance and build capacity</p>		
<p><b>Key element (4):</b> <b>Disclose</b> monitoring reports.</p>	<p><b>EA Art. 131. REGISTER.</b> (1) The Director shall keep a register containing a copy of all notifications, applications, decisions and approvals taken under this Act including but not limited to –... (p) <b>each monitoring and management report</b> submitted by a permit holder under the conditions of a permit; ... (2) The register shall be made available for inspection by any person at all reasonable times. (3) Any person may be entitled to search for, request and obtain copies of any entry in the register subject to payment of fees fixed by the Director under Section 100.</p>	<p><b>Full equivalence.</b> Access to monitoring reports is subject to payment of fees.</p>	
<p><b>Policy Principle 8:</b> Do not implement project activities in areas of critical habitats, unless (i) there are no measurable adverse impacts on the critical habitat that could impair its ability to function, (ii) there is no reduction in the population of any recognized endangered or critically endangered species, and (iii) any lesser impacts are mitigated. If a project is located within a legally protected area, implement additional programs to promote and enhance the conservation aims of the protected area. In an area of natural habitats, there must be no significant conversion or degradation, unless (i) alternatives are not available, (ii) the overall benefits from the project substantially outweigh the environmental costs, and (iii) any conversion or degradation is appropriately mitigated. Use a precautionary approach to the use, development, and management of renewable natural resources.</p>			
<p><b>Key element (1):</b> <b>Do not</b></p>	<p><b>EA Art. 2 INTERPRETATION</b> ...“matters of national importance” means the matters set out in</p>	<p><b>Partial equivalence.</b> The EA mentions habitats only once,</p>	<p>To achieve full equivalence:</p>

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<p><b>implement project activities in areas of critical habitats, unless</b> (i) there are <b>no measurable adverse impacts</b> on the critical habitat that could impair its ability to function</p>	<p>Section 5;...</p> <p><b>EA Art. 5. MATTERS OF NATIONAL IMPORTANCE.</b> All persons exercising powers and functions under this Act shall recognise and provide for the following matters of national importance:- ... (c) the protection of areas of significant biological diversity and the habitats of rare, unique or endangered species;...</p> <p><b>EA Art. 42. LEVEL 1, 2 AND 3 ACTIVITIES.</b> ...(2) Activities that – (a) involve matters of national importance; or (b) may result in serious environmental harm, may be prescribed as level 3 activities.</p> <p><b>EA Art. 50. NOTICE TO UNDERTAKE ENVIRONMENTAL IMPACT ASSESSMENT.</b> (1) Where the Director receives a notification of intention to carry out preparatory work in relation to a proposed level 3 activity, he shall serve a notice on the proponent named in the notification requiring the proponent to undertake an environmental impact assessment in relation to the proposed activity.</p> <p><b>EA Art. 58. COUNCIL'S RECOMMENDATION.</b> (1) ... the Council... shall consider the statement, assessment report and any public submissions, reports and other information on the proposed activity and shall within 90 days –... accept the environmental impact statement and make a recommendation to the Minister to approve the proposed activity in principle and specify the conditions to which the proposed activity should be subject if it is approved; or (b) refuse to accept the environmental impact statement and advise the proponent to amend the statement and resubmit it to the Director. (2) In making a recommendation to the Minister, the Council shall have regard to –... (a) the objects of the Act; and (b) the matters of national importance; and (c) the general environmental duty; and</p>	<p>stating that the protection of habitats of rare, unique or endangered species is a matter of national importance. Matters of national importance are not defined in the Constitution. The Director has the discretion to classify activities that involve matters of national importance as Level 3 activities for the purposes of the EIA process.</p> <p>Under the EPAR, proposed activities that will create potential impacts in officially declared protected areas are given the highest level of scrutiny during the EIA process.</p> <p>If habitats of rare, unique or endangered species are not within an officially declared protected area, they may or may not be given the highest level of EIA scrutiny.</p> <p>The EIA/EIS Guideline specifies only "information on vulnerable (endangered) species", but does not explicitly indicate whether this includes information on such species' habitat.</p> <p>The Conservation Areas Act 1978, National Parks Act 1982, National Parks Regulation 1984, Fauna (Protection and Control) Act 1966, and Fauna (Protection and Control) Regulation 1968 make no reference to habitat. Rules for eight wildlife management areas and three wildlife sanctuaries, all adopted in the late</p>	<p>1. Develop and adopt a biodiversity law. There are two options for doing this: a. A comprehensive biodiversity law, with implementing regulations, that would replace the Conservation Areas Act, National Parks Act, and the Fauna (Protection and Control) Act, consolidating into one internally consistent law the management and protection of all types of ecosystems and species, including protected areas and rare, unique or endangered species. Such a law should, among many other things, stipulate criteria for determining the conditions under which proposed development activities that would impact protected areas and species may or may not be permitted.</p> <p>b. Develop and adopt an umbrella biodiversity law that establishes principles and fundamental obligations for the conservation and</p>

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	<p>(d) any relevant Environment Policy;...</p> <p>(n) any relevant obligations under any international treaty, convention or instrument to which Papua New Guinea is a party;...</p> <p>(3) The Regulations may prescribe for further criteria to be applied by the Council in making a recommendation to the Minister.</p> <p><b>EA Art. 62. APPLICATION IN RELATION TO LEVEL 3 ACTIVITIES ETC.</b></p> <p>(1) Where an application for a permit relates to –</p> <p>(a) a level 3 activity (other than an existing activity);...</p> <p>the application shall not be accepted until an environmental impact assessment has been conducted in relation to the proposed activities in accordance with Division 3 (Environmental Impact Assessment).</p> <p><b>EA Art. 133. REGULATIONS.</b></p> <p>(2) Without limiting the generality of Subsection (1) but subject to this Act, the Regulations may prescribe in relation to environmental contaminants –...</p> <p>(w) the protection of –...</p> <p>(ii) flora and fauna from damage or the risks of damage, arising out of or in the course of the handling, use or disposal of contaminants; and</p> <p><b>EPAR Schedule 2</b></p> <p>Level 3 Activities, 14.4 Activities that may result in a significant risk of serious or material environmental harm within Wildlife Management Areas, Conservation Areas, National Parks and Protected Areas or any area declared to be protected under the provisions of an International Treaty to which Papua New Guinea is a party and which has been ratified by the Parliament of the Independent State of Papua New Guinea.</p> <p><b>EIA/EIS</b></p> <p>Biological Environment</p> <p>Detail information should be provided on the existing biological environment and shall include but not limited to the following details -... information on vulnerable (endangered) species,...</p>	<p>1970s, make no reference to habitat.</p> <p>The Conservation Areas Act 1978 includes provisions governing approval of development in a conservation area. The CAA does not establish any criteria for determining whether to allow development in a conservation area.</p> <p>The National Parks Act 1982, National Parks Regulation 1984, Fauna (Protection and Control) Act 1966, and Fauna (Protection and Control) Regulation 1968 make no reference to development, projects, or activities.</p>	<p>sustainable use of ecosystems, species and genes and amend existing sectoral laws and regulations consistently with the provisions of the umbrella law.</p> <p>2. Until this is done, or if it is not done:</p> <p>a. Amend the EA as follows:</p> <p>(1) Art. 2 add a new definition: "critical habitat" means a specific geographic area or areas that are essential for the conservation of a rare, unique or endangered species and that may require special management and protection;</p> <p>(2) Art. 42: ...(2) Activities that – (a) involve matters of national importance; or (b) may result in serious environmental harm, shall be prescribed as level 3 activities.</p> <p>(3) Art. 66. Add a new clause:</p>

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	<p><b>Conservation Areas Act 1978 (CAA)</b>  <b>Art. 12. RECOMMENDATION TO DECLARE CONSERVATION AREA.</b>  (1) Where the Minister is of the opinion that an area has particular biological, topographical, geological, historical, scientific or social significance or other special value for the present community or for future generations, he may cause to be prepared a recommendation that the area be declared a conservation area.</p> <p><b>Art. 32. APPLICATION FOR DEVELOPMENT APPROVAL.</b>  (1) Where, in respect of any land—  (a) in a conservation area; or  (b) in an area in respect of which a notice of recommendation has been given under Section 12(1),  any development or alteration of the existing use of that land is proposed (other than in accordance with the terms of the management plan)—  (c) the owner of the land; or  (d) the proponent, with the consent of the owner of the land; or  (e) where the proponent is the State and the proposed use is a public purpose, the proponent,  shall make application to the Minister for approval to develop, or alter or permit the development or alteration of the existing use of the land.</p> <p><b>Art. 34. APPROVAL MAY BE GRANTED.</b>  (1) The Minister may, after considering—  (a) the application together with all material lodged under Section 32; and  (b) the opinion of the management committee to which reference was made under Section 33(1)(a); and  (c) any opinion or opinions sought under Section 33(1)(b); and  (d) the impact or likely impact of the proposed development or alteration on the environment of the conservation area or of the area in respect of which a notice of recommendation under Section 12(1) has been given; and  (e) any physical planning considerations,  approve the application, or approve the application subject to conditions, or refuse to approve the application.</p>		<p>...the taking of certain action to ensure that there are no measurable adverse impacts on protected areas and on the habitat of any rare, unique or endangered species that could impair its ability to function, that there is no reduction in the population of any officially recognized rare, unique or endangered species, and that any lesser impacts are mitigated;</p> <p>(4) Art. 133.  REGULATIONS.  ...(2) Without limiting the generality of Subsection (1) but subject to this Act, the Regulations may prescribe in relation to environmental contaminants —...  (w) the protection of —...  (ii) flora and fauna, in particular rare, unique or endangered species, and their habitats from damage or the risks of damage, arising out of or in the course of the handling, use or disposal of contaminants;...</p>

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	<p><b><u>Policy Document – Not legally binding</u></b></p> <p><b>National Biodiversity Strategy and Action Plan 2006 (NBSAP)</b> Priority Programme 1. Policy, Legislation and Administration Project 2. Comprehensive review and updating of national legislation on natural resources and linkages to MEAs and other relevant arrangements; Objective 1: An effective legal framework for the implementation of the CBD and related Conventions; Activities: 1. Review and update the national legislation to ensure complementarily in sustainable resource use and the incorporation of biodiversity conservation considerations...; 2. Develop a national policy statement on biodiversity</p> <p><b>Environment Policy 1976</b> ...wildlife and their habitat must be protected and wisely managed in the development process...</p>		<p>b. Implement EA Art. 58(3) by developing and issuing regulations prescribing criteria to be applied by the Council in making a recommendation for approval or disapproval of proposed projects whose activities would be carried out in areas of habitats of rare, unique or endangered species.</p> <p>3. Amend the Fauna (Protection and Control) Act as follows: a. 6. Declaration of protected fauna. The Minister may, by notice in the National Gazette, declare any fauna and its habitat to be protected for the purposes of this Act.</p> <p>b. 11. Declaration of sanctuaries. (1) The Minister may, by notice in the National Gazette, declare an area to be a sanctuary for the purposes of this Act. (2) In declaring a sanctuary for the purposes of protecting</p>

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			<p>rare, unique or endangered species, the Minister shall ensure that the sanctuary adequately protects the habitat of that species.</p> <p>(3) In the notice referred to in Subsection (1) or in a subsequent notice in the National Gazette, the Minister may specify animals or classes of animals that may lawfully be taken or killed in the sanctuary. In the case of a sanctuary declared for the purposes of protecting rare, unique or endangered species, the Minister shall specify that the protected species may not lawfully be taken or killed in the sanctuary.</p>
<p><b>Key element (2):</b> Do not implement project activities in areas of critical habitats, unless... (ii) there is <b>no reduction in the population of any recognized endangered or critically endangered</b></p>	<p>See Policy Principle 8, Key element (1), above.</p>	<p><b>Partial equivalence.</b> See Policy Principle 8, Key element (1), above.</p>	<p>See the recommendations for Policy Principle 8, Key element (1), above.</p>



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species, and			
<b>Key element (3):</b> Do not implement project activities in areas of critical habitats, unless... (iii) <b>any lesser impacts are mitigated.</b>	See Policy Principle 8, Key element (1), above.	<b>Partial equivalence.</b> See Policy Principle 8, Key element (1), above.	See the recommendations for Policy Principle 8, Key element (1), above.
<b>Key element (4):</b> <b>If a project is located within a legally protected area,</b> implement additional programs to promote and enhance the conservation aims of the protected area.	<b>No corresponding policy provision or legal requirement.</b>	<b>No equivalence.</b>	<p>1. To achieve full equivalence, see recommendation 1 for Policy Principle 8, Key element (1), above.</p> <p>2. Until this is done, or if it is not done:</p> <p>a. Implement EA Art. 58(3) by developing and issuing regulations prescribing criteria to be applied by the Council in making a recommendation for approval or disapproval of proposed projects whose activities would be carried out within a legally protected area.</p> <p>b. Amend EA Art. 66 to add a new clause: Implementing additional programs to promote and enhance the conservation aims of the protected area where the</p>

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			project is located within a legally protected area;
<b>Key element (5):</b> In an area of natural habitats, there must be <b>no significant conversion or degradation, unless (i) alternatives are not available</b>	See Policy Principle 3, Key elements (1), (2) and (3).	<b>Partial equivalence.</b> See Policy Principle 3, Key elements (1), (2) and (3).	1. To achieve full equivalence, see the recommendations for Policy Principle 3, Key elements (1), (2) and (3).  2. Implement EA Art. 58(3) by developing and issuing regulations prescribing criteria to be applied by the Council in making a recommendation for approval or disapproval of proposed projects whose activities would be carried out in areas of natural habitats.
<b>Key element (6):</b> In an area of natural habitats, there must be <b>no significant conversion or degradation, unless...(ii) the overall benefits from the project substantially outweigh the environmental costs, and</b>	<b>No corresponding policy provision or legal requirement.</b>	<b>No equivalence.</b>	1. To achieve full equivalence, see recommendation 1 for Policy Principle 8, Key element (1), above.  2. Until this is done, or if it is not done, implement EA Art. 58(3) by developing and issuing regulations prescribing criteria to be applied by the Council in making a recommendation for approval or disapproval of proposed projects whose activities would be

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			carried out in areas of natural habitats.
<b>Key element (7):</b> If a project is located within a legally protected area, there must be <b>no significant conversion or degradation, unless...(iii) any conversion or degradation is appropriately mitigated.</b>	See Operational Principle 4, Key element (2).	<b>Full equivalence.</b>	
<b>Key element (8):</b> Use a <b>precautionary approach</b> to the use, development, and management of renewable natural resources.	<b>EA Art. 4. OBJECTS.</b> The objects of this Act are – ...(h) to apply a precautionary approach to the assessment of risk of environmental harm and ensure that all aspects of environmental quality affected by environmental harm are considered in decisions relating to the environment;...	<b>Full equivalence.</b> The NBSAP states that “The precautionary approach is applied through the application of the Environmental Impact Assessment (EIA) process.”	
<b>Operational Principle 9:</b> Apply pollution prevention and control technologies and practices consistent with international good practices as reflected in internationally recognized standards such as the World Bank Group’s Environmental, Health and Safety Guidelines. Adopt cleaner production processes and good energy efficiency practices. Avoid pollution, or, when avoidance is not possible, minimize or control the intensity or load of pollutant emissions and discharges, including direct and indirect greenhouse gases emissions, waste generation, and release of hazardous materials from their production, transportation, handling and storage. Avoid the use of hazardous materials subject to international bans or phaseouts. Purchase, use, and manage pesticides based on integrated pest management approaches and reduce reliance on synthetic chemical pesticides.			
<b>Key element (1):</b> Apply <b>pollution prevention and control</b> technologies and practices <b>consistent with</b>	<b>EA Art. 1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.</b> (3) For the purpose of Section 53(1) of the Constitution – (a) purposes and the reason for which this Act permits – (i) protection of the environment from environmental harm; and (ii) control, prevention and minimisation of the contamination of the environment;... are hereby declared to be public purposes...	<b>Partial equivalence.</b> At the policy level, there is a clear commitment to using clean energy generation technologies and minimising pollution, but neither the EIP nor MTDP addresses pollution control technology.	To achieve full equivalence:  1. If the EIP has not yet been finalized, revise Appendix A as follows: Headings should be in

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<b>international good practices</b>	<p><b>EA Art. 4. OBJECTS.</b> The objects of this Act are – ...(f) to require persons engaged in activities which have a harmful effect on the environment progressively to reduce or mitigate the impact of those effects as such reductions and mitigation become practicable through technology and economic developments;...</p> <p><b>EA Art. 31. NATURE OF POLICIES.</b> ...(2) ...an Environment Policy may apply to the whole country or to a segment or element of the environment and may be made in respect of any of the following matters:- ...(c) a technology or process;...</p> <p><b>Policy Document – Not legally binding</b> <b>Electricity Industry Policy May 2010 (EIP)</b> <b>Section 5.1.3</b> Scope of Work of the Electricity Management Committee The EMC will oversee the implementation of the EIP. The operational functions and responsibilities of the EMC will be led by the DPE, with the involvement of the organizations represented in the Committee. These functions and responsibilities will include in particular, the following:...</p> <ul style="list-style-type: none"> <li>▪ Where economically feasible, and in all the circumstances desirable, require the incorporation of latest technologies, including renewable energy sourcing; and complementary technology...</li> </ul> <p><b>Appendix A</b> <b>Technologies, Sources and Means for Providing Electricity</b> The State here states clearly its position in relation to choice and preference on the technologies and sources of electricity that are to be used or developed and the approach to generating electricity in PNG. <b>Economically-viable Technologies</b> Economic viability precedes every other criterion for technologies and sources of electricity that will be employed and utilized in the PNG electricity industry. In situations of vibrant competition where market mechanisms are active, it is expected that the competitive forces alone are sufficient to see that this criterion is met. <b>Environmentally-sound Technologies</b> Technologies those are friendly to the human and natural environment</p>	<p>The EIP promotes “latest technologies”, “where economically feasible”. The Appendix to the EIP is contradictory. It states that: “Economic viability precedes every other criterion for technologies and sources of electricity that will be employed and utilized in the PNG electricity industry.” In the following paragraph, however, it states that “The human environment can never be allowed to be sacrificed for the purpose of economic gains”.</p> <p>The Appendix to the EIP refers to domestic standards, but not to international ones: “Technologies used in the provision of electricity services in PNG must be compatible with existing and approved standards in the country.” International good practices are, by definition, voluntary. They are used as an alternative to mandatory legislated standards. The government could require the use of international good practices by the public sector and promote and/or provide incentives for the private sector to use them.</p> <p>PNG Power is a state-owned enterprise. The MTDP notes that private sector competition will create the incentive for state-owned enterprises to “operate efficiently using cutting edge industry technology”, but the MTDP does not</p>	<p>the following order and the text under the headings “Economically-viable Technologies” and “Compatibility with existing Standards” should be revised as indicated:</p> <ol style="list-style-type: none"> <li>1. <b>Technologies, Sources and Means for Providing Electricity</b></li> <li>2. <b>Environmentally-sound Technologies</b></li> <li>3. <b>Energy-efficient Technologies</b></li> <li>4. <b>Indigenous Resources</b></li> <li>5. <b>Economically-viable Technologies</b></li> </ol> <p>Economic viability is secondary to environmental soundness, energy efficiency, and use of indigenous resources as a criterion for technologies and sources of electricity that will be employed and utilized in the PNG electricity industry. In situations of vibrant competition where market mechanisms are active, it is expected that the competitive forces alone are sufficient to see that</p>

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	<p>are promoted to be used in the PNG electricity industry. The human environment can never be allowed to be sacrificed for the purpose of economic gains. Where economic reasons assume greater importance on the Government's developmental agenda, the industry may not see it fit to resort to technologies that do not impact significantly on the natural environment. Where control measures are available and can be used, these should be used in concert with the use of the selected technologies.</p> <p><b>Indigenous Resources</b> This Policy promotes use of indigenous resources and sources of electricity to the extent of maximizing these resources. [The indigenous resources to be promoted are: hydro; geothermal; solar; wind; gas; ocean currents.]</p> <p><b>Energy-efficient Technologies</b> Energy efficient technologies are promoted by the Government for their use in the electricity industry. The Government will ensure that electricity users are not allowed to pay the high price of inefficient technology usage.</p> <p><b>Compatibility with existing Standards</b> Technologies used in the provision of electricity services in PNG must be compatible with existing and approved standards in the country. In the view of the Government, this can be compromised for economic gains of the undertakers of electricity or importers and manufacturers of these technologies, which it will guard against.</p> <p><b>MTDP Section 2.9 State owned enterprise reform</b> <b>State owned enterprise policy framework</b> ...Private sector competition will impose an ongoing obligation for SOEs to operate efficiently using cutting edge industry technology....</p> <p><b>Section 3.13 Energy development</b> A table in this section sets targets for increasing capacity using the following technologies: gas; hydro; geothermal; solar installations; wind power; biomass; and biogas.</p> <p><b>Section 5.6 Environment</b> In order to promote a sustainable environment, MTDP 2011-2015 will</p>	<p>indicate that use of cutting-edge technology is a formal government policy.</p> <p>For the period 2011-2015, the MTDP appears to acknowledge limitations and constraints with respect to technology and to expect the private sector to provide the impetus to which state-owned enterprises would have to respond, stating that "...interventions will be focused on enforcing <i>minimum</i> [emphasis added] technology and maintenance standards, particularly within...sectors such as...energy.</p> <p>Support in legislation for pollution prevention and control technology consistent with international good practice is indirect in the EA and non-existent in the Electricity Industry Act 2000, which does not contain the words 'pollution' or 'technology'. Neither law makes reference to international standards.</p>	<p>this criterion is met.</p> <p><b>6. Compatibility with existing Standards</b> Technologies used in the provision of electricity services in PNG must be compatible with existing and approved standards in the country. In the view of the Government, this can be compromised for economic gains of the undertakers of electricity or importers and manufacturers of these technologies, which it will guard against. The Government must promote and provide incentives for the use of cleaner production processes and the application of pollution prevention and control technologies and practices consistent with international good practices.</p> <p>2. When the next MTDP is drafted, consideration should be given to including in it, for all sectors, the substance of all Key elements of this Operational Principle.</p>

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	<p>focus on interventions to minimise pollution,...</p> <p><b>Section 5.7 Climate change</b> ...during the first MTDP, interventions will be focused on enforcing minimum technology and maintenance standards, particularly within the economic and infrastructure sectors such as forestry, agriculture and energy.</p>		<p>3. Amend the Electricity Industry Act 2000 to make it consistent with the EIP, in particular introducing provisions on energy efficiency and environmental soundness, and providing incentives for the adoption of cleaner generation processes and the use of technologies and practices consistent with international good practices for the prevention and control of all types of contaminants resulting from the generation of electricity.</p> <p>4. Amend EA Art. 4(f) as follows: (f) to require persons engaged in activities which have a harmful effect on the environment progressively to adopt cleaner production processes and to prevent, reduce or mitigate the impact of those effects as such reductions and mitigation become practicable through technologies and practices consistent with</p>

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			<p>international good practices, and economic developments;...</p> <p>Amend EA Art. 133(2) to add a new clause: The adoption of cleaner production processes and the application of technologies and practices consistent with international good practices for the prevention and control of contaminants;</p>
<p><b>Key element (2):</b> Adopt <b>cleaner production</b> processes</p>	<p><b>Electricity Industry Act 2000 (EIA)</b> Being an Act to provide for the establishment of an Electricity Commission and to regulate the generation, supply and sale of electricity, and for related purposes. Being an Act to regulate the generation, supply and sale of electricity, and for related purposes.</p> <p><b>EA Art. 31. NATURE OF POLICIES.</b> ...(2) ...an Environment Policy may apply to the whole country or to a segment or element of the environment and may be made in respect of any of the following matters:- ...(c) a technology or process;...</p> <p><b><u>Policy Document – Not legally binding</u></b> <b>EIP</b> See provisions under Key element (1), above.</p> <p><b>MTDP Section 3.13 Energy development</b> Electricity will be provided to rural aid centres and schools by using renewable energy such as solar, wind and micro hydro.... The MTDP will also address the establishment of clear and specific frameworks for</p>	<p><b>Partial equivalence.</b> At the policy level, there is a clear commitment to using clean energy generation technologies. See, however, comments on Key element (1), above.</p> <p>The EIA 2000 states that it governs the generation of electricity, but does not include provisions that do so. It is possible that there may be regulations on electricity generation under the Act, but they were not available for review.</p> <p>Neither the EIA nor the EA makes any reference to cleaner productions processes as such, nor stipulates any obligation to use them.</p>	<p>See recommendations 1, 2 and 3 for Operational Principle 9, Key element (1), above.</p>

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	<p>utilising gas in electricity generation.... The emphasis will be establishing hydroelectric, geothermal and other renewable energy technologies to replace diesel.</p> <p>Sector Strategy 10.1 Introduce clean coal generation technology that underpins both energy security and competitive electricity tariffs.</p> <p><b>Climate-compatible development for Papua New Guinea, 2<sup>nd</sup> draft, March 2010 (CCD PNG)</b></p> <p><b>Section 3b.</b> Greenhouse gas abatement in non-forestry sectors</p> <p>For the non-forestry sectors, emissions can be reduced by approximately 20%, i.e., ~2.2 Mt CO<sub>2</sub>e in 2030 compared to BAU levels, <b>mostly from the power sector</b>. Approximately half the abatement potential (~1.2 Mt CO<sub>2</sub>e) would come from a near total decarbonisation of the power sector at largely negative abatement costs (but at a substantial capital cost, approaching USD 200 m of investment required if rural electrification is included). This decarbonisation will also reduce indirect emissions from the manufacturing and service sectors as these sectors would rely on <b>cleaner generation of energy</b>.</p>		
<p><b>Key element (3):</b> Adopt good energy efficiency practices.</p>	<p><b><u>Policy Document – Not legally binding</u></b></p> <p><b>EIP</b></p> <p><b>Introduction</b> This Policy, therefore, is intended to stimulate the development of the electricity industry by utilizing market mechanisms; encouraging the involvement of the private sector; and, thereby, accelerating expansion of electricity infrastructure and increasing efficiency.</p> <p><b>Section 2.1 Aim and Goals.</b> The aim of this Policy is to put in place structures and processes to achieve the Government’s goals of equity and efficiency in the supply of electricity.</p> <p>See also EIP provisions under Key element (1), above.</p> <p><b>MTDP Section 3.13 Energy development</b></p> <p>Inefficiencies in the electricity systems will also be addressed in the first MTDP. In particular, 50 per cent of technical losses in electricity systems will be rectified and a framework will be established for eradicating non-technical losses.</p>	<p><b>Partial equivalence.</b></p> <p>At the policy level, there is a clear commitment to energy efficiency. See, however, comments on Key element (1), above.</p> <p>Neither the EIA nor the EA makes any reference to energy efficiency nor stipulates any obligation to adopt practices that lead to it.</p>	<p>See recommendations 1, 2 and 3 for Operational Principle 9, Key element (1), above.</p>



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	<p><b>CCD PNG Section 3b.</b> Greenhouse gas abatement in non-forestry sectors</p> <p>Additional grid-connected hydro plants are economically feasible, but require creative financing solutions to overcome the initial capital hurdle and avoid locking in carbon-emitting, inefficient power sources for 20–40 years. Further improvements in the costs and efficiency of micro-hydro and solar photovoltaic technology may allow the use of these technologies for rural electrification in the future.</p>		
<p><b>Key element (4):</b> Avoid pollution, or, when avoidance is not possible, minimize or control the intensity or load of <b>pollutant emissions and discharges, including direct and indirect greenhouse gases emissions,</b></p>	<p><b>EA Art. 2. INTERPRETATION.</b> In this Act, unless the contrary intention appears –</p> <p>... “contaminant” means –</p> <p>(a) a gas, liquid, or solid; or</p> <p>(b) an odour; or</p> <p>(c) an organism (whether alive or dead), including a virus; or</p> <p>(d) energy, including noise, heat, radioactivity and electromagnetic radiation; or</p> <p>(e) a combination of contaminants, which when released into the environment causes or is likely to cause environmental harm, and includes a hazardous contaminant, ozone - depleting substance or any litter;...</p> <p>“environmental harm” means any change to the environment, or any part of the environment, which has a detrimental effect on any beneficial value relating to the environment, and –</p> <p>...(b)...(i) causes or permits to be placed in or so that it may be released into the environment any contaminant which is prohibited by or under this Act or does not comply with any standard prescribed for that contaminant; or</p> <p>(ii) causes or permits the release of any contaminant into the environment in contravention of this Act; or...</p> <p>(iii) uses any chemical substance or fuel the use of which is prohibited by or under this Act; or</p> <p>(iv) contravenes any regulation dealing with the use of any ozone depleting substance, or the manufacture, assembly, operation, maintenance, removal, sale or disposal of goods, equipment, machinery, or plant containing or using an ozone-depleting substance; or</p> <p>(v) places a contaminant in any position where it could reasonably be</p>	<p><b>Partial equivalence.</b> At the policy level, there is a clear commitment to greenhouse gas abatement. The policy goal is to “contribute to global efforts to abate greenhouse gas emission”. A high priority next step toward this goal is to develop a comprehensive greenhouse gas inventory.</p> <p>The EA is fully equivalent with respect to avoiding, minimizing and controlling pollution. The EA, however, does not make reference to greenhouse gas abatement, although it does explicitly include ozone-depleting substances in the definition of ‘contaminant’.</p>	<p>To achieve full equivalence, amend the EA as follows:</p> <p><b>1. EA Art. 2. INTERPRETATION.</b> In this Act, unless the contrary intention appears –...</p> <p>... “contaminant” means – ... which when released into the environment causes or is likely to cause environmental harm, and includes a hazardous contaminant, ozone-depleting substance, greenhouse gas, or any litter;...</p> <p><b>2. Develop and issue a regulation implementing EA Art. 133(2).</b></p>

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	<p>expected to gain access to waters in circumstances where if access was gained the contaminant would result in the waters being changed in a manner prohibited by this Act or which does not comply with any standard prescribed for that contaminant; or...</p> <p>(vii) establishes on land a site for the disposal of refuse, garbage, soil, rock or other solid or liquid waste so as to be obnoxious or unduly offensive to the senses of human beings or so as to interfere with any ground water in a manner prohibited by this Act or which does not comply with any standard prescribed for that contaminant;</p> <p><b><u>Policy Document – Not legally binding</u></b>  <b>MTDP Section 5.7 Climate change</b>  Sector Goal: Adapt to the domestic impacts of climate change and contribute to global efforts to abate greenhouse gas emission  ...during the first MTDP, interventions will be focused on enforcing minimum technology and maintenance standards, particularly within the economic and infrastructure sectors such as forestry, agriculture and energy.</p> <p><b>CCD PNG Section 3b. Greenhouse gas abatement in non-forestry sectors</b>  For the non-forestry sectors, emissions can be reduced by approximately 20%, i.e., ~2.2 Mt CO<sub>2</sub>e in 2030 compared to BAU levels, mostly from the power sector. Approximately half the abatement potential (~1.2 Mt CO<sub>2</sub>e) would come from a near total decarbonisation of the power sector at largely negative abatement costs (but at a substantial capital cost, approaching USD 200 m of investment required if rural electrification is included). This decarbonisation will also reduce indirect emissions from the manufacturing and service sectors as these sectors would rely on cleaner generation of energy....  Additional grid-connected hydro plants are economically feasible, but require creative financing solutions to overcome the initial capital hurdle and avoid locking in carbon-emitting, inefficient power sources for 20–40 years. Further improvements in the costs and efficiency of micro-hydro and solar photovoltaic technology may allow the use of these technologies for rural electrification in the future.</p>		

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	<p><b>Section 5a.</b> Next steps for policy and institutional development ... a high priority will be to develop a comprehensive greenhouse gas inventory, including (but not limited to) emissions resulting from land use, land use change and forestry (LULUCF).</p>		
<p><b>Key element (5):</b> Avoid pollution, or, when avoidance is not possible, <b>minimize or control waste generation</b></p>	<p><b>EA</b> <b>Art. 17. ESTABLISHMENT AND APPOINTMENT OF ENVIRONMENT COUNCIL.</b> (1) There shall be an Environment Council consisting of –... (b) one person of good standing in the community with tertiary qualifications and professional expertise in the field of environmental chemistry or engineering, waste minimisation or management of environmental impacts;...</p> <p><b>Art. 31. NATURE OF POLICIES.</b> (2) Without limiting the generality of Section 31, an Environment Policy may apply to the whole country or to a segment or element of the environment and may be made in respect of any of the following matters:-... (f) waste management or minimisation;...</p> <p><b><u>Policy Document – Not legally binding</u></b> <b>MTDP</b> <b>Section 3.11 Utilities</b> <b>Building on MTDP 2011-2015</b> ...Septic and waste treatment methods that address environmental and health issues will also be implemented in rural areas.</p> <p><b>Section 5.6 Environment</b> <b>MTDP 2011-2015</b> In order to promote a sustainable environment, MTDP 2011-2015 will focus on interventions to minimise pollution, reduce deforestation and improve waste management, thereby resulting in a cleaner, more inhabitable environment for all. This will be done by firstly monitoring and minimising runoffs from all industrial processors and improving waste disposal methods.</p>	<p><b>Partial equivalence.</b> At the policy level, the MTDP deals only with waste management, treatment and disposal. It does not address minimizing or controlling waste generation.</p> <p>The EA clearly distinguishes between waste minimization and management, but does not create an obligation to minimize waste or control its generation.</p> <p>EA Art. 133(1) generally provides for regulations. Technically, Art. 133(1) should be possible EA Art. 133(2), which itemizes the issues on which regulations may be issued, does not include waste minimization.</p>	<p>To achieve full equivalence, see the recommendation for Operational Principle 4, Key element (3).</p>

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<p><b>Key element (6):</b> Avoid pollution, or, when avoidance is not possible, <b>minimize or control release of hazardous materials</b> from their production, transportation, handling, and storage</p>	<p><b>EA Art. 2. INTERPRETATION.</b> In this Act, unless the contrary intention appears – ... “contaminant” means – (a) a gas, liquid, or solid; or (b) an odour; or (c) an organism (whether alive or dead), including a virus; or (d) energy, including noise, heat, radioactivity and electromagnetic radiation; or (e) a combination of contaminants, which when released into the environment causes or is likely to cause environmental harm, and includes a hazardous contaminant, ozone - depleting substance or any litter;...</p> <p>“hazardous contaminant” means a substance prescribed by regulation as a hazardous contaminant under Section 133(2);</p> <p><b>Art. 133. REGULATIONS.</b> ...(2) Without limiting the generality of Subsection (1) but subject to this Act, the Regulations may prescribe in relation to environmental contaminants – (a) restrictions on and conditions applying to the importation, exportation, manufacture, labelling, packaging, advertising, distribution, sale, storage and transportation of hazardous contaminants;...</p> <p><b>EPAR Art. 1. INTERPRETATION.</b> In this Regulation, unless the contrary intention appears – ...“hazardous contaminant” means a substance prescribed by regulation to be a hazardous contaminant under Section 133 of the Act;...</p> <p><b>EPAR Schedule 2, Level 3 Activities</b> 14.3 Activities that will involve the discharge, emission or deposit of hazardous contaminants, except where such discharge, emission or deposit is ancillary or incidental to, or associated with, any other activity in this Regulation in which case that category of activity will apply to the discharge, emission or deposit.</p> <p>15.2 Manufacture of hazardous contaminants, except where such</p>	<p><b>Partial equivalence.</b> There is no legal definition of ‘hazardous contaminant’. The EA and the EPAR use the identical definition, which says that a hazardous contaminant is a substance prescribed by regulation. That has not yet been done.</p>	<p>To achieve full equivalence, develop and issue a regulation implementing EA Art. 133(2).</p>

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	<p>manufacture is ancillary or incidental to, or associated with, any other activity in this Regulation in which case that category of activity will apply to the manufacture.</p> <p>21.2 Construction of commercial sites for the storage, treatment, reprocessing, incineration or disposal of hazardous contaminants.</p>		
<p><b>Key element (7): Avoid the use of hazardous materials</b> subject to international bans or phaseouts</p>	<p><b>Constitution 1975 Art. 117. Treaties, etc.</b> (7) Notwithstanding the consent of Papua New Guinea to be bound as a party to a treaty, no treaty forms part of the municipal law of Papua New Guinea unless, and then only to the extent that, it is given the status of municipal law by or under a Constitutional Law or an Act of the Parliament. (8) Legislative approval or ratification of a treaty does not, without more, give it the status of municipal law for the purposes of Subsection (7).</p> <p><b>EA Art. 2. INTERPRETATION.</b> In this Act, unless the contrary intention appears – ... “contaminant” means – (a) a gas, liquid, or solid; or (b) an odour; or (c) an organism (whether alive or dead), including a virus; or (d) energy, including noise, heat, radioactivity and electromagnetic radiation; or (e) a combination of contaminants, which when released into the environment causes or is likely to cause environmental harm, and includes a hazardous contaminant, ozone - depleting substance or any litter;...</p> <p>“hazardous contaminant” means a substance prescribed by regulation as a hazardous contaminant under Section 133(2);</p> <p><b>EA Art. 42. LEVEL 1, 2 AND 3 ACTIVITIES.</b> ...(2) Activities that – (a) involve matters of national importance; or (b) may result in serious environmental harm, may be prescribed as level 3 activities.</p>	<p><b>Partial equivalence.</b> PNG is a Party to:</p> <ul style="list-style-type: none"> <li>▪ the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal;</li> <li>▪ the Stockholm Convention on Persistent Organic Pollutants (POPs); and</li> <li>▪ the Vienna Convention for the Protection of the Ozone Layer and the Montreal Protocol on Substances that Deplete the Ozone Layer but has not acceded to the Rotterdam Convention on the Prior Informed Consent Procedure for certain hazardous Chemicals and Pesticides in international trade (PIC).</li> </ul> <p>Constitutionally, the treaties to which PNG is a Party are only effective in the country when their provisions have been incorporated into national legislation.</p> <p>The EA governs hazardous substances generally and ozone depleting substances specifically. The EA does not explicitly refer to</p>	<p>To achieve full equivalence, a regulation on contaminants, and/or hazardous contaminants, implementing EA Art. 133(2), should be developed and issued.</p>

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	<p><b>EA Art. 133. REGULATIONS.</b>  (1) The Head of State, acting on advice, may make Regulations not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and in particular for prescribing penalties of fines not exceeding K100,000.00 or imprisonment for a term not exceeding two years for offences against the Regulations.  (2) Without limiting the generality of Subsection (1) but subject to this Act, the Regulations may prescribe in relation to environmental contaminants –  (a) restrictions on and conditions applying to the importation, exportation, manufacture, labelling, packaging, advertising, distribution, sale, storage and transportation of hazardous contaminants;...  (za) giving effect to any international convention to which the State is a party or agreement between the State and any or countries relating to the control of contaminants and the protection of the environment;...</p> <p><b>EPAR Art. 1. INTERPRETATION.</b>  In this Regulation, unless the contrary intention appears –  ...“hazardous contaminant” means a substance prescribed by regulation to be a hazardous contaminant under Section 133 of the Act;...  “ozone depleting substances” means those substances defined in the Montreal Protocol on Ozone Depleting Substances as agreed at subsequent conventions of the parties, that Papua New Guinea has ratified as being controlled substances;...</p> <p><b>EPAR Schedule 2, Level 3 Activities</b>  14.3 Activities that will involve the discharge, emission or deposit of hazardous contaminants, except where such discharge, emission or deposit is ancillary or incidental to, or associated with, any other activity in this Regulation in which case that category of activity will apply to the discharge, emission or deposit.</p> <p>15.2 Manufacture of hazardous contaminants, except where such manufacture is ancillary or incidental to, or associated with, any other</p>	<p>POPs, but POPs can be interpreted to fall within the definition of a ‘hazardous contaminant’.</p> <p>The problem is that there is no legal definition of ‘hazardous contaminant’. The EA and the EPAR use the identical definition, which says that a hazardous contaminant is a substance prescribed by regulation. That has not yet been done.</p>	

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	activity in this Regulation in which case that category of activity will apply to the manufacture.  21.2 Construction of commercial sites for the storage, treatment, reprocessing, incineration or disposal of hazardous contaminants.		
<b>Key element (8):</b> Purchase, use, and manage pesticides based on <b>integrated pest management</b> approaches		This Key element is not relevant to the energy (hydropower and transmission) sector.	
<b>Key element (9):</b> Reduce reliance on <b>synthetic chemical pesticides</b>		This Key element is not relevant to the energy (hydropower and transmission) sector.	
<b>Operational Principle 10:</b> Provide workers with safe and healthy working conditions and prevent accidents, injuries, and disease. Establish preventive and emergency preparedness and response measures to avoid, and where avoidance is not possible, to minimize, adverse impacts and risks to the health and safety of local communities.			
<b>Key element (1):</b> Provide workers with <b>safe and healthy working conditions</b> and prevent accidents, injuries, and disease	<b>EA Art. 133</b> (2) Without limiting the generality of Subsection (1) but subject to this Act, the Regulations may prescribe in relation to environmental contaminants – ...(w) the protection of – (i) persons from injury or illness or from the risks of injury or illness;...  <b>Industrial Safety, Health and Welfare Act 1961 (ISHWA)</b> <b>Art. 1. INTERPRETATION.</b> (1) In this Act, unless the contrary intention appears– ...“factory” means a building or place– (a) in which employees are engaged directly or indirectly–... (ii) in the generation of power (other than for private domestic purposes of the owner);...  PART V. – Conditions of work	<b>Full equivalence.</b> In addition to the general ISHWA and ISHWR, PNG has several industry-specific Acts governing safety, but none of them apply directly to the energy sector.	

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	<p>This Part includes provisions on:</p> <p><b>Art. 29.</b> Cleanliness, space and ventilation  <b>Art. 31.</b> Sanitary and ablution facilities  <b>Art. 32.</b> Means of access  <b>Art. 33.</b> First-aid facilities and personnel  <b>Art. 34.</b> Notification of disease or injury  <b>Art. 35.</b> Dangerous work  <b>Art. 36.</b> Installation, operation and maintenance of boilers, etc.  <b>Art. 37.</b> Clothing, etc., of employees working with machinery  <b>Art. 38.</b> Ventilation, etc., in certain kinds of work  <b>Art. 39.</b> Protection from dust, fluff, fumes, etc.  <b>Art. 40.</b> Work in confined spaces  <b>Art. 41.</b> Particular safety responsibilities of employees</p> <p>Part V also prescribes penalties for non-compliance with any health and safety obligations.</p> <p><b>Industrial Safety, Health and Welfare Regulation 1965 (ISHWR)</b>  PART IV – Conditions of work  This Part regulates:</p> <p><b>Art. 7.</b> FLOOR AND CUBIC SPACE  <b>Art. 8.</b> LIGHTING  <b>Art. 9.</b> CLOSETS, URINALS, ETC.  <b>Art. 10.</b> WASH BASINS  <b>Art. 11.</b> SHOWERS  <b>Art. 12.</b> CHANGE-ROOMS, REST-ROOMS, LOCKERS, ETC.  <b>Art. 13.</b> DRINKING WATER  <b>Art. 14.</b> MEANS OF ACCESS, ETC.  <b>Art. 15.</b> SERVICE AREAS  <b>Art. 16.</b> BARRIERS  <b>Art. 17.</b> FIRST-AID PERSONNEL  <b>Art. 18.</b> FIRST-AID FACILITIES</p> <p>PART V specifically regulates in detail the installation, use and maintenance of boilers and pressure vessels.</p>		
<b>Key element (2):</b> Establish <b>preventive and</b>	<b>EA Art. 2. INTERPRETATION.</b> In this Act, unless the contrary intention appears – ...“environment” includes –	<b>Partial equivalence.</b> By definition, ‘environment’ includes communities. EA articles 66 and 106	See recommendation for Operational Principle 4, Key Element 3.



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<p><b>emergency preparedness and response measures</b> to avoid, and where avoidance is not possible, to minimize, adverse impacts and risks to the health and safety of local communities.</p>	<p>(a) ecosystems and their constituent parts including people and communities and including human-made or modified structures and areas...</p> <p>“environment permit” means an environment permit issued under Part V and includes a permit, licence or approval which is deemed to be a permit under Section 139;...</p> <p>“permit” means an environment permit and includes a permit, licence or approval which is deemed to be an environment permit under Section 135;...</p> <p><b>Art. 66. CONDITIONS OF PERMITS.</b> (1) A permit may be issued subject to such conditions the Director considers are necessary or desirable, including but not limited to conditions containing requirements to do all or any of the following – ...<i>(h)</i> preparation and lodgement of a plan for emergency response in relation to accidental release of contaminants or risk of other emergency;...</p> <p><b>Art. 106. EMERGENCY DIRECTION.</b> (1) The Director, or an authorized officer, may orally issue an Emergency Direction where he is of the opinion that urgent action is required to prevent or minimise serious or material environmental harm.</p>	<p>would therefore apply to communities. An emergency response plan is, however, a discretionary, rather than a mandatory, condition of an environment permit.</p>	
<p><b>Operational Principle 11:</b> Conserve physical cultural resources and avoid destroying or damaging them by using field-based surveys that employ qualified and experienced experts during environmental assessment. Provide for the use of “chance find” procedures that include a pre-approved management and conservation approach for materials that may be discovered during project implementation.</p>			
<p><b>Key element (1):</b> Conserve physical cultural resources and avoid destroying or damaging them</p>	<p>See Policy Principle 2 Key Element (7)</p>	<p><b>Full equivalence.</b></p>	
<p><b>Key element (2):</b> Use <b>field-based surveys</b> that employ <b>qualified and experienced</b></p>	<p><b>No corresponding policy provision or legal requirement.</b></p>	<p><b>No equivalence.</b> Section 10 of the EIR Guideline, Qualification of Environmental Consultants, specifies that “details including Resume” of consultants</p>	<p>Amend the EIR and EIA/EIS Guidelines to specify required methodologies.</p>

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<p><b>experts</b> during environmental assessment.</p>		<p>must be provided, but does not specify any requirements for consultants' qualifications and does not specify the methodologies to be used for any aspect of EIA.</p> <p>Section 13 of the EIA/EIS Guideline requires detailed information on the persons who were involved in conducting the EIA and preparing the EIS. It also stipulates that "Information on persons involved should be the same as those approved in the Environmental Inception Report." It is not clear whether this means that only the persons identified in the EIR may be involved in the EIA/EIS process, or whether the information required by Section 10 of the EIR Guideline must be provided in the EIS as well.</p>	<p>For consistency, if methodologies are to be stipulated for assessing impacts on physical cultural resources, methodologies should also be stipulated for every other type of survey and analysis to be carried out during EIA.</p> <p>It is questionable whether this is advisable, given the number of different types of surveys and analyses that may be carried out for the range of factors that must be assessed during EIA.</p> <p>It could be considered whether it is advisable to stipulate certain standard or indicative methodologies for specific aspects of EIA, keeping in mind that the Guidelines will have to be amended each time there is a change in the internationally accepted methodology for any survey or analysis that may be carried out for EIA.</p>
<p><b>Key element (3):</b> Provide for the</p>	<p><b>No corresponding policy provision or legal requirement.</b></p>	<p><b>No equivalence.</b> Section 10 of the EIR Guideline and</p>	<p>Amend the second bullet point of Section 8 of the</p>

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<p>use of “<b>chance find</b>” <b>procedures</b> that include a <b>pre-approved management and conservation approach</b> for materials that may be discovered during project implementation</p>		<p>Section 13 of the EIA/EIS Guideline do not specify procedures to be followed for any aspect of EIA.</p> <p>Section 8 of the EIA/EIS Guideline requires that “information on socio-economic management and monitoring strategy” must be included in the EIS, but there is nothing in the EIR Guideline or the EIA/EIS Guideline that requires a management and conservation approach specifically for physical cultural materials.</p> <p>See also the comment on Key Element (2), above.</p>	<p>EIA/EIS Guideline:</p> <ul style="list-style-type: none"> <li>▪ information on socio-economic management and monitoring strategy, including the management and conservation approach for physical cultural materials that may be discovered during project implementation.</li> </ul> <p>See also the Recommendation for Key Element (2), above.</p>
<p><b>Involuntary Resettlement Safeguards</b></p> <p><b>Objectives:</b> 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.</p>			

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	<p><b>EIA/EIS Section 6. CHARACTERISTICS OF THE RECEIVING ENVIRONMENT</b> Social Environment This sub-section deals with the existing social structure and socio-economic data on the resource/land owners, Local Level Government, the Province and PNG as a whole....</p> <p><b>The outcome of the Social Impact Assessment process is the Social Impact Statement, which is included in this section of the Environmental Impact Statement that is submitted to DEC for assessment.</b></p> <p>Information provided in this sub-section shall include but not limited to the following details -</p> <ul style="list-style-type: none"> <li>▪ demographic information,</li> <li>▪ information on existing infrastructure,</li> <li>▪ information on public health issues (if applicable),</li> <li>▪ information on present economic status of the project area,</li> <li>▪ description of existing social services,</li> <li>▪ details of archaeological, historical, cultural or religious features of the project area under consideration, etc.</li> </ul> <p><b>EA Art. 1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.</b> ...(3) For the purpose of Section 53(1) of the Constitution –... (b) the purposes specified in Section 85(1), are hereby declared to be public purposes and further required for a reason that is reasonably justified in a democratic society that has a proper regard for the rights and dignity of mankind, that is so declared and so described for the purposes of Section 53 of the Constitution.</p> <p><b>EA Art. 5. MATTERS OF NATIONAL IMPORTANCE.</b> All persons exercising powers and functions under this Act shall recognise and provide for the following matters of national importance:- (a) the preservation of Papua New Guinea traditional social structures; and (b) the maintenance of sources of clean water and subsistence food sources to enable those Papua New Guineans who depend upon them to maintain their traditional lifestyles; and...</p>	<p>EA Art. 5 establishes as a matter of national importance the recognition of the role of landowners in making decisions about the development of resources on their land.</p> <p>EA Part 7 establishes rights with respect to the use of water for hydropower and to the use of land for constructing works for the generation and distribution of hydropower.</p> <p>EA Art. 85 and the Land Act Art. 2 establish that generation and transmission of hydropower are public purposes for which the government may acquire land for these purposes, which in turn may require involuntary resettlement.</p> <p>The EA, with articles 4(d) and 51(1)(b), creates what amounts to an environmental and social impact assessment (ESIA). The ‘social’ aspect of that assessment is inconsistently provided for in the EA and its regulations and it does not explicitly reference involuntary resettlement.</p>	<p>To attain full equivalence:</p> <ol style="list-style-type: none"> <li>1. Review and rationalize all references in the EA and its regulations to the social aspect of impact assessments as specified in the EIA/EIS.</li> <li>2. In particular, amend EA Art. 56 as follows: <b>EA Art. 56.</b> ACCEPTANCE OF ENVIRONMENTAL IMPACT STATEMENT. (1) Where the Director is satisfied that –... (b) all reasonable steps will be taken to minimise environmental <i>and social</i> harm which may result from the carrying out of the activity;...</li> <li>3. Develop more detailed guidelines on social impact assessment, including involuntary resettlement.</li> </ol>

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	<p>(d) the recognition of the role of land-owners in decision-making about the development of the resources on their land; and (e) responsible and sustainable economic development.</p> <p><b>EA Art. 78. INTERPRETATION.</b> In this Part, unless the contrary intention appears, “permit” means a permit containing conditions that authorize the permit holder to – (a) dam a river or stream; or (b) divert water;...</p> <p><b>EA Art. 82. RIGHTS CONFERRED BY PERMIT RELATING TO WATER USE.</b> Subject to any prescribed conditions or conditions endorsed on it, a permit confers on the holder for the purposes for which it was granted and in the area of land specified in the permit – (a) the exclusive right of the construction or protection of works, subject to the right of the Director or a person authorized by him to enter and inspect the land and the works constructed on it under the permit; and (b) the right to construct, in accordance with the plan and the programme approved by the Director – (i) works in accordance with that plan and works for purposes subsidiary to those works; and (ii) on Government land, or land over which the State has easements permitting the construction of pipelines, tunnels, <b>electricity transmission lines</b>, roads for construction and maintenance purposes, helicopter landing pads and other necessary works; and (c) <b>the right to flood such areas of land specified in the permit as areas that may be flooded</b>; and (d)<sup>11</sup> subject to the Electricity Industry Act (Ch 78) <b>the right to operate and maintain the works constructed in pursuance of Paragraph (b) for –</b> <b>(i) the generation and distribution of hydro electric power;...</b></p> <p><b>EA Art. 85. ACQUISITION OF LAND.</b> (1) The following are declared to be public purposes for purposes of Section 53(1)(protection from unjust deprivation of property) of the Constitution and of the Land Act –... (c) <b>construction of works for the generation of hydro-electric power; and</b></p>		

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	<p><b>(d) conveyance of water or electricity;</b>...</p> <p><b>Land Act (LA) Art. 2. INTERPRETATION.</b>  (1) In this Act, unless the contrary intention appears—...  “public purpose” means—...  (o) the purposes of or connected with the generation or supply of electricity;</p>		
<p><b>Key element (1):</b></p> <p>Avoid involuntary resettlement wherever possible</p>	<p><b>No directly corresponding policy provision or legal requirement.</b></p> <p>See Environmental Safeguards, Operational Principle 4, Key element (1).</p>	<p><b>No equivalence.</b></p>	
<p><b>Key element (2):</b></p> <p>Minimize involuntary resettlement by exploring project and design alternatives</p>	<p><b>No directly corresponding policy provision or legal requirement.</b></p> <p>See Environmental Safeguards, Policy Principle 3, Key elements (1)-(3).</p>	<p><b>No equivalence.</b></p>	<p>See the Recommendation under the Objectives for Involuntary Resettlement Safeguards (IRS).</p>
<p><b>Key element (3):</b></p>	<p><b>No corresponding policy provision or legal requirement.</b></p>	<p><b>No equivalence.</b></p>	<p>See the Recommendation under</p>

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Enhance, or at least restore, the livelihoods of all displaced persons in real terms relative to pre-project levels			the Objectives for IRS.
<b>Key element (4):</b>  Improve the standards of living of the displaced poor and other vulnerable groups.	<b>No corresponding policy provision or legal requirement.</b>	<b>No equivalence.</b>	See the Recommendation under the Objectives for IRS.
<p><b>Scope and Triggers:</b> 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>			
<p><b>Policy Principle 1:</b> Screen the project early on to identify past, present, and future involuntary resettlement impacts and risks. Determine the scope of resettlement planning through a survey and/or census of displaced persons, including a gender analysis, specifically related to resettlement impacts and risks.</p>			
<b>Key element (1):</b>  Screen the project early on	<b>No directly corresponding policy provision or legal requirement.</b>  <b>EP</b> ...planning to be applied to human settlement and urbanization...  See Environmental Safeguards, Policy Principle 1, Key element (1).	<b>No equivalence.</b>	See the Recommendation under the Objectives for IRS.  Assuming that the EA is amended to clarify that the relationship of environmental impact assessment and social impact assessment, the EIA requirement for

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<b>Key element (2):</b>  Identify past, present, and future involuntary resettlement impacts and risks	<b>No corresponding policy provision or legal requirement.</b>	<b>No equivalence.</b>	screening would apply.  See the Recommendation under the Objectives for IRS.
<b>Key element (3):</b>  <b>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</b>	<b>No corresponding policy provision or legal requirement.</b>	<b>No equivalence.</b>	See the Recommendation under the Objectives for IRS.
<b>Policy Principle 2:</b> 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.			
<b>Key element (1):</b>  Carry out	<b>No directly corresponding legal requirement.</b>  <b>Policy Document – Not legally binding</b>	See Environmental Safeguards, Policy Principle 8, all Key elements, in relation to all Key elements of	See the Recommendation under the Objectives for IRS.



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meaningful consultations with affected persons, host communities, and concerned nongovernment organizations	<p><b>EIP Section 4.4.5 Participation by Landowners</b> Electricity service providers have the scope to establish arrangements that seek participation from the landowners. The Government will facilitate all arrangements that are aimed at involving participation from the landowners in ventures with IPPs. Such participation can harness and draw the benefits from the industry to the landowners, and ascertain appropriate level of their involvement in business partnerships for enhanced security and reliability of electricity services in the industry.</p>	<p>Involuntary Resettlement, Policy Principle 2</p> <p>In another sector, the Oil and Gas Act 1998 Art. 49(c) requires submission of a socio-economic impact study as part of the environmental plan for a proposed project, before a development forum (Art. 50) can be held with people who will be affected by a petroleum project.</p>	
<p><b>Key element (2):</b></p> <p>Inform all displaced persons of their entitlements and resettlement options</p>	<p><b>EA Art. 86. NOTICE TO LANDHOLDERS OF EXERCISE OF POWERS.</b> (1) Subject to Section 120, where a person owns or is entitled to occupy land, another person shall not in relation to that land, exercise any of the powers conferred on him by this Part or by a permit unless he has given <b>not less than 14 days' written notice</b> to the first mentioned person, including where the land is occupied under a licence under an Act of the National Parliament, to the holder of that licence. (2) It is sufficient compliance with Subsection (1) where, in respect of customary land, written notice is given to the landowners and the Local-level Government body in the area where the land is situated.</p> <p><b>LA Art. 2. INTERPRETATION.</b> (1) In this Act, unless the contrary intention appears—... “public purpose” means—... (o) the purposes of or connected with the generation or supply of electricity;</p> <p><b>LA Art. 12. COMPULSORY ACQUISITION.</b> (1) The Minister may, on behalf of the State— (a) after the expiration of a period of <b>two months</b> after the service of a notice to treat, or of notices to treat under Section 13, in relation to any land;... by notice in the National Gazette, declare that the land, other than any interest in respect of which a notice to treat has been withdrawn, or any</p>	<p><b>Partial equivalence.</b> The LA Art. 14 provides that all interests in land are converted to a right to compensation on the date of acquisition. The LA (Art. 13(3)) provides that the Minister may provide particulars of the acquisition, without specifying that this includes information on entitlements and options.</p> <p>The statutory period for informing persons to be displaced by compulsory acquisition of their land is not less than 14 days (EA Art. 86) and not more than two months (LA Art. 12). Both Acts explicitly cover the specific issue of acquiring land for the purpose of generating and transmitting electricity. The EA is a more recent law than the LA and on that basis 14-day notice period could be interpreted to control.</p> <p>The EA does not require that people</p>	<p>To achieve full equivalence:</p> <ol style="list-style-type: none"> <li>1. The EA and the LA should be amended to harmonize all provisions on compulsory acquisition of land, allowing for the maximum possible prior notice of compulsory acquisition and displacement.</li> <li>2. See the Recommendation under the Objectives for IRS.</li> </ol>

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	<p>chattel, is acquired by compulsory process under this Act for a public purpose specified in the notice.</p> <p>(2) On the publication of a notice under Subsection (1), the land or chattel to which the notice applies is–</p> <p>(a) vested in the State; and</p> <p>(b) freed and discharged from all interests, trusts, restrictions, dedications, reservations, obligations, contracts, licences, charges and rates.</p> <p><b>LA Art. 13. NOTICE TO TREAT.</b></p> <p>(1) The Minister shall not acquire land by compulsory process under this Act unless he has first caused to be served on each of the owners of the land, or such of them as can, after diligent inquiry, be ascertained, a notice inviting the person on whom the notice is served to treat with the Minister for the sale or surrender to the Minister, on behalf of the State, of his interest in the land.</p> <p>(2) A person served with a notice to treat in respect of land shall, not later than <b>two months</b> after the service of the notice, provide the Minister with particulars of–</p> <p>(a) the interest claimed by him in the land; and</p> <p>(b) the amount for which he is agreeable to sell his interest in the land;...</p> <p>(3) On receipt of the particulars referred to in Subsection (2), the Minister may–</p> <p>(a) treat with the person providing the particulars for the acquisition of his interest by agreement; and</p> <p>(b) notwithstanding anything in this Act, enter into an agreement with that person for the acquisition.</p> <p>(4) The Minister may, by written notice to a person served with a notice to treat, withdraw the notice to treat.</p> <p>(5) Where the owner of an interest in land, who has provided the particulars referred to in Subsection (2), suffers loss by reason of the notice to treat having been given and withdrawn, the State is liable to pay to him such compensation as is determined by agreement between the owner and the Minister or, in the absence of agreement, by action as determined by a court of competent jurisdiction.</p> <p><b>LA Art. 14. CONVERSION OF INTERESTS INTO CLAIMS FOR</b></p>	<p>whose land is to be acquired and who are to be displaced must be informed of their entitlements and options.</p>	

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	<p>COMPENSATION.</p> <p>(1) Subject to Subsection (2), the interest of every person in land or a chattel to which a notice of acquisition applies is, on the date of acquisition, converted into a right to compensation under this Act.</p> <p>(2) Where an easement, right, power, privilege or other interest in, over or in connection with land that did not previously exist as such is acquired, the interest of every person in the land is, on the date of acquisition, and to the extent to which the interest is affected by the acquisition, converted into a right to compensation under this Act.</p>		
<p><b>Key element (3):</b></p> <p><b>Ensure the participation of displaced persons</b> in planning, implementation, and monitoring and evaluation of resettlement programmes</p>	<p><b>No corresponding policy provision or legal requirement.</b></p> <p><b>Policy Document – Not legally binding</b>  <b>EIP Section 4.4.5 Participation by Landowners</b>  Electricity service providers have the scope to establish arrangements that seek participation from the landowners. The Government will facilitate all arrangements that are aimed at involving participation from the landowners in ventures with IPPs. Such participation can harness and draw the benefits from the industry to the landowners, and ascertain appropriate level of their involvement in business partnerships for enhanced security and reliability of electricity services in the industry.</p>	<p><b>No equivalence.</b></p>	<p>See the Recommendation under the Objectives for IRS.</p>
<p><b>Key element (4):</b></p> <p><b>Ensure the participation in consultations</b> of vulnerable groups, especially those below the poverty line, the landless, the elderly, women and children, and Indigenous Peoples, and</p>	<p><b>No corresponding policy provision or legal requirement.</b></p>	<p><b>No equivalence.</b></p>	<p>See the Recommendation under the Objectives for IRS.</p>

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those without legal title to land			
<b>Key element (5):</b>  Establish a grievance redress mechanism to receive and facilitate resolution of the affected persons' concerns	<b>No corresponding policy provision or legal requirement.</b>	<b>No equivalence.</b>	See the Recommendation under the Objectives for IRS.
<b>Key element (6):</b>  Support the social and cultural institutions of displaced persons and their host population	<b>No corresponding policy provision or legal requirement.</b>	<b>No equivalence.</b>	See the Recommendation under the Objectives for IRS.
<b>Key element (7):</b>  Where involuntary resettlement impacts and risks are highly complex and sensitive, compensation and resettlement decisions should be preceded by a <b>social preparation phase.</b>	<b>No corresponding policy provision or legal requirement.</b>	<b>No equivalence.</b>	See the Recommendation under the Objectives for IRS.

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<p><b>Policy Principle 3:</b> 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.</p>			
<p><b>Key element (1):</b></p> <p>Improve, or at least restore, the livelihoods of all displaced persons through <b>land-based resettlement strategies</b> when affected livelihoods are land based, where possible, or <b>cash compensation at replacement value for land</b> when the loss of land does not undermine livelihoods</p>	<p><b>EA Art. 85. ACQUISITION OF LAND.</b>  (1) The following are declared to be public purposes for purposes of Section 53(1)(protection from unjust deprivation of property) of the Constitution and of the Land Act –...  (c) construction of works for the generation of hydro-electric power; and  (d) conveyance of water or electricity; and...  (f) release of contaminants from operations connected with purposes specified in this section....  (3) Where land has been acquired for a purpose specified under Subsection (1) and has been made available to a permit holder for the purposes of his permit under this Act, the amount of <b>compensation</b> paid by the State in respect of the land is a debt due and payable by the holder to the State.  (4) Payment of the amount due under Subsection (3) on written demand being served on the permit holder is a condition applying to a permit for purposes of Section 72.</p> <p><b>EA Art. 87. COMPENSATION.</b>  (1) Subject to this section, <b>the holder of a permit is liable to pay compensation</b> to the owners and occupiers of, and any person with customary rights in, any private land in relation to their several interests, in respect of entry on the land, or occupation of the land by the holder.  (2) Subject to this section, compensation shall be paid for –  (a) the deprivation of the use and enjoyment of the surface of the land or any part of it, or of rights to water customarily associated with the land, except where there has been a reservation in favour of the State of the right to that use and enjoyment; and  (b) damage to the surface of the land or any part of it or improvements on it, or to any flora or fauna, caused by the carrying on of operations under a permit; and  (c) rights of way and easements; and</p>	<p><b>Partial equivalence.</b>  Neither the EA nor the LA stipulates that cash compensation must be at replacement value. Under both Acts, the amount of compensation is to be agreed/negotiated between the person/s with rights to the land and the Minister (LA) or the permit holder, or determined by the Director and/or the Council (EA).</p> <p>The Office of the State Solicitor confirms that EA Art. 87(2)(d) adequately covers compensation for land, the subject of the activity, and for the damages to use or control of water or a water source on or in the land_(the subject of the activity). However, the provision does not adequately cover damages to downstream river/water/soil/land as a result of the activity upstream.</p> <p>The ESA applies only in emergency situations.</p>	<p>To achieve full equivalence:  1. Amend the EA and the LA to harmonize all provisions on compulsory acquisition of land.  2. See the Recommendation under the Objectives for IRS.</p>

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	<p>(d) any damage consequential on the holder's use or occupation of the land, or use or control of water or a water source on or in the land.</p> <p>(3) Where private land, or improvements on it, adjoining or in the vicinity of land occupied under a permit, is or are damaged or depreciated in value –</p> <p>(a) by any operations carried on by or on behalf of the permit holder; or</p> <p>(b) by reason of a right of way acquired by the permit holder, the owners and occupiers of, and any person with customary rights in, that private land or those improvements shall be entitled in respect of their several interests to compensation for loss or damage sustained and the amount of compensation shall be ascertained in accordance with this section.</p> <p>(4) A permit holder may agree with any person entitled to compensation under this section the amount and form of compensation and the time for payment.</p> <p>(5) An agreement under Subsection (4) shall be –</p> <p>(a) by instrument signed by the parties to it or their agents; and</p> <p>(b) lodged with the Director.</p> <p>(6) Where the permit holder and any person entitled to compensation under this section have not reached agreement on the amount and form of compensation and the time for payment, within 90 days of the permit holder giving notice in writing to that person seeking to open negotiations on these issues, either party may, by notice to the Director, apply to the Director to determine each of these matters.</p> <p>(7) The Director shall determine each matter referred to him under Subsection (6) within 90 days of the date of the notice from the party referring the matter, and in determining such matters, the Director may seek the advice of the Council in order to assist the Director to make a determination within the 90 day period.</p> <p>(8) Where the Director considers it impracticable or inexpedient to assess the amount of compensation to be paid in full satisfaction for the damage sustained by the claimant, the Director may make an order –</p> <p>(a) as to the compensation payable in respect of a specified period; and</p> <p>(b) in respect of the whole or a part of the total claim for compensation; and</p> <p>(c) as to the period and the manner in which any outstanding claim for compensation is to be determined.</p>		

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	<p>(9) The Director may, at any time, require that the person from whom compensation is sought gives such security as the Director thinks fit for payment of compensation for which that person may become liable before commencing or continuing, as the case may be, any operations under this Act.</p> <p>(10) Where, after the Director has determined an amount of compensation under this section, it is proved that further loss or damage, not being loss or damage in respect of which compensation has already been determined or ordered, has been sustained, the Director may, with the advice of the Council if the Director so requires, determine the further loss or damage and order that further compensation be paid by the holder of the permit to the person entitled to the further compensation.</p> <p>(11) Where the Director has determined the amount of compensation or further compensation under this section, payment of the amount is a condition applying to a permit for the purposes of Section 72.</p> <p>(12) In determining the amount of compensation payable under this section, the Director may –</p> <p>(a) consider and seek an opinion from the Council as to the detriment to any beneficial value in relation to the environment or a part of the environment; and</p> <p>(b) take into consideration the amount of compensation that the owner or occupiers of, or the person interested in, the land or any of them or their predecessors in title has or have already received for the damage or loss for which compensation is being determined and deduct that amount from the amount to which they or any of them respectively would otherwise be entitled.</p> <p>(13) Where either party is aggrieved by a determination of the Director, they may appeal to the National Court.</p> <p>(14) A person, who fails to pay the compensation within the time determined in accordance with Subsection (8), is guilty of an offence.</p> <p><b>Land Act 1996 (LA)</b> <b>Art. 25. AGREEMENT BEFORE ACQUISITION AS TO COMPENSATION.</b> (1) The Minister may, on behalf of the State, enter into an agreement with the owner of land as to the amount of compensation to which the</p>		

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	<p>owner will be entitled if the land is acquired by compulsory process under this Act within a time specified in the agreement.</p> <p>(2) If the land is acquired by compulsory process under this Act– (a) within the time specified in the agreement; and (b) while the owner who made the agreement is still the owner of the land, the compensation payable to him in respect of the acquisition shall be deemed to have been determined by agreement at the amount specified in the agreement.</p> <p><b>LA Art. 26. AGREEMENT AFTER ACQUISITION AS TO COMPENSATION.</b> Where a claim for compensation is accepted under Section 21, the amount of compensation to be paid may be determined by agreement between the Minister and the claimant.</p> <p><b>Essential Services Act 2002 (ESA)</b> <b>Art. 1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.</b> ...(4) Insofar as this Act involves a compulsory taking of possession of property or a compulsory acquisition of an interest in or right over property within the meaning of Section 53 of the Constitution – (a) the purposes and reasons for each such taking and acquisition are declared and described to be –... and each of those purposes and reasons is hereby also declared to be described as – (iii) a public purpose;... for the purposes of Section 53 of the Constitution and for the purposes of any other relevant law; and (b) for the purposes of Section 53(2) of the Constitution, just compensation will be made on just terms for the compulsory taking of possession of property, in accordance with the terms set out in Section 8 and shall constitute compensation procured (and accordingly made) by, and made on behalf of, the State in connection with each such taking and acquisition.</p> <p><b>Underlying Law Act 2000 (ULA)</b> <b>Art. 10. REMEDIES.</b> In a proceeding before a court, when the remedy sought is based on the underlying law, the court may grant any remedies that are available under:</p>		



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	<p>(a) a source of the underlying law; or (b) a formulated rule of the underlying law.</p> <p><b>Policy Document – not legally binding</b> <b>EIP Section 4.2.1 Regulation on Use of Indigenous Resources for Electricity Generation</b> Ownership of indigenous resources that are exploited and utilized for electricity generation lies with the State as well as the local indigenous people. These resources include <b>land</b>, water, geothermal potential, ocean tidal and current potentials, natural gas and other primary sources of energy that are sourced and extracted from within PNG’s national boundaries and used. The State would be required to develop appropriate regulatory instruments to determine levies and taxes for the access to and use of these resources or establish <b>alternative arrangements such as through purchases for the transfer of their ownership or payments for the lease of these resources.</b></p>		
<p><b>Key element (2):</b> Improve, or at least restore, the livelihoods of all displaced persons through <b>prompt replacement of assets with access to assets of equal or higher value</b></p>	<p><b>LA Art. 14. CONVERSION OF INTERESTS INTO CLAIMS FOR COMPENSATION.</b> (1) Subject to Subsection (2), the interest of every person in land or a chattel to which a notice of acquisition applies is, on the date of acquisition, converted into a right to compensation under this Act.</p> <p><b>LA Art. 25. AGREEMENT BEFORE ACQUISITION AS TO COMPENSATION.</b> (1) The Minister may, on behalf of the State, enter into an agreement with the owner of land as to the amount of compensation to which the owner will be entitled if the land is acquired by compulsory process under this Act <b>within a time specified in the agreement.</b></p> <p><b>LA Art. 26. AGREEMENT AFTER ACQUISITION AS TO COMPENSATION.</b> Where a claim for compensation is accepted under Section 21, the amount of compensation to be paid may be determined by agreement between the Minister and the claimant.</p>	<p><b>Partial equivalence.</b> The amount of compensation is subject to agreement between the State and the land owner. Neither the LA nor the EA stipulates that replacement of assets must be at equal or higher value.</p>	<p>To achieve full equivalence: 1. Amend the EA and the LA to harmonize all provisions on compulsory acquisition of land. 2. See the Recommendation under the Objectives for IRS.</p>
<p><b>Key element (3):</b></p>	<p><b>No corresponding policy provision or legal requirement.</b></p>	<p><b>No equivalence.</b></p>	<p>See the</p>

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<p>Improve, or at least restore, the livelihoods of all displaced persons through <b>prompt compensation at full replacement cost for assets that cannot be restored</b></p>			<p>Recommendation under the Objectives for IRS.</p>
<p><b>Key element (4):</b></p> <p>Improve, or at least restore, the livelihoods of all displaced persons through <b>additional revenues and services through benefit sharing schemes</b> where possible</p>	<p><b>Policy Document – Not legally binding</b> <b>NSP 2010-2050 Section 3.1.2</b></p> <p>Based on the development analysis over the last three decades and following the comprehensive district consultations, our people believe that the best way to achieve the vision is by: <i>“Creating opportunities for personal and national advancement through smart innovative ideas, quality services <b>plus fair and equitable distribution of benefits.</b>”</i></p>	<p><b>No equivalence.</b></p> <p>At the policy level, the NSP articulates the results of citizen consultations which call for benefit sharing. There are no regulatory provisions on benefit sharing.</p> <p>In another sector, the Oil &amp; Gas Act 1998 (Art. 50) provides for “development agreements” to be negotiated among project area landowners to proportionally share benefits resulting from a project (Arts. 170 and 171) and among local governments in proportion to the number of project area landowners receiving benefits under Arts. 170-171 and who reside within the jurisdictions of local-level governments (Art. 172).</p> <p>In yet another sector, the Mining Act 1992 provides for “compensation agreements” (Art. 156). The Office of the State Solicitor confirms that these compensation agreements in practice</p>	<p>See the Recommendation under the Objectives for IRS.</p> <p>The energy/hydropower sector could provide for agreements similar to those used in the petroleum and mining sectors, which would maintain consistency with established national practice.</p>

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		include benefit-sharing arrangements.	
<p><b>Policy Principle 4:</b> 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.</p>			
<p><b>Key element (1):</b> Provide physically and economically displaced persons, if there is relocation, with <b>secured tenure to relocation land, better housing at resettlement sites with comparable access to employment and production opportunities</b>, integration of resettled persons economically and socially into their host communities, and <b>extension of project benefits to host communities</b></p>	<p><b>Policy Document – Not legally binding</b> <b>PNG DSP Section 1.7 Impacts of sectoral strategies</b> It is clear from the national income and employment impacts in tables 1.1 and 1.2 that the key platforms for the future prosperity of PNG will be...the implementation of <b>land reforms</b> that will empower landowners to make the most of their land. It is important to note that the results for many other sectors, for example agriculture and tourism, are premised on the success of law and order and <b>land reforms</b>.</p>	<p><b>No equivalence.</b> At the policy level, the PNG DSP states generally that land reforms must be implemented.</p>	<p>To achieve full equivalence: 1. In implementing land reforms, include provisions to secure tenure to relocation land for displaced persons. 2. See the Recommendation under the Objectives for IRS.</p>
<p><b>Key element (2):</b></p>	<p><b>No corresponding policy provision or legal requirement.</b></p>	<p><b>No equivalence.</b></p>	<p>See the Recommendation under</p>

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Provide physically and economically displaced persons with <b>transitional support and development assistance</b> , such as land development, credit facilities, training, or employment opportunities			the Objectives for IRS.
<b>Key element (3):</b>  Provide physically and economically displaced persons with <b>civic infrastructure and community services</b>	<b>No corresponding policy provision or legal requirement.</b>	<b>No equivalence.</b>  In another sector, the Oil and Gas Act 1998 provides for development agreements (Art. 50), the terms of which are to be negotiated by people who will be affected by a petroleum project. Such agreements could presumably include arrangements for civic infrastructure and community services.  In yet another sector, Articles 154-160 of the Mining Act 1992, which provide generally for compensation agreements, could be interpreted to include in-kind compensation in the form of civic infrastructure and community services.	See the Recommendation under the Objectives for IRS.  The energy/hydropower sector could provide for agreements similar to those used in the petroleum and mining sectors, which would maintain consistency with established national practice.
<b>Policy Principle 5:</b> Improve the standards of living of the displaced poor and other vulnerable groups, including women, to at least national minimum standards. In			

<b>(A)</b> <b>ADB Safeguard Policy Statement</b>	<b>(B)</b> <b>Corresponding Provisions in National Policy and Legal Instruments<sup>2</sup></b>	<b>(C)</b> <b>Extent of Equivalence<sup>3</sup> Review comments</b>	<b>(D)</b> <b>Recommendations</b>
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.			
<b>Key element (1):</b>  Improve the standards of living of the displaced poor and other vulnerable groups, including women, to at least national minimum standards	<b>No corresponding policy provision or legal requirement.</b>	<b>No equivalence.</b>	See the Recommendation under the Objectives for IRS.
<b>Key element (2):</b>  In rural areas provide them with <b>legal and affordable access to land and resources</b>	<b>Policy Document – Not legally binding</b> <b>PNG DSP Section 1.7 Impacts of sectoral strategies</b> It is clear from the national income and employment impacts in tables 1.1 and 1.2 that the key platforms for the future prosperity of PNG will be...the implementation of <b>land reforms</b> that will empower landowners to make the most of their land. It is important to note that the results for many other sectors, for example agriculture and tourism, are premised on the success of law and order and <b>land reforms</b> .	<b>No equivalence.</b> At the policy level, the PNG DSP states generally that land reforms must be implemented.	To achieve full equivalence: 1. In implementing land reforms, include provisions to secure for displaced persons legal and affordable access to land and resources. 2. See the Recommendation under the Objectives for IRS.
<b>Key element (3):</b>  in urban areas provide them with <b>appropriate income sources</b> and <b>legal and affordable access to</b>	<b>No corresponding policy provision or legal requirement.</b>	<b>No equivalence.</b>	See the Recommendation under the Objectives for IRS.

<b>(A)</b> <b>ADB Safeguard Policy Statement</b>	<b>(B)</b> <b>Corresponding Provisions in National Policy and Legal Instruments<sup>2</sup></b>	<b>(C)</b> <b>Extent of Equivalence<sup>3</sup> Review comments</b>	<b>(D)</b> <b>Recommendations</b>
adequate housing			
<b>Policy Principle 6:</b> 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.			
<b>Key element (1):</b> Develop procedures in a transparent, consistent, and equitable manner if land acquisition is through negotiated settlement	<b>No corresponding policy provision or legal requirement.</b>	<b>No equivalence.</b> It was not possible to ascertain whether there are procedures under the LA for negotiating land acquisition settlements.	To achieve full equivalence: 1. Amend the EA and the LA to harmonize all provisions on compulsory acquisition of land. 2. See the Recommendation under the Objectives for IRS.
<b>Key element (2):</b> Ensure that those people who enter into negotiated settlements will maintain the same or better income and livelihood status	<b>No corresponding policy provision or legal requirement.</b>	<b>No equivalence.</b>	To achieve full equivalence: 1. Amend the EA and the LA to harmonize all provisions on compulsory acquisition of land. 2. See the Recommendation under the Objectives for IRS.
<b>Policy Principle 7:</b> 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.			
	<b>No corresponding policy provision or legal requirement.</b>	<b>No equivalence.</b>	See the Recommendation under the Objectives for IRS.
<b>Policy Principle 8:</b> 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.			

<b>(A)</b> <b>ADB Safeguard Policy Statement</b>	<b>(B)</b> <b>Corresponding Provisions in National Policy and Legal Instruments<sup>2</sup></b>	<b>(C)</b> <b>Extent of Equivalence<sup>3</sup> Review comments</b>	<b>(D)</b> <b>Recommendations</b>
	<b>No corresponding policy provision or legal requirement.</b>	<b>No equivalence.</b>	See the Recommendation under the Objectives for IRS.
<b>Policy Principle 9:</b> 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.			
<b>Key element (1):</b>  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	<b>No corresponding policy provision or legal requirement.</b>	<b>No equivalence.</b>	See the Recommendation under the Objectives for IRS.
<b>Key element (2):</b>  Disclose the final resettlement plan and its updates to affected persons and other stakeholders.	<b>No corresponding policy provision or legal requirement.</b>	<b>No equivalence.</b>	See the Recommendation under the Objectives for IRS.
<b>Policy Principle 10:</b> 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.			
<b>Key element (1):</b>	<b>No corresponding policy provision or legal requirement.</b>	<b>No equivalence.</b>	See the

<b>(A)</b> <b>ADB Safeguard Policy Statement</b>	<b>(B)</b> <b>Corresponding Provisions in National Policy and Legal Instruments<sup>2</sup></b>	<b>(C)</b> <b>Extent of Equivalence<sup>3</sup> Review comments</b>	<b>(D)</b> <b>Recommendations</b>
Conceive and execute involuntary resettlement as part of a development project or programme			Recommendation under the Objectives for IRS.
<b>Key element (2):</b>  Include the full costs of resettlement in the presentation of project's costs and benefits	<b>No corresponding policy provision or legal requirement.</b>	<b>No equivalence.</b>	See the Recommendation under the Objectives for IRS.
<b>Key element (3):</b>  For a project with significant involuntary resettlement impacts, consider implementing the involuntary resettlement component of the project as a stand-alone operation	<b>No corresponding policy provision or legal requirement.</b>	<b>No equivalence.</b>	See the Recommendation under the Objectives for IRS.
<b>Policy Principle 11:</b> Pay compensation and provide other resettlement entitlements before physical or economic displacement. Implement the resettlement plan under close supervision throughout project implementation.			
<b>Key element (1):</b>	<b>EA Art. 87. COMPENSATION.</b> ...(4) A permit holder may agree with any person entitled to	<b>Partial equivalence.</b> The EA provides that the time period	See the Recommendation under



<b>(A)</b> <b>ADB Safeguard Policy Statement</b>	<b>(B)</b> <b>Corresponding Provisions in National Policy and Legal Instruments<sup>2</sup></b>	<b>(C)</b> <b>Extent of Equivalence<sup>3</sup> Review comments</b>	<b>(D)</b> <b>Recommendations</b>
<p><b>Pay compensation</b> and provide other resettlement entitlements <b>before physical or economic displacement</b></p>	<p>compensation under this section the amount and form of compensation and the time for payment.</p> <p><b>LA Art. 25. AGREEMENT BEFORE ACQUISITION AS TO COMPENSATION.</b> (1) The Minister may, on behalf of the State, enter into an agreement with the owner of land as to the amount of compensation to which the owner will be entitled if the land is acquired by compulsory process under this Act <b>within a time specified in the agreement.</b></p> <p><b>LA Art. 26. AGREEMENT AFTER ACQUISITION AS TO COMPENSATION.</b> Where a claim for compensation is accepted under Section 21, the amount of compensation to be paid may be determined by agreement between the Minister and the claimant.</p>	<p>for paying compensation is to be determined by agreement between the permit holder and the person entitled to compensation.</p> <p>The LA provides that compensation may be paid before or after acquisition, but does not specify whether displacement occurs at the time of acquisition.</p>	<p>the Objectives for IRS.</p>
<p><b>Key element (2):</b></p> <p>Implement the resettlement plan under <b>close supervision</b> throughout project implementation</p>	<p><b>No corresponding policy provision or legal requirement.</b></p>	<p><b>No equivalence.</b></p>	
<p><b>Policy Principle 12:</b> 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.</p>			
<p><b>Key element (1):</b></p> <p>Monitor and assess resettlement outcomes, their impacts on the standards of living of displaced</p>	<p><b>EIA/EIS Section 8. ENVIRONMENTAL MANAGEMENT, MONITORING AND REPORTING</b> Sufficient information on this section of the Environmental Impact Statement should be provided to enable DEC to anticipate possible environmental management, monitoring and reporting requirements for an Environment Permit. Information listed should reflect the proponent's environmental policy (environment management system) and the translation of that policy to meet the requirements under this Section and Section 7 (POTENTIAL</p>	<p><b>Partial equivalence.</b> Section 8 of the EIA/EIS guideline specifies that information on a socio-economic management and monitoring strategy must be included in an environmental impact statement. See the comments for Policy Principle 7 Key element (3).</p>	<p>To achieve full equivalence, amend EA Art. 66 to as recommended for Operational Principle 4, Key element (3).</p>

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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	<p>IMPACTS OF PROPOSAL) during different stages in the project life, from construction to decommissioning and closure. Information detailed in this section shall include but not limited to the following -...</p> <ul style="list-style-type: none"> <li>▪ information on socio-economic management and monitoring strategy,...</li> </ul>		
<p><b>Key element (2):</b></p> <p>Disclose monitoring reports</p>	<p><b>EA Art. 131. REGISTER.</b></p> <p>(1) The Director shall keep a register containing a copy of all notifications, applications, decisions and approvals taken under this Act including but not limited to -...</p> <p>(p) <b>each monitoring and management report</b> submitted by a permit holder under the conditions of a permit; ...</p> <p>(2) The register shall be made available for inspection by any person at all reasonable times.</p> <p>(3) Any person may be entitled to search for, request and obtain copies of any entry in the register subject to payment of fees fixed by the Director under Section 100.</p>	<p><b>Full equivalence.</b></p> <p>Access to monitoring reports is subject to payment of fees.</p>	

### PROPOSED ACTION PLAN

	<b>Action</b>	<b>Responsibility</b>	<b>Timing</b>
1	Survey and comprehensive analysis of the degree to which existing law and regulations governing environmental safeguards are complied with and enforced	To be determined	To be determined
2	Comprehensive review and amendment of the Environment Act 2000	To be determined	To be determined
3	Comprehensive review and amendment of the existing Regulations and Guidelines under the Environment Act 2000	To be determined	To be determined
4	Harmonization of the Environment Act 2000 and its Regulations and Guidelines and the laws and regulations governing sectors whose activities create environmental and social impacts	To be determined	To be determined
5	Draft a comprehensive or umbrella biodiversity law	To be determined	To be determined

1. Conduct a survey and comprehensive analysis of the degree to which existing laws, regulations, and guidelines governing safeguards are complied with and enforced. Such an analysis will facilitate the development of amendments that comprehensively address not only the gaps on paper, but the gaps in practice.

2. Conduct a comprehensive review and amendment of the Environment Act 2000. It has been more than a decade since the Environment Act 2000 was enacted.

The Act should be reviewed in the context of:

- international environmental agreements to which PNG has become a party;
- national policies;
- related existing national laws and regulations that have been issued since the adoption of the Environment Act 2000; and
- the proposed biodiversity law.

Specific recommendations with respect to amendments to bring the Environment Act 2000 into full equivalence with the key elements of the ADB Social Safeguard Policy Statement are in the Legal Analysis Matrix in Appendix 3.

3. Comprehensive review and amendment of the Environment (Prescribed Activities) Regulation 2002 and the Environment (Permits) Regulation 2002, and of the Guideline for Preparation of Environmental Inception Report 2004 and Guideline for Conduct of Environmental Impact Assessment & Preparation of Environmental Impact Statement 2004 to harmonize them with the proposed amendments to the Environment Act.

4. The review of the Environment Act 2000 and its Regulations and Guidelines should be done in conjunction with review of the laws and regulations governing all sectors whose activities create environmental impacts including, but not limited to:

- the Land Act 1996;
- the Conservation Areas Act 1978;
- laws and regulations governing all non-renewable resources

- laws and regulations governing extractive activities, including but not limited to the Mining Act 1992, Oil & Gas Act 1998, Fisheries Management Act 1994, and the Forestry Act 1994;
- laws and regulations governing agriculture, forestry, fisheries and other biological resources;
- laws and regulations governing activities that involve state acquisition of land and/or resources;
- laws and regulations that create incentives for development of land and renewable and non-renewable natural resources and prescribe fiscal measures that apply to these resources.

5. In conjunction with the reviews and analyses described in paragraphs 1-4, conduct a comprehensive analysis of the degree to which existing laws, regulations, and guidelines governing biodiversity are consistent with PNG's obligations under the CBD. On the basis of this analysis and an analysis of the relative feasibility of these options, determine whether to develop and adopt a comprehensive biodiversity law or an umbrella biodiversity law. A comprehensive biodiversity law, with implementing regulations, would replace the Conservation Areas Act, National Parks Act, and the Fauna (Protection and Control) Act and their implementing regulations and rules, consolidating into one internally consistent law the management and protection of all types of ecosystems and species – of terrestrial, aquatic and marine – including protected areas and rare, unique or endangered species. An umbrella biodiversity law would establish principles and fundamental obligations for the conservation and sustainable use of terrestrial, aquatic and marine ecosystems, species and genes. Existing laws, regulations and rules would have to be amended to be consistent with the provisions of the umbrella biodiversity law.

6. The review and amendment of the Environment Act 2000 should not be limited to the recommendations set out in the Legal Analysis Matrix. The Matrix is a tool for analyzing issues related to safeguards; the scope of the review and amendments to the Environment Act 2000 will necessarily be broader than this safeguards review.

**WORKSHOP AGENDA**  
**PNG Country Safeguards Review**  
**Consultation**  
**Holiday Inn Port Moresby**  
**Thursday, 10 November 2011**

<b>Time</b>	<b>Topic</b>
09.00 – 09.15	Welcome and opening comments <i>Mr. Michael Bongro, Executive Manager – Policy and International Division, DEC</i>
09.15 – 09.30	Self-introductions and explanation of each agency's/institution's activity with respect to safeguards and the energy and hydropower sector
09.30 – 09.40	Asian Development Bank support to PNG <i>Mr. Charles Andrews, Country Director, ADB Resident Mission</i>
09.40 – 09.50	Overview of Country Safeguards Systems (CSS) <i>Mr. Jay Roop, Senior Environment Specialist, ADB</i>
09.50 – 10.20	Methodology and findings of the legal analysis <i>Ms. Patricia Moore, International Legal Specialist</i>
10.20 – 10.45	Tea
10.45 – 11.15	Discussion and comment on the draft Legal Analysis Matrix <i>Facilitator: Ms. Patricia Moore</i>
11.15 – 11.45	Discussion and comment on how to operationalize the findings set out in the draft Legal Analysis Matrix <i>Facilitator: Ms. Patricia Moore</i>
11.45 – 12.15	Introduction to Assessment of Implementation Capacity <i>Mr. Charles Adamson, Environment Specialist</i>
12.15 – 12.30	Closing remarks and next steps <i>Mr. Michael Bongro</i>
12.30	Lunch

**TA-7566 (REG) Strengthening Country Safeguard Systems, PNG: Country Safeguards Review  
 Consultation on Draft Legal Analysis Matrix  
 10 November 2011  
 Participants**

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### MEAs TO WHICH PNG IS A PARTY AS OF 4 SEPTEMBER 2012

COUNTRY	Agreement																					
	Regional Integration Agreement	Basel	CBD	CBD Cartagena Protocol	CBD Nagoya Protocol	CITES	UNCCD	CMS	ITPGRFA	UNFCCC	UNFCCC Kyoto Protocol	Vienna Convention	Vienna Convention Montreal Protocol	PIC	POPs	Ramsar	WHC	WTO	Law of the Sea	UN Fish Stocks Agreement	IMO	MARPOL
Papua New Guinea	SPREP	a	r	a		a	a			r	r	a	√		r	√	a	m	r	r	√	√
Date		01.09.95	16.03.93	12.01.06		12.12.75	06.12.00			16.03.93	28.03.02	27.10.92	27.10.92		07.10.03	*	28.07.97	09.06.96	14.01.97	04.06.99	1976	
In force Date		*	*	*		11.03.76	06.03.01			21.03.94	16.02.05	*	*		*	16.07.93	*	*	*	*	*	

rtf = Ratification, a = Accession, at = Acceptance, ap = Approval, d = Denunciation, s = Signature, m = Membership, o = Observer

Date format: dd.mm.yy

\* : Date unavailable

√ : The State is a Party to the Agreement, but information on whether by ratification or accession is unavailable

#### Agreements – Short Names and Acronyms

Basel -- Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal

CBD -- Convention on Biological Diversity; Cartagena Protocol on Biosafety; Nagoya Protocol on Access to Genetic Resources and Benefit Sharing

CITES -- Convention on the International Trade in Endangered Species of Wild Fauna and Flora

UNCCD -- United Nations Convention to Combat Desertification

CMS -- Convention on Migratory Species of Wild Animals

ITPGRFA -- International Treaty on Plant Genetic Resources for Food and Agriculture

UNFCCC -- United Nations Framework Convention on Climate Change; Kyoto Protocol

Vienna Convention -- Vienna Convention for the Protection of the Ozone Layer; Montreal Protocol -- Montreal Protocol on Substances that deplete the Ozone Layer

PIC -- Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade

POPs -- Stockholm Convention on Persistent Organic Pollutants

Ramsar -- Convention on Wetlands of International Importance

WHC -- World Heritage Convention

WTO -- World Trade Organization

Law of the Sea -- The United Nations Convention on the Law of the Sea

IMO Convention -- International Maritime Organization Convention ( IMO Convention 48)

MARPOL -- International Convention for the Prevention of Pollution from Ships (Annex I & II)