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Regional Technical Assistance (RETA) – 7433: Mainstreaming Land Acquisition and Resettlement Safeguards in Central and West Asia Region

Country Assessment on Land Acquisition and Resettlement

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Abbreviations and Acronyms

ADB	Asian Development Bank
AP	Affected Person
Aiyl aimak	Local government
CA	Country Assessment
CAREC	Central Asia Regional Economic Cooperation
CRP	Compliance Review Panel
CSO	Civil society organization
DP	Displaced Person
EA	Executing agency
GRM	Grievance Redress Mechanism
IFI	International Finance Institution
IR	Involuntary Resettlement
FA	Financing Agreement
Giprozem	State Institute for Land Use Planning
Gosregister	The common name for the State Registration Service
Gosstroy	The common name for State Agency for Construction and Regional Development
KGZ	Kyrgyz Republic
LAR	Land acquisition and resettlement
LARF	Land Acquisition and Resettlement Framework
LARP	Land Acquisition and Resettlement Plan
LRF	Land Redistribution Fund
MFF	Multi Tranche Financial Facility
MOE	Ministry of Energy
MOF	Ministry of Finance
MLEM	Ministry of Labor, Employment and Migration
M&E	Monitoring and evaluation
MRM	Management Review Meeting
NESK	National Electric Grid Company Kyrgyzstan
NGO	Non- government Organization
PCP	Public Communication Policy
PIU	Project Implementation Unit
PPTA	Project Preparation Technical Assistance
PUU	Pasture User Union
RSA	Rayon State Administration
RETA	Regional Technical Assistance
REU	Real Estate Unit
SACRD	State Agency for Construction and Regional Development
SAEF	State Agency for Environment and Forestry
SIA	Social Impact Analysis
SFAL	State Fund for Agricultural Lands (former LRF)
ST	Safeguards Team (ADB)
SPS	Safeguards Policy Statement 2009
SRS	State Registration Service
UKV	Union of Kyrgyz Valuers

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CHAPTER 1

INTRODUCTION

1.1 Goal and Objectives

1. This Country Assessment (CA) for the Kyrgyz Republic is prepared under ADB Regional Technical Assistance (RETA) 7433: Mainstreaming Land Acquisition and Resettlement Safeguards in the Central and West Asia Region. 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 ADB Safeguard Policy Statement 2009 (ADB SPS 2009) and about the improvements needed for effective LAR implementation in each participating country;
- (ii) improved country ownership of applicable LAR practices;
- (iii) closer alignment between ADB Policy and local practice; and
- (iv) improved procedures and technical tools to prepare and execute resettlement plans.

The above outcomes are pursued in each country by implementing four RETA components:

- (i) preparation of a LAR 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.

1.2 Methodology

2. 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 context¹.

3. 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 country and ADB LAR requirements/practice. The objectives are to locate critical differences requiring reconciliation and to propose reconciliation measures.

4. 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 the Kyrgyz Republic 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 solved by the CBP.

¹ Two case studies were selected amongst donor-funded infrastructure projects with LAR impacts based on the following criteria: (i) project implemented over the last 8 years; (ii) illustrates procedural and technical constraints to effective LAR process; (iii) depicts the rehabilitation package offered to the affected communities; (iv) availability of thoroughly documented LAR process. The case study from another donor is included because it shows the LAR process when ADB is not involved.

1.3 Land Administration Context

5. This section reviews the national land administration context and details the land reform process between 1991 and 2012 that characterized the transformation from the Soviet-based system to the current system. The reforms and resulting land tenure system have 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.

1.3.1 Agricultural Land Reform

6. The Kyrgyz Republic is a landlocked, mountainous country spanning 199,900 square kilometers and inhabited by 5.5 million people. After independence in 1991, the Government undertook an in-depth land reform program that transformed land relations, fostered the development of private ownership and land markets and the emergence of new tenure forms such as community-managed pasture and forest areas.

A. Land Tenure during the Soviet period

7. During the Soviet period, all land was state property with people having only use rights. The land in rural areas was consolidated into large collective and state farms, accounting for 96–98 % (1.4 million hectares) of agricultural land. The other 2–4 % of land comprised small household plots used by individual households

B. Independence

8. After independence, the Government launched an extensive market-based reform, beginning with the de-collectivization of the collective and state farms, and introducing private ownership of agricultural land. Over two decades, the reform permitted the privatization of most of arable lands, fostered land markets development, and led to an improvement of the land administration system. The reform has been implemented in three phases.

9. **Phase 1 (1991-94):** Beginning in 1991, state subsidies for agricultural inputs and services were eliminated and agricultural markets and prices were deregulated. The Government restructured state and collective farms into peasant farm associations and cooperatives. However, these initial attempts had little overall impact and large agricultural farms continued to exert control over land or agricultural machinery. Land remained state-owned and purchase or sales was not allowed.

10. **Phase 2 (1995-2003).** In 1995, the Government adopted more assertive land reform measures and distributed 75% of the arable land to citizens using a formula based on farmer's experience, employment history and farm size². The other 25% of the land was pooled into the Land Redistribution Fund (LRF) and intended as a land reserve for local development needs or for those who, for various reasons, had not received plots in the initial reform phases. In 2000, the LRF was devolved to local governments (454 ayil kenesh), which became responsible for allocating LRF land under their administration. LRF land could be allocated for expanding settlement areas, creating experimental agricultural stations or for other Government-defined purposes.

11. Amendments to the Constitution in 1998³ allowed individual land users to receive private ownership rights to arable land plots. However, the 1999 Land Code imposed a moratorium on land sales to reduce land speculation risks. The moratorium was lifted in 2001 with the enactment of a series of laws regulating and limiting land transactions and safeguarding farmers or low income households from ill-advised land sales and further impoverishment (e.g. foreigners, legal entities and urban residents were not allowed to

² The reform was defined in the government "Program of Land and Agrarian Reform in the Kyrgyz Republic for 1995-1996."

³ Law on Amendments and Additions to Constitution of the Kyrgyz Republic dated of October 21, 1998, para. 1.

purchase agricultural land). In this period, the Government developed an overall regulatory framework, establishing the overarching principles for the sale, purchase, and lease of arable land; however, implementing procedures for land-based transactions were yet to be introduced through the adoption of a set of by-laws and regulations.

12. The land reform process succeeded in privatizing almost 80% of the country's arable land. By 2008, some 300,000 small farms averaging 3 hectares (run as a business with several plots) were created and some 900,000 individual household plots averaging 0.13 hectares were allocated amongst rural households for private ownership⁴. During these stages pasture lands remained in state-ownership.

13. **Phase 3 (2004-present):** In this phase the land reform process targeted support to the agricultural sector through the development of agro-processing, the promotion of agricultural cooperatives and associations and the improvement of pasture management practices⁵. In contrast to the previous stages, this phase of land reform encountered multiple challenges.

14. The most important aspect of this reform phase relates to pasture land tenure. The lease-based pasture management system introduced in 2003 proved to be largely ineffective, not least because the attempts to promote pasture enclosure conflicted with reviving traditional transhumant practices characterized by seasonal herd mobility and institutional flexibility. As a result, the pasture lease arrangements were abolished. A new Pasture Law approved in early 2009 introduced instead a community-based pasture management system. This system, which previously involved three government levels (local, rayon and oblast administration), devolved management functions to the local government and the Pasture Users Unions (PUUs). Organized as a community-based entity, the PUUs allocate annual grazing rights amongst herders, collect and manage the pasture use fees, determine the carrying capacity of pastures, and enforce the terms of the pasture tickets.

15. Given that pastures are used not only by herders (primary users), but also many other users – hunters, herb collectors, beekeepers, travel operators, mining companies etc, the reform seeks to (i) introduce complex tenure arrangement that accommodates the multiple uses of the pasturelands; (ii) draft a set of by-laws and regulations governing the tenure relations between herders and other non-grazing users and; (iii) promote multi-purpose use of the grazing lands so as to maximize the economic benefits for the local communities.

1.3.2 Residential Land Reform

16. During the Soviet era, residential land and commercial buildings were owed by the State. At independence, urban residents were granted the rights for their residential property, though the legal framework supporting these rights was still undeveloped, contributing to the high level of tenure insecurity. The situation was aggravated by unclear parcel boundaries, poor cadastral records, and inadequate land administration services. It was not until 2006 when most residential property was registered and people received the property title. Despite successful implementation of a systematic registration program, up to 180,000 privately-owned urban real estate units (REU) and 70,000 REU in rural area encountered technical and legal problems with registration. The problems were because of the difficulty of finding property owners (in many cases they were absent) or to the lack of complete/adequate property documentation. In situations where owners could not be located within 3 years, the Government introduced special procedures⁶ to acquire the land plots back to the state land fund⁷.

⁴ Based on the Land Code only citizens classified as rural settlers could own agricultural land plots

⁵ The Government intended to promote agricultural cooperatives as a means to raise efficiency and profitability in growing, processing and marketing agricultural produce through consolidation of smallholders as individual farmers, peasant farms, or other small agricultural commodity producers into larger farming estates through easier mechanisms to purchase, long-term lease, acquisition etc.

⁶ Land Code, Article 66, Clause 3, dated 2 June 1999, as last amended on 9 August 2012

⁷ State Land Fund comprises all agricultural and non-agricultural lands of the country and consists of the following categories of land: i) state forest land; ii) protected areas; iii) residential land; iv) agricultural land; v) land of industry,

17. The situation subsequently improved as a result of the progress made in land administration that began with privatization and registration of arable land during the second stage of reforms. The experience obtained through registration of rural property significantly raised the efficiency of registration for the urban sector. Land and structures found on a plot (house, sheds, fences etc) were treated as one REU, with a unique identification number. By 2007, with the support of the World Bank and other donors, as many as 1.25 million urban properties were registered. The total number of registered urban and rural REUs was estimated to be 2.5 million.

18. Notwithstanding these later improvements, residential land tenure continues to offer serious challenges for both the government and the private sector. These challenges are best exemplified by the widespread emergence of semi-formal settlements (*novostroiki*) around the perimeter of major cities⁸. The emergence of these settlements was because of inadequacies of the new land administration system in the early 1990s which partly continues today⁹ and to poor local governance practices. The sheer size of the population in *novostroiki* settlements makes the acquisition of the squatted areas by eviction not only a costly effort, but also a politically unpopular measure. To avoid this situation the city municipalities are now considering different mechanisms which entail the legalization of *novostroiki* around Bishkek or Osh. At the same time, the Government has adopted a set of measures to curb further expansion of the squatted territories by tightening legislation related to land-based transactions¹⁰.

19. A final feature of current land administration dynamics in the Kyrgyz Republic is the expansion of urban land at the expense of agricultural land, a phenomenon that raises concerns about food security. From 2005 to 2010, 13,067 ha of agricultural land were re-classified into residential plots¹¹. To prevent further reduction of crop land, the Parliament has imposed a moratorium on the re-classification of irrigated arable land¹². The moratorium has de-facto stopped the possibility to acquire *irrigated arable land* for both public and private projects requiring a conversion of land category and is currently creating a substantial limitation to the development of infrastructure projects (roads, energy, and communication)¹³.

1.4 Land Registration and Land Markets

20. With the 1998 amendments to the Constitution and subsequent legislation, private ownership was given a legal foundation, agricultural and urban land became transferable and mortgageable, and the sale/purchase of land became a common practice. However, the new land administration system that emerged from the early privatization reforms remained under-developed and largely under-regulated as the institutional framework for land transactions and relative implementing rules was still taking shape. Two

transportation, communication, defense, and other purposes; vi) water land and; vii) reserve land (Land Code, Article 10, dated 2 June 1999, last amended on 9 August 2012).

⁸ There are currently 7 semi-formal settlements in Osh and 47 in Bishkek, with the total number of squatters estimated to be anywhere between 125,000 to 300,000 people. Most squatters have some type of right-establishing document for their land. However these documents were often obtained with multiple violations of the law and therefore do not constitute a legitimate title. It is also to be noted that usually also the buildings on these plots do not comply with construction development requirements and lack basic water and sanitation services.

⁹ The issue remains problematic since so far the status of state-owned and municipal land plots remains unclear. Most municipalities do not have registered land certificates for all municipal plots and, therefore, cannot use them until the tenure status is clarified by Gosregister. Cadastral inventories of public plots and buildings is yet to be fully updated, as the systematic registration has focused up to now only on private property. This has left a significant gap for what concerns the titles of municipal and state land, which in part gave way to such phenomenon of semi-formal settlement trends described above. To resolve the situation with state-owned and municipal land titles, the Government needs significant resources to update cadastral records and issue the land titles for all state and municipal property.

¹⁰ Code on Administrative Violations (1999, last amended in November 2012)

¹¹ 80% of this land was originally classified as irrigated arable land (the most valuable agricultural land category).

¹² Law on Moratorium to Re-classification of Irrigated Arable Land into Other Categories of Land, dated 26 June 2009

¹³ The moratorium, however, does not apply for water development projects such as irrigation and water supply as detailed by specific provisions in the Land Code (Land Code, Clause 2, Article 74, dated 2 June 1999, last amended on 9 August 2012)

major developments contributed in improving the situation. One was the establishment in 1999 of a singled agency (*Gosregister*) responsible for maintaining land cadastral records and registering property rights. The other was the initiation of a systematic property rights registration program across the country¹⁴. These two developments had important effects in increasing the information base for land administration and fiscal cadaster, simplifying registration procedures and reducing transaction costs. Less success was however obtained in the registration of land leases which until today are often based on informal agreements or are not registered. Informal agreements between parties are especially common in rural areas where the land is leased for a short term period and rural residents settle disagreements without third party involvement. Tax disincentive also affects the decision of local governments to register long-term land leases.

21. The expansion of land market expansion has been slow but consistent since the beginning of the land privatization process initiated in 1998 and received a fundamental spur with the establishment of *GosRegister* and the start of the national land registration program. As these two developments contributed in a fundamental way in enhancing tenure security and raising the confidence of investors in property right holders the sale/purchase of agricultural land increased from 2.5 million transactions in 2004 to 4.2 million in 2008.

22. A similar expansion occurred also for the mortgage markets. Mortgage lending for residences became widespread and by 2006 the value of outstanding residential mortgages reached about USD 3 billion or 2.3 % of the GDP. Agricultural land mortgages expanded initially at a lower pace because of legislative limitations prohibiting foreigners, legal entities or urban residents to own agricultural land although this situation changed in 2009 when several points of the land code were amended¹⁵. These changes allowed legal entities to own agricultural land for a fixed term of 1 year and allowed commercial banks and credit institutions to accept agricultural land as collateral. As a result, the mortgage market for agricultural land experienced a seven-fold increase from 2008 to 2009.

23. Notwithstanding the trends described above, it is to be noted that today land markets remain unevenly developed across the country with the country's remote areas having much less developed real estate markets than cities or more developed areas. In such remote localities the numbers of transactions recorded by *Gosregister* or public notaries are minimal and often insufficient to establish a statistically acceptable base to calculate market value.

24. In situations where there are developed land markets, market value is derived through the comparative method by valuing a plot against the average sale price of a pool of comparator plots. The comparator plots and their sale prices are recorded by *Gosregister* and can be easily obtained by any citizen after the payment of a fee at any *Gosregister* office (the land sale records for the entire country have been computerized and made accessible in all *Gosregister* offices). The data on property transactions provided by *Gosregister* was seen up until recently as inaccurate and as failing to reflect true sale prices. This was because of widespread underreporting of the sale prices associated with the tax dodging. However, the measures the Government adopted in early 2011 to further rationalize the property registration services (establishing a fixed sale fee, removal of the intermediary private notaries for sale transactions, reducing time for the property registration) helped raise accuracy of the transacted prices and boost the confidence of the citizens in the services (including data provision) provided by *Gosregister*.

25. Where reliable market prices for land are absent, the Government draws on normative (cadastral) prices¹⁶ to establish the lease fee for LRF lands or municipal properties and calculate the compensation for

¹⁴ By 2008, 1.25 million urban REU and 1.3 million rural REU were surveyed and registered under the land registration program and today, most privately owned properties (about 90%) have been registered although significant gaps remain for municipal and state owned land.

¹⁵ Land Code, Article 5, Clause 4, dated 2 June 1999, last amended on 9 August 2012

¹⁶ Normative prices are prices defined a priori based on several pre-determined cadastral categories such as among others land type, land quality, location, productive capacity etc. These parameters are defined by *Giprozem* (State Institute for Land Use Planning) and the specific information for a given plot can be obtained from them against a fee. Ideally the data of *Giprozem* are regularly updated, but because of chronic shortage of budgetary resources this is not done systematically and comprehensively.

land acquisition or mandatory servitudes. Despite the Government's efforts to phase out the use of normative values where market rates are available, some state agency continue to use them. This happens when in a specific location there is no adequate valuation expertise, when the data at Gosregister are insufficient to assess clear market values or when for some other reason it is difficult to obtain undisputed valuations.

1.4.1 Property Valuation Issues

26. Although property valuation has undergone noticeable development since 1995, there is still no comprehensive regulation governing valuation practices that satisfy the needs of all sectors. In 2006 the Government approved a rather simple set of Valuation Standards which provide overall reference and technical guidance to both valuation specialists and reviewers of the valuation reports¹⁷. However, the principles and norms set forth in these Valuation Standards are generic and do not differentiate between property valuation mechanisms and standards for different purposes, thereby creating room for multiple interpretations. Often, property valuation requirements applied for taxation purposes, the field of practice where valuation is relatively advanced, are extended to valuation for resettlement purposes which not only creates confusion but also affects accurate calculation of the compensation package. As a result, the same type of property is frequently valued differently, depending on the purpose of the valuation, which leads to questions by executing agencies and ministries about the accuracy of valuation reports.

27. The state policy on asset valuation is rather vague for determining detailed regulation standards. The Government plays only a marginal role in enforcing valuation norms and most control and supervision functions are vested with the private sector. The Ministry of Economy was recently authorized as the institution responsible for formulation and implementation of the state policy on property valuation. Other functions such as building the capacity of valuation experts, certifying specialists and confirming the credentials of practicing specialists have been conferred to the Union of Kyrgyz Valuers (UKV).

28. The UKV performs an important general function for verifying the quality of valuation reports produced by independent valuers. Each regional branch of the UKV offers valuation review services to land buyers and sellers that request them. The expert opinions provided by UKV are non-binding but help to ensure compliance with the national valuation standards and related regulations. The UKV services are particularly useful to buttress with an expert opinion asset valuations to be presented to state agencies or to be used for investment decisions.

¹⁷ The standards are comprised of 6 documents, each describing overarching principles for valuation: 1.4 Main principles of valuation; 1.5 Ethics for valuers; 1.6 Valuation of businesses; 1.7 Valuation of vehicles; 1.8 Valuation of assets and 1.9 Preparation of the valuation report.

1.5 Land Acquisition for Public Purposes

29. The establishment of a project as a Public Purpose activity endowed with juridical personality and triggering the right of Eminent Domain is contingent on the promulgation of a Project Decree to be signed by the Prime Minister. Such a decree clearly establishes that the Project fits the public interest characters defined by the Law, identifies project location and local governments involved, and provides a preliminary assessment of the properties to be acquired under the right of eminent domain based on cadastral data and estimate relative costs based on cadastral values. Technically, surveyors and valuers tasked with the detailed field measurement of project-affected assets and their valuation at market rate can enter the affected properties only after the Decree is emanated. In practice however this principle may be circumvented if the signing of the Decree slows the preparation of a project by seeking informal agreements with owners of the affected plots.

1.5.1 Expropriation Issues

30. Under current legislation the exercise of eminent domain through expropriation is possible but seldom used as it is considered too onerous, controversial and impractical. The Land Code describes general land acquisition principles for public purpose projects indicating that: a) land is to be acquired through replacement land or cash based on the full market rate and b) preferentially through consensual agreement between State bodies land owners/users¹⁸. Compensation proceedings should cover all investments made on the land, liabilities to third parties and opportunity costs and may include provisions that the replacement land value is counted towards the compensation¹⁹. Failing agreement with a land owner, the state body can, within 2 months, turn to the court and have it rule on the compulsory purchase (expropriation)²⁰ and land owners/users. The Land Code provisions are generic and are not supported by a set of by-laws and regulations that fully clarifies the conditions for public purpose land acquisition and proper valuation mechanisms. It should also be noted that in the Land Code eminent domain cannot be applied to all types of land. For instance, land co-owned by multiple parties where apartment buildings are located or lands that are auxiliary attachments to apartment buildings cannot be expropriated for state and public purposes.²¹

1.5.2 LAR Process and Modalities

31. The LAR process for public projects varies depending on project implementing agency, nature of project, scale of resettlement impacts and source of funding (compare Case study 1 and 2). Nonetheless, there are key standard steps (Chapter 3), which are common to all public projects and are unavoidable to implement the LAR process. The approach for compensating the impacts of public purpose projects has undergone considerable changes since the early 1990s. In the last 20 years LAR practice has become more nuanced and inclusive, reflecting growing civil society or local community concerns on public participation, human rights, and gender considerations. Today, LAR practice incorporates at least some considerations for public consultation, property rights, grievance management, and community cohesion. Yet, clear implementing procedures to resolve these concerns are still to be established. Poor regulation results in significant variability in how various State agencies/local governments resolve citizen's concerns and in inconsistent or non-transparent LAR execution standards. The main issues to be resolved by future regulation are: inconsistency in valuation methods/procedures, unsystematic public consultation, loosely-defined complaint handling mechanisms, poor information disclosure patterns and lack of third-party monitoring. Each of these issues is briefly analyzed in the next paragraphs.

32. **Valuation process and valuation results.** Property valuation approaches vary from one executing agency to another but engaging independent appraisers has become common practice. It is to be noted, however, that there are still cases when valuation is carried out by state agencies (see Case study 1). The

¹⁸ Land Code, Article 68, Clause 1, dated 2 June 1999, last amended on 9 August 2012

¹⁹ Land Code, Article 68, Clause 3, dated 2 June 1999, last amended on 9 August 2012

²⁰ Land Code, Article 68, Clause 1, dated 2 June 1999, last amended on 9 August 2012

²¹ Land Code, Articles 32 and 42., dated 2 June 1999, last amended on 9 August 2012

executing agencies turn to State agencies²² for asset valuation because of lack of funds, tight schedules, pressure to deliver projects, fear of internal audits and reluctance to change established practices for new procedures. Motivated by the absence of a clear valuation protocol, the need to re-confirm and legitimize valuation findings through State expertise (in particular from *Gosstroy*) causes serious complications or delays in LAR implementation. On the one hand, executing agencies are uncertain which State agency is the most legitimate for the task (executing agencies often seek advice from different institutions or try to buttress their position by seeking approval from more than one institution.) On the other, State agency review of valuation surveys is slow and involves complicated procedures. The improvement of this situation requires a comprehensive reform of land valuation standards and protocols.

33. Aside from lack of clear mandates on valuation responsibilities, another element of uncertainty in valuation matters is the lack of clear technical standards and protocols both for valuation and review of the valuation reports. The State agencies entrusted by executing agencies for the verification of valuation reports follow approaches mixing standards that are at one time rather vague (i.e. the valuation methodology standards), extremely detailed. (i.e. the SNIP unit prices definition standards) or non-relevant norms (i.e. norms taken from laws/regulations not related to valuation). In other words valuation tends to be carried out in a grey technical and legal area. This situation, combined with a continued lack of capacity for valuers, lead to prolonged discussions about the proper compensation package.

34. **Grievances.** There is no accepted protocol for registering/reviewing grievances. Although the Law on Grievances²³ obliges State agencies to register and give due consideration to public complaints, many executing agencies are either unaware of the law, do not see it as fully binding or do not have proper mechanisms to accept and review complaints. As a result, most complainants directly lodge grievances to Rayon Administrations, the House of Government, the Parliament, or the Office of the President.

35. **Public Information and AP consultation.** The public consultation process undertaken by an executing agency is mostly superficial and often does not meaningfully incorporate inputs from stakeholders. Also public consultations during project preparation continue to follow patterns where only authorities are invited to meaningful meetings. In cases where citizens are invited the presentation takes more the form of information about decisions already taken than the form of a proper consultation. In these cases there is very little interactive discussion or presentation of the various options or opportunities.

36. **Third-party Monitoring.** Based on past laws and practice, a third party should witness the way agreement on compensation is reached between an executing agency and an Affected Party and should confirm that the AP consent was informed and voluntary, a function usually performed by a notary. However, third party verification is not always the current practice and many LAR decisions are only based on a letter between the executing agency and owner, with no proof of adequate information disclosure or voluntary negotiations.

1.6 State Bodies Responsible for LAR

37. Various State Agencies or Institutions have different functions in the LAR process, as detailed below:

- (i) **House of Government:** The House of Government (Central Government) is the authorized state body defining LAR procedures²⁴. To do so, the Government issues Resolutions and Ordinances, which are anchored within existing laws and intended to invoke relevant LAR provision(s) relative to specific public project. The Central Government is the only authorized state body that can: a) initiate land acquisition (through a Resolution); b) authorize executing agencies to begin LAR process on its behalf; c) endorse the compensation and rehabilitation

²² The main institution for State expertise is the State Agency for Construction and Regional Development (SACRD) but is more commonly referred to as *Gosstroy*. The UKV regional offices also provide expertise when asked, but its expert opinion is less binding compared the legal opinion issued by the *Gosstroy*.

²³ Law on Grievances, as of 23 March 2007

²⁴ Land Code, Article 20, Clause 11 - 1, dated 2 June 1999, last amended on 9 August 2012

measures for the APs and; d) endorse the land re-classification for irrigated arable and forested lands (as last procedural step in LAR process in the Kyrgyz Republic).

- (ii) **National Parliament (Jogorku Kenesh):** The National Parliament is the only authorized body that is mandated to pass and amend relevant laws on LAR.
- (iii) **Rayon State Administration (RSA):** The RSA is the representative body of the Government in the regions regulating management rights for state land²⁵. The RSA includes a representative and an executive body. The former is responsible for legislative matters within the RSA territory; the latter is responsible for administrative issues. The representative body (Rayon Kenesh) has the right to establish temporary and permanent state commissions (e.g. establish LAR Commission) to provide a preliminary review of issues pertinent to the RSA mandate. A RSA commission may seek the advice of technical experts (e.g. independent valuers) or representatives of other state institutions to support its decisions. Insofar as the LAR is concerned, the RSA is often a body that is tasked by the executing agency to mobilize the relevant implementing partners (local government, regional branches of line ministries, technical experts etc.) and implement LAR process on the ground.
- (iv) **Local government (ayil aimak):** This is the local organization performing state functions at the lowest administrative level. It has management and use rights over all lands within its administrative territory except for some state or private land. As with the RSA, the *ayil aimak* can establish local commissions (e.g. LAR Commission) to review facts and issue recommendations for its own or other state institutions. These recommendations do not have a binding force but support documents or justification for formal decisions. Insofar as land resources are concerned, the *ayil aimak* is responsible for managing LRF land and its allocation to local citizens for purposes defined in relevant legislation.
- (v) **City municipalities:** A Municipality is the local self-government of cities or towns. It has both representative (city council) and executive bodies. The city councils have management and use rights for municipal lands and have functions similar to the *ayil aimak*. The city municipalities are authorized to establish and implement the city-specific procedures for LAR, as long as such procedures are based on and do not contradict the national laws and regulations.
- (vi) **State Registration Service (or Gosregister):** The SRS provides technical support to LAR tasks by ensuring that property rights are registered and due process is followed. The SRS maintains cadastral data for REUs covering the entire country. These data are made available to State commissions or other State bodies for land title review and land valuation purposes. The SRS carries out cadastral survey work for the executing agencies during the project design process. They also provide legal support for other issues such as re-classification of land. Considering its important functions and its wide network of regional offices (49 land offices across the country) the SRS is always included as a member of the State LAR commissions.
- (vii) **State LAR Commission:** The level of the Commission is determined by the scope of resettlement and can be Central Government, rayon, local Government, or an inter-agency Commission. The Commission is set up upon the request of an executing agency by a Decree specifying its functions, members, program of work and resource needs. The Commission performs specific LAR tasks, makes recommendations to the executing agency and other government bodies on various aspects of LAR which are not binding and are only meant to inform the decisions made by a Ministry or the Central Government. The Commission usually comprises representatives from relevant ministries and agencies and is usually chaired by the executing agency itself. In implementing its founding Decree, the Commission mobilizes local stakeholders, reviews cadastral data, conducts impact assessments, commissions valuation surveys and procures legal expertise. Based on the results of these activities the Commission

²⁵ Land Code, Article 4, Clause 2, dated 2 June 1999, last amended on 9 August 2012

elaborates recommendations related to: (i) the allocation of replacement plots; (ii) the cash compensation for lost assets/businesses/livelihoods; (iii) other rehabilitation measures and; (iv) the nomination of the agencies that will implement the proposed recommendation (Table 1.2).

- (viii) **Executing Agencies:** Neither line ministries nor state agencies have the right to initiate LAR (or establish the public purpose project), unless they have been assigned as the executing agency by a Governmental Decree. Once mandated by the Central Government to lead the LAR process, ministry/state agency (directly or through the State commission) investigates the case and recommends an action plan to the Central Government. If the action plan is approved, the executing agency proceeds to implement the endorsed measures to compensate and/or rehabilitate APs.
- (ix) **Line Ministries and State Agencies:** Aside from acting as an executing agency, line Ministries and State agencies may be involved in LAR issues as members of the LAR Commission or as providers of expert opinions and validating decisions at different stages of the LAR process for a project, including the final approval of a LARP for ADB projects. For example, the valuation methodology for different assets needs to be validated by relevant ministries or agencies; for example, valuation methodology for structures, land, businesses verified by the Gosstroy, trees and bushes – by the State Agency for Environment and Forestry, crops varieties – by the Ministry of Agriculture.

1.7 ADB Experience in Managing Projects with LAR in the Kyrgyz Republic

38. The history of ADB projects in the Kyrgyz Republic had almost no record of involuntary resettlement issues up to 2010. By and large until 2010 LAR impacts were avoided in most infrastructure projects through design solutions that involved no civil works beyond public lands or in the immediate proximity of residential houses, businesses or other private property. Moreover, most projects were implemented on unused state or municipal lands, requiring no land acquisition or resettlement of private owners and only in a few cases compensation for other assets. In certain cases, however, some projects failed to duly account for LAR, giving rise to unanticipated impacts during project implementation. Such impacts were subsequently solved either in line with the national legislation only, without triggering ADB SPS 2009 (see Case Study 1 in Appendix 3).

39. Against the backdrop of general unawareness of ADB policy requirements, the LAR issues were resolved by executing agency as they arise based on emerging national legislation regarding LAR and what considered being expedient by the EA. The absence of an established protocol that need to be followed by all executing agency in managing LAR, combined with insufficient downstream supervision by the executing agency and ADB, often created the situation where resettlement impacts were not recognized and losses were not adequately adjusted. The examples of such situations include: compensation is paid to APs long after the affected property was acquired (see Case Study 2 in Appendix 4), the compensation failed to account for all impacts, no replacement land (cash compensation) was provided in lieu of taken land, infrastructure was built on contested border lands²⁶.

40. Then in early 2009 changes in the application of ADB policies were initiated. Following the adoption of the ADB SPS 2009 more emphasis was placed on implementation level supervision and enforcement. These changes were manifested, among others, in the creation of the safeguard unit within the Project Implementation Unit (PIU) at the Ministry of Transport and Communication (MOTC), which is the executing agency for all transport sector projects, and in introducing requirements for the executing agency to monitor safeguard issues during the project implementation phase and beyond. The first category B project for

²⁶ KGZ Grant 0122: Community-Based Infrastructure Service Sector Project (Supplementary Grant)

resettlement²⁷ was registered in 2010 with multiple temporary impacts. Currently there are 7 category B projects for resettlement and others are being considered for a change in category.

²⁷ KGZ Project No 43456-023: Power Sector Improvement Project

CHAPTER 2

COMPARATIVE ANALYSIS OF ADB POLICY AND NATIONAL LEGISLATION PRINCIPLES

41. This chapter analyzes ADB and the Kyrgyz Republic principles for LAR. The objective is to recognize inconsistencies or gaps that may complicate LARP preparation and implementation and indicate the available solutions.

2.1 National Legal Framework and Entitlements for LAR

2.1.1 Relevant Provisions of the Kyrgyz Republic Laws and Regulations

A. Constitution

42. The Constitution of the Kyrgyz Republic (June 27, 2010), Article 12 provides that:

- (i) The Kyrgyz Republic recognizes diversity of ownership forms and guarantees equal legal protection to private, state, municipal and other types of ownership Article 12, Clause 1).
- (ii) Land can be in private, municipal or other types of ownership with an exception of pasture lands that cannot be held in private ownership (Article 12, Clause 5).
- (iii) Ownership is inviolable and no one can be dispossessed of its property arbitrarily. The property can be acquired by the state against the person's (party's) will only based on the court's ruling (Article 12, Clause 2)
- (iv) Acquisition of property for public purposes, as defined in the national laws, can be carried out only through the court's ruling and with the fair and prior payment of the compensation for the affected property as well as other costs (Article 12, Clause 2).

B. Civil Code

a. The Civil Code (8 May 1996, # 16; last amended on 25 February, 2013) provides that: a party whose rights are violated can claim full compensation for its losses, unless the national legislation or agreements (contracts) prepared in line with the national legislation indicate the contrary (Article 14, Clause 1). The Civil Code also specifies that compensable losses include:

- (i) Costs that the party concerned has incurred or was going to incur for reinstating the party's violated right (Article 14, Clause 2)
- (ii) Losses or damages of the property (Article 14, Clause 2)
- (iii) Lost profit that the party was supposed to receive under the normal conditions, if the party's rights were not violated (opportunity costs) (Article 14, Clause 2)

C. Land Code

b. The Land Code (2 June 1999, # 45; last amended on 9 August, 2012) provides that:

- (i) Land can be acquired (purchased) for state and public purposes based on agreement between the authorized body and land owner or land user. In case the land owner or land user disagrees with the acquisition (purchase), the authorized body can within 2 months turn to the court with the request to carry out the acquisition with the payment to the owner or land user the compensation for the land (Article 68, Clause 1).
- (ii) When determining the compensation for the land being acquired, it (compensation) should reflect the market value of the right to the land and associated structures, losses that the land owner or land user incurs and liabilities to the third parties (Article 68, Clause 3).

- (iii) When acquiring the land for state or public purposes with the consent of the land owner or land user, owner/user can be allocated replacement land with the value of this land to be counted towards compensation for the land acquired (Article 68, Clause 4).
- (iv) The Land Code specifies instances when the right to the land and associated structures can be terminated. These include:
 - a) Failure to use the land according to its targeted purpose²⁸;
 - b) Land needed for state or public purposes;
 - c) Non-use of land provided for agricultural use for three years;
 - d) Failure to use land provided for non-agricultural purposes for the period indicated in the original provision;
 - e) Non-payment of land taxes;
 - f) Non-payment of social taxes;
 - g) Annulment of license for mining on the basis of the Kyrgyz Republic's mining law.

46. A court decision is required to officially terminate the rights to land and associated structures for instances 1 through 4. The acquisition of the land under instances 1 through 4 (above) can be effected only after compensating the costs of the rights termination and associated costs (Article 49, Clause 4).

47. According to Article 49, Clause 1, unless the legislation, land title or lease contract indicates the contrary, the land owners or user can has the right to:

- (i) Use land based on owner's/user's own discretion and in accordance to the targeted purpose of the land (Article 49, Clause 1, sub-Clause 1)
- (ii) Build structures on the land, according to its targeted purpose, following the established procedures and meeting architectural, construction, environmental, sanitary, fire safety and other requirements (Article 49, Clause 1, sub-Clause 6)
- (iii) Claim compensation for losses suffered, as specified by the Kyrgyz Republic legislation (Article 49, Clause 1, sub-Clause 5.)

48. Finally the Land Code (Article 78, Clause 2) specifies the use regime with regards to the *lands of common use*. It particularly indicates that *lands of common use* in settlements/towns/villages (e.g. roads, streets, squares, sidewalks, driveways, park bands, boulevards, mini parks, water bodies, etc.) cannot be in private ownership, and only in exceptional instances can be rented by the authorized state body to legal entities and individuals for maximum of 5 years. The authorized state body may permit construction of light (not capital) structures on lands of common use (Clause 78, Clause 3).

D. Law on State Registration of Property Rights and Associated Transactions (26 November 1998, last amended on 8 August 2012)

49. The law provides that the State recognizes and protects the property rights and encumbrances, which are registered following the legally established procedures (Chapter 1, Article 1, Clause 1). Any right establishing document or document that relates to the property rights or encumbrances should be registered within 30 days since the abovementioned document was produced or prepared (Chapter 1, Article 7, Clause 1). The property rights and encumbrances which are subject to the mandatory registration include (Chapter 1, Article 4):

- (i) Ownership rights;
- (ii) Management rights;
- (iii) Use rights;
- (iv) Perpetual (term less) right for the land plot;
- (v) Property rights arising from the mortgage or collateral related obligations;

²⁸ The use of land according to its targeted purpose is the use of the land according to the purposes specified in the title, lease agreement, or other officially endorsed documents (Article 2, Clause 30, Land Code 1999). The rights to the land can be terminated in case of failure to use the land according to its targeted purpose. The termination of rights, however, can be ruled only by the court (Article 67, Clause 1, Land Code 1999).

- (vi) Temporary rights, lease or sub-lease for a period of 3 or more years;
- (vii) Servitudes;
- (viii) Encumbrances on property rights related to designing, construction, and maintenance of the property;
- (ix) Property rights arising from the court decisions;
- (x) Rights to use the national resources;
- (xi) Rights arising from the legalization of the property.

50. The property rights, which are not subject to the registration, but are recognized and protected by the State include (Chapter 1, Article 6):

- (i) Access rights to the communication lines, pipelines, geodesic localities, and other pieces of infrastructure meant for the public purpose;
- (ii) Rights of spouses, children, and other individuals;
- (iii) Temporary rights, lease or sub-lease for a period of under 3 years;
- (iv) Actual use rights for the primary or preferential use of the property;
- (v) Rights arising from the taxation requirements;
- (vi) Encumbrances arising from the common rules on healthcare, public safety, environmental protection etc.

E. Law on Grievances

51. The Law on Grievances (23 March 2007, last amended on 3 May 2011) provides that the grievance from the Kyrgyz Republic citizens should be registered, given due consideration, and adjusted in an equitable, timely and accountable manner (Article 2 and 4). The grievance registered with the state agency or the local government should be processed within no more than 30 days (Article 8). For the grievance to be given due consideration, it should be filed in written, showcasing the substance of the complaint and, if necessary, supported by the relevant documentation (Article 4 and 5). The grievance submitted should be processed and resolved strictly following the relevant national laws and regulations (Article 11).

F. Law on Roads

52. According to the Article 4 of the Law on Roads (2 June 1998, # 72, last amended on 26 July 2011) roads of common use can be only in state ownership and cannot be sold or held in private ownership. The same Law (Article 27) provides that unless prior permit is given by the State Traffic Inspection and the Ministry of Transportation and Communication, the following activities are prohibited on the right-of-way of common use roads:

- (i) Organizing trading outlets along the roads
- (ii) Buildings, kiosks, pavilions and similar structures

53. The arbitrary use of the lands within right-of-ways can be discontinued without compensating the illegal user(s) the costs incurred for the duration of the unauthorized use of these lands (Article 23).

G. Regulation on Assets Valuation

54. The valuation of the assets is carried out on the basis of the Temporary rules for the valuers and valuation companies (Government Resolution, as of 21 August 2003, # 537), Valuation standards for the valuers (Government Resolution, 03 April 2006, # 217) and other provisions of national legislation.

2.2 ADB's Requirements

55. The current ADB policy on involuntary resettlement is elaborated in ADB SPS 2009 and in Appendix 2: Safeguard Requirements 2: Involuntary Resettlement.

2.2.1 ADB SPS Key Principles and its Structure

56. The overarching objectives of the SPS 2009 are “avoid involuntary resettlement wherever possible; minimize involuntary resettlement by exploring project and design alternatives; improve, 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.”

57. The scope of the SPS 2009 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

58. The implementation of the SPS 2009 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 temporary²⁹. The SPS 2009 also covers “involuntary resettlement actions conducted by the borrower/client in anticipation of ADB support”.

59. The SPS 2009 includes 12 key policy principles for IR. These can be summarized as follows:

- (i) Screen the project early on to determine 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, 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 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 resolve 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

²⁹ A 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.

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 the relevant income sources and legal and affordable access to adequate housing.
- (vi) Establish 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.

60. The SPS 2009 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.

61. 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.

62. 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)³⁰. 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.

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

64. 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.

2.2.2 Resettlement Planning and Documentation

65. The IR policy defined by the SPS 2009 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 Plan³¹ following 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;
 - 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;

³⁰ Based 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.”

³¹ To avoid misunderstandings in the Central Asia Region the document is called Land Acquisition and Resettlement Plan (LARP)

66. 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 Framework³² (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.

2.2.3 Resettlement Plan Preparation, Loan Approval and Project implementation

67. 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 because of 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 Plan³³. 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.

2.2.4 ADB's Public Communications Policy

68. ADB's 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 ADB itself and are the following:

- (i) ADB shall post (para 52, PCP 2011) on its website the following documents submitted by the borrower and/or client:
 - a) a draft resettlement plan and/or resettlement framework, endorsed by the borrower and/or client before appraisal;
 - b) the final resettlement plan endorsed by the borrower and/or client after the census of affected persons has been completed;
 - c) a new or updated resettlement plan, and a corrective action plan, if any, prepared during project implementation, upon receipt by ADB; and
 - d) the resettlement monitoring reports, upon receipt by ADB.

69. In practice, clients are expected to disclose documentation locally (para 47 and 129, PCP 2011), in the local language and in a culturally fit 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.

2.2.5 Due Diligence for Multi Tranche Financial Facilities

70. 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 Resettlement Framework and are as follows:

- (i) A Resettlement Framework for the project 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

³² Or Land Acquisition and Resettlement Framework (LARF)

³³ It is assumed that to be acceptable a draft resettlement plan tentative as it may be is to be based on actual measurement surveys in all impacts known based on the level of design available at the time of its preparation.

- (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.

2.3 Gap Analysis

71. This section identifies the gaps between the IR requirements of the SPS 2009 and of the Kyrgyz Republic law and regulations through a direct comparison. The exercise takes into consideration both formal principles (principles) and the way these principles are applied in practice by ADB and the Government (application). This section also proposes the action needed to reconcile ADB and the Kyrgyz Republic position and the level of the action needed.

2.3.1 Livelihood Rehabilitation Standards

72. The Kyrgyz Republic 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 or incomes. This may create some reconciliation problem with ADB requirements especially for what concerns 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 (for instance indicates that the poor, the disadvantaged and the people leaving in frontier areas require special attention during LAR) to allow an interpretation of its mandates to cover ADB requirements without the need of legal reform.

Reconciliation needs. *No reconciliation of principles needed as the Kyrgyz Republic 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*

2.3.2 Entitlement to Compensation

73. The Kyrgyz Republic Law and ADB policy are consistent regarding the compensation entitlements of titled APs. The country's 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 2009, 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.*

2.3.3 Compensation for Affected Assets

74. **Permanent loss of land.** Both ADB and the Kyrgyz Republic law require that permanent loss of land is to be compensated at replacement cost to all legal/legalizable APs either via compensation in cash at market rate or replacement land³⁴. There is no difference in principle or application.

Reconciliation needs. *No reconciliation issues for this point.*

75. **Loss of Land leases.** Both ADB policy and the Kyrgyz Republic law require that affected land leases are to be compensated³⁵. ADB Policy provides that compensation for this item is to be given at replacement cost. Such a requirement is practically implemented either through the provision of another comparable leased plot or of the expected net income of the leased plot lost for the number of years

³⁴ Land Code, Article 68, Clause 1 – 4, dated 2 June 1999, as I last amended on 9 August 2012.

³⁵ Civil Code Part 1, Article 14, Clause 1 - 2, dated 8 May 1996, last amended on 25 February 2013

remaining before the expiration of the original lease. The law instead envisions only the provision of a replacement lease.

Reconciliation needs. *Application reconciliation is needed to clarify how lost leases are to be compensated. Although reconciliation has been already achieved on a case by case basis for previous projects the technical aspects of lease compensation will have to be improved with additional provisions for lease replacement in cash. It is expected that this can be done through the emanation of an instruction for ADB projects.*

76. **Loss of indirectly affected parts of an asset.** ADB Policy requires that indirectly affected assets that become unusable after impact are to be compensated as direct impacts. the Kyrgyz Republic law is silent on this matter.

Reconciliation needs. *As the law is silent on this matter no principle reconciliation is needed. However development of the relevant provisions is needed for policy application. This may possibly be pursued without legal reform through a special Decree for ADB projects (see also para.55 above)*

77. **Loss of structures/buildings.** There is a critical difference between ADB SPS 2009 and the Kyrgyz Republic law on this point. Based on ADB requirements compensation is to be given at replacement cost (free of deduction of depreciation, salvaged materials or transaction costs) while the Kyrgyz Republic Law mandates that structures/buildings are compensated at market rate (this includes deductions for depreciation and salvaged materials³⁶)

Reconciliation needs. *Reconciliation needed for principle and application. Reconciliation requires the establishment of a protocol allowing the compensation of structures/building at replacement cost free of depreciation/salvaged materials or transaction costs deductions. Reconciliation has been already obtained on a case by case basis for previous projects. Thus, based on precedent, it is hoped that this can be formalized without legal reform but only a Decree for ADB projects.*

78. **Loss of business.** For business losses the Kyrgyz Republic legislation does not contradict ADB Policy³⁷ 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 but needs to be mainstreamed through the relevant Decree for ADB projects.*

79. **Loss of trees.** The Kyrgyz Republic law generically recognizes that trees (like any other private property) affected by a public project are to be compensated, as these are specified in the Civil Code³⁸ and Forest Code³⁹. In practice, however, this happens selectively depending on the executing agencies

³⁶ Civil Code Part 1, Article 14 (1) and (2), dated 8 May 1996, last amended on 25 February 2013. An AP must account for salvage materials used and their value is discounted from the compensation. If an AP refuses this provision the executing agency should register such materials as state property and then sell or utilize them according to established procedures. This norm applies to any type of salvaged materials, including bricks, rebar, windows, roofing, trees, branches etc.

³⁷ Civil Code Part 1, Article 14 (1) and (2), dated 8 May 1996, last amended on 25 February 2013.

³⁸ Civil Code Part 1, Article 14 (1) and (2), dated 8 May 1996, last amended on 25 February 2013.

³⁹ Forest Code, Article 100 and 101, date 8 July 1999, last amended on in 3 March 2005.

understanding of the law and tree type and impact scope/value and often after the APs raise complaints⁴⁰. The unspecific nature of the law provisions on tree compensation contrasts with the fact that there are rather detailed methodological instructions for tree compensation meant to be used in inter-governmental or private sector transactions. Except for minor details, these instructions are in general comparable to the tree valuation methods allowed under the SPS 2009. These are as follows:

- (iv) **Valuation of wood/unproductive trees on private, forestry⁴¹ or urban land.** The national approach fits ADB Policy. For non-urban trees cash compensation is given at market rate of 1 cubic meter of wood multiplied by tree volume determined based on forester's sourcebook and instructions on forest taxation⁴². For urban trees in Bishkek a Mayor Decree⁴³ indicates that compensation is based on reproduction cost or on the cost of relocating the trees. No comparable decree exists in other major cities creating multiple interpretations on how trees should be valued in cities outside Bishkek.
- (v) **Valuation of Productive trees.** Although ADB and the Kyrgyz Republic approach is similar, there is a basic difference. Specifically, the Kyrgyz Republic law stipulates that compensation for lost productive trees is to be calculated based on a 1 year net income of the market value of the expected yield multiplied by the fixed term of 5 years. If a tree is productive for more than 5 years this may not correspond to full replacement cost. This contrasts with ADB Policy that requires full replacement cost. To fit this principle the usual ADB practice is to provide 1 year net income for: a) the whole number of years needed to re-grow a tree at the same productive potential it had before impact or b) for the whole number of productive years remaining after impact. The length of the period on which compensation is to be based may be more than 5 years depending on tree type.

Reconciliation needs. *No Policy reconciliation is needed as in principle the law mandates for tree compensation. However, Application reconciliation is needed to ensure that compensation is systematically provided by default and in accordance to SPS 2009 principles and valuation requirements. To fit ADB policy the product of these trees is to be compensated based on an assessment considering the actual period of income loss not just 5 years. Application reconciliation has been already reconciled on a case by case basis for previous projects but needs to be mainstreamed through a relevant Decree for ADB projects.*

80. **Loss of crops.** The situation is similar to that of trees compensation. The SPS 2009 requires crop compensation. This is also generically mandated by the law under the provision that all items on the affected plots are to be compensated⁴⁴ but it is often not provided as it is assumed that the crops will be harvested before impacts occurs. When this does not happen the crops may be compensated but often only after APs complaints. To avoid these situations ADB practice is to require that crops are compensated by default irrespective of the timing of the harvest.

Reconciliation needs. *No reconciliation for policy is needed but reconciliation of policy application is necessary to ensure that crops are compensated by default. Application reconciliation has been already reconciled on a case by case basis for previous projects but needs to be mainstreamed through a relevant Decree for ADB projects.*

81. **Loss of jobs.** Both ADB policy and the national law provide for the indemnification of APs who lose a job because of land/assets acquisition under a public interest project. The two, however, differ

⁴⁰ Cash compensation for wood trees is not provided as the practice to leave the salvaged timber to the AP is often considered as satisfying compensation needs. The same logic applies for productive trees but cash compensation may be provided for them when the impact is substantial enough to motivate AP grievances.

⁴¹ Rules on Sale of Trees from the Forest Sites in the Kyrgyz Republic, approved by Governmental Decree # 97 of 10 February 2009.

⁴² Reference Book of Forest Taxation by A. B. Chotonov.

⁴³ Regulations on Procedures for Acquisition of the Trees and Irrigation Facilities found within the Municipal Lands of Bishkek, as well as Compensation for the Loss of the Trees and Irrigation Facilities while Removing, Relocating or Dismantling, approved by Decree # 78 of the Bishkek Mayor Office, as of 30 June 2009.

⁴⁴ Civil Code Part 1, Article 14 (1) and (2), dated 8 May 1996, last amended on 25 February 2013

substantially on how the matter is conceptualized and resolved in practice. ADB policy compounds the matter as an income rehabilitation issue and thus requires that the actual job income lost by the APs is fully reimbursed to them. This approach covers temporary and permanent job losses and is generally implemented through an allowance providing the APs their declared monthly salary for the number of months of business stoppage up to a maximum of 12 months which is the benchmark for permanent job loss. For informal permanent jobs without declared salaries the approach is the same but based on national minimum salary. To guarantee proper policy application the payment of the job loss allowances are to be directly disbursed to the APs by the project proponent.

82. The national legislation, instead, limits the matter to the payment as mandated by the Labor Code of fixed employment termination indemnities due by an employer to his employees and to the obligation of the project proponent to reimburse the employer of the cost of those indemnities mandate by the Civil Code. Such an approach excludes from job loss compensation informal employees without a declared salary, applies only to permanently affected jobs and does not automatically guarantee that the APs receive their job termination dues⁴⁵.

Reconciliation needs. *No reconciliation is needed for principles. Application reconciliation is however needed to: a) ensure the rehabilitation of both formal and informal permanent employees; b) provide compensation parameters ensuring the compensation of actual income losses of both temporarily and permanently affected employees and c) guarantee that the APs automatically receive their compensation. Application has been already reconciled on a case by case basis for previous projects but needs to be mainstreamed through a relevant Decree for ADB projects.*

2.3.4 Resettlement Planning and Identification of Project Impacts

83. **LARP Preparation.** ADB requires a broad LAR planning process with early scoping of LAR impacts and timely preparation of a LARP providing a thorough impact assessment based on: a) a detailed measurement survey of all affected assets, b) an AP census specifying all affected parties and individuals and c) a socio-economic survey elaborating on the livelihood conditions of the affected population. In addition the LARP will specify LAR budgets and will provide information on compensation entitlements, income/livelihood restoration strategies, institutional arrangements, implementation schedules, LAR budgets, monitoring schemes, public consultation activities and complaints and grievances mechanisms.

84. The national legislation and practice, instead, do not require a stand-alone LARP detailing background information on its preparation and implementation and entails investigations which are not as extensive or detailed as those required by ADB. The impacts assessment is primarily based on cadastral or other official records and the verification of these records through a detailed measurement survey in the field is generally carried out for registered plots or fixed building but not for non-registered assets. Other affected items such as trees, crops and other improvements are not usually counted or measured. Special impacts to vulnerable or severely affected APs are also not assessed. Finally local practice does not envisage the execution of a socio-economic survey.

Reconciliation needs. *No principle or application reconciliation needed as law and regulation are silent on these technical issues. LAR preparation documents and surveys fitting ADB requirements have been already agreed with the executing agencies on a case to case basis for previous ADB projects. Technical improvements are however needed to mainstream SPS requirements and improve consistency and accuracy of LAR assessments and surveys. This is particularly so for*

⁴⁵ Based on the Labor Code of July 2004, last amended on in 12 May 2012 (Article 327) loss of employment is to be compensated with 3 months average salary plus a severance pay of a maximum of 2 months average salary depending on the length of the employment lost. Based on the Civil Code (see footnote 42) when the cause of the job losses is an official Government activity (i.e. Land acquisition for a public project) the cost of job losses/ severance allowances is to be reimbursed to the employer by the Land Acquiring Agency. This is implied by the Civil Code provision that all costs associated with running the business/enterprise, including liabilities to the third parties, are to be fully compensated.

what concerns the execution of detailed measurement surveys for all affected items and the compilation of AP lists including also legalizable and non-legal APs. This can be done through a set of technical instructions for ADB projects.

Application reconciliation is needed instead for the valuation survey (in particular for the valuation of buildings and productive trees). Application has been already reconciled on a case by case basis for previous projects but needs to be mainstreamed through a relevant Decree for ADB projects (Chapter 4).

2.3.5 Due Diligence Procedural Mechanisms

85. **Information Disclosure and Public Consultation.** the Kyrgyz Republic law does not provide specific disclosure instructions but based on common practice some information is disclosed to the APs during LAR preparation. Regarding public consultation the Kyrgyz Republic law mandates that matters of local importance likely to affect the well being or livelihoods of local communities are to be discussed with local self-government bodies and local citizens⁴⁶. LAR is widely recognized as a matter of local importance and thus some public consultation is regularly carried out. While this generally satisfies ADB Policy public consultation remains an informal and often ad hoc activity without standards guaranteeing meaningful public participation. Also, consultation is often limited to local government bodies and only randomly engages the APs.

Reconciliation needs *No principle or application reconciliation is needed because the law is silent on this but instructions for more effective public information/disclosure fitting SPS requirements are to be conducted through technical guidelines. (see: chapters 3 and 4).*

86. **Grievance Redress Mechanism.** Just like ADB Policy, each state agency has to set up a grievance review process (see Law on Grievances⁴⁷.) This law requires that the executing agencies register queries and complaints submitted in written form by aggrieved parties, review the grievance within 30 working days, and thereafter issue an official response supported by proper technical/legal arguments.

Reconciliation needs. *No reconciliation is needed but more effective instructions on complaints and grievances handling are to be conducted through technical guidelines.*

87. **Payment of compensation prior to property acquisition.** As with ADB SPS 2009, the national legislation specifically states that AP compensation is to be paid in full before an affected property is acquired for a project⁴⁸. This provision is supported by Constitutional norms explicitly stating that 'private property is inviolable and nobody can be arbitrarily deprived of private property'. However, executing these provisions in practice proves to be difficult as the executing agencies tend short-cuts this rule to meet project and contracts deadlines (see Case Study 2 in Appendix 4).

Reconciliation needs. *No reconciliation needed. However greater attention to ensure that the APs are not affected before being compensated is needed*

2.3.6 Special Assistance to Vulnerable and Severely Affected APs

88. Unlike ADB Policy that requires special assistance to vulnerable, severely affected and relocating APs, the national legislation is silent on special livelihood rehabilitation allowances.

Reconciliation needs. *The law is silent on this and as the implementation of these provisions was already achieved in previous ADB-financed projects. However formal reconciliation of the application mechanisms details is needed. To be elaborated in a Decree for ADB projects.*

⁴⁶ Law on Local Self Government, Article 9, Clause 2, dated 16 June 2011

⁴⁷ Law on Grievances, as of 23 March 2007

⁴⁸ Land Code, Clause 4, Article 66, dated 2 June 1999

2.3.7 Chapter Summary and Conclusion

89. 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 ADB policy requirements may not require legal reform and may be dealt with decrees or ordinances. 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 (Chapter 4, Section on the Country Land Acquisition and Resettlement Framework). Table 2.1, next page, schematizes the findings of this chapter's analysis. In the table 2.1. the SPS 2009 principles are accompanied by the way they are actually applied in the country in the course of ADB projects.

Table 2.1 Comparison of LAR Provisions between ADB Policy and National Legislation

Issues	ADB SPS (2009) and ADB practice for application*	Kyrgyz Republic	Reconciliation Needs
1. Livelihood rehabilitation	ADB Policy requires rehabilitation/improvement of AP livelihood standards.	Notion of livelihood rehabilitation not sanctioned by national law.	No Policy reconciliation needs. Application already reconciled in previous ADB projects but to be formalized regarding <u>indirect/livelihood impacts rehabilitation..</u>
2. Compensation entitlements	<p>A. APs with formal title have to be compensated for lost land/other assets.</p> <p>B. APs with legalizable title have right to be compensated for lost land and assets after the EAs helps them in legalizing their assets.</p> <p>C. APs with no legal title are compensated for lost non-land assets.</p>	<p>A. APs with formal title are compensated for lost land/other assets.</p> <p>B/C. APs with legalizable or no legal title. Legalizable are not distinguished and considered non-legal as legalization is a burden of the APs. Non-legal APs have no right to be compensated for land and non-land assets.</p>	<p>A. Same in principle/ application. <u>No reconciliation needed</u></p> <p>B/C. Critically different in principle and application. Application already reconciled in previous ADB projects but <u>formal Reconciliation on both counts through a Decree for ADB projects is needed.</u></p>
3. Compensation	<p>A. Permanent loss of land. Replacement land as preferred option or cash compensation at full market rate. At least for legal/legalizable APs.</p> <p>B. Replacement of leased land. Based on replacement of lost income through cash compensation of gross income x the remaining lease years or through a replacement land lease</p> <p>C. Loss of structures/buildings. Cash compensation at replacement cost for lost item free of depreciation, transaction costs, other deductions</p> <p>D. Loss of indirectly affected items. Non affected parts of an asset no longer usable after impact will have to be compensated as well.</p>	<p>A. Permanent loss of land. Cash compensation at market rate or replacement land for legal/legalizable APs.</p> <p>B. Replacement of leased land. Based on lease replacement.</p> <p>C. Loss of structures/buildings. Cash compensation at market rate <u>deduced of depreciation.</u></p> <p>D. Loss of indirectly affected assets. Law is silent on how to compensate when only part of the land is to be taken.</p>	<p>A. Same in principle/ application. <u>Technical improvement of valuation mechanisms/process needed.</u></p> <p>B. Same in principle. Application to be further improved. <u>No reconciliation needed but a method to replace the lease in cash is needed. To be reflected through an instruction for ADB projects.</u></p> <p>C. Different in policy and application. Informally reconciled in previous projects but formal application reconciliation by a Decree x ADB projects needed.</p> <p>D. The Kyrgyz Republic law is silent on this point. <u>While no reconciliation is needed the point needs to be clearly agreed and sanctioned through a Decree for ADB projects.</u></p>

Issues	ADB SPS (2009) and ADB practice for application*	Kyrgyz Republic	Reconciliation Needs
	<p>E. Business losses. Reimbursement of actual losses + business re-establishment costs. For application based on tax declared income for period of business stoppage. In absence of tax declaration based on maximum non-taxable salary.</p> <p>F. Loss of wood/unproductive trees. Irrespective of legal land occupancy status compensation at market rate. Application based on tree type/ wood volume or other methods ensuring AP rehabilitation.</p> <p>G. Loss of productive trees. Compensation at replacement cost based for application on various methods: tree reproduction cost, income lost (x tree type x market value of 1 year income x full production years lost).</p> <p>H. Loss of crops. Compensation of crop in cash at market price.</p> <p>I. Loss of jobs. Indemnity for lost income ensuring AP rehabilitation. Based for application on stoppage period up to a maximum of 12 months of declared salary (formal employees) or minimum salary (informal employees.) Compensation directly disbursed to APs.</p>	<p>E. Loss of business. Cash compensation at market value for all damages/ opportunity costs incurred. Burden of proving opportunity costs rests on the AP based on recognized documented evidence but no clear methodology.</p> <p>F. Loss of wood/unproductive trees. Mandate in general terms by the law but often not provide as leaving the salvaged timber to the APs is equated with compensation.</p> <p>G. Loss of productive trees. Mandate by law but selectively applied depending on situation. Valuation standards differ from SPS standards.</p> <p>H. Loss of crops. Mandated by law but selectively applied.</p> <p>I. Loss of jobs. Compensation for loss of employment equal to 3 months average salary + severance pay worth at least 2 months average salary. Compensation provided by employer and then reimbursed by EA.</p>	<p>E. Same in principle but ADB does not consider opportunity cost. <u>Application reconciliation needed</u> to define a clear methodology and distinguish short- and long- term losses.</p> <p>F. Same in principle, different in application. Already adjusted for previous ADB projects but <u>Application reconciliation is needed</u> through a decree for ADB projects ensuring that also cash compensation is provided by default.</p> <p>G. Same in principle different in application. Already adjusted for previous ADB projects. <u>Application reconciliation needed</u> through a decree for ADB projects ensuring systematic law implementation and use of valuation standards fitting SPS.</p> <p>H.As above.</p> <p>I. Same in principle but different in implementation. <u>Application reconciliation needed</u> through a Decree for ADB projects establishing mechanisms to assess temporary/permanent income loss indemnity of both formal and informal employees and guaranteeing direct disbursement to the APs.</p>

Issues	ADB SPS (2009) and ADB practice for application*	Kyrgyz Republic	Reconciliation Needs
4. LAR Planning, assessment and valuation of impacts	<p>A. Resettlement Plan (LARP). LARP preparation includes: a) impacts assessment/AP census; b) definition of entitlements, income/livelihood restoration strategy, compliance & grievance mechanisms, institutional arrangements; c) consultation results; d) monitoring schemes; e) budget and implementation schedule. RP requires the following surveys:</p> <p>i. Measurement survey. Measures all affected items.</p> <p>ii. AP Census. Identifies all APs and establishes legitimate beneficiaries based on legal status.</p> <p>iii. Socio-economic survey. Provides background information on AP' socio-economic features.</p> <p>iv. Valuation survey</p> <p>a) Land: If land market exist based on a survey of recent transactions; without land market based on land productivity/income;</p> <p>b) Buildings and structures. Replacement cost of materials, labor and transport and special features of building/structure without discounting depreciation, salvaged materials and transaction costs;</p> <p>c) Trees/crops. Based on the methodology detailed in section 2.</p>	<p>A. Resettlement Plan. There are no requirements to prepare integrated and stand-alone LARPs. LAR planning entails similar but less extensive/simpler assessment/survey efforts than ADB Policy, as detailed below:</p> <p>i. Measurement survey. Land and buildings impacts measured. Other impacts identified but not measured.</p> <p>ii. APs Identification. Identifies only legal APs</p> <p>iii. Socio-economic survey. <u>No comparable requirements exist.</u></p> <p>iv. Valuation survey</p> <p>a) Land: valued at market rate based on a transactions survey. Valuation includes transaction costs/third party liabilities.</p> <p>b) Buildings and structures. Market value of materials, labor, transport and special building features <u>but discounted for depreciation, salvaged materials or transaction costs.</u></p> <p>c) Trees/crops. If compensated is provided based on the methodology detailed in section 3H or based on an agreed lump sum.</p>	<p>A. Partly different in principle and application. <u>No reconciliation needed</u> as law/regulation is silent on this matter and SPS requirements have been already applied in previous ADB projects. Still, clear instructions regarding ADB projects ensuring the measurement of all impacts and the counting of all AP are needed for mainstreaming purposes.</p> <p>i. Detailed Measurement Surveys to be mainstreamed for all impacts.</p> <p>ii. Detailed count of individuals to be mainstreamed.</p> <p>iii. The execution of the survey is to be mainstreamed.</p> <p>iv. Valuation survey</p> <p>a) Same in principle/application; .</p> <p>b) Already reconciled for previous ADB projects but <u>Formal reconciliation needed.</u></p> <p>c) Already reconciled for previous ADB projects but <u>Formal reconciliation needed</u>(See 3.H. above.) Detailed valuation for each tree based on SPS requirements to be mainstreamed.</p>
5. Procedural mechanisms	<p>A. Information disclosure. Resettlement-related documents to be timely disclosed in the AP language.</p> <p>B. 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. Grievance procedure. A Grievance Redress Mechanism (GRM) is to be established for each project. I information on GRM to be communicated to the APs</p> <p>D. Asset acquisition conditions. Property can be acquired only after full compensation is paid to the APs</p>	<p>A. Information disclosure. No disclosure requirement exists.</p> <p>B. Public consultation. Matters of local importance to be publicly discussed with local authorities. But no requirement to consult directly the APs</p> <p>C. Grievance Procedures. Each state agency/ministry should define a process for registering and reviewing the concerns and claims from citizens.</p> <p>D. Asset acquisition conditions. Property can be acquired only after full compensation is paid to APs</p>	<p>A. Different in principle and application. <u>Already reconciled for ADB projects.</u></p> <p>B. Same in principle but different in application. Already reconciled for ADB projects. <u>Better application needed.</u></p> <p>C. Same in principle but different in application. Already reconciled for ADB projects. <u>Better application needed.</u></p> <p>D. Same in principle, but unsystematic in application. <u>Application to be improved.</u></p>

Issues	ADB SPS (2009) and ADB practice for application*	Kyrgyz Republic	Reconciliation Needs
6. Assistance to vulnerable and severely affected AP	A. These APs are to be identified and special assistance is provided to restore/ improve their pre-project level of livelihoods.	A. No special consideration is given to these APs.	A. Critically different in principle/ application. <u>Permanent reconciliation through a decree for ADB projects needed.</u>

* As applied in ADB Resettlement Plans in the Kyrgyz Republic

CHAPTER 3

COMPARATIVE ANALYSIS OF ADB AND COUNTRY'S LAR PROCESSES

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

3.1 ADB Project Cycle

91. The provision of an ADB stand-alone 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 projects⁴⁹. These activities include engineering design, economic analysis, environmental studies and LARP preparation.

92. The preparation and implementation of a stand-alone 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 unfolds 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 at least draft project designs and LARP(s). If these are appraised 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.

93. 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.

⁴⁹ The projects under second or third MFF tranches are prepared by consultants hired under the loan.

94. Independently from the loan type or MFF tranche number considered the significant points of 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 32) is a condition to loan appraisal and; iii) the finalization of an implementation-ready LARP and its 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: Project Preparation/PPTA implementation	- Engineering design - Detailed LAR impact/ assessment; AP Census; Socio-economic survey - Valuation survey - Final/Draft LARP drafting and finalization.
3	Management Review Meeting (MRM)	- Final/Draft LARP approved.
4	Loan Processing Proper: Finalization of Loan processing	- 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

3.2 The Kyrgyz Republic project preparation and implementation cycle

95. 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 provisions⁵⁰. These legal provisions are not supported by implementing rules or associated instructions systematically 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 archival project documents, an analysis of documented deliberations of LAR Commissions, in-depth interviews with representatives of executing agencies 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, executing agency, and project situations.

96. Based on the identified pattern, project preparation starts after the promulgation of a Decree establishing the project as public purpose task (and thus implicitly invoking the right of Eminent domain) and the EA. The first activity is the finalization of engineering design by the design institution.

97. Only after design finalization and approval, LAR planning is launched by a document prepared by the executing agency which includes a request of assistance for survey tasks to various concerned offices

⁵⁰ The Main legal provisions governing the LAR process are reflected in the Constitution, Land Code and Civil Code of the Kyrgyz Republic (please see also the Chapter 2)

or agencies. The first step is the conduction of a preliminary impacts assessment based on cadastral and other existing records to be reviewed by the relevant expertise agencies. Once this is done, the LAR Commission is established by ministerial decree⁵¹ and field surveys start. Field surveys entail a measurement survey to confirm/update the preliminary data on land/buildings impacts and on affected parties; other impacts are also identified but not measured. Impact verification is followed by a valuation survey, by the preparation of a protocol for each AP detailing impacts and compensation and by the discussion of the protocols with the relevant APs. Protocols and other documents informing the LAR program are then reviewed by the expertise agencies LAR Commission. If the review response is positive, the LAR documentation is approved through the promulgation of a Governmental Ordinance signed by the Prime Minister. The Ordinance details LAR budgets and clears their disbursement by the Ministry of Finance. Finally, compensation is paid and then civil works begin.

98. 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 (see Case study 2). 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 The Kyrgyz Republic Process for LAR Planning and Implementation

Steps	Main Tasks
Project design finished/ alignment fixed	- Promulgation of Project Decree establishing the project and initiating design - Design tasks - No LAR tasks so far
Preliminary LAR studies and activities	- Preliminary LAR magnitude assessment based on cadastral records. - Expertise agency review. - Promulgation of LA Commission Decree.
Detailed LAR Preparation	- Fielding of LAR Commission. - Coordination with local Governments. - Field verification of impacts and measurement surveys of plots and houses - Valuation survey - Preparation of protocols. - Expertise Agency Review.
LAR Implementation Approval	- Promulgation of a State Ordinance approving LAR implementation budgets.
LAR implementation	- Allocation of replacement land and finances for cash compensation. - Payment of compensation and distribution of replacement plots.
Civil Works implementation	- Civil works starts.

3.3 Comparative analysis

99. The short outline of ADB and the Kyrgyz Republic LAR processing steps detailed above shows a fundamental disconnect between ADB and national practice. The Kyrgyz Republic system is still structured on the old Soviet paradigm of postponing LAR tasks to the completion of project design. ADB system, instead, envisions LAR preparation and project design as parallel tasks. If matched for comparison purposes against each other the two systems have no solution of continuity and cannot be translated into each other. 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

⁵¹ In case the scale of resettlement impact is extensive or involves sensitive issues, than the LAR Commission is established through the Governmental Ordinance.

ADB system. This new system however, still requires fine-tuning, codification in national instructions and broad mainstreaming.

100. 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 executing agencies officers. The new scheme was formally adopted by ADB and Government during PPTA negotiations without a parallel elaboration 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 an executing agency officers, the former tending to take for granted ADB approach and discounting its novelty for the executing agencies and the latter instinctively orienting their action based on known national practices and struggling to make the adaptations needed.

101. 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 executing agencies which have already prepared ADB loans. The same issues, however, can repeat with new executing agencies 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 ADB and national LAR planning systems.

3.4 General Issues

3.4.1 Project Design Level and options for LARP preparation

102. 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 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 because of 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.

103. Leaving alone case one which has never occurred in the Kyrgyz Republic, 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 executing agencies 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 executing agency and consultants, and; iii) design and LARP preparation tasks are properly coordinated (the possible improvements on this see para 115 below).

104. Case three is instead much more complex and entails substantial challenges even when a project involves an executing agency 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. Because of 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 bulk⁵² of the consultants' LAR team after that is done.

3.4.2 Finalization of a Draft LARP

105. 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, executing agency and consultant training (during the interval between appraisal and loan administration several members of the executing agency 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 executing agency 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 PPTA inception and Loan approval. This would substantially increase the possibility that by Loan approval a LARP is fully finalized.

3.5 Step by Step Issues along the LAR implementation process for ADB-financed projects

106. The following section provides a comparative analysis of the practical merging of ADB and the Kyrgyz Republic LAR processing systems in the preparation of projects in the Kyrgyz Republic. 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.

3.5.1 PPTA Preparation Issues

107 **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:*

- a) *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*

⁵² 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

project areas; ii.) based on SPS requirements and in consultation with the EA, assess the likely impacts magnitude; iii.) specify 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, and; e) Coach the executing agency on 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 executing agency new to ADB procedures, ADB may also hire a staff consultant to advise the executing agency and the Project Team during the PPTA processing phase.

- b) 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.

108 **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 ADB project/LAR preparation system. In this respect particular attention is to be paid to the fact that under the Kyrgyz Republic Country System the full initiation of actual design and LAR surveys in the field is contingent upon:

- a) The promulgation of a Project Decree by the Prime Minister office establishing the Project, nominating the executing agency and sanctioning the start of design tasks and the allocation of relative finances. Decree preparation may take time and requires extensive background activities by the Government.
- b) The execution of preliminary desk-surveys defining: a) a basic project alignment; b) initial LAR impact scopes based on cadastral data and c) assessing potential LAR costs based on cadastral values.
- c) The establishment of a LAR State Commission which will coordinate LAR activities, advise the executing agency, ensure surveys and valuation quality and legal standards and recommend the LAR Plan for approval⁵³.

109 The above-mentioned actions require reviews by the Expertise Agencies and Decree promulgation involves procedures reaching the highest echelons of the Government (the House of Government and the Prime Minister Office). It is thus recommended that to avoid delays the executing agency and ADB proactively resolve the matter. Moreover, 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 because of administrative hurdles, potential AP resistance or lack of overall task-coordination⁵⁴.

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.*

⁵³ Based on the national processing system, where project design precedes LAR preparation, the signing of the Project Decree occurs much before the beginning of LAR tasks as a condition to start engineering design not LAR planning. Within a merged ADB and National processing system, however, design and LAR tasks start in parallel. Therefore both Project and LAR commission decrees are to be signed together during the preliminary phase of project preparation.

⁵⁴ In principle, without a Project Decree surveyors or valuers cannot enter private plots without the permission of their owners.

3.5.2 PPTA Implementation Issues

110. **Lack of experience of executing agencies and consultants with either ADB LAR requirements or the Kyrgyz Republic practice.** The LAR Commission is an ad hoc institution specifically formed for one Project. Depending on Project magnitude LAR Commission can be composed by officers from different administrative levels who have no experience with ADB practice and SPS requirements. In turn the consultants are mostly foreigners who 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) *LAR Commission, executing agency and consultants plan the action to come together and are well coached both on SPS and the Kyrgyz Republic LAR provisions and LAR planning mechanisms for ADB projects.*
- (ii) *LAR Commission, executing agency and consultants 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;*
- (iii) *Local Governments are informed of the plan.*
- (iv) *To carry out this work the ST specialists at headquarters or at least the LAR consultants at the resident mission will have to be mobilized to assist. The scheduled action plan will be prepared by the PPTA consultants and included in the inception report.*

111. **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 defined⁵⁵. 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 affected by civil works.

112. 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 75 above should:*

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

113. Finally, it is also to be noted that to appraise a loan ADB requires Government approval of the LARP both when it is final or a draft. Again, this may create a substantial delay issue as Government

⁵⁵ I.e. whether the impacts area is the whole right-of-way or only the corridor of impacts.

approval requires lengthy reviews by the expertise agencies and the promulgation of a House of Government Ordinance signed by the Prime Minister.

Proposed Action. *To avoid unnecessary delays it is recommended that only final LARPs, which by definition are binding, are approved based on the above mentioned action. Draft LARPs can be instead approved only by the executing agency since they are yet to be finished and therefore do not need to be binding.*

3.5.3 Loan Processing Issues

114. **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. 72, 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 Executing Agency LAR team, the LAR Commission and the concerned local governments.*

3.5.4 Loan Administration Issues

115. **Eventual Continuation of LAR Preparation during Loan Administration.** In case the LARP was not finalized in the preceding phases, LAR preparation will continue in this phase 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 consultant's 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, the executing agency and the LAR Commission.*
- (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.*

3.4.5 LARP Implementation Issues

116. **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 executing agency or ADB.*

117. **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 executing agency will have to be proactive in assisting them to accelerate LAR". In this respect it is recommended that:*

- a) *The executing agency 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.*
- b) *The executing agency 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 executing agency has no finances to advance for this task ADB may want to consider the possibility of an advance from Project finances.*

118. **LARP Finances Allocation.** Based on the approval of the Final LARP Decree the executing agencies 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. *If the LARP approval is needed several months before the yearly budget allocation it is recommended that the executing agency includes in the LARP Decree also an authorization for the request of the out-of-budget funds. If this is not possible the executing agency can alternatively prepare simultaneously two decrees, one for LARP approval and the other for the extra budgetary allocation of money.*

119. **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 executing agency, 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 executing agency personnel and other stakeholders. Although the Kyrgyz Republic law requires that complaints and grievances issues are given proper attention so far no clear protocol for this exists. Different executing agencies 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 executing agencies and consultants in the planning and establishment of Complaint resolution mechanisms fitting SPS requirements.*

120. **External Monitoring** ADB's SPS requires that LARP implementation is supervised by an Independent Agency which is usually a civil society organization, a consultant or an academic institution and is hired by the EA. In the case of Kyrgyzstan this practice encounters two impediments: a) Based on standing regulation the Government cannot hire civil society organizations, and; b) in the country and especially in the countryside there are only few civil society organizations with sufficient experience for the task. If no solution is found it will not be possible to implement an important requirement of the SPS.

Proposed action. *As already done in the case of other projects, it is recommended that the independent monitoring agency is hired by ADB as a consultant and is trained for the task by the ST.*

121. **Note on issues relative to LARP preparation under 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 outmost 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 executing agency since it was already exposed to the merged ADB-local project processing system during tranche 1.

122. Table 3.3 next page refers to self-standing project loans or first MFF tranches. It summarizes the above text concerning self-standing project loans by matching the LAR action required by ADB and the country's 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 Kyrgyz Republic LAR Planning and Streamlining Needs

ADB			KGZ			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> <ul style="list-style-type: none"> hire a LAR consultant (1 month) to assist EA; Extend PPTA finances/ capacity to Loan approval. <p>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 Executing Agency 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 design-LAR tasks.</p> <p>Proposed Consultants Action: The consultants prepare an action plan to:</p> <ul style="list-style-type: none"> - 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.
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		

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 the LARP is final EA engages in the preparation of the validation and approval of the LARP 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 House of GOV for approval -d) House of GOV approves LARP through a State Ordinance. -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 the Kyrgyz Republic	
MRM					
Average Total Time B.		18			18
Loan Processing			LAR Preparation (continuation)		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. 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.
SCENARIO A		Wks	SCENARIO A		Wks	issues: Need to simplify the process for the promulgation of State Ordinances and Decrees. Proposed GOV Action. The establishment of a shortened process for the preparation and approval of the LARP is needed to maintain the proposed schedule.
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.	LAR Commission/ Local GOV mobilized in support to PPTA consultants	20	
2. LARP Review	- LARP reviewed (if final)		LARP reviewed (if final)	EA assists as needed in the review		
3. LARP Approval	- ADB Approves LARP (if final) and waits for the Government approval	6	GOV approval of LARP (if final)	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	
4. Loan Negotiations						
5. Advanced procurement of Supervision Consultants						
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 Kyrgyz	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) Earlier engagement in the finalization of AP legalization and possibly advances payment of land registration fees; b) adapt work for the request of
Supervision consultants supervise LARP implementation	Routine supervision of LARP implementation and compensation delivery..	18		Legalization is finalized	2	
				Request of LAR funds to MOF	4	
			Support to External			

	ADB hires External Monitoring Agency			Monitoring agency	6	LAR funds to the schedule of LARP approval and national budget approval. Proposed ADB Action. a) Provide sufficient ST support in this Project Preparation; 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.
				Preparation of compensation		
				Contracts signing		
				Initiation of Expropriation		
				Delivery of compensation	Compensation delivery	
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			22	

CHAPTER 4

INSTITUTIONAL AND TECHNICAL ISSUES RELATED TO LAR

123. 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 2 as gaps between the SPS 2009 and the national regulatory requirements, or in Chapter 3 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 resolve 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.

4.1 Institutional and Technical Capacity

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

Proposed Mainstreaming Action for ADB Projects. *In the future ADB may want to consider the preparation in consultation with a designated panel of National experts of the following:*

- b) *A LARP preparation and implementation manual fitting aligned principles and implementation mechanisms/procedures for ADB projects. The manual will be distributed to and discussed with EAs, LAR Commissions, local Governments and Consultants at the start of PPTA activities.*
- c) *Training modules reflecting the technical and administrative aspects of the various activities to be carried out during LARP implementation and preparation.*

4.2 Valuation

125. Currently in the Kyrgyz Republic does not exist an overarching regulatory basis to conduct property valuation for LAR subjected to the right of Eminent Domain. Many principles specified in national laws and Valuation Standards were conceived to establish property values for private sale, lease or mortgage, or for taxation, but not specifically for LAR purposes⁵⁶. The national principles are manifested in: i.) Terms of Reference for valuers; ii.) normative methodologies for price definition; and iii.) parameters used to review and approve the valuation reports. The absence of integrated valuation norms and standards for LAR purposes results in operational delays and creates substantial misunderstandings and complications when the SPS principles are to be applied for calculating compensation rates.

Proposed Mainstreaming Action for ADB Projects. *To harmonize the principles and procedures for property valuation with SPS requirements specific reconciliation measures should be provided at least for ADB-financed projects, notably: a) adaptation of existing regulation; b) draft supplementary instructions on how to apply the LAR Valuation Standards in consonance with the SPS; c) draft guidance notes on the preparation of valuation reports fitting the*

⁵⁶ For instance, the prevalent valuation method for buildings includes deductions for depreciation. This fits the valuation standards for private sales between free buyer and seller but not the standards implicit in compulsory acquisition transactions which to be fair require compensation at full replacement cost.

parameters for state expertise review and ADB procedures; and d) advance the capacity of valuers to conduct valuation not only for specific LAR purposes but also for ADB LARPs .

- a) **Regulation drafting.** 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 drafted 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 drafted 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 authorized 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 drafted, training on their implementation will have to be provided to valuers and concerned State agencies.

4.3 Financial facilitation of the reconciliation of Livelihood rehabilitation requirements

126. The SPS 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 mainstreaming action for ADB Projects. To avoid delays and project planning complications that may be caused by this issue it is recommended that ADB considers the possibility of financing the allowances for severely affected and vulnerable APs under the loan as a standard practice.

4.4 Simplification of the promulgation mechanisms for State Ordinances/Decrees

127. Based on the Kyrgyz Republic 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 State Ordinance approving the final LARP, the decree to authorize the reclassification of land use statuses and, when needed the Decree to authorize the disbursement of funds for LAR implementation.

128. State Ordinances are always approved at the highest Government echelons while the level of approval of decrees varies according to the Decree subject matter or the scope of the project for which they are prepared. In one way or another, ordinances and decrees entail complicated inter-agency processes and require substantial processing time (from about ten to two weeks depending on the level of approval and connected review task). 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 Mainstreaming Action for ADB Projects. *It is recommended that ADB studies with the authorized 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.*

4.5 Translation of LAR documents.

129. Current the Kyrgyz Republic government protocols provide that project documents should be translated both in Russian and Kyrgyz language. As the national law is in Russian and so far only partly translated in Kyrgyz and as a conceptual universe reflecting international standards in Kyrgyz 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 Kyrgyz may lead to legal and technical misunderstandings.

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

Proposed Mainstreaming Action for ADB Projects. *Until the law is thoroughly translated in Kyrgyz 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 better translation of the SPS in Russian.*

4.6 Grievance Redress Mechanism

131. 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 built and mainstreamed into all ADB-funded projects. Executing agencies need to understand the importance of identifying issues at an early stage and taking decisive action to remedy them. Past experience shows that neither executing agencies nor local government have an adequate understanding about how to recognize potential problems or to resolve specific claims in an efficient and satisfactory manner. While Chapter 2 noted the fact that national legislation requires ministries and agencies to have GRM mechanisms in place, this chapter highlights the lack of qualified understanding, standardized processes or GRM documents for LAR purposes.

132. The level of intervention would include a sector-specific technical guidance note drafted and adopted by the MOTC and MOE. The technical guidance note for developing and managing project level GRM for infrastructure projects would include standardized materials drafted in cooperation with ADB. The package would include a standard application form in both Russian and Kyrgyz 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 executing agency 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, executing agency 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 Mainstreaming Action for ADB Projects: *A standard package of GRM materials with GRM templates and suitable training programs may be developed and approved.*

4.7 Preparation of a Country Land Acquisition and Resettlement Framework

133. Most of the policy gaps analyzed in Chapter 2 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 3. This piecemeal approach practically solves immediate problems, but is time consuming, requires intensive discussions for each project and leaves ADB teams and executing agencies uncertain on the final LARP approval of the expertise agencies.

134. Planning as-you-go was inevitable for the first ADB project loans in the Kyrgyz Republic, when both ADB and executing agencies were learning about each-other practice and were discovering the complexities caused by their merging. With the progression of ADB lending to the Kyrgyz Republic, 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 Mainstreaming action for ADB Projects. *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 the Kyrgyz Republic, 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 Kyrgyz Republic Constitution and Art.29 Law on International Agreements. Government approval will also entail a full review process involving validation from the competent agencies and ratification at the highest approval level through a State Ordinance promulgated by the House of Government and signed by the Prime Minister.*

CHAPTER 5

SUMMARY AND FINAL RECOMMENDATIONS

5.1 Summary of Report Findings and Recommendations

135. 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 the Kyrgyz Republic. 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.

136. Chapter 2 has focused on the formal/legal alignment of the Kyrgyz Republic 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 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 suitable 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 system 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
1 Compensation of non-legal APs	<u>Reconciliation needed</u> (non-land losses).	<u>Reconciliation needed</u> .	Already reconciled for previous projects but <u>to be mainstreamed by a Decree or Ordinance for ADB Projects.</u>
2 Assistance to severely affected/vulnerable APs	<u>Reconciliation needed</u>	<u>Reconciliation needed</u>	Already Reconciled for previous projects but <u>to be mainstreamed by a Decree for ADB Projects .</u>
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 <u>to be mainstreamed by Decree for ADB Projects.</u>
4 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 <u>to be mainstreamed by a Decree for ADB Projects.</u>
5 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 <u>to be mainstreamed by a Decree for ADB Projects.</u>
6 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 automatic disbursement of the compensation to the APs	Already Reconciled for previous projects but <u>to be mainstreamed by a Decree for ADB Projects.</u>
7 Compensation of indirect impacts	<u>No Reconciliation needed.</u>	<u>No Reconciliation needed</u>	Law silent on this point so no reconciliation is needed but application standards are to be

			formally agreed/ defined by a Decree for ADB Projects.
8 Public participation	<i>No Reconciliation needed</i>	<i>No Reconciliation needed</i> (Instructions for meaningful/ transparent participation to be drafted.)	Specific approach to be agreed with RETA Working Group.
9 Information disclosure	<i>No Reconciliation needed</i>	<i>No Reconciliation needed</i> (Instructions for information disclosure to be drafted.)	Specific approach to be agreed with RETA Working Group.
10 Grievance resolution	<i>No Reconciliation needed</i>	<i>No Reconciliation needed</i> (instructions for managing Grievances to be drafted.)	Specific approach to be agreed with RETA Working Group.
11 LAR Planning	<i>No Reconciliation needed</i>	<i>No Reconciliation needed</i> (instructions for full impacts measurements surveys and AP censuses to be drafted.)	Specific approach to be agreed with RETA Working Group.

137. Chapter 3 has focused on the LAR aspects of ADB and the Kyrgyz Republic 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 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 executing agency and LAR Commission in the finalization of AP legalization involving the advance of land registration funds either by the executing agency 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 Implement LAR and Relevant Responsibilities

Issues	Action needed	Responsibility
Process Coordination	Project Ordinance/LAR Commission Decree to be promulgated before fielding LAR Consultants in the field. Coordination of request of LAR implementation funds with LAR implementation schedules	- EA/Government - EA/Government
Planning/financing	Extension of PPTA Finances/schedules to loan approval Fielding ADB resettlement specialists at PPTA processing; 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; Financing the allowances for severely affected and vulnerable APs under the loan	- ADB - ADB - ADB, Consultants, EA, LAR Commission, - ADB
Capacity	- Training/coaching of EA, LAR Commission and consultants - Development	- ADB

Time-saving/efficiency measures	<ul style="list-style-type: none"> - Design and LAR surveys based on staggered schedules prioritizing work in project sections with LAR.. - Shorten/simplify the Decree/Ordinance promulgation process; - Proactive engagement of EA and LAR Commission in the finalization of AP legalization including advancing to the APs the land registration fees; - Hiring of external monitoring Agency by ADB 	<ul style="list-style-type: none"> - ADB, Consultants, EA, LAR Commission, - EA, LAR Commission, Government. - EA, possibly ADB - ADB
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138. Chapter 4 has focused on background institutional and capacity issues to be reflected 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 executing agencies, key Government agencies and selected local consulting firms; b) elaboration of valuation instructions fitting SPS provisions and ADB practice to be approved by an authorized Government agency; c) agreement with the government on a simplified translation process of LAR documents for ADB projects involving only translation in Russian, d); drafting 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 House of Government. The issues detailed in Chapter 4 are summarized in Table 5.3 below.

Table 5.3 Country-Wide Capacity Building Action Plan

Issues	Action needed	Responsibility
Training on LAR requirements reflecting the agreed reconciliation between SPS and the Kyrgyz Republic 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, authorized Government Agency (T.B.D)
Valuation Instructions for LAR	- Preparation of valuation standards for LAR/provision of training	ADB authorized Government Agency (T.B.D)
Documents translation procedures	- Translation of documents only in Russian.	ADB, authorized Government Agency (T.B.D)
C&G handling	- Preparation of instruction on C&G organization and handling	ADB authorized Government Agency (T.B.D)
LAR Policy/practice mainstreaming	- Preparation of a CLARF	ADB, RETA Working Group, Expertise agencies, House of Government

5.2 Next Steps

139. The issues analyzed and the improvement action proposed in this CA will be taken up again during phase two of the RETA which involves the preparation of a Capacity Building Plan (CBP). CBP preparation 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 ADB team and by the RETA Working Group and will require intensive consultation with the authorized State Expertise Agencies. Before being implemented the CBP 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 CBP unfolds.

APPENDIX 1

Letter establishing RETA Focal Agency and Working Group

To: Mr. Babur Alimov

Officer-in-Charge

Director

Permanent Representative of Asian Development Bank in the Kyrgyz Republic

Subject: RETA 7433-REG: Mainstreaming Land Acquisition and resettlement Safeguards in the West and Central Asia Region

Dear Mr. Alimov,

I would like to express my deep appreciation and gratitude for your support on socio-economic development for our country.

With reference to your letter dated 11th of October, 2010, regarding the approval of the regional technical assistance "Mainstreaming Land Acquisition and resettlement Safeguards in the West and Central Asia Region" for \$5 million, the Ministry of Finance of the Kyrgyz Republic would like to confirm that we have no objection to the inclusion of the Kyrgyz Republic in this RETA by countersigning your letter.

In addition to that we are pleased to inform that the Ministry of Labour, Employment and Migration of the Kyrgyz Republic and the State Registration Service of the Kyrgyz Republic are the executive bodies to implement this technical assistance.

The Ministry of Finance of Kyrgyz Republic expresses its gratitude for your understanding and cooperation and takes this opportunity to show its respect to the Asian Bank of Development.

Attachment: Counter-signed letter - 1 page.

Sincerely yours,

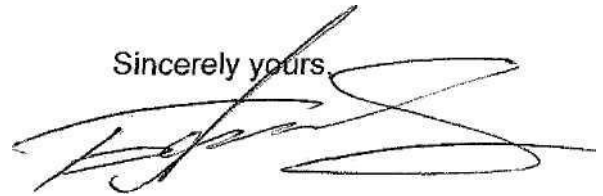


Chorobek Imashev

**Minister of Finance and Governor in ADB
for the Kyrgyz Republic**

If you need any further information or clarification about the RETA or the proposed activities, please do not hesitate to contact Ms. Lanfranco Blanchetti-Revelli, Senior Social Development Specialist, Office of the Director General, Central and West Asia Department at email address Lblanchetti@adb.org. or telephone number (63 2 632 6172).

Sincerely yours,



Bobur Alimov

Officer-in-Charge

cc: Mr. Emil Umetaliev, Minister of Economic Regulation of the Kyrgyz Republic.

We confirm that we have no objection to the inclusion of the Kyrgyz Republic in this RETA.

Imashev Ch

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APPENDIX 2

SPS 2009 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; improve, 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 improve, or at least restore, the livelihoods of all displaced person 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. 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 conduct and implement a management plan to restore the livelihood of affected persons to at least pre-project level or better.

E. Requirements

1. Compensation, Assistance and Benefits for Displaced Persons

7. 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.

8. 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.

9. 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, locational 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.

10. 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.

11. 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 enough development benefits from the project.

12. 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 the relevant development benefits from the project. The borrower/client will compensate economically displaced people under para. 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.

13. 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.

14. 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 enough 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 following the timetable outlined in the resettlement plan agreed between the borrower/client and ADB.

2. Social Impact Assessment

15. The borrower/client will conduct socioeconomic survey(s) and a census, with applicable socioeconomic baseline data to recognize 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 persons¹ and their assets,² (iii) an assessment of their income and livelihoods, and (iv) gender-disaggregated information pertaining to the economic and sociocultural 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.

16. 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

17. 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

¹ A 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.

² The asset inventory is a preliminary record of affected or lost assets at the household, enterprise, or community

merely restored, by providing adequate housing, security of land tenure and steady income and livelihood sources. The resettlement plan will follow relevant requirements of Safeguard Requirements 2, and the 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 2.

18. 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 adjusting the need of female headed households, gender-inclusive consultation, information disclosure, and grievance mechanisms, to ensure that both men and women receive adequate and proper compensation for their lost property and resettlement assistance, if required, as well as assistance to restore and improve their incomes and living standards.

19. 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.

20. 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.

21. 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.

22. 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) sufficiently resolves all involuntary resettlement issues pertaining to the project, (ii) describes specific mitigation measures that will be taken to resolve the issues, and (iii) ensures the availability of sufficient resources to resolve the issues satisfactorily.

23. Projects with significant involuntary resettlement impacts will need adequate contingency funds to adjust 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.

24. 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

25. 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 adjust 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

26. 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.

27. 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

28. The borrower/client will conduct meaningful consultation with affected persons, their host communities, and civil society for all projects and subprojects 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

29. The borrower/client will establish a mechanism to receive and resolve 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 resolve affected persons' concerns and complaints promptly, using an understandable and transparent process that is gender responsive, culturally fit, 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

30. 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 resolve 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.

31. 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

32. 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

33. 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 resolve 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 determine 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 on 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, determine, 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) determine 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 reflected 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 resolve 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 determine gaps between local laws and ADB's policy requirements; and discuss how any gaps will be covered.
 - (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 the relevant 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 relevant 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.

APPENDIX 3

Case Study 1: Road Tash Kumyr – Kerben – Ala Buka [km0 - km53]

A. Introduction

1. This case study brings to light technical/institutional factors hindering or otherwise delaying the timely compensation of the APs. It specifically focuses on the efforts pursued by the executing agency to determine LAR issues, assess the scope of LAR impact, endorse the LAR documents, and compensate the APs. The case study reveals that the factors contributing to LAR implementation delays are: **a)** failure to conduct proper due diligence after changes in detailed project design; **b)** absence of a functional grievance redress mechanism (GRM) at project level; **c)** inefficient and complicated valuation procedures; **d)** bureaucratic procedures to request funds for LAR purposes and pay compensation to the APs. Additionally, the case study seeks to indicate the deficiencies in the application of ADB Policy as well as the lax downstream project supervision.

2. This case study is conducted based on a review of ADB-financed Bishkek – Osh Road Rehabilitation Project (Third Phase) which was implemented between 2002 and 2007. The project focused on the rehabilitation of a 120 km highway, connecting Bishkek and Osh and the upgrading of 125 km of secondary roads in Djalal-Abad oblast, feeding into the Bishkek-Osh road.

3. At appraisal the Project was classified ‘C’ for involuntary resettlement, as no resettlement impact was anticipated. According to the Loan Agreement, the executing agency was supposed to ensure that LAR was avoided, or if LAR impacts were unavoidable, that ADB Involuntary Resettlement Policy (1995) was used to compensate the APs.

B. Due diligence for LAR following the change in the project design

4. ***Failure to conduct proper due diligence and determine the LAR issues early added to the costs associated with AP compensation.*** To adjust the road to the rough terrain features, the detailed design was altered for the Tash Kumyr, Karajygach, Tegene feeder road section. This change exposed 3 houses to traffic generated nuisances and created safety issues for the households creating a situation in which the APs were finally compensated after the impact had already occurred.

C. Lack of functional mechanisms to review grievances

5. In 2006, all 3 families complained repeatedly to the contractor, local government and the Road Maintenance Unit (RMU) of MOTC, about the increased noise level from traffic and sludge on shoulders of the road that drained into the house. Since no adequate local government or RMU response followed, the complainants appealed to a member of the National Parliament, who communicated their grievances to the MOTC and requested an investigation of the situation in Tegene village.

6. As a result, on 6 July 2007, an inter-agency commission on involuntary resettlement (LAR commission) was established to review and decide on the validity of the complaints. The commission met with the local government representatives and the 3 complainants and conducted a legal due diligence. The commission found all 3 complaints as eligible and recommended relocating the APs to a safe area. The proximity of the affected houses to the road was judged to be incompatible with safety requirements.

7. The absence of locally accessible mechanism to review grievances has also prevented MOTC from registering and resolving the complaint at an earlier project implementation stage. Although that the APs raised their concerns to the contractors, RMU, MOTC, and local government, none of the complaints were registered or given due consideration. Having exhausting all means, the APs had to file the complaint to the National Parliament, which resulted in the case gaining a high profile and eventually raising transaction costs associated with complaint handling.

D. Impact Assessment

8. ***Instruments to assess the impacts and determine the value of the compensation tend to focus on direct physical impact, paying less attention to secondary or less tangible impacts.*** LAR commission conducted an impact assessment, and based on its results, identified affected assets and eligible APs. The impact assessment primarily focused on land, buildings, and structures without taking into account costs associated with land and building permit registration or with the fees to reinstall water and electricity supply, externalizing in this way the cost of re-establishing basic living conditions to the APs. The full list of the affected property that was registered for compensation is provided in Table A3.1 below.

Table A3.1. Approved Entitlements for 3 affected households

	Name of APs	Affected property	Compensation	Other entitlements
			KGS	
	Janybek RYSPEKOV	Residential house, shed, shelter and fences	1 052 273	Replacement land
	Amantay ALTYBAEV	Residential house, shed, shelter and fences	977 522	Replacement land
	Makmal BEKMANOVA	Residential house, shed, shelter and fences	1 015 858	Replacement land
	TOTAL:		3 045 653	

E. Property valuation for LAR purposes

9. Property valuation was conducted as if the affected assets were on sale instead of being under compulsory acquisition. The regional office of Gosstroy was tasked to carry out valuation, not least because there was no funding available to recruit an independent valuator. The valuation was carried out according to the official Valuation Standards and national legislation, which require that the affected property be assessed at market value, accounting for the depreciation of buildings and structures. The valuation specifically came up with the cost estimate for the construction of the comparable houses by prices for year of 1963 adjusted to the inflation rate for up to 2009. The results of the calculations were taken as the suggested compensation value for the lost houses and associated structures.

10. Lost land was not valued separately, as the LAR Commission recommended allocating replacement land within the same village. In implementing the recommendations of the LAR Commission, the local government allocated the replacement land to 3 APs in 2007.

F. Seeking a positive legal opinion to validate the valuation results

11. ***Validating the valuation results through the positive legal opinion proved to be time-consuming and laborious process.*** The valuation prepared and submitted for the legal opinion to Gosstroy was revised and improved upon several times to correct inaccuracies and meet the normative requirements for structure valuation. The legal opinion first issued in 2007 pointed out the major faults in the methodology of estimating prices for the houses and structures, suggesting multiple revisions to the document. On 1 April 2008, the legal opinion on the re-worked valuation results was issued indicating again inconsistencies in the calculation methodology and pointing to the need to further revisions. The valuation results were further amended, and deficiencies were corrected. On 4 September 2008, the Gosstroy approved the revised valuation results and sent its positive legal opinion to the MOTC. The valuation review and correction process took over 1 year, representing a major factor delaying APs compensation.

G. Seeking approval from the line ministries and the House of Government

12. **Allocating the resettlement budget from the republican budget to compensate APs took over one year to complete.** In early 2009, the commission completed its work and formulated the following recommendations:

- a. *Relocate the 3 APs to safe areas given that their current place of residence falls within the ROW and does not meet safety requirements;*
- b. *Request the Ak Say rayon state administration and local government to allocate the replacement land for 3 APs within the Tegene village;*
- c. *Recommend to the House of Government the amount of compensation for 3 APs for the lost houses and structures*

13. The recommendations then were forwarded to MOTC to agree them with the line ministries and submit them to the House of Government. There were no substantive comments from the ministries, and on 15 March 2009, MOTC submitted to the House of Government the proposed recommendations. On 2 April 2009 the House of Government endorsed the commission's recommendations and issued the Governmental Ordinance, authorizing MOTC to proceed with requesting the compensation amount from the republican budget. The actual payment of the compensation to the APs was made only early 2010.

H. Conclusion and provisional recommendations

14. Thus, the case study helped to specify the contributing factors that usually hinder the timely compensation of the APs and draft provisional recommendations on how the deficiencies in LAR planning process can be effectively resolved in future ADB-funded projects. Listed below are conclusions and corresponding recommendations for each contributing factor:

- (i) The failure of the executing agency and ADB to conduct due diligence supervision of resettlement safeguards and specify new, previously undetected LAR impacts related to changes in detailed project design. ***For future projects, it is recommended to strengthen downstream supervision of the social safeguards not only at the project processing stage, but also throughout the project implementation.***
- (ii) The absence of a functional GRM at project level led to AP complaints to the National Parliament, thereby initiating a high-level review of the LAR for the project and creating reputational risks for ADB. ***It is therefore suggested that ADB ensures that the executing agencies establish and maintain a functional GRM for the entire project cycle. It also advisable for ADB to provide technical support to the executing agencies on how organize/manage GRM issues in various sectors.***
- (iii) Onerous procedures to validate the valuation report (through a positive legal opinion), coupled with the inadequate capacity of Gosstroy to carry out the property valuation, proved to be a major factor contributing to compensation delays. ***It is therefore recommended that ADB builds the capacity of Gosstroy (or other entities conducting property valuation for LAR purposes) and helps mainstreaming the approval procedures for valuation reports.***
- (iv) Requesting the resettlement funds from the republican budget and securing their disbursement to the APs poses another major challenge to timely compensation. ***It is therefore recommended that ADB and Government agree upon the mechanisms for more efficient request and disbursement of resettlement funds from the central budget.***

APPENDIX 4

Case Study 2: Osh - Batken – Isfana Road [km248 – 271]

A. Introduction

1. This case study is based on an in-depth review of LAR implementation for the Batken – Isfana (km 248–271) Road Rehabilitation Project financed by a Euro 6,3 million grant from the European Commission. The project, implemented in 2008 - 2009, covered the rehabilitation of 23 km road section passing through Kok Tash and Orto Boz villages in Batken Oblast. Under the grant agreement LAR was the sole responsibility of the Government, and MOTC, as the EA, followed national legislation to resolve LAR impacts. This case study illustrates how LAR impacts are adjusted based to the national norms/practice.

2. **Summary findings.** The study reveals technical, institutional and capacity-related constraints contributing to multiple delays and breach of national LAR legislation, including: **a)** inadequate valuator capacity; **b)** onerous / time-consuming procedures to approve LAR-related documents; **c)** inadequate technical capacity of state agencies tasked with the impact assessment; and **d)** absence of adequate capacity within MOTC to manage valuation process.

B. Technical constraints

3. **Inadequate capacity of the valuers to deliver quality valuation services.** It took from May 2008 to February 2009 for the valuation report to reach an acceptable level before Gosstroy would issue a positive legal opinion confirming the validity of the valuation results. The valuation report, once finalized and submitted to the Gosstroy in April 2008, was subject to multiple revisions and re-submissions. The initial comments specifically indicated deficiencies in valuation methodology, inaccurate application of Valuation Standards and national laws as well as insufficient supporting documentation justifying the valuation methods used.

4. Additional time was also needed for the MOF approval of LAR implementation funds. Once a positive legal opinion was obtained from Gosstroy, the valuation report was submitted to MOF which found the valuation quality sub-standard (inconsistencies in methodology, insufficient justification of methods used etc) and thus unacceptable. To verify the accuracy of valuation, MOF recommended establishing an inter-agency commission to conduct a selective verification of valuation results.

5. Following the September-October 2009 inter-agency commission review, the compensation amount was finalized and included in a Governmental Ordinance, allowing MOTC to request the compensation funds from the republic budget for the following fiscal year. The budget however was allocated only in *May 2011*; the APs received compensation the same year.

C. Capacity of executing agency to manage valuation process

6. **Inadequate technical capacity of State Agencies to carry out an impact assessment.** The impact assessment instruments used by the State Registration Service (Gosregister) and Gosstroy – members of the inter-agency commission – tend to focus on direct and physical impacts, paying less attention to indirect and intangible impacts. The LAR Commission established to assess LAR impacts made an inventory of affected assets and identified the list of eligible APs based on a review of their property titles. The total number of APs that the LAR Commission found eligible for the compensation was 46. The results of the impact assessment are provided in Table A4,1 below:

Table A4.1. Results of Impact Assessment in Kok Tash and Orto Boz Villages, Batken Oblast

Type of impact	Quantity
Affected houses	1
Loss of private agricultural land (rice paddies)	22
Loss of private orchard	17
Affected municipal land (village school)	1
Lost trees	788 (336 productive/ 452 unproductive)
Affected structures	27

Source: MOTC 2011

7. At the same time, less tangible but still significant impacts, especially for vulnerable groups, were not identified or compensated for. Specifically, the impact assessment failed to account for costs related to land re-registration, building permits, land titling. Combined with the failure to provide rehabilitation allowances to vulnerable APs, this underscores deficiencies in the current impact assessment instruments. It should be noted, however, that in partial recognition of less tangible impacts, the MOTC extended extra informal support (gravel, construction materials, cleaning clogged ditches etc) to the APs and community as a whole (please refer to Table A4.2 for entitlements granted).

Table A4.2. Entitlements for the APs

	Impact Type	Entitlements	Description
1	Land loss	Replacement land	In Ak Say ayil okmotu, 4 ha of land from the Land Redistribution Fund were allocated (2,54 ha for orchards, 0,96 ha for land allotments and 0,50 ha for road rehabilitation purposes) In Ak Tatyrl ayil okmotu, 1,83 ha of land were allocated from Land Redistribution Fund, (0,68 ha for orchards, 0,65 ha for land allotments and 0,50 ha for road rehabilitation purposes)
2	Buildings/trees losses	Cash compensation	Funds to pay cash compensation were provided from the MOTC budget, approved by the MOF and Government
3	Loss of livelihood	Cash compensation	In recognition of the livelihood loss from cutting down apricot, compensation was calculated at the value of the amount of annual dried apricot sold at market prices
4	Inconveniences caused by civil works	Informal in-kind support	Construction of ditches and the drainage network within the villages by the request of the residents; provision of construction stones, gravel, sand etc to APs who expressed need for the materials

Source: MOTC 2011

D. Institutional constraints

8. **Onerous and time-consuming procedures to approve LAR-related documents.** The most bureaucratic and laborious processes for formal approval included: a) endorsing the valuation report through a positive legal opinion from Gosstroy; b) obtaining line ministries endorsement of the draft Governmental Ordinance; and c) obtaining MOF clearance of compensation funds.

9. **Endorsing the valuation report to validate its findings.** Following the emerging practice, the MOTC submitted the valuation report to the Gosstroy to solicit a positive legal opinion validating the valuation results. However, endorsing the valuation report proved to be rather lengthy process not only because of the inadequate capacity of the valuers, but also because of the absence of established parameters for reviewing the valuation report and issuing the legal opinion. The generic nature of Valuation Standards and lack of instructions on how to conduct valuation for LAR added to the fact that the valuation methodology used was found inaccurate and therefore was recommended by MOF for re-checking.

10. **Obtaining ‘no objection’ from the line ministries for the draft Governmental Ordinance.** Following the validation for the valuation results, the draft Governmental Ordinance text was circulated across line ministries to solicit their formal opinion on key provisions. The comments and recommendations of line ministries are binding and must be followed and the revised text must be re-circulated to the ministries. This process was repeated several times and it took several months before each line ministry provided a ‘no objection’.

11. **Obtaining the clearance from the MOF for the compensation amount requested from the republican budget.** The MOF is the central ministry, which approves changes to either ministerial or state budgets. It was a very long process to allocate the LAR budget and receive disbursement.

12. **Acquiring the property prior to payment of compensation.** Complicated approval procedures and pressure to meet project implementation schedules forced MOTC to selectively initiate LAR tasks before compensation was fully paid. Civil works started and ROW clearing initiated in July 2008 in parallel with the impacts assessment (as the clearing proceeded the contractor documented each property to be acquired). The clearing took 3 – 4 months. In this period some properties, essentially major residence buildings, were left standing while other properties were demolished immediately. Compensation was provided to all APs only in 2011, that is three years after the beginning of civil works and for some APs two years and a half after the impact occurred. This delay represents a serious breach of the national regulatory norms requiring the payment of compensation prior to acquisition.

E. Capacity Needs within the EA

13. The limited capacity of MOTC to manage the valuation process added to the delayed endorsement of the valuation report. The absence of clear Terms of Reference for the valuation complicated the provision of substantive comments or suggestions to the valuation report. Most comments provided by Gosstroy could have been reflected if the valuation report had been reviewed by the relevant MOTC unit prior to submission for legal opinion. A preliminary discussion on the report with MOTC would have shortened the time needed to receive a positive legal opinion.

F. Conclusion and provisional recommendations

14. In summary, the case study revealed underlying causes not only for delayed compensation of the APs, but also for the breach of APs’ rights for fair and advance compensation. The provisional recommendations listed below are based on the findings of the case study and meant to help avoid breach of the national legislation and improve the LAR planning in future projects with LAR impacts.

- i) The inadequate capacity of an independent valuator to carry out accurate valuation and produce quality valuation report represents the source of major delay in compensating the APs. ***It is therefore advised to pursue targeted capacity building activities for independent valuers and to make efforts to engage valuers with proven qualifications and skills.***
- ii) The onerous and time-consuming procedures to approve LAR-related documents contributed in substantially delaying AP compensation. ***It is suggested for the Government to consider rationalizing the approval procedures to allow for efficient review and endorsement of the LAR-related documents.***
- iii) The inadequate technical capacity of state agencies to carry out the impact assessment often results in undervaluing or missing entirely some impacts in particular indirect or less visible impacts. ***Given this, it is recommended that the Government re-visits the impact assessment methodologies to include all indirect and less tangible impacts.***
- iv) The lack of sufficient capacity within the executing agency to manage the LAR process in general and valuation of the affected property in particular, is yet another factor that adds to the delayed compensation of the APs. ***The capacity building program therefore needs to focus***

not only on raising the qualifications of the executing agency staff to effectively manage the LAR processes, but also on institutionalizing the social safeguards staff within EA.