

Comparison of ADB Principles and Requirements – Indigenous Peoples	
Policy Principles – Indigenous Peoples Safeguards	Safeguard Requirements for Borrowers/Clients – Indigenous Peoples
<p>Objectives:</p> <p>“Design and implement projects in a way that fosters full respect for Indigenous Peoples’ identity, dignity, human rights, livelihood systems, and cultural uniqueness as defined by the Indigenous Peoples themselves, so that they</p> <ul style="list-style-type: none"> (i) receive culturally appropriate social and economic benefits; (ii) do not suffer adverse impacts of projects; and (iii) are able to participate actively in projects that affect them. <p>Scope:</p> <p>“The Policy is triggered if a project impacts directly or indirectly on the dignity, human rights, livelihood systems, or culture of Indigenous Peoples, or affects the territories, natural or cultural resources that Indigenous Peoples own, use, occupy or claim as an ancestral domain or asset.</p> <p>“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:</p> <ul style="list-style-type: none"> (i) self identification and recognition of this identity by others, (ii) collective attachment to geographically 	<p>Objectives:</p> <p>“This set of policy requirements aims to safeguard Indigenous Peoples’ rights to maintain, sustain and preserve their cultural identities, practices and habitats, and ensure that projects affecting them will take into consideration necessary measures to protect these rights.”</p> <p>Scope:</p> <p>“3. These requirements for Indigenous Peoples safeguards apply to all projects including ADB-funded and/or ADB-administered sovereign and non-sovereign investment projects funded by a loan, and/or a grant, and/or other means (such as equity and/or guarantee). They also cover actions conducted in anticipation of ADB projects.”</p> <p>“5. For operational purposes, 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:</p> <ul style="list-style-type: none"> (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 and to the natural resources in these habitats and territories; (iii) distinct customary cultural, economic, social, or political institutions that are separate from those of the dominant society and culture; and (iv) an indigenous language, often different from the official language of the country or region.” <p>“6. A group that has lost “collective attachment to geographically distinct habitats or ancestral territories in the project area” (paragraph 5[ii]) because of forced severance remains eligible for coverage under the Policy.”</p> <p>“7. The Policy on Indigenous Peoples is triggered, if a project impacts directly or indirectly on the dignity, human rights, livelihood systems, or culture of Indigenous Peoples,</p>

<p>distinct habitats or ancestral territories and to the natural resources in these habitats and territories, because of forced severance,</p> <p>(iii) presence of distinct customary, cultural, economic, social or political institutions, and</p> <p>(iv) Indigenous language.</p> <p>A group that has lost “collective attachment to geographically distinct habitats or ancestral territories in the project area” (item [ii]) remains eligible for coverage under this Policy.”</p>	<p>or affects the territories, natural or cultural resources that Indigenous Peoples own, use, occupy or claim as their ancestral domain or asset.”</p>
<p>Discrepancies between Principle and Safeguard Requirements:</p> <ul style="list-style-type: none"> - The scope of the Principle does not expressly indicate whether it applies to <u>all</u> ADB-funded and ADB-administered projects including anticipated projects. This is only implied in the use of “project”. - Otherwise scope of both policies appears to be the same. 	
<p>“1. Screen early to determine (a) Whether Indigenous Peoples are present in, or have collective attachment to, the project area, and (b) Whether there are likely project impacts on Indigenous Peoples.”</p>	<p>“12. Screening will be conducted as early as possible in the project cycle. Screening will determine</p> <ul style="list-style-type: none"> (i) Whether IP are present in, or have collective attachment to, the project area, and (ii) Whether there are likely project impacts on IP. In conducting the screening, the borrower/client will seek the technical judgment of qualified and experienced expert(s). <p>“13. Screening of impact can continue throughout the project cycled. The results of the screening of whether the projects will trigger the Policy or not will be validated and such results could change in late stages as further information becomes available.”</p>

<p>Discrepancies between Principle and Safeguard Requirements:</p> <ul style="list-style-type: none"> - Only requires screening ‘early’ in the project, as opposed to ‘as early as possible’, removing some urgency. - Does not require the ‘technical judgment of qualified and experienced expert(s)’ in the screening process as per the detailed Safeguard Requirements. - Provides no indication as to whether screening can or should be a continuous process throughout the project cycle. 	
<p>“2. Undertake free, prior and informed consultations with affected communities to solicit their participation</p> <p>(a) In designing, implementing, and monitoring measures to avoid adverse impacts, or, when avoidance is not feasible, to minimize, mitigate, or compensate for such effects; and</p> <p>(b) In tailoring project benefits for them in a culturally appropriate manner. To enhance Indigenous Peoples’ active participation, the projects affecting them will provide for culturally-appropriate capacity development.”</p>	<p>“8. The borrower/client will undertake free, prior and informed consultation with affected Indigenous Peoples to obtain their broad community support of the project, and their informed participation in</p> <p>(a) Designing, implementing, and monitoring measures to avoid adverse impact on them, or when avoidance is not feasible, to minimize, mitigate and compensate for such effects; and in</p> <p>(b) Tailoring project benefits that accrue to them in a culturally appropriate manner. Free, prior and informed consultation is an ongoing process and will be started as early as possible in the project cycle so that views of affected Indigenous Peoples can be taken into account in the project design.”</p> <p>“9. To carry out free, prior and informed consultation, the borrower/client will:</p> <p>(i) Establish a strategy for inclusive consultation to take place on a level playing field on which all participants (affected IP communities and IP organisations if any, and other local civil society organisations) have the same say (this includes special measures for marginalized groups) and are able to voice their concerns without facing any pressure or guidance;</p> <p>(ii) Use consultation methods appropriate to the social and cultural values of the affected IP communities, giving special attention to the concerns of indigenous women, and the youth;</p> <p>(iii) Provide the affected IP, prior to actual consultation, all relevant information (draft documents and plans, including an assessment of potential impacts that may arise during and after project implementation).</p>
<p>Discrepancies between Principle and Safeguard Requirements:</p> <ul style="list-style-type: none"> - Only stipulates for communities’ ‘participation’ as opposed to their ‘informed’ participation - Does not require that ‘free, prior and informed consultation is an ongoing process and will be started as early as possible in the project cycle’ to ensure IP views are incorporated in project design, thus weakening IP safeguard standards. 	

- Fails to include specific criteria or elements that must be incorporated into a free, prior and informed consultation with IP.

<p>“3. In deciding whether to proceed with the project, ascertain that the affected Indigenous Peoples’ (IP) communities provide their broad support to the project, including measures proposed to respond to anticipated project impacts, on the basis of free, prior and informed consultation.”</p>	<p>“8. The borrower/client will undertake free, prior and informed consultation with affected Indigenous Peoples to obtain their broad community support of the project, and their informed participation in</p> <ul style="list-style-type: none"> (a) Designing, implementing, and monitoring measures to avoid adverse impact on them, or when avoidance is not feasible, to minimize, mitigate and compensate for such effects; and in (b) Tailoring project benefits that accrue to them in a culturally appropriate manner. Free, prior and informed consultation is an ongoing process and will be started as early as possible in the project cycle so that views of affected Indigenous Peoples can be taken into account in the project design.” <p>“10. In deciding whether to proceed with the project, the borrower/client will ascertain whether the affected IP communities provide their broad support to the project, and where there is such support, the borrower/client will provide documentation that details the process and outcomes of consultations with IPs and IP organisations, including</p> <ul style="list-style-type: none"> (i) The findings of the social assessment; (ii) The process of free, prior and informed consultation with the affected IP communities; (iii) Additional measures including project design modification, that may be required to address adverse impacts on the IP and to provide them with culturally appropriate project benefits; (iv) Recommendations for free, prior and informed consultations with and participation by IP communities during project implementation, monitoring and evaluation; and (v) And formal agreements reached with IP communities and/or the IP organisation. <p>“11. When the borrower/client and the affected IP have serious differences and disagreements on the project, its components, or IPP, the borrower/client should adopt good faith negotiations for them to resolve such differences and disagreements.”</p>
---	---

Discrepancies between Principle and Safeguard Requirements:

- No requirements for providing *documentation* that details the processes and outcomes attained from consultations with IP and IP organisations, including findings of the social assessment, the details of the prior informed consent process that was implemented and recommendations to continue the process during the project implementation phase, additional measures such as project design modification, and the details of any formal agreements reached with IP communities and organizations. This is a concerning omission reflecting a lack of attention to the importance of ensuring transparency and accountability throughout the project cycle.
- Provides no requirement for ‘good faith negotiations’ as a means of dispute settlement when differences arise during prior informed consent consultations.

“4. Avoid, to the maximum extent possible, any restricted access to and relocation from protected areas and natural resources. Where such avoidance proves not to be feasible, ensure that the affected Indigenous Peoples’ communities participate in the design, implementation, monitoring and evaluation of management plans for such areas and natural resources and that their benefits are equitably shared.”

“51. In many countries, the lands and natural resources set aside as legally designated parks, protected areas, and/or exclusive zones, may overlap with lands and territories that IP customarily used or claim as ancestral territory. ADB will recognise these rights of ownership, occupation, or usage, as well as the need for long-term sustainable management of critical ecosystems. Therefore, involuntary restrictions on IP access to legally designated parks, protected areas, exclusion zones and other natural resources, in particular access to their sacred sites, will be avoided to the maximum extent possible, and management arrangements of such sites will give priority to collaborative approaches that enable IP, as the custodians of the resources, to continue to use them in an ecologically sustainable manner.

Under exceptional circumstances, where avoidance is proven to be impossible, the borrower/client will prepare, with the free, prior and informed consultation of the affected IP communities, necessary steps and guidelines for preparation, during project implementation, of individual parks’, protected areas’ and natural resources’ and/or exclusion zones’ management arrangements, that will ensure that the IP participate in the design, implementation, monitoring, and evaluation of the arrangements, and receive equitable share of the benefits. The compensation and livelihood restoration measures will be developed by the borrower/client for all such operations in an IPP that could be combined with a resettlement plan.

Such combined plan will need to be compatible with the IP cultural preferences, and will include culturally appropriate livelihood restoration measures. The borrower/client will document the results of the free, prior and informed consultation process for that particular IP community. Where possible, the plan will allow the affected IP to obtain full ownership of the territory they traditionally owned, or customarily used or occupied, if the protected area or

	natural resource management system ceases to exist.
<p>Discrepancies between Principle and Safeguard Requirements:</p> <ul style="list-style-type: none"> - Only contains standards that must be followed when avoidance is ‘<i>not feasible</i>’ as opposed to ‘in exceptional circumstances’, where ‘avoidance is proven to be <i>impossible</i>’. Thus representing a weakening of the detailed IP Safeguard. - Contains no requirement that the preparation of IPPs (that could be combined with a resettlement plan) concerning these protected areas must include compensation and livelihood restoration measures, or that the ‘combined plan’ would need to be ‘compatible with the IP cultural preferences’. - Again, fails to also include the requirement from the detailed Safeguard, that the borrower/client must document the results of its free, prior and informed consultation processes with IPs, displaying a concerning lack of accountability and transparency in the IP Policy Principle. - Does not require that such IPPs, ‘where possible’ would allow the IP to obtain <i>full ownership</i> of their customary lands in the event that the relevant natural resources or protected areas would cease to exist. 	
<p>“5. Put in place an action plan for the legal recognition of customary rights to lands and territories, or ancestral domain, when the project involves</p> <ul style="list-style-type: none"> (a) Activities that are contingent on establishing legally recognized rights to lands and territories that Indigenous Peoples traditionally owned, or customarily used or occupied; or (b) The involuntary acquisition of such lands.” 	<p>“45. If the project involves</p> <ul style="list-style-type: none"> (a) Activities that are contingent on establishing legally recognized rights to lands and territories that IP have traditionally owned or customarily used or occupied (such as land titling projects), or (b) The acquisition of such lands, <p>the borrower/client will integrate in the IPP an action plan for the legal recognition of customary rights to such lands, territories and ancestral domain. Normally, the action plan is carried out before project implementation but in some cases, the action plan may need to be formulated concurrently with the project itself. Such legal recognition may take the following forms:</p> <ul style="list-style-type: none"> (i) Full legal recognition of existing customary land tenure systems of IP; or (ii) Conversion of customary usage rights to communal and/or individual ownership rights. <p>“46. If neither option is possible under national law, the IPP will include measures for legal recognition of perpetual or long-term renewable custodial or user rights.”</p> <p>“47. For all projects affecting IP ownership and access to land and natural resources, the borrower/client will prepare an IPP that could be combined with a resettlement plan.</p>

	<p>Such a combined plan will be compatible with the IP cultural preferences, and will include culturally appropriate livelihood restoration measures. The borrower/client will document the results of the free, prior and informed consultation process for that particular IP community. Where possible, the plan will allow the affected IP to obtain full ownership of the resources they traditionally owned, or customarily used or occupied, if the restrictions cease to exist.”</p>
<p>Discrepancies between Principle and Safeguard Requirements:</p> <ul style="list-style-type: none"> - Does not provide details on the timing of such an action plan, whether it is appropriate to have in place before project implementation or concurrently with the project. No mention made of <i>when</i> the action plan is required or can be expected (particularly, by affected IP communities). - No indication given of the kinds of legal rights that may be recognized, whether full legal recognition of customary systems or conversion of customary usage rights (or perpetual/long-term custodial rights where necessary). - No requirement that this recognition of legal ownership be incorporated into the IPP, which conforms with the IP cultural preferences and could be combined with a resettlement plan (to be formed under documented, free prior and informed consent procedures). 	
<p>“6. Undertake a social assessment or use similar methods to assess potential project impacts, both positive and adverse, on Indigenous Peoples. Give full consideration to options preferred by the affected Indigenous Peoples (IP) in the provision of project benefits and in designing of mitigation measures.</p> <p>Identify social and economic benefits for affected Indigenous Peoples that are culturally appropriate, and gender and inter-generationally inclusive and develop measures to avoid, minimize and/or mitigate adverse impacts on Indigenous Peoples.”</p>	<p>“14. When screening confirms likely impacts on IP, the borrower/client will retain qualified and experienced expert(s) to carry out a full social impact assessment, and if adverse impacts on IP are identified, prepare an IPP in conjunction with the feasibility study.”</p> <p>“15. Based on the screening, a field-based social impact assessment (SIA) will be conducted either as part of the feasibility study or as a stand-alone activity. The SIA will identify the project affected IPs and the potential impacts of the proposed project on them. The SIA will provide the baseline socioeconomic profile of the Indigenous groups in the project area and project impact zone, assess their access to and opportunities to avail of basic social and economic services, assess the short and long-term, direct and indirect as well as positive and negative impacts of the project on each ethnic group’s social, cultural and economic status, assess and validate which Indigenous groups will trigger the IP policy principles, and assess the subsequent approaches and resource requirements to address the various concerns and issues of projects that affect them.”</p> <p>“16. The level of detail and comprehensiveness of the social assessment will be proportional to the complexity of the proposed project and commensurate with the nature and scale of the proposed project’s potential effects on the IP, whether adverse or positive.”</p>

	<p>“44. IP are closely tied to land, forests, water, wildlife and other natural resources, and therefore special considerations apply if the project affects such ties.</p> <p>In this situation, when carrying out the social assessment and preparing the IPP, the borrower/client will pay particular attention to</p> <ul style="list-style-type: none"> (i) The customary rights of the IPs, both individual and collective, pertaining to ancestral domains, lands or territories that they traditionally owned, or customarily used or occupied, and where access to natural resources is vital to the sustainability of their cultures and livelihood systems; (ii) The need to protect such ancestral domains, lands and resources against illegal intrusion or encroachment; (iii) The cultural and spiritual values that the IP attribute to such lands and resources; (iv) IP natural resources management practices and the long-term sustainability of such practices, and (v) The need to rehabilitate the livelihood systems of IP who have been evicted from their lands before proper safeguards were put in place.”
<p>Discrepancies between Principle and Safeguard Requirements:</p> <ul style="list-style-type: none"> - Contains no requirement to engage qualified experts to carry out the social impact assessment. - Provides no detailed requirements for what criteria the SIA must address, for example a baseline socio-economic profile of Indigenous groups in the project area, or that the nature of the SIA will be commensurate with the complexity of the project’s potential effects on the relevant IPs. - Contains no other specific requirements for what must be given ‘special attention’ in conducting a SIA. e.g. the IP customary rights or their natural resource management practices in that project area. 	
<p>“7. Prepare an Indigenous Peoples Plan (IPP) or equivalent document that is based on the social assessment, uses qualified professionals, and draws on indigenous knowledge and the participation of the affected communities.</p> <p>The IPP includes a framework for continued consultation with the affected communities during project implementation; specifies</p>	<p>“17. If the screening and SIA indicate that the proposed project will have impacts on IP, the borrower/client will prepare an IPP, or an equivalent document, in the context of the SIA and in free, prior informed consultations with the affected IP communities. The IPP, or an equivalent document, will set out the measures through which the borrower/client will ensure that</p> <ul style="list-style-type: none"> (a) Affected IP receive culturally appropriate social and economic benefits; and (b) When potential adverse impacts on IP are identified, these will be avoided to the maximum extent possible. Where this avoidance is proven to

<p>measures to ensure that Indigenous Peoples receive culturally appropriate benefits; identify measures to avoid, minimize, mitigate or compensate for any adverse project impacts; and include culturally-appropriate grievance procedures, monitoring and evaluation arrangements, and the time-bound actions and budget for implementing the planned measures.</p> <p>Disclose a satisfactory draft IPP, or equivalent document, including documentation of the consultation process and the results of the social assessment, before appraisal, in a form, manner and language(s) accessible to affected communities and the public.</p> <p>The final IPP and its updates will also be disclosed to the affected Indigenous Peoples and the public.”</p>	<p>be unfeasible, the IPP will prepare based on free, prior and informed consultation with Indigenous communities, and with measures to minimize, mitigate and compensate for the adverse impacts. The level of detail and comprehensiveness of IPPs (Annex A) will vary depending on the specific project and the nature of impacts to be addressed. The borrower/client will integrate the elements of the IPP into the project design.”</p> <p>“18. If IP are the sole or the overwhelming majority of direct project beneficiaries and when only positive impacts are identified, the elements of an IPP will be included in the overall project design, and a separate IPP will not be required. In such cases, the project document will include a summary of how the project complies with the Policy on Indigenous Peoples Safeguards, in particular, will explain how the requirements for free, prior and informed consultations are fulfilled and how accrual of benefits has been integrated into the project. The project design and legal covenants will also explicitly specify how benefits accrue to IP in the project area and how free, prior and informed consultations will be done during implementation.”</p> <p>“19. The borrower/client will finalize draft IPPs after the completion of detailed engineering design, and detailed measurement surveys. Addendums to the draft IPPs will be prepared closely following the award of contract packages, and the implementation time schedules of each project component or subproject for implementing IPPs. The mitigating measures to avoid adverse impact on IPs will be enhanced but the agreed outcomes of the draft IPP will not be lowered or minimized. If new groups of IP are identified prior to submission of the final IPP to ADB, free, prior and informed consultation, aimed at obtaining broad community support, will also be undertaken.”</p>
<p>Discrepancies between Principle and Safeguard Requirements:</p> <ul style="list-style-type: none"> - Contains no express requirement that the finalized IPP be integrated into the project design or provide any details about the process for integrating IPP conclusions. - Contains no provision for the instance where new groups of IP are identified prior to submission of the final IPP to the ADB. - No express requirement that the IPP explicitly identify how anticipated project benefits will accrue to IP in the project area. 	
<p>“8. Commercial development of the cultural resources and knowledge of Indigenous Peoples is conditional upon their prior</p>	<p>“49. If the project involves the commercial development of IP cultural resources and knowledge, the borrower/client will ensure that as part of the free, prior and informed consultation process, the affected communities are</p>

<p>agreement to such development.”</p>	<p>informed of</p> <ul style="list-style-type: none"> (a) Their rights to such resources under statutory and customary law; (b) The scope and nature of the proposed commercial development and the parties interested or involved in such development; and (c) The potential effects of such development on IP livelihoods, environments, and use of such resources. (d) Commercial development of the cultural resources and knowledge of these IP is conditional upon their prior agreement to such development. The IPP will reflect the nature and content of such agreements and will include arrangements to ensure that IP receive in a culturally appropriate way an equitable share of the benefits to be derived from such commercial development. <p>Note: the detailed Safeguard Requirements for IP also include a policy statement regarding the ‘commercial development of natural resources’ at paragraph 48, which requires that where natural resources are commercially developed under the project terms, the affected IP will be informed of their rights to said resources under customary law, the scope of the proposed development, and the potential development effects on their livelihoods and resources. The borrower/client must include in the IPP, arrangements to ensure IP receive in a culturally appropriate manner, an equitable share of the benefits from the commercial development.</p>
<p>Discrepancies between Principle and Safeguard Requirements:</p> <ul style="list-style-type: none"> - Only expressly requires the prior ‘agreement’ of the IP, not necessarily ‘free, prior and informed consultation’ with IP. - Displays a complete absence of any criteria for factors the IP community must be informed of (i.e. their rights under statutory and customary law) in this area to ensure that free prior and informed consultations take place. - Completely fails to address the issue of the commercial development of <i>natural resources</i>, as opposed to ‘<i>cultural</i> resources and knowledge’. The ADB’s Safeguard on IP includes consideration of both, but the Policy Principle on IP completely overlooks this. 	
<p>“9. Monitor the implementation of the IPP, using qualified professionals, and adopting a participatory monitoring approach, wherever possible, and prepare a project completion report that assesses if the objective and desired outcome of the IPP have</p>	<p>“23. The borrower/client will monitor and measure the progress of implementation of IPP. In addition to recording information to track performance, the borrower/client should use dynamic mechanisms, such as inspections and audits, where relevant, to verify the compliance with the requirements and the progress toward achieving the desired outcomes.</p>

<p>been achieved, taking into account the baseline conditions and the results of IPP monitoring.”</p>	<p>For projects with significant adverse impacts on IPs, the borrower/client will retain qualified and experienced external experts to conduct semi-annual monitoring and/or verify monitoring information of borrower/client. The external experts engaged by the borrower/client will advise on compliance issues, and if any significant IP issues are found, an additional IPP or an addendum to the approved IPP will be prepared.”</p> <p>“24. The borrower/client will prepare periodic progress reports on progress of IPP implementation highlighting compliance issues and corrective actions, if any. The borrower/client will submit semiannual progress reports. The costs of monitoring requirements will be reflected in project budgets.”</p>
---	---

<p>Discrepancies between Principle and Safeguard Requirements:</p> <ul style="list-style-type: none"> - Only requires a ‘participatory monitoring approach’ which could be very broadly interpreted or misinterpreted, as opposed to the specificity of the detailed IP Safeguard which requires ‘dynamic mechanisms such as inspections or audits’. The level of specificity indicates what the ADB would consider acceptable, whereas general ‘participatory’ requirements do not provide sufficient guidance or establish ADB expectations of borrowers/clients. - Contains no requirement for semi-annual monitoring and reporting verification of projects with ‘significant adverse impacts on IPs’ (which may in turn require further IPPs or addendums to existing IPPs to be prepared). - No express requirement for the borrower to prepare periodic progress reports on IPP implementation, semiannual progress reports, and reflect the costs of such monitoring requirements in project budgets. - <i>Only</i> express and specific monitoring requirement is for a project <i>completion</i> report. IPP monitoring requirements are only couched as a general requirement to ‘monitor’ IPP implementation (which leaves room for an insufficient number of IPP periodic progress reports to be prepared) during the project cycle. 	
---	--