



# Technical Assistance Consultant's Report

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Project Number: 43288  
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## REG: Mainstreaming Land Acquisition and Resettlement Safeguards in the Central and West Asia Region

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**Asian Development Bank**

# GEORGIA

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Project Number: 43288 – 01

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
APLR	Association for Protection of Land Owners' Rights
CA	Country Assessment
CAREC	Central Asia Regional Economic Cooperation
CBP	Capacity Building Plan
CRP	Compliance Review Panel
CSO	Civil society organization
DP	Displaced Person
EA	Executing agency
EU	European Union
GRM	Grievance Redress Mechanism
IFI	International Finance Institution
IR	Involuntary Resettlement
LAR	Land acquisition and resettlement
LARF	Land Acquisition and Resettlement Framework
LARP	Land Acquisition and Resettlement Plan
MFF	Multi Tranche Financial Facility
MOF	Ministry of Finance
MRM	Management Review Meeting
NAPR	National Agency for Public Registry
NGO	Non- government Organization
PCP	Public Communication Policy
PIU	Project Implementation Unit
PPTA	Project Preparation Technical Assistance
RETA	Regional Technical Assistance
ROW	Right of Way
SDLM	State Department of Land Management
ST	Safeguards Team (ADB)
SPS	Safeguards Policy Statement 2009
TOR	Terms of Reference
USAID	United States Agency for the International Development
USSR	The Union of Soviet Socialist Republics

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# CHAPTER 1

## INTRODUCTION

### 1.1 Goal and Objectives

1. This Country Assessment (CA) for Georgia is prepared under the 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 2009 ADB Safeguard Policy Statement (ADB Policy) and about the improvements needed for effective LAR implementation in each participating country;
- (ii) improved country ownership of appropriate LAR practices;
- (iii) closer alignment between ADB Policy and local practice; and
- (iv) improved procedures/technical tools to prepare and execute resettlement plans.

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

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

2. The RETA is carried out in two phases. Phase one includes the establishment of a RETA working group and CA preparation, and phase two includes the preparation of the CBP and then its implementation. On the job-coaching activities are carried out in both phases. Based on lessons learned from previous similar ADB programmes, the RETA will then focus only on improvements obtainable under existing laws through by-laws or technical regulations. The RETA however will not engage in legal reform although could help preparing an agenda for legislative changes if this is requested by a participating Government.

### 1.2 Scope of the Country Assessment

3. This CA entailed an analysis of project documents, a review of national legislation and questionnaires/interviews with representatives of state agencies, 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 the practical context of projects.

4. The identification of policy reconciliation and LAR preparation/implementation issues in the country was based on an analysis of both the Country and the ADB system/procedures. The evidence gathered in this fashion was then followed by a comparative effort juxtaposing Georgia and ADB LAR requirements/practice which had the objective to identify critical differences requiring reconciliation and propose the needed reconciliation measures of LAR implementation improvements.

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

6. The Georgian Government is in the process of establishing a Working Group to review the Country Assessment and generally to follow up on the RETA implementation and measures proposed in this Country Assessment. The country assessment was carried out in different phases between May 2011 and April 2013.

## 1.3 Historical Overview of Land Management in Independent Georgia

### 1.3.1 Land in Georgia

7. Total<sup>1</sup> agricultural land in Georgia amounts to about 3 million hectares. Recent statistics (FAO report GCP/RER/041/EC, 2012) of the land distribution are the following:

(i) Total country area:	6.97m Ha
(ii) Agricultural lands:	3.03m Ha
(iii) Arable land:	0.80m Ha
(iv) Perennial plantations:	0.26m Ha
(v) Meadows and pastures:	1.97m Ha

### 1.3.2 Land in Soviet Georgia

8. All land in the Soviet Union was State property. Nationalising land was so high on the Bolshevik agenda that the decree nationalising all land was the second one taken by the Congress of Soviets on 26 October, 1917, even before a provisional government was put in place immediately after the revolution. This decree became applicable in Georgia in 1921 when Georgia was annexed by the USSR. It is important to note that, in contrast with some formerly communist countries in Eastern Europe, none of the post-Soviet republics, including Georgia, recognised pre-nationalisation ownership rights to land and associated claims. Upon the collapse of the Soviet Union, land was privatised regardless of pre-nationalisation land rights and no compensation was paid to pre-nationalisation land owners.

9. By Soviet standards of an economy largely dominated by heavy industry and where at the level of the USSR as a whole agriculture had a secondary place in the overall economy, Georgia was considered an agricultural republic, with about as much as 40% of the workforce engaged in agriculture during the sixties, and an estimated 25% at the collapse of the Soviet Union in 1991. Although reliable statistics are not available (and the very notion of a Soviet Republic GDP is questionable), it is estimated that in 1991 agriculture contributed about one third of the then Soviet Republic's GDP. The Soviet authorities also embarked in several significant projects to improve Georgian agricultural production, including irrigation in the semi-arid plains of the East of the country and drainage in the semi-tropical swamps of the West towards the Black Sea Coast. Soviet emphasis at the Republic level was mainly on grapes and tea, with grain and cattle playing a rather secondary role since other areas of the USSR were expected to provide these (Ukraine, Central Russia, Central Asia).

10. During the Soviet period, agriculture was characterized by State ownership of all agricultural land and concentration of production in large-scale collective farms, i.e. sovkhoz (State agricultural enterprises) and kolkhoz (cooperative agricultural enterprises). The sovkhoz differed from the kolkhoz as follows:

- (i) sovkhoz ("sovietskoye xozyajstvo" – soviet husbandry) was just an ordinary State owned enterprise (like all industrial enterprises) with an appointed management and salaried workers who were simply expected to execute the instructions of the management and had no ownership, whether private or joint, over any of the means of production, which all belonged to the State, including agricultural land. Sovkhoz workers were typically housed in apartment blocks or other housing

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<sup>1</sup> The text of this section is based on the introductory paragraphs to the "Final Report – Land Market Development II Activity" prepared by APLR for the USAID, and a 2012 FAO report prepared under EU financing and available at [http://agrokartli.com/?page\\_id=122](http://agrokartli.com/?page_id=122).

belonging to the enterprise (ie to the State), where they had a non-transferable right of usage over a flat that they never owned, and had no access to private plots (at least not officially, although it may have been tolerated, particularly into the nineteen-eighties).

- (ii) whereas the kolkhoz (“kollektivnoye xozyajstvo” – collective husbandry) was meant as a cooperative with joint ownership by the workers of some of the means of production (like cattle or equipment, but not land which remained under State ownership), some say given to the workers (they were members rather than employees), as well as some incentives on productivity. The kolkhoz legislation recognised the right for kolkhoz members to retain personal ownership of their residential house, and usage rights over garden plots typically located around the house but also sometimes allocated to them from the kolkhoz fund.

11. Sovkhoz were usually larger than kolkhoz. In both the case of the sovkhoz and kolkhoz, rural households could at the same time be employed by the State or cooperative farm and have private usage rights (not ownership) over household plots, usually located close to their residences or around settlements, and in a surface of 0.25 hectare per household. While this land remained State property, people had a right to cultivate it as they pleased, as long as they had done their due at the State or collective farm. Like apartments or houses, land subject to this arrangement remained State property, and was not transferrable or inheritable. If people moved or died, this land was returned to the land fund and the local council would reallocate it to others. Thanks to this arrangement, and not unlike other areas of the Soviet Union, Georgia had in fact a relatively vigorous private agricultural sector, producing crops and livestock on these small plots allocated to rural residents in addition to whatever was produced on State and collective farms, where productivity was low and procurement and marketing chains significantly affected by corruption. In 1990, at about the time the Soviet Union collapsed, according to official statistics, the private sector contributed 46% of gross agricultural output, and productivity of private land was much higher than that of the state farms.

12. In the residential areas of cities and villages, there was no private land either. All land was State owned, similar to agricultural land. An important feature of the Soviet system, which is still to a large extent applicable now, is that the ownership of land and the ownership of a building upon this land can be different. In the current situation buildings are privatised, but the land upon which they are established is still publicly owned (typically by municipalities or sometimes by the State).

13. Residential housing was also State owned, but with usage rights formally allocated to residents. These rights were typically not transferrable and not inheritable. If a resident was to move or to decease, the local authorities in charge would decide to whom to allocate the dwelling. Practice was different in rural villages with individual houses though, where “family” houses (and the associated piece of residential land and attached garden) were usually kept within the same family. Particularly kolkhoz workers typically retained a right of usage over their house.

14. Upon the collapse of the Soviet Union and Georgia independence in 1991, the land tenure situation was as follows:

- (i) Nearly 1,300 large collective and state farms cultivated about 3 million ha of agricultural land. About 1 million hectares were arable or perennially cropped land; the rest were mostly pasture and mowing lands;
- (ii) About 700,000 farm households cultivated about 15,400 hectares as household garden plots, which stayed in State ownership and were typically allocated by State farm management under formal or more frequently informal lifetime lease arrangements. Some factories also allocated land to cooperatives of workers for them to develop private gardens, particularly in areas around the main cities.

### 1.3.3 Land Reforms in Independent Georgia and Current Institutional Setting

#### 1.3.3.1 Agricultural Land

15. Shortly after independence from the Soviet Union in 1991, the Georgian agricultural land reform was devised starting in 1992 by the first Shevardnadze government as part of the general transition towards a market economy, with a two-fold strategy, intended to create both a sector of subsistence oriented small landowners and a market oriented sector with larger leaseholders:

- (i) First, the “small parcel reform” involved the distribution in full private ownership and free of charge of land parcels of up to 1.25 hectare to rural families for subsistence farming, a process usually referred to as “privatisation” of land;
- (ii) Secondly, District authorities leased the remaining state-owned land in larger allotments to physical persons or legal entities, with the goal to create larger cash crop oriented farms. This land was allocated under short- to mid-term leases (typically three years), generally, but not only, to private entities that were created using the existing equipment and infrastructure of the state farms upon their dismantling. The intention behind the leases was obviously to generate regular revenues to the State, and possibly to preserve the existing infrastructure of large farms inherited from the sovkhoz and kolkhoz. However, this arrangement was later (in 2005) changed as the new government realised that these large farms were not productive and that the lease arrangement had not reached its objective of creating a large agri-business sector. This land was eventually privatised too, typically to the very entities that were benefitting from the leases as they benefitted from a pre-emption right, such that there are now very few of these large lease holders left.

16. The “small parcel” reform was initiated in early 1992 (“Decree 48”, or the “Land Privatisation Decree”, which addressed only agricultural land) to transfer ownership of agricultural land from the State to households on an emergency basis. The main intention at the time and its urgent character was to alleviate the consequences of a very severe food shortage resulting from the collapse of Soviet agriculture and the civil war. A “privatization fund” of 0.8 million ha of land was established covering roughly 30 percent of all agricultural lands and approximately 60 percent of all lands defined as being “arable” and “perennial”. Lands qualifying for the Privatization Fund were distributed free of charge to rural households. The maximum area of agricultural land to be transferred into ownership in lowlands was 1.25 ha and up to 5 ha was distributed to the eligible households in the highlands. Land reform committees elected by the village managed the land distribution process. The size of privatized agricultural landholdings varied from 0.3 to 1.25 ha, with a typical allocation of a half hectare, and the stipulation that the land should be farmed, although not necessarily by the landowner who had received it in ownership. Commissions were established in each village to inventory land parcels and identify those to be privatized. Limitations were placed on what the new owners could do with their land (essentially they were expected to farm rather than build or otherwise develop). By the end of 1993, over half of all cultivated land was in private hands. Small plots were also allocated free to city residents to relieve the acute food shortage in that period. In most occurrences, these plots allocated to city residents were not cultivated by the landowners themselves but by lessees, generally on an informal basis (relatives or others). Lands were distributed in the lowlands according to three categories:

- (i) farmers - up to 1.25 ha per household;
- (ii) other rural dwellers - up to 0.75 ha per household;
- (iii) urban dwellers - up to 0.25 ha per household.

17. The reform had positive results: about 744,000 ha of agricultural land were distributed in ownership to 1,055,200 households. The change did not take place at the same pace in all areas of the country, with Kvemo-Kartli and Samtskhe-Javakheti progressing more slowly in the beginnings (but later catching up), and the breakaway republics (including, at the time, Ajarra – see below, not participating in the reform at all). It was, however, also accompanied by some flaws. For example, many people did not receive proper official documents establishing ownership, and the allocation of small plots to multiple owners resulted in significant land fragmentation, presenting a serious problem for further development of agriculture. It is also



worth noting that during the early nineties few attempts were made to change the legislative framework, and the small parcel reform and the lease reform were fundamentally implemented based on the then existing laws.

18. High mountain pasture land was treated separately: this land was usually not privatised and was allocated to communities rather (in principle pasture land cannot be privatised unless its categorisation is changed). Communal councils (represented by their *gangabeli* or mayor) were allocated large areas of pasture and hay land in usufruct. This land is currently not supposed to be allocated in lease to local residents for grazing or mowing purposes, but in some municipalities informal arrangements are made.

19. The date of 22 March 1998 was set as the deadline for the completion of the land reform in Georgia although it was later extended to 31 December 1998 because one region (Kvemo Kartli) had not been able to complete the exercise. After the deadline, the process of transferring State owned land into private ownership became impossible.

### **1.3.3.2 Non Agricultural Land**

20. Private ownership of non-agricultural land did not exist at all prior to November 1997 and all non-agricultural land parcels used by private persons were deemed state owned. The authorities of the time were desirous to progress the privatisation of agricultural land before starting privatisation of non-agricultural real estate. Privatization of non-agricultural land has overall been less problematic, as such land is more readily registered, marketed, and transferred. Urban property reforms were undertaken in 1997, five years after rural land privatization was initiated. Housing privatization was carried out without privatization of the land on which the property stood nor of the land adjacent to the property. Urban land was generally state-owned. However, the Civil Code, which became effective on 25 November 1997, declared that non-agricultural land parcels under individual houses and apartment buildings were under private ownership and the process of titling and registering such land then started.

21. The second phase of privatization covered industrial lands. In 1998 the Parliament of Georgia passed a special law "on Declaration of Private Ownership of Non-agricultural Land in Use by Physical and Private Legal Persons", which declared non-agricultural lands possessed by entrepreneurs as privately owned. The law established a one-off symbolic payment to obtain ownership rights, which was equal to the annual land tax. Initial registration accompanied the process of privatizing industrial lands. Enterprises were required to submit certain documents to Registrars in order to have the land privatized.

22. The Law on the Administration and Disposal of State-owned Non-Agricultural Land of 1998 established that urban land has to be privatized through public tender. The Law on the Privatization of Urban Land of 1999 is the most recent regulation on the privatization of property in urban areas.

23. Privatization of urban lands and property was the responsibility of three governmental bodies: the SDLM (predecessor to the NAPR, see below 1.1.4), the Ministry of Urban Development and Construction, and the Ministry of State Property. Municipalities do not own land, but they are directly involved in the ongoing privatization of state-owned land within their jurisdictions

### **1.3.3.3 Housing**

24. Housing in Georgia during the Soviet period was mostly in public hands. In fact, taking the example of Tbilisi, about 45% of the housing stock (in square metres) was directly in State ownership, with another 35% under various public institutions such as ministries or public enterprises. However, a sizable part (the rest is about 20%) was owned either by housing cooperatives or associations<sup>2</sup>, with a very tiny fraction

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<sup>2</sup> *Housing cooperatives ("Жилищно-строительный кооператив, ЖСК") were authorised in the twenties, then "liquidated" in 1937, then authorised again in 1958 and strengthened in the early 1980s, when it appeared as the only*

(probably less than one per cent) remaining in individual private hands. The funding of construction differed between these two categories (State or cooperatives/associations):

- (i) The construction of State or enterprise owned housing was entirely financed by the State (or by the State enterprises), then allocated to applicants based on waiting lists or on employment at the enterprise; tenants were expected to pay a rent (or rather a fee for occupancy<sup>3</sup>) and State housing stock was typically placed under the management responsibility of the different *gamgeoba* (municipal council); most large enterprises (including agricultural ones) were obliged to build housing for their workers, with self-contained worker cities a typical Soviet feature, particularly in rural areas or suburban fringes, whereby the State enterprise was not only supposed to provide housing but also all related services (heating, water, sewerage, etc...);
- (ii) Cooperative housing was financed by cooperative members: the State would provide a 15 year loan over 60 to 70% of the cost of construction, and cooperative members were expected to finance the rest upfront and to reimburse the loan, after which the apartment would be allocated in full property to them.

25. Housing was privatised from 1992 and it is estimated that 95% or more of the Georgian housing stock is currently in private hands. The privatisation was undertaken within the framework of Decree 107 of the Cabinet of Ministers (1st February 1992), which essentially transferred the ownership of apartments to their residents. The process was free of charge, with citizens only having to pay a symbolic registration duty and was implemented by municipal organs, The Decree failed, however, to specify the legal status of the land plots lying under apartment blocks, nor did it provide any guidance on the duties of the apartment owners in multi-flat housing, which had serious consequences in terms of maintenance of these blocks, many of which deteriorated very significantly.

26. An important change in the last 10 years has been the introduction in Georgian banking services of mortgage loans, which were practically unknown before 2003. Their introduction has greatly stimulated the construction of mid-range apartment blocks.

## 1.4 Current Institutional Setting

27. From 1997, three key changes occurred:

- (i) The Government and Parliament of Georgia realised that the legislative framework was generally inadequate and started implementing considerable legal and regulatory changes. Most current laws relevant to land management actually date back to the period 1997 – 1999;
- (ii) USAID started providing extensive support to land privatisation and reform in Georgia, including in the drafting of key legislative texts;
- (iii) Work started on improving procedures for registration of land, a key weakness of the previous privatisation process.

Procedures for registration were improved to provide official confirmation of privatisation. Red tape was reduced to a minimum. Concurrently the first cadastral surveys were implemented, with a first pilot project in Zestaponi district, which started in 1998, further expanded to 40 more districts. These surveys provided a cartographic basis and their final outcome were registration of the parcel and the issuance of a certificate of ownership. This first phase resulted in the registration of 1 million land plots.

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*method to tackle the serious housing problems that the Soviet Union was then experiencing, but overall at the level of the whole USSR it never accounted for more than 15% of the housing stock.*

<sup>3</sup> “Квартплата”: these “rents” were rather low, in the USSR this housing fee represented only 6% of the average salary, whereas housing expenses nowadays are in the range of 30% of the average salary.

28. From 2001, the registration programme was expanded to a further 1.4 million land plots, an objective achieved in 2005. Meanwhile, important reforms took place in 2004, with (1) the State Department of Land Management (SDLM) transformed into the National Agency of Public Registry (NAPR), a more customer-oriented and financially autonomous organization responsible for registration of rights, and (2) the Law on Public Registry adopted in 2004. Since this institutional reform, NAPR has been playing an important role in rapid and effective service provision and public access to registration information and land market development, with remarkable results that make Georgia a model in the region. Specifically:

- (i) NAPR is now intended as a “one-stop shop” for all matters pertaining to land; regional offices are available in every region of Georgia<sup>4</sup> and in Tbilisi;
- (ii) A unified electronic cadastral database has been created and is available on line, at all territorial offices of NAPR, and through a number of authorised agents such as surveyors and notaries; the process is well advanced and most regions are covered, albeit with varying levels in the quality in the information: the NAPR is now putting most of its emphasis on improving the quality of the cadastral information, and its objective is to complete the coverage of the whole country with checked information by 2015;
- (iii) Registration procedures have been simplified; for example prior notarisation of a sale-purchase agreement is not mandatory for registration any longer;
- (iv) Cadastral information is available on-line and some routine operations that do not require the seal of the Registrar can be done on-line, like for instance requesting a cadastral map of a specific plot of land; specific entities like notaries, banks and real estate agencies can be given special access rights.

29. In the more remote regions of Georgia, such as Upper Svaneti for example, recent experience on ADB sponsored projects indicates that while land is indeed privatised, much of it is not registered with NAPR yet. A mid 2011 survey of a water pipeline right-of-way in Mestia in Upper Svaneti indicated that out of 23 affected plots of land only one was registered with NAPR at the time. This situation is changing rapidly as NAPR is catching up on gaps in registration. Where land is not registered some backup information can be obtained at municipal level using tax registries, and if such is not available a complete identification and survey exercise has to be done for the purpose of compensation, preferably following the surveying requirements of NAPR such that they can further use these data to complement their own cadastral databases.

30. A similar situation, although more complex, arises in the Autonomous Republic of Adjara. Adjara was an autonomous republic during Soviet times and is still one nowadays, It was de facto governed separately in the period between 1993 and 2004. As a result the privatisation and registration of land, a major achievement of Georgia in that period, was never implemented systematically in this autonomous area. Privatisation did take place but private interests in land were typically not registered. For example, the second phase of the Ajara bypass Batumi highway considered for finance by ADB intersected 116 private land parcels, of which 97 were not formally registered. It later appeared that no legal mechanism was available to legalise and register these interests. To tackle this complex legal issue, a specific decree had to be taken in March 2011 by the Government of Georgia to legally support compensation payments.

31. It is important to note that the breakaway regions of South Ossetia and Abkhazia were not involved in these land reforms and the status of land privatisation and registration there is not known.

## 1.5 Real Estate Markets

32. Georgia real estate markets were still recently qualified by independent bodies such as international finance institutions as being in a “formative state”, with all the difficulties typical of former communist countries: unreliable cadastral information, limited number of transactions making comparative valuation difficult, rural exodus, potential for bubble effects in Tbilisi and Batumi with purchases by wealthy institutions and companies on a market with relatively little offer and associated risks for the middle class, etc

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<sup>4</sup> Regional offices are located in the following centres: Batumi, Ozurgeti, Kutaisi, Telavi, Mtskheta, Ambrolauri, Zugdidi, Akhaltsikhe, Rustavi, Gori.

33. However, in the last five years this situation has changed and it is possible to describe Georgian real estate markets as reasonably well developed. This has obviously applied to Tbilisi city for some years, and can be expanded to other regional cities. Two key factors are:

- (i) The general economic growth, which has strengthened the middle class, which in Georgia as anywhere else is the key driver for a healthy development of the real estate market;
- (ii) The development of mortgage loans, which has allowed a number of developers to complete programmes designed for the middle class, and households in this middle class to be able to finance their accession to property under reasonable terms.

34. This does not mean that everything is perfect and there are still a number of problems:

- (i) There are areas of the country (essentially in mountainous areas – for example in Tsalka or Borjomi districts) – where rural exodus has been very significant and there is too much land available (and even residences) for the land market to absorb; these are areas where certain communities (for instance the Greeks) left and a lot of houses remain vacant and land is unused.
- (ii) As compared to the situation in 1990, Georgia now farms less than half of its arable land and has less than half the number of cows and one-third of the pigs it had in 1990. Agriculture contributed over 33% of the GDP in 1990, 16% in 2005, but only 8% in 2010. Agriculture employs over half the population, yet contributes less than a tenth of GDP. As a result, many of Georgia's poorest people live in the countryside. That poverty is so widespread in the Georgian countryside is not good for the land markets as it may cause land grabbing and similar distortions of the market.
- (iii) Some outbursts of farmer discontent have been noted in the last two-three years. Several of these were caused by attempts by local authorities to privatise pasture land, which local farmers vehemently opposed.

## **1.6 Institutional Framework**

35. The NAPR nowadays plays a prominent role in all land affairs in Georgia. The overall institutional setting on a typical infrastructure project with international financing is the following:

- (i) The Execution Agency prepares the land acquisition process based on project siting, routing and design, organises all surveys and valuation, and applies for expropriation if necessary (see 1.3.5 for details of the expropriation process and institutions involved); valuation services are to be provided by certified valuers;
- (ii) NAPR is to provide all available cadastral information, including information on ownership and existing servitudes if applicable and maps of properties;
- (iii) If expropriation (eminent domain) is sought, then the competent court is also involved.

## **1.7 Property Valuation Issues**

36. Establishing the value of real estate is problematic in Georgia as it is in all post-communist countries with real estate markets in a formative state. As mentioned above in this document, Tbilisi and Batumi have active markets for land and housing, but this is not the case in other places in the country, particularly in rural areas. The comparative value approach, which is the most reliable of valuation methods, cannot be applied where there are too few comparable transactions, the case in most of rural Georgia. Valuation is therefore undertaken based on different methods (typically through income approaches), the usual outcome of which being that the value of land derived by these methods appears very high compared to, say, Western Europe, where land value is actually derived from comparisons with similar transactions on active and mature markets. In addition, as explained below, some pieces of Georgian legislation have had a durable and not necessarily positive effect on land valuation by establishing somewhat arbitrary (and fairly high) price benchmarks. That land values are often too high and possibly disconnected from economic reality is not detrimental to affected people, who will typically get generous compensation for their assets.

This potential over-compensation has been observed in the past in some private and public sector projects in Georgia to trigger speculative behaviours (people opportunistically seeking to maximise compensation), which can be highly detrimental to projects, and more generally it increases the cost of public infrastructure.

37. The “Law on Payment of Substitute Land Reclamation Cost and Damages in Allocating Farm Land for Non-Farming Purposes” was adopted on 2 October 1997 and amended on 11 November 2007. This law establishes the rules for changing land registered as farm land in the Public Registry to non-farming use (which is the case wherever farm land is converted to industrial or infrastructure use, for both public and private sectors). The law includes rules for valuing farm land and compensating for damages. To change farm land to non-farming land, the person applies to the Ministry of in charge of Environmental Protection and Natural Resources or to the National Agency of Public Registry. Where farm land is converted to non-farming purposes the land owner must be compensated and the amount per hectare is established by the law and depends on the municipality where the land plot is located and its size. A table appended to the law shows the amount the law requires to pay to the owners. In practice, these rates – which are determined based, in principle, on market rates – can appear quite high in comparison with economic reality<sup>5</sup>, particularly in the more rural areas. They are known of affected people and are used as a benchmark for negotiation, which can put a project that would come up with lower values in a difficult position.

38. Per the law on “Management and disposal of state-owned non agricultural land”, municipalities and districts are expected to establish “normative prices”, which is the minimal price under which state entities or local authorities would not be allowed to sell public land. Like the rates mentioned in the previous paragraph, these normative rates are widely available in the public. Experience shows that although they are not necessarily intended to serve in this purpose, these normative rates are often used as a benchmark in private transactions as well as by both expropriating agencies and affected people. There is no systematic correlation between normative prices and market values. Again, the background to the calculation of these normative prices is not necessarily evident, and where the normative prices are high it can be difficult to justify a valuation at a lower price.

39. There are large numbers of companies and individuals on the valuation market in Georgia. The market is mainly fueled by commercial banks, professional auditors, and State agencies. There is currently no specific legislation regulating land and real estate valuation. The Association for the Protection of Landowners’ Rights (APLR), a non-government organisation created at the time of USAID support to land privatisation and registration, runs a certification process for professional real estate valuers<sup>6</sup>. The certification is based on training and professional testing. The certification is not mandatory to undertake valuation on behalf of state agencies.

40. Approaches used by the Georgian real estate valuers typically involve depreciation coefficients applied to the replacement value, thereby resulting in a valuation at depreciated value, which does not comply with the IFI replacement cost requirement. Services rendered by the certified real estate appraisers are mostly used by local commercial banks for the appraisal of mortgaged properties, which typically include the calculation of depreciation coefficients for structures, while IFIs, including the ADB, mandate not to take depreciation into consideration.

41. In summary, there is no mandated or universally accepted valuation methodology, there are numerous players in the field of valuation, which makes reaching methodological consistency more challenging, and replacement value appraisal is used only where IFIs are involved.

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<sup>5</sup>Generally between GEL 15,000 and 35,000. Examples: Mestia: GEL 15,429 per hectare; Batumi: GEL 34,001 per hectare

<sup>6</sup><http://www.certification.org.ge>

## **1.8 ADB Experience in Managing Projects with LAR in Georgia**

42. ADB operations in Georgia began in 2007 and for the first year the projects financed did not involve land acquisition and only minimal acquisition of other assets. The Involuntary Resettlement issue entered the agenda only in late 2008 when the preparation of the Ajara bypass road started. On the score of the LAR difficulties experienced for that project the following three years entailed. LAR learning both on the side of ADB and the EA which has by now developed a well-rounded understanding of the ADB safeguards policy requirements. Challenges remain with agencies that had no or less experience with the processing of ADB projects.

## CHAPTER 2

### LEGAL AND INSTITUTIONAL BACKGROUND

#### 2.1 Key Legislative and Regulatory Texts

##### 2.1.1 Overview of Key Legislation

43. Key legislative and regulatory texts addressing land acquisition and resettlement include:

- (i) The Constitution (24 August, 1995)
- (ii) The Law on the Procedures for Expropriation of Property for Necessary Public Need (23 July, 1999)
- (iii) The Civil Code (26, June 1997)
- (iv) The Law on Ownership Rights to Agricultural Land (22 March, 1996)
- (v) Law on Payment of Substitute Land Reclamation Cost and Damages in Allocating Farm Land for Non-Farming Purposes (1997, as amended 7 November 2007)
- (vi) The Law on Protection of Cultural Heritage
- (vii) The Law on Notary Actions
- (viii) The Civil Procedural Code (November 14, 1997).

##### 2.1.2 Overarching Principles in the Constitution

44. The Constitution of Georgia recognizes universally acknowledged human rights principles, including those pertaining to private ownership and its protection. The Constitution creates foundation for the legislative basis of possession of property. It recognizes the right of ownership (Article 21, Part 1), and permits expropriation for necessary public needs, while requiring payment of relevant compensation (Article 21, Parts 2, 3).

45. It is also important to note that the Constitution establishes the clear principle that Georgian citizens have the right to receive complete, unbiased and timely information about his/her working and living environment (Article 37, Part 5). In addition, Georgian citizens have a right of access to information about themselves (Article 41, Part 1).

##### 2.1.3 Ownership Rights

46. The Civil Code defines three categories of owners:

- (i) Private persons, either natural or legal
- (ii) Municipal entities
- (iii) State entities.

##### 2.1.4 Use Rights

47. While ownership rights are established by the Constitution and confirmed by various pieces of legislation, the Civil Code also defines the following use rights:

- (i) Right-to-build is essentially a lease over a piece of land granted by the owner to another legal entity for the purpose of erecting a structure on or beneath the land. The right thus defined is temporary (no longer than 59 years), and either based on the payment of a price or free-of-charge. The beneficiary of the right to build can alienate the right to a third party (Articles 233-241). Right to build must be registered.

- (ii) Usufruct right is defined as the right to use an immoveable object and can be exerted jointly or separately from the ownership right over this same immoveable. It can be transferred into use of another person or entity, so that the latter will be authorized to use this object as its owner and not permit third parties to use it, but, unlike the owner, this person/entity does not have the right to alienate, hypothecate or bequeath this object (Articles 241-446). Usufruct may be based on payment or free-of-charge.
- (iii) Servitude: a land parcel or other immovable property can be used (encumbered) for the benefit of the owner of another land parcel or other immovable property, so that the property owner will have the right to use this parcel, or it will be forbidden for the owner to carry out certain activities on the parcel, or the use of certain rights of the owner of the encumbered parcel (Articles 247-253). Servitude may be based on payment or free-of-charge.
- (iv) Lease: Under the lease Agreement, the lessor (owner) is obliged to transfer to the lessee (user) defined property into temporary use and, in course of the lease term, to ensure the possibility to harvest the crop, if it is produced, as income, as a result of correct management of the farming. The lessee is obliged to pay to the lessor the agreed lease payment. Lease payment may be determined both in cash or in-kind (Articles 581-606).
- (v) Rent: Under the rent agreement, the person who rents out the property (owner) is obliged to transfer into use of the renter (user) the object, for a defined period of time. The renter is obliged to pay to the owner the agreed rent amount (Articles 531-575).

## **2.1.5 Land Acquisition based on Eminent Domain**

### ***2.1.5.1 Standard Process***

48. The law on the Procedures for Expropriation<sup>7</sup> of Property for Necessary Public Need was adopted on 23 July 1999 and describes when and how a property can forcibly acquired under Eminent Domain and defines the type of project that may be eligible to such a form of land acquisition (Article 2). Fundamentally the expropriation process is organized in two steps: a) first the required land is sought by means of amicable agreement; b) only when such agreement is not reached the Land acquiring agency will seek an expropriation decree and then will apply to the relevant Court to initiate expropriation proceedings. The expropriation process initiates after the preliminary studies are carried out under the Feasibility study. It involves the following steps:

- (i) (Article 3) The promulgation for the relevant project of a decree of the Ministry of Economy and Sustainable Development (MESD) defining the necessity of expropriation, the existence of public interest conditions and the Land expropriating agency/legal entity which will benefit from the right of expropriation;
- (ii) (Article 4 ) For every property to be expropriated (forcibly acquired), the expropriating agency should publish a description of the project and the property in the central and local press, and also provide this information directly to each owner of affected properties (Article 4);
- (iii) (Article 5) For each property, the expropriating agency should submit a detailed application to the regional court that will review the case for expropriation. The court considers the application and makes a decision whether to allow expropriation. If the court does allow it, the court specifies which government authority and/or legal entity will have the right of expropriation (Article 5);
- (iv) (Article 6) Once the right of expropriation is granted by the Decree, the expropriating agency must first seek to reach agreement with the owner on the value of the property or on a replacement

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<sup>7</sup> It needs to be clarified that the term "expropriation" is used in the law to indicate the whole process of forcible land acquisition under the right of Eminent Domain. This process does not only include only forcible acquisition by court order but also: a) the right to enter the properties for surveys purposes and b) forcible acquisition by agreement which has to be attempted before proceeding with e acquisition by court order.



property offered as in-kind compensation. The compensation amount should be no less than the market value of the affected property and should also cover indirectly affected items that would be unusable or less valuable after the expropriation;

- (v) (Article 7) To follow the requirements of the Decree the land acquiring agency, or a valuator hired (and paid) by the agency and agreed upon to by the owner will be entitled to enter a property to carry out the necessary measurements and evaluate it at market value. The expropriating agency then notifies the owner of such value and how it was determined. The owner can also pay for a separate market value valuation of the property;(Article 11) adds that if crops have been already sowed at the time of valuation, the appraised market value of the land has to include the revenue attached to those crops, however if a plot is not cultivated at the time of valuation, this crop revenue is not included;
- (vi) (Article 8) If the owner and the expropriating agency cannot reach agreement, either party may file a lawsuit with the competent territorial court in accordance with the civil laws of Georgia, and the court will then make a decision on the compensation due.
- (vii) (Article 9 and 10) In determining the final compensation amount the court may carry out a new valuation survey which will have to be paid by the expropriating agency.

49. In summary, this is a sound process that complies with the ADB IR policy requirements. It is to be noted however that both for the ADB projects so far carried out and often for local project as well the EAs try to avoid expropriation as the process is time consuming. They do so by carrying out the detailed measurement surveys and the valuation surveys without requesting for the Expropriation Decree and by then offering the compensation at market rate or replacement cost to the APs as if it was a purchase payment under a free buyer free seller agreement. The promulgation of an expropriation decree is then sought as a last resort only if the EAs do not manage to convince all APs to accept the compensation offered. Such a practice technically leads to the automatic imposition of sale taxes on the transaction and may create delays because some AP may not allow the surveyors to enter their plot. Although such issues have been reconciled for ADB projects in the past (see paras. 81 and 84 below) it is advisable that in the future that a proper process to initiate the surveys on the basis of an expropriation decree is mainstreamed or at least an alternative is studies together with MESD.

50. A specific legal issue with the Georgian Expropriation Law in its current formulation is that it cannot be used to acquire rights other than full ownership. For example it cannot be used to acquire easement rights, which is problematic for infrastructure such as water or other pipelines and transmission lines. In these cases, the project sponsor can resort only to amicable agreements or a specific process called Necessary Right of Way. This is an area where the legislation could usefully be improved.

51. Another shortcoming of the Georgian Expropriation Law is that it does not properly address non ownership rights that may hinder expropriation. For instance, in situations where the landowner has agreed to acquisition by a public agency, the law does not provide legal means to manage the potential disagreement of a lessee: the lessee cannot be expropriated.

### **2.1.5.2 Urgent Process**

52. This is defined by the Law on the Rule for Expropriation of Ownership for Urgent Public Needs, which can be used if urgent necessities arise. The applicability of this Law extends only to cases of ecological disaster, natural catastrophe, or if a threat arises to human health, state security and safety.

53. In accordance with this Law, decision on expropriation of property is taken by the President, the executive authority of the Autonomous Republic, or the local government (Article 3). The taking of possession is immediate and the owner will receive compensation calculated at market value as determined by the expropriating authority. The law states that the owner must receive relevant compensation before the property is expropriated (Article 4). The owner can lodge a claim with the relevant territorial court, but only

after the property has been expropriated and when the emergency situation is over (Article 6). In principle, this law is not to be used for common land acquisition.

### **2.1.5.3 Necessary Right of Way**

54. An alternative to expropriation is to apply to the Court for “Necessary Right-Of-Way”, which is regulated by the Civil Code of Georgia (Article 180). Per the Civil Code, Necessary Right-Of-Way can be invoked “if a tract of land lacks access to public roads, electricity, oil, gas and water supply lines that are necessary for its adequate use”. The owner may then claim from a neighbor to use his/her land parcel “for the purpose of providing the necessary access”. “Necessary Right-Of-Way” is granted by a District Court based on an application by the “neighbor” that must contain a justification of the urgency. Compensation may either be amicably agreed or be decided by the Judge further to the decision granting “Necessary Right-of-Way”.

55. Fundamentally “Necessary Right-Of-Way” is intended to allow a landowner to obtain right of way through a neighbouring land parcel for utilities serving his/her land parcel. It can be particularly useful as a legal instrument where expropriation cannot be used (easement rights) and amicable agreements cannot be reached due to refusal or absence of affected landowners. It is worth noting, though, that use in the past by certain projects of Necessary Right-of-Way for common land acquisition and acquisition of easement rights has been questioned by Georgian human rights groups.

## **2.1.6 Land Use Changes and Valuation**

### ***2.1.6.1 State Rates Established by Law on Farm Land Conversion***

56. The “Law on Payment of Substitute Land Reclamation Cost and Damages in Allocating Farm Land for Non-Farming Purposes” was adopted on 2 October 1997 and amended on 11 November 2007. This law establishes the rules for changing land registered in the Public Registry as farm land to non-farming use (which is the case wherever farm land is converted to industrial or infrastructure use), including rules for valuing farm land and compensating for damages. To change farm land to non-farming land, the person applies to the Ministry of in charge of Environmental Protection and Natural Resources or to the National Agency of Public Registry. The applicant would usually have to pay to change the categorisation from farm land to non-farm land. However, no payment is due where land is converted in the interest of public need.

57. Where farm land is converted to non-farming purposes the land owner must be compensated. The amount per hectare is established by the law and depends on the municipality where the land plot is located and its size. A table appended to the law shows the amount the law requires to be paid to the owners. In practice, these rates – which generally appear quite high in comparison with market prices<sup>8</sup> – have been used as a framework for negotiation by a number of projects in the recent past.

### **2.1.6.2 Normative Prices**

58. Per the law on “management and disposal of state-owned non agricultural land”, municipalities and districts are expected to establish “normative prices”, which is the minimal price under which state entities or local authorities would not be allowed to sell public land. These rates are widely available in the public. Experience shows that although they are not necessarily intended to serve in this purpose, these rates are often used as a benchmark in private transactions as well as by both expropriating agencies and affected people.

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<sup>8</sup> Generally between GEL 15,000 and 35,000. Examples: Mestia: GEL 15,429 per hectare; Batumi: GEL 34,001 per hectare

### 2.1.6.3 Valuators and Valuation Practice

59. There are large numbers of companies and individuals on the valuation market in Georgia. The market is mainly fueled by commercial banks, professional auditors, and State agencies. There is currently no specific legislation regulating land and real estate valuation. The Association for the Protection of Landowners' Rights (APLR) runs a certification process for professional real estate valuers<sup>9</sup>. The certification is based on training and professional testing. Services rendered by the certified real estate appraisers are mostly used by local commercial banks for appraisal of mortgaged properties. The certification is not mandatory to undertake valuation on behalf of state agencies. Approaches used by the Georgian real estate valuers typically involve depreciation coefficients applied to the replacement value, thereby resulting in a valuation at depreciated value, which does not comply with the IFI replacement cost requirement. As mentioned above, the tables appended to the "Law on Payment of Substitute Land Reclamation Cost and Damages in Allocating Farm Land for Non-Farming Purposes" and the "normative prices" sometimes provide a benchmark. Some projects have also used the basis also by property tax, applying a coefficient on top of it.

60. In summary, there is no accepted valuation methodology, there are numerous players in the field of valuation, which makes reaching some methodological consistency more challenging, and replacement value appraisal is used only where IFIs are involved.

## 2.2 ADB Safeguard Requirements

61. The current ADB policy on involuntary resettlement is elaborated in the ADB's Safeguard Policy Statement of 2009 (SPS) and specifically in Appendix 2 "Safeguard Requirements 2: Involuntary Resettlement." (see Appendix 3)

### 2.2.1 SPS Key Principles and its Structure

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

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

64. The implementation of SPS requirements is required for all projects as long as there is either physical or economic displacement or both. The requirements apply regardless of the numbers of affected parties involved and of whether losses are full or partial, permanent or temporary<sup>10</sup>. The SPS also covers "involuntary resettlement actions conducted by the borrower/client in anticipation of ADB support".

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

- (i) Screen the project early on to identify past, present, and future involuntary resettlement impacts and risks. Determine the scope of resettlement planning through a survey and/or

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<sup>9</sup> <http://www.certification.org.ge>

<sup>10</sup> 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.

- census of displaced persons, including a gender analysis, specifically related to resettlement impacts and risks.
- (ii) Carry out meaningful consultations with affected persons, host communities, and concerned nongovernment organizations. Inform all displaced persons of their entitlements and resettlement options. Ensure their participation in planning, implementation, and monitoring and evaluation of resettlement programs. Pay particular attention to the needs of vulnerable groups, especially those below the poverty line, the landless, the elderly, women and children, and Indigenous Peoples, and those without legal title to land, and ensure their participation in consultations. Establish a grievance redress mechanism to receive and facilitate resolution of the affected persons' concerns. Support the social and cultural institutions of displaced persons and their host population. Where involuntary resettlement impacts and risks are highly complex and sensitive, compensation and resettlement decisions should be preceded by a social preparation phase.
  - (iii) Improve, or at least restore, the livelihoods of all displaced persons through (i) land-based resettlement strategies when affected livelihoods are land based where possible or cash compensation at replacement value for land when the loss of land does not undermine livelihoods, (ii) prompt replacement of assets with access to assets of equal or higher value, (iii) prompt compensation at full replacement cost for assets that cannot be restored, and (iv) additional revenues and services through benefit sharing schemes where possible.
  - (iv) Provide physically and economically displaced persons with needed assistance, including the following: (i) if there is relocation, secured tenure to relocation land, better housing at resettlement sites with comparable access to employment and production opportunities, integration of resettled persons economically and socially into their host communities, and extension of project benefits to host communities; (ii) transitional support and development assistance, such as land development, credit facilities, training, or employment opportunities; and (iii) civic infrastructure and community services, as required.
  - (v) Improve the standards of living of the displaced poor and other vulnerable groups, including women, to at least national minimum standards. In rural areas provide them with legal and affordable access to land and resources, and in urban areas provide them with appropriate income sources and legal and affordable access to adequate housing.
  - (vi) Develop procedures in a transparent, consistent, and equitable manner if land acquisition is through negotiated settlement to ensure that those people who enter into negotiated settlements will maintain the same or better income and livelihood status.
  - (vii) Ensure that displaced persons without titles to land or any recognizable legal rights to land are eligible for resettlement assistance and compensation for loss of nonland 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.

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

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

67. 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, cops, 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.

68. 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)<sup>11</sup>. 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.

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

70. The SPS 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

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

- (i) Preparation of a Social Impact Assessment (SIA) involving: a) a detailed measurement survey of all impacts; b) a detailed Census of all affected parties and affected persons and; c) a socio-economic surveys to be based on a statistical sample of the APs detailing the livelihood situation in project affected areas;
- (ii) A review of the local laws and regulations and an assessment of the impacts and risks against these laws and regulations;
- (iii) Preparation of a Resettlement Plan<sup>12</sup> addressing all SPS requirements. Based on the SIA and on consultation with affected persons, the RP should provide:
  - a. An executive summary;
  - b. A Project description;
  - c. A precise assessment of land acquisition and resettlement;
  - d. A detailed census of the affected parties and persons;
  - e. A socio-economic profile of the affected population;
  - f. A clear asset valuation methodology;

<sup>11</sup> 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."

<sup>12</sup> To avoid misunderstandings in the Central Asia Region the document is called Land Acquisition and Resettlement Plan (LARP)

- 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;

72. 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 Framework<sup>13</sup> (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**

73. The Preparation of a Resettlement Plan approved by the Borrower and disclosed to the APs is a condition for loan appraisal (in case of single project loans) or for the approval of a project tranche (in case of MFFs). Ideally a Resettlement Plan meeting loan/MFF tranche requirements should be a fully finalized document. However when due to specific project circumstances the document is not final (i.e. when the project design has allowed only a preliminary definition of the project impacts footprint) loan appraisal or MFF tranches can be approved by ADB based on an acceptable Draft Resettlement Plan<sup>14</sup>. 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**

74. The 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 the ADB itself and are the following:

- (i) ADB shall post (PCP, para 52) on its website the following documents submitted by the borrower and/or client:
  - 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.

<sup>13</sup> Or Land Acquisition and Resettlement Framework (LARF)

<sup>14</sup> It is assumed that to be acceptable a draft resettlement plan tentative as it may be needs to quantify all impacts and AP knowable on the score of the level of design available at the time of its preparation and based on field surveys and AP consultation. An acceptable draft also needs to provide at least a realistic assessment of the compensation budget based on replacement cost/market rates. Finally an acceptable draft will also have to clearly identify in its text the improvements needed to fully meet the SPs requirements and to ensure the final implementability of the LARP compensation and rehabilitation program.

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

## 2.2.5 Due Diligence for Multi Tranche Financial Facilities

76. 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;
- (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

77. This section identifies the gaps between the IR requirements of the SPS and of Georgia law and regulations through a direct comparison. The exercise takes into consideration both formal provisions (principles) and how these provisions are applied by ADB and the Government (application). This section also proposes the action needed to reconcile the ADB and the Georgia position and the level of the action needed.

### 2.3.1 Livelihood Rehabilitation Standards

78. Georgia 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 rehabilitation allowances to severely affected or vulnerable APs. The law, however, has enough span to allow an interpretation of its mandates to cover ADB requirements without the need of legal reform.

***Reconciliation needs.*** *No principle reconciliation is needed as Georgia law is silent on the issue of rehabilitation. Application reconciliation is needed for indirect impacts or livelihood rehabilitation for severely affected and vulnerable APs (see below 2.3.6).*

### 2.3.2 Entitlement to Compensation

79. Georgia Law and ADB policy are consistent regarding the compensation entitlements of Legal and Legalizable APs but this is not the case for non-legal AP. Regarding non-legal APs the SPS provides that they are to be identified and compensated for all non-land impacts (including buildings, trees, crops and income). Georgia law instead excludes them both from land and non-land-impacts compensation.

***Reconciliation needs.*** *Both Principle and Application reconciliation is needed to allow the full compensation of all non-land losses of non-legal APs. As reconciliation was already achieved on case by case basis for previous ADB projects it is hoped that this could be achieved without legal reform through a Decree for ADB projects.*

### 2.3.3 Compensation for Affected Assets

80. **Loss of land.** Both ADB policy and Georgia law require that permanent or temporary loss of land is to be compensated based on replacement cost to all legal and legalizable APs either via compensation in cash at market or replacement land. However this principle is applied in full only to APs that are expropriated. APs that accept the land acquisition based on a sale (see above para. 50) are considered instead as “sellers” and their compensation is deduced of capital gains and transaction costs. This selective application of the compensation at replacement cost principle contradicts the SPS provisions.

**Reconciliation needs.** No principle reconciliation is needed. Application reconciliation is instead needed to ensure that APs expropriate and not expropriate receive replacement cost. As reconciliation was already achieved on case by case basis for previous ADB projects it is hoped that this could be achieved without legal reform through a Decree for ADB projects.

81. **Loss of Land leases.** Both ADB policy and Georgia law require that affected land leases are to be compensated. ADB Policy provides that compensation for this item is to be given at replacement cost. Such 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 remaining before the expiration of the original lease. Georgia law instead does not clearly specify how leases are to be compensated.

**Reconciliation needs.** Application reconciliation is needed to clarify how lost leases are to be compensated. Although reconciliation has been already achieved in the case of previous ADB projects the technical aspects of lease compensation will have to be improved. It is expected that this can be addressed through the emanation of an ad hoc Decree for ADB projects.

82. **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. Georgia law provides the same and on this is more extensive than ADB policy.

**Reconciliation needs.** No reconciliation needed.

83. **Loss of structures/buildings.** Both ADB policy and Georgian law require the compensation of affected buildings. However there is a critical difference between the two regarding the application of the principle. Based on ADB requirements compensation is to be given at replacement cost (free of deduction of depreciation, salvaged materials or transaction costs). The Law, instead, mandates that structures/buildings are compensated at market rate but with deductions for depreciation and salvaged materials and transaction costs. Moreover also in this case like in the case of land losses (see para. 49 above) APs who accept the acquisition in for of sale (see para. 50 above) have their compensation deduced of capital gains.

**Reconciliation needs.** Reconciliation needed for application to a) allow the compensation of structures/building at full replacement cost free of depreciation/salvaged materials and transaction costs deductions and b) to avoid the deduction of capital gains to all APs whether expropriated or not. Reconciliation already obtained on case by case basis for previous projects but needs to be mainstreamed through a Decree for ADB projects.

84. **Loss of business.** For legal business losses Georgia legislation does not contradict ADB Policy principles as it mandates that income losses are to be compensated although it does not specify the compensation assessment methodology. The ADB application practice in Georgia is to compensate the affected businesses based on the income stated in the tax declaration or in equivalent documents for the period of business stoppage up to 12 months, the benchmark for permanent impacts). On the other hand, Georgia law and ADB policy contrast on non-legal/non-registered business losses. The former does not envision any compensation for these losses while ADB does (in this case ADB practice is to compensate based on the maximum non taxable income for the period of business stoppage up to 12 months).



**Reconciliation needs.** *Principle is needed for non-legal businesses only. Application reconciliation is needed for all businesses to specify the methodology for this entitlement. Reconciliation already obtained case by case basis for previous projects but to be mainstreamed through a Decree for ADB projects.*

85. **Loss of trees.** Like in the case of ADB policy also Georgia law provides for the compensation of affected trees. Georgia law and by-laws, however, do not specify a clear method to value the trees. Based on ADB application practice in the country, wood trees are to be valued at the market value of the volume of timber lost. Fruit/productive trees are instead to be valued based on the yearly income provided by a tree multiplied by the number of years to re-grow it at productive stage (other comparable methods are also considered).

**Reconciliation needs.** *Application reconciliation is needed to define the valuation methodology for wood and productive trees. Reconciliation was already obtained on a case by case basis in previous projects but it needs to be mainstreamed through a Decree for ADB projects.*

86. **Loss of crops.** Both ADB policy and Georgia law provide for crops compensation. This latter however does not specify a clear method detailing how the compensation is to be provided.

**Reconciliation needs.** *Application reconciliation is needed to specify how the crops are to be compensated. Reconciliation has been already achieved on a case by case basis for previous projects but needs to be mainstreamed through a Decree for ADB projects.*

87. **Loss of jobs.** ADB policy and Georgia law principles for compensating jobs and employment losses are consistent. In the case of registered jobs, the ADB application practice is to provide the actual monthly salary lost up to 12 months, the benchmark for permanent losses. In the case of non-registered jobs the same approach is followed but the amount to be compensated is computed based on minimum salary. Georgia law instead does not clearly specify how job losses compensation to be provided.

**Reconciliation needs.** *Application reconciliation is needed to specify the methodology for this entitlement. Reconciliation has been already achieved on a case by case basis in previous projects but mainstreaming is needed through a special decree for ADB projects.*

#### **2.3.4 Resettlement Planning and Identification of Project Impacts**

88. **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 identifying 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 identify LAR budgets and will provide background information on compensation entitlements, income/livelihood restoration strategies, institutional arrangements, implementation schedules LAR budgets, monitoring schemes, public consultation activities and complaints and grievances mechanisms,

89. Georgia law and practice, instead, do not require stand-alone LARPs detailing background information on LAR preparation/implementation and entails investigations which are less extensive or detailed than those required by ADB. The impacts assessment is essentially a desk task based on existing cadastral or other official documents. This limits the assessment only to items recorded in these documents (land plots, fixed buildings or legal businesses) and to registered/legal APs. Some verification of the documentary data used for the assessment is carried out during the valuation survey to make up for possible errors or outdated information but affected items such as crops, trees, land improvement or non-physical livelihood losses such impacts to vulnerable and severely affected AP remain unrecorded. The same applies to legalizable and non-legal APs. 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 EAs on a case to case basis for previous ADB projects. But technical improvements are badly needed to mainstream SPS requirements and improve consistency and accuracy of LAR assessments and surveys. This is particularly so for 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 building, trees and crops). This has been already done for previous ADB projects and hopefully it can be done without legal reform by means of Decree for ADB projects (see chapter 4 for details).*

### 2.3.5 Due-Diligence Mechanisms

90. **Information disclosure and Public consultation.** Georgia law specifically provides that the protocols detailing the impacts in each affected plot are disclosed to the APs but does not require the disclosure of a LARP since this stand-alone document is not envisaged by the current country system. Regarding public consultation it is understood the law mandates that matters of local importance likely to affect the well being or livelihoods of local communities are to be discussed with local government bodies and representatives of the local citizens. This however rarely happens in form of public meetings open to the public and involving directly the APs as instead it is mandated by ADB policy.

**Reconciliation needs** *No principle reconciliation is needed but instructions to mainstream more effective public information/disclosure fitting SPS standards are to be developed through technical guidelines informing the implementation of ADB projects. (see: chapters 3 and 4).*

91. **Grievance Redress Mechanism.** Contrary to ADB policy the Georgia law does not envisage the establishment of a structured mechanism pursuing grievance redress at the level of the affected communities and directly involving EAs, local governments and APs. Based on the country system grievances are addressed only through the existing formal channels offered by the courts.

**Reconciliation needs.** *No reconciliation is needed as the law is silent on this matter but more effective instructions on how to handle complaints and grievances in line with SPS requirements are to be developed through technical guidelines for ADB projects.*

92. **Payment of compensation prior to property acquisition.** As with ADB Policy, Georgia law (constitution article.....) specifically states that AP compensation is to be paid in full before an affected property is acquired for a project. However, executing these provisions in practice may be difficult as often the EA short-cuts this rule to meet project and contracts deadlines.

**Reconciliation needs.** *No reconciliation needed but precise instructions on how to ensure observance of the law are to be developed for ADB projects.*

### 2.3.6 Special Assistance to Vulnerable and Severely Affected APs

93. ADB Policy requires special assistance to vulnerable, severely affected and relocating APs, Georgia law is instead silent on special livelihood rehabilitation allowances. In the preparation of previous ADB projects several issues emerged in relation to its entitlement. The main arguments were as follow:

- (i) One was that it was unclear which APs had to be included among the vulnerable people. Based on the categories of Georgia social programs fitting the vulnerable people definition these would be the invalids internally displaced households and the poor<sup>15</sup>. ADB instead generally defines that the vulnerable people as people that disproportionately affected by LAR due to their specific socio-economic conditions. In most LARP occasions these groups include at least the poor, women headed households and indigenous Peoples households but ADB policy does not provide a full list of the type of people for whom this entitlement is relevant.
- (ii) Another was whether all households fitting the above categories are to be considered for LARP allowances even if they are not poor. For instance an argument elaborated by local officials was that a woman headed household may not be vulnerable if the household head is not poor.
- (iii) Local officials were also uncertain whether vulnerable people are entitled to receive the LARP allowances when they already receive support allowances under national programs
- (iv) Finally it was noted that in many cases by receiving the due allowances under a LARP a poor household may exceed for the year of LARP implementation the poverty benchmark and therefore is no longer classifiable as poor.

***Reconciliation needs.*** *As the law is silent on this no principle reconciliation should be needed. Application reconciliation is however needed to establish the categories eligible to this entitlement and to define a methodology for the provision of this entitlement. Application reconciliation has been already achieved on case by case basis for previous projects by: i) assuming for Georgia the following vulnerable people categories: invalid, displaced households, women headed households and poor as represented by the AP tallies of each specific LARPs; 2) providing the allowances to all these categories whether poor or not or whether already receiving special assistance under national programs<sup>16</sup>; 4) disregarding the livelihood improvement caused by the provision of the allowances. Application reconciliation however needs to be mainstreamed through a Decree for ADB projects.*

### 2.3.7 Chapter Summary and Conclusion

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

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<sup>15</sup> In the preparation of ADB LARPs the poor were identified based on the national poverty benchmark and the allowance was calculated based on the minimal monthly subsistence income defined by the Georgia Institute of Statistics which is updated monthly.

<sup>16</sup> Based on the logic of the ADB policy the special allowances for vulnerable people are meant to provide special assistance to parties that given their general socio-economic situation may be exceptionally affected by the LAR process. These allowances do not overlap with allowances vulnerable people receive as a standard contribution by the state but are provided as an additional form of assistance directly related with their special needs during the relocation process. As such they are to be provided independently from other allowances they receive.

**Table 2.1 Comparison of LAR provisions between ADB Policy and national legislation impacts and rehabilitation of vulnerable/severely affected APs**

Issues	ADB SPS (2009) and ADB practice for application *	Georgia	Reconciliation Needs
1) Livelihood rehabilitation	ADB Policy requires rehabilitation / improvement of AP livelihood standards.	Notion of livelihood rehabilitation not sanctioned by national law but extent of compensation parallels ADB requirements	As the law is silent on this principle reconciliation is not needed. Application reconciliation is instead needed for indirect impacts and rehabilitation of severely affected/vulnerable APs. Already reconciled in previous projects but to be formalized through a Decree for ADB projects..
2) Compensation entitlements	<p><b>A. APs with formal title</b> have to be compensated for lost land/other assets.</p> <p><b>B. APs with legalizable title</b> have right to be compensated for lost land and assets after the EAs helps them in legalizing their assets.</p> <p><b>C. APs with no legal title</b> have right to be compensated for non-land assets lost.</p>	<p><b>A. APs with formal title</b> are compensated for lost land/other assets.</p> <p><b>B. APs with legalizable title.</b> are considered by default non-legal and are not compensated unless they legalize themselves.</p> <p><b>C. APs with no legal title</b> have no right to be compensated for both land and non-land assets.</p>	<p><b>A.</b> Same in principle/application. <u>No reconciliation needed</u></p> <p><b>B.</b> Different in application. Already reconciled in previous ADB projects but <u>formal Reconciliation through a Decree for ADB projects is needed.</u></p> <p><b>C.</b> Critically Different in principle and application. Already reconciled in previous ADB projects but <u>formal Reconciliation through a Decree for ADB projects is needed.</u></p>
3) Compensation	<p><b>A. Land Losses.</b> Replacement land as preferred option or cash compensation at full market rate. At least for legal/legalizable APs.</p> <p><b>B. Leases Losses.</b> Based on cash replacement of gross income lost x remaining lease years or through a replacement land lease</p> <p><b>C. Loss of structures/buildings.</b> Cash compensation at replacement cost for lost item free of depreciation, transaction costs, other deductions.</p> <p><b>D. Loss of indirectly affected items.</b> Non affected parts of an asset no longer usable after impact will have to be compensated as well.</p> <p><b>E. Loss of business.</b> Compensation of lost income. Applied in practice by</p>	<p><b>A. Land Losses.</b> Compensation in cash at market rate. In kind compensation not excluded. Non expropriated APs are taxed.</p> <p><b>B. Leases Losses.</b> Based on cash replacement of gross income lost x remaining lease years or through a replacement land lease.</p> <p><b>C. Loss of structures/buildings.</b> Cash compensation at market rate deduced of depreciation/transaction costs. Non- expropriated AP are taxed.</p> <p><b>D. Loss of indirectly affected assets.</b> The law prescribe their compensation.</p> <p><b>E. Loss of business.</b> Cash compensation at market value for legal businesses but the</p>	<p><b>A.</b> Same in principle/application. If the law is fully applied. However, If property is acquired in form of sale APs should be exempted of taxes. <u>Technical improvement of valuation mechanisms/process needed.</u></p> <p><b>B.</b> Same in principle and application. <u>No reconciliation needed.</u> <u>Technical improvement of valuation mechanisms needed.</u></p> <p><b>C.</b> Different in application. Already reconciled in practice in previous projects but <u>formal reconciliation is needed</u> through by a Decree x ADB projects needed. Same as A if property is acquired in form of sale.</p> <p><b>D.</b> Same in principle and application. <u>No reconciliation needed</u></p> <p><b>E.</b> Different in principle for non legal businesses and in application, for all businesses.</p>

	<p>providing lost income up to 12 months based on tax declaration. In absence of tax declaration compensation based on mechanisms to be discussed with the borrower (usually maximum non-taxable salary).</p> <p><b>F. Loss of trees.</b> Irrespective of legal land occupancy status compensation at market cost. Applied in practice based for wood trees on tree type/ wood volume and for productive trees on income lost (x tree type x market value of 1 year income x full production years lost).</p> <p><b>I. Loss of crops.</b> Compensation of crop in cash at market price.</p> <p><b>J. Loss of jobs.</b> Indemnity ensuring AP rehabilitation. Arrangements to be agreed with EAs but usually based on salary x months of stoppage up to 6-12 months.</p>	<p>methodology is not specified.. Non-registered businesses not entitled to compensation.</p> <p><b>F. Loss of trees.</b> Trees are compensated either based on reproduction cost or provision of lost income (1 year of income x remaining productive years of tree).</p> <p><b>I. Loss of crops.</b> Generally not compensated.</p> <p><b>J. Loss of jobs.</b> Not compensated.</p>	<p>Already reconciled for previous projects but mainstreamed <u>principle (for non-legal APs) and application (for all APs) reconciliation is needed</u> through a decree for ADB projects.</p> <p><b>F.</b> Slightly Different in application. Already reconciled for previous ADB projects <u>but to be mainstreamed</u> through a decree for ADB projects.</p> <p><b>I.</b> As above.</p> <p><b>J.</b> Different in principle and application Already adjusted for previous ADB projects but mainstreamed <u>Principle and application reconciliation needed</u> through a Decree for ADB Projects.</p>
<p>4) LAR planning, assessment and valuation of impacts</p>	<p><b>A. Resettlement Plan (RP).</b> RP preparation includes: a) impacts assessment/AP census ;b) definition of entitlements, income/livelihood restoration strategy, compliance &amp; grievance mechanisms, institutional arrangements; c) consultation results, d) monitoring schemes, e) budget and implementation schedule. A RP requires the following surveys:</p> <p>i. <b>Measurement survey.</b> Measures all affected items.</p> <p>ii. <b>AP Census.</b> Identifies all APs and establishes legitimate beneficiaries based on legal status.</p> <p>iii. <b>Socio-economic survey.</b> Provides background information on AP' socio-economic features.</p> <p>iv. <b>Valuation survey.</b></p> <p><b>a) Land:</b> If land market exist based on a survey of recent transactions; without land market based on land</p>	<p><b>A. Resettlement Plan.</b> There are no requirements to prepare RPs as a stand-alone document. LAR planning however requires similar assessment/survey efforts as ADB Policy, as detailed below:</p> <p>i. <b>Measurement survey.</b> Measures all impacts.</p> <p>ii. <b>APs Identification.</b> Identifies all APs by residence / establishes legitimate beneficiaries based on legal status.</p> <p>iii. <b>Socio-economic survey.</b> <u>No comparable requirements exist.</u></p> <p>iv. <b>Valuation survey.</b></p> <p><b>a) Land:</b> Stress is made on market value, rather than replacement cost. Market value is not clearly defined. Valued at market rate based on a</p>	<p><b>A.</b> Same in principle. Different in application. Reconciled for previous ADB projects.</p> <p>i. Same in principle/ application</p> <p>ii. Same in principle/application</p> <p>iii. Different in principle and application <u>but already reconciled for ADB projects.</u></p> <p>iv. <b>Valuation survey.</b></p> <p><b>a)</b> Same in principle/application.</p>

	<p>productivity/ income.</p> <p><b>b)Buildings/structures.</b> Replacement cost of materials, labor and transport and special features of building/structure without discounting depreciation, salvaged materials and transaction costs.</p> <p><b>c) Trees/crops.</b> Based on the methodology detailed in section 2.</p>	<p>transactions survey. Valuation includes transaction costs/third party liabilities.</p> <p><b>b) Buildings/structures. Stress is made on market value,</b> rather than replacement cost. Market value is not clearly defined Market value of materials, labor, transport and special building features <u>but discounted for depreciation, salvaged materials or transaction costs.</u></p> <p><b>c) Trees/crops.</b> Based on the methodology detailed in section 2.</p>	<p><b>b) <u>Reconciliation needed.</u></b> See 3.C. above.</p> <p><b>c) Same in principle/application for non-productive tree. <u>Application for productive trees to be reconciled x ADB Projects.</u></b> See 3 H above.</p>
5) Procedural mechanisms	<p><b>A. Information disclosure.</b> Resettlement-related documents to be timely disclosed in the AP language.</p> <p><b>B.Public consultation.</b> 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><b>C. Grievance procedure.</b> A Grievance Redress Mechanism (GRM) is to be established for each project. Information on GRM to be communicated to the APs</p> <p><b>D. Asset acquisition conditions.</b> Property can be acquired only after full compensation is paid to the APs</p>	<p><b>A. Information disclosure.</b> No public disclosure requirement exists.</p> <p><b>B. Public consultation.</b> In general, matters of local importance to be publicly discussed with local authorities. But no requirement to consult directly the APs, except the cases when Expropriation procedures are applied. In case of expropriation, APs should be informed personally and besides, disclosure of details in local and central mass-media is required.</p> <p><b>C. Grievance Procedures.</b> Through the Court system Each state agency/ministry should define a procedure for registering and reviewing the concerns and claims from citizens. Deadlines for response are defined by Administrative Code of Georgia.</p> <p><b>D. Asset acquisition conditions.</b> Property can be acquired only after full compensation is paid to APs Formally, compensation is paid for actual damage but not planned activities (loss of land, structure, other assets). This has an impact on implementation procedure: either compensation should be executed after the land acquisition (through expropriation) or (as a rule) the assets are compensated before land acquisition based on sales/purchase agreement, But in that case income taxes could be formally incurred.</p>	<p><b>A. Different in principle and application. <u>Already reconciled for ADB projects.</u></b></p> <p><b>B. Same in principle but different in application. Already reconciled for ADB projects. <u>Better application needed.</u></b></p> <p><b>C. Same in principle but different in application. Already reconciled for ADB projects. <u>Better application needed.</u></b></p> <p><b>D. Same in principle, but unsystematic in application. <u>Application procedure to be improved.</u></b></p>

6) Assistance to severely affected, vulnerable and relocated APs	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. The law does not exclude possibility of allowances for severely affected and vulnerable APs., However, there are several legal/procedural problems related to implementation to fit ADB requirements.	A. Critically different in principle/ application. <u>Permanent reconciliation through a decree for ADB projects needed.</u>
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## CHAPTER 3

### COMPARATIVE ANALYSIS OF ADB AND GEORGIA LAR PROCESSES

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

#### 3.1 ADB Project Preparation and Implementation Cycle

96. The provision of an ADB single-project or Multi-Tranche Financial Facility (MFF) loan to a borrower is usually preceded by a Project Preparation Technical Assistance (PPTA) which is financed by an ADB grant supporting the main preparation activities for the project or the Tranche 1 projects<sup>17</sup>. These activities include engineering design, economic analysis, environmental studies and LARP preparation.

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

- (i) **Loan/tranche 1 processing.** This phase 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 draft project designs and LARP(s). If these are approved as acceptable at the Management Review Meeting (MRM) recommendation is made to proceed with loan preparation;
  - c. *Loan preparation proper* entailing the planning/structuring of the loan. This step is concluded with loan negotiations and then loan approval.
- (ii) **Loan Administration.** This phase entails the actual implementation of the project. It includes the bidding process for hiring the contractors and then civil works. However, as often detailed project design and LARP preparation are not fully finished at the time of loan approval, this phase may also start with project design and LARP finalization. When this is the case design and LARP preparation will continue under loan finances and the physical implementation of the project(s) will start only once design and the other preparatory activities (including LARP implementation) are completed.

98. 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.

99. Independently from the loan type or MFF tranche number considered the significant points of the ADB project cycle pertaining to LAR are that: i) project design and LAR planning are carried out in parallel;

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<sup>17</sup> The projects under second or third MFF tranches are prepared by consultants hired under the loan.



ii) effective LAR planning and approval of at least of an acceptable draft LARP based on field surveys (see footnote 11) is a condition to loan appraisal and; iii) the finalization of an implementation-ready LARP and its 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 The ADB Process for LAR Planning and Implementation**

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

### 3.2 Georgia Project Preparation and Implementation Cycle

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

**(i) Preliminary Project Planning**

- a. Promulgation of a project decree which slates a planned project for implementation. The Decree also establishes the EA and approves the execution of a Feasibility study and relative disbursement.

**(ii) Feasibility Study and Feasibility study Decree**

- a. The FS explores different project alternatives and provides technical-economical information needed for selecting the preferred option to be used as a basis for preparing Detailed Design. Each proposed alternative includes the definition of routes and layouts for linear infrastructure and a general scoping of potential LAR impacts which will be considered in the choice of the final project alternative.
- b. After the final option for the project is selected preliminary LAR studies begin. These preliminary studies involve a desk survey of impacts and relative compensation costs based on cadastral and public registry records. In this phase the impacts considered are essentially impacts on land and buildings affecting registered (legal) APs) and APs covered by cadastral studies financed by different donor organizations during the implementation of land reform.

- c. Based on the preliminary survey the final FS will detail an initial assessment of impacts, APs and LAR costs.
- d. The FS is reviewed by the EA and appropriate Government agencies (the sector Ministry<sup>18</sup>) and then approved by Decree.

**(iii) Expropriation Decree**<sup>19</sup>

- a. A Decree establishing the right of eminent domain is promulgated by the MESD and is endorsed by the Regional court in project areas. The decree authorizes surveyors to enter the plots and informs the future expropriation process by mandating the following tasks: a) public announcement and specific notification to the APs that their land is needed for public needs; b) detailed measurement and valuation surveys and the preparation of a compensation offer to the APs. If the APs do not agree with the offer expropriation proceedings at the court are initiated.

**(iv) Detailed Design and Detailed LAR Studies**

- a. Detailed Design is initiated.
- b. The APs are notified that their land is needed for public needs;
- c. Detailed LAR preparation tasks in the field start. They include the following:
  - i. A Detailed measurement survey of all impacts These surveys identify legal status of all affected items, the land use patterns of each affected plot and measure/count all affected plots, buildings, businesses and trees.
  - ii. A detailed identification of all Affected parties (including non-legal APs)
  - iii. A detailed valuation at market rates of all affected items by an independent valuator
  - iv. Public consultation
- d. Compensation contracts are prepared and then presented to each AP for signature<sup>20</sup>
- e. Based on the above the EA prepares a LAR brief detailing impacts, APs and the overall LAR budget
- f. The brief is submitted to the appropriate Government Agencies for review and, if accepted, the LAR implementation and the disbursement of LAR funds is approved by the Government through a LAR Decree (in ADB- financed projects this Decree approves also the LARP).

**(v) Compensation Delivery**

- a. The compensation finances are allocated by the Ministry of Finance (MoF)
- b. APs who have signed the contracts are compensated immediately thereafter by check/bank transfer.
- c. APs who have not signed the contracts are slated for expropriation under court order and needed proceedings are initiated. In this case the compensation amounts will be deposited at the relevant court.

**f) Start of Civil Works**

- a. After the APs are compensated or expropriation is approved by the court the land can be taken and civil works begin.

101. 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 project design tasks are

<sup>18</sup> e.g. EAs are Road Department, MDF or UWSCG and Sectoral Ministry is Ministry of Regional Development and Infrastructure; EA is GSE and Ministry of Energy;

<sup>19</sup> As noted in Chapter 2 para 50, the promulgation of the Decree at this point may be skipped by the EAs if they wish to attempt to acquire the land based on a free buyer-free seller approach. Although this is often done by the EAs it is unclear what is the legal status and requirements of this practice if it is conducted for public interest projects. In one way or another the Decree may be needed later if at the end of the process some AP refuses the offered compensation and expropriation through court proceedings cannot be avoided.

<sup>20</sup> In this occasion the contracts will be discussed with the APs and to reach an agreement some minor modification of the compensation due may be negotiated

performed. 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 Georgia Process for LAR Planning and Implementation**

<b>Steps</b>	<b>Main LAR Tasks</b>
Preliminary tasks	Decree Establishing Project, EA and project preparation funds.
Feasibility Study	identification of Project alternatives and for each alternative definition of: <ul style="list-style-type: none"> <li>b. Preliminary alignment</li> <li>c. Identification of local governments affected</li> <li>d. Desk-LAR studies based on Cadastral records and local public registers</li> <li>e. Preliminary LAR costs assessment based on cadastral values</li> </ul> Selection of project option Promulgation of Decree approving Feasibility design and Detailed design funds.
Expropriation Decree	An Expropriation Decree is promulgated establishing the right of eminent domain for the project and informing the following expropriation process. The Decree may be skipped (but not many of the activities it requires) if the EAs acquires the needed land based on a free buyer free seller agreement
Detailed design Detailed LAR Studies	Execution of detailed design or at least establishment of Project footprint. Announcement of land acquisition needs to APs Assessment of LAR magnitude/scope through detailed measurements in the field Valuation of assets Consultation with APs Provision of compensation offers to the APs Identification of cases that require expropriation ( if any). If expropriation is needed and the expropriation decree was not promulgated earlier this will be done now. Preparation of LAR Brief inclusive of list of all impacts/ AP and LAR budgets
Approval of LAR Documents	Review and Validation of LAR brief by relevant agencies Promulgation of the LAR implementation Decree (inclusive of LAR budgets). In the case of ADB projects this Decree is equated with the decree approving the LARP.
Preparation of LAR implementation	Allocation of LAR finances Compensation contracts signing Initiation of expropriation through court orders for relevant cases and deposit of relative compensation funds to the courts.
LAR implementation	Payment of compensation to the APs Expropriation approved by the court
Civil Works implementation	

### 3.3 Comparative analysis

102. The short outline of the ADB and Georgia LAR processing steps detailed above shows a fundamental disconnect between the ADB and national practice. The Georgia system is still structured on the old Soviet paradigm of postponing LAR tasks to the completion of project design. The ADB system, instead, envisions LAR preparation and project design as parallel tasks. If matched for comparison purposes against each other the two systems 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 the ADB system. This new system however, still requires fine-tuning, codification in national instructions and broad mainstreaming.

103. It is important to note that the new LAR processing system has matured through a difficult process of adaptation involving mistakes, task implementation delays and substantial misunderstandings between ADB and EAs officers. The new 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 EA officers, the former tending to take for granted the ADB approach and discounting its novelty for the EAs and the latter instinctively orienting their action based on known national practices and struggling to make the adaptations needed.

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

## **3.4 General Issues**

### **3.4.1 Project Design Level and options for LARP preparation**

105. 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 non linear projects). The level of detail of the prior design is directly correlated with the level of detail that can be achieved for the LARP prepared during a PPTA as a condition to project appraisal. Based on the overall ADB experience and on the assumption that the average time for a PPTA is six months the situation is as follows:

- (i) In the very rare case of a PPTAs starting with a fully finished detailed design (this so far has never occurred in Georgia) 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 (this has occurred so far once or twice in Georgia) it may be expected that the LARP prepared for MRM appraisal can be at least an advanced draft document based on a sufficiently detailed design to mark the final project footprint. Such a LARP may include all the basic impacts and APs information but may require better specification in the baseline, some fine-tuning of the compensation delivery modalities and minor changes in the impacts/AP baseline due to adaptations in the final project footprint elaborated during the execution of detailed design.
- (iii) In case a PPTA starts without a prior Feasibility study (as in many Georgia projects) 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.

106. Leaving alone case one which has never occurred in Georgia, it is important to elaborate on the specific LAR preparation predicaments of case two and three. Based on experience, for case two the

delivery of an advanced draft LARP within a period of six months will require very intense efforts but it may be assumed as achievable at least with EAs who have already prepared ADB-financed projects. This is possible as long as: i) the Feasibility study/preliminary design is approved by the Government before the consultants are fielded (if this happens before it may be difficult for them to enter the properties to be surveyed or engage local governments; ii) the work to be done and the compensation policy expectations are clear to EA and consultants, and; iii) design and LARP preparation tasks are properly coordinated (for possible improvements on this see para. 116 below).

107. Case three is instead much more complex and entails substantial challenges even when a project involves an EA with experience on the preparation of ADB projects. As most of the standard PPTA period is likely to be used to select the final project option and prepare the preliminary design limited time will be left for field surveys and for the analysis of the impacts/AP baseline. Due to time compression the LARPs presented for appraisal may barely meet the minimal approval conditions for project appraisal and at times may require that approval is granted conditionally to basic improvements in the text and to the execution of final tasks such as Government Approval or disclosure. To avoid these situations ADB and the Government may want to carefully consider the possibility to extend the PPTA period of two to three months. Crucially important will also be to avoid time wastes by ensuring quick Government approval of the Feasibility Study and by fielding the bulk<sup>21</sup> of the consultants' LAR team after that is done.

### **3.4.2 Finalization of a Draft LARP**

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

109. The following section provides a comparative analysis of the practical merging of ADB and Georgia LAR processing systems in the preparation of projects in Georgia. 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**

110. **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.

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<sup>21</sup> Minimal LAR capacity may have to be fielded during the preparation of the Feasibility study when LAR preparation is needed or to provide assistance during project identification and during the early cadastral surveys carried out by the Government

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

- (i) *The ADB Safeguards Team (ST) either from headquarters or Resident Mission is fielded at Reconnaissance Mission as a standard procedure. During the mission the ST specialist will: i.) visit project areas; ii.) based on SPS requirements and in consultation with the EA, assess the likely impacts magnitude; iii.) identify major LARP preparation issues and approaches needed; d) based on an analysis of the information available (including whether a Feasibility study is available or not) prepare a preliminary LARP preparation scenario and a schedule inclusive of Government tasks, and; e) Coach the EA on the ADB LAR requirements and agree on a LAR processing plan to be adopted so as to fit both ADB and national requirements and ensure its smooth execution. The above will be summarized in a LAR planning brief which will inform the preparation of PPTA paper, consultants TOR and borrower agreement. For difficult cases as projects implemented by an EA new to ADB procedures, ADB may also hire a staff consultant to advise the EA and the Project Team during the PPTA processing phase.*
- (ii) *Given the difficulty to finalize a LARP within the PPTA period the PPTA Paper and the consultants TOR include financial and schedule provisions fitting cases where the PPTA covers also Feasibility Study preparation and, if possible, extending the consultants work up to loan negotiations or Loan approval (see para. 117 below for more detail).*
- (iii) *If sufficient information and if needed ADB may prepare a draft LARF.*

### **3.5.2 PPTA Implementation Issues**

111. **Need of greater alignment of Borrower's and ADB's Project/LAR processing system.** Greater understanding of Borrower's LAR preparation procedures is needed to avoid contradictions between the Country and the ADB project/LAR preparation system. In this respect particular attention is to be paid to two facts:

- (i) that under the Georgia law on expropriation the establishment of eminent domain and the initiation of detailed LAR surveys and the field is formally contingent upon the promulgation of an Expropriation Decree by the MESD. The Decree is to be approved by the relevant Regional Court and establishes the rights of the APs and the due-diligence action to be carried out to ensure that these rights are respected.
- (ii) that to save time and administrative complications the EAs often skip the Decree at that point in the LAR process and informally carry out land acquisition based on a free buyer-free seller modality. In these cases the EAs carry the same due-diligence actions required by the law so as to avoid legal contradictions.

112. If on the one hand approach (ii) may save some time in the middle of the land acquisition process on the other it may create serious complications and add delays from other directions. Without the Decree, the AP may oppose surveying activities in their plots and may question the legitimacy of the LAR process, communication and agreements with local governments may be overly complicated and ultimately the EA may have difficulties in obtaining the official final approval of the LARP. Moreover if approach (ii) is followed, the Decree may still have to be proclaimed later during LAR implementation in case there are AP still refusing the compensation who need to be expropriate through court proceedings. Finally approach (ii) requires that to fit the ADB policy the APs (under this approach they are plainly sellers) are exempted from paying transaction or capital gains taxes. Although this has been informally done it may cause further project implementation delays and create ambiguities with other laws of the country.

**Proposed Action.** *It is recommended that due process in accordance to the law is implemented and that the Expropriation Decree (or at least a temporary alternative document agreed with MESD) is promulgated before initiating the field surveys. However to establish an unambiguous process and ultimately avoid delays and complications the full Decree should be promulgated as soon as it possible along the process. To this effect it is also recommended to discuss with the Government the needed mechanisms to expedite the promulgation of the Expropriation Decree for ADB projects.*

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

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

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

114. **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 defined<sup>22</sup>. For instance in this initial project preparation phase, design plans should selectively focus on the essential investigations needed to establish a clear project footprint (other dimensions of design work may follow later the LAR surveys are concluded). In parallel it would be important to agree from the start on whether the corridor of impacts is to be taken as the entire project right-of way or only as the area directly affected by civil works.

115. 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 114b above should:*

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

### 3.5.3 Loan Processing Issues

116. **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.

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<sup>22</sup> I.e. whether the impacts area is the whole right-of-way or only the corridor of impacts.

**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 111b, it is thus recommended that the PPTA Paper and the consultants TOR prepare during the PPTA processing phase include financial and schedule provisions for possible extensions of the consultants work up to loan negotiations or Loan Approval. To ensure continuity with the project preparation activities prepared during the PPTA administration phase it is also recommended that the Government keeps mobilized the EA LAR team, the LAR Commission and the concerned local governments.*

### 3.5.4 Loan Administration Issues

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

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

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

### 3.5.5 LARP Implementation Issues

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

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

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

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

- (i) The EA assigns one member of the LAR team to the task to: i) directly contact each AP with pending legalization issues, understand their case and provide advice on what is to be done; and ii) coordinate and intervene with the relevant administrative offices on the solution of the situation of each AP and on its establishment as a priority case.*



- (ii) *The EA directly pays the administrative fees for each AP that has failed to do so (the fee will then be recovered from the APs as a deduction from their compensation dues). In case the EA has no finances to advance for this task ADB may want to consider the possibility of an advance from Project finances.*

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

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

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

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

122. **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 EA since it was already exposed to the merged ADB-local project processing system during tranche 1.

123. Table 3.3 next page refers to self-standing project loans or first MFF tranches. It summarizes the above text in reference to self-standing project loans by matching the LAR action required by the ADB and the Georgia 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 merged ADB and Georgia LAR planning process and related streamlining needs**

ADB			GEO			Streamlining/improvement Needs
Task	LAR Activities	wks	Tasks	LAR Activities	wks	
<b>Project concept preparation/PPTA Processing</b>			<b>LAR Preparation</b>			<p><b>Issues:</b> Poor alignment of ADB/ local process tends to cause project delays and often leads to incomplete surveys which will require substantial updates after loan agreement.</p> <p><b>Proposed GOV Action:</b> 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><b>Proposed ADB Action:</b> To speed up PPTA tasks it is recommended that the ST is fielded in this phase. ADB may also consider to:</p> <p>a) hire a LAR consultant (1 month) to assist EA;</p> <p>b) Add 2-3 months to PPTAs covering Feasibility Studies</p> <p>c) Extend PPTA finances/ capacity to Loan approval.</p> <p>d) If sufficient information is available and if needed prepare a LARF</p>
1. Reconnaissance mission	No field activity		If a feasibility study is available promulgation of the feasibility study decree so as to allow full field surveys.	<ul style="list-style-type: none"> <li>- Establishment of EA LAR team/ engagement of Local Government</li> <li>- If a feasibility study is available ensure that the preliminary impact assessment (AP census &amp; LAR costs based on cadastral data) is carried out.</li> <li>- Promulgate Feasibility Study Decree</li> <li>- Disclose feasibility study Decree.</li> </ul>		
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	
<b>Project Preparation/PPTA Implementation</b>			<b>LAR Preparation (continuation)</b>			<p><b>Issues:</b> 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><b>Proposed Consultants Action:</b> If a Feasibility study is needed The consultants prepare an action plan to ensure that the PPTA provides not only the preliminary LAR information based on desk surveys but also LAR information from LAR surveys in the field fitting minimal ADB requirements for LARPs. To do so the consultants will have to plan the surveys so as to:</p> <ul style="list-style-type: none"> <li>- define design level needed for alignment;</li> <li>- split project in sections with-without LAR.</li> <li>- Field more than 1 design teams working in parallel on different sections</li> <li>- phase design and project schedules in 2 phases for sections with and without LAR.</li> </ul>
1. Consultants mobilization	- ADB ST fielded -Consultants / EA prepare a time bound LAR Action Plan (APL).	1	A well-staffed LAR team is fielded..	EA LAR team/ Local GOV mobilized in support to PPTA consultants		
2. Inception Mission		2		EA team assist Consultants in the preparation of the Action Plan		
3. LARP Preparation	<ul style="list-style-type: none"> <li>- ADB ST fielded</li> <li>- LAR Policy agreed with EA</li> <li>- LAR surveys done.</li> <li>- AP Consultation</li> <li>- Initial LARP text</li> </ul>	16	If a Feasibility study is to be prepared:	<ul style="list-style-type: none"> <li>- EA team intensively coordinates with local GOV/relevant state agencies.</li> <li>- EAs carry out preliminary surveys and when they are finished promulgate the Feasibility Study Decree.</li> <li>- EAs ask the Promulgation of the Expropriation Decree. If not possible the EA has to find a viable temporary alternative in agreement with MESD.</li> <li>- EA discloses the Decree to the public.</li> <li>- EA carries out at least basic field surveys satisfying minimal ADB requirements.</li> <li>-EA carries out AP consultation.</li> </ul>		
<p><b>Issues:</b> 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.</p> <p><b>Proposed Government action.</b> The promulgation of the Expropriation decree needs to be simplified (see chapter 4 for a proposed solution).</p> <p>As full GOV approval of a LARP through a Decree 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.</p>						

			If a feasibility study is available	- EA ask for the promulgation of the Expropriation Decree. - EA discloses the Decree to the public - Carries all detailed LAR surveys - Carries out AP consultation - Notifies impacts and compensation to APs - Initiates AP legalization	
4. Technical review	-ADB reviews Draft/final LARP	1		EA Team assists Consultants in LARP finalization and review	
5. Final/ Draft LARP completion	- Draft/final LARP finalized	2			
6. Final/Draft LARP approval	-ADB approves Draft/final LARP	1		- If the LARP is final EA seeks the review of the relevant ministries and obtains its approval through a Government Decree. -If the LARP is a draft it is reviewed and approved only by the EA.	
7. LARP Disclosure	-ADB discloses LARP on web	1		- EA discloses draft/final LARP in Georgian	
MRM					
Average Total Time B.		24			24
<b>Loan Processing</b>		<b>LAR Preparation (continuation)</b>			<b>Issues:</b> 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. <b>Proposed ADB Action.</b> 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: - <b>Scenario A:</b> with PPTA funds up to loan approval - <b>Scenario B:</b> without additional PPTA funds
<b>SCENARIO A</b>		<b>wks</b>			<b>Wks</b>
1. Appraisal Mission and Continuation of LARP preparation	- ADB ST fielded - Continuation of design and LAR preparation.	20	Continuation of unfinished Project / LAR preparation tasks.	EA and Local GOV remain mobilized in support to TA consultants	20
2. LARP Review	- LARP reviewed (if final)		LARP review	EA assists as need in the review	
3. LARP Approval	- (if final) ADB Approves LARP and waits for the Government approval	6	GOV approval of LARP	If the LARP is final EA seeks the review of the relevant ministries and obtains its approval through a Government Decree.	6
4. Loan Negotiations					
5. Advanced procurement of Supervision Consultants					
6. LARP Disclosure	If final ,LARP in English re-disclosed on Web	2	Re-disclosure (if LARP is final)	Final LARP re-disclosed in Georgian	2
6. Board Approval	No LARP activity	1	No LARP activity	No LARP activity	1

7. Loan Signing		1			1		
8. Loan Effectiveness		2			2		
<b>Expected average total time C</b>		31			31		
<b>SCENARIO B</b>		<b>wks</b>			<b>Wks</b>		
1. Appraisal Mission	No field activity or only minor field activity			No field activity or only minor field activity			
2. 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		
<b>Loan Administration</b>			<b>Feasibility Study (continuation)</b>				
Continuation of LARP Preparation(if needed)			Continuation of LARP Preparation (if needed)				
1. Consultants fielded/ coached, Loan Administration Mission.	ADB fields the ST team, coaches the consultants on project issues.	3	Redeployment of EA team, and loc. Governments.	The EA assists in the coaching of the consultants.	3	<b>Issues:</b> As above <b>Proposed GOV Action.</b> As above.	
2. Continuation of Design and LARP finalization	-LARP finalization based on final ROW alignment.	18	Conclusion/ of unfinished LAR preparation tasks.	EA/ Local GOV mobilized in support to TA consultants	18		
	ADB reviews LARP	2		EA assist in the review	2		
4. LARP Approval	ADB approves Final LARP	6	GOV approval of Final LARP	- EA seeks review from appropriate ministries; Government approves LARP.	6		
LARP Disclosure	ADB discloses LARP on web	1	EA Disclosure	EA discloses LARP	1		
Expected Average Total LARP Finalization time		30			30		
<b>LARP Implementation and final Project chores (BOTH SCENARIO A AND B)</b>			<b>Execution of Impacts Compensation</b>				
ADB Mission	Consultants prepare a LARP Implementation plan	2	Preparation of LAR Implementation	EA assist in with LARP implementation plan preparation	2	<b>Issues:</b> LARP implementation could be expedited with more proactive engagement of EA and ADB . <b>Proposed GOV Action:</b> a) Proactively engage in the finalization of AP legalization and possibly advances payment of land registration fees; b) adapt work	
Supervision consultants LAR	Routine supervision of LARP implementation			Legalization is finalized	2		
				Request of LAR funds to MOF	4		

implementation	and compensation delivery.	18		EA hires External Monitoring agency	6	for the request of LAR funds to the schedule of LARP approval and national budget approval. <b>Proposed ADB Action.</b> 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		
				Compensation delivery	6	
Compliance report review and 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 IN ADB PROJECTS

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

#### 4.1 Institutional Administrative and Technical Capacity

##### 4.1.1 Institutional and Administrative Capacity

125. As noted in previous chapters, LARP preparation is often hindered or slowed down by lack of experience of EA/PIUs LAR team, Local governments, valuers and consultants with SPS or RA 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:

- (i) 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, PIUs LAR teams, local Governments and Consultants at the start of PPTA activities.
- (ii) Training modules addressing the technical and administrative aspects of the various activities to be carried out during LARP implementation and preparation.

##### 4.1.2 Technical Capacity

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

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

- (i) LAR surveys Methodology and recording formats: A clear survey methodology leading to the identification of all impacts and APs in the field and improved measurement methods involving a better calibration of GPS data for all detailed measurements are to be established. In addition, standard formats/forms for DMS, census, socio-economic surveys and description protocols reflecting all compensation categories addressed by ADB policy have to be designed. The forms currently used change from project to project and at times miss some compensation category.

- (ii) Logistics of LAR related surveys: The Planning and organisation of surveys by consultants is to be improved. To implement LAR-related surveys, a well coordinated multi-disciplinary team is required (measurement specialists, agronomists and sociologists) to allow seamless exchange of information and good team work integration. The experience of the Road Corridor Development Program showed that cooperation between consultants and local authorities is not always optimal. To assist the process, the PIUs should provide more support to consultants, as they know what the LAR requirements are, what kind of data is needed, and how the survey can be effectively organized. So far the PIUs have not been involved enough in surveys and LARP development processes as their tasks tended to be limited only to formal and administrative aspects of the LAR preparation process (for example preparing letters to regional and local governments with request to support the survey team), but this is not sufficient.
- (iii) Greater Coordination is also needed between EAs, PIUs and relevant State agencies. LAR related surveys are not the only sources of information for LARP development and to finalize a LARP other data should be provided and validated by different state agencies (see chapter 2)<sup>23</sup> This information or eventual corrections of information already obtained (i.e. post verification corrections to the description protocols) need to be provided or endorsed quickly. To ensure effective and prompt LAR preparation action the EA/PIUs need to engage and coordinate more intensively with local governments and other relevant agencies.

***Proposed Mainstreaming Action for ADB Projects.*** In the future ADB may want to consider the following:

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

## 4.2 Valuation

128. In respect of valuation of affected properties, which was mentioned by all agencies in the as a potentially problematic area, the following issues were identified:

- (i) Absence of standard valuation methodology: there is no agreed valuation methodology or formulas in use in Georgia. In fact every valuator uses their own methodology for the establishment of market value, and for example there is no agreed methodology for identifying and using reference transactions that the valuation will be based upon. It was also mentioned that the valuation market is not well structured, with a large number of valuator<sup>24</sup>, whose credentials, experience and even independence are often unclear. A valuable initiative was developed by the Association for Protection of Landowners' Rights (APLR) to provide valuator with a certification on the model of the ISO 9000 certification, but the certification process does not necessarily involve the use of a standard valuation methodology or require valuator to use such.
- (ii) Replacement value: Implementation agencies stated that they find the relationship between replacement value and market value somewhat unclear. In fact, IFIs, including the ADB, require valuation at "replacement value", but this is not necessarily a very well defined concept as the

<sup>23</sup> RA Government decree N1274-ს issued on 16<sup>th</sup> September 2010.

<sup>24</sup> According to some estimates, there are no less than 300 entities on the valuation market. This market is mainly entertained by banks and certified accountants / auditors (some of these audit companies have asset valuation capabilities). There is also a large valuation bureau, which used to have a de facto monopoly of all Government valuation and still holds a considerable part of the market.

guidance provided by the different IFIs is perceived as insufficient. The implementation agencies indicated that they would need more precise guidance and a set replacement value valuation methodology.

- (iii) Difficulty to determine market value: In some areas of Georgia, baseline transactions are not in sufficient number to determine market value for land or structures. Also there is no agreed methodology to sample transactions properly or to extrapolate their value to that of the affected assets. Lastly, registered transactions are known to be understated for buyers and sellers to minimise tax but there is no agreed coefficient to meet this gap.
- (iv) Diminished value for environmental impacts: Linear projects and other infrastructure may cause a reduction in the value of non expropriated properties, due for example to noise and other nuisances. The current approach is “all or nothing”:
  - a. either the property falls within the sanitary protection zone if environmental standards (noise or air quality for example) are exceeded, and it is eligible to full compensation,
  - b. or it is deemed unaffected and residents have to stay in spite of environmental impacts and are not eligible to compensation of diminished value.
- (v) Diminished value for restrictions: This is another aspect where there is no set methodology to assess the diminution in the value of an asset affected by restrictions associated with easement rights or servitudes. This is particularly relevant for pipelines and transmission lines.
- (vi) Valuation of business losses: While immovable assets held by a business are valued as any other immovable asset, the loss of income experienced by a business due to relocation or disruptions during construction or operations is either not valued, or valued without an agreed methodology.
- (vii) In addition to the above it is also necessary to establish a format for the presentation of valuation fitting the requirements of ADB reports which address both the national and the international community.

***Proposed Mainstreaming Action for ADB Projects.*** In the future ADB may want to consider the following:

- (i) Valuation methodology: prepare a draft standard valuation methodology for infrastructure projects<sup>25</sup> that would meet both ADB and other IFI requirements of the replacement value and Georgian law. This method should address all immovable assets (land, structures, perennial crops, forest, other developments) as well as annual crops and business losses. Restrictions and the valuation of servitudes should be addressed too.
- (ii) Assist in improving the valuator certification: include training on valuation for the in the certification curriculum and requirements.
- (iii) Guidance note for valuator on how to prepare valuation reports. To complement the new valuation instructions ADB may want to assist the designated Government agency in the preparation of guidance notes for valuator. In the meantime while the new regulation is developed ADB may also prepare a guidance note addressing the specific valuation needs and valuation reports standards for ADB-financed projects.
- (iv) Capacity of the valuator to conduct valuation for LAR purposes. Once the LAR valuation Instructions are developed, training on their implementation will have to be provided to valuator and concerned State agencies. ADB may assist in the preparation of the training modules and in providing the training at least for ADB-financed projects.

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<sup>25</sup> Valuation for banking (collateral) and audit purposes has different objectives and should not be used as a benchmark (which is one of the reasons of the current problems).



### 4.3 Development of Targeted LAR Interventions in Specific areas of Country

129. Within Georgia there are several regions or locations where because of historical or cultural reasons the national LAR system is implemented based on local variations or special arrangements. This is for instance the case of the Autonomous Ajara province (see chapter 1) where the initial land privatisation process involving the issuance of land passports<sup>26</sup> was only partially implemented (until 2004 Ajara did not recognize the Georgian status quo) and where the reform was interrupted in 2008 by a Parliament Order due to the difficulty of establishing the legitimacy of land rights and land claims. So far in Ajara most plots remain unregistered and are not recorded in the NAPR cadastral maps system. In this situation it is very difficult to carry detailed land surveys or to identify the legal status of the land users and any LAR initiative would require long and painstaking mapping and legalization efforts.

130. Another case is the situation in Swaneti or other high mountain areas where land can be held either individually and or communally by the members of broad extended families and clans. Although in this last case the local system allows for the possibility of providing compensating land directly to the actual land user this requires good knowledge of the local tenure system and the application of arrangements that are different in mainstream Georgia.

131. The specific and potentially contentious situation of ethnic minorities may need to be addressed as well by future capacity building initiatives, particularly (but not only) in the case of the Azeri people the West of the country and that of the Armenian minority in the South–East. While it is thought at this point that their ethnic minority status does not necessarily warrant a vulnerable group status, specific provisions need to be made wherever relevant to ensure meaningful consultation and disclosure and document translations both in Georgian and in the local languages

***Proposed Mainstreaming Action for ADB Projects.*** In close collaboration with the Government, ADB may want to develop specific LARP preparation and implementation instructions for projects planned in the above mentioned areas.

### 4.4 Monitoring and Evaluation

132. In Georgia there is no standard framework for Monitoring and Evaluation (M&E), nor is there much understanding of ADB's requirements which entail: a) Short-term due-diligence (M&E) tasks to be carried out during and immediately after the implementation of a LARP and b) long-term evaluation efforts to assess the success of the rehabilitation program under a LARP

***Proposed Mainstreaming Action for ADB Projects.*** ADB may want to prepare a set of instructions for M&E detailing the activities for short- and long- term tasks. These instructions may be included as an appendix to the LARP preparation and implementation manual mentioned above.

### 4.5 Financial facilitation of the reconciliation of Livelihood rehabilitation requirements

133. 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.

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<sup>26</sup> Land passports (often referred to as "Chevarnadze passports") were the primary outcome of the land privatisation exercises of the nineties, they identify the plot with coordinates and boundaries, and sanction ownership. They are the basis upon which a landowner can be issued a final title after registration.

***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.

#### **4.6 Simplification of the Promulgation Mechanisms for Decrees**

134. Based on national procedure various steps of the LAR preparation and implementation process require the promulgation and approval of Governmental decrees. Among others, these are the feasibility Study Decree, the Expropriation Decree, and the final LARP approval Decree which have to be promulgated from the highest administrative echelons. In addition ADB requires both Government approval of draft and final LARPs, a practice that in the case of draft LARPs is seen as overly taxing and time consuming by many of the national officers contacted for this CA.

***Proposed Mainstreaming Action for ADB Projects.*** It is recommended that:

- (i) ADB studies with the appropriate government agency(s) the available options to shorten and simplify the approval of LARPs and the promulgation process of needed Decrees. Of particular importance is the approval of the Expropriation Decree and of the approval of draft LARPs*
- (ii) The simplification of the promulgation of the Expropriation Decree is key to speed up LAR preparation tasks as technically it should occur before the implementation of field surveys. One possible option would be to have it promulgated in parallel or even before the promulgation of the Feasibility Study Decree.*
- (iii) The approval of draft LARPs may be simplified if that is provided only by the EA as standard practice. The arrangements adopted will be formalized in a working note acceptable to the Government. Final LARPs will require full approval from the needed Government level.*

#### **4.7 Grievance Redress Mechanism**

135. So far in Georgia the management of grievances is left to the formal court system as a matter addressing potential wrongs after-the-fact. To ensure effective application of the GRM at project level in a fashion targeting not only grievance redress but also grievance prevention, a more effective process for accepting and reviewing complaints or claims has to be developed and mainstreamed into all ADB-funded projects. EAs need to understand the importance of identifying issues at an early stage and taking decisive action to remedy them. Past experience shows that neither EAs nor local government have an adequate understanding about how to identify potential problems or to address specific claims in an efficient and satisfactory manner.

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

***Proposed Mainstreaming Action for ADB Projects:*** A standard package of GRM materials with GRM templates and with appropriate training programs may be developed and approved.

#### **4.8 Preparation of a Country Land Acquisition and Resettlement Framework**

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

138. Planning as-you-go was inevitable for the first ADB project loans in RA, when both ADB and EAs were learning about each-other practice and were discovering the complexities caused by their merging. With the progression of ADB lending to RA, 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 LAR principles/implementation mechanisms fitting both SPS and Country requirements; b), define the institutional and administrative context for LAR in RA, 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. Government approval will also entail a full review process involving validation from the appropriate expertise agencies and ratification at the highest approval level through a Government Decree signed by the Prime Minister.*

## CHAPTER 5

### SUMMARY AND FINAL RECOMMENDATIONS

#### 5.1 Summary of Report Findings and Recommendations

139. The previous chapters have identified at different level the main issues complicating the timely and effective planning/execution of LAR tasks for ADB projects in the Georgia. 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.

140. Chapter two has focused on the formal/legal alignment of Georgia 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 trees and crops; and (c) rehabilitation of vulnerable and severely affected APs. Items requiring only law-application reconciliation are: (a) loss of structures and buildings, (b) loss of businesses and (b) 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) public consultation; (b) information disclosure; (c) grievance resolution and (d) preparation of LARPs and appropriate measurement/census surveys for all impacts and APs. All gaps will require a reconciliation Decree for ADB Projects except for public consultation; information disclosure, grievance resolution and LARP/surveys preparation which require only technical instructions. The interventions needed to harmonize and fill gaps between ADB Policy and the country 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/legalizable APs	<u>Reconciliation needed</u> (non-land losses).	<u>Reconciliation needed.</u>	Already reconciled for previous projects but to be mainstreamed by a Decree or Ordinance for ADB Projects.
2 Assistance to severely affected/vulnerable APs	<u>Reconciliation needed</u>	<u>Reconciliation needed</u>	Already Reconciled for previous projects but to be mainstreamed by a Decree for ADB Projects.
3 Loss of Land	<u>No Reconciliation Needed</u>	<u>Reconciliation needed</u> To ensure compensation at replacement cost of non-expropriated APs	Already Reconciled for previous projects but to be mainstreamed by a Decree for ADB Projects.
3 Loss of trees and crops	<u>Reconciliation needed</u>	<u>Reconciliation needed</u> To ensure compensation and proper valuation method	Already Reconciled for previous projects but to be mainstreamed by a Decree for ADB Projects.
4 Loss of structures and buildings	<u>No Reconciliation Needed</u>	<u>Reconciliation needed</u> (for valuation of replacement cost free of depreciation, salvaged materials, transaction costs and to ensure compensation at replacement cost of non-expropriated APs.)	Already Reconciled for previous projects but to be mainstreamed by Decree for ADB Projects.
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 to be mainstreamed by a Decree for ADB Projects.

ADB Policy Requirement	Reconciliation/Action needed		
	Policy	Application	Action needed
6 Loss of Jobs	<u>No Reconciliation Needed</u>	<u>Reconciliation needed</u> (to distinguish short- and long- term impacts)	Already Reconciled for previous projects but to be mainstreamed by a Decree for ADB Projects.
7 Public participation	<u>No Reconciliation needed</u>	<u>No Reconciliation needed</u> ( Instructions for meaningful/ transparent participation to be developed.)	Specific approach to be agreed with RETA Working Group.
8 Information disclosure	<u>No Reconciliation needed</u>	<u>No Reconciliation needed</u> (Instructions for information disclosure to be developed).	Specific approach to be agreed with RETA Working Group.
9 Grievance resolution	<u>No Reconciliation needed</u>	<u>No Reconciliation needed</u> (instructions for managing Grievances to be developed.)	Specific approach to be agreed with RETA working Group.
10 LAR Planning	<u>No Reconciliation needed</u>	<u>No Reconciliation needed</u> (instructions for full impacts measurements surveys and AP censuses to be developed.)	Specific approach to be agreed with RETA working Group.

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

**Table 5.2 Summary of Recommended Action to Facilitate LAR**

Issues	Action needed	Responsibility
Process Coordination	<ul style="list-style-type: none"> <li>Project Decree to be promulgated before fielding LAR Consultants in the field.</li> <li>Coordination of request of LAR implementation funds with LAR implementation schedules</li> </ul>	<ul style="list-style-type: none"> <li>- EA/Government</li> <li>- EA/Government</li> </ul>
Planning/financing	<ul style="list-style-type: none"> <li>Extension of PPTA Finances/schedules to loan approval</li> <li>Fielding ADB resettlement specialists at PPTA processing;</li> <li>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;</li> <li>Financing the allowances for severely affected and vulnerable APs under the loan</li> </ul>	<ul style="list-style-type: none"> <li>- ADB</li> <li>- ADB</li> <li>- ADB, Consultants, EA, LAR Commission,</li> <li>- ADB</li> </ul>
Capacity	<ul style="list-style-type: none"> <li>Training/coaching of EA and consultants</li> <li>Development</li> </ul>	- ADB

<b>Issues</b>	<b>Action needed</b>	<b>Responsibility</b>
Time-saving/efficiency measures	<ul style="list-style-type: none"> <li>• Design and LAR surveys based on staggered schedules prioritizing work in project sections with LAR..</li> <li>• Shorten/simplify the Decree/Ordinance promulgation process;</li> <li>• Proactive engagement of EA in the finalization of AP legalization including advancing to the APs the land registration fees;</li> <li>• Hiring of external monitoring Agency by ADB</li> </ul>	<ul style="list-style-type: none"> <li>- ADB, Consultants, EA, G</li> <li>- EA, Government.</li> <li>- EA, possibly ADB</li> <li>- ADB</li> </ul>

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

**Table 5.3 Country-wide Capacity Building Action Plan**

<b>Issues</b>	<b>Action needed</b>	<b>Responsibility</b>
Administrative and Technical capacity for LAR preparation under ADB projects	<ul style="list-style-type: none"> <li>• Preparation of a LAR preparation and implementation Manual with instructions on administrative, LAR planning and survey matters.</li> <li>• Preparation of a broad training program/training modules for EAs and local consultants supporting the manual</li> </ul>	ADB, appropriate Government Agency (T.B.D)
Valuation Capacity for LAR under ADB projects	<ul style="list-style-type: none"> <li>• Update of valuation standards and formats,</li> <li>• Preparation of a valuation manual</li> <li>• Provision of training</li> </ul>	ADB appropriate Government Agency (T.B.D)
Vulnerable/severely AP issues	<ul style="list-style-type: none"> <li>• Preparation of instructions on how to identify these APs and on how to set allowance amounts</li> <li>• Finance the allowances under the loan</li> </ul>	
Business rehabilitation	<ul style="list-style-type: none"> <li>• Preparation of instructions on how on how to set indemnities amounts</li> </ul>	
Simplification of Decree promulgation	<ul style="list-style-type: none"> <li>• Definition of a shortened/simplified process elaborated in a working note.</li> </ul>	
Monitoring and Evaluation	<ul style="list-style-type: none"> <li>• Preparation of instruction detailing short- and long- term tasks and capacity needed</li> </ul>	
C&G handling	<ul style="list-style-type: none"> <li>• Preparation of instruction on C&amp;G organization and handling</li> </ul>	ADB appropriate Government Agency (T.B.D)
LAR Policy/practice mainstreaming	<ul style="list-style-type: none"> <li>• Preparation of a CLARF</li> </ul>	ADB, RETA working group, Expertise agencies, House of Government

## **5.2 Next Steps**

143. 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 National Capacity Building Action Plan (NCBAP). NCBAP 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 the ADB team and by the RETA working Group and will require intensive consultation with the appropriate State Expertise Agencies. Before being implemented the NCBAP and relative budgets will have to be approved by ADB and the Government. The level of Government approval needed will be decided as the work for the NCBAP unfolds.

## APPENDIX – 1

### THE LAW ON EXPROPRIATION

#### LAW ON THE PROCEDURE FOR EXPROPRIATION OF PROPERTY FOR NECESSARY PUBLIC NEEDS

(As published in Sakanonmdeblo Matsne N40(47) 1999)

#### Chapter I General Provisions

##### Article 1. Definition of the Terms Used in the Law

The terms used in the Law shall have the following meanings:

- a) **Evaluation** – the calculation by the specially authorized person of the value of expropriated property and adequate compensation;
- b) **Expropriator** – the person vested by court with the right of expropriation; (29.12.2006, N 4204)
- c) **Costs** – the costs incurred in connection with expropriation and proceeding including land evaluation costs and other expenses;
- d) **Right of expropriation** – one-time right to deprive property for the necessary public need defined by Article 21 of the Constitution of Georgia and this Law against adequate compensation; (29.12.2006, N4204)
- e) **Expropriation** – expropriation of property under Article 21 of the Constitution of Georgia and this Law against adequate compensation for the property so expropriated;
- f) **Compensation** – payment of the adequate compensation sum to the owner in return for the expropriated property or transfer of any other property having the market value of the expropriated property. (29.12.2006, N4204)

##### Article 2. Purpose of the Law

1. The purpose of the Law is to define the procedure for granting the right of expropriation and for performing expropriation for necessary public needs. The expropriation for necessary public needs is carried out based on a decree of the Minister of Economics and Sustainable Development of Georgia (further – Minister) and by a court decision, in favour of a public authority or local self-government authority or/and legal entity under public or private law that is vested with the right of expropriation in accordance with this Law. (15.102010)
2. Expropriation for necessary public needs is carried out to perform the following works:
  - a) To build roads and arterial highways;
  - b) To build railway lines;
  - c) To build crude oil, gas and oil products pipelines;
  - d) To build electricity transmission and distribution lines;
  - e) To build water supply, sewage and wastewater collection lines;
  - f) To build telephone lines;
  - g) To build TV cables;
  - h) To build structures and facilities necessary for public needs;



- i) To perform works needed for national defence;
- j) To extract mineral resources. (22.04.2005 N1417)

## **Chapter II Performance of Expropriation**

### **Article 3. Basis for Gaining the Right of Expropriation**

1. Property may be deprived by way of expropriation for the necessary public needs under Article 21 of the Constitution of Georgia. The right of expropriation is granted based on a decree of the Minister and by a court decision. The decree of the President of Georgia defines the indispensability of expropriation for necessary public need and identify the subject that may be vested with the right of expropriation.
2. The decision of expropriation is made only by the court. The court decision identifies the public authority or local self-government authority or/and legal entity under public or private law that is vested with the right of expropriation. The court decision shall also contain a detailed description of the property to be expropriated and the relevant reference to the necessity to pay the adequate compensation to the owner. (29.12.2006, N4204)

### **Article 4. Publication of Information**

1. All the owners, whose property is subject to expropriation, shall after the promulgation of the decree of the Minister, be provided by the person interested in gaining the right of expropriation, with the information that is published in the central and relevant local press. The information shall state a brief description of the project and scopes of its implementation as well as of the territory and presumably the property subject to expropriation.
2. All the owners referred to in Paragraph 1 above shall be informed also of the dates of lodging the application with and hearing of such application by the court.

### **Article 5. Decision of Regional (City) Court on Granting the Right of Expropriation (29.12.2006 N4204)**

1. The question of granting the right of expropriation is heard by the regional (city) court. (29.12.2006 N4204)
2. The person interested in gaining the right of expropriation shall lodge with the regional (city) court the application for granting the right of expropriation. The application shall state: (29.12.2006, N4204):
  - a) Name of the regional (city) court;
  - b) Name and legal address of the applicant;
  - c) Name, first name and surname of the representative, where the application is lodged by the representative;
  - d) The applicant's claim;
  - e) The circumstances, on which the applicant builds his claim;
  - f) The evidence confirming such circumstances;
  - g) List of the documents appended to the application.
3. The application shall also be appended with:
  - a) Detailed description of the project, for the implementation of which the right of expropriation is claimed;
  - b) The relevant decree of the Minister;
  - c) Detailed description of the property to be expropriated;
  - d) The information publication document provided by Article 4 of this Law.

4. The regional (city) court shall hear the application in accordance with this Law and within and terms and in the matter provided by the Civil Procedure Code of Georgia. The decision of the regional (city) court shall be executed immediately under the procedure of execution of the decision to be executed. (29.12.2006 N4204)

#### **Article 6. Sine Qua Non to Expropriation**

1. The expropriator having gained the right of expropriation shall, in accordance with Article 3 of this Law, agree with the owner of the property on the procedure of compensation for the property to be expropriated. The expropriator shall take all the adequate actions to receive the property from the owner by agreement. Before starting negotiations on the purchase of the property, the expropriator shall, at his own expense, with the assistance of external experts, evaluate the property and determine the approximate compensation sum or any other property as per the market value of any other property given to the owner as compensation. The owner may enjoy the assistance of any other external expert at his own costs. (29.12.2006, N4204)
2. Before starting negotiations on the purchase of property, the expropriator shall furnish the owner with the proposal on the purchase of the property and the procedure for compensation for such property. The market value of any other property offered as compensation or the compensation sum shall not be less than the amount determined by the expropriator as a result of evaluation. Other property may be transferred as compensation to the owner in return for the expropriated property only if the owner so agrees. The expropriator shall furnish the owner with the evaluation in writing, indicating the basis for determination of compensation. (29.12.2006 N4204)
3. In signing an agreement on compensation for property expropriation, the expropriator shall under no circumstance impede negotiations or transfer of compensation sum or any other property as compensation to or put any other pressure upon the owner of the property. (29.12.2006 N4206)
4. The property purchase proposal shall also consider the compensation for the property, the size, form and location of which is insignificant or due to inefficiency – less valuable but is related to and is useless without the property being purchased.

#### **Article 7. Actions to Be Taken before Expropriation**

1. To evaluate the property, by consent of the owner of such property, the expropriator or the external expert hired by the expropriator is entitled to inspect the property, conduct a study, obtain samples and take other actions.
2. Before starting expropriation, the expropriator shall furnish the owner of the property with a written document stating:
  - a) Validation of the existence of the public necessity for expropriation of the property, with reference to the relevant decree of the Minister and the court decision, based on which the expropriator is granted the right of expropriation;
  - b) Detailed description of the location and volume of the property to be expropriated; amount of the compensation sum or detailed description of any other property given as compensation and its market value in accordance with Paragraph 2 of Article 6 of this Law. (29.12.2006 N4204)

#### **Article 8. Dispute over the Property Market Value and Compensation (29.12.2006 N4204)**

1. If the expropriator and the owner of the property fail to agree on the market value of

and compensation for the property or on the property offered as compensation, each party may file a lawsuit with the court of competent jurisdiction, in manner provided by the civil laws of Georgia. (29.12.2006 N4204)

2. The lawsuit of the expropriator shall be appended with:
  - a) Detailed description of the property to be expropriated;
  - b) Documents evidencing the existence of public necessity for expropriation of the property;
  - c) Documents concerning the project to be implemented for public necessity;
  - d) Decision of the regional (city) court on granting the right of expropriation. (29.12.2006 N4204)
3. Based on a reasonable petition of a party, the court may on its own determine the type of compensation for the property to be expropriated. (29.12.2006 N4204)

#### **Article 9. Evaluation of Property by Court (29.12.2006 N4204)**

To evaluate the property, the court may appoint an external expert in manner provided by the Civil Procedure Code of Georgia. The external expert shall produce within a fixed term before the court an opinion on the market value of the property to be expropriated as well as of the other property offered as compensation to the owner instead of the property to be expropriated. Based on the external expert's report as well as on the evidence produced by the parties, the final evaluation of the compensation given to the property owner instead of the property to be expropriated is performed by the court.

#### **Article 10. Obligations of the Expropriator**

The expropriator shall pay all the costs and expenses incurred by the parties, including court costs as well as the expenses related to the evaluation and transfer of the property to be expropriated.

#### **Article 11. Evaluation of Arable Land (29.12.2006 N4204)**

The value of arable land shall be evaluated in consideration of the value of the sowings on such land. The value of sowings shall be calculated in view of the revenue that the property owner would have received in the current business year. If sowing on arable lands takes place after the evaluation of arable lands, the value of sowing shall not be included in determining the amount of compensation.

### **Chapter III Conclusive Provision**

#### **Article 12. Enactment of the Law**

This Law be enacted on the 15<sup>th</sup> day of its promulgation.

***Eduard Shevardnadze***  
President of Georgia  
Tbilisi, 23 July 1999; N 2349-R

## **APPENDIX – 2**

### **ADB REQUIREMENTS ON INVOLUNTARY RESETTLEMENT**

#### **SPS (2009): SAFEGUARD REQUIREMENTS APPENDIX 2: INVOLUNTARY RESETTLEMENT**

##### **A. Introduction**

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

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

##### **B. Objectives**

3. The objectives are to avoid involuntary resettlement wherever possible; to minimize involuntary resettlement by exploring project and design alternatives; to enhance, or at least restore, the livelihoods of all displaced persons<sup>27</sup> 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

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<sup>27</sup> In the context of involuntary resettlement, displaced persons are those who are physically displaced (relocation, loss of residential land, or loss of shelter) and/or economically displaced (loss of land, assets, access to assets, income sources, or means of livelihoods) as a result of (i) involuntary acquisition of land, or (ii) involuntary restrictions on land use or on access to legally designated parks and protected areas.

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 develop and implement a management plan to restore the livelihood of affected persons to at least pre-project level or better.

## **D. Requirements**

### **1. Compensation, Assistance and Benefits for Displaced Persons**

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

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 an adequate budget, is in place to help displaced persons improve, or at least restore, their incomes and livelihoods. While compensation is required to be paid before displacement, full implementation of the resettlement plan might take longer. If project activities restrict land use or access to legally designated parks and protected areas, such restrictions will be imposed in accordance with the timetable outlined in the resettlement plan agreed between the borrower/client and ADB.

## **2. Social Impact Assessment**

15. The borrower/client will conduct socioeconomic survey(s) and a census, with appropriate socioeconomic baseline data to identify all persons who will be displaced by the project and to assess the project's socioeconomic impacts on them. For this purpose, normally a cut-off date will be established by the host government procedures. In the absence of such procedures, the borrower/client will establish a cut-off date for eligibility. Information regarding the cut-off 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 persons<sup>28</sup> and their assets,<sup>29</sup> (iii) an assessment of their income and livelihoods, and (iv) gender-disaggregated information pertaining to the economic and socio-cultural conditions of displaced persons. The project's potential social impacts and risks will be assessed against the requirements presented in this document and applicable laws and regulations of the jurisdictions in which the project operates that pertain to involuntary resettlement matters, including host country obligations under international law.

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

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<sup>28</sup> 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.

<sup>29</sup> The asset inventory is a preliminary record of affected or lost assets at the household, enterprise, or community

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 merely restored, by providing adequate housing, security of land tenure and steady income and livelihood sources. The resettlement plan will address all relevant requirements specified in Safeguard Requirements 2, and its level of detail and comprehensiveness of the resettlement plan will be commensurate with the significance of involuntary resettlement impacts. An outline of resettlement plan is provided in the annex to this appendix.

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

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

23. Projects with significant involuntary resettlement impacts will need adequate contingency funds to address involuntary resettlement impacts that are identified during project implementation. The borrower/client will ensure that such funds are readily available. Moreover, the borrower/client will consult with displaced persons identified after the formulation of the final resettlement plan and inform them of their entitlements and relocation options. The borrower/client will prepare a supplementary resettlement plan, or a revised resettlement plan, and will submit it to ADB for review before any contracts are awarded.

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 address the risks of asymmetry of information and bargaining power of the parties involved in such transactions. For this purpose, the borrower/client will engage an independent external party to document the negotiation and settlement processes. The borrower/client will agree with ADB on consultation processes, policies, and laws that are applicable to such transactions; third-party validation; mechanisms for calculating the replacement costs of land and other assets affected; and record-keeping requirements.

#### **5. Information Disclosure**

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



## **7. Grievance Redress Mechanism**

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

## **8. Monitoring and Reporting**

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 address such issues. Until such planning documents are formulated, disclosed and approved, the borrower/client will not proceed with implementing the specific project components for which involuntary resettlement impacts are identified.

31. The borrower/client will prepare semi-annual 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 address both involuntary resettlement and Indigenous Peoples issues. Such a combined plan will also meet all relevant requirements specified under Safeguard Requirements.

## OUTLINE OF A RESETTLEMENT PLAN

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

### A. Executive Summary

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

### B. Project Description

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

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

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

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

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

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

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

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

**G. Legal Framework/.** This section:

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

**H. Entitlements, Assistance and Benefits.** This section:

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

**I. Relocation of Housing and Settlements.** This section:

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

**J. Income Restoration and Rehabilitation.** This section:

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

**K. Resettlement Budget and Financing Plan.** This section:

- (i) provides an itemized budget for all resettlement activities, including for the resettlement unit, staff training, monitoring and evaluation, and preparation of resettlement plans during loan implementation.
- (ii) describes the flow of funds (the annual resettlement budget should show the budget-scheduled expenditure for key items).
- (iii) includes a justification for all assumptions made in calculating compensation rates and other cost estimates (taking into account both physical and cost contingencies), plus replacement costs.

(iv) includes information about the source of funding for the resettlement plan budget.

**L. Institutional Arrangements.** This section:

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

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

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