



Technical Assistance Consultant's Report

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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 VIII

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Asian Development Bank

Accessing Land for Development
International Best Practices and Country Systems
Key Issues in Land Acquisition and Resettlement (viii)

Physical Displacement

In the case of physically displaced persons, the project offers the choice of replacement property of equal or higher value with security of tenure, or cash compensation at replacement cost. Where livelihoods of displaced persons are derived primarily from land, compensation in kind that is land-for-land will be considered. Payment of cash compensation for acquired land and other assets may be appropriate where: (a) livelihoods are not land-based; (b) livelihoods are land-based but the land taken for the project is a small piece of the affected land and the residual land is still economically viable; or (c) active markets for land, housing, and labor exist, and displaced persons can have access to such markets.

In the case of physically displaced squatters or informal dwellers, the project will help them to obtain adequate housing with the security of tenure. Where these displaced persons own and occupy structures, the project compensates them for the loss of assets other than land, such as dwellings and other improvements to the land, at replacement cost. Based on consultation with such displaced persons, the project provides relocation assistance in lieu of compensation for land sufficient for them to restore their standards of living at an adequate alternative site.

The project is not required to compensate or assist those who encroach on the project area after the cut-off date for eligibility, provided the cut-off date has been clearly established and made public.

The project owner will not resort to forced evictions of affected persons. Consultations should continue as a social preparation phase to agree on an amicable solution. As an alternative to displacement in situations where APs resist LAR, the project owner may consider negotiating in situ land development arrangements by which APs may elect to accept a partial loss of land or localized relocation in return for improvements that will increase the value of their property after development. Any person not wishing to participate in such an arrangement will be allowed to opt instead for full compensation and other assistance.

Economic Displacement

If persons and households will lose their sources of income or livelihood, the project establishes measures to allow them to improve, or at least restore, their incomes or livelihoods. The LARP establishes the entitlements of APs and/or communities and will ensure that these entitlements are provided in a transparent, consistent, and equitable manner. The LARP provides arrangements to monitor the effectiveness of livelihood improvement measures during and project implementation. The mitigation of economic displacement will be considered complete

when APs and affected communities have received all assistance for which they are eligible, and have been provided with adequate opportunity to reestablish their livelihoods.

Economically displaced persons who face loss of assets or access to assets will be compensated for such loss at replacement cost:

- Affected commercial enterprises will be compensated for: (i) the cost of identifying a viable alternative location; (ii) lost net income during the period of transition; (iii) the cost of the transfer and reinstallation of the plant, machinery, or other equipment; and (iv) reestablishing commercial activities. Affected employees of such enterprises will receive assistance for temporary loss of wages and, if necessary, assistance in identifying alternative employment opportunities;
- Those who have legal rights or claims to land that are recognized or recognizable under national laws, replacement property of equal or greater value will be provided, or, where appropriate, cash compensation at replacement cost;
- Economically displaced persons who are without legally recognizable claims to land will be compensated for lost assets other than land (such as crops, irrigation infrastructure and other improvements made to the land), at replacement cost. Additionally, the project will provide assistance in lieu of land compensation sufficient to provide such persons with an opportunity to reestablish livelihoods elsewhere. The project is not required to compensate or assist persons who encroach on the project area after the cut-off date for eligibility.

Economically displaced persons will be provided opportunities to improve, or at least restore, their means of income-earning capacity, production levels, and standards of living.

(a) For APs whose livelihoods are land-based, replacement land that has a combination of productive potential, locational advantages, and other factors at least equivalent to that being lost will be offered, where feasible. Where provision of suitable replacement land is not possible, they will be compensated at replacement cost for land (and other lost assets);

(b) For APs whose livelihoods are natural resource-based and where project-related restrictions on access apply, measures will be implemented to either allow continued access to affected resources or to provide access to alternative resources with equivalent livelihood-earning potential and accessibility. Where common property resources are affected, benefits and compensation associated with natural resource usage may be collective in nature; and

(c) If replacement land or resources to continue livelihoods are unavailable, the project will offer them options for alternative income earning opportunities, such as credit facilities, skills training, business start-up assistance, employment opportunities, or cash assistance in addition to compensation for acquired assets including land. Cash assistance alone, however, frequently fails to provide affected persons with the

productive means or skills to restore livelihoods. Transitional support will be provided as necessary to all economically displaced persons, based on a reasonable estimate of the time required to restore their income-earning capacity, production levels, and standards of living.

Types of Displaced Persons Eligible for Compensation

There are three types of displaced persons who are eligible for compensation and resettlement assistance.

- ✓ Persons with formal legal rights to land and/or structures lost entirely or in part;
- ✓ Persons who have no formal legal rights to land lost wholly or in part, but who have claims to such lands that are recognized or recognizable under national laws and customary practices; and
- ✓ Persons those who lost their land and other property and do not have formal legal rights or recognized or recognizable claims to such property.

Vulnerable Groups

One of the best practices in LAR is to improve the standards of living of the displaced poor and other vulnerable groups - who may experience adverse impacts from a proposed project more severely than others because of their race and/or ethnicity, gender, language, health, marital status, poverty, and landlessness. Typically, the poor, the landless or those without a title to land, the elderly, households headed by women, and ethnic minorities comprise the vulnerable groups within a project's displaced population. In some countries, indigenous peoples and those dependent on natural resources may not be protected by national land tenure legislation and are therefore extremely vulnerable. Safeguard best practices focus specifically on vulnerable displaced persons in order to ensure that a project's adverse impacts do not fall on them disproportionately, and that they share the benefits and opportunities of the development equally with others. The LARP of the project identifies vulnerable APs and groups, their specific challenges and needs. It will provide adequate safeguards and budget to ensure that they receive special assistance.

Project-affected Women

The needs of affected women by LAR are likely to be different from those of affected men, particularly in terms of social support, services, employment, and livelihoods. For example, relocated women may face more difficulties than relocated men in reestablishing markets for home industry produce or small trade items, if they are constrained by lack of mobility or illiteracy. Too often, in addition, women are abandoned by men during relocation because new assets (cash) are handed over to the male household heads. Female heads of household are eligible for the same benefits as their male counterparts. However, they need special attention if they lack resources, educational qualifications, skills, or work experience.

The relocation process should provide opportunities for women to take part in the design and layout of housing. Infrastructure development can ensure that women have easy access to basic social amenities such as water and electricity. Women in subsistence communities often depend on forest resources for basic needs such as food, fuel, or animal forage. Measures to safeguard the interests of women in the resettlement process are given below.

Safeguarding Women's Interests in Resettlement

- Collection and recording of socioeconomic conditions, needs, and priorities of women as part of SIA.
- Surveys and entitlements criteria recognize female-headed households.
- Ensure land acquisition and resettlement process does not disadvantage women.
- Land and/or house titles and grants should be in the name of both spouses.
- Female resettlement staff to assist women in resettlement and income restoration activities
- Project impacts on women to be monitored and evaluated

It is a good practice to register the new assets of the relocated households as joint property of husband and wife. This joint control of household assets may change a woman's position and decision making power. It may not be possible in some DMCs whose national laws do not permit the registration of all new assets of a household as joint property of husband and wife.

Customary Land Users

Some communities, including indigenous peoples and ethnic minorities, may not have formal titles to land they own or use but have ancestral customary rights to regulate collective common property. They depend on open access to common grazing lands, fishing areas, or forest resources for subsistence and cash incomes. SIA surveys and the census will take full account of these patterns of resource use, including the systems of land use and land transfer that operate under customary law and usufruct systems. LAR planners will take note of these tenural arrangements and work in consultation with all APs to ensure that such arrangements will not get disturbed because of the project.

Informal Dwellers and Squatters

Informal dwellers or squatters occupy unused or under-used public or private land. If they arrived before the entitlements cut-off date of the project, the project provide them with replacement structures or cash compensation at full replacement cost for any structures, crops, or land improvements that they will lose, as well as relocation assistance. The project could pay this as rehabilitation assistance if the laws of a given DMC do not allow compensation for those without a legal title. For those who do not depend on agriculture, LAR planners identify alternative income restoration options in consultation with them.

Compensation and Benefits

When permanent or temporary acquisition of land cannot be avoided, the project offers APs compensation at replacement cost, and other assistance as may be necessary to help them improve or at least restore their standards of living or livelihoods.

Compensation standards for categories of land and fixed assets will be disclosed and applied consistently. In all cases, a clear basis for calculation of compensation will be documented and disclosed and the compensation will be distributed following transparent procedures.

The valuation methods of replacement cost are included in LARP. Transaction costs include administrative charges, registration or title fees, moving expenses, and any similar costs imposed on APs by the project. To ensure compensation at replacement cost, planned compensation rates may require updating in project areas where inflation is high or the period of time between calculation of compensation rates and delivery of compensation is extensive.

Where livelihoods of displaced persons are land-based or where land is collectively owned, the project offers them the option of land-for-land. If suitable and adequate land is not available, cash-for-land mode is applied. In such cases the project's responsibility to provide resettlement assistance and income restoration and improvement programs is highlighted in LARP.

The project authorities take possession of acquired land and related assets only after compensation in accordance with the LARP has been made available and, where applicable, resettlement sites and moving allowances have been provided to the displaced persons in addition to compensation.

When significant difficulties related to compensation payment arise because of land ownership disputes or because of the rejection of compensation rates or the difficulty in finding absentee landowners, the project may deposit compensation funds listed in LARP in an escrow account or in a court account, and proceeds with project activities. Compensation placed in escrow or in court will be made available to eligible persons when issues are resolved.

Community Engagement

The project personnel engage with affected communities including host communities through the process of stakeholder engagement. Decision-making processes related to land acquisition, resettlement and livelihood restoration include options and alternatives from which affected persons may choose, where applicable. Disclosure of relevant information to all stakeholders and engagement of affected communities in LARP planning and its implementation will promote community participation in LAR programs.

Significance of LAR

To address the issues identified in the social impact assessment, the project owner prepares a LARP which deals with the risks and impacts associated with the project. Four types of LARPs indicate the degree of LAR's significance and LAR planning instruments needed:

- ✓ For projects with minor land acquisition or restrictions on land use. These projects are unlikely to have a measurable impact on incomes or livelihoods of APs. The LARP establishes eligibility criteria for APs, set out procedures and standards for compensation, and incorporate arrangements for consultations, monitoring and addressing grievances;
- ✓ For projects causing physical displacement, the LARP sets out additional measures to assist the relocation of APs;
- ✓ For projects involving economic displacement with impacts on livelihoods or income generation, the LARP sets out additional measures relating to livelihood improvement or restoration;
- ✓ For projects that may impose changes in land use that restrict access to resources in legally designated parks or protected areas or other common property resources on which local people may depend for livelihood purposes, the LARP will establish a participatory process for determining appropriate restrictions on use and set out the mitigation measures to address adverse impacts on livelihoods that may result from such restrictions.

Collaboration with Responsible Agencies

The project owner establishes means of collaboration with governmental agencies that are responsible for land acquisition, resettlement planning and provision of resettlement assistance. The LARP outline such institutional arrangements and specify financial responsibilities for each of the agencies involved, appropriate timing and sequencing for implementation steps, and coordination arrangements for addressing financial contingencies or responding to unforeseen circumstances. Where the capacity of other responsible agencies is limited, the project owner will obtain assistance from hired specialists and NGOs in resettlement planning, implementation, and monitoring.

Key Issues to be Addressed during LARP Formulation

	Key Issue	Requirements
1	Cut-off date	✓ Establish a cut-off date based on SIA. Official statement
2	Determination of the number of displaced persons, including those requiring relocation	✓ Establish the number of displaced persons. ✓ Include both directly and indirectly affected persons.
3	Consultation with stakeholders	✓ Inform, consult, and involve the stakeholders in the resettlement planning process.
4	Gender planning	✓ Recognition of women's needs in new resettlements. ✓ Consider gender-based differential impacts of resettlement. ✓ Develop additional eligibility for social support, services, employment, and means of subsistence for income restoration.
5	Special attention to vulnerable groups	✓ Address the needs of vulnerable groups such as the poor, households headed by women, landless persons, indigenous peoples, ethnic minorities, and the elderly and the disabled. ✓ Provide for social preparation for indigenous peoples and

		vulnerable groups
6	Gap analysis	<ul style="list-style-type: none"> ✓ Identify gaps, if any, between international best practices in LAR and policies, laws, and regulations of DMC, and fill the gaps with appropriate measures.
7	Establishment of replacement cost for lost assets	<ul style="list-style-type: none"> ✓ Displaced persons should be eligible to receive the replacement cost of all lost assets.
8	Decision on eligibility and entitlement matrix to cover all affected persons	<ul style="list-style-type: none"> ✓ Define entitlements and eligibility and how compensation and rehabilitation measures will be structured. ✓ Include those without titles and ownership rights.
9	Resettlement site identification for site and services development	<ul style="list-style-type: none"> ✓ Identify resettlement sites in consultation with the affected people. ✓ Provide the sites with civic amenities and services.
10	Income restoration plan	<ul style="list-style-type: none"> ✓ Include a plan for income restoration, particularly for the poor and vulnerable groups.
11	Plan for capacity building for resettlement management	<ul style="list-style-type: none"> ✓ Assess the organization ability of the executing agency and plan for capacity building for implementation of the resettlement plan. ✓ Include provision for staff training for resettlement management.
12	Recognition of host populations population's needs	<ul style="list-style-type: none"> ✓ Address the needs of the host population carefully. ✓ Include provision for civic infrastructure facilities to enhance the carrying capacity of the host populations.
13	Valuation of assets and cost estimate and budget	<ul style="list-style-type: none"> ✓ Include costs for land acquisition, resettlement, income restoration, implementation and administration, and monitoring. ✓ Consider replacement costs and include unit costs of all items. ✓ Explain how resettlement costs will be financed.
14	Monitoring and reporting arrangements	<ul style="list-style-type: none"> ✓ Explain monitoring and reporting arrangements. ✓ Include provision for qualified and experienced external experts for Category A involuntary resettlement impact projects to verify the monitoring information.