

**Comparative Analysis of Fiji's Legal Framework and ADB Safeguard Policy Statement:
Indigenous Peoples**

(A) ADB Safeguard Policy Statement	(B) Corresponding Legal Provisions	(C) Extent of Equivalence ¹	(D) Recommended Gap-filling Measures
<p>Scope and Triggers: (Definition of Indigenous Peoples) The term Indigenous Peoples is used in a generic sense to refer to a distinct, vulnerable, social and cultural group possessing the following characteristics in varying degrees: (i) self-identification as members of a distinct indigenous cultural group and recognition of this identity by others; (ii) collective attachment to geographically distinct habitats or ancestral territories in the project area and to the natural resources in these habitats and territories; (iii) customary cultural, economic, social, or political institutions that are separate from those of the dominant society and culture; and (iv) a distinct language, often different from the official language of the country or region. ...A group that has lost collective attachment to geographically distinct habitats or ancestral territories in the project area because of forced severance remains eligible for coverage under this policy.</p>			
<p>Key Element (1) Self-identification as members of a distinct indigenous cultural group and recognition of this identity by others</p>	<p>Constitution 2013 Preamble We, the people of Fiji, Recognising the indigenous people or the <i>iTaukei</i>, their ownership of <i>iTaukei</i> lands, their unique culture, customs, traditions and language; Recognising the indigenous people or the Rotuman from the island of Rotuma, their ownership of Rotuman lands, their unique culture, customs, traditions and language; Recognising the descendants of the indentured labourers from British India and the Pacific Islands, their culture, customs, traditions and language; and Recognising the descendants of the settlers and immigrants to Fiji, their culture, customs, traditions and language, Declare that we are all Fijians united by common and equal citizenry;...</p> <p>Fijian Affairs (Amendment) Decree 2010 2. The Fijian Affairs Act [Cap. 120] ("the Act") and is amended by deleting section 1 and replacing with the following-</p>	<p>Full equivalence Fiji's legal regime uses the term <i>iTaukei</i> rather than 'indigenous peoples'. The Constitution gives the term as "<i>iTaukei</i>". The Fijian Affairs (Amendment) Decree 2010 gives the term as "i Taukei".</p>	

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.

(A) ADB Safeguard Policy Statement	(B) Corresponding Legal Provisions	(C) Extent of Equivalence ¹	(D) Recommended Gap-filling Measures
	<p>Short title 1. This Act may be cited as the i Taukei Affairs Act." Amendment of all references to "Fijian" in the Act 3. The Act and all subsidiary legislation made under the Act are amended by deleting the word "Fijian" wherever it appears and replacing it with "i Taukei". 4. The Act is amended by inserting the following new section after section 2- "Amendment of all references to "Fijian" in all written laws etc. 2A.-(1) All written laws, including any Act, Proclamation, Promulgation, Decrees and any subsidiary legislation, (including the titles of any written law) are amended by deleting the word "Fijian" wherever it appears and wherever it currently refers to indigenous Fijians, and replacing it with "i Taukei", unless the context otherwise requires. (2) All State documents, of any nature whatsoever, are consequentially amended by deleting the word "Fijian" wherever it appears and wherever it currently refers to indigenous Fijians, and replacing it with "i Taukei", unless the context otherwise requires."</p> <p>Native Lands (Amendment) Decree 2011 1A. All written laws are amended by deleting all references to the word "native" wherever it appears and inserting "i Taukei".</p> <p>Native Land Trust (Amendment) Decree 2011 1A. All written laws are amended by deleting all references to the word "native" wherever it appears and inserting "i Taukei".</p>		
Key Element (2) Collective attachment to geographically distinct habitats or ancestral	Constitution 2013 28.—(1) The ownership of all <i>iTaukei</i> land shall	Full equivalence	

(A) ADB Safeguard Policy Statement	(B) Corresponding Legal Provisions	(C) Extent of Equivalence ¹	(D) Recommended Gap-filling Measures
<p>territories in the project area and to the natural resources in these habitats and territories</p>	<p>remain with the customary owners of that land and <i>iTaukei</i> land shall not be permanently alienated, whether by sale, grant, transfer or exchange, except to the State in accordance with section 27.</p> <p>Any <i>iTaukei</i> land acquired by the State for a public purpose after the commencement of this Constitution under section 27 or under any written law shall revert to the customary owners if the land is no longer required by the State.</p> <p>The ownership of all Rotuman land shall remain with the customary owners of that land and Rotuman land shall not be permanently alienated, whether by sale, grant, transfer or exchange, except to the State in accordance with section 27.</p> <p>Any Rotuman land acquired by the State for a public purpose after the commencement of this Constitution under section 27 or under any written law shall revert to the customary owners if the land is no longer required by the State.</p> <p>The ownership of all Banaban land shall remain with the customary owners of that land and Banaban land shall not be permanently alienated, whether by sale, grant, transfer or exchange, except to the State in accordance with section 27.</p> <p>Any Banaban land acquired by the State for a public purpose after the commencement of this Constitution under section 27 or under any written law shall revert to the customary owners if the land is no longer required by the State.</p> <p>Environment Management Act 2005 (EMA 2005) 3.-... (3) A person required to perform any function under this Act relating to the use and</p>		

(A) ADB Safeguard Policy Statement	(B) Corresponding Legal Provisions	(C) Extent of Equivalence ¹	(D) Recommended Gap-filling Measures
	utilization of natural and physical resources must recognize and have regard to the following matters of national importance:... (d) the relationship of indigenous Fijians with their ancestral lands, waters, sites, sacred areas and other treasures;...		
Key Element (3) Customary cultural...institutions that are separate from those of the dominant society and culture	See Scope and Triggers, Key element 1	Full equivalence	
Key Element (4) Customary... economic.... institutions that are separate from those of the dominant society and culture	See Scope and Triggers, Key element 1	Full equivalence	
Key Element (5) Customary... social, institutions that are separate from those of the dominant society and culture	See Scope and Triggers, Key element 1	Full equivalence	
Key Element (6) Customary...political institutions that are separate from those of the dominant society and culture	See Scope and Triggers, Key element 1	Full equivalence	
Key Element (7) A distinct language, often different from the official language of the country or region	Constitution 2013 3.— ... (3) This Constitution is to be adopted in the English language and translations in the <i>iTaukei</i> and Hindi languages are to be made available. (4) If there is an apparent difference between the meaning of the English version of a provision of this Constitution, and its meaning in the <i>iTaukei</i> and Hindi versions, the English version prevails.	Full equivalence	
Key Element (8) A group that has lost collective attachment to geographically distinct habitats or ancestral territories in the project area because of forced severance remains eligible for coverage under this policy.	See Scope and Triggers, Key element 2	Full equivalence	
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):	EMA 2005	No equivalence	Amend the EMA 2005 and the EIA

(A) ADB Safeguard Policy Statement	(B) Corresponding Legal Provisions	(C) Extent of Equivalence ¹	(D) Recommended Gap-filling Measures
<p>Early screening to determine whether Indigenous Peoples are present in, or have collective attachment to, the project area.</p>	<p>2. In this Act, unless the context otherwise requires... "environment" means: (a) air, land or water; (b) all layers of the atmosphere; (c) all organic or inorganic matter or living organisms; or (d) the interacting natural or human system that include components referred to in paragraphs (a) to (c);...</p> <p>Section 27(1) An approving authority must- (a) examine every development proposal received by it; and (b) determine whether the activity or undertaking in the development proposal is likely to cause significant environmental or resource management impact... (3) Any determination under subsection (1) must be submitted as soon as practicable to the EIA Administrator... (4) If the approving authority determines that the activity or undertaking will cause a significant environmental or resource management impact, the development proposal must be subject to the EIA process and the approving authority must- (a) for a proposal set out in Part 1 of Schedule 2, send it to the Department for processing by the EIA Administrator; (b) for a proposal set out in Part 2 of Schedule 2, process the proposal; or (c) for a proposal set out in Part 3 of Schedule 2, send it to the EIA Administrator to determine whether an EIA is required....</p> <p><u>Schedule 2</u> Part 1, [Development Proposals that Are to Be] Approved by the EIA Administrator Part 2, [Development Proposals that Are to Be]</p>	<p>The definition of 'environment' in the EMA 2005 includes human systems only to the extent that they interact with the natural environment.</p> <p>The EMA 2005 and the EIA Process Regulations 2007 provide for early screening, but do not require determining whether any of the country's recognized <i>i Taukei</i> are present in or have collective attachment to a project area, or would likely be impacted by a project.</p>	<p>Process Regulations 2007 to stipulate that screening must identify potential social impacts as well as environmental impacts, including impacts on <i>i Taukei</i>, and other groups identified in the Constitution, in the project area or who have an attachment to the project area and whether the project is likely to impact them.</p>

(A) ADB Safeguard Policy Statement	(B) Corresponding Legal Provisions	(C) Extent of Equivalence ¹	(D) Recommended Gap-filling Measures
	<p>Approved by Approving Authority Part 3, Development Proposals that May Not Require the EIA Process or an EIA Report</p> <p>Environmental Management (EIA Process) Regulations 2007 (EIA Process Regulations 2007) Regulation 4(1) Every proponent of a development proposal must apply for screening of the proposal in accordance with these Regulations and section 27 of the Act.</p> <p>Regulation 6(1) Upon receipt of an application in due form for screening of a proposal, the approving authority must determine whether the proposal is subject to the EIA process, that is to say, whether it is likely to cause significant environmental or resource management impact, taking into account the matters set out in section 27(2) of the Act.</p> <p>18 (1) The processing authority may if it considers appropriate involve the public in the scoping exercise to gather information that is likely to benefit the planning of the development proposal. In particular, public participation should be sought in order to - ... (c) allay fears in the community or improve the social acceptability of the project.;...</p>		
<p>Key element (2): Early screening to determine whether project impacts on Indigenous Peoples are likely.</p>	<p>See Policy Principle 1, Key element 1.</p>	<p>No equivalence</p> <p>See Policy Principle 1, Key element 1.</p>	<p>See Policy Principle 1, Key element 1.</p>
<p>Policy Principle 2: Undertake a culturally appropriate and gender-sensitive social impact assessment or use similar methods to assess potential project impacts, both positive and adverse, on Indigenous Peoples. Give full consideration to options the affected Indigenous Peoples prefer in relation to the provision of project benefits and the design of mitigation measures. Identify social and economic benefits for affected Indigenous Peoples that are culturally appropriate and gender and intergenerationally inclusive and develop measures to avoid, minimize, and/or mitigate adverse impacts on Indigenous Peoples.</p>			

(A) ADB Safeguard Policy Statement	(B) Corresponding Legal Provisions	(C) Extent of Equivalence ¹	(D) Recommended Gap-filling Measures
<p>Key element (1): Undertake a culturally appropriate and gender-sensitive social impact assessment or use similar methods to assess potential project impacts, both positive and adverse, on Indigenous Peoples.</p>	<p>No corresponding legal provision.</p>	<p>No equivalence</p>	<p>Amend the EMA 2005 to explicitly include social aspects in the definition of 'environment'.</p> <p>Amend the EMA 2005 and the EIA Process Regulations 2007 to stipulate that the EIA process must include a culturally appropriate and gender-sensitive social impact assessment or use similar methods to assess potential project impacts, both positive and adverse, on <i>i Taukei</i> and other groups identified in the Constitution.</p>
<p>Key element (2): Assessment process gives full consideration to options the affected Indigenous Peoples prefer in relation to the provision of project benefits and the design of mitigation measures.</p>	<p>No corresponding legal provision.</p>	<p>No equivalence</p>	<p>Amend the EMA 2005 and the EIA Process Regulations 2007 to stipulate that the EIA process must give full consideration to options for mitigating project impacts and providing project benefits that project-affected people – including all affected <i>i Taukei</i> and other groups identified in the Constitution – prefer.</p>
<p>Key element (3): Assessment process identifies social and economic benefits for affected Indigenous Peoples that are culturally appropriate and gender and intergenerationally inclusive.</p>	<p>No corresponding legal provision.</p>	<p>No equivalence</p>	<p>Amend the EMA 2005 and the EIA Process Regulations 2007 to stipulate that the EIA process must identify social and economic benefits for affected <i>i Taukei</i> and other groups identified in the Constitution which are culturally appropriate and gender and inter-generationally inclusive.</p>
<p>Key element (4): Project preparation process develops measures to avoid, minimize, and/or mitigate adverse impacts on Indigenous Peoples.</p>	<p>EMA 2005 Section 27(2) In examining a development proposal, the approving authority must take into account-... (c) whether there exist any technically or economically feasible measures that would prevent or mitigate any adverse environmental</p>	<p>No equivalence</p> <p>See Policy Principle 1, Key element 1.</p> <p>The EMA 2005 and the EIA Process Regulations 2007 provide</p>	<p>Amend the EMA 2005 and the EIA Process Regulations 2007 to stipulate that the EIA process must explicitly require project preparation processes to develop measures to avoid, minimize, and/or mitigate adverse impacts on affected <i>i Taukei</i></p>

(A) ADB Safeguard Policy Statement	(B) Corresponding Legal Provisions	(C) Extent of Equivalence ¹	(D) Recommended Gap-filling Measures
	<p>or resource management impact;...</p> <p><u>Schedule 2</u> Part 3 - Development Proposals that May Not Require The EIA Process or an EIA Report ...3. A person or agency undertaking emergency action under this Part must make all reasonable efforts to consult with the Department and to incorporate in the emergency action measures that will reduce, mitigate or avoid adverse environmental effect.</p> <p>Section 2 ... "significant environmental or resource management impact", in relation to a development proposal, means an impact on the environment, either in the context of the setting of the proposed development or in the context of the intensity of the proposed development's effect on the environment, and includes, but is not limited to-</p> <ul style="list-style-type: none"> (a) the degree to which public health and safety are affected;... (c) the degree to which effects on the environment are likely to involve controversy; (d) the degree to which unique or unknown risks are taken; (e) the degree to which a precedent for future action is created;... (h) the degree to which a cultural, traditional...resource may be threatened;... (k) the extent to which one aspect of use of a resource may conflict or contrary with another aspect of use of that resource;... <p>EIA Process Regulations 2007 Regulation 6(1) Upon receipt of an application in due form for screening of a proposal, the approving authority must determine whether the proposal...is likely to cause significant environmental or resource management</p>	<p>for avoiding, minimizing and mitigating adverse environmental impacts, but do not address social impacts.</p> <p>The EIA Process Regulations 2007 mention social aspects of EIA only once, in the context of public involvement in the scoping phase, where the public may be involved in order to "allay fears in the community or improve the social acceptability of the project".</p>	<p>and other groups identified in the Constitution.</p>

(A) ADB Safeguard Policy Statement	(B) Corresponding Legal Provisions	(C) Extent of Equivalence ¹	(D) Recommended Gap-filling Measures
	<p>impact... (3) A determination under subregulation (1) must be in writing and must – ... (f) determine whether the proposal will have – (i) no significant impacts; (ii) impacts that will be mitigated to the point of insignificance by the conditions normally attached to an approval;...</p> <p>Regulation 24(1) The EIA report on a proposal is based on the EIA study. It should – ... (c) identify the potential impact of the proposal on the surrounding environment and suggest possible mitigation measures;...</p> <p>Regulation 25(1) An EIA report on a proposal must, to the extent appropriate, include –... (g) a statement of the mitigation action proposed in respect of any adverse impacts identified under paragraph (e);...</p>		
<p>Policy Principle 3: Undertake meaningful consultations with affected Indigenous Peoples communities and concerned Indigenous Peoples organizations to solicit their participation (i) in designing, implementing, and monitoring measures to avoid adverse impacts or, when avoidance is not possible, to minimize, mitigate, or compensate for such effects; and (ii) in tailoring project benefits for affected Indigenous Peoples communities in a culturally appropriate manner. To enhance Indigenous Peoples’ active participation, projects affecting them will provide for culturally appropriate and gender inclusive capacity development. Establish a culturally appropriate and gender inclusive grievance mechanism to receive and facilitate resolution of the Indigenous Peoples’ concerns.</p>			
<p>Key element (1): Affected Indigenous Peoples communities and organizations are consulted in a meaningful manner.</p>	<p>EMA 2005 Section 34(1) When the preparation of an EIA assessment is completed, a public hearing must be conducted by the proponent within the vicinity of the area of the proposed development. (2) Where the Government is the proponent, the Ministry responsible for the development must establish a committee to be responsible for undertaking consultations with all interested parties.</p> <p>EIA Process Regulations 2007</p>	<p>Partial equivalence The EMA 2005 and the EIA Process Regulations 2007 require opportunity for public comment but do not require that affected <i>i Taukei</i> be consulted in a meaningful manner.</p>	<p>Amend the EMA 2005 and the EIA Process Regulations 2007 to explicitly stipulate that all affected <i>i Taukei</i> and other groups identified in the Constitution, and their organizations, if any, must be consulted during public hearings.</p>

(A) ADB Safeguard Policy Statement	(B) Corresponding Legal Provisions	(C) Extent of Equivalence ¹	(D) Recommended Gap-filling Measures
	<p>Regulation 4(1) Every proponent of a development proposal must apply for screening of the proposal in accordance with these Regulations and section 27 of the Act....</p> <p>(3) The application must include –...</p> <p>(g) a statement as to what public consultations have been held on the proposal, if any;</p> <p>(h) an indication of public response to the proposal, as evidenced by such consultations or otherwise.</p> <p>Regulation 18(1) The processing authority may if it considers appropriate involve the public in the scoping exercise to gather information that is likely to benefit the planning of the development proposal. In particular, public participation should be sought in order to -...</p> <p>(c) allay fears in the community or improve the social acceptability of the project;...</p> <p>(2) Public participation in scoping involves discussions with the proponent, the approving authority (if not the processing authority), scientific institutions, local community leaders and others to include all the possible issues and concerns raised by these various groups.</p> <p>(3) The processing authority may in writing require the proponent to convene one or more scoping meetings, at times and locations determined by the processing authority and convenient for those likely to wish to take part.</p> <p>Regulation 20(1) In the case of a major development proposal, if the TORs are prepared by the proponent's own EIA consultant, the proponent must convene at least one meeting at which draft TORs are presented for discussion and participants can propose additions to or deletions from them.</p> <p>(2) ...the processing authority may if it considers it necessary require the proponent to</p>		

(A) ADB Safeguard Policy Statement	(B) Corresponding Legal Provisions	(C) Extent of Equivalence ¹	(D) Recommended Gap-filling Measures
	<p>convene one or more meetings to discuss the draft TORs on the proposal.</p> <p>Regulation 23(4) Pursuant to and in accordance with section 34 of the Act – (a) the proponent must conduct one or more public consultations during the EIA study on a proposal; (b) a Ministry that is a proponent must establish a committee to undertake consultations on the proposal.</p> <p>Regulation 28(2) The processing authority may, and in respect of a major development proposal must, give notice of the publication of a report... (3) If notice is given under subregulation (2) it must set out –... (c) how the community can participate in identifying the issues of concern by commenting on the report;... and</p> <p>Regulation 30(1) The processing authority must require the proponent to conduct public consultations on the review of an EIA report by way of one or more review meetings, at times and places determined by the processing authority and convenient for those likely to wish to take part. (2) At least one of the review meetings must be held in the vicinity of the area of the proposed development, in compliance with section 34(1) of the Act.</p>		
<p>Key element (2): The scope of consultations includes design, implementation and monitoring of measures to avoid or otherwise minimize, mitigate or compensate for adverse impacts.</p>	<p>See Policy Principle 3, Key element 1.</p>	<p>Partial equivalence</p> <p>The EMA 2005 requires public consultation only on a draft EIA report.</p>	<p>Amend the EMA 2005 and the EIA Process Regulations 2007 to explicitly stipulate that the EIA process must include opportunities for public comment at all stages of the EIA process including design,</p>

(A) ADB Safeguard Policy Statement	(B) Corresponding Legal Provisions	(C) Extent of Equivalence ¹	(D) Recommended Gap-filling Measures
		<p>The EIA Process Regulations 2007 indicate that public comment is advisable at the screening stage. If a project proponent's consultant prepared the ToR for an EIA, public consultation is mandatory at the scoping stage. The Regulations make consultation discretionary during the EIA process and empower the processing authority to require consultation at its discretion. The Regulations require public consultation on a draft EIA.</p> <p>The EMA 2005 and the EIA Process Regulations 2007 do not require public participation in project implementation and monitoring.</p>	implementation and monitoring.
<p>Key element (3): The Scope of consultations includes tailoring project benefits for affected Indigenous Peoples communities in a culturally appropriate manner.</p>	No corresponding legal provision.	No equivalence	Amend the EMA 2005 and the EIA Process Regulations 2007 to stipulate explicitly that the scope of opportunities for public comment must include tailoring project benefits, in a culturally appropriate manner, for affected <i>i Taukei</i> and other groups identified in the Constitution.
<p>Key element (4): Enhance Indigenous Peoples' active participation in projects affecting them will provide for culturally appropriate and gender inclusive capacity development.</p>	No corresponding legal provision.	No equivalence	Amend the EMA 2005 and the EIA Process Regulations 2007 to stipulate explicitly that the EIA process must enhance the active participation of affected people, including <i>i Taukei</i> and other groups identified in the Constitution, and provide for culturally appropriate and gender inclusive capacity development.
<p>Key element (5): Establish a culturally appropriate and gender inclusive grievance</p>	<p>Constitution 2013 15.— (2) Every party to a civil dispute has the</p>	No equivalence	Amend the EMA 2005 and the EIA Process Regulations 2007 to

(A) ADB Safeguard Policy Statement	(B) Corresponding Legal Provisions	(C) Extent of Equivalence ¹	(D) Recommended Gap-filling Measures
mechanism to receive and facilitate resolution of the Indigenous Peoples' concerns.	right to have the matter determined by a court of law or if appropriate, by an independent and impartial tribunal.	The Constitution generally guarantees the right to access the courts, but the EMA 2005 and the EIA Process Regulations 2007 do not require project proponents to establish a project-specific grievance mechanism.	stipulate explicitly that project designs must ensure that there are culturally appropriate and gender inclusive mechanisms to resolve project-related grievances of all project-affected people, including <i>i Taukei</i> and other groups identified in the Constitution.
<p>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.</p>			
<p>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.</p>	No corresponding legal provision	No equivalence	Amend the EMA 2005 and the EIA Process Regulations 2007 to stipulate explicitly that project proponents must secure the written consent of the <i>i Taukei</i> Affairs Board on behalf of affected <i>i Taukei</i> for project activities that would include commercial development of their cultural resources and knowledge.
<p>Key element (2): Consent of affected Indigenous Peoples communities is required for project activities that would include physical displacement of Indigenous Peoples from traditional or customary lands.</p>	<p>Constitution 2013 27.—(1) Every person has the right not to be deprived of property by the State other than in accordance with a written law referred to in subsection (2), and no law may permit arbitrary acquisition or expropriation of any interest in any property. (2) A written law may authorise compulsory acquisition of property— (a) when necessary for a public purpose; and (b) on the basis that the owner will be promptly paid the agreed compensation for the property, or failing agreement, just and equitable compensation as determined by a court or tribunal, after considering all relevant factors, including— (i) the public purpose for which the property is</p>	<p>Full equivalence</p> <p>The <i>i Taukei</i> Lands Act stipulates that <i>i Taukei</i> manage their lands according to their own customs.</p> <p>The Constitution guarantees that <i>i Taukei</i> land remains with <i>i Taukei</i> unless the government acquires it for a public purpose. The Constitution stipulates that a written law must authorize compulsory acquisition of property.</p> <p>The [<i>i Taukei</i>] Land Trust Act stipulates that the [<i>i Taukei</i>] Land Trust Board must approve any</p>	<p>Amend the Crown Acquisition of Lands Act to make it consistent with the Constitution, which requires a written law to authorize compulsory acquisition of land, rather than a court order.</p> <p>Amend the <i>i Taukei</i> Lands Act by repealing Article 23 to make it consistent with the Constitution.</p>

(A) ADB Safeguard Policy Statement	(B) Corresponding Legal Provisions	(C) Extent of Equivalence ¹	(D) Recommended Gap-filling Measures
	<p>being acquired;</p> <p>(ii) the history of its acquisition by the owner;</p> <p>(iii) the market value of the property;</p> <p>(iv) the interests of any person affected by the acquisition; and</p> <p>(v) any hardship to the owner.</p> <p>(3) Nothing contained in, or done under the authority of, a law is inconsistent with this section to the extent that the law makes provision for the acquisition of property by way of—</p> <p>(a) taxation;</p> <p>(b) sequestration of bankrupt estates;</p> <p>(c) confiscation of the proceeds of crime;</p> <p>(d) penalty for breach of the law;</p> <p>(e) satisfaction of a mortgage, charge or lien; or</p> <p>(f) execution of a judgment of a court or tribunal.</p> <p>28.—(1) The ownership of all <i>iTaukei</i> land shall remain with the customary owners of that land and <i>iTaukei</i> land shall not be permanently alienated, whether by sale, grant, transfer or exchange, except to the State in accordance with section 27.</p> <p>Any <i>iTaukei</i> land acquired by the State for a public purpose after the commencement of this Constitution under section 27 or under any written law shall revert to the customary owners if the land is no longer required by the State.</p> <p>The ownership of all Rotuman land shall remain with the customary owners of that land and Rotuman land shall not be permanently alienated, whether by sale, grant, transfer or exchange, except to the State in accordance with section 27.</p> <p>Any Rotuman land acquired by the State for a public purpose after the commencement of this</p>	<p>alienation of <i>i Taukei</i> land. This appears to mean that affected <i>i Taukei</i> would not directly consent to any physical displacement; the Board would consent on their behalf.</p> <p>The <i>i Taukei</i> Lands Act does not apply to the island of Rotuma, but the Constitution explicitly provides that Rotuman land must be treated the same as <i>i Taukei</i> land.</p> <p>The Crown Acquisition of Lands Act 1940 implies that consent is inferred if there is agreement to accept compensation in the event the government compulsorily acquires land. Under the [<i>i Taukei</i>] Land Trust Act, the [<i>i Taukei</i>] Land Trust Board would have to approve any alienation of <i>i Taukei</i> land. In the event that the Board did not consent/agree to accept compensation, it appears that a government acquiring authority could apply to the courts for an order authorizing compulsory acquisition of <i>i Taukei</i> land.</p>	

(A) ADB Safeguard Policy Statement	(B) Corresponding Legal Provisions	(C) Extent of Equivalence ¹	(D) Recommended Gap-filling Measures
	<p>Constitution under section 27 or under any written law shall revert to the customary owners if the land is no longer required by the State.</p> <p>The ownership of all Banaban land shall remain with the customary owners of that land and Banaban land shall not be permanently alienated, whether by sale, grant, transfer or exchange, except to the State in accordance with section 27.</p> <p>Any Banaban land acquired by the State for a public purpose after the commencement of this Constitution under section 27 or under any written law shall revert to the customary owners if the land is no longer required by the State.</p> <p>[i Taukei] Lands Act amended as of 2013² Tenure of native lands by [i Taukei] 3. [i Taukei] lands shall be held by [i Taukei] according to [i Taukei] custom as evidenced by usage and tradition. Subject to the provisions hereinafter contained such lands may be cultivated, allotted and dealt with by [i Taukei] as amongst themselves according to their native customs and subject to any regulations made by the [i Taukei] Affairs Board, and in the event of any dispute arising for legal decision in which the question of the tenure of land amongst [i Taukei] is relevant all courts of law shall decide such disputes according to such regulations or native custom and usage which shall be ascertained as a matter of fact by the examination of witnesses capable of throwing light thereupon.</p> <p>23. This Act shall not apply to the island of</p>		

² This Act, which was first adopted as an Ordinance in 1905, was titled the “Native Lands Act” as of 1978. In 2011, the Native Lands (Amendment) Decree re-named it the “i Taukei Lands Act”.

(A) ADB Safeguard Policy Statement	(B) Corresponding Legal Provisions	(C) Extent of Equivalence ¹	(D) Recommended Gap-filling Measures
	<p>Rotuma.</p> <p>[i Taukei] Land Trust Act 1940 amended as of 2011</p> <p>3. -(1) There is hereby established a Board of trustees called the [i Taukei] Land Trust Board which shall consist of -</p> <ul style="list-style-type: none"> (a) the Minister as Chairman; (b) five members, all of whom must be members of i Taukei land owning units, appointed by the Minister responsible for i Taukei Affairs; (c) three members appointed by the Minister on the recommendation of the i Taukei Affairs Board from a list of nominees submitted by provincial councils to the i Taukei Affairs Board; and (d) two other members, appointed by the Minister. <p>Control of [i Taukei] land vested in Board</p> <p>4.-(1) The control of all i Taukei land shall be vested in the Board and all such land shall be administered by the Board for the benefit of the i Taukei owners.</p> <p>[i Taukei] land alienable only to Crown</p> <p>5.-(1) [i Taukei] land shall not be alienated by [i Taukei] owners whether by sale, grant, transfer or exchange except to the Crown, and shall not be charged or encumbered by [i Taukei] owners, and any [i Taukei] to whom any land has been transferred heretofore by virtue of a native grant shall not transfer such land or any estate or interest therein or charge or encumber the same without the consent of the Board.</p> <p>(2) All instruments purporting to transfer, charge or encumber any [i Taukei] land or any estate or interest therein to which the consent</p>		

(A) ADB Safeguard Policy Statement	(B) Corresponding Legal Provisions	(C) Extent of Equivalence ¹	(D) Recommended Gap-filling Measures
	<p>of the Board has not been first given shall be null and void.</p> <p>[i Taukei] land not to be alienated save in accordance with Act</p> <p>7. Subject to the provisions of the Crown Acquisition of Lands Act, the Forest Act, the Petroleum (Exploration and Exploitation) Act and the Mining Act, no [i Taukei] land shall be sold, leased or otherwise disposed of and no licence in respect of [i Taukei] land shall be granted save under and in accordance with the provisions of this Act.</p> <p>Alienation of [i Taukei] land by lease or licence</p> <p>8. (1) Subject to the provisions of section 9, it shall be lawful for the Board to grant leases or licences of portions of [i Taukei] land not included in a [i Taukei] reserve for such purposes and subject to such terms and conditions as to renewals or otherwise as may be prescribed.</p> <p>(2) Any lease of or licence in respect of land under the provisions of this Act shall be made out from and in the name of the Board and such lease or licence shall be executed under the seal of the Board.</p> <p>Conditions to be observed prior to land being dealt with by way of lease or licence</p> <p>9. No [i Taukei] land shall be dealt with by way of lease or licence under the provisions of this Act unless the Board is satisfied that the land proposed to be made the subject of such lease or licence is not being beneficially occupied by the [i Taukei] owners, and is not likely during the currency of such lease or licence to be required by the [i Taukei] owners for their use, maintenance or support.</p>		

(A) ADB Safeguard Policy Statement	(B) Corresponding Legal Provisions	(C) Extent of Equivalence ¹	(D) Recommended Gap-filling Measures
	<p>Crown Acquisition of Lands Act 1940 amended as of 1970</p> <p>6.-(1) The acquiring authority shall not compulsorily acquire any land unless he has applied to the Court and has obtained therefrom an order authorising such acquisition.</p> <p>(2.) In the event of an acquiring authority compulsorily taking possession of any land he shall within thirty days of so entering into possession apply to the Court for an order authorising such taking of possession.</p> <p>(3) The Court shall not grant an order...unless it is satisfied that the taking of possession or acquisition is necessary or expedient in the interests of defence, public safety, public order, public morality, public health, town and country planning or utilisation of any property in such a manner as to promote the public benefit.</p> <p>7.- (1) An acquiring authority shall pay damages to all persons owning the property or having any other interest or right therein that would be affected by the taking of possession or acquisition thereof in respect of the taking of possession prior to the application to the Court under the provisions of subsection (2) of section 6 in a case where the Court does not grant the order for which application has been made.</p> <p>(2) Adequate compensation for the taking of possession or the acquisition of property where an order has been granted by the Court under the provisions of section 6 shall be paid to the persons entitled thereto within thirty days of such order being granted.</p> <p>(3) If no agreement has been concluded with any person claiming to be entitled as to the amount or manner of payment of</p>		

(A) ADB Safeguard Policy Statement	(B) Corresponding Legal Provisions	(C) Extent of Equivalence ¹	(D) Recommended Gap-filling Measures
	<p>compensation referred to in this section within thirty days of the grant of the order of the Court, the acquiring authority shall, immediately upon the expiry of such period of thirty days, apply to the Court for the determination of those matters in relation to such claimant including where necessary any question as to the entitlement of such claimant to compensation.</p>		
<p>Key element (3): Consent of affected Indigenous Peoples communities is required for project activities that would include commercial development of natural resources within customary lands under use that would impact the livelihoods or the cultural, ceremonial, or spiritual uses that define the identity and community of Indigenous Peoples.</p>	<p>See Policy Principle 4, Key element 2.</p>	<p>Full equivalence</p> <p>See Policy Principle 4, Key element 2.</p> <p>In the event of any lease of <i>i Taukei</i> land for project activities, the <i>i Taukei</i> Land Trust Board would approve any lease of <i>i Taukei</i> land. This appears to mean that affected <i>i Taukei</i> would not directly consent to commercial development; the Board would consent on their behalf.</p>	
<p>Policy Principle 5: Avoid, to the maximum extent possible, any restricted access to and physical displacement from protected areas and natural resources. Where avoidance is not possible, ensure that the affected Indigenous Peoples communities participate in the design, implementation, and monitoring and evaluation of management arrangements for such areas and natural resources and that their benefits are equitably shared.</p>			
<p>Key element (1): Project design avoids, to the maximum extent possible, any restrictions on Indigenous Peoples' access to, and physical displacement of Indigenous Peoples from, protected areas and natural resources.</p>	<p>On physical displacement, see Policy Principle 4, Key element 1.</p> <p>EMA 2005 Schedule 2 (Section 27) Development Proposals Part 1 - Approved by EIA Administrator 1. The following development proposals are to be approved by the EIA Administrator-... (n) a proposal that could harm or destroy designated or proposed protected areas including, but not limited to, conservation areas, national parks, wildlife refuges, wildlife</p>	<p>Partial equivalence</p> <p>On physical displacement, see Policy Principle 4, Key element 1.</p> <p>The EMA 2005 provides only that a proposal that could harm or destroy protected areas must be approved by the EIA Administrator – the highest level of approval.</p> <p>The Fisheries Act recognizes customary rights to fishing areas and resources, but does not</p>	<p>Amend the EMA 2005 and the EIA Process Regulations 2007 to explicitly stipulate that project design must avoid, to the maximum extent possible, any restrictions on access by <i>i Taukei</i> and other groups identified in the Constitution, and their physical displacement from natural resources and protected areas that are wholly or partially within their ancestral territories.</p>

(A) ADB Safeguard Policy Statement	(B) Corresponding Legal Provisions	(C) Extent of Equivalence ¹	(D) Recommended Gap-filling Measures
	preserves, wildlife sanctuaries, mangrove conservation areas, forest reserves, fishing grounds (including reef fisheries), fish aggregation and spawning sites, fishing or gleaning areas, fish nursery areas, urban parks, recreational areas and any other category or area designated by a written law;...	<p>explicitly enable or require <i>i Taukei</i> with registered customary rights to protect those areas and resources.</p> <p>The EIA Process Regulations 2007 do not mention protected areas.</p> <p>Fiji does not have legislation that governs protected areas. The Fiji Forest Policy Statement 2007 indicated that creating a protected area system was a priority.³</p> <p>Fiji is a Party to the Convention Concerning the Protection of the World Cultural and Natural Heritage.</p>	
<p>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.</p>	No corresponding legal provision.	No equivalence	Amend the EMA 2005 and the EIA Process Regulations 2007 to explicitly stipulate that explicitly stipulate that, where avoidance is not possible, project designs ensure that project-affected <i>i Taukei</i> and other groups identified in the Constitution can participate in the design, implementation, and monitoring and evaluation of management arrangements for such natural resources and protected areas that are wholly or partially within their ancestral territories..
<p>Key element (3): Where avoidance is not possible, project designs ensure that affected Indigenous</p>	No corresponding legal provision.	No equivalence	Amend the EMA 2005 and the EIA Process Regulations 2007 to explicitly stipulate that, where

³ **Fiji Forest Policy Statement 2007**

5 Policies and Strategies

5.1 Conservation of forests and biological resources

Key focus areas:

2. Establish and manage protected area system for the conservation of representative sites of Fiji's indigenous forest types with their typical flora and fauna.

(A) ADB Safeguard Policy Statement	(B) Corresponding Legal Provisions	(C) Extent of Equivalence ¹	(D) Recommended Gap-filling Measures
Peoples communities share equitably in project benefits.			avoidance is not possible, project designs must ensure that project-affected <i>i Taukei</i> and other groups identified in the Constitution share equitably in project benefits.
Policy Principle 6: Prepare an Indigenous Peoples plan (IPP) that is based on the social impact assessment with the assistance of qualified and experienced experts and that draw on indigenous knowledge and participation by the affected Indigenous Peoples communities. The IPP includes a framework for continued consultation with the affected Indigenous Peoples communities during project implementation; specifies measures to ensure that Indigenous Peoples receive culturally appropriate benefits; identifies measures to avoid, minimize, mitigate, or compensate for any adverse project impacts; and includes culturally appropriate grievance procedures, monitoring and evaluation arrangements, and a budget and time-bound actions for implementing the planned measures.			
Key element (1): When Indigenous Peoples communities are present in the project area, or are likely to be affected by project activities, an Indigenous Peoples Plan (IPP) is prepared.	EMA 2005 Section 32(1) A proponent must prepare and implement any environmental or resource management plan, monitoring programme, protection plan or mitigation measure that is required as a condition of any approved EIA. EIA Process Regulations 2007 Regulation 21(1) There is no prescribed form for TORs for an EIA study on a proposal but they must –... (c) consider whether an environment management plan should be a condition of approval of the proposal;... (2) If the processing authority or the EIA consultant considers that an environmental management plan should be a requirement for EIA approval of a proposal, this must be stated in the TORs in relation to the proposal. Regulation 22(2) An EIA study – ... (c) should consider whether an environment management plan should be a condition of approval of the proposal;... Regulation 25(1) An EIA report on a proposal must, to the extent appropriate, include –... (k) an environment management plan if one is required by the TORs;...	No equivalence An environmental management plan is not mandatory under the EMA 2005 and the EIA Process Regulations 2007 and there is no requirement for a social management plan or any other document similar to an IPP.	Amend the EMA 2005 and the EIA Process Regulations 2007 to explicitly require preparation of an environmental management plan that provides for mitigating a project’s social impacts as well and, in the case of projects that affect <i>i Taukei</i> and other groups identified in the Constitution, to require preparation of a separate social impact management plan that addresses the impacts on them.
Key element (2):	No corresponding legal provision	No equivalence	Amend the EMA 2005 and the EIA

(A) ADB Safeguard Policy Statement	(B) Corresponding Legal Provisions	(C) Extent of Equivalence ¹	(D) Recommended Gap-filling Measures
The IPP is based on social impact assessment and is prepared by qualified experts.			Process Regulations 2007 to explicitly provide that, in the case of projects that affect <i>i Taukei</i> and other groups identified in the Constitution and for which a separate social impact management plan is prepared, that plan must be based on social impact assessment and be prepared by qualified experts.
Key element (3): The IPP draws on indigenous knowledge and participation by the affected Indigenous Peoples communities.	No corresponding legal provision	No equivalence	Amend the EMA 2005 and the EIA Process Regulations 2007 to explicitly provide that, in the case of projects that affect <i>i Taukei</i> and other groups identified in the Constitution and for which a separate social impact management plan is prepared, that plan must draw on the knowledge of the affected <i>i Taukei</i> and other groups identified in the Constitution and provide for their participation in its preparation.
Key element (4): The IPP includes a framework for continued consultation with the affected Indigenous Peoples communities during project implementation.	No corresponding legal provision	No equivalence	Amend the EMA 2005 and the EIA Process Regulations 2007 to explicitly provide that, in the case of projects that affect <i>i Taukei</i> and other groups identified in the Constitution and for which a separate social impact management plan is prepared, that plan must include a framework for continued consultation with the affected <i>i Taukei</i> and other groups identified in the Constitution during project implementation.
Key element (5): The IPP includes specific measures to ensure that Indigenous Peoples communities receive culturally appropriate benefits.	No corresponding legal provision	No equivalence	Amend the EMA 2005 and the EIA Process Regulations 2007 to explicitly provide that, in the case of projects that affect <i>i Taukei</i> and other groups identified in the Constitution and for which a separate social impact management plan is

(A) ADB Safeguard Policy Statement	(B) Corresponding Legal Provisions	(C) Extent of Equivalence ¹	(D) Recommended Gap-filling Measures
			prepared, that plan must include specific measures to ensure that the affected <i>i Taukei</i> and other groups identified in the Constitution receive culturally appropriate benefits.
Key element (6): The IPP identifies measures to avoid, minimize, mitigate, or compensate for any adverse project impacts.	No corresponding legal provision	No equivalence	Amend the EMA 2005 and the EIA Process Regulations 2007 to explicitly provide that, in the case of projects that affect <i>i Taukei</i> and other groups identified in the Constitution and for which a separate social impact management plan is prepared, that plan must identify measures to avoid, minimize, mitigate, or compensate for any adverse project impacts.
Key element (7): The IPP includes a culturally appropriate grievance redress mechanism.	No corresponding legal provision	No equivalence	Amend the EMA 2005 and the EIA Process Regulations 2007 to stipulate that project designs must incorporate the requirement to explicitly provide that, in the case of projects that affect <i>i Taukei</i> and other groups identified in the Constitution and for which a separate social impact management plan is prepared, that plan must include arrangements for a culturally appropriate grievance redress mechanism.
Key element (8): The IPP includes arrangements for monitoring during project implementation and for evaluation of results.	No corresponding legal provision	No equivalence	Amend the EMA 2005 and the EIA Process Regulations 2007 to explicitly provide that, in the case of projects that affect <i>i Taukei</i> and other groups identified in the Constitution and for which a separate social impact management plan is prepared, that plan must include arrangements for monitoring during project implementation and for evaluating results.

(A) ADB Safeguard Policy Statement	(B) Corresponding Legal Provisions	(C) Extent of Equivalence ¹	(D) Recommended Gap-filling Measures
<p>Key element (9): The IPP includes a budget and time-bound plan for implementing all required actions.</p>	<p>No corresponding legal provision</p>	<p>No equivalence</p>	<p>Amend the EMA 2005 and the EIA Process Regulations 2007 to explicitly provide that, in the case of projects that affect <i>i Taukei</i> and other groups identified in the Constitution and for which a separate social impact management plan is prepared, that plan must include a budget and time-bound plan for implementing all required actions.</p>
<p>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.</p>			
<p>Key element (1): A draft IPP (including documentation of consultations with Indigenous Peoples communities and social impact assessment results is publicly disclosed in a timely manner before project appraisal.</p>	<p>Constitution 2013 Article 25 (1) Every person has the right of access to— (a) information held by any public office;... (3) To the extent that it is necessary, a law may limit, or may authorise the limitation of, the rights set out in subsection (1), and may regulate the procedure under which information held by a public office may be made available.</p> <p>Article 150. A written law shall make provision for the exercise by a member of the public of the right to access official information and documents held by the Government and its agencies.</p> <p>EMA 2005 Article 30(2) When an EIA report is reviewed, the proponent may be required to invite public comments on the report at the proponents cost, in the manner prescribed by regulations. (3) A member of the public may inspect and view an EIA report within 21 days after it is submitted to the EIA Administrator or the approving authority.</p>	<p>No equivalence</p> <p>Under the EMA 2005 and EIA Process Regulations 2007, an EMP is discretionary and an EMP may not be part of a draft EIA report.</p> <p>There is no requirement for a social management plan or any other document similar to an IPP.</p>	<p>Amend the EMA 2005 and the EIA Process Regulations 2007 to explicitly provide that, in the case of projects that affect <i>i Taukei</i> and other groups identified in the Constitution and for which a separate social impact management plan is prepared, a draft of that plan which includes documentation of consultations with the affected <i>i Taukei</i> and other groups identified in the Constitution must be disclosed in a timely manner before project appraisal.</p>

(A) ADB Safeguard Policy Statement	(B) Corresponding Legal Provisions	(C) Extent of Equivalence ¹	(D) Recommended Gap-filling Measures
	<p>EIA Process Regulations 2007</p> <p>Regulation 28(1) Once an EIA report has been submitted under regulation 27 –</p> <p>... (b) the Director must enter the report in the register; and</p> <p>(c) the processing authority must make the complete report available at appropriate locations for inspection by the public and for purchase at cost.</p> <p>Regulation 30(1) The processing authority must require the proponent to conduct public consultations on the review of an EIA report by way of one or more review meetings, at times and places determined by the processing authority and convenient for those likely to wish to take part.</p> <p>(2) At least one of the review meetings must be held in the vicinity of the area of the proposed development, in compliance with section 34(1) of the Act.</p> <p>(3) If a review meeting is held, notice of it must be given by the proponent in the manner set out in regulation 18(4) in relation to scoping meetings and must inform the public of –</p> <p>(a) the locality and the nature of the development;</p> <p>(b) where copies of the EIA report can be obtained;</p> <p>(c) the location and time of the review meeting; and</p> <p>(d) the time limit for the submission of comments in writing, being 28 days from the submission of the report.</p> <p>(4) The proponent's costs of convening a review meeting, including but not limited to the hire of a venue and publicity, are to be met by the proponent.</p> <p>(5) Every review meeting must be held within 21 days of the submission of the EIA report.</p>		

(A) ADB Safeguard Policy Statement	(B) Corresponding Legal Provisions	(C) Extent of Equivalence ¹	(D) Recommended Gap-filling Measures
<p>Key element (2): The disclosed draft IPP is accessible to, and in a form and language(s) understandable to, affected Indigenous Peoples communities and other stakeholders.</p>	<p>No corresponding legal provision</p>	<p>No equivalence</p>	<p>Amend the EMA 2005 and the EIA Process Regulations 2007 to explicitly provide that, in the case of projects that affect <i>i Taukei</i> and other groups identified in the Constitution and for which a separate social impact management plan is prepared, a draft of that plan must be disclosed to the affected <i>i Taukei</i> and other groups identified in the Constitution in a form and language(s) that they understand.</p>
<p>Key element (3): The final IPP (and any subsequent updates) also are disclosed to affected Indigenous Peoples communities and other stakeholders.</p>	<p>No corresponding legal provision</p>	<p>No equivalence</p>	<p>Amend the EMA 2005 and the EIA Process Regulations 2007 to explicitly provide that, in the case of projects that affect <i>i Taukei</i> and other groups identified in the Constitution and for which a separate social impact management plan is prepared, the final plan and any updates must be disclosed to the affected <i>i Taukei</i> and other groups identified in the Constitution and other stakeholders.</p>
<p>Policy Principle 8: Prepare an action plan for legal recognition of customary rights to lands and territories or ancestral domains when the project involves (i) activities that are contingent on establishing legally recognized rights to lands and territories that Indigenous Peoples have traditionally owned or customarily used or occupied, or (ii) involuntary acquisition of such lands.</p>			
<p>Key element (1): Prepare an action plan for legal recognition of customary rights to lands and territories or ancestral domains when the project involves activities that are contingent on establishing legally recognized rights to lands and territories that Indigenous Peoples have traditionally owned or customarily used or occupied.</p>	<p>See Policy Principle 4, Key element 2.</p>	<p>Irrelevant</p> <p>See Policy Principle 4, Key element 2.</p> <p>In light of the Constitution, the <i>i Taukei</i> Lands Act and the <i>i Taukei</i> Land Trust Act, this Key element is irrelevant for Fiji.</p>	
<p>Key element (2): Prepare an action plan for legal recognition of customary rights to lands and territories or ancestral domains when the project involves</p>	<p>See Policy Principle 4, Key element 2.</p>	<p>Irrelevant</p> <p>See Policy Principle 4, Key element 2.</p>	

(A) ADB Safeguard Policy Statement	(B) Corresponding Legal Provisions	(C) Extent of Equivalence ¹	(D) Recommended Gap-filling Measures
involuntary acquisition of such areas.		In light of the Constitution, the <i>i Taukei</i> Lands Act and the <i>i Taukei</i> Land Trust Act, this Key element is irrelevant for Fiji.	
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.	EMA 2005 Section 32(1) A proponent must prepare and implement any environmental or resource management plan, monitoring programme, protection plan or mitigation measure that is required as a condition of any approved EIA.	No equivalence An environmental management plan is discretionary under the EMA 2005 and there is no requirement for a social management plan or any other document similar to an IPP.	Amend the EMA 2005 and the EIA Process Regulations 2007 to explicitly provide that, in the case of projects that affect <i>i Taukei</i> and other groups identified in the Constitution and for which a separate social impact management plan is prepared, implementation of that plan must be monitored by qualified and experienced experts.
Key element (2): Include arrangements for participatory monitoring whenever possible.	No corresponding legal provision	No equivalence	Amend the EMA 2005 and the EIA Process Regulations 2007 to explicitly provide that, in the case of projects that affect <i>i Taukei</i> and other groups identified in the Constitution and for which a separate social impact management plan is prepared, that plan must include arrangements for participatory monitoring whenever possible.
Key element (3): Assess whether IPP objectives and desired outcomes are achieved, taking into account baseline conditions and monitoring results.	No corresponding legal provision	No equivalence	Amend the EMA 2005 and the EIA Process Regulations 2007 to explicitly provide that, in the case of projects that affect <i>i Taukei</i> and other groups identified in the Constitution and for which a separate social impact management plan is prepared, monitoring of the implementation of that plan must assess whether its objectives and desired outcomes are achieved, taking into account baseline

(A) ADB Safeguard Policy Statement	(B) Corresponding Legal Provisions	(C) Extent of Equivalence ¹	(D) Recommended Gap-filling Measures
Key element (4): Monitoring reports are disclosed.	EIA Process Regulations 2007 Regulation 41(1) The environmental register maintained under section 17 of the Act must include information about –... (f) every compliance report produced under regulation 34;...	No equivalence The EIA Process Regulations 2007 generally require maintaining a public register of compliance reports, but there is no legal requirement for a social management plan or any other document similar to an IPP.	conditions and monitoring results. Amend the EMA 2005 and the EIA Process Regulations 2007 to explicitly provide that, in the case of projects that affect <i>i Taukei</i> and other groups identified in the Constitution and for which a separate social impact management plan is prepared, the implementation of that plan must be monitored and the monitoring reports must be disclosed.

DRAFT