

Equivalence Matrix: Indigenous People

WB Bank Objectives and Operational Principles per OP 4.00 Table A1	GoI Legal Framework	POWERGRID Environmental and Social Policy and Procedures (POWERGRID ESPP)	Gap Analysis POWERGRID ESPP	Gap Filling Measures POWERGRID ESPP
<p>Objectives To design and implement projects in a way that fosters full respect for Indigenous Peoples’ dignity, human rights, and cultural uniqueness and so that they: (a) receive culturally compatible social and</p>	<p>Various Constitutional and legal provisions are designed to foster respect for the dignity, rights and cultural distinctiveness of designated “tribal communities” in India.¹ The development of criteria for scheduling tribes and presidential orders on scheduling a tribe itself is a recognition of giving special attention to vulnerable tribal communities under the Indian Constitution.</p> <p>The Constitution (Arts. 14-16, 29 (although 29 is related more with minorities than IP)</p>	<p>The ESPP incorporates provisions of World Bank Operational Directive (OD) 4.20 (superseded in 2005 by OP 4.11) on Indigenous Peoples. The ESPP references as one of the objectives of OD 4.20 “to ensure that development benefits are socially and culturally compatible and that the [Indigenous Peoples] are consulted. As part of the Terms of Reference (ToR) for the Baseline Socio-Economic Survey</p>	<p>Full Equivalence. The ESPP is fully equivalent to the Objectives, as the objectives of OP 4.00 as revised by the issuance of World Bank OP 4.10 are virtually identical to the objectives of OD 4.20.</p> <p>However, the</p>	<p>The ESPP could be revised to recognize the objectives of the FRA as well as the north east context under the constitution.</p>

¹ A full list of these provisions would include Articles 14, 14(4), 16(4), 16(4A), 46, 243(d), 244(1), 244 (2), 244A, 275(1), 330, 332, 335, 342, 3338(A), 399(1), 340, and 342 and Amendments 73 and 74 as extended by PESA, see below (Source DTP, Paras. 1.5 and 3.1).

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<p>economic benefits; and (b) do not suffer adverse effects during the development process.</p>	<p>provides that “the State shall not deny to any person equality before the law, the equal protection of the laws admission into any educational institution; [or] any employment or office under the State and shall not discriminate against any citizen on grounds only of religion, race, caste, sex, [or] place of birth.”</p> <p>The constitution also provides for affirmative action on behalf of Scheduled Tribes per article 16 (4)(A).²</p> <p>With respect to cultural rights, the Constitution provides that “[a]ny section of the citizens residing in the</p>	<p>and Preparation of a Rehabilitation Action Plan is required under the ESPP, it is stated that “It is ... essential ‘to ensure that Indigenous (Tribal) people do not suffer adverse effects during the development process and they received culturally compatible social and economic benefits.’” (ESPP Appendix XVII)</p> <p>In addition, among the general objectives of the ESPP [not limited to Indigenous Peoples] are to “avoid socially sensitive areas of human habitations and cultural significance” and to</p>	<p>ESPP was also issued prior to enactment of the (FRA) Unlike the FRA, the ESPP does not explicitly recognize all of the objectives of the FRA, in particular with respect to recognizing and vesting the forest rights and occupation in forest land of forest dwelling Scheduled Tribes and other traditional</p>	

² “Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion, with consequential seniority, to any class or classes of posts in the services under the State in favour of the Scheduled ... Tribes which, in the opinion of the State, are not adequately represented in the services under the State.”

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	<p>territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.” (Art. 29)</p> <p>The Constitution also provides the President with the authority to recognize as an official language of a State, any language spoken by a substantial proportion of the population of that State and further provides that such a recognized language may be used for purposes of representations for redress of grievances. (Article 347)</p> <p>The Constitution provides that officers and members of STs are to be represented among the elected officers and members of the national Parliament as well as the Panchayats in proportion to their percentage of the population. (Arts. 243D and</p>	<p>“pay special attention to marginalized and vulnerable groups and secure their inclusion in overall public participation.”</p> <p>POWERGRID’s Social Entitlement Framework (SEF) includes Additional Benefits for Tribals as specified below. (ESPP 1.0 and Table 2.3.)</p>	<p>forest dwellers.</p> <p>It neither recognizes the special areas of administration especially the north-eastern states and most specifically VI scheduled areas and special states.</p>	

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	<p>330)</p> <p>The Constitution provides for the establishment of a National Commission for the Scheduled Tribes with the duty to: (a) investigate and monitor all matters relating to safeguards provided to STs under the Constitution or any other law; (b) inquire into specific complaints with respect to the deprivation of rights and safeguards of the STs; (c) to participate and advise on the planning process of socio-economic development of the STs and to evaluate the progress of their development under the Union and any State; (d) to present to the President and Parliament and any concerned State Government at least annually , reports on the working of such safeguards; (e) recommend</p>			

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	<p>measures for the effective implementation of safeguards and other measures for the protection, welfare and socioeconomic development of the STs...” (Article 338A)</p> <p>Under Schedule V of the Constitution, a Tribes Advisory Council (TAC) is established for each State having STs with the duty of advising on matters pertaining the welfare and advancement of STs. Currently, nine states³ having scheduled areas and two states of West Bengal and Tamil Nadu who do not have Scheduled Areas have TAC. Seventy-five percent of the members of the TAC are to be recruited from State</p>			

³ Andhra Pradesh, Chhattisgarh, Gujarat, Orissa, Himachal Pradesh, Maharashtra, Jharkhand, Madhya Pradesh, and Rajasthan have scheduled areas recognised under the V scheduled of the Constitution.

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	<p>legislative representatives of STs. (Schedule V, Part A.4).</p> <p>The Provisions of Panchayats (Extension to Scheduled Areas) Act, 1996, (PESA) came into force on December 24, 1996 “with the objective of safeguarding and preserving the traditions and customs of the people living in the Fifth Schedule areas, their social, religious and cultural identifies, and traditional management practices of community resources.” (DTP, Para.. 14.12)</p> <p>PESA extends Constitutional provisions for limited self-government at the village level (Gram Sabha) (“Panchayat”) to Scheduled Areas⁴, characterized by a</p>			

⁴ Under Article 244 of the Constitution Scheduled Areas are defined as “such areas as the President may by order declare to be Scheduled Areas.”

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	<p>high proportion of tribal inhabitants. The Act provides that State legislation affecting SAs “may be made in consonance with the customary law, social and religious practices and traditional management practices of community resources” and that village assemblies (“Grama Sabhas”⁵) “shall be competent to safeguard and preserve the traditions and customs of the people, their cultural identify, community resources and the customary mode of dispute resolution.” (Art. 4 (a) and (d). (Gram</p>			

⁵ Under PESA, Section 4 (c) defines Gram Sabha and states that “every village shall have a Gram Sabha consisting of persons whose names are included in the electoral rolls for the Panchayat at the village level” . Note that this definition is similar to the one under Part IX of the Constitution of India, under Article 243 (b) Gram Sabha means a body consisting of persons registered in the electoral role relating to a village comprised within the area of Panchayat at the village level. It is this definition that should be referred to and not under the FRA. The Definition under FRA is for the purposes of recognition of forest right and is limited to the purposes of the Act. FRA, “Grama Sabha” means “a village assembly which shall consist of all adult members of a village and in case of States having no Panchayats, *Padas*, *Tolas* and other traditional village institutions and elected village committees, with full and unrestricted participation of women.” (Art. 2(g))

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	<p>Sabhas are not representative assemblies. The representative group is the Panchayat.</p> <p>Among other things, PESA provides that “Prior consultation with Gram Sabha or Panchayats at the appropriate level [is] mandatory before acquisition of land for development projects.” It also provides that “Panchayats at the appropriate level and Gram Sabhas be endowed with the ownership of minor forest produce.” (DTP, Para..14.2)</p> <p>However, for its full implementation, PESA requires the State Governments to change their existing laws, wherever these are inconsistent with the central legislation. Not all State Governments have done so, limiting the</p>			

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	<p>legislative effect of PESA at the State and local levels.⁶ In some cases it is being contested to bring it to the conformity with the central PESA. What is more important is the fact that the current conforming legislations (whether in total conformity or not) is the applicable law for tribal self rule in the respective states. This gets further diluted by the fact that the subject matter legislations including those of land, water and forests, have yet not been suitable amended to reflect the true spirit of central PESA.</p> <p>The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 is intended to</p>			

⁶ DTA, Para. 1.13

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	<p>protect SCs and Sts from various forms of official and unofficial discrimination subject to criminal penalties.</p> <p>The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 Notified on 31 December, 2007 and the Rules Notified on January 1, 2008 (FRA), seeks “to recognize and vest the forest rights and occupation in forest land [of] forest dwelling Scheduled Tribes and other traditional forest dwellers...” (Preamble)</p> <p>The Protection of Human Rights Act constitutes the National Human Rights Commission as well as State Human Rights Commissions to check instances of violations on human rights</p>			

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	<p>especially in the context of marginalized communities. The Commission is a fact finding body with powers to conduct inquiry into complaints on violation of human rights.</p> <p>Apart from the above, the Constitution also recognizes certain special areas of administration which are primarily tribal states. These include, the state of Nagaland (See Article 371A) where the Naga Customary law and procedure as well as ownership and transfer of land and its resources have been given precedence and even the Act of parliament may not override it and is subject to the approval of the state of Nagaland. Further, the governor has been given special powers for certain districts of the state. There</p>			

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	<p>are similar special provisions for state of Assam, Manipur, Sikkim, Mizoram and Arunachal Pradesh. In addition to this the VIth scheduled areas in the state of Assam, Meghalaya, Mizoram, Tripura also enjoy special status of administration as they have autonomous district councils and regional councils to govern their affairs in accordance with their customary law and practice. Note that most of these states are dominated by scheduled tribes and other tribal communities.</p>			
<p>1.Screen early to determine whether Indigenous Peoples are present in, or have collective</p>	<p>Under the Forest Conservation Rules of 2003 every proposed user of any forest land for first-time non-forest purposes must submit Form A to the State Government for review and submission for approval to</p>	<p>The ToR for the Baseline Socio-Economic Survey and Preparation of Rehabilitation Plan includes within the Scope of the study “Identification of</p>	<p>Partial Equivalence The ESPP provisions for identifying vulnerable populations are</p>	<p>The ESPP should be revised to expand the definition of Indigenous Peoples or tribals to</p>

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<p>attachment to, the project area. Indigenous Peoples are identified as possessing the following characteristics in varying degrees: self-identification and recognition of this identity by others; collective attachment to geographically distinct habitats or ancestral territories and to the natural resources in these habitats and territories; presence of</p>	<p>the Ministry of Environment and Forests (MoEF) Form A (Part I) requires the proposed user to provide details on any people to be displaced due to the proposed project, including the “number of Scheduled... Tribe families.” (Section 6(1) and Appendix). The EA Notification of 2006 requires that all projects seeking Environmental Clearance (EC) submit an application of Form 1. Form 1 asks the applicant to identify whether the proposed activity would lead to “an influx of people to an area...either temporarily or permanently?” (S. No. 1.28) “Use... natural resources...especially...resources which are non-renewable or in short supply,” such as “forests and timber,” (S.2.5); “affect the</p>	<p>vulnerable sections of population such as SC/ST [Scheduled Castes/Scheduled Tribes],” (ESPP Appendix XVII) POWERGRID’s “Guidelines for Tribal People Development Plan” refers to the use of “initial scoping and preliminary assessments” to “establish/determine that indigenous peoples (referred to as tribals in India) will be affected by a proposed project. (ESPP, Appendix XXXIII). The Guidelines define Indigenous People as “distinct groups identified based on their social, cultural economic and political traditions</p>	<p>equivalent to the requirement for early screening. However, the ESPP’s use of the term Indigenous People is equivalent to only a few of the e criteria referenced in this Operational Principle for the identification of Indigenous Peoples: both refer to Indigenous Peoples as having cultural, economic, social or</p>	<p>include the following defining characteristics: -collective attachment to geographically distinct habitats or ancestral territories and to the natural resources in these habitats and territories (beyond forest ecosystems); and -indigenous language.</p>

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<p>distinct customary cultural, economic, social or political institutions; and indigenous language.</p>	<p>welfare of people by changing living conditions”; (S. 3.3) “[affect] vulnerable groups of people (e.g. hospital patients, children, the elderly, etc)”;(S. 3.4) impact “areas occupied by sensitive man-made land uses (...places of worship, community facilities):”(S 9).</p> <p>In any case, the EA Notification does not apply to the electrical transmission sector.</p> <p>The Constitution of India does not define Scheduled Tribes as such. Article 366(25) refers to Scheduled Tribes as those communities who are scheduled in accordance with Article 342 of the Constitution. This Article says that only those</p>	<p>and institutions, which are distinct from the mainstream or dominant society or culture. Tribal with similar cultural characteristics are known as ‘Adivasi’ in Hindi⁹ and are recognized as Schedule Tribes (ST) as per the Indian Constitution.” (ESPP Appendix XXXIII)</p>	<p>political institutions distinct from the mainstream of dominant society or culture. The ESPP does not use the following criteria to identify Indigenous or tribal people:</p> <ul style="list-style-type: none"> - self-identification; -recognition of this identity by others; - collective attachment to geographically distinct habitats or ancestral 	

⁹ Ādivāsīs (in Devanagari script: आदिवासी), literally "original inhabitants", comprise a substantial indigenous minority of the population of India. Indian tribals are also called Atavika (forest dwellers, in Sanskrit texts), Vnvasis or Girijans (“hill people”) (Source: Wikipedia)

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	<p>communities who have been declared as such by the President through an initial public notification will be considered as Scheduled Tribes. Any further amendment in the list is through an Act of Parliament. The list of Scheduled Tribes is State specific and a community declared as scheduled tribe in a state need not be so in another state.⁷</p> <p>Two Advisory Committees have been established to specify the essential characteristics of Scheduled Areas and Scheduled Tribes, respectively and although their findings and</p>		<p>territories and to the natural resources in these habitats and territories; and</p> <ul style="list-style-type: none"> - indigenous language. 	

⁷ The Constitution provides that the President or Parliament with the authority, in consultation with the Governor of a State, publicly designate (“notify”), or by law in the case of Parliament, the tribes or tribal communities or part of or groups within tribes or tribal communities which shall be deemed to be STs. (Arts. 342, 366).

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	<p>recommendations have guided the application of legal provisions pertaining to SAs and STs, neither Committee has any legal standing.⁸</p> <p>The PESA makes reference to “Scheduled Areas” and “Scheduled Tribes” but without defining these terms. (Title, Preamble, Arts.3, 4(g, h, m (iii, and v)). In fact, in scheduled areas where programs being implemented through the Panchayat at the village level</p>			

⁸The Dhebar Commission was established in 1960 for the delineation of Scheduled Areas. The criteria cited by the Commission include (i) preponderance of tribal population; (ii) compactness and reasonable size of the area (iii) underdeveloped nature of the area; and (iv) marked disparity in economic standards of the people and outside the area.”); Likewise, the Lokur Committee on the Revision of the Lists of Scheduled Castes and Scheduled Tribes was established in 1965. The Lokur Committee determined that for a community to be identified as Scheduled Tribe, required characteristics are – “(a) Primitive traits (b) a distinctive culture (c) shyness of contact with the public at large (d) geographical isolation and (e) backwardness-social and economic.” (DTP 19.7). Also, some scholars e.g.,B.K. Roy Burman however, argue that the Lokur Committee was not accepted officially and hence the criteria that is used is not “official” (pers. communication).

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	<p>requires the approval of the <i>Gram Sabha</i> is mandatory. Such <i>Gram Sabhas</i> constitutes primarily of STs in scheduled areas.</p> <p>Further in some Land Acquisition Acts as applicable in states there are provisions of preliminary surveys prior to initial notification for Land acquisition. This provision (although currently not used for such social screening) has the potential of screening the socially vulnerable communities such as the scheduled tribes. Examples of such provision exist in Gujarat, Himachal Pradesh to name a few.</p> <p>The FRA defines “forest dwelling Scheduled Tribes” as “the members or community of the Scheduled Tribes who primarily reside</p>			

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	in and who depend on the forests or forest lands for bona fide livelihood needs and includes the Scheduled Tribe pastoralist communities.” (Art. 2(c)).			
2.Undertake free, prior and informed consultation with affected Indigenous Peoples to ascertain their broad community support for projects affecting them and to solicit their participation:	Under the PESA “every Grama Sabhas shall approve the plans, programmes and projects for social and economic development before such plans...are taken up for implementation...” (Art. 4(e)(i). In addition “the Grama Sabha or the Panchayats at the appropriate level shall be consulted before making the acquisition of land in the Scheduled Areas for development purposes and before re-setting or rehabilitating persons	POWERGRID’s SEF (Is this SEF i.e. social entitlement framework?) provides that “all tribal PAFs shall be consulted through their representative or group engaged in their activities for all their rehabilitation measures.” (ESPP 2.6). Among the stated objectives for the preparation and implementation of a Tribal Peoples	Partial Equivalence. The ESPP’s SEF is equivalent to the requirement for consultation with affected Indigenous People and for soliciting their participation in the design, implementation and monitoring of avoidance,	The SEP should be revised to include explicit provisions to ensure that consultation takes place prior to project implementation and that consultation is free from undue influence and results in broad community support.

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<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 benefits in a culturally appropriate manner.</p>	<p>affected by such projects....” (Art. 4(i))</p> <p>An Andhra Pradesh High Court judgment (trying to get the judgment) has interpreted the word consultation to mean consent. Infact the Original Committee that was constituted to report on this aspect and based on which the PESA was modeled (the Buria Committee Report) had recommended the word consent and not consultation. It was the legal framework that had diluted the recommendation. The Andhra Judgment however gives strength to the process by interpreting the word consultation to mean consent.</p> <p>Under the FRA, “...no forest rights holders [as recognized under the Act] shall be</p>	<p>Development Plan (TPDP) is that Indigenous People are “included in the entire process of planning implementation and monitoring of the project...[that] all community development plans carried out by POWERGRID will be designed and implemented with the active involvement of tribal groups in the project area...[that] the TPDP will be prepared in consultation with the tribal people both affected and those living in the vicinity of the project area”...that the TPDP itself will include a “[s]trategy for local participation including mechanism defined with the assistance and in</p>	<p>mitigation and compensation measures.</p> <p>However, the SEF does not include explicit provisions to ensure that consultation takes place prior to project implementation and that consultation is free from undue influence and results in broad community support.</p>	

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	<p>resettled or have their rights in any manner affected...[unless](e) the free informed consent of the Gram Sabhas in the areas concerned to the proposed resettlement and to the proposed [resettlement or alternatives] package has been obtained in writing.” (Art. 4(2)(e))</p> <p>Although not covered in the strict sense of ascertaining community support, the settlement of rights process in most wildlife and forest laws where either protected areas or reserved forest areas are constituted where the settlement of rights require every person affected to prefer his or her claims and in fact if they cannot then the settlement officer (either the Collector or his authorized officers) is required to make</p>	<p>consultation with indigenous peoples for their participation in [the] decision-making process throughout project planning, implementation and [the] evaluation cycle.” (ESPP Appendix XXXIII)</p>		

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	<p><i>suo motu</i> inquiry. He is also required to either ascertain through records or through persons who are familiar with such records. This may also qualify as eliciting broad community support as there are provisions of agreement in terms of exercising such rights between the affected party and the state government. Such agreement can be termed as broad consensus that is arrived at on specific terms and conditions.</p>			
<p>3.Undertake social assessment or use similar methods to assess potential project impacts, both positive and adverse, on</p>	<p>The PESA provides that the identification and selection of beneficiaries under government programs can be selected by the village assembly. The village assembly is also competent to safeguard its traditions, cultural and community resources.</p>	<p>The ESPP “Guidelines for Tribal People Development Plan” refers to the use of “initial scoping and preliminary assessments” to “establish/determine that indigenous peoples (referred to as tribals in</p>	<p>Full Equivalence. The ESPP’s Guidelines for Tribal People Development Plan” are fully equivalent to the requirement</p>	<p>None</p>

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<p>Indigenous Peoples. Give full consideration to options preferred by the affected Indigenous Peoples in the provision of benefits and design of mitigation measures. Identify social and economic benefits for Indigenous Peoples that are culturally appropriate, and gender and inter-generationally inclusive and develop measures to</p>	<p>Under the EIA and especially under the activities listed for area development or construction related thereto, socio economic impacts are supposed to be looked into. (See Appendix II, Section 7)</p>	<p>India) will be affected by a proposed project.</p> <p>In such cases the Guidelines require the preparation of “a detailed social assessment to identify issues and prepare a Tribal People Development Plan for affected indigenous peoples.” (ESPP, Appendix XXXIII).</p> <p>The Social Assessment is to yield baseline data on the tribal people, including details on their subsistence, employment, and community networks affected by the project. (ESPP, Appendix XXXIII)</p>	<p>for a social assessment that gives fully consideration to the options preferred by affected Indigenous Peoples, to culturally appropriate and gender and inter-generationally inclusive benefits.</p>	

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avoid, minimize and/or mitigate adverse impacts on Indigenous Peoples.		<p>The ESPP also provides for the preparation of a Social Assessment and Management Plan (SAMP) that includes, as one of its main components, a Tribal Peoples Development Plan (TPDP) where there is a potential for adverse impacts on Indigenous communities.</p> <p>POWERGRID appoints a suitable agency to prepare the SAMP. “The compensation packages in the TPDP are evolved in consultation with PAPs. (ESPP 5.4.1.i.and iii)</p> <p>The ToR for the Baseline Socio-Economic Survey and Preparation of</p>		

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		Rehabilitation Plan includes within the Scope of the study “Identification of vulnerable sections of population such as SC/ST [Scheduled Castes/Scheduled Tribes],,,” (ESPP Appendix XVII)		
4. Where restriction of access of Indigenous Peoples to parks and protected areas is not avoidable, ensure that the affected Indigenous Peoples’ communities participate	For STs living within SAs PESA mandates that “prior consultation with Gram Sabha or Panchayats at the appropriate level [is] mandatory before acquisition of land for development projects.” (DTP 14.2) According to the FRA “No forest rights holders shall be resettled or have their rights in any manner affected in any manner affected for the purposes of creating	Under the ESPP, “the practice of siting a substation is to avoid lands of tribal. However, if tribal land acquisition becomes inevitable, additional [specified] benefits are made available to affected tribal families.” These benefits include consultation with “all tribal PAFs [Project Affected Families] through their	Full Equivalence. The ESPP provisions are equivalent to the requirements of the Operational Principles.	None

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<p>in the design, implementation, monitoring and evaluation of management plans for such parks and protected areas and share equitably in benefits from the parks and protected areas.</p>	<p>inviolate areas for wildlife conservation” [unless]... (a) the process of recognition and vesting of rights [as specified elsewhere in the Act] is complete in all the areas under consideration; (b) it has been established by the concerned agencies of the State Government, in exercise of their powers under the Wildlife Protection Act, 1972 that the activities or impact of the presence of holders of rights upon wild animals is sufficient to cause irreversible damage and threat the existence of said species and their habitat; (c) the State Government has concluded that no other reasonable options, such as coexistence are not available; (d) a resettlement or alternatives package has been prepared and communicated that provides</p>	<p>representative or group engaged in their welfare activities for all their rehabilitation measures.</p>		

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	<p>a secure livelihood for the affected individuals and communities;</p> <p>(e) the free informed consent of the Gram Sabhas in the areas concerned to the proposed resettlement and to the package has been obtained in writing and</p> <p>(f)...facilities and land allocation at the resettlement location are complete as per the promised package.” (Art. 4(2))</p>			
5.Put in place an action plan for the legal recognition of customary rights to lands and territories, when the	Under the PESA State Legislatures are required to “ensure that the, Panchayats andGrama Sabhas [in Scheduled Areas] are endowed specifically withthe power to...take appropriate action to restore any unlawfully alienated	Among the criteria used to determine the need for a Tribal People Development Plan under the ESPP is “significant adverse effects on customary rights of use and access to land and natural resources.” (ESPP Appendix	Full Equivalence The ESPP requirement that assurance be provided to tribals for continued use of customary	The ESPP should be revised to explicitly incorporate the PESA and FRA provisions regarding the legal

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<p>project involves: (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 acquisition of such lands.</p>	<p>land of a Scheduled Tribe.” (Art. 4(m)(iii) The PESA also prescribes in one of its essential and fundamental principles that the a State legislation on the Panchayats that may be made (in accordance with Central PESA) shall be in consonance with the customary law, social and religious practices and traditional management practices of community resources ; Secondly, every Gram Sabha shall be competent to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources... Under the FRA, forest dwelling STs and other traditional forest dwellers are entitled to the following forms of individual”</p>	<p>XXXIII). The TDPD is required to include an “[e]xamination of land tenure issues including lands under customary rule and assurance of continued use of these resources by the groups involved.” (ESPP Appendix XXXIII) In addition to the benefits to be made available to other categories of PAFs, the ESPP provides that the “land for land option shall be preferred for rehabilitation of affected tribal families” and that “if resettlement is involved, they will be resettled close to their natural habitat so that they can retain their ethnic, linguistic and</p>	<p>land resources is consistent with the requirements of this Operational Principle. However, the ESPP does not contain any provisions for legal recognition of such customary land rights as is provided for under the PESA and FRA. (Note: The ESPP was issued prior to the enactment of FRA).</p>	<p>recognition of customary land rights. Also, under the DTP it is recommended that the Indian Registration Act be amended to prevent invalid registration of transfer of tribal land to non-tribals. (DTP 19(e).</p>

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	<p>[and/o]r community tenure”: “(a) right to hold and live in forest land under...individual or common occupation for habitation and self-cultivation for livelihood ... (e) rights including community tenures of habitat and habitation for primitive tribal groups and pre-agricultural communities (f) rights over disputed lands under any nomenclature in any State where lands are disputed; (g) rights for conversion of <i>Pattas</i>¹⁰ or leases or grants issued by any local authority of any State Government on forest lands for titles. (h) rights of settlement and conversion of all forest villages, old habitation, unsurveyed villages and other villages in forests,</p>	<p>cultural identify.” (ESPP 2.6)</p>		

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	<p>whether recorded, notified or not into revenue villages;...</p> <p>(j) rights which are recognized under any State or laws of any Autonomous District or...Regional Council or which are accepted as rights of tribals under any traditional or customary law of the concerned tribes of any State....”</p> <p>(l) any other traditional right customarily enjoyed by the forest dwelling [STs] or other traditional forest dwellers...</p> <p>(m) right to in situ rehabilitation including alternative land in cases where the [STs] or other traditional forest dwellers have been illegally evicted or displaced from the forest land...prior to [December 13,] 2005.”</p>			

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6. Do not undertake commercial development of cultural resources or knowledge of Indigenous Peoples without obtaining their prior agreement to such development.	<p>Among the individual and community rights of forest dwelling STs and other traditional forest dwellers recognized under the FRA are “the community right to intellectual property and traditional knowledge related to biodiversity and cultural diversity.” (Art. 3(k))</p> <p>In addition, “[T]he holders of any forest right, Gram Sabha and village level institutions...are empowered to ... (c) ensure that the habitat of any forest dwelling {STs} and other traditional forest dwellers is preserved from any form of destructive practices affecting their cultural and natural heritage; Art. 5(c) ;</p> <p>These provisions are</p>	<p>Among the criteria required under the ESPP for determining the need for a full TPDP due to acquisition of land belonging to/used by tribal people is:...”impacts that may alter or undermine indigenous knowledge and customary institutions.”</p> <p>The TPDP is to be prepared in consultation with tribal people, both those affected and those living in the vicinity of the project area and their views will be taken into account in finalizing the Plan. ESPP, Appendix XXXIII)</p>	<p>Partial equivalence</p> <p>The ESPP provides partial equivalence to the requirements of this Operational Principle by providing tribal people with consultative role in preparation of the TPDP. However, there is no explicit provision for obtaining “prior agreement” of Indigenous</p>	<p>The ESPP should be revised to require that the “prior agreement” of Indigenous Peoples be obtained for the commercial development of their cultural resources or knowledge</p>

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	<p>reinforced by the Biological Diversity Act, 2002 which states that “[t]he Central Government shall endeavor to respect and protect the knowledge of local people relating to biological diversity...through...measures which may include registration of such knowledge at the local, State or national levels and other measures for protection including ...’in situ conservation.” (Art. 35 (5) The Act also prevents unauthorized persons from obtaining “knowledge associated [with a biological resource] in India for “commercial utilization... without .previous approval of the National Biodiversity Authority.” (NBA) (Art. 3). Non- official members of the NBA are to include “conservers, creators</p>		<p>Peoples for the commercial development of such resources or knowledge. (Note: The ESPP was issued prior to the revision of OP 4.00 to incorporate the Operational Principle per OP 4.10, which was also approved by the Bank subsequent to the issuance of the ESPP.)</p>	

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	<p>and knowledge-holders of biological resources.” (Art. 8(4)(d). Local people and communities, including growers and cultivators of biodiversity including practitioners of indigenous medicine are exempt from the requirement that they notify State Biodiversity Boards prior to obtaining biological resources for commercial utilization. (Art. 7). Every local body is required to establish a Biodiversity Management Committee which shall be consulted by the NBA and State Biodiversity Boards “while taking any decision relating to the use of biological resources and knowledge associated with such resources.” (Art. 41)</p>			

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7. Prepare an Indigenous Peoples Plan that is based on the social assessment and draws on indigenous knowledge, in consultation with the affected Indigenous Peoples' communities and using qualified professionals Normally, this plan would include a framework for continued	Under the PESA, “every Grama Sabhas shall ...approve the plans, programmes and projects for social and economic development before such plans...programmes and projects are taken up for implementation...” (Art. 4(e)(i). In Scheduled Areas the Chair and at least one half of the total number of seats in the Grama Sabhas shall be reserved for STs. (Art. 4(g). In the Scheduled Areas The Grama Sabha or the Panchayats shall be consulted before any acquisition of land is undertaken for development projects or for resettling or rehabilitation of persons affected by such projects. (Art 4(i)	The ESPP incorporates provisions of World Bank Operational Directive (OD) 4.20 (superseded in 2005 by OP 4.11) on Indigenous Peoples. Accordingly, the ESPP incorporates the requirement of OD 4.20 that an Indigenous Peoples Development Plan (IPDP) be prepared as a project prerequisite, wherever necessary. (ESPP 2.7 (B) Guidelines for [the] Tribal People Development Plan (TPDP) are included as part of the ESPP. The Guidelines provide that a TPDP is required if: 1) there are	Full Equivalence.	None.

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<p>consultation with the affected communities during project implementation; specify measures to ensure that Indigenous Peoples receive culturally appropriate benefits, and identify measures to avoid, minimize, mitigate or compensate any adverse effects; and include grievance procedures,</p>	<p>Under the FRA the Gram Sabha has the authority to “initiate the process for determining the nature and extent of individual or community forest rights given to the forest dwelling Scheduled Tribes and other traditional forest dwellers within the local limits of its jurisdiction....by receiving claims, consolidating and verifying them a preparing a map delineating the area o each recommended claim ...” (Art. 6(1))</p> <p>Under the FRA, “[a]ny person aggrieved by the resolution of the Gram Sabha may refer a petition to the Sub-Divisional Level Committee constituted by each State Government for the purpose of examining the resolution of the Gram Sabha and prepare a record of forest</p>	<p>significant adverse impacts on customary rights of use and access to land and natural resources; 2) negative impacts on the socio-economic and cultural identity of tribal communities; 3) impacts on health, education, livelihood and social security status; and 4) any other impacts that may alter or undermine indigenous knowledge and customary institutions. If impacts are “insignificant,” specific actions in favor of tribal people will be integrated into RAP instead (A-115).</p> <p>The Guidelines provide that the TPDP be based on a “detailed social assessment;” that it be</p>		

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<p>monitoring and evaluation arrangements , and the budget for implementing the planned measures.</p>	<p>rights.” Decisions of the Sub-Divisional Level Committee may be further appealed to the District Level Committee for final disposition. (Art. 6(2-6). The FRA provides that “[T]he State Government shall constitute a State Level Monitoring Committee to monitor the process of recognition of vesting of forest rights and to submit to the nodal agency such returns and reports as may be called for by that agency. (Art. 6(7).”</p> <p>The FR Rules, 2007 also provides that the Gram Sabha shall initiate the process of determination of the nature and extent of rights over community forest resource. (See Rule 19)Further, under the Right to Intellectual Property</p>	<p>“prepared in consultation with the tribal people both affected and those living in the vicinity of the project area,” will “include in the team of [the] consultants staff with adequate knowledge and experience of working among tribal groups.”</p> <p>The Guidelines also provide that “tribal institutions and organization in the affected area will also be involved in implementing the TPDP and resolving any disputes that may arise.” (ESPP, Appendix XXXIII). The Guidelines state among the objectives of the TPDP that :affected</p>		

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	<p>includes the rights to regulate access, control, develop and protect traditional science and technology associated with biodiversity resources including genetic resources, medicines, health practices, medicinal plants, agriculture, knowledge of fauna and flora and other indigenous knowledge system and practices (Rule 21 (1)). Infact, such Gram Sabha is required to coordinate with Biodiversity Management Committee under the Biological Diversity Act, 2002. (Rule 21 (2)).</p> <p>The main function of the Biodiversity Management Committee under the Biological Diversity Rules, 2004 is the preparation of Peoples Biodiversity Register in consultation with local people. The register</p>	<p>tribal/ST people receive benefits from the project that are at least on a par with or better than those received by the rest of the population the...[and] that a basis is provided for the tribal groups in the area to receive adequate development focus.” It further provides that “[w]herever possible, tribal groups will be given employment opportunities in the project area.”</p> <p>With respect to grievance procedures the TPDP Guidelines state that “Policy Guidelines available at the national and state level regarding ST and POWERGRID ‘Social Entitlement Framework’ will be used to address tribal issues in</p>		

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	shall contain comprehensive information on availability and knowledge of local biological resources, their medicinal or any other use or any other traditional knowledge associated with them.	relation to the interventions at the project level.” (ESPP, Appendix XXXIII). [With respect to monitoring and evaluation of TPDP implementation, the TPDP Guidelines stipulate that internal monitoring of the TPDP will be done by POWERGRID’s Environmental and Social Management Cell and the Environmental and Social Management Team ¹¹ to be assisted by “a person with tribal development experience” who will be “engaged in both supervision and will guild TPSP implementation”		

⁸ The term *Pattas* is commonly used to refer to land that has been worked for more than one generation, generally without formal title or lease.

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		<p>reporting quarterly to the Corporate Environmental and Social Managing Director “who will in turn appraise higher management.”</p> <p>“A set of monitoring indicators will be defined during TPDP preparation and implementation for reviewing...progress....In addition, an external independent monitor will be engaged to undertake monitoring of the TPDP implementation” with “benchmarks to assess progress” and “using specific indicators.” ...</p> <p>The Guidelines provide for a “[d]etailed cost estimate/budget and financing plan and sources of funds for the</p>		

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		TPDP.” (ESPP, Appendix XXXIII)		
8. Disclose the draft Indigenous Peoples Plan, including documentation of the consultation process, in a timely manner before appraisal formally begins, in an accessible place and in a form and language that are understandable to key stakeholders	<p>There are no comparable provisions in GOI law, though the Right to Information Act, 2005 however, empowers people to force state to disclose their plans and programmes including consultation processes if done or required.</p> <p>The granting of utilisation certificate under PESA as well as approval of plans together with RTI may be used to demonstrate disclosure.</p>	<p>The ESPP’s TPDP Guidelines provide that the tribal people affected by the project as well as those living in the vicinity of the project area “will be informed of the measures proposed [in the TPDP] and their views will be taken into account in finalizing the plan. The Plan will be translated into the local language(s) and made available to them before implementation.” (ESPP, Appendix XXXIII)</p>	<p>Partial Equivalence.</p> <p>The ESPP provisions are partially equivalent to this Operational Principle with respect to the drafting of an Indigenous Peoples Plan (TPDP) and its disclosure. The ESPP does not require that the consultation process be documented in the TPDP</p>	<p>The ESPP should be revised to require that the public consultation process be documented in the TPDP.</p>

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<p>9. Monitor implementation of the Indigenous Peoples Plan, using experienced social scientists.</p>	<p>The FRA provides that “[T]he State Government shall constitute a State Level Monitoring Committee to monitor the process of recognition and vesting of forest rights and to submit to the nodal agency such returns and reports as may be called for by that agency. (Art. 6(7).”</p> <p>The Constitution also requires the Governor to prepare annually a report regarding the administration of scheduled areas to the President of India. Thus, the Highest office of India is required to monitor through such reports the administration of scheduled areas which predominantly inhabited by scheduled tribes. The Tribes Advisory Council (TAC) also performs a similar role.</p>	<p>POWERGRID selects and appoints a suitable agency to implement the SAMP. (ESPP 5.5.2.a). POWERGRID monitors all Resettlement and Rehabilitation (R & R) measures; conducts periodic monitoring reports containing updates on SAMP execution and annually reviews the performance of social management measures. (ESPP 5.6.2 and 5.7.2). In addition, POWERGRID appoints an external agency to conduct the review/audit of implementation performance of its environment and social management systems (ESPP 5.7.1)</p>	<p>Full Equivalence.</p> <p>The ESPP is equivalent to this Operational Principle .</p>	

