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ACCESSING LAND FOR DEVELOPMENT: INTERNATIONAL BEST PRACTICES AND COUNTRY SYSTEMS TRAINING PROJECT READING MATERIAL II

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Asian Development Bank

Accessing Land for Development
International Best Practices and Country Systems
Land Acquisition and Resettlement Key Concepts and Resettlement Planning
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Key Concepts

Laws, policies and regulations and social safeguards pertaining to land acquisition and resettlement use several common concepts with special meanings. They help project planners and project implementing agencies to be precise and concise in using such terms so that all stakeholders understand them easily without any confusion.

Project-affected person: Any person who, as a result of the implementation of a development project, loses the right to own, or otherwise benefit from a built structure, land (residential, agricultural and pasture), annual or perennial crops and trees, or any other fixed or moveable asset, either in full or in part, permanently or temporarily. Affected persons may be classified as persons: (a) Who have formal legal rights to land or assets; (b) Who do not have formal legal rights to land or assets, but have a claim to land or assets that is recognized or recognizable under local and national laws; or (c) Who have no recognizable legal right or claim to the land or assets they occupy or use. The census will establish the status of the affected persons.

Project-affected household: All members of an project-affected household, whether related or not, operating as a single economic unit.

Physical displacement: Loss of shelter and assets resulting from the acquisition of land associated with a project that requires APs to move to another location,

Economic displacement: Loss of income streams or means of livelihood resulting from land acquisition or obstructed access to resources (land, water, or forest).

Land expropriation (acquisition): Process whereby a public authority, usually in return of compensation, requires a person, household or a community to relinquish rights to land that it occupies or otherwise uses.

Compensation: Payment in cash or in kind for an asset such as land or a resource (income source) that is acquired or affected by a project at the time the asset or resource needs to be replaced.

Resettlement assistance: Support provided to APs who are physically displaced by a project. Assistance may include transportation, food, shelter, and social services that are provided to APs during their relocation. Assistance may also include cash allowances that compensate affected people for the inconvenience associated with resettlement and defray expenses of a transition to a new locale, such as moving expenses and lost work days.

Resettlement Plan: The planning document in which a project agency specifies the procedures that it will follow, and the actions that it will undertake to mitigate adverse effects, compensate losses, and provide development benefits to APs and communities, affected by a project

Cut-off Date: Date of completion of the census and assets inventory of APs by the project. Persons occupying the project area after the cut-off date are not eligible for compensation and/or resettlement assistance. Similarly, fixed assets such as built structures, crops, fruit trees, and wood lots established after the date of completion of the assets inventory, or an alternative mutually agreed date, will not be compensated.

Vulnerable groups: People who because of their gender, ethnicity, age, physical or mental disability, economic disadvantage, or low social status are more adversely affected by LAR than others and who have limited ability or connections to claim or benefit from resettlement assistance and the project.

Stakeholders: Project-affected individuals, communities, organizations, and institutions interested in and potentially having the ability to influence a project.

Involuntary resettlement: Resettlement is involuntary when it occurs without the informed consent of the displaced persons or if they give their consent without having the power to refuse resettlement.

Host population: People living in or around areas to which people physically displaced by a project will be relocated who, in turn, may be affected by the relocation.

Replacement Cost: A range of methods of valuation yielding compensation sufficient to replace assets, plus necessary transaction costs associated with asset replacement. Where functioning markets exist, replacement cost is the market value as established through independent and competent real estate valuation, plus transaction costs. Where functioning markets do not exist, replacement cost may be determined through alternative means such as calculation of output value for land or productive assets, or the non-depreciated value of replacement material and labor for construction of structures or other fixed assets, plus transaction costs. With regard to land and structures, replacement cost is defined as follows:

Agricultural land - The market value of land of equal productive use or potential located in the vicinity of the affected land, plus the cost of preparation to levels similar to or better than those of the affected land, plus the cost of any registration and transfer taxes;

Land in urban areas -- The market value of land of equal size and use, with similar or improved public infrastructure facilities and services preferably located in the vicinity of the affected land, plus the cost of any registration and transfer taxes;

Household and public structures - The cost of purchasing or building a new structure, with an area and quality similar to or better than those of the affected structure, or of repairing a partially affected structure, including labor and contractors' fees and any registration and transfer taxes.

In determining the replacement cost, depreciation of the asset, and the value of salvage materials are not taken into account, nor is the value of benefits to be derived from the project deducted from the valuation of an affected asset.

Restrictions on land use: Some prohibitions impose on agricultural, residential, commercial or other land uses by a project to facilitate its own operations. These may include restrictions on access to legally designated parks and protected areas, restrictions on access to other common property resources, and restrictions on land use within utility easements.

Income restoration: Re-establishing the productive livelihood of a displaced person to generate income equal to or, if possible, better than that earned by the displaced person before land acquisition and/or relocation.

Security of tenure: An entitlement of both titled and non-titled displaced persons. It refers to protection of resettled persons from forced evictions from resettlement sites. It also indicates that they should receive title deeds or similar security of ownership to their allocated land at a resettlement site.

Social risks: They are manifold. They include (i) threats to human security through the escalation of personal, communal or inter-state conflict, crime or violence; (ii) risks that project impacts fall disproportionately on disadvantaged or vulnerable groups; (iii) any prejudice or discrimination toward individuals or groups in providing access to development resources and project benefits, particularly in the case of disadvantaged or vulnerable groups; (iv) negative economic and social impacts relating to land acquisition or restriction on access to natural resources and common property; (v) risks or impacts associated with land and natural resource tenure and use, including (as relevant) potential project impacts on local land use patterns and tenure arrangements, land access and availability, food security and land values, and any corresponding risks related to conflict or contestation over land and natural resources; (vi) impacts on the health, safety and well-being of workers and project-affected communities; and (vii) risks to cultural heritage.

Cut-off date: Date of completion of the census and assets inventory of persons affected by the project. Persons occupying the project area after the cut-off date are not eligible for compensation and/or resettlement assistance. Similarly, fixed assets (such as built structures, crops, fruit trees, and wood-lots) established after the date of completion of the assets inventory, or an alternative mutually agreed on date, will not be compensated.

Land acquisition: Legal avenues for getting private or communal land for a public purpose. Among them are outright purchases, expropriation of property, establishing access rights such as easements or rights of way, takeover of unoccupied or unutilized land regardless of their tenure, and repossession of public land that is used or occupied by individuals or households. “Land” includes anything growing on or permanently affixed to land, such as crops, buildings and other improvements.

Livelihood: Full range of means that individuals, families and communities utilize to make a living such as wage-based income, agriculture, fishing, foraging, other natural resource-based livelihoods, petty trade and bartering.

Disadvantaged or vulnerable: Those who, by virtue of, for example, their age, gender, ethnicity, religion, physical or mental disability, social and civic status, sexual orientation, gender identity, economic disadvantages or indigenous status, and/or dependence on unique natural resources may be more likely to be adversely affected by the project impacts and/or more limited than others in their ability to take advantage of a project benefits. Such a person/group is also more likely to be excluded from participation fully in mainstream consultations and as such may require special assistance. Considerations relating to age include the elderly and minors, including in circumstances where they may be separated from their family, the community or other individuals upon which they depend.

Planning Documents

Resettlement Plan or Land Acquisition and Resettlement Plan

Each project needs planning. In development planning, a key planning document is LARP. They are also known as resettlement plans or resettlement action plans. The project authority is responsible for preparing LARP specifying the procedures it will follow and the actions it will take to properly resettle and compensate APs and communities. This means that the project authorities will identify a full range of potential APs and justify their physical or economic displacement after considering alternatives to minimize or avoid displacement. It outlines eligibility criteria to identify affected parties, establishes rates of compensation for lost assets, and describes levels of assistance for relocation and reconstruction of affected households. A well prepared LARP protects the project authority against unanticipated or exaggerated claims from individuals who have spurious eligibility for resettlement benefits. Because of its centrality to resettlement planning and implementation, a separate module is devoted in the sources book to outline the key components of a LARP and how to formulate one.

Resettlement Framework

Resettlement framework (RF) is prepared when the scope resettlement impacts of subprojects of a project are not fully known. RF is a set of guidelines that instruct resettlement planners of subprojects. If resettlement impacts of some subprojects are known and their relevant information is available, RPs will be prepared for them. The RF will guide those subprojects

whose impacts are not known or relevant information is not fully available. RF is not an implementable planning instrument.

Environmental and Social Management Framework (ESMF)

An environmental and social management framework (ESMF) is a planning document required for projects such as an investment of financial intermediaries (FI), general corporate finance and results-based loans. An environmental and social management system framework provides policies, procedures, reporting mechanisms, and recommendations on organizational capacity development to manage environmental and social issues arising out of operations and activities.

Resettlement Due Diligence

There are different types of due diligence at project planning phase. The first is when a proposed project is categorized at its inception as one without resettlement impacts or with minimal resettlement impacts, a resettlement specialist will review available information and data of the project to ascertain the scope and significance of its resettlement impacts. The purpose of this social due diligence is to assist the lender in deciding whether to provide support for the proposed project and, if so, the way in which social risks and impacts will be addressed in the assessment, development and implementation of the project. The environmental and social due diligence will be integrated into the overall project appraisal.

The second type is to specify concrete action program prior to or during project implementation to correct non-compliance of pre-project action. For example, sometimes a borrower or a client acquires land in anticipation of a development project or removes squatters without compensation and resettlement assistance. A due diligence of this issue combined with field visits could lead to a retroactive LARP or a special compensation package to help those who were affected.

The third type of due diligence takes the form of a resettlement audit. In financial intermediary loans, the FI conducts annual due diligence to ascertain the progress of resettlement implementation. In each case, a resettlement specialist prepares a report known as 'resettlement due diligence report' and submits to the project executive agency and the lender for review, if applicable.