



Technical Assistance Consultant's Report

Project Number: 44140
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TA 7566-REG: Strengthening and Use of Country Safeguard Systems

Subproject: Training and Knowledge Sharing for
CSS Strengthening in the Pacific (Regional)

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

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Asian Development Bank

Accessing Land for Development

International Best Practices and Country Systems

Introduction to ADB's Involuntary Resettlement Safeguards/Best Practices (iv)

When a project is proposed for ADB's support, the borrower will provide information on borrower's country safeguard system (CSS) applicable to land acquisition and resettlement for review. This information will assist ADB in determining to what extent the CSS can be used to achieve objectives of resettlement safeguards. The borrower will also provide to ADB recent studies and assessments including other projects implemented in the DMC if they are relevant to the proposed project.

Country Safeguard Systems

The CSS will include the national development policy, LAR policy, if available, legal and institutional framework. It also includes national, sub-national and sectoral level applicable laws, regulations, rules and procedures. The other component of the CSS is its implementation capacity to address social risks and impacts of the project. Where there are inconsistencies or lack of clarity in CSS regarding relevant authorities or jurisdiction, ADB will discuss them with the borrower. The adequacy of the CSS that to address LAR issues varies from project to project, depending on the type, scale, location and potential social risks and impacts of the project and the institutional capacity to address them.

The borrower in consultation with ADB identifies measures to address weaknesses and gaps in the CSS. Such measures may be implemented during project preparation phase or project implementation phase. In addition, both the borrower and ADB agree on, where necessary, measures and actions to address any capacity development issues. The agreed measures and actions together with the timeframes form part of the LARP. The borrower agrees with the Bank a LARP to address LAR issues. The borrower will notify ADB of any material changes in the LARP that may affect the project.

Special Arrangements

- ✓ Resettlement safeguards apply to all projects supported by. If a project includes existing facilities or existing activities that do not meet safeguard requirements of ADB, the borrower will implement satisfactory measures to ensure that those facilities or activities comply with safeguard best practices.
- ✓ Where ADB is jointly financing a project with other multilateral or bilateral funding agencies, the borrower will cooperate with each of them on a common approach for the

assessment and management of LAR risks and potential impacts of the project. ADB endorses a common approach if it will not materially deviate from LAR safeguards.

- ✓ The involuntary resettlement policy applies to all associated facilities. Associated Facilities will meet involuntary resettlement safeguard requirements of ADB to the extent that the borrower has control and influence over such associated facilities.

Responsibilities of a Borrower

The Borrower will assess, manage and monitor the social risks and impacts of the project throughout the project life-cycle. The borrower will:

- Conduct social impact assessment of the proposed project, including its stakeholder engagement;
- Disclose appropriate information and undertake stakeholder engagement;
- Develop and implement an LARP; and
- Conduct monitoring and reporting on the social performance of the project.

Application of Involuntary Resettlement Safeguard Principles

The applicability of its involuntary resettlement safeguard principles to LAR of a proposed project is established by ADB during the initial assessment of CSS. The following land related actions and transactions come within the purview of involuntary safeguard policy of ADB. Such actions and transactions could lead to permanent or temporary loss of land or assets, or restrictions on land use. Among them are:

- ✓ Land rights or land-use rights acquired or restricted through expropriation or other compulsory procedures in accordance with national law;
- ✓ Land rights or land-use rights acquired or restricted through negotiated settlements with property owners or those with legal rights to the land, if failure to reach settlement would have resulted in expropriation or other compulsory procedures;
- ✓ Restrictions on land use and access to natural resources that cause a community or groups within a community to lose access to resource usage where they have traditional or customary tenure, or recognizable usage rights. This may include situations where legally designated protected areas, forests, biodiversity areas or buffer zones are established in connection with the project;
- ✓ Relocation of people without formal, traditional, or recognizable usage rights, who are occupying or utilizing land prior to a project-specific cut-off date;

- ✓ Restriction on access to land or use of other resources including communal property and natural resources such as marine and aquatic resources, timber and non-timber forest products, fresh water, medicinal plants, hunting and gathering grounds and grazing and cropping areas;
- ✓ Land rights or claims to land or resources relinquished by individuals or communities without full payment of compensation; and
- ✓ Land acquisition or land use restrictions occurring prior to the project, but which were undertaken or initiated in anticipation of, or in preparation for, the project.

Exclusions

The following actions and transactions do not fall under the domain of involuntary resettlement safeguards:

- ❖ Voluntary, legally recorded market transactions in which the seller is given a genuine opportunity to refuse to sell the land and to retain it, and is accurately informed about available choices and their implications;
- ❖ Impacts on incomes or livelihoods that are not a direct result of land acquisition or land use restrictions imposed by the project on the land of the affected persons or communities;
- ❖ Land titling/regularization activities; or
- ❖ Regulation or planning of natural resources or land use on a regional or national level to promote sustainability