

Indigenous Peoples Assessment and Measures

Indigenous Peoples Planning Framework
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Papua New Guinea: Town Electrification Project

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The Indigenous Peoples planning framework is a document of the borrower. The views expressed herein do not necessarily represent those of ADB's Board of Directors, Management, or staff, and may be preliminary in nature.

ABBREVIATIONS

ADB	–	Asian Development Bank
AP	–	affected people/persons
CEO	–	Chief Executive Officer
CDO	–	Community Development Officer
DPE	–	Department of Petroleum and Energy
DLO	–	District Lands Officer
EA	–	Executing Agency
IA	–	Implementing Agency
ILG	–	Incorporated Land Group
IP	–	indigenous people
IPPF	–	Indigenous People Planning Framework
LAO	–	land acquisition officer
MFF	–	multi-tranche financing facility
PLO	–	Provincial Lands Officer
PMU	–	Project Management Unit
PNG	–	Papua New Guinea
PPL	–	PNG Power Ltd
RP	–	resettlement plan
SIA	–	social impact assessment
TEIP	–	Town Electrification Investment Program

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I. INTRODUCTION

1. This Indigenous People Planning Framework (IPPF) for the Town Electrification Investment Program (TEIP) has been prepared based on the *Safeguard Policy Statement (2009)* of the Asian Development Bank (ADB) and the laws and regulations of the Government of Papua New Guinea (PNG). It is to guide the preparation of TEIP subprojects that may affect indigenous peoples (IPs) in the TEIP subproject areas.
2. The TEIP is a multi-tranche financing facility (MFF) with two tranches to be implemented over a six year period. The subprojects under TEIP may be expected to involve some acquisition of customary land. However, it is not expected to have significant impact. Tranche 1 is classified as Category B. The impacts are limited to acquisition of land without any physical displacement. The customary landowners or communities will benefit from the project. The subsequent tranches are also expected to be classified as the same category.
3. The Department of Petroleum and Energy (DPE) is the executing agency (EA) and PNG Power Limited (PPL) is the implementing agency.

II. OBJECTIVE AND POLICY FRAMEWORK

4. The **PNG Constitution** adopts the customary law as part of the underlying law of the country and recognizes customary rights attached to customary land. According to the 2000 Underlying Act, the customary law comprises the rules, rights and obligations pertaining to an individual or group by custom and tradition. The customary law applies and the courts recognize it where written and underlying laws do not apply and it is not inconsistent with written law.
5. The **Land Act** (1996) sets out the procedures for the government to acquire customary land required for public purposes. The key provisions of the Act are (i) the government may acquire land, including improvements on land, through agreement or compulsory acquisition; (ii) in case of negotiated purchase, the government and customary owners mutually agree terms and conditions; (iii) even in case of compulsory acquisition, participation of leaders of customary landowners and local government representatives is sought in several steps; and (iv) compensation for affected customary land is provided to the landowner groups/clans, while compensation for land improvement (e.g. crops) is provided to individual land users.
6. The **Land Disputes Settlement Act** (2000) sets out the procedures for resolution of disputes involving customary land. The Act provides for a land disputes committee at provincial level and land courts at local, district and provincial levels. The committee can appoint land mediators. The Act promotes resolution of disputes through mediation based on the principles of traditional dispute settlement. If mediation fails, it is followed by appeal to the courts.
7. The **Land Groups Incorporation Act** (1974) recognizes the corporate nature of customary groups and allows them to hold, manage and deal with land in their customary names. A customary group can register with the Registrar of Incorporated Land Group (ILG) and, once registered, the rights and liabilities of the customary group become rights and liabilities of the ILG. An ILG may acquire, hold and dispose of customary land, enter into agreements for its use and management, and distribute any product or profits from the land. Each ILG must have a dispute-settlement authority, for dealing with disputes between group members or between the ILG and a member, including disputes over entitlement to membership.

8. The Environment Act (2000) provides the guidelines on environmental impact assessment and management. The Act was recently amended by the National Parliament. The amendments are related to approval of environment assessment report and environment permit and are targeted mostly towards the private sector projects. It is not expected to affect the TEIP, as it is the public sector project and will follow the Land Act for acquisition of customary land.

9. The objectives of **ADB's Safeguard Policy Statement** (2009) are to avoid adverse impacts of projects on affected people, where possible; (ii) minimize, mitigate, and/or compensate for adverse project impacts on the affected people when avoidance is not possible; and (iii) help borrowers/clients to strengthen their safeguard systems and develop the capacity to manage safeguard risks.

10. The IPPF is based on the PNG laws and regulation and ADB's *Safeguard Policy Statement* (2009). The principal objectives are to design and implement subprojects in a way that fosters full respect for IPs' identity, dignity, human rights, livelihood systems, and cultural uniqueness as defined by IPs themselves. This is to ensure that they (i) receive culturally appropriate social and economic benefits, (ii) do not suffer adverse impacts as a result of TEIP subprojects, and (iii) can participate actively in subprojects that affect them.

11. The need for an indigenous peoples plan (IPP) will depend on the nature and scale of the subproject impact and vulnerability of IPs. The social assessment will identify requirements for preparing an IPP and/or incorporation of IPP elements in other project design documents such as resettlement plan. An IPP would be required if IPs are found to be distinct and vulnerable and they experience significant impacts, including (i) adverse impacts on customary rights of use and access to land and natural resources; (ii) negative effects on the socioeconomic and cultural integrity; (iii) effects on health, education, livelihood, access to the project benefits, and social security status; and (iv) other impacts that may alter or undermine indigenous knowledge and customary institutions. An IP categorization checklist to be used in the screening exercise during the project preparation stage is provided in Annex 1.

12. The IPP will set out the measures whereby the executing agency (EA) will consult with IP communities and ensure that (i) affected IPs receives culturally appropriate social and economic benefits; and (ii) when potential adverse impacts on IPs are identified, these will be avoided to the maximum extent possible. Where this avoidance is proven to be impossible, IPP will outline measures to minimize, mitigate, and compensate for the adverse impacts. The level of detail and comprehensiveness of IPP (outline IPP in annex 2) will vary depending on the specific subproject and the nature of impacts to be addressed. If the impacts are limited to acquisition of customary land, the elements of IPP will be combined to the RP. If IPs are the sole or overwhelming majority of the subproject beneficiaries, the elements of the IPP could be integrated into the subproject design or documents such as community development program to ensure that all ethnic groups participate in and receive culturally appropriate benefits from the subproject. No separate IPP will be prepared in such cases.

III. IDENTIFICATION OF AFFECTED IPS

13. Most population groupings in PNG comprise several tribes/clans, while no particular groups consider themselves as 'ethnic minorities'. The country's legal system recognizes the customary law as key part of the underlying law. All customary landowners living in the subproject sites are treated as IPs under the TEIP. Most IPs are expected to benefit from improved energy access and short term employment opportunities from hydropower construction.

14. The presence of customary landowners (or IPs) in each subproject will be determined in consultation with local community leaders, local governments and other relevant stakeholders. The DPE/PPL will coordinate with provincial land administration to undertake a detailed land survey and investigation report. This report will confirm the presence of different clans/tribes and ownership of customary land in the subproject site.

IV. SOCIAL IMPACT ASSESSMENT AND PREPARATION OF IP PLAN

15. The TEIP will follow the following process:
- i) Screen the potential impacts of subproject activities on IPs.
 - ii) Conduct a field-based social impact assessment (SIA). The SIA will (i) review legal and institutional framework applicable to IPs in subproject context; (ii) provide socio-economic baseline information of affected IPs and their land ownership and use of natural resources; (iii) identify key project stakeholders and appropriate process for consultation with IPs; (iv) assess potential adverse and positive effects; (v) assess affected IPs' perceptions about the project and its impacts; and (vi) recommend measures to avoid, minimize, mitigate, and/or compensate for adverse effects and to ensure that the IPs receive culturally appropriate benefits.
 - iii) Review policy/guidelines regarding IPs and undertake meaningful consultation with the affected IPs and provide the opportunity to the IPs to participate in the subproject.
 - iv) prepare and disclose IPP or other documents that combine IPP elements (e.g. RP), including documentation of the consultation process in accordance to the IPPF and ADB's safeguard policy statement (2009).
 - v) Prepare beneficial, mitigation and capacity building measures as relevant based on the SIA results;
 - vi) Legal recognition of customary rights and territories for project activities that involve customary land acquisition;
 - vii) If physical displacement from customary lands should occur, resettlement plan will endeavor to ascertain broad community support;
 - viii) Establish grievance redress mechanism;
 - ix) Prepare an appropriate budget and a mechanism for monitoring, reporting and evaluation of IPP or other documents that include IPP elements;
 - x) Publicly disclose and post on ADB website IPP and relevant documents prior to the appraisal of the respective subproject; and,
 - xi) IPP policy and measures must comply with the ADB policy and approved IPPF.

V. CONSULTATION, DISCLOSURE AND INSTITUTIONAL FRAMEWORK

16. The DPE is the executing agency (EA) and PPL is the implementing agency (IA). The DPE/PPL will have overall responsibility in preparation and implementation of safeguard assessment and measures on IPs. The project management unit (PMU) will include a land acquisition officer (LAO) and a community development officer (CDO). The TEP will also finance an international social development consultant for a period of 10 months and a national consultant for a period of 24 months. These consultants will (i) develop and implement a training program on social safeguard policies and procedures for DPE/PPL staff and other relevant stakeholders; and, (ii) provide technical support to PMU for the preparation and implementation of safeguard plans for T1 subprojects.

17. The DPE/PPL will assign a project manager at PMU for day to day management of subproject, including social safeguard activities. The project manager will be responsible for ensuring that all relevant safeguard plans are implemented so as to meet their intended requirements. The project manager, assisted by LAO, CDO and safeguard consultants, will undertake following activities to fulfil the DPE/PPL's role:

- (i) Prepare and update safeguard plans for subprojects as required to meet the program's requirements according to the safeguard policies of ADB and the government;
- (ii) Undertake adequate consultations with and dissemination of relevant information to affected communities, including public disclosure of draft and final safeguard plans, in accordance with ADB's safeguard policies and the government's legal requirements;
- (iii) Ensure that the PMU's design engineers take into account safeguard issues and try to avoid or minimize social impacts through appropriate design. The social safeguard team will brief PMU technical design team in this regard;
- (iv) Address any project-related grievances of the affected IPs and facilitate in resolving disputes on landownership.
- (v) Undertake public consultation to inform affected communities of the subproject scope and schedule of the relevant sub-project activities;
- (vi) Following the award of the civil works contract, the safeguard team will arrange a briefing to the contractors to raise their awareness on safeguard requirements;
- (vii) Coordinate with local authorities including PLO and DLO, as relevant;
- (viii) Implement the IPP and other safeguard plans; and
- (ix) Undertake regular monitoring and reporting on progress in implementation of safeguard plans.

18. IPP will be prepared in full consultation with affected IPs. The consultations will be documented. The mitigation measures and strategies will be presented to them in community level meetings for their inputs before being finalized. The relevant information in IPP will be translated into the local language(s) prior to implementation and IPP will be disclosed on ADB's website.

19. For subprojects involving physical displacement of IPs, the EA will seek the consent of affected IP communities and broad community support through meaningful consultations with affected individuals and/or their recognized representatives as specified in Appendix 3 of ADB's Safeguard Policy Statement (2009). The mechanisms and procedure for documentation of the consultation process that ascertains such broad support from affected IP communities will be as follows:

- (i) initial discussions with IPs to inform about the subproject and the need for land;
- (ii) focus group discussions on potential impacts and benefits from the subproject;
- (iii) a land investigation about land ownership and socio-economic survey to establish a baseline information (e.g. income, livelihood, basic social services);
- (iv) community meeting(s) to further discuss IPs' concerns and recommendations;
- (v) documentation of outcome of the informal consultation process (i.e., meeting minutes); and
- (vi) a memorandum of agreement with landowners demonstrating their support on use of customary land.

20. The existing IPs' institutions and organizations will be involved in the implementation of the IPP and resolution of any dispute arising out of the implementation process. When there is a need of IPP or any other plans combining elements of IPP, the EA will ensure that an adequate budget will be provided for implementation of such plans.

VI. GRIEVANCE REDRESS MECHANISM

21. A grievance redress mechanism will be developed for addressing the grievances from the affected IPs related to subproject implementation. The procedure of grievance redress will be incorporated in the project information pamphlet to be distributed prior to implementation. Participatory consultation with affected households will be undertaken during project planning and implementation stages. The key features of grievance redress and resolution of disputes are as follows¹:

- (i) Affected people can first lodge a complaint with the PMU office at the subproject site. The safeguard staff and consultants will assist APs in registering their complaints with PMU. The PMU project manager will consider the complaint and within one week will convey a decision to the APs. The safeguard staff as well as local government officials will assist the project manager in reviewing and addressing the complaint.
- (ii) If the APs are not satisfied with the PMU's decision, they may then take the grievance to the CEO of the PPL. The CEO has two weeks to consider the complaint and following this (s)he will either instruct the PMU to rectify the situation or dismiss the complaint. Should APs are not satisfied with the decision of the CEO, they may take the grievance to the PNG legal system.
- (iii) The Land Disputes Settlement Act (2000) provides for resolution of land disputes through (i) mediation, followed by (ii) appeal to the designated courts. This process is closely allied with the village court system and traditional mediation procedures that draw on the skills of recognized local leaders and elders. While the landowner clans or ILGs are responsible for dealing with disputes, external mediators are involved in case disputes are between different clans or ILGs.

VII. MONITORING AND EVALUATION

22. The implementation of IPP will be monitored. DPE/PPL will establish a monitoring system involving DPE/PPL staff, local governments, and IP groups to ensure effective implementation of IPP. A set of monitoring indicators will be determined during IPP implementation. The TEIP support consultants will carry out monitoring. Appropriate monitoring formats will be prepared for monitoring and reporting requirements.

23. For subproject with significant adverse impacts on IPs, external experts or an NGO will be engaged by the EA/IA to verify monitoring information of the IPP for such subproject. The external experts will advise on compliance issues and if any significant issues are found, the EA /IA will prepare a corrective action plan or an update to the approved IPP. The EA/IA requires implementing the corrective actions and following up these actions to ensure their effectiveness.

24. Several key indicators and topics for monitoring and evaluation of IPP are (i) process of consultation activities; (ii) appropriateness of affected assets valuation and compensation disbursement; (iii) implementation of relevant safeguard activities; (iv) current condition of social,

¹ The Resettlement Framework provides detailed procedures in resolving grievances and disputes concerning acquisition of customary land.

cultural, political and economic status of IPs in comparison with pre project condition; (v) status of vulnerable people as identified in the SIA; (vi) any disadvantaged conditions to IPs that was not anticipated during the preparation of IPP that required corrective actions; and (vii) grievance redress issues.

VIII. BUDGET

25. All costs for implementation of IPP will be financed by the DPE/PPL using counterpart funds. The costs will be estimated during feasibility based on interviews with community members and relevant government officials. This will be updated after the detailed survey and investigation as well as further consultations with APs. The IPP budget will also include costs for implementation of IPP, such as salaries and travel costs of the relevant PMU staff.

Annex 1

INDIGENOUS PEOPLES IMPACT SCREENING CHECKLIST

KEY CONCERNS (Please provide elaborations on the Remarks column)	YES	NO	NOT KNOWN	Remarks
A. Indigenous Peoples Identification				
1. Are there socio-cultural groups present in or use the project area who may be considered as "tribes" (hill tribes, schedules tribes, tribal peoples), "minorities" (ethnic or national minorities), or "indigenous communities" in the project area?				
2. Are there national or local laws or policies as well as anthropological researches/studies that consider these groups present in or using the project area as belonging to "ethnic minorities", scheduled tribes, tribal peoples, national minorities, or cultural communities?				
3. Do such groups self-identify as being part of a distinct social and cultural group?				
4. Do such groups maintain collective attachments to distinct habitats or ancestral territories and/or to the natural resources in these habitats and territories?				
5. Do such groups maintain cultural, economic, social, and political institutions distinct from the dominant society and culture?				
6. Do such groups speak a distinct language or dialect?				
7. Has such groups been historically, socially and economically marginalized, disempowered, excluded, and/or discriminated against?				
8. Are such groups represented as "Indigenous Peoples" or as "ethnic minorities" or "scheduled tribes" or "tribal populations" in any formal decision-making bodies at the national or local levels?				
B. Identification of Potential Impacts				
9. Will the project directly or indirectly benefit or target Indigenous Peoples?				
10. Will the project directly or indirectly affect Indigenous Peoples' traditional socio-cultural and belief practices? (e.g. child-rearing, health, education, arts, and governance)				

KEY CONCERNS (Please provide elaborations on the Remarks column)	YES	NO	NOT KNOWN	Remarks
11. Will the project affect the livelihood systems of Indigenous Peoples? (e.g., food production system, natural resource management, crafts and trade, employment status)				
12. Will the project be in an area (land or territory) occupied, owned, or used by Indigenous Peoples, and/or claimed as ancestral domain?				
C. Identification of Special Requirements <i>Will the project activities include:</i>				
13. Commercial development of the cultural resources and knowledge of Indigenous Peoples?				
14. Physical displacement from traditional or customary lands?				
15. Commercial development of natural resources (such as minerals, hydrocarbons, forests, water, hunting or fishing grounds) within customary lands under use that would impact the livelihoods or the cultural, ceremonial, spiritual uses that define the identity and community of Indigenous Peoples?				
16. Establishing legal recognition of rights to lands and territories that are traditionally owned or customarily used, occupied or claimed by indigenous peoples ?				
17. Acquisition of lands that are traditionally owned or customarily used, occupied or claimed by indigenous peoples ?				

D. Anticipated project impacts on Indigenous Peoples

Project component/ activity/ output	Anticipated positive effect	Anticipated negative effect
1.		
2.		
3.		
4.		
5.		

Note: The project team may attach additional information on the project, as necessary.

Annex 2

OUTLINE OF AN INDIGENOUS PEOPLES PLAN

The level of detail and comprehensiveness of an IPP will be commensurate with the significance of potential impacts on Indigenous peoples (IPs). The substantive aspects of this outline will guide the preparation of IPPs, although not necessarily in the order shown.

- A. **Executive Summary:** This section concisely describes the critical facts, significant findings, and recommended actions.
- B. **Description of the Project:** This section provides a description of the project; discusses project components and activities that may impact IPs; and identify projects area.
- C. **Social Impact Assessment :** This section:
 - i. Reviews the legal and institutional framework applicable to IPs in project context.
 - ii. Provides baseline information on the demographic, social, cultural, and political characteristics of the affected IP communities; the land that they have traditionally owned or used or occupied; and the natural resources on which they depend.
 - iii. Identifies key projects stakeholders and elaborate a process for meaningful consultation with IPs at each stage of project cycle.
 - iv. Assesses the potential adverse and positive effects of the project. A gender-sensitive analysis of the relative vulnerability of ,and risks to, the affected IPs, as well as their lack of access to opportunities .
 - v. Includes a gender-sensitive assessment of the affected IPs perceptions about the project and its impact on their social economic and cultural status.
 - vi. Identifies and recommends the measures necessary to avoid adverse effects of , if such measure are not possible, identifies measures to minimize, mitigate, and /or compensate for such effects and to ensure that the IPs receive culturally appropriate benefits under the project.
- D. **Information Disclosure , Consultation and Participation:** This section:
 - i. Describes the information disclosure , consultation and participation process with the affected IP communities that was carried out during project preparation;
 - ii. Summarizes their commends on the results of the SIA and identifies concerns raised during consultation and how these have been addressed in project design;
 - iii. In the case of project activities requiring the broad community support ,documents the process and outcome of consultations with affected IPs and any agreement for the project activities and safeguard measures for impacts of such activities;
 - iv. Describes consultation and participation mechanisms to be used during implementation to ensure IPs participation during implementation; and
 - v. Confirms disclosure of the draft and final IPP to the IPs communities

E. Beneficial Measures

This section specifies the measures to ensure that the IP receive social and economic benefits that are culturally appropriate, and gender responsive.

F. Mitigation Measures

This section specifies the measures to avoid adverse impacts on IPs; and where the avoidance is impossible, specifies the measures to minimize mitigate and compensate for identified unavoidable adverse impacts for each affected IP groups.

G. Capacity Building

This section provides measures to strengthen the social , legal, and technical capabilities of (a) government institutions to address IP issues in the project area; and (b) IP organizations in the project area to enable them to represent the affected IPs.

H. Grievance Redress Mechanism

This section describes procedures to redress grievances by affected IPs. It also explains how the procedures are accessible to IPs and culturally appropriate and gender sensitive.

I. Monitoring , Reporting and Evaluation

This section describes the mechanisms for monitoring, evaluating the implementation of the IPP. It also specifies arrangements for participation of affected IPs in the preparation and validation of monitoring, and evaluation reports.

J. Institutional Arrangement

This section describes institutional arrangement responsibilities and mechanisms for carrying out the various measures of the IPP. It also describes the process of including relevant local organizations and NGOs in carrying out the measures of the IPP.

K. Budget and Financing

This section provides an itemized budget for all activities described in the IPP.