

Comparative Analysis of DMC Legal Framework and ADB Safeguard Policy Statement: Indigenous Peoples

Peoples Republic of China

(A) ADB Safeguard Policy Statement	(B) Corresponding DMC Legal Provisions	(C) Extent of Equivalence ¹	(D) Recommended Gap-filling Measures
Policy Principle 1: Screen early on to determine (i) whether Indigenous Peoples are present in, or have collective attachment to, the project area; and (ii) whether project impacts on Indigenous Peoples are likely.			
Key element (1): Early screening to determine whether Indigenous Peoples are present in, or have collective attachment to, the project area.	No formal mechanism for early screening for Indigenous Peoples (people with the defining characteristics of Indigenous Peoples are a subset of groups commonly termed “minority nationalities” or “ethnic minorities” in China). The potential relevance of minority issues is usually determined by whether project activities are located in an officially designated minority autonomous area (region, prefecture or county). And any dialogue relating to consideration of project-related impacts generally occurs between or among project proponents or government entities and local officials in designated minority autonomous areas.	No equivalence.	Prior agreement on a project-specific basis to require early screening to determine whether Indigenous Peoples are present in, or have collective attachment to, the project area.
Key element (2): Early screening to determine whether project impacts on Indigenous Peoples are likely.	No formal screening to determine whether minority nationality communities have defining characteristics of Indigenous Peoples and, if so, whether they are likely to be affected by project activities.	No equivalence.	Prior agreement on a project-specific basis to require early screening to determine whether project impacts on Indigenous Peoples are likely.
Policy Principle 2: Undertake a culturally appropriate and gender-sensitive social impact assessment or use similar methods to assess potential project impacts, both positive and adverse, on Indigenous Peoples. Give full consideration to options the affected Indigenous Peoples prefer in relation to the provision of project benefits and the design of mitigation measures. Identify social and economic benefits for affected Indigenous Peoples that are culturally appropriate and gender and intergenerationally inclusive and develop measures to avoid, minimize, and/or mitigate adverse impacts on Indigenous Peoples.			

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

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Key element (1): Undertake a culturally appropriate and gender-sensitive social impact assessment or use similar methods to assess potential project impacts, both positive and adverse, on Indigenous Peoples.	Social impact assessment guidelines have been in place in China since the 1990s, and the 18 th Party Congress in 2012 instituted requirements for social impact assessment for all major projects, since reflected in revision to the Environmental Protection Law in 2014. But there are no specific social impact assessment requirements relating to cultural appropriateness or gender sensitivity, or for specific positive or negative impacts affecting Indigenous Peoples.	Partial equivalence.	Prior agreement to scope and methods in TOR for social impact assessment.
Key element (2): Assessment process gives full consideration to options the affected Indigenous Peoples prefer in relation to the provision of project benefits and the design of mitigation measures.	Available guidance on social impact assessment does not specifically mandate consideration of Indigenous Peoples' preferences regarding project benefits or design of mitigation measures.	Partial equivalence.	Prior agreement to scope and methods in TOR for social impact assessment.
Key element (3): Assessment process identifies social and economic benefits for affected Indigenous Peoples that are culturally	Available guidance on social impact assessment does not mandate consideration of cultural appropriateness, gender sensitivity, or intergenerational inclusiveness with specific reference to Indigenous Peoples.	Partial equivalence.	Prior agreement to scope and methods in TOR for social impact assessment.

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appropriate and gender and intergenerationally inclusive.			
Key element (4): Project preparation process develops measures to avoid, minimize, and/or mitigate adverse impacts on Indigenous Peoples.	Social impact assessment guidance is intended as advisory; there are no requirements that findings or conclusions relating to adverse impacts, and specifically relating to adverse impacts on Indigenous Peoples, result in development of measures for avoidance, minimization or mitigation.	Partial equivalence.	Prior agreement on a project-specific basis on necessity for incorporation of SPS principles in an Indigenous Peoples Plan (IPP).
Policy Principle 3: Undertake meaningful consultations with affected Indigenous Peoples communities and concerned Indigenous Peoples organizations to solicit their participation (i) in designing, implementing, and monitoring measures to avoid adverse impacts or, when avoidance is not possible, to minimize, mitigate, or compensate for such effects; and (ii) in tailoring project benefits for affected Indigenous Peoples communities in a culturally appropriate manner. To enhance Indigenous Peoples' active participation, projects affecting them will provide for culturally appropriate and gender inclusive capacity development. Establish a culturally appropriate and gender inclusive grievance mechanism to receive and facilitate resolution of the Indigenous Peoples' concerns.			
Key element (1): Affected Indigenous Peoples communities and organizations are consulted in a meaningful manner.	No requirements for formal consultation with Indigenous Peoples communities. Information flow generally is from project proponents or government entities to affected people or their designated local leaders.	No equivalence.	Prior agreement on a project-specific basis on consultation arrangements for affected Indigenous Peoples communities.
Key element (2): The scope of consultations	No requirements for formal consultation with Indigenous Peoples communities.	No equivalence.	Prior agreement on a project-specific basis on consultation

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includes design, implementation and monitoring of measures to avoid or otherwise minimize, mitigate or compensate for adverse impacts.			arrangements for affected Indigenous Peoples communities.
Key element (3): The scope of consultations includes tailoring project benefits for affected Indigenous Peoples communities in a culturally appropriate manner.	No requirements for formal consultation with Indigenous Peoples communities.	No equivalence.	Prior agreement on a project-specific basis on consultation arrangements for affected Indigenous Peoples communities.
Key element (4): To enhance Indigenous Peoples' active participation, projects affecting them will provide for culturally appropriate and gender inclusive capacity development.	No requirements to consider provision of capacity development measures for potentially affected Indigenous Peoples communities.	No equivalence.	Prior agreement on a project-specific basis that the need for, and feasibility of, capacity-building measures to enhance Indigenous Peoples' active participation will be assessed through the social impact assessment (or other means).
Key element (5): Establish a culturally appropriate and gender inclusive grievance mechanism to receive and facilitate resolution of the Indigenous Peoples' concerns.	No specific requirements pertaining to establishment of grievance mechanisms to facilitate resolution of Indigenous Peoples' concerns.	No equivalence.	Prior agreement on a project-specific basis regarding grievance redress mechanisms and procedures, to be reflected in the IPP.
Policy Principle 4: Ascertain the consent of affected Indigenous Peoples communities to the following project activities: (i) commercial development of the cultural resources and knowledge of Indigenous Peoples; (ii) physical displacement from traditional or customary lands; and (iii) commercial development of natural resources within customary lands under use that would impact the livelihoods or the cultural, ceremonial, or spiritual uses that define the identity and community of Indigenous Peoples. For the purposes of policy application, the consent of affected Indigenous Peoples communities refers to a collective expression by the affected Indigenous Peoples communities, through individuals and/or their recognized representatives, of broad community support for such project activities. Broad community support may exist even if some individuals or groups object to the project activities.			

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Key element (1): Consent of affected Indigenous Peoples communities is required for project activities that would include commercial development of cultural resources and knowledge of Indigenous Peoples.	No requirement to obtain consent of affected Indigenous Peoples communities for project activities that would involve commercial development of their cultural resources or knowledge.	No equivalence.	Prior agreement on a project-specific basis that affected Indigenous Peoples communities' consent must be obtained for commercial development of cultural resources or indigenous knowledge.
Key element (2): Consent of affected Indigenous Peoples communities is required for project activities that would include physical displacement of Indigenous Peoples from traditional or customary lands.	No requirement to obtain consent of affected Indigenous Peoples communities for project activities that would include physical displacement of Indigenous Peoples from traditional or customary lands.	No equivalence.	Prior agreement on a project-specific basis that affected Indigenous Peoples communities' consent must be obtained for activities that would physically displace them.
Key element (3): Consent of affected Indigenous Peoples communities is required for project activities that would include commercial development of natural resources within customary lands under use that would impact the livelihoods or the cultural, ceremonial, or spiritual uses that define the identity and community of Indigenous Peoples.	No requirement to obtain consent of affected Indigenous Peoples communities for project activities that would include commercial development of natural resources within customary lands under use that would impact the livelihoods or the cultural, ceremonial, or spiritual uses that define the identity and community of Indigenous Peoples.	No equivalence.	Prior agreement on a project-specific basis that affected Indigenous Peoples communities' consent must be obtained for commercial development of natural resources within customary or traditional lands.
Policy Principle 5: Avoid, to the maximum extent possible, any restricted access to and physical displacement from protected areas and natural resources. Where avoidance is not possible, ensure that			

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the affected Indigenous Peoples communities participate in the design, implementation, and monitoring and evaluation of management arrangements for such areas and natural resources and that their benefits are equitably shared.			
Key element (1): Project design avoids, to the maximum extent possible, any restrictions on Indigenous Peoples' access to, and physical displacement of Indigenous Peoples from, protected areas and natural resources.	No specific design provisions requiring avoidance, to the maximum extent possible, of restrictions on Indigenous Peoples' access to, and physical displacement of Indigenous Peoples from, protected areas and natural resources.	No equivalence.	Prior agreement on a project-specific basis that such impacts will be avoided to the maximum extent possible; review of project design.
Key element (2): Where avoidance is not possible, project designs ensure that the affected Indigenous Peoples communities can participate in the design, implementation, and monitoring and evaluation of management arrangements for such protected areas and natural resources.	No specific provisions ensuring that affected Indigenous Peoples communities can participate in the design, implementation, and monitoring and evaluation of management arrangements for such protected areas and natural resources. (Local officials in officially designated minority autonomous areas may participate and officially are expected to represent the interests of potentially affected communities.)	No equivalence.	Prior agreement on a project-specific basis that project design, as reflected in the IPP, allows affected Indigenous Peoples communities to participate in the design, implementation, and monitoring and evaluation of management arrangements for protected areas and natural resources.
Key element (3): Where avoidance is not possible, project designs ensure that affected Indigenous Peoples communities share equitably in project benefits.	No specific provisions ensuring that affected Indigenous Peoples communities share equitably in project benefits. (Depending on the nature of the project, an officially designated minority autonomous area may directly share in project benefits, but distribution of an equitable share of benefits to directly affected communities is not specifically required.)	No equivalence.	Assessment of equitability and cultural appropriateness of project benefits is included in TOR for social impact assessment and results are incorporated into IPP.
Policy Principle 6: Prepare an Indigenous Peoples plan (IPP) that is based on the social impact assessment with the assistance of qualified and experienced experts and that draw on indigenous			

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knowledge and participation by the affected Indigenous Peoples communities. The IPP includes a framework for continued consultation with the affected Indigenous Peoples communities during project implementation; specifies measures to ensure that Indigenous Peoples receive culturally appropriate benefits; identifies measures to avoid, minimize, mitigate, or compensate for any adverse project impacts; and includes culturally appropriate grievance procedures, monitoring and evaluation arrangements, and a budget and time-bound actions for implementing the planned measures.			
Key element (1): When Indigenous Peoples communities are present in the project area, or are likely to be affected by project activities, an Indigenous Peoples Plan (IPP) is prepared.	As the concept of Indigenous Peoples is not recognized in China, there are no requirements relating to screen proposed project areas for Indigenous Peoples or for subsequent preparation of project-specific Indigenous Peoples Plans.	No equivalence	Prior agreement on a project-specific basis on necessity of, and scope of coverage of, IPP.
Key element (2): The IPP is based on social impact assessment and is prepared by qualified experts.	No similar requirements for preparation of an IPP by qualified experts based on social impact assessment.	No equivalence.	Same as above.
Key element (3): The IPP draws on indigenous knowledge and participation by the affected Indigenous Peoples communities.	No similar requirements.	No equivalence.	Same as above.
Key element (4): The IPP includes a framework for continued consultation with the affected Indigenous Peoples communities during project implementation.	No similar requirements.	No equivalence.	Same as above.
Key element (5): The IPP includes specific measures to ensure that Indigenous Peoples communities receive culturally appropriate	No similar requirements.	No equivalence.	Same as above.

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benefits.			
Key element (6): The IPP identifies measures to avoid, minimize, mitigate, or compensate for any adverse project impacts.	No similar requirements.	No equivalence.	Same as above.
Key element (7): The IPP includes a culturally appropriate grievance redress mechanism.	No similar requirements.	No equivalence.	Same as above.
Key element (8): The IPP includes arrangements for monitoring during project implementation and for evaluation of results.	No similar requirements.	No equivalence.	Same as above.
Key element (9): The IPP includes a budget and timebound plan for implementing all required actions.	No similar requirements.	No equivalence.	Same as above.
Policy Principle 7: Disclose a draft IPP, including documentation of the consultation process and the results of the social impact assessment in a timely manner, before project appraisal, in an accessible place and in a form and language(s) understandable to affected Indigenous Peoples communities and other stakeholders. The final IPP and its updates will also be disclosed to the affected Indigenous Peoples communities and other stakeholders.			
Key element (1): A draft IPP (including documentation of consultations with Indigenous Peoples communities and social impact assessment results is publicly disclosed in a timely manner before project appraisal.	An IPP, and specific consultations with Indigenous Peoples communities, are not required. Public disclosure of project documents (including social impact assessments, if conducted) is not required.	No equivalence.	Project-specific agreement on method and timing of IPP disclosure.
Key element (2): The	No similar requirements.	No equivalence.	Project-specific agreement on

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disclosed draft IPP is accessible to, and in a form and language(s) understandable to, affected Indigenous Peoples communities and other stakeholders.			method and timing of IPP disclosure.
Key element (3): The final IPP (and any subsequent updates) also are disclosed to affected Indigenous Peoples communities and other stakeholders.	No similar requirements.	No equivalence.	Project-specific agreement on method and timing of IPP disclosure.
Policy Principle 8: Prepare an action plan for legal recognition of customary rights to lands and territories or ancestral domains when the project involves (i) activities that are contingent on establishing legally recognized rights to lands and territories that Indigenous Peoples have traditionally owned or customarily used or occupied, or (ii) involuntary acquisition of such lands.			
Key element (1): Prepare an action plan for legal recognition of customary rights to lands and territories or ancestral domains when the project involves activities that are contingent on establishing legally recognized rights to lands and territories that Indigenous Peoples have traditionally owned or customarily used or occupied.	China has no constitutional or legal provisions for establishing legal recognition of customary rights to lands and territories or ancestral domains of Indigenous Peoples.	No equivalence.	Prior agreement on a project-specific basis for preparation of an action plan when necessary.
Key element (2): Prepare an action plan for legal recognition of customary rights to lands and territories or ancestral domains when the project	No similar requirements.	No equivalence.	Same as above.

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involves involuntary acquisition of such areas.			
Policy Principle 9: Monitor implementation of the IPP using qualified and experienced experts; adopt a participatory monitoring approach, wherever possible; and assess whether the IPP's objective and desired outcome have been achieved, taking into account the baseline conditions and the results of IPP monitoring. Disclose monitoring reports.			
Key element (1): Monitor implementation of the IPP using qualified and experienced experts.	No requirement to prepare IPP (or to monitor implementation of same).	No equivalence.	Monitoring arrangements included in the project IPP.
Key element (2): Include arrangements for participatory monitoring whenever possible.	No similar requirements.	No equivalence.	Prior agreement that feasibility of participatory monitoring will be considered in social impact assessment.
Key element (3): Assess whether IPP objectives and desired outcomes are achieved, taking into account baseline conditions and monitoring results.	No similar requirements.	No equivalence.	Prior agreement on evaluation methods and timing, with arrangements incorporated in IPP.
Key element (4): Monitoring reports are disclosed.	No similar requirements.	No equivalence.	Prior agreement on disclosure arrangements, incorporated in IPP.