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Country Assessment on Land Acquisition and Resettlement

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Abbreviations and Acronyms

ADB	Asian Development Bank
AP	Affected Person
CA	Country Assessment
CAREC	Central Asia Regional Economic Cooperation
CBP	Capacity Building Plan
CC	Civil Code
CLMG	Committee for Land Management and Geodesy
CLARF	Country Land Acquisition and Resettlement Framework
CSO	Civil Society Organizations
Dehkan farm	Farmer (peasant) farm
DFA of Roghun HPP	Directorate of Flooding Area of Roghun Hydro Power Plant
DFID	Department for International Development of the United Kingdom
DMS	Detailed measurement survey
EA	Executing Agency
EU	European Union
FA	Financing Agreement
Jamoat	Sub district level government authority
GRM	Grievance Redress Mechanism
IFI	International Finance Institution
IR	Involuntary Resettlement
IT	Information technology
LAR	Land acquisition and resettlement
LARF	Land acquisition and resettlement framework
LARP	Land acquisition and resettlement plan
LC	Land Code
M&E	Monitoring and evaluation
MBTI	Mezhraion (inter-district) bureau of technical inventory
MFF	Multi-tranche Financial Facilities
MLSP	Ministry of Labor and Social Protection
MOJ	Ministry of Justice
MOT	Ministry of Transport
MRM	Management Review Meeting
NCBAP	National Capacity Building Action Plan
NGO	Non-governmental organization

PCP	Public Communications Policy
PFR	Periodic Financing Request
PIU	Project Implementation Unit
PPTA	Project Preparation Technical Assistance
PFR	Periodic Financial Request
RETA	Regional Technical Assistance
RF	Resettlement Framework
ROW	Right of Way
RP	Resettlement Plan
SDC	Swiss Development Cooperation
SES	Socio-economic survey
SIA	Social Impact Assessment
SPS	Safeguard Policy Statement
SR	Safeguard Requirements
ST	Safeguard Team
SUE	State Unitary Enterprise
TAJ	Tajikistan
TOR	Terms of reference
URS	Unified Registration System
USAID	United States Agency for International Development

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I. INTRODUCTION

A. Goal and Objectives

1. The Country Assessment (CA) for Tajikistan was prepared under the ADB Regional Technical Assistance (RETA) 7433: Mainstreaming Land Acquisition and Resettlement Safeguards in the Central and West Asia Region, which was approved on December 2009. The RETA objective is to foster more effective infrastructure development in the region through the improvement of land acquisition and resettlement (LAR) practices. This objective includes the following outcomes:

- (i) increased understanding amongst the governments and civil society organizations (CSO) about LAR, as defined in the 2009 ADB Safeguard Policy Statement (ADB Policy) and about the improvements needed for effective LAR implementation in each participating country;
- (ii) improved country ownership of appropriate LAR practices;
- (iii) alignment between ADB policy and local practice; and
- (iv) improved procedures/technical tools to prepare and execute resettlement plans.

2. The above outcomes will be implemented through four main RETA components:

- (i) preparation of a LAR Country Assessment (CA);
- (ii) establishments of a LAR Capacity Building Plan (CBP);
- (iii) implementation of the LAR CBP, focusing on regulatory changes or technical standards that do not require formal legal reform; and
- (iv) provision of on-the job coaching for Executing Agencies (EA) on LAR preparation/implementation for ADB projects.

B. Methodology

3. This CA entailed an analysis of project documents, a review of national legislation and interviews with representatives of state agencies, other international organizations, NGOs, and LAR-affected communities. These efforts were then complemented with in-depth studies of actual LAR cases. These studies allowed the identification of LAR planning and implementation constraints emerging within a practical context.

4. The identification of LAR preparation/implementation issues in the country arises from elements in both the country system and in ADB Policy or procedures. The evidence gathered through the assessment instruments noted above is thus analyzed in comparative fashion by juxtaposing Tajik and ADB LAR requirements/practice. The objectives are to locate critical differences requiring reconciliation and to propose reconciliation measures.

5. The comparison of formal ADB Policy requirements/policy application with pertinent laws/implementing regulations and related policy reconciliation issues is elaborated in Chapter 2. The comparison of ADB and Tajikistan processes for LAR and the definition of alignments needed are provided in Chapter 3. Chapter 4 focuses on overarching institutional and technical improvements needed to close the gaps between the application of ADB Policy principles and national law. Finally Chapter 5 summarizes the issues to be addressed by the CBP.

C. Land Administration Context

6. This section reviews the land reform process between 1991 and 2009 that transformed the country from the Soviet-based system to the current system and the national land administration context that define the current tenure system. The reforms and resulting land tenure system has a direct relation to the type, strength and identification of property rights allocated over the past two decades, how those rights are affected during the LAR process, and some of the constraints that ADB- financed projects face.

1. Land Tenure during the Soviet period

7. Tajikistan is a mountainous country with a land area of 140,000 square kilometers, of which less than 7% is arable land. It has a population of approximately 7 million, almost three-fourths of which are classified as rural. Cotton is the predominant product and export and ensuring continued cultivation has a direct influence on state oversight of the agricultural sector and land rights regulation. Tajikistan has undergone fewer reforms than other former Soviet Republics, with land remaining wholly in state ownership. However, reforms have been introduced since independence and are slowly advancing the economy toward a market based approach with increasing property rights.

8. Under the Soviet regime the Tajik Soviet Socialist Republic focused on producing cotton and the government increased the amount of irrigated land through massive water management projects, particularly in the southern part of the country. In 1990, 99% of agricultural land was operated by large state or collective farms (with an average of 700 ha each) and the remaining 1% was cultivated by families for personal use and subsistence. Pastures were included as part of the state and collective farms while forests were under the authority of a separate government entity. The majority of housing was allocated by the government or an employer. A quasi-private ownership and use structure existed for certain types of structures such as *dachas* (weekend cottage) or housing cooperatives where limited exchanges and trades took place, although not under a formal market structure.

9. When land was acquired for (usually large) infrastructure projects, the government used a comprehensive approach by providing adequate living space, social infrastructure (education, health care, and cultural facilities) electricity, water supply etc. to the resettled families and taking care of their integration into the new location. Valuation methods were provided through SNIPs (construction norms and regulations), specific tariffs and norms which were regularly updated. Replacement housing was allocated following Housing Code norms and in general was adequate for resettled households and enabled access to improved houses/apartments. Cash compensation (for trees) was paid very seldom and mainly as a supplement to the allocated replacement apartment or house.

10. Loss of job/income was mitigated through providing employment to the resettled households in the new locations. It was not a problem to be solved by a single institution, but rather a complex task discussed and agreed upon by all the line ministries and agencies involved in the process.

2. Independence

11. After independence in 1991, a civil war erupted that lasted from 1992 to 1997 with over 50,000 dead and 1 million displaced people. The war led to economic collapse and delayed legal and institutional reform. Tajikistan has experienced greater economic growth after peace agreement in 1997 and, with the exception of cotton, agriculture sector has regained pre-war levels of production. The state has passed a series of laws, presidential decrees and regulations promoting limited private property and land reform, but land use and ownership continue to be restrictive. Until very recently the government continued to mandate production of cotton on irrigated lands, restricting the freedom of farmers for cropping choices and causing tenure insecurity as land rights could be taken away for failure to follow cotton growing quotas.

12. Nevertheless, Tajikistan has made progress within implementation of Land Reform, especially by increasing the size of plots made available to households for food production. The 1996 Land Code granted every household a life-long use right to a small (0.15–0.40 hectare) household plot and the government expanded distribution of these small plots under Presidential Decrees in 1995, 1996 and 1997. A total of 75,000 additional hectares (5-6% of agricultural land), commonly known as “Presidential Lands” have been allocated. The agricultural productivity on these smallholder farms has driven substantial rates of growth.

13. Another component of the land reform process was the breakup of state and collective farms. In 1992 Tajikistan approved the Law on Dekhan Farms and the Law on Land Reform. These laws provided all members of state and collective farms with the right to create a small individual or family farm based on the share within collective and state farm land. However, reform of the large state and collective farms has been

slow and often superficial due to the continued government focus on cotton production. Three main types of *dekhan* (farmer) farms have evolved, with important differences between individual and family *dekhan* farms on the one hand and collective *dekhan* farms on the other:

- (i) Collective *dekhan* farms typically emerged from a fast-track approach to farm restructuring. In order to meet privatization targets, state and collective farms were often converted into one or several collective *dekhan* farms, depending on the size of the previous entities. Usually, the former chief of the *kolkhoz/sovkhhoz* or head of a brigade is “elected” as the head of the farm and the administration continues as before. A Land Use Certificate is issued in the name of the head of the farm. The resulting farms are usually large, with land sizes ranging from 40 to 2,000 hectares. While the Land Use Certificate should list all members and individuals should also receive an individual share certificate, the procedures are not always followed.
- (ii) Individual and family *dekhan* farms were created by the initiative from individuals or families rather than by official restructuring. The Land Use Certificates are issued by the *hukumat* in the names of the individual(s) or family members who requested the creation of the farm. Individual and family *dekhan* farms are smaller, usually between 0.5 ha and 40 ha.
- (iii) Associations of *dekhan* farms are a third type of farm organization emerging from farm restructuring. The associations vary in the degree of autonomy of their member farms. In some cases, member farms are managed independently but certain functions such as input purchase, operation and maintenance of farm machinery and output marketing are carried out by the association. In other cases, state and collective farms have been converted directly into associations of *dekhan* farms, with the association still functioning as before.

3. Existing Types of Tenure

14. As noted above, there is no private ownership of land in Tajikistan. The Land Code sets forth several types of tenure for agricultural land, distinguishing “primary” use rights from “secondary” use rights. Secondary use rights refer mainly to lease while primary use rights include:

- (i) Life-long inheritable use: This right is assigned to physical persons or collectives and applies to land-shares used to organize *dekhan* farms as well as for household plots.
- (ii) Perpetual use: This right has no fixed term. It is granted to legal entities such as state and cooperative agricultural enterprises, public and religious organizations and charities, industrial and transportation needs, public enterprises, defense, and joint ventures that include foreign entities.
- (iii) Limited or fixed-term use: This right may be granted to legal or physical persons for either a short-term (up to 3 years) or long-term (3–20 years).

4. Urban Land Reform

15. During the Soviet era urban land and buildings were owed by the State. In 1991, the government began privatization of housing to the occupants through selling and transfers free of charge. As with rural land, there is no ownership of urban land although under the Land Code, the land use right under and around buildings is deemed to be transferred along with the structure.¹ While not all socially owned apartments have been formally privatized and registered, there are generally records of the occupants and their rights are acknowledged by the state.

¹ Land Code, Article 27. Transfer of the right to use a land plot and its allocation.

5. New Land Code Approved

16. In August 2012 significant amendments to the Land Code were approved that will enable legal sales and lease transactions for land use rights.² The introduction of buying/selling and mortgaging of Land Use Rights requires further legal regulations. Nevertheless, the right to buy/sell Land Use Rights is a step toward the creation of a land market. The Land Code also includes changes to the provisions related to land acquisition.³ Implementation of the new Land Code provisions requires Government Resolutions and other regulations that still need to be developed and approved so it is too early to predict when a land use rights market will be introduced.

D. Institutions Responsible for Property Management

1. Maintenance of Land Records and Cadastral Maps

17. There are currently three government agencies that implement land related legislation and play a role in the registration of property rights. These are the Committee for Land Management, and Geodesy (CLMG), the Mezhraion (Inter-raion) Bureau of Technical Inventory (MBTI), and the Ministry of Justice (MOJ).

- (i) **The Committee for Land Management and Geodesy (CLMG)** is the central body responsible for state land management policy, geodesy and mapping, development of legal acts that regulate land relations and undertaking government works on land management, cadaster and registration of land use rights and implementation of land reform. Land-use rights must be registered by the district level CLMG and local government offices (hukumat). Rights of perpetual use, limited use and lifelong inheritance must be recorded on the Land Use Certificate, while leases must be registered in the local Land Use Registry. However, inefficiency and potential corruption within competent government bodies has led to land tenure insecurity and make identification of land use right holders problematic. When collective and state farms were reorganized the process was often superficial and the documents are not always issued according to legal requirements. Under the Law On Dekhan Farms, two tiers of documents should be issued and registered. First, the CLMG issues the Land Use Certificate in the name of the farm manager or leader with a list of other shareholders attached, describing the farm's physical location and boundaries in a map. Second, the CLMG should issue individual land share certificates (also referred to as Land Use Sub-Certificates) to all shareholders. However, Land Use Certificates often lack the list of all shareholders and the individual sub-certificates are not always issued or delivered to the individuals. In addition, the records of land transferred to household plots through Presidential Decrees have not been properly maintained and land use rights for these plots cannot always be proven.
- (ii) **Markaz Zamin (Land Center):** The State Unitary Enterprise 'Markaz Zamin' is the entity under the CLMG that performs technical and land surveys and prepares the legal registration documents for land. There are 69 subordinate offices at district and city level that prepare the necessary documentation for clients that are then formally approved and issued from the central office in Dushanbe.⁴ Legally, all land users, including infrastructure projects of EAs should have Land Use Certificates that reflect the boundaries and area of the relevant land plot. Markaz Zamin charges land users for the provided services, based on set tariffs. In practice, particularly government funded major infrastructure projects do not have proper land use documentation in place or simply do not

² Law 891, dated August 2012, article 19.

³ Articles 37-45

⁴ The process can be time consuming and expensive although there is a pilot under a World Bank-funded project to decentralize the responsibility for approving and issuing Land Use Certificates and streamlining the process to include less expensive, computer generated certificates with approvals taking place at the regional level rather than at the central office in Dushanbe.

update the existing registration information. Often Markaz Zamin blames EAs for not having proper land acquisition documents and/or not paying them for the services they provide.

- (iii) **Mezhraion Bureau of Technical Inventory (MBTI):** The State Unitary Enterprise “*Hojagii manziliyu kommunali*” (Housing and Communal Services) and its subordinate division MBTI are the main supplier of public utilities and housing in Tajikistan. There are 31 MBTI offices operating at district and city level that are responsible for technical inventory and registration of ‘immovable property’ (i.e. houses, apartments and other structures);⁵ preparation of the Ownership Certificate for immovable property; valuation of immovable property; and technical inventory of engineering networks. The MBTI conducts registration of houses, buildings and apartments. Property files are kept for each immovable property unit. Privately owned immovable property is registered in a Registration Book, which is parcel based, although the land plots number is not consistent with the land plot identification numbers kept by other institutions such as the CLMG. For urban land and housing the documents kept by the MBTI are generally reliable, however, in rural areas the majority of houses do not have the technical passports.
- (iv) **Ministry of Justice:** Since 2000, the Ministry of Justice (MOJ) has had responsibility for registration of mortgages. In relation to immovable property (buildings), the Civil Code requires documents to be notarized and registered with a notary. The system operates on a manual basis. Under the 2008 amendments to the Land Code, land use rights can also be mortgaged, although the mortgaging has not begun due to lack of implementing legislation and the interpretation that land use rights cannot be bought/sold. Of relevance to LAR is the fact that mortgages to buildings and, eventually to land, exist and the records should be consulted to make sure the LARP takes into consideration the rights
- (v) **New Registration Authority:** In 2008 the government approved a new Law On State Registration of Immovable Property and Rights to It which is the basis for the creation of a Unified Registration System (URS)⁶. The URS is a modern, parcel based system that combines the functions of several institutions (CLMG, MBTI, the Ministry of Justice and local government offices) into a more efficient and streamlined registration authority. To date the law has not been implemented. However, after approval of the new Land Code government support for implementing the URS is gaining momentum. While detailed plans are still needed for the transition of existing government institutions into a unified registration system, there seems to be general acceptance of the need for creating a modern, unified registry. The current indication is that MBTI will be transferred under the authority of the CLMG. Thus, in the future it should be easier to access property information through a single agency.

E. The Land Market

18. Due to the Constitutional limitation that all land remains in state ownership, land markets remain underdeveloped. While the 2012 amendments to the Land Code set forth the right to transfer and mortgage land use rights, the implementing legislation is not yet in place. There is a formal market for buildings and apartments although reliable information on prices is not recorded in state institutions and access to accurate data from the private sector is difficult and not always consistent with facts. There is a gray market for land for residential purposes because the associated land plots transfer with the sale of the structure. Certainly value of the land is included in the transaction cost, and there is trade happening with rural land as well but due to the lack of formality and legality the market structure remains informal, without reliable data.

⁵ Unlike most other countries in the world the term ‘immovable property’ in Tajikistan does not include land. Under the Tajik Civil Code immovable property refers to buildings, other structures and permanent fixtures such as trees.

⁶ A Unified Registration System refers to an institution that is responsible for mapping (cadastre) and registering legal rights to all property units (land use rights, buildings, apartments), whether urban or rural, state or private.

F. Property Valuation

19. The state policy and valuation model used in Tajikistan is based on the former Soviet system. The 2006 Law On Pricing (valuation) Activity provides the legal basis for valuation aimed at identifying market value or prices. The law sets forth core principles of valuation (transparency, impartiality, objectivity, credibility and competency), defines the parties involved, describes assets to be valued, valuation types, bases and conditions for conducting valuation, a valuers' rights and responsibilities, regulation of the valuation activity, and provisions focusing on dispute resolution. However, the law has been used only in a limited scope because of a few key factors: a) an outdated methodology, b) lack of efficient and modern enforcement mechanisms; c) unclear standards for obtaining a license for valuation activity; d) weak capacity of existing valuation authorities and experts; and e) non-existent training or re-training opportunities.

20. All agencies involved in the appraisal process should be licensed to perform such services. Of all the pricing and valuation entities functioning in the country, both independent and state-owned, the State Unitary Enterprise (SUE) "*Narkhguzori*" (pricing) under the State Committee on Investment and State Property Management is the only licensed institution performing valuation services. There are also approximately 9 independent valuers in the country. However, their valuation and decisions are not self contained since the majority of them work for banks and/or other financial institutions. Two or three provide contract work for SUE "*Narkhguzori*" and while they could potentially offer other independent services, there is a potential for conflict of interest. The majority of the valuation department staff are economists, mostly educated during the Soviet era and who mainly worked previously for the State Property Management Committee. The staff and the small pool of other valuers in the country have extremely limited training or re-training opportunities on new valuation principles and international standards.

21. In urban areas and for residential structures MBTI carries out valuation of buildings for taxation and some other purposes.⁷ It uses construction norms and regulations (SNIPs) adopted during the Soviet era. These norms and regulations have never been reviewed, updated or improved. The data relating to the value of the building is calculated using old methods, every three years. Local authorities use the norms and apply incremental coefficients to adjust the value. The coefficients are set by the Antimonopoly Department of the Ministry of Economic Development and Trade but the methodology is not clear or based on market considerations.

22. Valuation of land in Tajikistan is difficult because individuals do not have full ownership rights and land rights cannot currently be transacted. Separate from land is the valuation of other non-land assets, including structures, buildings, outbuildings, fruit and wood trees, crops, employment etc. and even less tangible concepts such as livelihoods. The country's transition from the soviet system contributed to distortions and gaps in valuation concepts, standards and the technical base.

G. Land Acquisition for Public Purposes

1. Expropriation for State and Public Need

23. Under current legislation the state's right of eminent domain through expropriation⁸ is dominated by concepts associated with full state control and ownership of land. While use rights are a form of right known around the world, it can lead to complications in developing a land market and determining valuation for compensation purposes. There are currently different views amongst Tajik legal professionals and government officials over the interpretation of use rights and how use rights are to be treated and compensated for in LAR cases. Many officials argue that since land is state-owned there is little or no requirement to compensate for the loss of land use right.

⁷ Government Resolutions 641, dated 30.12.2011, and 293, dated 15.07.1997.

⁸ Under Tajik legislation the term used is 'withdrawal of land use rights'. This term will be used interchangeable in this report with acquisition and expropriation.

24. The 2008 Land Code amendments expanded the rules related to compulsory acquisition of land.⁹ Local government authorities have the responsibility for approval of land management documents, including allocation and withdrawal of land plots and for withdrawal (LAR) of Land Use Rights. Land acquisition is allowed for state and public need and should be carried out only in exceptional cases. Other key points include: a) the justification for LAR for state and public need must be based on urban planning or other project documentation; b) the land user must be notified in writing by local authorities at least one year prior to LAR; c) all LAR decisions must be published in state-owned newspapers within five days; d) LAR may only take place after (i) allocation of a land plot of equal value, (ii) construction of housing, production, and other buildings with the same purpose and same value, or cash payment; and (iii) full compensation for all other losses, including lost profits; e) all losses should be calculated according to the market price and f) the owner/user has the right to apply to the court in the event of disagreement over the LAR decision or the terms of compensation.

2. Process and Modalities

25. When land is acquired for public purpose projects the Government sets up an inter-departmental commission from among the representatives of all relevant agencies, including land management, environment, sanitary, architecture, representatives of the party in whose favor the land is withdrawn (acquired) as well as representatives of the APs. The commission's mandate is to assess both permanent and temporary impacts caused by LAR. The administrative level of the commission depends on the scope of the project and may be national, district or city level. The commission should eventually produce an assessment report which indicates the scope of losses to be compensated for and which is reviewed and endorsed by the decree/resolution of (local) government.

26. Depending on the scope of the project and composition/capacity of the commission, the assessment report may be comprehensive enough or it may miss or omit certain issues. In the absence of a clear template and guidelines for drafting such reports combined with an overall non-transparent process for the commission's work, the assessment can result in social tensions and require additional protracted revisions and amendments. In some cases external advocates, mainly from civil society sector, enter the process in support of the APs.

27. **Valuation process and valuation results.** Property valuation should be carried out only by a licensed valuer. In Tajikistan, there are very few independent valuers or companies specializing in valuation. Those rare companies that conduct property valuation are mostly audit companies with one licensed valuer who mainly performs services for banks and other financial institutions. In view of the weak profile of these companies compared to that of the sole State licensed valuation entity, the EAs ultimately use the services of the latter for valuation of LAR impacts. However, the state enterprise performs relatively well although the result depends on the Terms of Reference and the valuation method used (i.e. cost based or other).

28. Although the law provides clear guidelines for the content of valuation reports¹⁰ and that the EA is responsible for endorsement, it does not specify the standards for review and endorsement of the report or provide the link and sequence between the work of the assessment commission and the valuer throughout the compensation process. The weak regulatory basis complicates endorsement, requiring the valuer to repeatedly defend and justify his/her work.

29. **Grievances.** There are no specific norms or procedures for complaints arising from the LAR process. The Code of Civil Procedure defined the general order, rules and terms for judicial protection in the event of a dispute, which would include those related to LAR, and the Land Code allows land and property owners/users to file a claim against a LAR decision or valuation. However, there is no mechanism to allow for identification or resolution of disputes outside of the formal judicial structure.

⁹ Land Code, Chapters 5 and 6 deal specifically with land acquisition.

¹⁰ The Law "On valuation activity" No 196, dated 28.07.2006, Article 11.

30. **Public Information.** The law requires that owners/users receive notification about a proposed LAR at least one year prior to the acquisition and that a LAR Decision is published in national media within 5 days of issuance. However, these are very formal processes and do not involve interactive discussions or participatory decision-making.

31. **Third-party Monitoring.** Although there is no specific requirement in local legislation for third party monitoring, the increased involvement of local Civil Society Organizations (CSOs), especially independent legal aid centers and NGOs observing projects on a voluntary basis, has led to more careful government attention to recommendations about adherence to international human rights standards as well as local LAR legislation.

H. State Bodies Responsible for LAR

32. Various State Agencies and Institutions are responsible for different functions in the LAR process, as detailed below.

- (i) **The Government:** The Land Code stipulates that the decision for LAR for state and public needs is made by the local state authority or, for major infrastructure projects, the decision on LAR may be approved by the Government. More specifically, the Prime Minister who is, inter alia, in charge of construction/infrastructure projects is the one endorsing LAR related decisions, including compensation package.
- (ii) **District authorities:** District level authorities are responsible for general LAR cases. The district authorities base their review and decisions for LAR on planning documents and other designs, as well as approved feasibility studies. District authorities should work closely with the client's valuation/assessment teams who prepare the documents necessary for LAR. These documents include the impact details for APs, the unit cost per type of impact and a list of APs for compensation. The district office representative of the Ministry of Agriculture values the loss of crops and fruit trees, the district office representative of the Committee on Environment Protection values wood trees, the district office representatives of the Ministry of Labor and Social Protection and Tax Committee value the loss of income/business/job. Valuation of structures/buildings and other tangible assets require a special valuation license; therefore this task is contracted out to SUE "Narkhguzori". The impact assessment should be verified/signed and stamped by relevant district level agencies (chief architect, head of agriculture department, head of land management committee, MBTI etc.) Based on the list of APs the district level authorities prepare a request letter for compensation payment and send it to the EA for further action.
- (iii) **Jamoat:** The jamoat is the sub-district level local authority and is instrumental during impact assessment by identifying/verifying land users and their type and ownership/use status. The jamoat also re-confirms the names of APs, because in many cases the actual AP is different than the name stipulated on the title documents. This occurs for various reasons including technicalities such as the land use rights documents were not timely re-registered or the law of inheritance had not come into effect yet. While district level authorities officially endorse the list of APs, the jamoat level authorities are the front-line force working with the surveyors to identify the impact.
- (iv) **City and town local state executive authorities:** are the bodies of local government in the cities and towns. Their functions in relation to LAR are basically the same as those of district authorities and depending on the scope of the project entailing LAR, the relevant critical decisions may be taken either at city/town level or by the national Government.
- (v) **Committee for Land Management and Geodesy (CLMG):** During the impact assessment, when land user data is concerned, land specialists from CLMG subdivisions at district and jamoat level provide information on ownership/use rights and propose the replacement land plot for APs. The central office of the CLMG, through its subdivisions like "Markaz Zamin" or "Fazo", deals with the transfer of land use rights from land users to the EAs. However, for the major infrastructure projects,

especially externally funded, the legal requirement and procedure of transferring land use rights from the AP to the EA is neglected. This happens mainly due to the underdeveloped and inaccurate cadastral/registration system which results in complicated procedures to rectify the information and transfer the registration to the EA. EAs often ignore the legal registration process which then sets the precedent for others to ignore registration as well.

- (vi) **Mej-raion Bureau of Technical Inventory (MBTI):** MBTI subdivisions at various levels (except jamoat level) provide data for impacted residential buildings, structures and outbuildings or those associated with the affected land. They perform relatively well when it concerns urban areas but have more problems in rural areas due to lack of technical passports for rural structures. Before the new law on valuation activity required professionals to obtain a license for valuation activities, MBTI was also involved in valuation of buildings and structures in case of LAR, carrying out valuation by the outdated valuation standards.
- (vii) **State Unitary Enterprise for valuation (SUE)“Narkhguzori”:** SUE “*Narkhguzori*” staff are responsible for valuation of state owned assets or in the case of LAR of residential, commercial or industrial buildings (and the functional land plot associated with the structures).

33. **Line Ministries and Agencies:**

- (i) **Ministry of Transport (MOT):** The MOT has a Resettlement Department, mainly due to its work with the ADB, which is perhaps the most advanced and developed department for LAR in the country. The department has one resettlement specialist hired to work on LAR and the unit now has experience in developing and implementing LARPs. Experience with and understanding of LAR was evident in the recent Dushanbe-Uzbek road project where 4 families were left off the Phase 1 list of APs to be compensated but once this was discovered by the MOT/PIU through the house-to-house validation process, it quickly investigated the issue, assessed the eligibility, valued the property and expedited the approval for payment.
- (ii) **The State Joint Stock Holding Company “Barki Tojik”,** the state institution responsible for power supply, does not have a unit dedicated for LAR. However, the Project Implementation Unit (PIU) of the ADB-funded energy sector projects under “*Barki Tojik*” has hired an external expert/consultant with a sociology background to work on the LARP. Even though there are no major resettlement issues for ADB-funded energy sector projects yet, the LARP developed for the Dushanbe-Lolazor Power Transmission Line in southern Tajikistan required significant discussions and negotiations with relevant stakeholders and agreement on cash for the land compensation methodology proposed by ADB. “*Barki Tojik*” frequently uses consulting companies which hire individual consultants as needed to carry out socio-economic assessments, but this is an irregular and inefficient way to build institutional capacity and understanding of LAR issues.
- (iii) **Ministry of Labor and Social Protection (MLSP)** works with migrants/resettled persons both internal and external. The Government Resolution¹¹ regulates procedures for internal voluntary resettlement. The resolution is issued in relation to reclamation of abandoned lands mainly in southern and central Tajikistan as well as to cope with environmental resettlement caused by soil degradation in some areas of the country. It is the only regulatory document that, in a relatively systemic though limited way, describes resettlement procedures.
- (iv) **Ministry of Finance** is responsible for allocating the compensation budget for government projects. It basically performs well when and if the compensation budget is considered and included during the annual budgeting process. The Ministry of Finance acts based on the request coming from an EA and transfers funds to the EA for compensation based on the supporting documents, i.e. endorsed LAR related documents. However, EAs/projects usually face problems getting funds allocated for LAR mid-year because the budget does not have any assigned funding for LAR even if the project is included in strategic documents. Therefore, capacity building is needed either through synergy

¹¹Government Resolution 467, dated 1.10.2008.

between the RETA and ongoing Public Finance initiatives (World Bank, EU, DFID) or as targeted awareness raising for Ministry of Finance to discuss the workable options to solve the issue.

- (v) **Directorate of Flooding Area of Roghun Hydro Power Plant (DFA HPP):** In order to address a national priority with a significant LAR impact, the government set up an ad hoc unit in 2009 for resettling the population affected by the Roghun HPP flooding area. While this decree is specific for the Roghun HPP, it addresses LAR issues in a comprehensive manner by assigning LAR related tasks to various state institutions and local governments. The DFA is a state institution but separate from the State joint stock company responsible for construction of the dam. The DFA has many responsibilities from preparing the technical specifications and contracting technical surveys to LAR related activities such as preparing statements for allocation of land plots, obtaining approvals for demolition of structures, resettlement of the APs, and compensating APs for their houses, equipment, crops, fruit trees and other property. The government hired an international company to assist with the socio-economic assessment. It reportedly even paid partial compensation to the APs and relocated some of them to new plots. However, the work has not been transparent because neither the LARP nor any other related documents reflecting the details of the resettlement or compensation package have been shared with the public or other parties.

I. ADB experience managing projects with LAR in Tajikistan

34. Due to the significant amount of investment needed and planned for infrastructure and natural resource projects in Tajikistan, LAR safeguards are a recurring theme within the International Finance Institution (IFI) and donor community. The government has limited experience and resources to address the issue in a comprehensive manner, leading to an inefficient and time consuming process for both the lender/donor and the government.

35. Nevertheless, over the past year there has been important progress made which opens the way for a more standardized approach that will meet safeguard requirements for future investment projects. The particular case of the Dushanbe-Uzbek border road¹² is significant because, for the first time, compensation was paid in cash for assets, including both agricultural and urban land. Due to the strict interpretation of the Constitutional provision that all land is owned by the State, many officials argue that land does not have a value and, therefore, land users do not qualify for (cash) compensation. Furthermore, in land-for-land compensation, there is limited acknowledgement that the location of the original plot should be a significant factor in deciding the alternative land to be used for compensation or re-location.¹³

36. Under the Dushanbe-Uzbek border project, the ADB safeguards team effectively argued that land-for-land compensation was not appropriate due to the small amount of land affected by the road widening. It was ultimately agreed with the government that APs would receive cash compensation for the loss of their use rights. The question then became how to assess the value. In general, compensation is based on the value of the land rights and improvements to the land. Calculating equivalent compensation in Tajikistan is difficult since there is no (formal) land market and people have only use rights rather than full ownership.

37. Ultimately, it was agreed to compensate land use right holders of agricultural land with 5 times the annual gross harvest. Fruit trees were compensated at two times the gross annual harvest and residential/urban land was compensated using the annual fee paid (tax) multiplied by 25 years. This formula sets an important precedent for Tajikistan, in recognizing the value of land use rights and in attempting to adopt a more market based approach to valuation.

¹²Tajikistan: CAREC Corridor 3 (Dushanbe-Uzbekistan Border) Improvement Project ADB Grant: 42052-TAJ(SF).

¹³There are numerous examples in Dushanbe where property owners have been involuntarily relocated from the centre of the city to the remote edges, and provided with less land or less valuable housing than the original residence under the argument that land is owned by the State and of no value to the calculation made for the immovable property (house/building/ construction) owner.

38. The experience from the Dushanbe-Uzbek border road project set important precedents with respect to LAR policy and processes, especially for valuation. In order to benefit in the future from these important achievements, there should be an agreement between ADB and the government that formalizes these precedents. The best option is to develop and approve a national Land Acquisition and Resettlement Framework (LARF) which will then be used in all future ADB projects with LAR.

II. COMPARATIVE ANALYSIS OF ADB SAFEGUARD POLICY AND NATIONAL LEGISLATION PRINCIPLES

39. This chapter analyzes the ADB and the country specific principles for LAR. The objective is to identify inconsistencies or gaps that may complicate LARP preparation/implementation and indicate the available solutions.

A. National Regulatory Framework and Entitlements for LAR

1. General provisions

40. The policy framework for the project is based on the Legislation of Tajikistan, the ADB Safeguards Policy Statement of 2009 and Operations Manual F1 on Safeguards (2010). In the legislation of Tajikistan, there is no special law or policy which regulates the issues of resettlement and/or land acquisition or expropriation of rights to land and immovable property for state or public needs. Moreover, there is no separate law which completely provides norms and mechanisms for the determination of a full, fair, market value of land. The key legislative acts regulating land management relations and the ownership rights to immovable properties in Tajikistan are the following:

- (i) Constitution of Tajikistan (1994, as amended in 2003)¹⁴
- (ii) Land Code (as amended in 2008)¹⁵
- (iii) Civil Code (as amended in 2007)¹⁶
- (iv) Regulation “about compensation of losses to the land users and losses of agricultural products” (approved by the Decree of Government of Tajikistan, 2000. № 515)¹⁷

41. The Constitution of Tajikistan, the Land Code of Tajikistan and the Civil Code of Tajikistan are the fundamental laws on which the legislation is based. The applicable Laws, regulations and policies are briefly summarized below. Based on the analysis of the applicable laws and policies and ADB’s Safeguards requirement, project related LAR principles have been adopted.

2. Policy and Legal Framework for Land Acquisition and Resettlement

42. The framework for the project is based on the ADB requirements on Resettlement as embedded in the Safeguards Policy Statement (2009) and on the ADB Operations Manual F1 on the Safeguard Policy Statement (2010), the Constitution of Tajikistan, and the Land Code of Tajikistan. Where differences exist between local law and ADB policies and practices, the resettlement for this project will be resolved in favor of the latter.

3. Tajikistan Constitution, law/regulation on land acquisition, resettlement and compensation

43. The Constitution of Tajikistan is the main legal document guaranteeing citizen’s rights. Article 13 states “land, bowels of the earth, water, airspace, animal and vegetable kingdoms, and other natural resources are owned by the state, and the state guarantees their effective use in the interests of the people.” Further, Article 12 states “the economy of Tajikistan is based on various forms of ownership. The state will guarantee freedom of economic activity, entrepreneurship, equality of rights, and the protection of all forms of ownership, including private ownership.” The legal basis for state acquisition of private property for public works is outlined in Article 32 which states “...the property of an individual is taken away only on the basis of

¹⁴ Constitution, November 6, 1994, as amended on 22 June 2003.

¹⁵ Land Code, as amended by N 498 from December 12, 1997., N 746 from May 14_ 1999, N 15 from May 12 2001, N 23 from February 28 , 2004. From 28.07.2006 №199, from 5.01.2008 №357, from 18.06.2008 №405.

¹⁶ Civil Code, as amended by August 6, 2001, N 41: May 3 2002 №5, March 1 2005, N 85; April 29, 2006 №180, May 12, 2007.№247).

¹⁷ Approved by the Decree of Government of Tajikistan, December 30, 2000. №515.

the law, with the consent of the owner and to meet the requirements of the state and society, and with the state paying full compensation.”

44. Compensation for land withdrawal and other impacts due to public interest projects are regulated also by other legislative acts governing land withdrawal, land allotment and impacts compensation to the citizens are the Land Code RT (LC), the Civil Code RT (CC), and various normative-legal acts. Based on these laws, the withdrawal/allotment of lands and resettlement is based on the following applicable principles:

- (i) land users have a right to be reimbursed for losses due to withdrawal of right of land use for state and public needs (Article 41,43 LC).
- (ii) at termination of the rights of property then property will be assessed on the basis of its market value (Article 265 CC).
- (iii) land user or user of other registered rights associated with land should be noticed in written about land withdrawal by local land management authority not later than one year before coming land withdrawal procedure (Article 40.LC).
- (iv) If according to International agreements which are recognized by Tajikistan other rules are established than those which are specified in the Land Code of Tajikistan, so the rules of international agreements will be accepted (Article 105, LC).

45. The LC, 1997 is the core legal document with regards to land acquisition. It has been updated a few times since then, most recently in 2004. Article 2 of LC states that there is no “private ownership of land, “land is an exclusive ownership of the State... [but]... guarantees its effective use in the interests of its citizens. However, in Articles 10-14, the LC outlines land title as being of long-term, short-term, and inherited land use entitlement.

46. Article 24 of LC describes the allocation of land for non-agricultural purposes, and provides that when choosing a suitable location for such land uses, land not suitable for agricultural should be favoured. The same principle is stressed by Article 29 LC, which discourages the use of high-yielding agricultural land for non-agricultural use. However, Article 29 also allows for allocation, and sequestering of agricultural land for “other very important State objects”.

47. Article 31 of LC provides that land acquisition for non-agricultural public purposes is subject to the award of compensation: “terms of allocating land plots to new land users for non-agricultural needs must envisage compensation of all losses related to confiscation of land plots from former land users, as well as compensation of losses in agricultural production.” Article 19 of LC states the rights of land users, including clauses allowing a land use rights holder the “waiving voluntarily land plot” or “indemnifying for [compensating] for losses” as mentioned in Article 41 of LC. This article sets out the basis for compensation: “Fully reimbursed shall be losses, including loss of profit, caused by:

- (i) sequestration of land for non-agricultural purposes;
- (ii) restriction of land users' rights;
- (iii) deterioration of land quality as the result of activities of other land users.

48. In the case of this project, this could be interpreted as compensation for permanent loss of land use and crops, and complying with (ii) and (iii) above, the need to compensate for temporary use of land and disturbance of cropping patterns for construction purposes.

49. Calculation of the compensation due for land acquisition is contained in Articles 43 and 44, which state “actual prices of equipment and materials as well as prices of assets and other works existing either at the moment of confiscation of a land plot and drafting of the report shall be applied. When calculating losses of agricultural production and forestry, the standard costs for bringing into cultivation virgin lands and improve them so that they reach the maximum level of production obtained on the sequestered lands shall be applied. Disputes about the amount of compensation for damages caused and losses of agricultural production and forestry shall be settled in court.”

50. The guarantee of land users' rights is further emphasized in Article 48 which states "confiscation of land plots from natural persons for state and public needs can be made after:

- (i) having been assigned of another equivalent land plot;
- (ii) having been constructed on a new place of housing, industrial and other structures equivalent in their purpose instead of plots sequestered, in the established order by enterprises, institutions and organizations for which the land plot was assigned;
- (iii) having paid full compensation for all other losses, including profit loss. (Article 41 & 42 of LC)

51. Compensation for land, which belongs to the State and is allocated and essentially leased to users by each *hukumat*, is divided on a 40–60% basis between the *hukumat*, which will no longer derive an income from taxes and leases for that portion of the land going forward, and the land user, who suffers a reduction in his/her income generating asset. The compensation received by the *hukumat* is used for the management, construction, and maintenance of local infrastructure. The land user also gets compensation for lost crops based on the average of the 4 years previous to the impact.

B. ADB Safeguard Requirements

52. The current ADB policy on involuntary resettlement is elaborated in the ADB's Safeguard Policy Statement of 2009 (SPS) and specifically in Appendix 2 "Safeguard Requirements 2: Involuntary Resettlement." (see Appendix 2)

1. SPS Key Principles and its Structure

53. The overarching objectives of the SPS are "avoid involuntary resettlement wherever possible; minimize involuntary resettlement by exploring project and design alternatives; enhance, or at least restore, the livelihoods of all displaced persons in real terms relative to pre-project levels; and improve the standards of living of the displaced poor and other vulnerable groups."

54. The scope of the SPS includes all projects entailing physical displacement (relocation, loss of residential land, or loss of shelter) and economic displacement (loss of land, assets, access to assets, income sources or means of livelihoods) as a result of (i) involuntary acquisition of land, or (ii) involuntary restrictions on land use or on access to legally designated parks and protected areas. It covers them whether such losses and involuntary restrictions are full or partial, permanent or temporary

55. The implementation of SPS requirements is required for all projects as long as there is either physical or economic displacement or both. The requirements apply regardless of the numbers of affected parties involved and of whether losses are full or partial, permanent or temporary¹⁸. The SPS also covers "involuntary resettlement actions conducted by the borrower/client in anticipation of ADB support".

56. The SPS includes 12 key policy principles for involuntary resettlement (IR). These can be summarized as follows:

- (i) Screen the project early on to identify past, present, and future involuntary resettlement impacts and risks. Determine the scope of resettlement planning through a survey and/or census of displaced persons, including a gender analysis, specifically related to resettlement impacts and risks.
- (ii) Carry out meaningful consultations with affected persons, host communities, and concerned nongovernment organizations. Inform all displaced persons of their entitlements and resettlement options. Ensure their participation in planning, implementation, and monitoring and evaluation of resettlement programs. Pay particular attention to the needs of vulnerable groups, especially those

¹⁸A benchmark of 200 severely affected individuals (losing more than 10% of their income or to be relocated) is however considered to define the impacts significance of a project. When the severely affected individuals are less than 200 the project is classified as "B" for impacts severity, when they are more than 200 the project will be classified as "A" for impacts severity. Independent monitoring of LARP implementation is compulsory for "A" projects.

below the poverty line, the landless, the elderly, women and children, and Indigenous Peoples, and those without legal title to land, and ensure their participation in consultations. Establish a grievance redress mechanism to receive and facilitate resolution of the affected persons' concerns. Support the social and cultural institutions of displaced persons and their host population. Where involuntary resettlement impacts and risks are highly complex and sensitive, compensation and resettlement decisions should be preceded by a social preparation phase.

- (iii) Improve, or at least restore, the livelihoods of all displaced persons through (i) land-based resettlement strategies when affected livelihoods are land based where possible or cash compensation at replacement value for land when the loss of land does not undermine livelihoods, (ii) prompt replacement of assets with access to assets of equal or higher value, (iii) prompt compensation at full replacement cost for assets that cannot be restored, and (iv) additional revenues and services through benefit sharing schemes where possible.
- (iv) Provide physically and economically displaced persons with needed assistance, including the following: (i) if there is relocation, secured tenure to relocation land, better housing at resettlement sites with comparable access to employment and production opportunities, integration of resettled persons economically and socially into their host communities, and extension of project benefits to host communities; (ii) transitional support and development assistance, such as land development, credit facilities, training, or employment opportunities; and (iii) civic infrastructure and community services, as required.
- (v) Improve the standards of living of the displaced poor and other vulnerable groups, including women, to at least national minimum standards. In rural areas provide them with legal and affordable access to land and resources, and in urban areas provide them with appropriate income sources and legal and affordable access to adequate housing.
- (vi) Develop procedures in a transparent, consistent, and equitable manner if land acquisition is through negotiated settlement to ensure that those people who enter into negotiated settlements will maintain the same or better income and livelihood status.
- (vii) Ensure that displaced persons without titles to land or any recognizable legal rights to land are eligible for resettlement assistance and compensation for loss of non-land assets.
- (viii) Prepare a resettlement plan elaborating on displaced persons' entitlements, the income and livelihood restoration strategy, institutional arrangements, monitoring and reporting framework, budget, and time-bound implementation schedule.
- (ix) Disclose a draft resettlement plan, including documentation of the consultation process in a timely manner, before project appraisal, in an accessible place and a form and language(s) understandable to affected persons and other stakeholders. Disclose the final resettlement plan and its updates to affected persons and other stakeholders.
- (x) Conceive and execute involuntary resettlement as part of a development project or program. Include the full costs of resettlement in the presentation of project's costs and benefits. For a project with significant involuntary resettlement impacts, consider implementing the involuntary resettlement component of the project as a stand-alone operation.
- (xi) Pay compensation and provide other resettlement entitlements before physical or economic displacement. Implement the resettlement plan under close supervision throughout project implementation.
- (xii) Monitor and assess resettlement outcomes, their impacts on the standards of living of displaced persons, and whether the objectives of the resettlement plan have been achieved by taking into account the baseline conditions and the results of resettlement monitoring. Disclose monitoring reports.

57. The SPS distinguishes three categories of affected persons, with variable compensation needs:

- (i) **Legal APs:** APs with formal legal rights to land lost in its entirety or in part;
- (ii) **Legalizable APs:** APs without formal legal rights to land lost in its entirety or part but who have claims to such lands that are recognized or are recognizable under national law; and
- (iii) **Non-legal APs:** APs who have neither formal legal rights nor recognized/recognizable claims to land lost in its entirety or in part.

58. For categories (i) and (ii) above, borrowers are expected to provide compensation at full replacement cost for lost land, structures, land improvements and relocation assistance. For APs in category (iii) (informal settlers), the borrower/client is expected to compensate all assets other than land (i.e. buildings, trees, crops, businesses) at full replacement cost. The risk of opportunistic encroachment on land designated for acquisition by the project is managed through a cut-off date.

59. Compensation for lost land may be in form of replacement land (preferable if feasible) or in cash. When “land for land” compensation is not feasible cash compensation can be valued based on market rates or, in absence of land markets, through other methods (i.e. land productivity or reproduction costs)¹⁹. Independently from the valuation method used compensation is to be provided at “full replacement cost”. This includes:

- (i) transaction costs,
- (ii) interest accrued,
- (iii) transitional and restoration costs, and
- (iv) other applicable payments, if any.

60. Compensation for all other assets is to be provided in cash at replacement cost without deductions for amortization, salvaged materials and transaction costs.

61. The SPS 2009 importantly establishes that where land acquisition is achieved without the exercise of the right of Eminent Domain through negotiated settlements (sale based on free buyer and free seller conditions) SR2 does not apply. In such cases, ADB requires, however, that negotiation be properly documented by an independent third party.

2. Resettlement Planning and Documentation

62. The IR policy defined by the SPS envisions the following sequence of activities:

- (i) Preparation of a Social Impact Assessment (SIA) involving: a) a detailed measurement survey of all impacts; b) a detailed Census of all affected parties and affected persons and; c) a socio-economic surveys to be based on a statistical sample of the APs detailing the livelihood situation in project affected areas;
- (ii) A review of the local laws and regulations and an assessment of the impacts and risks against these laws and regulations.
- (iii) Preparation of a Resettlement Plan²⁰ addressing all SPS requirements. Based on the SIA and on consultation with affected persons, the RP should provide:
 - a. An executive summary;
 - b. A Project description;
 - c. A precise assessment of land acquisition and resettlement;
 - d. A detailed census of the affected parties and persons;
 - e. A socio-economic profile of the affected population;
 - f. A clear asset valuation methodology;
 - g. The results of information disclosure and consultation;

¹⁹Based on the SPS (Appendix 2, para 10) in absence of well established land markets land compensation will be provided based on a thorough study of the land transaction, use, cultivation and productivity patterns in project areas. One method accepted by ADB in such a situations would be to provide land compensation based on land productivity or land reproduction costs.”

²⁰To avoid misunderstandings in the Central Asia Region the document is called Land Acquisition and Resettlement Plan

- h. A description of the grievance redress mechanism;
- i. A description of the administrative organization and responsibilities for LAR;
- j. A description of the local legal framework and an analysis of gaps against key ADB requirements;
- k. A description of entitlements, including an entitlement matrix;
- l. A description of proposed measures for relocation of settlements and housing if needed;
- m. A description of proposed measures for livelihood restoration;
- n. The budget and funding plan, implementation arrangements and schedule,
- o. A description of monitoring and reporting provisions;

63. For Multi-tranche Financial Facilities (MFF) loans and for sector investment loans (loans with multiple sub-projects) involving resettlement impacts, the borrower/client is expected to agree with ADB before project approval on a Resettlement Framework²¹ (RF) to guide subproject selection, screening and categorization, social and environmental assessment, and preparation and implementation of Resettlement Plans for subprojects that may require them.

3. Resettlement Plan Preparation, Loan Approval and Project implementation

64. The Preparation of a Resettlement Plan approved by the Borrower and disclosed to the APs is a condition for loan appraisal (in case of single project loans) or for the approval of a project tranche (in case of MFFs). Ideally a Resettlement Plan meeting loan/MFF tranche requirements should be a fully finalized document. However when due to specific project circumstances the document is not final (i.e. when the project design has allowed only a preliminary definition of the project impacts footprint) loan appraisal or MFF tranches can be approved by ADB based on an acceptable Draft Resettlement Plan²². The final "implementation-ready" Resettlement Plan will be completed and later implemented during the early loan administration phases and in any event prior to land taking and the start of civil works. Based on the practice of the Central and Western Asia Regional Department an acceptable draft is a document based on actual DMS surveys on the ground of all impacts expected based on the available design.

4. ADB Public Communications Policy 2012

65. The ADB Public Communications Policy (PCP, 2011) is relevant to land acquisition and resettlement issues in so far as it establishes principles applicable to disclosure of information, and specifically to disclosure of resettlement planning documentation. These principles apply to both the borrower and the ADB itself and are the following:

- (i) ADB shall post (PCP, para 52) on its website the following documents submitted by the borrower and/or client:
- (ii) a draft resettlement plan and/or resettlement framework, endorsed by the borrower and/or client before appraisal;
- (iii) the final resettlement plan endorsed by the borrower and/or client after the census of affected persons has been completed;
- (iv) a new or updated resettlement plan, and a corrective action plan, if any, prepared during project implementation, upon receipt by ADB; and
- (v) the resettlement monitoring reports, upon receipt by ADB.

²¹ Or Land Acquisition and Resettlement Framework (LARF)

²² It is assumed that to be acceptable a draft resettlement plan tentative as it may be needs to quantify all impacts and AP knowable on the score of the level of design available at the time of its preparation and based on field surveys and AP consultation. An acceptable draft also needs to provide at least a realistic assessment of the compensation budget based on replacement cost/market rates. Finally an acceptable draft will also have to clearly identify in its text the improvements needed to fully meet the SPs requirements and to ensure the final implementability of the LARP compensation and rehabilitation program.

66. In practice, clients are expected to disclose documentation locally (PCP, para. 47 and 129), in the local language and in a culturally appropriate manner (which may require tools other than the sheer disclosure of reports). The full ADB Public Communications Policy is available at www.adb.org/sites/default/files/pcp-2011.pdf.

5. Due Diligence for Multi Tranche Financial Facilities

67. One lending instrument widely used by ADB is the Multi-tranche Financing Facility, in addition to usual Project finance. For these financial instruments, the requirements include the establishment of a Land Acquisition and Resettlement Framework (LARF) and are as follows:

- (i) A LARF for the loan as a whole, including an outline of the social impact assessment and census methodologies, to be agreed between borrower/client and ADB before loan appraisal.
- (ii) At least acceptable Resettlement Plans drafts for tranche 1 subprojects prepared and submitted by the borrower/client and reviewed by ADB prior to loan appraisal.
- (iii) At least acceptable Resettlement Plans for the subsequent tranches before tranche approval.

C. Gap Analysis

68. This section identifies the gaps between the IR requirements of the SPS and of Tajikistan law and regulations through a direct comparison. The exercise takes into consideration both formal provisions and the way these provisions are applied in practice by ADB and the Government. This section also proposes both the action needed to reconcile the ADB and the Tajikistan position and the level of the action needed.

1. Eligibility

69. Tajikistan Law and ADB policy are consistent regarding the compensation entitlements of Legal APs. The local LAR system however does not distinguish between legalizable and not legalizable APs which are lumped together into a non-legal category which in principle are not eligible to compensation. The SPS, instead, mandates that legalizable APs are to be identified, legalized and then compensated and that non-legalizable APs are to be identified and compensated for all non-land impacts (including buildings, trees, crops and income).

Reconciliation needs. *Reconciliation needed both for principle and application to allow the full compensation of legalizable APs and of all non-land losses of non-legal APs. As this was already done for previous ADB projects it is hoped that this could be achieved without legal reform through a special Decree for ADB projects.*

2. Livelihood Rehabilitation

70. Tajikistan law does not define compensation as targeting the rehabilitation of the APs livelihood. It instead focuses on the mere compensation of directly measurable physical impacts/incomes. This may create some reconciliation problem with ADB requirements especially regarding the compensation of indirectly affected items that become unusable after impacts or for the provision of severe impacts, vulnerable APs and relocation allowances. The law, however, has enough span (i.e. it indicates that the poor, the disadvantaged and the people leaving in frontier areas require special attention during LAR) to allow an interpretation of its mandate to cover ADB requirements without the need of legal reform.

Reconciliation needs. *No reconciliation of principles needed as Tajikistan law is silent on the issue of rehabilitation. There are however application reconciliation needs for indirect impacts or livelihood rehabilitation for severely affected and vulnerable APs (see below 2.3.6).*

3. Compensation for Affected Assets

71. **Loss of land.** Until the promulgation of the Land law amendment of 2012 there was a notable difference between ADB policy and Tajik law with regard to compensation for loss of land. Tajik legislation does not allow for cash compensations and was possible only through the provision of replacement land. This provision was already modified in the case of the ADB-financed Dushanbe-Uzbek border road project for which land for land compensation was not possible. Because of lack of official land markets in Tajikistan, in that case land was valued based on productivity based on 5 times the annual production value of annual crops land and 3 times the annual production value of orchard land. In the case of residential plots which have no intrinsic productive value the compensation was provided based on the annual tax value multiplied by 25 years. This innovation set an important precedent that contributed to signal to the Government the necessity to allow Land compensation in cash and to facilitate the 2012 amendment of the land law. However, the solution followed for the project mentioned above is to be considered preliminary and extensive work is to be done to establish sustainable land valuation mechanisms fitting both agricultural and residential land.

Reconciliation needs. *As the 2012 amendment to the Land Code specifies that land can now be compensated in cash at market rate no policy reconciliation is needed. Application reconciliation is however needed to establish sustainable mechanisms for land valuation.*

72. **Loss of structures.** There is a difference between ADB Policy and national legislation in the approach used to value the loss of structures/buildings. While the former requires compensation at full replacement cost the latter mandates compensation at market value that is with deductions for depreciation, salvaged materials and transaction costs.

Reconciliation needs. *Reconciliation is needed both for policy and application to establish mechanisms allowing the valuation at full replacement cost. The reconciliation was already obtained for previous ADB-financed projects but needs to be mainstreamed by Decree.*

73. **Loss of business.** For business losses Tajikistan legislation does not contradict ADB Policy²³ as all losses (including incomes lost, opportunity costs and liabilities to the third parties) are to be compensated. The law however is silent on what is to be done to calculate the losses especially in case of permanent stoppage. Regarding this ADB practice would be to compensate the lost income based on tax records for the number of months of business stoppage up to a maximum of 12 months (this maximum corresponds to the number of months to be paid for permanent stoppage). For non-registered business the compensation methodology used by ADB would follow the same parameters but would be based on maximum non-taxable income.

Reconciliation needs. *No need of Policy reconciliation. However application reconciliation is needed to fix a compensation methodology for both registered and unregistered businesses and for permanent impacts. Application reconciliation has been already reconciled on a case by case basis for previous projects*

74. **Loss of trees.** The legislation deal only with the compensation of trees as a public asset and is based both for wood and productive trees on their reproduction and maintenance cost. The legislation however is silent about valuing trees as a private asset and often trees are not compensated to individuals. ADB mandates that non-productive trees are to be compensated based either on reproduction cost or value of their wood volume while productive trees are to be based the income lost after their cutting.

Reconciliation needs. *Reconciliation is needed both for policy and application to ensure that trees are compensated and to establish a clear methodology to value productive and non-productive trees based on the SPS requirements. This was already done on project by project basis in previous ADB financed projects but will have to be mainstreamed through the promulgation of a special decree for ADB projects.*

²³ Civil Code Part 1, Article 14 (1) and (2), dated 8 May 1996, as amended 25 February 2013

75. **Loss of crops.** Both ADB and Government require compensation at market rate of the income that would have been derived from the affected crops.

Reconciliation needs. *No reconciliation needed.*

76. **Loss of jobs.** ADB policy and Tajikistan law principles for compensating employment losses are non-consistent. The former mandates that sufficient reparation is to be provided to employees affected by the forced acquisition of a plot of land so as to ensure their economic rehabilitation. Usually this principle is applied in practice by providing a number monthly salaries sufficient to provide the needed livelihood buffer to the affected employees. Tajikistan law instead does not envisage any reparation for lost jobs on the side of a public project proponent. Based on the labor code a severance pay is to be provided to the affected employees by the job provider. This clashes with ADB policy principles or policy application practice for three reasons: a) the need to rehabilitate job losses is caused by a project not by decisions of the job provider and thus is to be given by the project sponsor; b) the reparation mandated by the labor code may be insufficient to guarantee the level of rehabilitation required by ADB policy standards and c) to ensure smooth LARP implementation and ensure that the affected employees are swiftly rehabilitated reparation is to be directly disbursed to them rather than be reimbursed to the job provider.

Reconciliation needs. *Both principle and application reconciliation is needed to allow the provision of job loss reparation allowances by the project sponsor, define better allowance computation so as to ensure full rehabilitation of permanent and temporary impacts and allow direct disbursement to the affected employees. This has been already achieved in practice in previous ADB projects so it is hoped that reconciliation does not need legal reform but only the promulgation of a special decree for ADB projects.*

4. Due Diligence Procedural Mechanisms

77. **Prior notification:** Information disclosure is addressed in the Land Code²⁴ and meets the requirements of ADB policy. The land user and user of other rights to the land must be notified in writing by the local authorities at least one year prior to the withdrawal of the land. It also requires publication of LAR decisions in state-owned newspapers, in both Tajik and Russian, within 5 days after the decision is made. The same applies for urban planning documents, master plans, design drawings etc. related to the LAR which should be displayed publicly within 10 days from approval of technical documents and up until the end of the construction. In practice, unfortunately, this article is neglected or implemented in a very limited scope. Disclosure of LAR related information and the technical documentation is generally non-transparent and ineffective as it is almost impossible for an ordinary person to obtain any data about the LAR process or specific designs.

Reconciliation needs. *Policy or application reconciliation is not necessary. However much more consistency is needed to implement correctly the requirements of the law and ADB policy. Specific instructions on this issue will have to be included in the planning documents prepared for ADB projects.*

78. **Public consultations:** Other than the formal notification requirements described in the point above, there is no requirement for the government to discuss project designs or possible LAR options with APs. Local government authorities continue to deal with issues of AP information and consultation based on the formalistic requirements that were practiced during the Soviet times.

Reconciliation needs. *No Policy reconciliation is needed as the law is silent on the issue. Application reconciliation is however needed through a special decree for ADB projects.*

79. **Grievance Redress Mechanisms:** Although the Land Code provides for appeals to the court and the Code of Civil Procedure defines the procedural aspects for court appeals there is no other mechanism for project based GRM.

²⁴ Land Code, article 40

Reconciliation needs. *Policy or application reconciliation is needed to ensure the establishment of a mechanisms fitting the SPS and ensuring that the needed process is followed consistently. Already reconciled for previous projects but to be mainstreamed through a special decree for ADB projects.*

80. **Payment of compensation prior to property acquisition.** As with ADB Policy Tajik law specifically states that AP compensation is to be paid in full before an affected property is acquired for a project.

Reconciliation needs. *Policy or application reconciliation is not necessary.*

5. Resettlement Planning

81. **LARP Preparation.** ADB requires a broad LAR planning process with the early scoping of potential LAR impacts and the timely preparation of a LARP inclusive of a thorough impacts assessment, a clear description of compensation entitlements, income/livelihood restoration strategies, institutional arrangements, monitoring schemes, public consultation records, budget, and the LAR implementation schedule. Tajikistan legislation does not provide for development of LARPs at all, although there are 'migration plans' for internal voluntary resettlement. Resettlement as such is understood as physical relocation only. There is no policy or other permanent legal framework regulating resettlement in detail. The issue is dealt with on an ad-hoc basis by government resolutions for an individual project. The law provides for a land-based compensation strategy and compensation of all the other impacts like lost profit etc. and emphasizes compensation at market price, but without the regulations or instructions necessary to standardize the process.

Reconciliation needs. *The format of the LARP differs from the format of official documents compiled by the LAR commission and accepted by the EA and the Government but the agreed standard format for a LARP has been already agreed with the EAs implementing ADB-financed projects.*

82. **Detailed measurement survey (DMS).** The LAR Commission requires impact surveys comparable to the ADB DMS. However, due to lack of instructions, the implementation of the surveys lacks consistency and accuracy and may be less detailed than the standard ADB DMS. Valuation issues especially need standardization.

Reconciliation needs. *There is no reconciliation issue as such, as there are no regulatory provisions or accepted protocol for conducting a measurement survey. However, the process and standards can be set in the national LARF as a way to bridge the gap in the national system.*

83. **AP Census.** Tajik legislation and application are similar to ADB policy: AP census identifies all APs by residence or locality and establishes a list of legitimate beneficiaries based on land use title and house ownership status.

Reconciliation needs. *There is no reconciliation issue.*

84. **Socio-economic survey (SES).** Conducting a separate SES is neither required under Tajikistan legislation nor carried out during the LAR process. This gap between local legislation and practice and ADB Policy is related to the fact that these in-depth surveys were not required during the Soviet period and the fact that the Government does not view these surveys as determinant since it does not differentiate between vulnerable and non-vulnerable APs (this distinction is possible only through a thorough socio-economic assessment of the APs).

Reconciliation needs. *There is no reconciliation issue as such, as there are no regulatory provisions or accepted protocol for conducting SES. However, the precedent to conduct the SES in ADB projects has already been set and can be standardized in the national LARF.*

85. **Valuation survey.** There is a difference in both the policy and application for valuation surveys. The critical difference is that market based land valuation is not possible because land is in exclusive state-ownership and cannot be transacted. Also, there is no clear provision in law or practice for covering costs associated with termination of ownership rights such as cadastral surveys and re-registration.

Reconciliation needs. *The main point for reconciliation is the need to standardize the cash for land compensation option provided by the amended Land Code is approved and a sustainable methodology to calculate market value compensation. In addition, the valuation process must take into account the costs of registration, re-survey of land, updating cadastral data, permits etc. New, updated valuation methodologies and trained valuers are also needed to implement market based valuation.*

86. **Monitoring and Evaluation (M&E):** ADB requirements for M&E depend on category of project but requires due diligence and other M&E actions throughout project development and implementation. In Tajikistan there are no legal requirements related to Monitoring and Evaluation (M&E). Firstly, LAR plans are not developed, as mentioned earlier. Secondly, the term “monitoring and evaluation” itself is very rarely used to follow-up on the progress of a project. There are no any requirements that would oblige implementing parties to submit an M&E report to the Government, except in cases when it is stipulated by a specific document to do so. Thus, for instance, no implementation report was required by the Government on ADB funded Dushanbe-Uzbek Border road project, except following the ADB reporting requirements. However, there is scheduled regular audit, conducted by the Anticorruption Agency under the Ministry of Economy and Trade, that checks compliance of the project, mainly with the financial requirements established by local legislation. For some significant government funded projects the project Resolution specifically often requires the implementing agency to report semi-annually on the implementation progress. This type of ad hoc approach deviates from best practice and leads to neglecting the importance of M&E as an efficient tool to ensure compliance with legal and regulatory requirements both locally and internationally.

Reconciliation needs. *As the issue is not regulated by the law no reconciliation is needed. The issue has been already resolved in the case of previous ADB projects.*

6. Special Assistance to Vulnerable, Severely Affected and Resettling APs

87. Unlike the ADB Policy that requires special assistance to vulnerable APs, Tajikistan legislation makes no distinction between vulnerable and other categories of APs when deciding on the rehabilitation package. Nor is any special consideration given under Tajik law to vulnerable APs (the poor, women-headed households or families with multiple children) during the LAR process. There are no national standards to assess poverty and the ‘poverty level’ is assessed through externally funded initiatives. The Law “On minimal consumption basket”, which would allow for food-based poverty assessment is still pending review and endorsement. This would help in identifying vulnerable APs and if well developed, in defining special assistance to those APs. The relocation allowance required by ADB policy is not mandated by national law although some precedent is provided by the Roghun HPP Decree which includes some relocation assistance.

Reconciliation needs. *Policy and application reconciliation is needed to ensure the delivery of these allowances. Reconciliation already obtained in previous ADB projects but to be mainstreamed through a special Decree for ADB projects.*

D. Summary and Conclusion

88. All issues signaled in the above analysis and requiring reconciliation of policy or policy application listed in this chapter have been already reconciled on a project by project basis in previous ADB Projects. It is thus expected that the mainstreaming of the ADB policy requirements may not require legal reform and may be dealt with decrees. To simplify Government approval of mainstreamed provisions it is recommended that these are not approved one by one but through the wholesale approval of an integrated framework gathering all of them (see chapter 4 section on the Country Land Acquisition and Resettlement Framework.) Table 2.1 schematizes the findings of this chapter’s analysis. In the table the SPS policy principles are accompanied by the way they are actually applied in Tajikistan in the course of ADB projects.

Table 2.1 Comparison of LAR provisions between ADB Policy and national legislation

Dimensions	ADB SPS (2009) and ADB practice for application *	Tajikistan	Reconciliation
1. Eligibility	APs with legal rights receive compensation for land and non-land assets	APs with legal/registered land use rights or occupants are eligible for compensation \ rehabilitation.	Same in principle and application.
	APs with legalizable rights receive compensation for land and non-land assets.	APs with legalizable rights receive compensation for the land and non-land assets	Same in principle and application
	APs with no legal rights receive compensation for the assets/improvements	APs who use the land illegally are not entitled to any compensation (for land or non-land assets)	Different in principle but sometimes the same in application (for non-land assets).
2. Livelihood rehabilitation standards	ADB Policy requires improvement in the standards for AP livelihood	No such a provision exists in the national law	Different in policy but application depends on the Government's good will, since it is the ultimate decision-maker for the whole compensation package. For ADB projects Government accepts requirements and endorses them in the entitlement matrix on a project by project basis.
3. Compensation	A. Loss of land. Replacement land as the preferred option of the compensation. Failing availability of the land, the cash compensation at full market cost.	A. Permanent loss of land. Replacement land but also cash compensation possible based on the new Land Code (LC). Valuation mechanisms to be defined.	A. Same in principle. Application mechanisms temporarily reconciled for ADB projects but to be better defined on a sustainable basis by a Decree.
	B. Loss of structures. Cash compensation for the lost structures at full replacement cost irrespective of the legal status of the land and free of depreciation, transaction costs and other deductions.	B. Loss of structures. Cash compensation for the lost structures at market cost with depreciation or value of salvaged materials sometimes included in the calculation.	B. Same in principle and not in application. Application already reconciled in previous projects but to be mainstreamed by a Decree for ADB projects.

Dimensions	ADB SPS (2009) and ADB practice for application *	Tajikistan	Reconciliation
	<p>C. Loss of the business. Actual losses reimbursement plus business restart costs. Application based on tax declaration/similar documents for business stoppage period. Without tax declaration /similar documents, based on maximum non-taxable salary.</p>	<p>C. Business Losses. Compensation in cash at market value for legal businesses but the methodology is not specified. Non-registered businesses not entitled to compensation</p>	<p>C. Different in principle (non-legal businesses and in application (all businesses. Already reconciled for previous projects but mainstreamed reconciliation <i>is needed</i> through a Decree for ADB projects.</p>
	<p>D. Loss of trees. Irrespective of legal land occupancy status compensation at market cost based for application on tree type/ wood volume for wood trees and based on income lost (x tree type x market value of 1 year income x full production years lost).</p>	<p>D. Loss of trees. In general private trees are not compensated although the wood cut is left to the APs.</p>	<p>D. Different in principle and in application. Already reconciled in previous projects but to be better defined and mainstreamed by a Decree for ADB projects.</p>
	<p>E. Loss of crops. Cash compensation at market price for the gross crop value of an expected harvest.</p>	<p>E. Loss of crops. Cash compensation at market price for all incurred land preparation activities and gross crop value of an expected value.</p>	<p>E. Same in principles and application.</p>
	<p>F. Loss of jobs. Indemnity of lost income so as to ensure AP rehabilitation. Specific arrangements to be agreed with borrowers for permanent impacts.</p>	<p>F. Loss of jobs. Severance pay provided by employer.</p>	<p>F. Different in principle and application already adjusted for previous ADB projects but to be mainstreamed for through a Decree for ADB Projects to ensure direct payment by Government to APs</p>
4. Procedural mechanisms	<p>A. Prior notification. Timely notice on land acquisition needed.</p>	<p>A. Prior notification. Written notification prior to withdrawal (acquisition) of land.</p>	<p>A. Same.</p>
	<p>B. Information disclosure. LAR documents should be disclosed in a timely manner and in a language accessible to local population.</p>	<p>B. Information disclosure. LAR decisions to be published in national media in Russian and Tajik within 5 days from approval.</p>	<p>B. Same in principle, different in application to ensure full LARP disclosure. Already reconciled for ADB projects but to be mainstreamed through technical instructions.</p>

Dimensions	ADB SPS (2009) and ADB practice for application *	Tajikistan	Reconciliation
	<p>C. Public consultation. Meaningful public consultations are to be held with the APs. APs should be informed about their entitlements and options, as well as resettlement alternatives</p>	<p>C. Public consultation. There are no requirements to inform directly the APs about their entitlements and resettlement options as such.</p>	<p>C. Different in principle and application. Already reconciled for ADB projects but to be mainstreamed through technical instructions.</p>
	<p>D. GRM should be established for each projects, and information on GRM should be communicated to APs.</p>	<p>D. GRM. No project specific GRMs exists. Disagreements are resolved by appeal to court.</p>	<p>D. Different in principle and application. Reconciled for ADB projects but to be mainstreamed through technical instructions.</p>
<p>5. Prior acquisition</p>	<p>A. Property can be acquired only after full compensation is paid to the APs</p>	<p>A. Property can be acquired only after full compensation is paid to the APs</p>	<p>A. Same in principle and application.</p>
<p>6. Resettlement Planning, assessment and valuation of project impacts</p>	<p>A. LARP Preparation: includes compensation entitlements, income/livelihood restoration strategy, monitoring plan, budget and implementation schedule, based on sound impact/valuation surveys as detailed below.</p> <p>i. Detailed measurement survey (DMS). Measures quantitatively impacts for each affected property.</p> <p>ii. AP Census (including review of legal status). Identifies all APs and establishes a list of legitimate beneficiaries.</p> <p>iii. Socio-economic survey. Includes information on AP's disaggregated by age, sex, family size, education, occupation, income source.</p>	<p>A. LARP Prep: There are no requirements to prepare LARP or pursue measures to restore the livelihoods of APs to pre-project level. A series of activities similar to those mandated by the SPS are however required as follows:</p> <p>i. DMS. Measures all impacts in quantitative terms.</p> <p>ii. AP Census: AP Identification. Identifies all APs by residence or locality and establishes a list of legitimate beneficiaries based on land title and house ownership status.</p> <p>iii. Socio-economic survey. No comparable requirements exist</p>	<p>A. Different in principle and application. Already reconciled for ADB projects through technical instructions.</p> <p>i. Same in principle and application. Valuation mechanisms need to be updated.</p> <p>ii. Same in principle and application</p> <p>iii. Different in principle and application but already reconciled for ADB projects.</p>

Dimensions	ADB SPS (2009) and ADB practice for application *	Tajikistan	Reconciliation
	<p>iv. Valuation survey</p> <p>a) Land: If land market exist based on a survey of recent land transactions. In absence of land market info, based on land productivity and income.</p> <p>b) Buildings Replacement cost of materials, labor and transport and special features of the building/structure without discounting for depreciation, salvaged materials and transaction costs.</p> <p>c) Trees/crops. Based on the methodology detailed in section 3.</p> <p>v. M&E: M&E depends on category of project, external for Category A and internal for Category B projects.</p>	<p>iv. Valuation survey.</p> <p>a) Land: Mechanisms for land valuation to be defined.</p> <p>b) Buildings/structures: Market value of materials, labor and transport and special building features but discounted for depreciation, salvage materials, and transaction costs.</p> <p>c) Trees/crops. Where applicable Based on the methodology detailed in section 3.</p> <p>v. M&E: There are no M&E requirements in national legislation</p>	<p>iv. Different</p> <p>a) Application and valuation method to be developed and mainstreamed.</p> <p>b) Different in application. Application already reconciled for previous projects but to be mainstreamed through a Decree for ADB projects.</p> <p>c) Same in principle, but different in application. Already reconciled for previous projects but to be mainstreamed through a Decree for ADB projects.</p> <p>v. M&E: Different in policy but reconciled once LARP is endorsed for ADB projects.</p>
7. Special assistance to vulnerable severely affected and relocating APs	<p>A. Vulnerable APs should be identified and special assistance should be provided to them so as to help their restoration or improvement of pre-project level of livelihoods</p> <p>B. Resettlement assistance. APs to be resettled receive relocation assistance covering transport and transitional period livelihood costs.</p>	<p>A. Vulnerable APs: No special consideration is required for vulnerable APs; no distinction is made between APs when deciding on the compensation or rehabilitation package</p> <p>B. Resettlement assistance No special consideration is required for resettled APs. However the package depends on Government's decision regarding transitional period allowance.</p>	<p>A. Critically different in principle and application. For ADB projects reconciled by endorsing the entitlement matrix and the LARP.</p> <p>B. Critically different in principle and application. For ADB projects reconciled by endorsing the entitlement matrix and the LARP.</p>

* As applied in ADB Resettlement Plans in Tajikistan

III. COMPARATIVE ANALYSIS OF ADB AND COUNTRY SPECIFIC PROCESSES FOR LAR

89. This chapter contrasts LAR processing tasks under the usual ADB project preparation cycle with those under the standard Tajikistan project preparation cycle. This comparison reveals procedural contradictions and capacity gaps within and across the ADB and the Tajikistan system. The analysis then highlights points where greater cross-system coordination or enhancing action is needed proposing ad hoc recommendations to improve processing efficiency and time frames. Tables 3.1 and 3.2 below outline the main stepping stones of the ADB and of the Tajikistan LAR planning/implementation systems.

A. ADB Project Preparation and Implementation Cycle

90. The provision of an ADB single-project or Multi-Tranche Financial Facility (MFF) loan to a borrower is usually preceded by a Project Preparation Technical Assistance (PPTA) which is financed by an ADB grant supporting the main preparation activities for the project or the Tranche 1 projects²⁵. These activities include engineering design, economic analysis, environmental studies and LARP preparation.

91. The preparation/implementation of a Loan or of tranche 1 of an MFF is divided in two main phases: a) Loan/tranche processing and b) loan/tranche administration and proceeds as detailed below:

(i) **Loan/tranche 1 processing.** This phase enfolds in three successive steps:

- a. *Concept paper/PPTA preparation* entailing the project concept paper preparation and approval, PPTA planning and the consultants hiring ;
- b. *PPTA implementation* entailing actual project design and related tasks and the elaboration of final or draft project designs and LARP(s).) If these are approved as acceptable at the Management Review Meeting (MRM) recommendation is made to proceed with loan preparation.
- c. *Loan preparation proper* entailing the planning/structuring of the loan. This step is concluded with loan negotiations and then loan approval.

(ii) **Loan Administration.** This phase entails the actual implementation of the project. It includes the bidding process for hiring the contractors and then civil works. However, as often detailed project design and LARP preparation are not fully finished at the time of loan approval, this phase may also start with project design and LARP finalization. When this is the case design and LARP preparation will continue under loan finances and the physical implementation of the project(s) will start only once design and the other preparatory activities (including LARP implementation) are completed.

92. The process detailed above applies in particular to the preparation of projects under a single project loan or under the first tranche of an MFF. For MFF tranches after the first, the process is slightly different as those tranches are technically under the MFF Administration phase and thus are prepared from the start with loan finances without an initial PPTA by the MFF consultants. The structure of the process is however similar and is marked by a preparation and an implementation phase. The first entails the preparation of the tranche project(s) and relative LARP(s) and their approval by ADB as a condition to sign the Periodic Financial Request (PFR) for the tranche. The second entails the implementation of the LARP(s) and then of the project(s) civil works. Also in this case if the PFR was approved based on draft designs and LARP(s) the implementation phase will start with project design and LARP finalization.

93. Independently from the loan type or MFF tranche number considered the significant points of the ADB project cycle pertaining to LAR are that: i) project design and LAR planning are carried out in parallel; ii) effective LAR planning and approval of at least of an acceptable draft LARP based on field surveys (see footnote 11) is a condition to loan appraisal and; iii) the finalization of an implementation-ready LARP and its

²⁵ The projects under second or third MFF tranches are prepared by consultants hired under the loan.

full execution is a condition to start physical civil works (at least in the project areas with impacts.) The above is synthesized in table 3.1 below.

Table 3.1 ADB process for LAR Planning and Implementation

Steps		Main LAR tasks
1	Loan Processing:: Project Concept/PPTA preparation:	- Project Concept approved - TOR for project design/ LAR are prepared - Consultants are hired.
2	Loan Processing:: PPTA Implementation/Project Preparation	- Engineering design, - Detailed LAR impact/ assessment,; AP Census; Socio-economic survey -valuation survey, - LARP drafting and finalization.
3	Management Review Meeting (MRM)	- LARP approved as a final document or at least as an advanced draft.
4	Loan Processing: Loan Processing Proper	- If funds are available Draft LARP finalization continues. If finalized at this stage the LARP is approved by loan negotiations/approval.
5	Loan Approval	- The loan is approved
6	Loan Administration	- If LARP was not finalized earlier its finalization continues under loan funds. - LARP implementation is carried out.
7	Civil works implementation	- LAR implementation due diligence After the successful implementation of the LARP civil works can start

B. Country Specific Project Preparation and Implementation Cycle

94. The thorough review of the country LAR processing system carried for this CA has posed a particular challenge since the regulatory basis governing the national project processing model is limited to only a few legal provisions. These legal provisions are not supported by systematic implementing rules or associated instructions detailing all steps necessary to prepare a project. In light of this situation, the national project processing model had to be elaborated based on a review of various laws and regulations, archival project documents, in-depth interviews with representatives of EAs or other state agencies, and observation of on-going projects. With adaptations, the scheme that finally emerged still reflects the basic structure of the old Soviet planning system and is practically applied with a range of variation in the execution of specific steps depending on project type. EA and project situations. The National LAR process scheme identified is divided in four phases and entails the following steps:

(i) **Completion of design or at least establishment of impacts footprint:**

- Design may be fully finalized or may be only based on a feasibility study identifying the basic impacts foot print. It appears that not all Execution Agencies have the same understanding of the level of design required to launch this process.

(ii) **Preparatory steps for LAR tasks and Public Interest Decree (about 2-3 months):**

- The EA submits a specific application to the Government to start LAR preparation,
- The approval of the application is sanctioned by a decree.
- A Cadastral survey of the properties to be alienated, an assessment of their values based on cadastral values and a review of the APs based on local public registers are carried out by MBTI, the State Architect office and the Land Committee.
- A "Government Decree on Recognising the Exclusive Public Interest for the Project is then promulgated and published.

- A LAR Commission inclusive of MBTI, the State Architect Office and the Land Committee is established by another Decree.
- (iii) **Field identification, description and valuation of affected properties (about 3 months):**
- The public interest Decree is notified to the APs
 - The data collected during the desk survey are verified in the field by the LAR Commission. If there are variations the affected plots and buildings are re-measured.
 - A protocol for each AP detailing the impacts identified through the Cadastral/documentary survey (essentially land, buildings and possibly businesses) is prepared, discussed with the relevant AP and then signed by this latter.
 - The affected assets in each protocol are valued²⁶.
 - Based on the valuation, the EA prepares the overall final budget of the compensation exercise and submits them to the Government for review.
- (iv) **Compensation Delivery (about 3 months, longer in case of expropriations)**
- Once Description Protocols and valuation reports are available/accepted by the EA they are submitted to the Government for budget approval/clearance of compensation delivery. This will be sanctioned by one more Decree (for ADB projects this Decree includes also LARP approval).
 - The compensation finances are allocated by the Ministry of Finance (MOF)
 - Compensation contracts are prepared and then presented to each AP for signature²⁷.
 - APs who have signed the contracts are compensated immediately thereof.
 - APs who have not signed the contracts are slated for expropriation. In this case the compensation amounts will be deposited at the relevant court.
- (v) **Start of Civil Works**
- After the APs are compensated or expropriation is approved by the court the land can be taken and civil works begin.

95. The basic feature of the local LAR processing system synthesized above and schematized in table 3.2 below, is that LAR planning is carried out as a subsidiary task only after a project is fully designed. It is also to be noted that now-a-days this approach to LAR processing is rarely if never followed in the preparation of complex infrastructure projects with significant LAR impacts which are financed through Multilateral or bilateral loans.

Table 3.2: Tajikistan Process for LAR Planning and Implementation

Steps	Main LAR Tasks
Project Design	Decree Establishing Project, EA and project preparation funds Project Design
Preliminary LAR Activities	Desk surveys Promulgation of eminent domain Decree Establishment by Decree of the LAR Commission.
Preparation of LAR documents and valuation	Verification in the field of the impacts cadastral data. Preparation of impacts protocols in consultation with the APs Finalization and notification of protocols Impacts valuation

²⁶Asset valuation of buildings and houses is done by the State Unitary Enterprise on Pricing/Valuation under the State Investment and State Property Management Committee. Until the land law amendment of 2012 no land valuation was done.

²⁷In this occasion the contracts will be discussed with the APs and to reach an agreement some minor modification of the compensation due may be negotiated

Approval of LAR Documents	Review and Validation of LAR budgets by relevant agencies Promulgation of the LAR implementation Decree (inclusive of LAR budgets). In the case of ADB projects this Decree is equated with the decree approving the LARP.
Preparation of LAR implementation	Allocation of LAR finances Compensation contracts signing Identification and initiation of expropriation cases and.
LAR implementation	Payment of compensation to the APs
Civil Works implementation	

C. Comparative analysis

96. The short outline of the ADB and Tajikistan LAR processing steps detailed above shows a fundamental disconnect between the ADB and national practice. The Tajikistan system is still structured on a model postponing LAR tasks to the completion of project design. The ADB system, instead, envisions LAR preparation and project design as parallel tasks. If matched for comparison purposes against each other the two systems can be adapted to each other with difficulty. For this a compromised processing system new for the country is required. This compromised approach has already informally emerged in the preparation of ADB-financed projects through a reorganization of the various steps implied by the national system into the structure of action predicated by the ADB system. This new system however, still requires fine-tuning, codification in national instructions and broad mainstreaming.

97. It is important to note that the new LAR processing system has matured through a difficult process of adaptation involving mistakes, task implementation delays and substantial misunderstandings between ADB and EAs officers. The new approach was formally adopted by ADB and Government during PPTA negotiations without a parallel understanding of local requirements and clear understanding of its consequences for the implementation of specific tasks. Without this prior understanding, the initial execution of the new scheme clashed with un-reflected assumptions of ADB and EA officers, the former tending to take for granted the ADB approach and discounting its novelty for the EAs and the latter instinctively orienting their action based on known national practices and struggling to make the adaptations needed.

98. The above situation is rather usual in situations where real change requires not only formal but also practice modifications. While formal change can be obtained by changing regulations and instructions, practical change requires instead a trial- and- error process taking place as things unfold. Many issues detailed in this section have now been solved for EAs which have already prepared ADB loans. The same issues, however, can repeat with new EAs partnering with ADB anew. In these cases, the repetition of the situation described above may be partly avoided if there is more consciousness of the various issues entailed by the merging of the ADB and national LAR planning systems.

D. General Issues

1. Project Design Level and Options for LARP Preparation

99. The possibility to prepare a LARP and in particular initiate the impacts surveys is logically contingent on the prior availability of a project design identifying the impacts area (at least a tentative project alignment for linear projects, or a tentative location of basic project components for nonlinear projects). The level of detail of the prior design is directly correlated with the level of detail that can be achieved for the LARP prepared during a PPTA as a condition to project appraisal. Based on the overall ADB experience and on the assumption that the average time for a PPTA is six months the situation is as follows:

- (i) In the very rare case of a PPTAs starting with a fully finished detailed design (this so far has never occurred in Tajikistan) it may be expected that the LARP presented at MRM is a final document. Such a document will require only the allocation of compensation budget and other pre-implementation actions to be implementation-ready.
- (ii) In case a PPTA starts with a finished Feasibility Study/preliminary design it may be expected that the LARP prepared for MRM appraisal can be at least an advanced draft document based on a sufficiently detailed design to mark the final project footprint. Such a LARP may include all the basic impacts and APs information but may require better specification in the baseline, some fine-tuning of the compensation delivery modalities and minor changes in the impacts/AP baseline due to adaptations in the final project footprint elaborated during the execution of detailed design.
- (iii) In case a PPTA starts without a prior Feasibility study it may be expected that the LARP prepared for MRM will be only a very initial document based on a tentative project footprint that may substantially change after detailed design is finished. Most often such a draft LARP will be based on a combination of desk and field data, may omit some basic information and will require extensive rewriting and modifications before it is finalized.

100. Leaving alone case one which has never occurred in Tajikistan, it is important to elaborate on the specific LAR preparation predicaments of case two and three. Based on experience, for case two the delivery of an advanced draft LARP within a period of six months will require very intense efforts but it may be assumed as achievable at least with EAs who have already prepared ADB-financed projects. This is possible as long as: i) the Feasibility study/preliminary design is approved by the Government before the consultants are fielded (if this happens before it may be difficult for them to enter the properties to be surveyed or engage local governments; ii) the work to be done and the compensation policy expectations are clear to EA and consultants, and; iii) design and LARP preparation tasks are properly coordinated (for possible improvements on this see para. 120 below).

101. Case three is instead much more complex and entails substantial challenges even when a project involves an EA with experience on the preparation of ADB projects. As most of the standard PPTA period is likely to be used to select the final project option and prepare the preliminary design limited time will be left for field surveys and for the analysis of the impacts/AP baseline. Due to time compression the LARPs presented for appraisal may barely meet the minimal approval conditions for project appraisal and at times may require that approval is granted conditionally to basic improvements in the text and to the execution of final tasks such as Government Approval or disclosure. To avoid these situations ADB and the Government may want to carefully consider the possibility to extend the PPTA period of two to three months. Crucially important will also be to avoid time wastes by ensuring quick Government approval of the Feasibility Study and by fielding the bulk²⁸ of the consultants' LAR team after that is done.

2. Finalization of Draft LARP

102. As noted in section 3.1, the draft LARPs prepared for project appraisal purposes are usually finalized after Loan approval under Loan funds (this would be scenario B in table 3.3). This practice entails complications and leads to delays in LARP finalization between 1.5 and 2 years which exceed the time of work interruption between appraisal and Loan administration and the time to technically finish the work. Additional time is in fact spent for consultants hiring and mobilization, EA and consultant training (during the interval between appraisal and loan administration several members of the EA team may have changed and the consultants team will be a new one) and to restart anew many interrupted tasks. This could be avoided if it was possible to rely on the experience built by the original EA team and by the PPTA consultants and to maintain the early PPTA momentum (this would be scenario A in table 3.3). It is thus advisable that at the time of PPTA preparation ADB considers the option of financing PPTAs covering the entire period between

²⁸ Minimal LAR capacity may have to be fielded during the preparation of the Feasibility study when LARF preparation is needed or to provide assistance during project identification and during the early cadastral surveys carried out by the Government

PPTA inception and Loan approval. This would substantially increase the possibility that by Loan approval a LARP is fully finalized.

E. Step by Step Issues along LAR implementation process for ADB-financed projects

103. The following section provides a comparative analysis of the practical merging of ADB and Tajikistan LAR processing systems in the preparation of projects in Tajikistan. This exercise highlights coordination gaps and improvement needs and recommends solutions. The results of the analysis are summarized in Table 3.3 at the end of the chapter.

1. PPTA Processing Issues

104. **Inadequate LAR planning, resource assessment and scheduling work.** Usually, during this phase no dedicated LAR preparation activity is carried out by ADB in the field. Beside a few inputs from the Resettlement specialists at headquarters, the PPTA paper and the consultants TOR are elaborated based on generic models/schedules without basic knowledge of the specific LAR situation of the project to come.

Proposed action: *To properly launch project preparation activities it is recommended that:*

- (i) *The ADB Safeguards Team (ST) either from headquarters or Resident Mission is fielded at Reconnaissance Mission as a standard procedure. During the mission the ST specialist will: i.) visit project areas; ii.) based on SPS requirements and in consultation with the EA, assess the likely impacts magnitude; iii.) identify major LARP preparation issues and approaches needed; d) based on an analysis of the information available (including whether a Feasibility study is available or not) prepare a preliminary LARP preparation scenario and a schedule inclusive of Government tasks (see para.73 below), and; e) Coach the EA on the ADB LAR requirements and agree on a LAR processing plan to be adopted so as to fit both ADB and national requirements and ensure its smooth execution. The above will be summarized in a LAR planning brief which will inform the preparation of PPTA paper, consultants TOR and borrower agreement. For difficult cases as projects implemented by an EA new to ADB procedures, ADB may also hire a staff consultant to advise the EA and the Project Team during the PPTA processing phase.*
- (ii) *Given the difficulty to finalize a LARP within the PPTA period the PPTA Paper and the consultants TOR include financial and schedule provisions fitting cases where the PPTA covers also Feasibility Study preparation and, if possible, extending the consultants work up to loan negotiations or Loan approval (see para. 121 below for more detail).*

105. **Need of greater alignment of Borrower's and ADB's Project/LAR processing system.** Greater understanding of Borrower's LAR preparation procedures is needed to avoid contradictions between the Country and the ADB project/LAR preparation system. In this respect particular attention is to be paid to the fact that under the Tajikistan Country System the full initiation of actual design and LAR surveys in the field is contingent upon:

- (i) The promulgation of a Project Decree starting impact assessment tasks. Decree preparation may take time and requires extensive background activities by the Government.
- (ii) The execution of desk-surveys defining: a) LAR impacts based on cadastral data; b) affected assets values based on cadastral values, and c) full AP lists based on local government records.
- (iii) The promulgation of a Decree establishing the project as a public interest task under the right of Eminent domain.

106. Lack of attention in having these three milestones in place before PPTAs activities start may cause difficult project processing situations. Current project experience shows that this is particularly so if the LAR specialists under the PPTA consultants are fielded before the two Decrees are signed and the preliminary investigations are carried out. When this happens, project design and LAR surveys may be slowed down or

even idle and may be carried out unsatisfactorily due to administrative hurdles, potential AP resistance or lack of overall task-coordination²⁹.

Proposed Action: *It is recommended that in the future ADB schedules PPTA activities so as to condition the fielding of PPTA design surveyors and LAR specialists to the execution of the desk surveys and the promulgation of the Eminent Domain Decree. This will allow a smooth and time-efficient execution of the surveys and allow the full use of the consultants' time once they are fielded.*

2. PPTA Implementation Issues

107. **Lack of experience of LAR with ADB requirements and PPTA consultants with Tajikistan practice.** The EAs may not be well acquainted with national LAR practice. Given the key roles of the commission and the consultants this reciprocal lack of experience may result in serious complications during LAR preparation and implementation.

Proposed Action: *It is recommended that during the Inception Mission and before the beginning of field surveys and other core LAR activities the following takes place:*

- (i) *EA and consultants plan the action to come together and are well Coached both on SPS and Tajikistan LAR provisions and LAR planning mechanisms for ADB projects.*
- (ii) *Discuss possible alignment modifications to avoid impacts*
- (iii) *EA, consultants and ADB agree on a scheduled LAR preparation plan reflecting both ADB and Government requirements and detailing the action to be carried out with each concerned local government, and;*
- (iv) *Local Governments are informed of the plan.*
- (v) *To carry out this work the ST specialists at headquarters or at least the LAR consultants at RM will have to be mobilized to assist. The scheduled action plan will be prepared by the PPTA consultants and included in the inception report.*

108. **Planning and Coordination of design and LAR tasks.** The execution of effective LAR impacts and valuation surveys necessarily follows the prior definition of a final project alignment and the identification of a well-defined impacts corridor. To avoid that design excessively delays LAR surveys, the former is to be planned as much as possible in function of the latter and what is to be taken as the impact area is to be clearly defined³⁰. For instance in this initial project preparation phase, design plans should selectively focus on the essential investigations needed to establish a clear project footprint (other dimensions of design work may follow later the LAR surveys are concluded). In parallel it would be important to agree from the start on whether the corridor of impacts is to be taken as the entire project right-of way or only as the area directly affected by civil works.

109. In addition, to make the best use of PPTA time, design tasks may need to be planned first in areas with **impacts** and may need to be coordinated with LAR activities based on a staggered process. This staggered process would involve the completion of design in small batches and the execution of LAR surveys for each batch immediately thereafter. Further time saving can be obtained if the design and LAR work is simultaneously carried out in different project sections by different teams of surveyors.

Proposed Action: *The scheduled Action Plan proposed in para 118c above should:*

- (i) *Define area of impacts and design level needed to fix the alignment;*
- (ii) *Phase project schedules in two phases one in areas without and with LAR and prioritize design work to be done in these latter;*
- (iii) *Subdivide design work in batches finalizable in 2 weeks;*
- (iv) *Identify the optimal number of design and LAR team needed, and;*
- (v) *Schedule LAR surveys in each batch immediately after design is finished.*

²⁹ In principle, without a Project Decree surveyors or valuers cannot enter private plots without the permission of their owners.

³⁰,e. whether the impacts area is the whole right-of-way or only the corridor of impacts.

3. Loan Processing Issues

110. **Establishment of additional capacity and finances for a rapid finalization of the LARP during the Loan Processing phase.** Based on the general ADB project preparation experience the time and financial allocation for PPTA studies is often insufficient to fully finalize the LARP by the PPTA's end and by the Management Review Meeting (MRM). When this happens, SPS requirements for MRM approval are satisfied by using a preliminary LARP draft. The draft LARP will then be finalized later under Project finances after the loan is approved and before the start of land acquisition and civil works. This scheduling format is required to expedite Loan Approval but leads to a time-gap in project preparation activities that causes very significant delays to the overall completion of project preparation.

***Proposed Action:** These delays could be avoided if the period between MRM and Loan Approval (usually about 6 months) could be utilized to further LARP preparation and, if possible, finalize it by Loan Approval. As already flagged in para 115b, it is thus recommended that the PPTA Paper and the consultants TOR prepare during the PPTA processing phase include financial and schedule provisions for possible extensions of the consultants work up to loan negotiations or Loan Approval. To ensure continuity with the project preparation activities prepared during the PPTA administration phase it is also recommended that the Government keeps mobilized the EA LAR team, the LAR Commission and the concerned local governments.*

4. Loan Administration Issues

111. **Eventual Continuation of LAR Preparation during Loan Administration.** In case the LARP has not been finalized in the preceding phases, LAR preparation will continue in this phase (see: 3.1 and 3.5.2) through capacity (often provided by the Project Supervision Consultants team) financed under Loan proceedings. Experience indicates that the transfer of LAR preparation tasks from one consultant to another is particularly delicate and needs careful preparation to avoid delays and complications.

***Proposed Action:** To launch the work of the new consultants and ensure continuity it is recommended that ADB takes action similar those taken during PPTA processing and administration. In particular it is recommended that:*

- (i) Before the consultants are hired the ST reviews the LAR preparation status for the project, prepares detailed TOR for the resettlement specialist and assists in the preparation of the contract as needed. In doing so the ST will have to ensure that the LAR capacity in the consultants' team is sufficient and available when needed.*
- (ii) After the consultants are mobilized the ST carries a mission to visit field sites and review with the consultants, to brief the new team on priorities and modalities of work and to ensure good understanding between them and the EA.*
- (iii) Before initiating their core tasks the consultants include in the inception report an action plan of the work to come detailing tasks, sequences and schedules and modalities of work including if necessary a detailed plan for survey execution.*

5. LARP Implementation Issues

112. **Planning Tasks.** Whether the LARP was finalized by Loan Approval or later during Loan Administration LARP implementation occurs regularly during Loan Administration. Most of the LARP implementation activities pertain to the Government but ADB needs to ensure proper planning and close supervision of the task to avoid delays and complications.

***Proposed Action:** Before the beginning of LARP implementation the Supervision Consultants prepare an action plan indicating in detail all tasks to be carried out, relative schedules, implementation issues and specific supporting action needed from EA or ADB.*

113. **Finalization of legalization.** Before the start of actual LARP implementation it is common to find that many legalizable APs have not yet taken the administrative action necessary to clear or reconstitute their property title on which legalization is predicated. There are several reasons for this: the APs have no money to pay for the land office fees, they do not understand the relevant administrative rules, or simply are too busy with their daily chores to take action. To avoid the significant complications and delays entailed by this situation special measures are needed.

***Proposed Action:** Although the legalization action is a primary responsibility of the APs, the EA will have to be proactive in assisting them in order to accelerate LAR". In this respect it is recommended that:*

- (i) The EA assigns one member of the LAR team to the task to: i) directly contact each AP with pending legalization issues, understand their case and provide advice on what is to be done; and ii) coordinate and intervene with the relevant administrative offices on the solution of the situation of each AP and on its establishment as a priority case.*
- (ii) The EA directly pays the administrative fees for each AP that has failed to do so (the fee will then be recovered from the APs as a deduction from their compensation dues). In case the EA has no finances to advance for this task ADB may want to consider the possibility of an advance from Project finances.*

114. **LARP Finances Allocation.** Based on the approval of the Final LARP Decree the EAs are authorized to request the LARP compensation funds to the Ministry of Finance (MOF). The actual funds allocation may take 2 months. The process, however, may be much longer and take more than one year if the requests of funds to MOF is made after the cut-off date for budget allocations in October. This bottleneck can be solved by requesting an exception to the rule to be supported by a Decree to be signed by the Prime Minister. This will expedite the delivery of funds but still requires significant time.

***Proposed Action:** In the eventuality that LARP approval is needed several months before the yearly budget allocation it is recommended that the EA includes in the LARP Decree also an authorization for the request of the out-of-budget funds. If this is not possible the EA can alternatively prepare simultaneously two decrees, one for LARP approval and the other for the extra budgetary allocation of money.*

115. **Complaints and grievances.** The SPS provides that for each project requiring LAR an *ad hoc* mechanism to swiftly and transparently handle complaints and grievances at the level of the affected communities is established. The implementation of this mechanism requires the development of: a) basic procedures and schedules to record and manage each complaint and set up an appeals system; b) the establishment of a team involving EA, local governments, representatives of the APs and civil society to evaluate and provide recommendations on each case and; c) the definition of logistic arrangements to facilitate travel to complainants EA personnel and other stakeholders. Although Tajikistan law requires that complaints and grievances issues are given proper attention so far no clear protocol for this exists. Different EAs deal with complaints and grievances with different levels of direct engagement and most often leave the ultimate solution of difficult cases to the formal court process. The overall result of this situation is that in the country there is little experience with the establishment of grievance resolution mechanisms requiring community participation dynamics and organizational efforts as those required by ADB.

***Proposed Action:** It is recommended that for each project ADB fields its own LAR specialists to train and assists EAs and consultants in the planning and establishment of Complaint resolution mechanisms fitting SPS requirements.*

116. **Note on issues relative to LARP preparation under Multi-Tranche Financial Facility (MFF) tranches.** The text above applies in general to the LARP preparation situation in MFF tranches following tranche one but with some major adaptation as detailed below:

- (i) As these tranches are completely prepared under loan finances by the MFF implementation consultants and do not entail a PPTA, the need to extend the duration PPTA to loan approval does not subsist. What is important in this case is that the borrowers pay the utmost attention to submit the PFR for ADB approval when the LARPs are fully finalized. As per ADB it is recommended that PFR endorsement is granted only when the LARPs are final.*

- (ii) As in the case of the first tranche, the MFF consultants responsible to prepare the LARPs will have to be thoroughly trained on the local project processing system and on national LAR principles and practice. However, since the consultants may be the same for different tranches the need to train them applies only for the first tranche they prepare. It is assumed that after that experience they will no longer need training. The same logic applies to the EA since it was already exposed to the merged ADB-local project processing system during tranche 1.

117. Table 3.3 next page refers to self-standing project loans or first MFF tranches. It summarizes the above text in reference to self-standing project loans by matching the LAR action required by the ADB and the Tajikistan system in the way they come together for ADB financed Projects. The table illustrates capacity and coordination issues emerging at each phase and step along the process.

Table 3.3: Comparison of the Harmonized ADB and the Tajikistan LAR Planning and Streamlining Needs

ADB			TAJ			Streamlining/improvement Needs
Task	LAR Activities	Wks	Tasks	LAR Activities	Wks	
Project concept and PPTA Processing			Launching of LAR Preparation			<p>Issues. Poor alignment of ADB/ local process tends to cause project delays and often leads to incomplete or poorly executed surveys which will require substantial updates after loan agreement.</p> <p>Proposed GOV Action: For effective PPTA scheduling and implementation, the tasks are to be done before start of PPTA administration and before the consultants are fielded.</p> <p>Proposed ADB Action: To speed up PPTA tasks it is recommended that the ST is fielded in this phase. ADB may also consider to:</p> <p>a) hire a LAR consultant (1 month) to assist EA;</p> <p>b) Add 2-3 months to PPTAs covering Feasibility Studies</p> <p>c) Extend PPTA finances/ capacity to Loan approval..</p> <p>d) f sufficient information is available and if needed prepare a LARF</p> <p>e) condition the fielding of the consultants to the execution of Government tasks.</p>
1. Reconnaissance mission	No field activity		Promulgation of Project and LAR Commission Decrees. so as to allow full field surveys.	-Establishment of LAR Commission/ engagement of Local Government -Preliminary impacts and compensation budget assessment based on cadastral data) - Establishment of an EA LAR Team - Analysis of relevant policy and regulatory frameworks		
2.PPTA concept paper preparation						
3.PPTA Concept paper review						
4. Consultants TOR/bidding						
5.PPTA Approval						
6. Consultant. Contract signed						
Average Total time A:		12			12	
Project Preparation			LAR Preparation			<p>Issues: To save time and improve PPTA effectiveness design and surveys need to be expedited and improved by better coordinating and planning</p>
1. Consultants mobilization		1	A well-staffed LAR team is fielded.	LAR Commission/ Local GOV mobilized in support to PPTA consultants		

2. Inception Mission	- ADB ST fielded - Consultants / EA prepare a time bound LAR Action Plan (APL).	2	.	EA and Commission assist Consultants in the preparation of the Action Plan	design-LAR tasks. Proposed Consultants Action: The consultants prepare an action plan to: - define design level needed for alignment; - split project in sections with-without LAR. - Plan several design teams working in parallel on different sections - phase design and project schedules in 2 phases for sections with- and without LAR.
3. LARP Preparation	ADB ST fielded - LARP Policy agreed with EA - LAR surveys done. AP Consultation Initial LARP text	16	Feasibility study Preparation:	a) LAR surveys carried out. EA team intensively coordinates with local GOV/relevant state agencies. - EA team/loc. GOV notifies APs and initiates legalization.	Issues. Except for very rare occasions design and surveys are not completed by this phase. MRM is thus approved based on a draft LARP based on field surveys and measurements but yet to be finalized. Proposed Government action. As full GOV approval of a LARP through a State Ordinance is time consuming It is recommended that when only a Draft LARP is available, approval is based on simplified and shortened procedures involving only the EA.
4. Technical review	ADB reviews Draft/Final LARP/ advises consultants	2		EA Team assists Consultants in LARP finalization and review	
5. Final/ Draft LARP completion	- Draft/Final LARP finalized				
6. Final/Draft LARP approval	-ADB approves Draft /Final LARP			- If LARP is final EA engages in the preparation of its validation and approval as follows: a) Positive legal opinion for valuation report is obtained b) LARP is agreed with line ministries c) LARP is circulated across Units of the GOV for approval d) GOV approves LARP through a Decree. -If the LARP is a Draft it is approved only by the EA (recommended)	
7. LARP Disclosure	-ADB discloses LARP on web			- Draft/Final LARP Disclosure in TAJ	
MRM					
Average Total Time B.		18			18

Loan Processing		LAR PREPARATION (continuation)		<p>Issues. Experience shows that usually at MRM: (a) design / LARPs are not final, (b) MRM approval is based on draft LARPs, and (c) project preparation is interrupted as PPTA funds are finished. LARP finalization is thus seriously delayed as is postponed to Loan Administration.</p> <p>Proposed ADB Action. This can be avoided if LARP finalization continues during loan processing and PPTA funds cover also this period. Based on this two LARP finalization scenarios are possible: - Scenario A: with PPTA funds up to loan approval - Scenario B: without additional PPTA funds.</p>	
SCENARIO A		Wks	SCENARIO A	Wks	<p>Issues: Need to simplify the process for the promulgation of State Ordinances and Decrees.</p> <p>Proposed GOV Action. The establishment of a shortened process for the preparation and approval of LARP is needed to maintain the proposed schedule.</p>
1. Appraisal Mission and Continuation of LARP preparation	- ADB ST fielded -Continuation of Design and LAR preparation.	20	Continuation of unfinished Project and LAR preparation tasks.	20	
2. LARP Review	- LARP reviewed (if final)		LARP reviewed (if final)		
3. LARP Approval	- ADB Approves LARP (if final) and waits for the Government approval	6	GOV approval of LARP (if final)	6	
4. Loan Negotiations					
5. Advanced procurement of Supervision Consultants			If the LARP is final - EA engages in the validation and approval of the LARP as follows: a) Positive legal opinion for valuation report is obtained b) LARP agreed with line ministries c) LARP is circulated across Units of the House of GOV for approval - House of GOV approves LARP through a State Ordinance signed by the Prime Minister.		

6. LARP Disclosure	If final the LARP in English is disclosed on ADB Web	2	Re-disclosure (if LARP is final)	Final LARP re-disclosed in Tajik	2	
6. Board Approval	No LARP activity	1	No LARP activity	No LARP activity	1	
7. Loan Signing		1			1	
8. Loan Effectiveness		1			1	
9. Supervision Consultants hired.		1			1	
Expected average total time C		32			32	
SCENARIO B		wks	SCENARIO B		wks	
1. Appraisal Mission	No field activity or only minor field activity		No field activity or only minor field activity	No field activity or only minor field activity		
Advanced procurement of Supervision consultant						
3. Loan Negotiations						
4. Board approval						
5. Loan signing						
6. Loan effectiveness						
7. Superv. Consultants hired						
Expected Average Total Time		22			22	
Loan Administration			LAR Preparation (continuation)			
Continuation of LARP Preparation(if needed)			Continuation of LARP Preparation (if needed)			
1. Consultants mobilization/ coaching and Loan Admin Mission	ADB fields the ST team, and coaches consultants on project issues.	3	Redeployment of EA team, LAR Commission and loc. Governments	EA assists in the coaching of the consultants	3	Issues: As above Proposed GOV Action. As above.
2. Continuation of Design and LARP finalization	-Design is finalized -LARP is finalized based on final ROW alignment.	18	Finalization of unfinished Project and LAR preparation tasks.	LAR Commission/ Local GOV mobilized in support to PPTA consultants	18	
	ADB reviews LARP	2		EA assist as need in the review	2	

4. LARP Approval	ADB approves Final LARP	6	GOV approval of Final LARP	- EA engages in preparation of the validation and approval of the Final LARP as follows: a) Positive legal opinion for valuation report is obtained b) LARP agreed with line ministries c) LARP circulated at the House of GOV for approval d) House of GOV approves LARP through a State Ordinance signed by the Prime Minister.	6	
LARP Disclosure	ADB discloses LARP on web	1	EA Disclosure	EA discloses LARP/Pamphlet	1	
Expected Average Total LARP Finalization time		30			30	
LARP Implementation and final Project chores (BOTH SCENARIO A AND B)			Execution of Impacts Compensation			
ADB Mission	The consultants prepare the LARP Implementation plan	2	Preparation of LAR Implementation	EA and LAR Commission assist in with LARP implementation plan preparation	2	Issues: LARP implementation could be expedited with more proactive engagement of EA and ADB. Proposed GOV Action: a) Proactively engage in the finalization of AP legalization and possibly advances payment of land registration fees; b) adapt work for the request of LAR funds to the schedule of LARP approval and national budget approval. Proposed ADB Action. a) Provide sufficient ST support in this phase; b) be prepared to advance finances to EA for land registration fees of legalizable APs and c) Finance the hiring and coach External Monitoring Agency.
Supervision consultants supervise LARP implementation	Routine supervision of LARP implementation and compensation delivery.. ADB hires External Monitoring Agency	18		Legalization is finalized	2	
				Request of LAR funds to MOF	4	
				Support to External Monitoring agency	6	
				Preparation of compensation		
				Contracts signing		
Initiation of Expropriation						
	Delivery of compensation		Compensation delivery	6		
Compliance report review/ no objection to start civil works.	ADB provides no objection letter.	2	Preparation of LAR Implementation report	EA prepares/submits report to Central Government.	2	
Expected Average Total LARP implementation time		22			2	

IV. OVERARCHING INSTITUTIONAL AND TECHNICAL ISSUES RELATED TO LAR

118. This chapter looks at overarching LAR issues which require capacity building interventions at the level of the Country system as a whole. Many of these issues have already emerged in Chapter two as gaps between the SPS 2009 and the National law requirements, or in Chapter three as factors hindering the LAR preparation and implementation for a project. In those two chapters specific recommendations were provided on how to reconcile each single policy gap and on how to address LAR complications within the project development process. In this chapter these and other issues are taken up at a general country level in view of establishing a systemic mainstreaming action.

A. Institutional, Administrative and Technical Capacity

119. As noted in previous chapters, LARP preparation is often hindered or slowed down by lack of experience of LAR Commission, EA, Local governments, valuers, consultants and NGOs with SPS 2009 or national regulatory requirements or with the project processing mechanisms merging ADB and local approaches to project planning. The situation mostly derive by the fact that SPS 2009 and law principles are not well integrated with clear application mechanisms and project preparation templates in a set of written instructions.

1. Government Capacity

120. In general, except for MOT, the capacity of both central and local government authorities for LAR is very low throughout the country. At the central level several units have been created within the MOT, MLSP and under the Presidential administration (for Roghun HPP) to deal with LAR. The MOT has perhaps the best capacity which has been built over the past 3-5 years through the work with ADB on the roads projects. Nevertheless, the capacity is associated with the ADB PIU and not necessarily with the MOT itself. This fact will require future consideration from the international community, including ADB, about how to make LAR capacity sustainable within government institutions. Discussions with the management of DFA of Roghun HPP, Barki Tojik and MLSP revealed that their staff also need intensive training in the area of LAR planning and implementation.

121. Local government district level authorities are responsible for the actual land acquisition process but the legal and regulatory basis for LAR is incomplete and the local government level staff have had no specialized training on land acquisition issues. While there are land professionals at the local level, through the offices of CLMG and Markaz Zamin staff, their knowledge and training has been aimed on the farm restructuring and registration of rights.

122. In the course of the preparation of ADB-financed projects in the past, LAR issues were slowed down and complicated by a generalized lack of understanding of the ADB policy and of its legal status for government action but also by the uneven understanding of the national LAR regulation at different levels of the State administration. It is expected that this may continue in the next future given the recent changes in fundamental aspects of the land code and given the lack of mainstreamed mechanisms to engage in land valuation. Another aspect that complicated LARP preparation and implementation was poor inter-agency coordination. It is expected that after the past experiences the communication between different Government offices will be fast and less problematic but some effort in this direction may be needed.

123. Finally it is to be noted that ownership and registration records in the country are at various levels of reliability. In urban areas the documents are more reliable and the MBTI staff has a reasonable understanding of the internal registration processes and requirements. However, the documents for agricultural land are less reliable and this is particularly true for what concerns the certificates for individual shareholders in dekhan farms that should be issued and registered as part of the farm reorganization process. While it is easy to identify who the farm owner or manager is on the farm Land Use Rights Certificate, the individual certificates have not been systematically issued or at least given to the shareholders. Identifying the individual right holders is important because of the superficial farm

reorganization process that took place, especially in the cotton growing areas, where women and other of the most vulnerable groups were excluded from the process or not informed of their rights. Making a general inquiry into the status of the individual certificates should be part of the process to identify the APs and in the M&E process, especially to make sure they are informed of the compensation and that they share the rights to the compensation rather than just the farm manager.

Proposed Capacity Building Activities: *In the future ADB may want to consider the following initiatives:*

- (i) The preparation of a LAR planning and implementation manual fitting aligned principles and implementation mechanisms/procedures for ADB projects. The manual will be translated in Tajik and distributed to and discussed with EAs, LAR Commissions, local Governments and Consultants at the start of PPTA activities for a project.*
- (ii) The preparation of training modules for Government agencies and local governments addressing the technical and administrative aspects of the various activities to be carried out during LARP implementation and preparation.*
- (iii) The implementation of the training with all relevant agencies in the Central Government and in the relevant local Governments affected by a project.*
- (iv) Support, if so requested by the Government, the development of land valuation methodologies and of implementation rules for the amended sections of the Land Codes³¹.*
- (v) Support, if so requested by the Government the establishment of a permanent LAR unit in the Land Committee and in key Line agencies such as MOT and MOE. Other institutions such as CLMG that play key roles in LAR should also have LAR units and professionals. The staff should receive permanent positions and receive appropriate training on LAR policy, legislation and procedures. While the creation of such permanent staff is beyond the responsibility or scope of ADB, it can nevertheless initiate dialogue with the government and encourage the creation of LAR professionals within the government structures. Once identified, the RETA project can support these professionals with training and materials to help them increase their knowledge and efficiency in identifying and implementing LAR in the project context.*
- (vi) Support land registration initiatives sponsored by other donors for the improvement of the legal and technical aspects of registration (farm restructuring, land surveying, IT development, mapping etc. This can be done by providing assistance to local governments affected by ADB projects to in the project may be able to provide practical assistance in preparing the land certificates for APs who do not have yet received them. This assistance could be in the form of training on the new simplified process and in the form of provision of equipment (computers, printers, paper. This work may require coordination with the land registration project of the World Bank.*

2. NGO Capacity

124. There are a limited number of active NGOs in the country that work closely on LAR or forced evictions. The NGOs that do so are mainly human rights/legal aid focused organizations that work directly with APs to

³¹While addressing the issue of legislative changes is beyond the scope of the RETA project, there are nevertheless some fundamental gaps/overlaps and other problems with the legal/regulatory and institutional frameworks for land acquisition, valuation, and land administration in general. It would be useful for the RETA team to participate in the already on-going initiatives for legal reform, in particular the Land Reform Working Group (WG) and the work on the Housing Code. Under these initiatives the various donor agencies are working together with the government on legal amendments to the Land Code, the Law on Dekhan Farms, the Law on Valuation and the Law on Land Reform. It would be useful for the RETA team to participate in the WG and to be able to provide comments on issues related to LAR, especially the provisions for land acquisition in the Land Code and the upcoming work

monitor implementation of LAR regulations and observance of APs rights, to follow-up any cases of violation of APs rights and to advocate for them. The NGOs however have limited information on GRM for ADB project

Proposed Capacity Building Activities: *In the future ADB may want to consider the preparation in consultation with a designated panel of National experts of the following:*

3. Technical Capacity

125. The consultants interviews and field visits for this CA indicated that the LAR surveys carried out for ADB projects, including both Detailed Measurement and socio-economic surveys, were not easily implemented and had to be either redone or revised several times before they could fit the requirements of ADB policy. To a great extent this was due to the fact that ADB and National practice differ substantially for what concerns surveys standards, methodologies and items to be surveyed (see chapter 2) and relates to the initial lack of understanding between ADB and EAs briefly described in chapter 3.

126. While ADB impacts assessment practice requires Detailed Measurement Surveys (DMS) to be carried out in the field and identifying/quantifying all affected items (including real-estate, non-real estate and non-physical impacts) National practice is principally based on desk surveys of Cadastral and local administration registries. These records allow only the identification of land and fixed buildings which are then reflected in the impact protocols but trees, crops or land improvements impacts are not identified or counted. Some field measurement of the impacts identified may be carried out but only as a secondary verification measure in case there are disagreements between the EA and the APs at the time of protocol signing.

127. Regarding AP identification, the ADB practice is to identify all Affected Parties being as they may legal, legalizable or non-legal. However, this is not feasible under the National survey practice which, being based only on official desk records, identifies only legal APs.

128. The differences between the ADB and national surveying systems have been bridged through *ad hoc* arrangements on a case to case basis to allow the processing of the first ADB-financed projects in the country. However many gaps persist and sustainable solutions are yet to be mainstreamed. To move in the direction of a well-established surveying system for ADB projects attention is to be put on the following:

- (i) **LAR surveys Methodology and recording formats:** A clear survey methodology leading to the identification of all impacts and APs in the field and improved measurement methods involving a better calibration of GPS data are to be established. In addition, standard formats/forms for DMS, census, socio-economic surveys and description protocols reflecting all compensation categories addressed by ADB policy have to be designed. The forms currently used change from project to project and at times miss some compensation category.
- (ii) **Logistics of LAR related surveys:** The Planning and organisation of surveys by consultants is to be improved. To implement LAR-related surveys, a well-coordinated multi-disciplinary team is required (measurement specialists, agronomists and sociologists) to allow seamless exchange of information and good team work integration. The experience of a recently implemented project (The Dushanbe- Uzbek Border Road) has showed that the coordination between these teams is not optimal, which creates real difficulties in data gathering and database developing processes. To assist the process, the PIUs should provide more support to consultants, as they know what the LAR requirements are, what kind of data is needed, and how the survey can be effectively organized. So far the PIUs have not been involved enough in surveys and LARP development processes as their tasks tended to be limited only to formal and administrative aspects of the LAR preparation process (for example preparing letters to regional and local governments with request to support the survey team), but this is not sufficient.
- (iii) Greater Coordination is also needed between EAs, PIUs and relevant State agencies. LAR related surveys are not the only sources of information for LARP development and to finalize a LARP other data should be provided and validated by different state agencies (see chapter 2). This information or eventual corrections of information already obtained (i.e post verification corrections to the description protocols) need to be provided or endorsed quickly. To ensure effective and prompt LAR

preparation action the EA/PIUs need to engage and coordinate more intensively with local governments and other relevant agencies.

Proposed Capacity Building Action: *In the future ADB may want to consider the following:*

- (i) *Preparation in consultation with a designated panel of National experts of the detailed instructions on how to carry out and manage the LAR surveys. These instructions would also include survey and protocol forms and may be prepared either as a self-standing document or as an appendix to the LARP preparation and implementation manual recommended above in section 4.1.1.*
- (ii) *Training modules addressing the technical and administrative aspects of the various activities to be carried out during LARP implementation and preparation.*

B. Valuation

129. Currently in Tajikistan does not exist an overarching regulatory basis to conduct property valuation for LAR subjected to the right of Eminent Domain. For what concerns land valuation this lack of capacity is directly related to the fact that until the end of 2012, when the Land Code was amended, land did not have monetized value and there were no official land markets. The absence of integrated valuation norms and standards for LAR purposes has resulted in the past in project preparation delays and has created substantial misunderstandings and complications when the SPS principles are to be applied for a project.

Proposed Capacity Building Activities: *To facilitate LAR planning and implementation in the country it is key that an appropriate land valuation method is established. This task is expected to be very difficult, will require time and will have to be carried out gradually so as to fit with the land markets formation process. Initially, the objective of this task will be to establish sustainable valuation methodologies allowing land compensation in cash based on land productivity or taxes. Only in a later phase it will be possible to establish valuation parameters fully based on market values. ADB may assist in the process by financing in coordination with the Government and together with other donors activities related to a) studies; b) implementing rules and regulations first for ADB projects and second if the Government requests it for the whole country; c) development of training on developed valuation methods; d) development of guidance notes on the preparation of valuation reports fitting the parameters for state expertise review and international standards; and e) develop the capacity of valuers in the country.*

- a) **Regulation development.** *The development of specific valuation principles for LAR purposes and fitting national and SPS requirements should be introduced as special instructions for the implementation of ADB projects. For this, discussions will have to be initiated with an ad hoc multi-agency working group to review the current situation, identify pertinent issues and the legal level/modality of the action needed for the changes.*
- b) **Supplementary instructions on how to apply the Valuation Standards for LAR under ADB projects.** *Based on the multi-agency working group recommendations, a body of Instructions should be developed to help valuers carry out valuation in line with National and SPS requirements. The Instructions would include specific guidance on how to calculate market values and assess/quantify livelihood losses, asset-based poverty levels, loss of employment, and special assistance to vulnerable people and the parameters to be used by the expertise agencies to review the compensation rates assessment for a LARP. The instructions will be developed by an agency to be identified but most likely at the level of a Ministry and will have to be approved by Governmental Decree.*
- c) **Guidance note for valuers on how to prepare valuation reports.** *To complement the valuation instructions ADB and an appropriate government agency will have to prepare a guidance note for valuers defining the requirements for the preparation of valuation reports for ADB-financed projects.*
- d) **Capacity of the valuers to conduct valuation for LAR purposes.** *Once LAR valuation Instructions are developed, training on their implementation will have to be provided to valuers and concerned State agencies.*

C. Public Information and Participation

130. The legal and procedural requirements and associated issues for information disclosure and public participation related to LAR have already been covered in previous. One additional point that affects efficient processing of projects is the language issue. Tajik protocol requires that official project documents are translated into both Russian and Tajik languages. This requirement adds to the cost and can delay the time needed for processing and approval of key documents.

131. Furthermore, LAR-related terminology has not yet been translated into the Tajik language which complicates the matter. In addition, the official Russian translation of the 2009 ADB SPS document posted on the ADB website is of average quality at best. For LAR issues, some of the specific concepts and requirements were either left out completely or are not clear. Use of the translation as a reference document for discussions with EAs and other government agencies often raises more questions than clarifications or guidance.

132. Both the government and ADB can improve the situation by: improving the translation of the ADB SPS, paying special attention to LAR related concepts and requirements; agreeing to only two languages for official project documents (English and either Russian or Tajik) with additional translations or summaries of the documents only for those that are key to effective communications and disclosure to local communities and APs.

Proposed Capacity Building Activities: First, sector specific instructions should be introduced in order for EAs to systematically implement and monitor public information and disclosure requirements that meet ADB standards. Second, the ADB and government should agree that official project documents are prepared in Russian and English only. Where communications are needed in Tajik or other language in order to reach local citizens or make the issues understandable, then a summary or a specifically agreed information disclosure format should be developed and agreed with the government and ADB. Agreeing on standard terminology in all 3 languages for LAR aspects would be beneficial and contribute to the overall government plan to standardize the language. Third, ADB should upgrade the quality of the official Russian version of the SPS, paying special attention to LAR concepts and terminology.

D. Financial Facilitation of Reconciliation of Livelihood Rehabilitation Requirements

133. The SPS 2009 includes among its requirements the provision of livelihood rehabilitation allowances to severely affected and vulnerable APs. These provisions are not considered under National law or regulation and therefore do not need reconciliation. However disbursement on the side of the Government of finances for these allowances may encounter resistances as the expenditure may require laborious justifications to be accepted under the rules regulating the use of the national budgets.

Proposed Capacity Building Activities: To avoid delays and project planning complications that may be caused by this issue it is recommended that ADB considers the possibility of financing for its projects the allowances for severely affected and vulnerable APs under the loan as a standard practice.

E. Simplification of Promulgation Mechanisms for State Decrees

134. Based on Tajikistan procedure various steps of the LAR preparation and implementation process require the promulgation and approval of several State ordinances or decrees. Among others, these are the Project Decree, the Decree establishing the LAR Commission, the Decree approving eventual interim LARPs, the Decree approving the final LARP.

135. Decrees are always approved at the highest Government echelons and entail complicated inter-agency processes and require substantial processing time. As the approval of an ordinance or of a decree are conditions to proceed with new LAR preparation/implementation steps the period of approval of a decree often corresponds to a temporary interruption of LARP finalization activities.

Proposed Capacity Building Activities: *It is recommended that ADB studies with the appropriate government agency(s) the available options to shorten and simplify the promulgation process of Ordinances and Decrees including the approval of LARP drafts only by the EA. The options adopted will be formalized in a working note acceptable to the Government.*

F. Translation of LAR documents

136. Current Tajikistan government protocols provide that project documents should be translated both in Russian and Tajik language as the national law, amendments to the laws and decrees issued in Tajik and Russian. But as a conceptual universe addressing international standards in Tajik is still taking form double translation requirements complicates LAR processes for internationally-financed projects in many ways. On the one hand double translation is costly and time consuming. On the other it requires ad hoc and often rushed translations of the law which combined with the lack of proper LAR terminologies in Tajik may lead to legal and technical misunderstandings.

137. For what concerns translation issues it is also to be noted that the Russian translation of the 2009 ADB SPS document posted on the ADB website at times lacks of precision or glosses over important requirements of the SPS.

Proposed Capacity Building Activities: *Until the law is thoroughly translated in Tajik and the terminological problems are solved it is recommended that the Government and ADB temporarily agree on translating most LAR documents only in Russian leaving the double translation only for documents that are key to effective communications and disclosure to local communities and APs. ADB can also prepare a new improved translation of the SPS in Russian. The Russian translation of the SPS should be improved, with specific attention to LAR concepts and terminology and information leaflets to distribute as a quick reference guide for EAs, ministries and local government should also be published.*

G. Grievance Redress Mechanism

138. To ensure effective application of the GRM at the project level, a more effective process for accepting and reviewing complaints or claims has to be developed and mainstreamed into all ADB-funded projects. EAs need to understand the importance of identifying issues at an early stage and taking decisive action to remedy them. Past experience shows that neither EAs nor local government have an adequate understanding about how to identify potential problems or to address specific claims in an efficient and satisfactory manner. While Chapter 2 noted the fact that national legislation requires ministries and agencies to have GRM in place, this chapter highlights the lack of appropriate understanding, standardized processes or GRM documents for LAR purposes.

139. The level of intervention would include a sector-specific technical guidance note developed and adopted by the MOT and MOE. The technical guidance note for developing and managing project level GRM for infrastructure projects would include standardized materials developed in cooperation with ADB. The package would include a standard application form in both Russian and Tajik languages as well as other standard forms such as a request of additional information or official notification to the claimant. A basic information leaflet for the claimant about their general rights and GRM procedures and a guideline for local government and the EA on how process, investigate and make a decision about the claim would also be part of the package. Training programs using the standard materials about GRM should be offered to key ministry, EA and local government staff as well as to relevant civil society groups. The package would also be provided to PPTA and supervision consultants, with a check list about GRM for the authors of the due diligence report.

Proposed Capacity Building Activities: A standard package of GRM materials with GRM templates and with appropriate training programs may be developed and approved.

H. Preparation of a Country Land Acquisition and Resettlement Framework

140. Most of the policy gaps analyzed in chapter two have been already harmonized through *ad hoc* expedients during the preparation of specific projects. The same has happened for the identification and solution of the LAR planning challenges identified in chapter three. This piecemeal approach practically solves immediate problems, but is time consuming, requires intensive discussions for each project and leaves ADB teams and EAs uncertain on the final LARP approval of the expertise agencies.

141. Planning as-you-go was inevitable for the first ADB project loans in Tajikistan, when both ADB and EAs were learning about each-other practice and were discovering the complexities caused by their merging. With the progression of ADB lending to Tajikistan, however, more project experience has accumulated and many LAR issues have become better known. Today this offers the possibility to map LAR problems likely to repeat at each project and mainstream the arrangements for their solution into integrated procedures and instructions.

Proposed Capacity Building Activities: *In the current situation a better option for predictable project development and simpler LARP preparation/approval would be to establish a Country Land Acquisition and Resettlement Framework (CLARF) applicable to ADB-financed project. The CLARF will integrate in one document: a) mainstreamed and reconciled LAR principles and principle application modality; b) LAR preparation and implementation mechanisms fitting both SPS and Country requirements; c), an established institutional and administrative context for LAR in Tajikistan, and; c) establish a clear LAR process template indicating actions needed at each step of the process and relative responsibilities. CLARF preparation would require the collaborative effort of ADB and Government which will have to concur on the issues where alignment is needed or not needed, on policy reconciliation measures and on the arrangements to be taken at each step of the LAR process. The CLARF will have to be officially approved by Government and ADB as an international agreement based on Art.6 of the Tajikistan Constitution and Art.29 Law on International Agreements, Government approval will also entail a full review process involving validation from the appropriate expertise agencies and ratification at the highest approval level through a State Ordinance promulgated by the Council of Ministers and signed by the Prime Minister.*

V. SUMMARY AND FINAL RECOMMENDATIONS

A. Summary of Report Findings and Recommendations

142. The previous three chapters have identified at different level the main issues complicating the timely and effective planning/execution of LAR tasks for ADB projects in Tajikistan. In parallel with this exercise the chapters above have also proposed solutions to be further developed in phase 2 of the RETA entailing the preparation of a capacity building program.

143. Chapter two has focused on the formal/legal alignment of Tajikistan law, law- application with SPS principles/ADB LAR practice. Items requiring both legal and law-application reconciliation include: (a) eligibility of non-legal APs; (b) loss of structures and buildings; and (c) vulnerable/severely affected APs rehabilitation. Items requiring only law-application reconciliation are: (a) loss of businesses; (b) loss of trees and crops and (c) loss of jobs. Some gaps do not need legal or law- application reconciliation but require the adoption of instructions sanctioning the legitimacy of SPS 2009 requirements and the definition of accepted mechanisms for their application. These are: (a) compensation of indirect impacts, (b) public consultation; (c) information disclosure; (d) grievance resolution and (e) preparation of LARPs and appropriate measurement/census surveys for all impacts and APs. All gaps will require a reconciliation Decree for ADB Projects except for public consultation; information disclosure, grievance resolution and LARP/surveys preparation which require only technical instructions. The interventions needed to harmonize and fill gaps between ADB Policy and the country systems are summarized in table 5.1 below.

Table 5.1 Summary of Policy Reconciliation Needs

ADB Policy Requirement	Reconciliation/Action needed		
	Policy	Application	Action needed
11 Compensation of non-legal APs	<u>Reconciliation needed</u> (x non-land losses).	<u>Reconciliation needed.</u>	Already reconciled for previous projects but to be mainstreamed by a Decree for ADB Projects.
2. Assistance to severely affected/ vulnerable and relocating APs	<u>Reconciliation needed</u>	<u>Reconciliation needed</u>	Already Reconciled for previous projects but to be mainstreamed by a Decree for ADB Projects .
3. Loss of structures and buildings	<u>Reconciliation Needed</u>	<u>Reconciliation needed</u> (for valuation of replacement cost free of depreciation, salvaged materials, transaction costs.)	Already Reconciled for previous projects but to be mainstreamed by Decree for ADB Projects.
4. Land losses	<u>No Reconciliation needed</u>	<u>Reconciliation needed</u> To develop proper valuation methods)	Already Reconciled for previous projects but to be improved and mainstreamed by Decree for ADB Projects.
5. Loss of trees and crops	<u>No Reconciliation needed</u>	<u>Reconciliation needed</u> To ensure compensation by default and proper valuation method	Already Reconciled for previous projects but to be mainstreamed by a Decree for ADB Projects.
6. Loss of Business/employment	<u>No Reconciliation needed</u>	<u>Reconciliation needed</u> (to distinguish short and long-term impacts)	Already Reconciled for previous projects but to be mainstreamed by a Decree for ADB Projects.
7. Loss of Jobs	<u>No Reconciliation Needed</u>	<u>Reconciliation needed</u> (to distinguish short/long- term impacts, fully reflect income rehabilitation and guarantee the	Already Reconciled for previous projects but to be mainstreamed by a Decree for ADB Projects.

ADB Policy Requirement	Reconciliation/Action needed		
	Policy	Application	Action needed
		automatic disbursement of the compensation to the APs	
8. Public participation	<u>No Reconciliation needed</u>	<u>No Reconciliation needed</u> (instructions for meaningful/transparent participation to be developed.)	Specific approach to be agreed with RETA Working Group.
9. Information disclosure	<u>No Reconciliation needed</u>	<u>No Reconciliation needed</u> (instructions for information disclosure to be developed).	Specific approach to be agreed with RETA Working Group.
10. Grievance resolution	<u>No Reconciliation needed</u>	<u>No Reconciliation needed</u> (instructions for managing Grievances to be developed.)	Specific approach to be agreed with RETA working Group.
11. LAR Planning	<u>No Reconciliation needed</u>	<u>No Reconciliation needed</u> (instructions for full impacts measurements surveys and AP censuses to be developed.)	Specific approach to be agreed with RETA working Group.

144. Chapter three has focused on the LAR aspects of the ADB and Tajikistan project cycles and on what happens when the two merge for ADB- financed projects. This analysis identified the need of greater LAR action coordination and several steps in the process requiring better planning, greater technical capacity, or ad hoc time-saving/quality improvement arrangements. Regarding process coordination the ensuing recommendation is that the fielding of PPTA consultants is conditioned to the approval of the Project Ordinance and of the Decree establishing the LAR Commission. As per planning issues the recommendations are: a) fielding of the ADB resettlement specialists during PPTA processing; b) expansion of PPTA finances/schedules to loan approval; c) preparation of action plans at each significant step in the process including start of PPTA administration; loan processing; loan administration and LARP implementation. Finally, regarding time-saving or efficiency interventions the analysis recommendations are: a) carry design and LAR surveys in accordance to a staggered and time-saving schedule prioritizing project sections with LAR; b) shortened/simplified procedures for Decree/Ordinance promulgation; c) ad hoc arrangements to synchronize the request of LAR implementation funds to the Ministry of Finance with LAR implementation schedules; d) a proactive engagement of the EA and LAR Commission in the finalization of AP legalization involving the advance of land registration funds either by the EA or ADB; e) the hiring of the external Monitoring Agency by ADB. These issues are schematized in table 5.2 below.

Table 5.2 Summary of Recommended Action to Facilitate LAR

Issues	Action needed	Responsibility
Process Coordination	Project Ordinance/LAR Commission Decree to be promulgated before fielding LAR Consultants in the field;	EA/Government
	Coordination of request of LAR implementation schedules;	EA/Government
Planning/financing	Extension of PPTA Finances/schedules to loan approval;	ADB
	Fielding ADB resettlement specialists at PPTA processing;	ADB
	Preparation of action plans at each significant step in the process including start of : a) PPTA administration; b) loan processing; c) loan administration and d) LARP implementation;	ADB, Consultants, EA, LAR Commission,

Issues	Action needed	Responsibility
	Financing the allowances for severely affected and vulnerable APs under the loan;	ADB
Capacity	Training/coaching of EA, LAR Commission and consultants development;	ADB
Time-saving/efficiency measures	Design and LAR surveys based on staggered schedules prioritizing work in project sections with LAR;	ADB, Consultants, EA, LAR Commission,
	Shorten/simplify the Decree/Ordinance promulgation process;	EA, LAR Commission, Government.
	Proactive engagement of EA and LAR Commission in the finalization of AP legalization including advancing to the APs the land registration fees;	EA, possibly ADB

145. Chapter four has focused on background institutional and capacity issues to be addressed to improve general LAR performance in the future. The interventions recommended in the chapter are: a) provision of an extensive training program on SPS requirements to EAs, key Government agencies and selected local consulting firms; b) elaboration of valuation instructions fitting SPS provisions and ADB practice to be approved by an appropriate Government agency; c) agreement with the government on a simplified translation process of LAR documents for ADB projects involving only translation in Russian, d); development of instructions on how to handle Complaint and Grievances (C&G) fitting the SPS. An additional and key issue signaled in this chapter is the need to carry out the mainstreaming of harmonized LAR policy and practices through an integrated CLARF to be validated by National Expertise Agencies and approved by the Council of Ministers. The issues detailed in chapter four are summarized in table 5.3 below.

Table 5.3 Country-wide Capacity Building Action

Issues	Action needed	Responsibility
Training on LAR requirements reflecting the agreed reconciliation between SPS and TAJ law and on the project preparation template for ADB- financed projects.	Preparation of a broad training program/training modules for EAs and local consultants.	ADB, appropriate Government Agency (T.B.D)
Provision of assistance in preparing implementing rules and regulations for the amended sections of the land code.	To be discussed with the Government.	
Contribution to the land registration program.	Sponsor registration in the areas affected by ASDB projects.	
Improvement of technical capacity and efficiency of LAR preparation	Establishment of effective survey methodologies and improved inter-agency coordination	
Valuation Instructions for LAR	Preparation of valuation standards for LAR allowing cash compensation of land. Provision of training	ADB appropriate Government Agency (T.B.D)
Documents translation procedures	Translation of documents only in Russian.	ADB, appropriate Government Agency (T.B.D)

Issues	Action needed	Responsibility
C&G handling	Preparation of instruction on C&G organization and handling	ADB appropriate Government Agency (T.B.D)
LAR Policy/practice mainstreaming	Preparation of a CLARF	ADB, RETA working group, Expertise agencies, Council of Ministers

B. Next Steps

146. The issues analyzed and the improvement action proposed in this CA will be taken up again during phase two of the RETA.

147. Preparation of a National Capacity Building Action Plan (NCBAP) will further advance the analysis done in this report in view of laying down a list of selected capacity building interventions and defining in detail type of action/responsibilities for each of them. These tasks will be led by the ADB team and by the RETA working Group and will require intensive consultation with the appropriate State Expertise Agencies. Before being implemented the NCBAP and relative budgets will have to be approved by ADB and the Government. The level of Government approval needed, will be decided as the work for the NCBAP unfolds.

APPENDIX – 1

LETTER OF ESTABLISHMENT OF THE WORKING GROUP

РОҶБАРИ
ДАСТГОҶИ ИҶРОИЯИ
ПРЕЗИДЕНТИ
ҶУМҲУРИИ ТОҶИКИСТОН



РУКОВОДИТЕЛЬ
ИСПОЛНИТЕЛЬНОГО
АППАРАТА ПРЕЗИДЕНТА
РЕСПУБЛИКИ ТАДЖИКИСТАН

№ 10/12.2

“21” 09 2010 г.

Временно исполняющему обязанности
Постоянного Представителя
Азиатского Банка Развития
в Республике Таджикистан

Уважаемый господин Джоджи Токеши,

Правительство Республики Таджикистан выражает Азиатскому Банку Развития признательность за плодотворное сотрудничество в развитии экономики нашей страны.

Настоящим, ссылаясь на Ваше письмо от 1 сентября 2010 года в отношении назначения координационного агентства и контактного лица для РЕТП 7433-REG, подтверждаем своё согласие в качестве координационного агентства – Государственный комитет по землеустройству и геодезии Республики Таджикистан и в качестве контактного лица – Заместителя председателя Государственного комитета по землеустройству и геодезии Республики Таджикистан – Нозанинова Нусратулло.

С уважением,

М. Давлатов
Управляющий
Азиатского Банка Развития
по Таджикистану

Unofficial translation of the above letter

Office-in-Charge

of Tajikistan Resident Mission

ADB in Republic of Tajikistan

Unofficial letter

Ref.: 10/12.2

Date: 21/09/10

Dear Mr. Tokeshi,

The Government of the Republic of Tajikistan presents its compliments to You and in Your name to the Management of the Asian Development Bank for the support provided to the Republic of Tajikistan in development of economy in the country.

Hereby, referring to your letter dated 1 September 2010 regarding appointing focal point of Coordination Agency and focal point for RETA 7433-REG, we give our no objection to select as Coordination committee-State Committee on Land Management and Geodesy of Republic of Tajikistan and as a contact point Deputy Minister of State Committee on Land Management and Geodesy of Republic of Tajikistan-Mr. Nozaninov Nusratullo.

Sincerely,

Mr. Davlatov M.

ADB Governor



Asian Development Bank

Господину Матлубхону С. Давлатову
Руководителю Исполнительного Аппарата
Президента Республики Таджикистан
Управляющий АБР по Таджикистану
Проспект Рудаки, 80
Душанбе, Таджикистан

221 6800 Зубович.
221 6803 Абурашариф / Рудаве

Постоянное представительство в
Таджикистане

221-5741

22 февраля 2011 г.

935555555
Абурашариф

Относительно: Проект региональной технической помощи № 7433-РЕГ:
Внедрение защитных мер в отношении приобретения
земли и переселению в регионе Центральной и Западной
Азии
– Просьба об организации Рабочей группы и встреч

Уважаемый Господин Давлатов,

Со ссылкой на корреспонденцию, направленную в Ваш адрес 3 марта 2009 года, мы рады сообщить, что Азиатский Банк Развития (АБР) начал реализацию вышеуказанного проекта региональной технической помощи (РЕТП). В настоящее время, для реализации РЕТП осуществляется найм международного консультанта, который предполагается завершить в ближайшее время. Рады сообщить также, что Национальный консультант – Специалист по переселению, г-жа Рангина Назриева уже приступила к работе (резюме национального консультанта прилагается).

На начальном этапе, работа Национального консультанта – Специалиста по переселению будет сфокусирована, в частности, на организации работы с Государственным комитетом по землеустройству и геодезии Республики Таджикистан, который является Координационным агентством в рамках РЕТП, а также, создании и продвижении деятельности *Рабочей группы по вопросам приобретения земли и переселения*. Предусматривается, что Рабочая группа будет включать представителей министерств и ведомств, имеющих отношение к вопросам, которые будут охвачены в рамках РЕТП. (Список министерств и ведомств, предлагаемых для включения в Рабочую группу, прилагается.)

В связи с вышеуказанным, мы хотели бы просить Вашего содействия в создании Рабочей группы с участием министерств и ведомств, в соответствии с приложенным списком. Также, просим Вас содействовать в организации встреч Национального консультанта – Специалиста по переселению с Государственным комитетом по землеустройству и геодезии Республики Таджикистан и ключевыми министерствами и ведомствами, имеющих отношение к вопросам приобретения земли и переселения. Мы были бы также чрезвычайно признательны, если бы Вы назначили уполномоченное лицо в Вашем офисе для дальнейшего направления и координации соответствующей деятельности в рамках РЕТП.

В случае возникновения вопросов в отношении создания Рабочей группы и дальнейшего сотрудничества в рамках РЕТП, мы готовы обсудить их в любое удобное для Вас время.

Постоянное Представительство Азиатского Банка Развития в Республике Таджикистан, пользуясь случаем, приносит уверения в своем высоком уважении и благодарит за сотрудничество.

С уважением,



Асель Чынгышева
И.О. Постоянного представителя
Азиатского Банка Развития в Таджикистане

Приложение 1

Список министерств и ведомств,
предлагаемых для включения в Рабочую группу по вопросам,
относящимся к приобретению земли и переселения

1. Министерство финансов РТ
2. Министерство юстиции РТ
3. Министерство транспорта и коммуникаций РТ
4. Комитет по землеустройству и геодезии РТ
5. Межведомственное бюро технической инвентаризации
6. Государственный комитет по строительству и архитектуре РТ
7. Государственный комитет по охране окружающей среды РТ
8. Государственный комитет по управлению государственным имуществом и инвестициям РТ
9. Министерство экономического развития и торговли РТ
10. Министерство промышленности и энергетики РТ / ГХК Барки Точик
11. Министерство труда и социальной защиты РТ

Mr. Matlubkhon S. Davlatov
Head of the Executing Apparatus
Of the President of Republic of Tajikistan
ADB Governor for Tajikistan
80 Rudaki Avenue
Dushanbe, Tajikistan

22 February, 2011

Subject: Regional Technical Assistance 7433 – REG: Mainstreaming Land Acquisition and Resettlement Safeguards in the Central and West Asia Region

Request for establishment of the Working Group and meetings

Dear Mr. Davlatov,

Referring to the correspondence sent to you on 3 March 2009, we are pleased to inform you that Asian Development Bank (ADB) has started implementation of the above mentioned project of regional technical assistance (RETA).

At the initial stage, the work of national consultant on resettlement issues will focus on organizing work with the State Committee on Land Management and Geodesy of Tajikistan, which is identified as Focal Point within the RETA and also establishment and further coordination of Working Group for land acquisition and resettlement issues. It is anticipated that Working group consist of the representatives of ministries and other government agencies dealing with resettlement issues, will be involved into the RETA. (List of ministries and other government agencies proposed to be included in the Working group is given in the attachment).

In connection to above mentioned, we request you to facilitate in establishment of the Working Group with representation of the ministries and other government agencies listed in the attachment. Also we request your support on organizing meetings of the national resettlement specialist with State Committee on Land Management and Geodesy of Tajikistan core ministries and other government agencies dealing with resettlement issues. We would highly appreciate if you could appoint a responsible person in your office for further coordination of the activities under the RETA.

In case of arising needs for clarification regarding establishment of the Working group and further collaboration within RETA project, we are ready to discuss them at any preferable time set by you.

Availing this opportunity, the Resident Mission of the Asian Development Bank in Tajikistan expresses profound respect and appreciates your kind cooperation.

Sincerely

Asel Chingysheva

Acting Country Director of the
Resident Mission of the Asian Development Bank in Tajikistan

Annex - 1

List of the Working Group members, including representatives of ministries and other government agencies dealing with resettlement issues:

- 1) Ministry of Finance
- 2) Ministry of Justice
- 3) Ministry of Transport
- 4) State Committee for Land Management and Geodesy
- 5) Interagency Bureau of Technical Inventory
- 6) State Committee on Construction and Architecture
- 7) State Committee on Environmental Protection
- 8) State Committee on Investment and State Property Management
- 9) Ministry of Trade and Economic Development
- 10) Ministry of Energy / SUE 'Barqi Tojik'
- 11) Ministry of Labor and Social Protection

APPENDIX – 2

SAFEGUARD REQUIREMENTS 2: INVOLUNTARY RESETTLEMENT

A. Introduction

1. ADB experience indicates that involuntary resettlement under development projects, if unmitigated, could give rise to severe economic, social, and environmental risks: production systems are dismantled; people face impoverishment when their productive assets or income sources are lost; people are relocated to environments where their productive skills may be less applicable, and the competition for resources greater; community institutions and social networks are weakened; kin groups are dispersed; and cultural identity, traditional authority, and the potential for mutual help are diminished or lost. ADB therefore seeks to avoid involuntary resettlement wherever possible; minimize involuntary resettlement by exploring project and design alternatives; enhance, or at least restore, the livelihoods of all displaced persons in real terms relative to pre-project levels; and improve the standards of living of the affected poor and other vulnerable groups.

2. Safeguard Requirements 2 outlines the requirements that borrowers/clients are required to meet in delivering involuntary resettlement safeguards to projects supported by the Asian Development Bank (ADB). It discusses the objectives, scope of application, and underscores the requirements for undertaking the social impact assessment and resettlement planning process, preparing social impact assessment reports and resettlement planning documents, exploring negotiated land acquisition, disclosing information and engaging in consultations, establishing a grievance mechanism, and resettlement monitoring and reporting.

B. Objectives

3. The objectives are to avoid involuntary resettlement wherever possible; to minimize involuntary resettlement by exploring project and design alternatives; to enhance, or at least restore, the livelihoods of all displaced persons¹ in real terms relative to pre-project levels; and to improve the standards of living of the displaced poor and other vulnerable groups.

C. Scope of Application

4. The requirements apply to all ADB-financed and/or ADB-administered sovereign and non-sovereign projects, and their components regardless of the source of financing, including investment projects funded by a loan; and/or a grant; and/or other means, such as equity and/or guarantees (hereafter broadly referred to as projects). The requirements also cover involuntary resettlement actions conducted by the borrower/client in anticipation of ADB support.

5. The involuntary resettlement requirements apply to full or partial, permanent or temporary physical displacement (relocation, loss of residential land, or loss of shelter) and economic displacement (loss of land, assets, access to assets, income sources, or means of livelihoods) resulting from (i) involuntary acquisition of land, or (ii) involuntary restrictions on land use or on access to legally designated parks and protected areas. Resettlement is considered involuntary when displaced individuals or communities do not have the right to refuse land acquisition that results in displacement. This occurs in cases where (i) lands are acquired through expropriation based on eminent domain; and (ii) lands are acquired through negotiated settlements, if expropriation process would have resulted upon the failure of negotiation.

6. In the context of involuntary resettlement, displaced persons are those who are physically displaced (relocation, loss of residential land, or loss of shelter) and/or economically displaced (loss of land, assets, access to assets, income sources, or means of livelihoods) as a result of (i) involuntary acquisition of land, or (ii) involuntary restrictions on land use or on access to legally designated parks and protected areas.

7. If potential adverse economic, social, or environmental impacts from project activities other than land acquisition (including involuntary restrictions on land use, or on access to legally designated parks and protected

areas) are identified, such as loss of access to assets or resources or restrictions on land use, they will be avoided, or at least minimized, mitigated, or compensated for, through the environmental assessment process. If these impacts are found to be significantly adverse at any stage of the project, the borrower/client will be required to develop and implement a management plan to restore the livelihood of affected persons to at least pre-project level or better.

D Requirements

1. Compensation, Assistance and Benefits for Displaced Persons

8. Displaced persons in a project area could be of three types: (i) persons with formal legal rights to land lost in its entirety or in part; (ii) persons who lost the land they occupy in its entirety or in part who have no formal legal rights to such land, but who have claims to such lands that are recognized or recognizable under national laws; and (iii) persons who lost the land they occupy in its entirety or in part who have neither formal legal rights nor recognized or recognizable claims to such land. The involuntary resettlement requirements apply to all three types of displaced persons.

9. The borrower/client will provide adequate and appropriate replacement land and structures or cash compensation at full replacement cost for lost land and structures, adequate compensation for partially damaged structures, and relocation assistance, if applicable, to those persons described in para. 7(i) and 7(ii) prior to their relocation. For those persons described in para. 7(iii), the borrower/client will compensate them for the loss of assets other than land, such as dwellings, and also for other improvements to the land, at full replacement cost. The entitlements of those under para. 7(iii) is given only if they occupied the land or structures in the project area prior to the cutoff date for eligibility for resettlement assistance.

10. Preference will be given to land-based resettlement strategies for displaced persons whose livelihoods are land-based. These strategies may include resettlement on public land, or on private land acquired or purchased for resettlement. Whenever replacement land is offered, displaced persons are provided with land for which a combination of productive potential, location advantages, and other factors is at least equivalent to the advantages of the land taken. If land is not the preferred option of the displaced persons, or sufficient land is not available at a reasonable price, non-land-based options built around opportunities for employment or self-employment should be provided in addition to cash compensation for land and other assets lost. The lack of land will be demonstrated and documented to the satisfaction of ADB.

11. The rate of compensation for acquired housing, land and other assets will be calculated at full replacement costs. The calculation of full replacement cost will be based on the following elements: (i) fair market value; (ii) transaction costs; (iii) interest accrued, (iv) transitional and restoration costs; and (v) other applicable payments, if any. Where market conditions are absent or in a formative stage, the borrower/client will consult with the displaced persons and host populations to obtain adequate information about recent land transactions, land value by types, land titles, land use, cropping patterns and crop production, availability of land in the project area and region, and other related information. The borrower/client will also collect baseline data on housing, house types, and construction materials. Qualified and experienced experts will undertake the valuation of acquired assets. In applying this method of valuation, depreciation of structures and assets should not be taken into account.

12. In the case of physically displaced persons, the borrower/client will provide (i) relocation assistance, secured tenure to relocation land, better housing at resettlement sites with comparable access to employment and production opportunities, and civic infrastructure and community services as required; (ii) transitional support and development assistance, such as land development, credit facilities, training, or employment opportunities; and (iii) opportunities to derive appropriate development benefits from the project.

13. In the case of economically displaced persons, regardless of whether or not they are physically displaced, the borrower/client will promptly compensate for the loss of income or livelihood sources at full replacement cost. The borrower/client will also provide assistance such as credit facilities, training, and employment opportunities so that they can improve, or at least restore their income-earning capacity, production levels, and standards of living to pre-displacement levels. The borrower/client will also provide opportunities to displaced persons to derive

appropriate development benefits from the project. The borrower/client will compensate economically displaced people under paragraph 7(iii) for lost assets such as crops, irrigation infrastructure, and other improvements made to the land (but not for the land) at full replacement cost. In cases where land acquisition affects commercial structures, affected business owners are entitled to (i) the costs of reestablishing commercial activities elsewhere; (ii) the net income lost during the transition period; and (iii) the costs of transferring and reinstalling plant, machinery, or other equipment. Business owners with legal rights or recognized or recognizable claims to land where they carry out commercial activities are entitled to replacement property of equal or greater value or cash compensation at full replacement cost.

14. Involuntary resettlement should be conceived of and executed as part of a development project or program. In this regard, the best strategy is to provide displaced persons with opportunities to share project benefits in addition to providing compensation and resettlement assistance. Such opportunities would help prevent impoverishment among affected persons, and also help meet the ethical demand for development interventions to spread development benefits widely. Therefore borrowers/clients are encouraged to ascertain specific opportunities for engaging affected persons as project beneficiaries and to discuss how to spread such opportunities as widely as possible among affected persons in the resettlement plan.

15. The borrower/client will ensure that no physical displacement or economic displacement will occur until (i) compensation at full replacement cost has been paid to each displaced person for project components or sections that are ready to be constructed; (ii) other entitlements listed in the resettlement plan have been provided to displaced persons; and (iii) a comprehensive income and livelihood rehabilitation program, supported by an adequate budget, is in place to help displaced persons improve, or at least restore, their incomes and livelihoods. While compensation is required to be paid before displacement, full implementation of the resettlement plan might take longer. If project activities restrict land use or access to legally designated parks and protected areas, such restrictions will be imposed in accordance with the timetable outlined in the resettlement plan agreed between the borrower/client and ADB.

2. Social Impact Assessment

16. The borrower/client will conduct socioeconomic survey(s) and a census, with appropriate socio-economic baseline data to identify all persons who will be displaced by the project and to assess the project's socioeconomic impacts on them. For this purpose, normally a cut-off date will be established by the host government procedures. In the absence of such procedures, the borrower/client will establish a cut-off date for eligibility. Information regarding the cutoff date will be documented and disseminated throughout the project area. The social impact assessment (SIA) report will include (i) identified past, present and future potential social impacts, (ii) an inventory of displaced persons³² and their assets,³³ (iii) an assessment of their income and livelihoods, and (iv) gender-disaggregated information pertaining to the economic and socio-cultural conditions of displaced persons. The project's potential social impacts and risks will be assessed against the requirements presented in this document and applicable laws and regulations of the jurisdictions in which the project operates that pertain to involuntary resettlement matters, including host country obligations under international law.

17. As part of the social impact assessment, the borrower/client will identify individuals and groups who may be differentially or disproportionately affected by the project because of their disadvantaged or vulnerable status. Where such individuals and groups are identified, the borrower/client will propose and implement targeted measures so that adverse impacts do not fall disproportionately on them and they are not disadvantaged in relation to sharing the benefits and opportunities resulting from development.

3. Resettlement Planning

³²A population record of all displaced persons by their residence based on the census. If a census is not conducted prior to project appraisal and the resettlement plan is based on a sample survey, an updated resettlement plan will be prepared based on a census of displaced persons after the detailed measurement survey has been completed but before any land acquisition for the project.

³³The asset inventory is a preliminary record of affected or lost assets at the household, enterprise, or community

18. The borrower/client will prepare a resettlement plan, if the proposed project will have involuntary resettlement impacts. The objective of a resettlement plan is to ensure that livelihoods and standards of living of displaced persons are improved, or at least restored to pre-project (physical and/or economic) levels and that the standards of living of the displaced poor and other vulnerable groups are improved, not merely restored, by providing adequate housing, security of land tenure and steady income and livelihood sources. The resettlement plan will address all relevant requirements specified in Safeguard Requirements 2, and its level of detail and comprehensiveness of the resettlement plan will be commensurate with the significance of involuntary resettlement impacts. An outline of resettlement plan is provided in the annex to this appendix.

19. A resettlement plan will be based on the social impact assessment and through meaningful consultation with the affected persons. A resettlement plan will include measures to ensure that the displaced persons are (i) informed about their options and entitlements pertaining to compensation, relocation, and rehabilitation; (ii) consulted on resettlement options and choices; and (iii) provided with resettlement alternatives. During the identification of the impacts of resettlement and resettlement planning, and implementation, the borrower/client will pay adequate attention to gender concerns, including specific measures addressing the need of female headed households, gender-inclusive consultation, information disclosure, and grievance mechanisms, to ensure that both men and women receive adequate and appropriate compensation for their lost property and resettlement assistance, if required, as well as assistance to restore and improve their incomes and living standards.

20. The borrower/client will analyze and summarize national laws and regulations pertaining to land acquisition, compensation payment, and relocation of affected persons in the resettlement plan. The borrower/client will compare and contrast such laws and regulations with ADB's involuntary resettlement policy principles and requirements. If a gap between the two exists, the borrower/client will propose a suitable gap-filling strategy in the resettlement plan in consultation with ADB.

21. All costs of compensation, relocation, and livelihood rehabilitation will be considered project costs. To ensure timely availability of required resources, land acquisition and resettlement costs may be considered for inclusion in ADB financing. Resettlement expenditure is eligible for ADB financing if incurred in compliance with ADB's safeguard policy statement and with ADB-approved resettlement planning documents. If ADB funds are used for resettlement costs, such expenditure items will be clearly reflected in the resettlement plan.

22. The borrower/client will include detailed measures for income restoration and livelihood improvement of displaced persons in the resettlement plan. Income sources and livelihoods affected by project activities will be restored to pre-project levels, and the borrower/client will make every attempt to improve the incomes of displaced persons so that they can benefit from the project. For vulnerable persons and households affected, the resettlement plan will include measures to provide extra assistance so that they can improve their incomes in comparison with pre-project levels. The resettlement plan will specify the income and livelihoods restoration strategy, the institutional arrangements, the monitoring and reporting framework, the budget, and the time-bound implementation schedule.

23. The information contained in a resettlement plan may be tentative until a census of affected persons has been completed. Soon after the completion of engineering designs, the borrower/client will finalize the resettlement plan by completing the census and inventories of loss of assets. At this stage, changes to the resettlement plan take the form of revising the number of displaced persons, the extent of land acquired, the resettlement budget, and the timetable for implementing the resettlement plan. The entitlement matrix of the resettlement plan may be updated at this stage to reflect the relevant changes but the standards set in the original entitlement matrix cannot be lowered when the resettlement plan is revised and finalized. The borrower/client will ensure that the final resettlement plan (i) adequately addresses all involuntary resettlement issues pertaining to the project, (ii) describes specific mitigation measures that will be taken to address the issues, and (iii) ensures the availability of sufficient resources to address the issues satisfactorily.

24. Projects with significant involuntary resettlement impacts will need adequate contingency funds to address involuntary resettlement impacts that are identified during project implementation. The borrower/client will ensure that such funds are readily available. Moreover, the borrower/client will consult with displaced persons identified after the formulation of the final resettlement plan and inform them of their entitlements and relocation

options. The borrower/client will prepare a supplementary resettlement plan, or a revised resettlement plan, and will submit it to ADB for review before any contracts are awarded.

25. The borrower/client will use qualified and experienced experts to prepare the social impact assessment and the resettlement plan. For highly complex and sensitive projects, independent advisory panels of experts not affiliated with the project will be used during project preparation and implementation.

4. Negotiated Land Acquisition

26. Safeguard Requirements 2 does not apply to negotiated settlements, unless expropriation would result upon the failure of negotiations. Negotiated settlements help avoid expropriation and eliminate the need to use governmental authority to remove people forcibly. The borrower/client is encouraged to acquire land and other assets through a negotiated settlement wherever possible, based on meaningful consultation with affected persons, including those without legal title to assets. A negotiated settlement will offer adequate and fair price for land and/or other assets. The borrower/client will ensure that any negotiations with displaced persons openly address the risks of asymmetry of information and bargaining power of the parties involved in such transactions. For this purpose, the borrower/client will engage an independent external party to document the negotiation and settlement processes. The borrower/client will agree with ADB on consultation processes, policies, and laws that are applicable to such transactions; third-party validation; mechanisms for calculating the replacement costs of land and other assets affected; and record-keeping requirements.

5. Information Disclosure

27. The borrower/client will submit the following documents to ADB for disclosure on ADB's website:

- (i) a draft resettlement plan and/or resettlement framework endorsed by the borrower/client before project appraisal;
- (ii) the final resettlement plan endorsed by the borrower/client after the census of affected persons has been completed;
- (iii) a new resettlement plan or an updated resettlement plan, and a corrective action plan prepared during project implementation, if any; and
- (iv) the resettlement monitoring reports.

28. The borrower/client will provide relevant resettlement information, including information from the documents in para. 26 in a timely manner, in an accessible place and in a form and language(s) understandable to affected persons and other stakeholders. For illiterate people, suitable other communication methods will be used.

6. Consultation and Participation

29. The borrower/client will conduct meaningful consultation with affected persons, their host communities, and civil society for every project and subproject identified as having involuntary resettlement impacts. Meaningful consultation is a process that (i) begins early in the project preparation stage and is carried out on an ongoing basis throughout the project cycle; (ii) provides timely disclosure of relevant and adequate information that is understandable and readily accessible to affected people; (iii) is undertaken in an atmosphere free of intimidation or coercion; (iv) is gender inclusive and responsive, and tailored to the needs of disadvantaged and vulnerable groups; and (v) enables the incorporation of all relevant views of affected people and other stakeholders into decision making, such as project design, mitigation measures, the sharing of development benefits and opportunities, and implementation issues. Consultation will be carried out in a manner commensurate with the impacts on affected communities. The borrower/client will pay particular attention to the need of disadvantaged or vulnerable groups, especially those below the poverty line, the landless, the elderly, female headed households, women and children, Indigenous Peoples, and those without legal title to land.

7. Grievance Redress Mechanism

30. The borrower/client will establish a mechanism to receive and facilitate the resolution of affected persons' concerns and grievances about physical and economic displacement and other project impacts, paying particular

attention to the impacts on vulnerable groups. The grievance redress mechanism should be scaled to the risks and adverse impacts of the project. It should address affected persons' concerns and complaints promptly, using an understandable and transparent process that is gender responsive, culturally appropriate, and readily accessible to the affected persons at no costs and without retribution. The mechanism should not impede access to the country's judicial or administrative remedies. The borrower/client will inform affected persons about the mechanism.

8. Monitoring and Reporting

31. The borrower/client will monitor and measure the progress of implementation of the resettlement plan. The extent of monitoring activities will be commensurate with the project's risks and impacts. In addition to recording the progress in compensation payment and other resettlement activities, the borrower/client will prepare monitoring reports to ensure that the implementation of the resettlement plan has produced the desired outcomes. For projects with significant involuntary resettlement impacts, the borrower/client will retain qualified and experienced external experts or qualified NGOs to verify the borrower's/client's monitoring information. The external experts engaged by the borrower/client will advise on safeguard compliance issues, and if any significant involuntary resettlement issues are identified, a corrective action plan will be prepared to address such issues. Until such planning documents are formulated, disclosed and approved, the borrower/client will not proceed with implementing the specific project components for which involuntary resettlement impacts are identified.

32. The borrower/client will prepare semiannual monitoring reports that describe the progress of the implementation of resettlement activities and any compliance issues and corrective actions. These reports will closely follow the involuntary resettlement monitoring indicators agreed at the time of resettlement plan approval. The costs of internal and external resettlement monitoring requirements will be included in the project budget.

9. Unanticipated Impacts

33. If unanticipated involuntary resettlement impacts are found during project implementation, the borrower/client will conduct a social impact assessment and update the resettlement plan or formulate a new resettlement plan covering all applicable requirements specified in this document.

10. Special Considerations for Indigenous Peoples

34. The borrower/client will explore to the maximum extent possible alternative project designs to avoid physical relocation of Indigenous Peoples that will result in adverse impacts on their identity, culture, and customary livelihoods. If avoidance is impossible, in consultation with ADB, a combined Indigenous Peoples plan and resettlement plan could be formulated to address both involuntary resettlement and Indigenous Peoples issues. Such a combined plan will also meet all relevant requirements specified under Safeguard Requirements 3.

ANNEX TO APPENDIX 2:

OUTLINE OF A RESETTLEMENT PLAN

This outline is part of the Safeguard Requirements 2. A resettlement plan is required for all projects with involuntary resettlement impacts. Its level of detail and comprehensiveness is commensurate with the significance of potential involuntary resettlement impacts and risks. The substantive aspects of the outline will guide the preparation of the resettlement plans, although not necessarily in the order shown.

A. Executive Summary This section provides a concise statement of project scope, key survey findings, entitlements and recommended actions.

B. Project Description This section provides a general description of the project, discusses project components that result in land acquisition, involuntary resettlement, or both and identify the project area. It also describes the alternatives considered to avoid or minimize resettlement. Include a table with quantified data and provide a rationale for the final decision.

C. Scope of Land Acquisition and Resettlement. This section:

- (i) discusses the project's potential impacts, and includes maps of the areas or zone of impact of project components or activities;
- (ii) describes the scope of land acquisition (provide maps) and explains why it is necessary for the main investment project;
- (iii) summarizes the key effects in terms of assets acquired and displaced persons; and
- (iv) provides details of any common property resources that will be acquired.

D. Socioeconomic Information and Profile. This section outlines the results of the social impact assessment, the census survey, and other studies, with information and/or data disaggregated by gender, vulnerability, and other social groupings, including:

- (i) define, identify, and enumerate the people and communities to be affected;
- (ii) describe the likely impacts of land and asset acquisition on the people and communities affected taking social, cultural, and economic parameters into account;
- (iii) discuss the project's impacts on the poor, indigenous and/or ethnic minorities, and other vulnerable groups; and
- (iv) identify gender and resettlement impacts, and the socioeconomic situation, impacts, needs, and priorities of women.

E. Information Disclosure, Consultation, and Participation. This section:

- (i) identifies project stakeholders, especially primary stakeholders;
- (ii) describes the consultation and participation mechanisms to be used during the different stages of the project cycle;
- (iii) describes the activities undertaken to disseminate project and resettlement information during project design and preparation for engaging stakeholders;
- (iv) summarizes the results of consultations with affected persons (including host communities), and discusses how concerns raised and recommendations made were addressed in the resettlement plan;
- (v) confirms disclosure of the draft resettlement plan to affected persons and includes arrangements to disclose any subsequent plans; and
- (vi) describes the planned information disclosure measures (including the type of information to be disseminated and the method of dissemination) and the process for consultation with affected persons during project implementation.

F. Grievance Redress Mechanisms. This section describes mechanisms to receive and facilitate the resolution of affected persons' concerns and grievances. It explains how the procedures are accessible to affected persons and gender sensitive.

G. Legal Framework. This section:

- (i) describes national and local laws and regulations that apply to the project and identify gaps between local laws and ADB's policy requirements; and discuss how any gaps will be addressed.
- (ii) describes the legal and policy commitments from the executing agency for all types of displaced persons;
- (iii) outlines the principles and methodologies used for determining valuations and compensation rates at replacement cost for assets, incomes, and livelihoods; and set out the compensation and assistance eligibility criteria and how and when compensation and assistance will be provided.
- (iv) describes the land acquisition process and prepare a schedule for meeting key procedural requirements.

H. Entitlements, Assistance and Benefits. This section:

- (i) defines displaced persons' entitlements and eligibility, and describes all resettlement assistance measures (includes an entitlement matrix);
- (ii) specifies all assistance to vulnerable groups, including women, and other special groups; and.
- (iii) outlines opportunities for affected persons to derive appropriate development benefits from the project.

I. Relocation of Housing and Settlements. This section:

- (i) describes options for relocating housing and other structures, including replacement housing, replacement cash compensation, and/or self-selection (ensure that gender concerns and support to vulnerable groups are identified);
- (ii) describes alternative relocation sites considered; community consultations conducted; and justification for selected sites, including details about location, environmental assessment of sites, and development needs;
- (iii) provides timetables for site preparation and transfer;
- (iv) describes the legal arrangements to regularize tenure and transfer titles to resettled persons;
- (v) outlines measures to assist displaced persons with their transfer and establishment at new sites;
- (vi) describes plans to provide civic infrastructure; and
- (vii) explains how integration with host populations will be carried out.

J. Income Restoration and Rehabilitation. This section:

- (i) identifies livelihood risks and prepare disaggregated tables based on demographic data and livelihood sources;
- (ii) describes income restoration programs, including multiple options for restoring all types of livelihoods (examples include project benefit sharing, revenue sharing arrangements, joint stock for equity contributions such as land, discuss sustainability and safety nets);
- (iii) outlines measures to provide social safety net through social insurance and/or project special funds;
- (iv) describes special measures to support vulnerable groups;
- (v) explains gender considerations; and
- (vi) describes training programs.

K. Resettlement Budget and Financing Plan. This section:

- (i) provides an itemized budget for all resettlement activities, including for the resettlement unit, staff training, monitoring and evaluation, and preparation of resettlement plans during loan implementation.

- (ii) describes the flow of funds (the annual resettlement budget should show the budget-scheduled expenditure for key items).
- (iii) includes a justification for all assumptions made in calculating compensation rates and other cost estimates (taking into account both physical and cost contingencies), plus replacement costs.
- (iv) includes information about the source of funding for the resettlement plan budget.

L. Institutional Arrangements. This section:

- (i) describes institutional arrangement responsibilities and mechanisms for carrying out the measures of the resettlement plan;
- (ii) includes institutional capacity building program, including technical assistance, if required;
- (iii) describes role of NGOs, if involved, and organizations of affected persons in resettlement planning and management; and
- (iv) describes how women's groups will be involved in resettlement planning and management,

M. Implementation Schedule.

This section includes a detailed, time bound, implementation schedule for all key resettlement and rehabilitation activities. The implementation schedule should cover all aspects of resettlement activities synchronized with the project schedule of civil works construction, and provide land acquisition process and timeline.

N. Monitoring and Reporting.

This section describes the mechanisms and benchmarks appropriate to the project for monitoring and evaluating the implementation of the resettlement plan. It specifies arrangements for participation of affected persons in the monitoring process. This section will also describe reporting procedures.