

Country Safeguards Review: Indonesia Consultation Draft

March 2017

Appendix 5, 6, and 7: Involuntary Resettlement Safeguards – Equivalence Assessment

This assessment is a work in progress, the purpose of which is to encourage an iterative process of feedback and update. When finalized, the Borrower will verify the assessment. The materials are prepared by consultants; hence, ADB does not guarantee the accuracy, reliability, or timeliness of these materials and therefore will not be liable in any capacity for any damages or losses that may result from the use of these materials. ADB, likewise, shall not be responsible for any errors, inadvertent omissions, or unauthorized alterations that may occur in the disclosure of content on this website.

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Appendix 5: Indonesian Legal Framework for Involuntary Resettlement Safeguards

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INDONESIAN LEGAL FRAMEWORK FOR INVOLUNTARY RESETTLEMENT SAFEGUARDS

1. The legal framework of land acquisition for public interest in Indonesia must be understood by referring to the full context of the Indonesian legal system, beginning with the Constitution of 1945 and its subordinate laws and relevant regulations related to land acquisition for public use, as shown in Table A4 below.

Table A4. Laws and Regulations Reviewed for Involuntary Resettlement

No.	Legal Hierarchy	Laws and Regulations Referred
	Constitution/Code	<ol style="list-style-type: none"> 1) The 1945 Constitution and its Amendments 2) The Indonesian Civil Code (Kitab Undang-Undang Hukum Perdata) 3) The Decision of the Constitutional Court on Judicial Review of Law 2 of 2012 concerning Land Acquisition for Development for Public Interest (Case Law No. 50/PUU-X/2012)
1	Laws	<ol style="list-style-type: none"> 1) Law 5 of 1960 Concerning Basic Agrarian Law 2) Law (PERPU/Government Regulation in Lieu of law) 51 of 1960 Concerning Prohibition of Land Utilization Without Permission from Owner or Representative 3) Law 20 of 1961 Concerning Revocation of Land Rights and Objects on Land 4) Law 39 of 1999 Concerning Human Rights 5) Law 38 of 2004 Concerning Roads 6) Law 11 of 2005 Concerning Ratification of International Covenant on Economic, Social and Cultural Rights (ICESCR) 7) Law 14 of 2008 Concerning Public Information Transparency 8) Law 30 of 2009 Concerning Power (Electricity) 9) Law 1 of 2011 concerning Housing and Settlement Areas 10) Law 16 of 2011 Concerning Legal Aid 11) Law 2 of 2012 Concerning Land Acquisition for the Development of Public Interest.
2.	Government Regulation	<ol style="list-style-type: none"> 1) Government Regulation (PP) 3 of 1973 Concerning Procedures on Determining Compensation by High Court Due to Land Right Revocation Stipulated by Law 20 of 1961 2) Government Regulation No 37 of 1998 on Land Deed Making Official (PPAT/<i>Pejabat Pembuat Akta Tanah</i>) 3) Government Regulation 14 of 2012 Concerning Business Activities to Provide Electricity 4) Government Regulation No 88 of 2014 concerning Housing and Settlement Areas
3.	Presidential Regulations	<ol style="list-style-type: none"> 1) Presidential Instruction (INPRES) 9 of 1973 Concerning Implementation of Land Rights Revocation Stipulated by Law 20 of 1961 2) Presidential Regulation 71 of 2012 Concerning Implementing Regulation of Law 2 of 2012 on Land Acquisition for Development for Public Interest 3) Presidential Regulation 40 of 2014 Concerning First Amendment of Perpres 71 of 2012 on Implementing Regulation of Law 2 of 2012 on Land Acquisition for Development for Public Interest 4) Presidential Regulation (Perpres) No 2 of 2015 on National Mid

No.	Legal Hierarchy	Laws and Regulations Referred
		<p>Term Development Plan (RPJMN) 2015-2019</p> <ol style="list-style-type: none"> 5) Presidential Regulation 30 of 2015 Concerning The Third Amendment of Perpres 71 of 2012 on Implementing Regulation of Law 2 of 2012 on Land Acquisition for Development for Public Interest 6) Presidential Regulation 148 of 2015 Concerning The Fourth Amendment of Perpres 71 of 2012 on Implementing Regulation of Law 2 of 2012 on Land Acquisition for Development of Public Interest 7) Presidential Regulation 3 of 2016 Concerning Acceleration of National Strategic Projects Implementation 8) Presidential Regulation 102 of 2016 Concerning Funding of Land Acquisition for Development of Public Interest for Implementation of National Strategic Projects.
4.	Ministerial Decrees	<ol style="list-style-type: none"> 1) Head of National Land Agency Regulation (Perkaban) 5 of 2012, Concerning Implementing Regulation on Land Acquisition for Development of Public Interest 2) Ministry of Home Affairs Regulation (Permendagri) 72 of 2012 Concerning Operational and Supporting Cost in Implementation of Land Acquisition for Development for Public Interest provided by Regional Budget (APBD) 3) Ministry of Finance Regulation No. 13/PMK.02/2013 Concerning Operational and Supporting Cost of Land Acquisition for Development for Public Interest provided by National Budget (APBN) 4) Regulation of Minister of Energy and Mineral Resources No 38 of 2013 Concerning Compensation to Land, Building and Plants located under SUTT (High Power Transmission) and SUTET (Extra-High Power Transmission) to transmit power energy 5) Supreme Court Regulation 2 of 2016 Concerning Guidelines on proceeding of dispute in Location Determination for Development of Public Interest. 6) Supreme Court Regulation 3 of 2016 Concerning Guidelines on Procedure for Filing Objections and Compensation Deposit to Court in Land Acquisition for development of Public Interest. 7) Instruction of Ministry Agrarian and Spatial Planning/National Land Agency No. 2/Ins/VIII/2016 Concerning Acceleration of Land Acquisition Implementation for Public Interest for Development of National Strategic Project

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Appendix 6: Equivalence Assessment for Involuntary Resettlement Safeguards

This assessment is a work in progress, the purpose of which is to encourage an iterative process of feedback and update. When finalized, the Borrower will verify the assessment. The materials are prepared by consultants; hence, ADB does not guarantee the accuracy, reliability, or timeliness of these materials and therefore will not be liable in any capacity for any damages or losses that may result from the use of these materials. ADB, likewise, shall not be responsible for any errors, inadvertent omissions, or unauthorized alterations that may occur in the disclosure of content on this website.

EQUIVALENCE ASSESSMENT: INVOLUNTARY RESETTLEMENT SAFEGUARDS NATIONAL LEVEL

1. The findings from assessing the equivalence between relevant instruments of the Indonesian legal framework on involuntary resettlement and the Asian Development Bank (ADB) Safeguard Policy Statement (SPS) involuntary resettlement safeguards policy principles and their subordinate key elements are indicated in Table A5.

Table A5. Summary of Equivalence Assessment for Involuntary Resettlement

No	Policy Principles	Level of Equivalence
1	Policy Principle 1	Full
1.1	Screen the project early on to identify past, present, and future involuntary resettlement impacts and risks.	Full
1.2	Determine the scope of resettlement planning through a survey and/or census of displaced persons, including a gender analysis, specifically related to resettlement impacts and risks.	Full
2	Policy Principle 2	Full
2.1	Carry out meaningful consultations with affected persons, host communities, and concerned nongovernment organizations.	Full
2.2	Inform all displaced persons of their entitlements and resettlement options.	Full
2.3	Ensure their participation in planning, implementation, and monitoring and evaluation of resettlement programs.	Full
2.4	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.	Full
2.5	Establish a grievance redress mechanism to receive and facilitate resolution of the affected persons' concerns.	Full
2.6	Support the social and cultural institutions of displaced persons and their host population.	Full
2.7	Where involuntary resettlement impacts and risks are highly complex and sensitive, compensation and resettlement decisions should be preceded by a social preparation phase.	Full
3	Policy Principle 3	Full
3.1	Improve, or at least restore, the livelihoods of all displaced persons through 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.	Full
3.2	Improve, or at least restore, the livelihoods of all displaced persons through prompt replacement of assets with access to assets of equal or higher value.	Full
3.3	Improve, or at least restore, the livelihoods of all displaced persons through prompt compensation at full replacement cost for assets that cannot be restored.	Full
3.4	Improve, or at least restore, the livelihoods of all displaced persons through additional revenues and services through benefit sharing schemes, where possible.	Full

No	Policy Principles	Level of Equivalence
4	Policy Principle 4	Partial
4.1	Provide physically and economically displaced persons with needed assistance, including, if there is relocation, secured tenure to relocation land, better housing at resettlement sites with comparable access to employment and production opportunities. Integrate resettled persons economically and socially into their host communities, and extend project benefits to host communities.	Partial
4.2	Provide physically and economically displaced persons with transitional support and development assistance, such as land development, credit facilities, training, or employment opportunities.	Partial
4.3	Provide physically and economically displaced persons with civic infrastructure and community services, as required.	Full
5	Policy Principle 5	Full
5.1	Improve the standards of living of the displaced poor and other vulnerable groups, including women, to at least national minimum standard.	Full
5.2	In rural areas provide them with legal and affordable access to land and resources.	Full
5.3	In urban areas provide them with appropriate income sources, and legal and affordable access to adequate housing.	Full
6	Policy Principle 6	Full
6.1	Develop procedures in a transparent, consistent and equitable if land acquisition is based on negotiated settlement.	Full
6.2	Ensure that those people who enter into negotiated settlements will maintain the same or better income and livelihood status.	Full
7	Policy Principle 7	Partial
7.1	Ensure displaced persons without titles to land or any recognizable legal rights to land are eligible for resettlement assistance and compensation for loss of non-land assets.	Partial
8	Policy Principle 8	Partial
8.1	Prepare a resettlement plan elaborating on displaced persons' entitlements.	Full
8.2	Prepare a resettlement plan elaborating on the income and livelihood restoration strategy.	Partial
8.3	Prepare a resettlement plan elaborating on the institutional arrangements and time bound implementation schedule.	Full
8.4	Prepare a resettlement plan elaborating monitoring and reporting framework.	Full
8.5	Prepare a resettlement plan elaborating on the budget	Full
9	Policy Principle 9	Full
9.1	Disclose a draft resettlement plan, including documentation of the consultation process in a timely manner, before project appraisal. The disclosed resettlement plan should be in an accessible place and a form and language(s) understandable to affected persons and other stakeholders.	Full
9.2	Disclose the final resettlement plan and its updates to affected persons and other stakeholders.	Full
10	Policy Principle 10	Full

No	Policy Principles	Level of Equivalence
10.1	Conceive and execute involuntary resettlement as part of a development project or program.	Full
10.2	Include the full costs of resettlement in the presentation of project's costs and benefits.	Full
10.3	For projects with significant involuntary resettlement impacts, consider implementing the involuntary resettlement component of the project as a stand-alone operation.	Full
11	Policy Principle 11	Full
11.1	Pay compensation and provide other resettlement entitlements before physical or economic displacement.	Full
11.2	Implement the resettlement plan under close supervision throughout project implementation.	Full
12	Policy Principle 12	Partial
12.1	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.	Partial
12.2	Disclose monitoring reports.	Full

2. As shown in Table A5, the 12 policy principles for Involuntary Resettlement can be divided into 36 key elements. The Indonesian CSS for involuntary resettlement is fully equivalent to 31 of these 36 key elements and partially equivalent to 5. There is no key element considered not equivalent.

3. The policy principles and key elements considered partial equivalence are as follow.
- (i) Policy Principle 4, Key Element 1: Provide physically and economically displaced persons with needed assistance, including, if there is relocation, secured tenure to relocation land, better housing at resettlement sites with comparable access to employment and production opportunities. Integrate resettled persons economically and socially into their host communities, and extend project benefits to host communities.
 - (ii) Policy Principle 4, Key Element 2: Provide physically and economically displaced persons with transitional support and development assistance, such as land development, credit facilities, training, or employment opportunities.
 - (iii) Policy Principle 7, Key Element 1: Ensure displaced persons without titles or any recognizable legal rights to land are eligible for resettlement assistance and compensation for loss of non-land assets.
 - (iv) Policy Principle 8, Key Element 2: Prepare a resettlement plan elaborating income and livelihood restoration strategy.
 - (v) Policy Principle No 12: Key Element 1: 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.

1. Analysis

Objectives:

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 in real terms relative to pre-project levels; and to improve the standards of living of the displaced poor and other vulnerable groups.

Source: ADB. 2009. *Safeguard Policy Statement*. Manila. p. 17.

4. *Aligned*. Indonesian CSS are broadly aligned with the requirements of the SPS. Law 2 of 2012 regarding Land Acquisition for Development for Public Use (Law 2/12) is the primary legal instrument governing land acquisition. Several other laws ensure still greater alignment with SPS objectives.

5. Law 2/12 aims to provide land for public interests that enhance welfare¹ and prosperity for nation, state, and society while ensuring the legal interests of entitled parties (Article 2). Law 2/12 provides that acquisition of land for public use shall observe the principles² of justice³, benefit⁴, and welfare⁵ (among others).

6. Law 39 of 1999 regarding Human Rights provides that “All members of vulnerable groups in society, such as children, the poor, and the disabled are entitled to greater protection of human rights” (Article 5).

7. Law 11 of 2005 regarding Ratification of International Covenant of Economic, Social, and Cultural Rights (ICESCR) ratifies the ICESCR that extends recognition of the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions⁶ (Article 11 of the ICESCR Rights). It acknowledges the essential importance of international cooperation based on free consent in ensuring this right.

8. Law 14 of 2008 regarding Public Information Openness aims to (Article 4) as: i) guarantee citizens’ right to acknowledge public policy making plans, public policy programs,

¹ Law 2/12 Elucidation of Article 2 (h): “Principle of welfare” means that the Acquisition of Land for development can bring added value to the viability of the Entitled Parties and the public in general.

² Law 2/12 Elucidation of Article 2 (f):

“Principle of agreement” means that the process of Acquisition of Land shall be carried out by negotiation between parties to reach mutual agreement under no duress.

³ Law 2/12 Elucidation: “Principle of justice” means to guarantee any reasonable reward in exchange for the acquired land to the Entitled Parties in the process of Acquisition of Land such that they have opportunity to live their better life.

⁴ Law 2/12 Elucidation: “Principle of benefit” means that the outcome of the Acquisition of Land can give to a large extent benefit to the public, the nation, and the state.

⁵ Law 2/12 Elucidation: “Principle of welfare” means that the Acquisition of Land for development can bring added value to the viability of the Entitled Parties and the public in general.

⁶ Law 11 of 2005 regarding Ratification of International Covenant of Economic Rights, Social, and Cultural Rights. ICESCR, Article 11.

public decision making process, and the grounds of a public decision making; ii) encourage public participation in public policy making process; iii) increasing active public involvement in the public policy making and good public body governance; iv) constitute good governance that is transparent, effective, efficient, and accountable; v) acknowledge the grounds of public policies that have eminent effects on people's lives; and vi) develop science and to enhance the intellectual life of the nation.

9. Law 11 of 2009 on Social Welfare stipulates that implementation of social welfare is prioritized to those who have a life that is not worth humanly and has criteria of social issues including poverty, neglect/displacement, disability, and remoteness⁷. Implementation of social welfare includes social rehabilitation, social security, social empowerment, and social protection.

10. Law No 16 of 2011 regarding Legal Aid governs *pro bono* legal services granted by a legal aid provider to a recipient freely (without any charges) (Article 1 paragraph 1). A legal aid recipient is a person or group of poor people (Article 1 paragraph 2). A legal aid provider is legal aid institution or civil society group offering legal aid services based on this law (Article 1 paragraph 1).

Scope and Triggers:

The involuntary resettlement safeguards covers 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.

Source: ADB. 2009. *Safeguard Policy Statement*. Manila. p. 17.

11. *Aligned*. Law 2/12 defines "Acquisition of Land" as any activity to make land available by giving reasonable and just compensation to an entitled party (Article 1, paragraph 2). "Compensation" refers to any reasonable and just awards to the entitled party in exchange for acquisition of land (Article 1, paragraph 10). Beyond the provisions of Law 2 of 2012, other national and regional⁸ laws and provisions influence the scope and triggers of the Indonesian CSS governing Involuntary Resettlement. For example, Constitutional Court Decision No. 35 (MK/35/12) establishes customary forests (*hutan adat*) as legally distinct from state forests.

12. Although implementation responsibilities are de-centralized, state ministries still have considerable influence on safeguard implementation. Ministry of Forestry Implementing Regulation No. 62/13, establishes process for the separate registration of customary forests, which it treats differently customary lands. The Ministry of Energy and Mineral Resources Regulation 38 of 2013 has specific arrangements governing compensation for land and assets when stringing high/very high-voltage networks (see especially Article 2, Article 7).

⁷ Government of Indonesia, 2009. *Law of the Republic of Indonesia Number 11 of 2009 regarding Social Welfare*. [Hereafter abbreviated as *Law 11 of 2009*]

⁸ *Permen 52/14* de-centralizes authority for designation of areas for customary-law communities to the district level.

Policy Principle 1:

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 census of displaced persons, including a gender analysis, specifically related to resettlement impacts and risks.

Source: ADB. 2009. *Safeguard Policy Statement*. Manila. p. 17.

13. *Full equivalence*. Law 2 of 2012 regarding Land Acquisition for Development for Public Interest⁹ and its implementing regulations stipulate screening requirements for risk and impact identification in a comprehensive manner. Law 2 of 2012 stipulates that the agency requiring land prepares a land acquisition plan based on the feasibility study (Article 15). The feasibility study includes a social-economic survey and analysis of environmental impacts and social impacts that may arise out of the acquisition of land and construction (Elucidation to Article 15). Law 2 of 2012 also provides that the land acquisition plan is conducted in accordance with the laws and regulations and shall refer to the Regional Spatial Planning, Medium-Term Development Plans, and Strategic Plan, and the relevant government agencies work plan (Article 14). Presidential Regulation 71 of 2012 regarding Implementation of Land Acquisition for Development in the Public Interest¹⁰ details the data and studies required for submitting a proposal for land acquisition planning to the Governor, which includes socio-economic surveys; the feasibility of the location; analysis of costs and benefits of development for the region and the community; the impact of environmental and social impacts that may arise as a result of the Land Acquisition and development; and additional studies needed (Article 6).

14. Law 2 of 2012 requires detailed analysis of the risks and impacts to affected communities; it does not explicitly discuss the need for analysis of affects to particular community groups (such as vulnerable groups). As such, it does not specifically require gender analysis. Elucidation to Article 15(2) provides that the feasibility study can accommodate “other studies, as necessary” which can extend to gender analysis. Taken by itself, the language is not sufficient to support a finding of full equivalence. However, gender issues have been prioritized by the Government of Indonesia as a cross-cutting priority by way of Presidential Regulation 2 of 2015 regarding the National Mid-term Development Plan Year 2015-2019 (*Rencana Pembangunan Jangka Menengah Nasional*). The National Mid-term Development Plan mandates government action on gender issues through gender mainstreaming in every policy, program, and development activity. By this token, the Indonesian CSS fulfills the requirement of gender analysis in the screening stage of land acquisition plan.

⁹ Government of Indonesia. 2012. *Law of the Republic of Indonesia Number 2 of 2012 regarding Land Acquisition for Development for Public Interest*. [Hereafter abbreviated as Law 2 of 2012]

¹⁰ Government of Indonesia. 2012. *Regulation of the President of the Republic of Indonesia Number 71 of 2012 regarding Implementation of Land Acquisition for Development for Public Interest*. [Hereafter abbreviated as Presidential Regulation 71 of 2012]

Policy Principle 2:

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 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.

Source: ADB. 2009. *Safeguard Policy Statement*. Manila. p. 17.

15. *Full equivalence*. Law 2 of 2012 and its implementing regulations treat all displaced persons equally as affected persons. Provisions with respect to vulnerable groups are established under Law 39 of 1999 regarding Human Rights¹¹, Article 5, which defines the term “vulnerable group” and requires their inclusion in consultations on matters affecting them. While Law 2 of 2012 and its implementing regulations do not specifically require that host populations are involved in consultations, Law 1 of 2011 regarding Housing and Resettlement Area¹² and Regulation 88 of 2014 regarding Implementing Housing and Guidance of Settlement Area¹³ stipulate that every instance of resettlement must involve and empower the local community. Law 2 of 2012 and its implementing regulations do not explicitly require NGO participation in public consultation, but the law stipulates that a public consultation shall involve entitled parties and affected communities¹⁴. Affected community is, any community directly contiguous to the location of the acquisition of land¹⁵. Article 354 of Law 23 of 2014 on Local Government stipulates that in the regional administration, local government encourages public participation including community groups and organizations to play an active role in the regional administration, developing institutionalization and decision making mechanism that allows community groups and organizations are effectively involved.¹⁶

16. Acquisition of land shall be performed through following stages; planning, preparation, implementation, and result delivery. Law of 2012 does not state specifically on consultation at planning stage, yet consultations may be carried out during feasibility study. At preparatory stage, Article 19 of Law 2 of 2012 stipulates that public consultation of the planned development is carried out to obtain the agreement on the planned development location and the agreement shall be stated in the minutes of agreement. At the implementation stage, Presidential Regulation 71 of 2012 states that Land Acquisition Implementating Unit shall organize

¹¹ Government of Indonesia. 1999. *Law of the Republic of Indonesia 39 of 1999 regarding Human Rights*.

¹² Government of Indonesia. 2011. *Law of the Republic of Indonesia 1 of 2011 regarding Housing and Resettlement Area*. [Hereafter abbreviated as Law 1 of 2011]

¹³ Government of Indonesia. 2014 *Regulation of the Government of Indonesia 88 of 2014 regarding Implementing Housing and Guidance of Settlement Area*. [Hereafter abbreviated as Government Regulation 88 of 2014]

¹⁴ Law 2 of 2012 on Land Acquisition for Development of Public Interest, Article 19.

¹⁵ Law 2 of 2012 on Land Acquisition for Development of Public Interest, Elucidation of Article 19

¹⁶ Government of Indonesia. 2014. *Law of the Republic Indonesia 23 of 2014 regarding Local Government*.

deliberation forum to establish the form of compensation based on compensation assessment. The Law 2 of 2012 and its implementing regulations do not stipulate on participation of entitled parties in monitoring and evaluation of resettlement program. Given this findings, the rating of partial equivalence is given to this policy principle.

Policy Principle 3:

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.

Source: ADB. 2009. *Safeguard Policy Statement*. Manila. p. 17.

17. *Full equivalence*. Law 2 of 2012 stipulates that Acquisition of Land for the Public Interest shall be implemented under the principles of Justice. It means that land acquisition guarantees the entitled parties to have opportunity to live in better life. Regulation of the President 71 of 2012, Article 74 (1), provides that compensation can be given in the form: money, replacement land; resettlement sites; shareholding; or other forms as agreed by both parties. Although Law 2 of 2012 and its implementing regulation do not provide for improvement or restoration of livelihoods of the displaced persons, Article 11 of the International Covenant on Economic, Social and Cultural Rights—which has been ratified by Indonesia in Law 11 of 2005¹⁷—stipulates that the government must provide adequate livelihood to its citizens in order to comply with the Covenant. Law 2 of 2012 regulates that entitled parties must be “reasonably and justly compensated” (Articles 1, 9, 41) and Elucidation of Article 27 (1).provides for negotiations with communities on the compensation amount. Law 2 of 12 provides (Article 36) that compensation may be made in the form of: money (cash), substitute land, resettlements¹⁸, shareholding¹⁹; or other forms as agreed upon by both parties²⁰.

18. Law 2 of 2012 and its implementing regulations delegate responsibility for calculating compensation amounts to independent or professional appraisers²¹. Determination of the

¹⁷ Government of Indonesia. 2005. *Law of the Republic of Indonesia Number 11 of 2005 regarding Ratification of the International Covenant on Economic, Social and Cultural Rights*. [Hereafter abbreviated as Law 11 of 2005]

¹⁸ Law 2 of 12 Elucidation of Article 36 (c): “Resettlements” means a process of replacing the Entitled Party’s land with the land of different location as agreed upon during the process of Acquisition of Land.

¹⁹ Law 2 of 12 Elucidation of Article 36 (d): “Shareholding” means placement of shares in the relevant development activities in the public interest and/or the management thereof is made by agreement of the parties.

²⁰ Law 2 of 12 Elucidation of Article 36 (e): Other forms as agreed upon by both parties are, for example, a combination of two (2) or more forms of Compensation as intended by point (a), point (b), point (c), and point (d).

²¹ *Standar Penilaian Indonesia* (SPI) determines the appraisal method of compensation incorporates *solatium* (emotional distress caused by land acquisition)

amount of compensation is made by an appraiser²² on a parcel-by-parcel basis²³ Types of assets eligible for compensation are: land, space above and below the land surface, buildings, plants, objects related to the land, and/or other appraisable losses²⁴. Furthermore, the process of inventory and identification of possession defined under Articles 28-30 ensures that affected people are compensated for all Objects of the Acquired Land, which account for the items of location, size, status, and type of use and utilization of land²⁵

19. The Law 2 of 2012 requires land agency to designate independent and professional appraisers who receive an appraising permit from the Ministry of Finance and a license from the Ministry of Agrarian and Spatial Planning/National Land Agency (MASP/NLA) to calculate the value/price of the land acquisition objects. To implement the land acquisition law mandates, The Indonesian Society of Appraisers (MAPPI) has established a regulatory framework for valuation of compensation called Indonesia Valuation Standard (SPI306): “Valuation for Land Acquisition for Development of the Public Interest. The SPI 306 was developed in line with the principle of justice in land acquisition law and applied international valuation standard. The SPI 306 emphasizes fair replacement value (*nilai penggantian wajar*), meaning the value for the benefit of the owner which will be based on the market value of a property, with special attention to elements of non-physical losses of property ownership caused the taking of property rights²⁶. The MAPPI standard includes a valuation method for compensation for physical and nonphysical loss.

Policy Principle 4:

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.

Source: ADB. 2009. *Safeguard Policy Statement*. Manila. p. 17.

20. *Partial equivalence*. Law 2 of 2012, Article 2, provides for the principle of justness, which the Elucidation to Article 2 defines “any reasonable reward in exchange for the acquired land to the entitled parties in the process of Acquisition of Land such that they have opportunity to live their better life.” This commitment is realized, in part, through the feasibility study, which must take into account the analysis of cost and development benefit to the area and the community (Elucidation to Article 15(2)). Law 1 of 2011 and Government Regulation 88 of 2014 on Housing and Settlement Area stipulate general and technical guidelines applicable to housing and settlement projects for persons displaced as a result of land acquisition for public purposes.

²² Law 2 of 12 governs that an appraiser establishes compensation amounts parcel by parcel (Article 33)

²³ Law 2/12 Article 32, Article 33.

²⁴ Law 2/12 Elucidation of Article 33 (f): “Other appraisable loss” means nonphysical loss equivalent to money value, for example, loss due to loss of business or job, cost of change of location, cost of change of profession, and loss of value of the remaining property.

²⁵ Law 2/12 Article 32, Elucidation to Article 28.

²⁶ Standar Penilaian Indonesia 306 (SPI 306), Penilaian Terhadap Pegadaan Tanah Bagi Pembangunan Untuk Kepentingan Umum. KEPI & SPI Edisi VI, 2015. Jakarta, Masyarakat Profesi Penilai Indonesia (MAPPI).

Central, provincial, regency, and city governments are responsible for developing norms, standards, procedures and criteria for housing development. Provisions on settlement, housing, basic facilities, supporting facilities, general utilities, and other related requirements sufficiently stipulate that relocation must be conducted in an appropriate manner, including by providing secured tenure, decent housing, civic infrastructure, and community services.

21. Article 1 of the law on Housing and Settlement Area states that Housing and settlement area is a unitary system that consist of advisory, housing and settlement area development, maintenance, improvement, prevention and quality enhancement toward slum housing and settlement, to provide land, fund, finance facility, and public participation. settlement area should consist of more than a housing unite that provide public facilities (prasarana and sarana), public utility and provide support for other functions in urban or rural area. While, basic facility of surrounding settlement should fulfil certain standard for decent living, healthy, secure and comfortable. Additionally, Presidential Regulation 71 of 2012, Article 119, provides for the allocation of funds to support Land Acquisition, including of fees, costs operational and support costs for the activities of planning; preparation; implementation; delivery of results; administration and management; and socialization.

22. Law 2 of 2012 and Presidential Regulation 71 of 2012 regulate on resettlement, however, they do not contain specific language regarding the issues of securing tenure to land ensuring better housing for displaced people at resettlement sites, and public facilities as stipulated by Law 1 of 2011. Both land acquisition law and housing and settlement law do not stipulate on integration of resettled people in the host community and extension of project benefit to host communities.

23. The laws and regulations states on resettlement support, yet it is limited to support for housing and settlement area development and moving cost, but does not include transitional support and development assistance, such as land development, credit facilities, training, or employment opportunities. Consequently, the rating of partial equivalence is given for this policy principle.

Policy Principle 5:

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.

Source: ADB. 2009. *Safeguard Policy Statement*. Manila. p. 17.

24. *Full equivalence*. Law 2 of 2012 does not specifically address the restoration of living standards of poor and other vulnerable displaced persons. However relevant provisions are made in Law 39 of 1999 on Human Rights. Article 5 states that (1) everyone is recognized as an individual with the right to demand and obtain equal treatment and protection before the law as befits his or her human dignity; (2) everyone has the right to just support and protection from an objective, impartial judiciary; and (3) all members of vulnerable groups in society, such as children, the poor, and the disabled, are entitled to greater protection of human rights.²⁷ In

²⁷ In addition, Law 16 of 2011 on Legal Aid provides legal service opportunities for person or groups of poor people if they need assistance pertaining to legal issues of land acquisition processes. The basic

addition, Article 5 – 12 of Law 11 of 2009²⁸ on Social Welfare stipulates that implementation of social welfare is prioritized to those who have a life that is not worth humanly and has criteria of social issues including poverty, neglect/displacement, disability, and remoteness. Implementation of social welfare includes social rehabilitation, social security, social empowerment, and social protection. Social empowerment shall be done in the form of skill training, assistance, providing capital stimulants, business equipment and places of business, increasing market access, social advocacy, strengthening harmony, and further guidance.

Policy Principle 6:

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.

Source: ADB. 2009. *Safeguard Policy Statement*. Manila. p. 17.

25. *Full equivalence*. Indonesia's CSS governing land acquisition for public interest—including acquisition through negotiated settlement—is established with full transparency. Principle of transparency in Article 2 of the Law 2 of 2012 is that that land acquisition for development shall be implemented by provision of public access to information concerning land acquisition. Presidential Regulation 71 of 2012 initially set one hectare as the maximum area acquired by land acquisition for public use that could be carried out through negotiated settlement. This threshold was recently amended by Presidential Regulation 40 of 2014²⁹, changing the maximum acquired area of 1 hectare to 5 hectares. The agency needing the land can directly meet with entitled parties by purchasing or exchanging or other means as agreed by both parties (Article 21). According to the Regulation of Ministry of Agrarian and Spatial Planning/National Land Agency 6 of 2015 on Amendment of Regulation of Head of National Land Agency 5 of 2012 on Technical Guidance of Land Acquisition Implementation³⁰, Agency needing the land uses independent appraiser valuation in determining value of purchase or exchange or other means agreed by both parties.

26. With respect to ADB's specification that "the borrower/client will engage an independent external party to document the negotiation and settlement processes" (SPS Appendix 3, paragraph 25), Indonesia's CSS require that every land transaction must be approved by a

provision clearly states that such legal services are to be provided on a *pro bono* basis. Article 1, paragraph 2 states that eligible legal aid recipients includes any person or group of poor people. The legal aid provider is a legal aid institution or civil society group that provides legal aid services based on this law.

²⁸ Government of Indonesia, 2009. *Law of the Republic of Indonesia Number 11 of 2009 regarding Social Welfare*. [Hereafter abbreviated as Law 11 of 2009]

²⁹ Government of Indonesia. 2014. *Regulation of the President of the Republic of Indonesia Number 40 of 2014 regarding Amendment of the Presidential Regulation Number 71 of 2012 regarding Implementation Of Land Acquisition For Development For Public Interest*. [Hereafter abbreviated as Presidential Regulation 40 of 2014]

³⁰ Government of Indonesia. 2015. Regulation of Ministry of Agrarian and Spatial Planning/National Land Agency 6 of 2015 on Amendment of Regulation of Head of National Land Agency 5 of 2012 on Technical Guidance of Land Acquisition Implementation.

Land Deed Making Official (*Pejabat Pembuat Akta Tanah*), who fills the role of professional third party. Government Regulation 37 of 1998 on Land Deed Making Official (PPAT)³¹ stipulates that the main task of PPAT is administering any transaction related to land rights, including “strata title”³² rights.

Policy Principle 7:

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.

Source: ADB. 2009. *Safeguard Policy Statement*. Manila. p. 17.

27. *Partial equivalence*. The basic provisions with respect to compensation of non-titled persons and those without recognizable legal rights to land are established principally within the Indonesia Civil Code (KUH Perdata). Article 570 of the Civil Code defines ownership rights as the right to use goods freely, so long as such use does not violate laws and general regulations enacted by an authorized entity, and that it does not disturb other people’s rights. Ownership of land is subject to the government’s right to expropriate land and property for public use with suitable compensation as determined by laws and regulations. With respect to property rights belonging to the occupants, Article 570 provides that private property other than land (buildings, plants or any other objects) must be respected as provided under Law 39 of 1999 on Human Rights. Article 29 of Law 39 of 1999 says that every person is entitled to protection of their property right. Article 36 stipulates that property right cannot be taken without due process and against the law. Further, Article 37 provides clear guidance that any property right taken for public use must be compensated. Article 570 of the Civil Code also stipulates that every owner of material property has a right to sue anyone who mater it, to refund the material in such circumstances as before. Presidential Regulation 71 of 2012, Article 26, further provides that that non-title land holders are eligible for compensation for “other appraisable loses.” This provision is clarified by Law 2 of 2012, which amends provisions of Law 51 of 1960 regarding Ban on Land Use Without Permission of the Entitled or their Proxies³³ (Basic Agrarian Law), concerning prohibition of use land without permission of the owner or representative by stipulating that illegal occupiers are not entitled to compensation of assets or land.

28. With regard to the practice of “land clearing” (also referred to as forced eviction, this is the act of moving unauthorized/illegal occupants—including long-term occupants—from a piece of land or and area, such as agriculture land, farm land, forest land, or otherwise) who have occupied the land for a period of time. These persons without land rights are also called squatters.³⁴ The provisions of Law 2 of 2012 on land acquisition for development of public use do not apply to squatters, since the land is already owned by an entity that needs the land for a project. However, the provisions of Law 39 of 1999 on Human Rights regarding the property right owned by the affected persons apply in cases of land clearing, and as such squatters are

³¹ Government of Indonesia. 1998. *Regulation of the Government of Indonesia Number 37 of 1998 on Land Deed Making Official*. [Hereafter abbreviated as Government Regulation 37 of 1998]

³² “Strata title” is a form of ownership devised for multi-level apartment blocks and horizontal subdivisions with shared areas.

³³ Government of Indonesia. 1960. *Law 51 of 1960 regarding Ban on Land Use Without Permission of the Entitled or their Proxies*. [Hereafter Law 51 of 1960]

³⁴ A squatter is an individual who takes up residency in an abandoned or unused property, despite not having any actual right—legal or otherwise—to do so. Wikipedia, The Free Encyclopedia. <http://en.wikipedia.org/wiki/squatting>

entitled of compensation. Several other legal frameworks also apply. One of these is Law 51 of 1960 concerning prohibition of using land without consent or agreement from the land right holder or the representative. Article 2 of Law 51 of 1960 prohibits the use of land (to occupy, utilize and/or control the piece of land, possessing plant or building on the land) without consent or agreement from the entitled (land right holder; it does not matter whether the building is used by them or somebody else).

Article 5 (3) provides that during the land clearing process, the entitled party must initially manage deliberation with the parties concerned. The procedure for such, however, is not well regulated, but requires the landowner/holder to obtain a permit from relevant government offices. Article 4 of Law 51 of 1960 stipulates that illegal occupants must move any objects on the occupied land and leave the land on their own resources—meaning that they must bear all costs related to the movement of their belongings. Article 6 of Law 51 stipulates that illegal occupants could be charged with "criminal offense." As such, all "illegal occupants" are not entitled any assistance, transitional support, and other assistance. This is considered as partially equivalent as the ADB SPS principle considers non-titled displaced persons eligible for resettlement assistance.

Policy Principle 8:

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.

Source: ADB. 2009. *Safeguard Policy Statement*. Manila. p. 17.

29. *Partial equivalence*. Law 2 of 2012 and Presidential Regulation 71 of 2012 require the preparation of a Land Acquisition Plan based on the feasibility studies. This document is prepared at the stage of land acquisition planning by agency needing the land. The land acquisition planning document shall include at least the objectives and purposes of the development plan, consistency with the regional spatial planning and the national/regional development plan, land location, land size, land status, estimated period of the land acquisition implementation and construction, estimated land value, and budget plan. Although, the planning document does not include displaced person entitlements, institutional arrangement, monitoring and reporting framework, yet the provisions of Law 2 of 2012 and its implementing regulations clearly stipulate on entitlements of the entitled parties, identification of resettlement impacts and entitled parties, consultation and disclosure, institutional arrangement, and grievance redress mechanism. However, the income and livelihood strategy, monitoring and evaluation of land acquisition impacts to the income and livelihood of displaced persons are not clearly stipulated in the law and regulations.

Policy Principle 9:

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.

Source: ADB. 2009. *Safeguard Policy Statement*. Manila. p. 17.

30. *Full equivalence.* Law 2 of 2012 and its implementing regulations satisfy this provision by requiring that, after the planning document is finalized by the agency needing land, the entitled parties are to be informed and invited to a public consultation to ensure that all data and information are accurate and that all eligible persons have been identified and compensated in accordance with law and regulation (Articles 16,18,19, 20 and 21).

Policy Principle 10:

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.

Source: ADB. 2009. *Safeguard Policy Statement*. Manila. p. 17.

31. *Full equivalence.* Law 2 of 2012 and its implementing regulations satisfy this provision by requiring that the planning document prepared by the agency needing land includes accurate data and information regarding the benefits to be derived from land acquisition, as well as its environmental and social impacts and risks. These provisions ensure that land acquisition is integrated into the overall project design or program development.

32. With regard to giving consideration to implementing the involuntary resettlement component of a project as a stand-alone operation for projects likely to cause significant involuntary resettlement impacts, this requirement is not stipulated in the land acquisition law. However, several regulations govern projects having "significant" involuntary resettlement impacts such that it would be a candidate for a stand-alone operation. The government determines National Strategic Projects (NSP) and several regulations have been issued to accelerate this NSP (infrastructure project) implementation³⁵. The Presidential Regulation, 3 of 2016 on Acceleration of National Strategic Project Implementation stipulates the specific procedure of project location determination or project location permit at preparatory stage of land acquisition and construction commencement. The Perpres 102 of 2016 on Land Acquisition Financing for Development of Public Interest in Framework of National Strategic Development governs land acquisition funding through financing of investments by the Government either through Ministries and/or use of enterprises funds in advance. The Perpres also requires monitoring and evaluation by Financial and Development Supervision Agency (*Badan Pengawasan Keuangan dan Pembangunan*). In addition, the Minister of MASP/NLA issues the Ministerial Instruction to accelerate land acquisition for the NSP through closer coordination among stakeholders, close monitoring and evaluation of process, and timely address raising issues³⁶. Given all key elements of principle 10 have been stipulated in the legal framework, the policy principle 10 is rated full equivalence.

³⁵ National Strategic Project is a project undertaken by the Government, Local Government, and / or entities business that has a strategic nature for increased growth and equitable development in order to improve social welfare and regional development. Presidential Regulation, 3 of 2016 on Acceleration of National Strategic Project Implementation

³⁶ Government of Indonesia, 2016; Instruction of Ministry of Agrarian and Spatial Planning/Head of National land Agency 2/Inst/VIII/2016 on Acceleration of Land Acquisition for Public Interest for Implementation of the National Strategic Development.

Policy Principle 11:

Pay compensation and provide other resettlement entitlements before physical or economic displacement. Implement the resettlement plan under close supervision throughout project implementation.

Source: ADB. 2009. *Safeguard Policy Statement*. Manila. p. 17.

33. *Full equivalence*. Law 2 of 2012 and its implementing regulations satisfy this provision per Article 5, which clearly states that compensation for land acquisition must be promptly received by the entitled parties before the land and other objects of land acquisition are relinquished. The Article 5 stipulates that the entitled party must release the land during the land acquisition implementation for the public interest after the giving of compensation or a final and binding court decision.

Policy Principle 12:

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.

Source: ADB. 2009. *Safeguard Policy Statement*. Manila. p. 17.

34. *Partial equivalence*. Law 2 of 2012 and Presidential Regulation 71 of 2012 require BPN to conduct monitoring and evaluation on land ownership, land possession, use of land and land utilization as a result of land acquisition. For the strategic projects, the Instruction of Ministry of Agrarian and Spatial Planning/Head of National Land Agency (KATR/BPN) 2/Ins/VIII/2016 requires the Directorate General of Land Acquisition to carry out monitoring and evaluation on the implementation of strategic projects at the regional land offices implementing national strategic development. The experts for land acquisition at the KATR/BPN to carry out evaluation directly on the progress of land acquisition implementation for the national strategic developments throughout Indonesia and take steps for solutions of the rising issues³⁷.

35. Since land acquisition is subject to a Land Acquisition Plan, KATR/BPN's monitoring and evaluation requirements satisfy this component of Policy Principle 12. However, Law 2 of 2012 and its implementing regulations do not stipulates on monitoring of the resettlement impacts on the standards of living of displaced persons and whether the objectives of the resettlement plan have been achieved, and therefore, this key element is rated partial equivalence. Although, the law 2 of 2012 and its implementing regulations do not require to disclose monitoring reports, since a public entity already has a legal obligation according to Articles 9 and 10 of Law 14 of 2008 on Public Information Openness to disclose such information to the public. Given these findings, the policy principle is rated partial equivalence.

³⁷ Government of Indonesia, 2016. the Instruction of Ministry of Agrarian and Spatial Planning/Head of National Land Agency (KATR/BPN) 2/Ins/VIII/2016.

2. Conclusions and Recommendations

36. Based on the above assessment, it is concluded that:

- (i) The Indonesian safeguard system is thoroughly regulated in Law 2 of 2012 and its implementing regulations as well as many other relevant laws and regulations.
- (ii) The Indonesian safeguard system is fully equivalent with 8 of the 12 policy principles of ADB's SPS for involuntary resettlement. Of the remaining policy principles, the Indonesian legal framework is partially equivalent to all of the constituted components (key elements) of the policy principles.
- (iii) When the 12 policy principles are disaggregated into 36 key elements, the Indonesian safeguard system is fully equivalent to 31 key elements and partial equivalence to 5 key elements.

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Appendix 7: Equivalence Assessment Matrix for Involuntary Resettlement Safeguard

This assessment is a work in progress, the purpose of which is to encourage an iterative process of feedback and update. When finalized, the Borrower will verify the assessment. The materials are prepared by consultants; hence, ADB does not guarantee the accuracy, reliability, or timeliness of these materials and therefore will not be liable in any capacity for any damages or losses that may result from the use of these materials. ADB, likewise, shall not be responsible for any errors, inadvertent omissions, or unauthorized alterations that may occur in the disclosure of content on this website.

**APPENDIX 7
EQUIVALENCE ASSESSMENT MATRIX FOR INVOLUNTARY RESETTLEMENT SAFEGUARDS**

(A) ADB Safeguard Policy Statement	(B) Corresponding DMC Legal Provisions	(C) Extent of Equivalence ¹	(D) Recommended Gap-filling Measures
<p>Objectives: 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 in real terms relative to pre-project levels; and to improve the standards of living of the displaced poor and other vulnerable groups.</p>		ALIGNED	
<p>Law 2 of 2012 on Land Acquisition for Development for Public Interest (Law 2/12)</p> <p>Article 1 paragraph 2 says that “Acquisition of Land” means any activity to make land available by giving reasonable and just compensation to the entitled party.</p> <p>Article 1 paragraph 10 says that “Compensation” means any reasonable and just compensation given to the entitled party in exchange for acquisition of land.</p> <p>Article 2 states that Acquisition of Land in the Public Purposes shall be implemented under the principles of:</p> <ul style="list-style-type: none"> b. justice <i>Elucidation: “Principle of justice” means to guarantee any reasonable reward in exchange for the acquired land to the Entitled Parties in the process of Acquisition of Land such that they have opportunity to live their better life.</i> c. benefit <i>Elucidation: “Principle of benefit” means that the outcome of the Acquisition of Land can give to a large extent benefit to the public, the nation, and the state.</i> f. consensus <i>Elucidation: “Principle of consensus” means that the process of Acquisition of Land shall be carried out by negotiation between parties to reach mutual agreement under no duress.</i> h. welfare <i>Elucidation: “Principle of welfare” means that the Acquisition of Land for development can bring added value to the viability of the Entitled Parties and the public in general.</i> <p>Article 3 Land Procurement for Public Interest aims to provide land for the construction in order to enhance the welfare and prosperity of nation, state, and society while ensuring the law interest of Entitled Party.</p> <p>Article 33 Appraisal of the amount of Compensation by the Appraiser as stated by Article 32 section (1) shall be made on a parcel-by-parcel basis, including:</p> <ul style="list-style-type: none"> a. land b. overground space and underground space of the land c. buildings 			

¹ “Full Equivalence” denotes that Developing Member Country (DMC) legal requirement(s) are in complete harmony with the corresponding ADB Safeguard Objective, Scope and Trigger, Policy Principle or Key Element thereof. “Partial Equivalence” denotes that the DMC legal requirement is in partial harmony with the corresponding ADB Safeguard Objective, Scope and Trigger, Policy Principle or Key Element; and “No Equivalence” denotes that no DMC legal requirement can be found that corresponds to the particular ADB Safeguard Objective, Scope and Trigger, Policy Principle or Key Element.

(A) ADB Safeguard Policy Statement	(B) Corresponding DMC Legal Provisions	(C) Extent of Equivalence ¹	(D) Recommended Gap-filling Measures
	<p>d. plants e. objects related to the land; and/or f. other appraisable losses.</p> <p>Article 36 The giving of Compensation may be made in the form of: a. money ; b. substitute land; c. resettlements; <i>Elucidation of Article 36 (c): "Resettlements" means a process of replacing the Entitled Party's land with the land of different location as agreed upon during the process of Acquisition of Land.</i> d. shareholding; or <i>Elucidation of Article 36 (d): "Shareholding" means placement of shares in the relevant development activities in the public interest and/or the management thereof is made by agreement of the parties.</i> e. other forms as agreed upon by both parties. <i>Elucidation of Article 36 (e): Other forms as agreed upon by both parties are, for example, a combination of two (2) or more forms of Compensation as intended by point (a), point (b), point (c), and point (d).</i></p> <p>Law 39 of 1999 on Human Rights Article 5 includes the following provision on "vulnerable groups:" (3) All members of vulnerable groups in society, such as children, the poor, and the disabled, are entitled to greater protection of human rights.</p> <p>Law 11 of 2005 on Ratification of International Covenant CESC Rights provides relevant provisions:</p> <p>Article 11 of the ICESCR Rights says that the States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent.</p> <p>Law No 16 of 2011 on Legal Aid provides equal provisions as follow:</p> <p>Article 1 paragraph 2 says that legal aid recipient is a person or group of poor people.</p> <p>Law 14 of 2008 on Public Information Openness contains relevant provisions, as follow:</p> <p>Article 3 The objectives of this Law are to: a. guarantee citizens right to acknowledge public policy making plans, public policy programs, public decision making process, and the grounds of a public decision making; b. encourage public participation in public policy making process; c. to increase active public involvement in the public policy making and good public body governance;</p>		

(A) ADB Safeguard Policy Statement	(B) Corresponding DMC Legal Provisions	(C) Extent of Equivalence ¹	(D) Recommended Gap-filling Measures
<p>d. constitute good governance which are transparent, effective, efficient, and accountable; e. acknowledge the grounds of public policies that have eminent effects on people's lives; f. develop science and to enhance the intellectual life of the nation; and/or g. improve management and service of information in public bodies in order to constitute excellent information service.</p>			
<p>Scope and Triggers: The involuntary resettlement safeguards covers 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.</p>		<p>ALIGNED</p>	
<p>Perpres 71 of 2012 on Implementation of Land Acquisition for Development in the Public Interest</p> <p>Article 33 (1) In the public consultation, dialogic process between preparatory team and Entitled Parties as referred to in Article 29 and the affected communities as intended in Article 30 shall take place. (2) The public consultation referred to in paragraph (1) may be carried out through a representative by letter and by the power of the Entitled Party. (3) Entitled Parties and the affected communities or their proxies are given the opportunity to give their views / comments on the site development plan. (4) The presence of the Entitled Party and the affected communities or their proxies as referred to in paragraph (2) evidenced by the attendance list. (5) The result of an agreement on the location of the development plan outlined in the Public Consultation minutes of meeting or agreement news show deal.</p> <p>Article 36 (1) Inventory issues as referred to in Article 35 paragraph (4) letter a form of: a. classification types and reasons for objection; b. classification of the parties objected; and c. classification proposal the parties objected; (2) Inventory issues referred to in paragraph (1) letter a, b, and c are arranged in the form of the document object. (3) Meetings or clarification with the parties that an objection referred to in Article 35 paragraph (4) letter b is made to: a. the perception of the material / reasons for objection parties objected; and b. reiterated the purpose and objective of development plans. (4) Recommendation referred to in Article 35 paragraph (4) letter c is based on results of the study document the objections raised by the parties objected to: a. Spatial plans; and b. Development priorities listed in: 1. Medium Term Development Plan; 2. Strategic Plan; and 3. Work Plan Government Agencies concerned.</p>			

(A) ADB Safeguard Policy Statement	(B) Corresponding DMC Legal Provisions	(C) Extent of Equivalence ¹	(D) Recommended Gap-filling Measures
<p>Constitutional Court Decision No. 35 (MK/35/12) ruled that customary forests (<i>hutan adat</i>) are distinct from the state forest zone.</p> <p>Law 6 of 2014 on Villages</p> <p>Permen 52/14 on Guidelines of the Recognition and Protection of Indigenous Peoples allows for the district-level designation of areas for customary-law communities.</p> <p>Ministry of Forestry Implementing Regulation No. 62/13 excludes excision customary forests from state land and sets up a process for the separate registration; of customary lands.</p> <p>Law 2 of 2012 on Land Acquisition for Development for Public Interest</p> <p>Article 35 Where a certain parcel of land affected by the Acquisition of Land results in the remaining portion not being functional to its allocation and use, the Entitled Party may claim Compensation for his/her parcel of land as a whole. <i>Elucidation of Article 35: "Not being functional" means that a parcel of land becomes unusable to the original allocation and use, for example, a dwelling house becomes divided so that any other part of it cannot be used as dwelling house. By reason thereof, the party who possesses/owns the land may claim Compensation for his/her land as a whole.</i></p> <p>Ministry of Energy and Mineral Resources Regulation 38 of 2013</p> <p>Article 2 License holder of electricity supply and operating license holders are required to provide compensation of land, building, and plants located in free space of high/very high-voltage wires before the implementing of the high/very high-voltage wires network stringing in the said location.</p> <p>Article 7 Land holders who have received compensation may use the land along the utilization does not enter free space of high/very high-voltage wires.</p>			
<p>Policy Principle 1: 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 census of displaced persons, including a gender analysis, specifically related to resettlement impacts and risks.</p>			
<p>Key Element (1): Screen the project early on to identify past, present, and future involuntary resettlement impacts and risks.</p>	<p>Law 2 of 2012 on Land Acquisition for Development for Public Interest stipulates equal provisions as follow:</p> <p>Article 13: Stages of land acquisition are planning, preparation, implementation and result delivery.</p> <p>Article 14 (1) The Agency needing land shall make a plan of Acquisition of Land in the Public</p>	<p>Full Equivalence</p>	<p>None required</p>

(A) ADB Safeguard Policy Statement	(B) Corresponding DMC Legal Provisions	(C) Extent of Equivalence ¹	(D) Recommended Gap-filling Measures
	<p>Interest in accordance with the laws and regulations.</p> <p>(2) Land Acquisition plan in the Public Interest as intended by section (1) shall refer to the Regional Spatial Planning and the development priority as stated in the Medium-Term Development Plan, the Strategic Plan, and the Working Plan of the relevant Agencies.</p> <p>Article 15</p> <p>(1) Land Acquisition plan in the Public Interest as intended by Article 14 section (1) shall be prepared in the form of Land Acquisition planning documentation that contains at least:</p> <ul style="list-style-type: none"> a. the objectives and purposes of the development plan; b. consistency with the Regional Spatial Planning and the National/Regional Development Plan; c. land location; d. land size needed; e. general description of the land status; f. estimated period of the implementation of Acquisition of Land; g. estimated period of the implementation of construction; h. estimated land value; and i. budget plan. <p><i>Elucidation of Article 15 (1):</i> <i>Preparation of Land Acquisition planning documentation may be made together with the Agency needing land and the relevant technical agency(ies) or with the assistance of professional institutions designated by the Agency needing land.</i></p> <p>(2) The Land Acquisition planning documentation as intended by section (1) shall be prepared under the feasibility study made in accordance with the laws and regulations.</p> <p><i>Elucidation of Article 15 (2):</i> The feasibility study shall include:</p> <ul style="list-style-type: none"> a. social-economic survey; b. location feasibility; c. analysis of cost and development benefit to the area and the community; d. estimated land value; e. environmental impacts and social impacts that may arise out of the Acquisition of Land and construction; and f. other study as necessary. <p>(3) The Land Acquisition planning documentation as intended by section (2) shall be certified by the Agency needing land.</p> <p>(4) The Land Acquisition planning documentation as intended by section (3) shall be submitted to the provincial government.</p>		

(A) ADB Safeguard Policy Statement	(B) Corresponding DMC Legal Provisions	(C) Extent of Equivalence ¹	(D) Recommended Gap-filling Measures
<p>Key Element (2): Determine the scope of resettlement planning through a survey and/or census of displaced persons, including a gender analysis, specifically related to resettlement impacts and risks.</p>	<p>Law 2 of 2012 on Land Acquisition for Development for Public Use provides for scoping of resettlement planning as follows:</p> <p>Article 15 The Land Acquisition planning documentation as intended by section (1) shall be prepared under the feasibility study made in accordance with the laws and regulations. <i>Elucidation of Article 15 (2):</i> <i>The feasibility study shall include:</i></p> <ul style="list-style-type: none"> a. <i>social-economic survey;</i> b. <i>location feasibility;</i> c. <i>analysis of cost and development benefit to the area and the community;</i> d. <i>estimated land value;</i> e. <i>environmental impacts and social impacts that may arise out of the Acquisition of Land and construction; and</i> f. <i>other study as necessary</i> (could be study on the community culture, study on politics and security, or study on religious affairs to anticipate any specific impact due to the development of public purposes) <p>Article 18 (1) Preliminary data collection of the location of the development plan as intended by Article 16 point (b) shall include the preliminary data gathering of the Entitled Parties and the Objects of the Acquired Land. (2) Preliminary data collection as intended by section (1) shall be made within thirty (30) working days of the notification of the development plan. (3) The results of preliminary data collection as intended by section (1) shall be used as data to hold a Public Consultation on a development plan as intended by Article 16 point (c).</p> <p>Similar provisions are made in Article 6 of Presidential Regulation (Perpres) 71 of 2012.</p> <p>Perpres 2 of 2015 on National Mid Term Development Plan (RPJMN) 2015-2019 addresses gender mainstreaming. In Book II sub chapter 1.1.3 of the Perpres' appendix provides that "gender perspective must be integrated in every policy, program and development activities"</p>	<p>Full Equivalence</p>	<p>None required</p>
<p>Policy Principle 2: 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</p>			

(A) ADB Safeguard Policy Statement	(B) Corresponding DMC Legal Provisions	(C) Extent of Equivalence ¹	(D) Recommended Gap-filling Measures
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.			
<p>Key Element (1): Carry out meaningful consultations with affected persons, host communities, and concerned nongovernment organizations.</p>	<p>Law 2 of 2012 on Land Acquisition for Development for Public Interest stipulates equal provisions as follow:</p> <p>Article 1 paragraph 8 says that "Public Consultation" means any communication process by a dialogue and consultation among stakeholders to achieve understanding and agreement in the planning of acquisition of land for development in the public interest.</p> <p><i>Article 2 e:</i> <i>"Principle of transparency" means that the Acquisition of Land for development shall be implemented by provision of public access to information concerning Acquisition of Land.</i></p> <p>Article 19 (1) A Public Consultation on the Development Plan... shall be held to achieve agreement on the location of the Development Plan with the entitled parties. <i>Elucidation of Article 19 (1): In the Public Consultation, the Agency needing land shall explain, among others, the Development Plan and Compensation calculation method the Appraiser may apply.</i></p> <p>(2) A Public Consultation as intended by paragraph (1) shall be convened involving the entitled parties and the affected community and held at the place of the Development Plan in the Public Purposes or at the agreed-upon place. <i>Elucidation of Article 19 (2): "Affected community" is, for example, any community directly contiguous to the location of the Acquisition of Land.</i></p> <p>(3) Involvement of the Entitled Parties² as intended by paragraph (2) may be through representation by a power of attorney of and by the Parties Entitled to the location of the Development Plan. <i>Elucidation of Article 19 (3): "Power of attorney" means a power of attorney to represent at the Public Consultation sessions in accordance with the provisions of laws and regulations. "Of and by the Parties Entitled" means that the attorney in-fact and the grantor of power are both from the Entitled Parties.</i></p>	Full Equivalence ³	None required

² The entitled party "Pihak Yang Berhak" includes land right holders as well as non-land right holders.

³ Law 2 of 2012 and its implementing regulations do not stipulate provision on host communities and concerned NGOs since the issues have been regulated under Article 106 of Law 1 of 2011 on Housing and Settlement Area and Article 2, 8, 15 and 16 Government Regulation No 88 of 2014 on Implementing Regulation of Housing and Settlement Area as well as Article 3 of Law 14 of 2008 on Public Information Openness – see those relevant articles in the column.

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	<p>(4) Agreement as intended by paragraph (1) shall be stated in the form of minutes of agreement.</p> <p>(5) Upon the agreement as intended by paragraph (4), an Agency needing land shall file with the governor an application for confirmation of the location.</p> <p>(6) The governor shall confirm the location as intended by paragraph (5) within fourteen (14) working days of the receipt of the application for confirmation by the Agency needing land.</p> <p>Perpres 71 of 2012 on Implementation of Land Acquisition for Development in the Public Interest</p> <p>Article 29</p> <p>(1) Public consultation of the Development Plan as referred in Article 28 paragraph (2) is carried out to obtain agreement with the Entitled Parties.</p> <p>(2) The Preparation Team will conduct Public Consultations on the Development Plan at the office of village officials or office of sub-district office at the location, or at a location that the Preparation Team and the Entitled Parties have agreed upon.</p> <p>(3) The Public Consultation as referred in paragraph (2) can be done in stages and more than 1 (one) time according to the local situation.</p> <p>(4) The Public Consultation as referred to in paragraph (3) is conducted within 60 (sixty) working days starting from the signing of the temporary list as referred in Article 28 paragraph (1).</p> <p>Article 30</p> <p>(1) In the development where there are planned specific impacts, the Public Consultation can also involve the public who are directly impacted.</p> <p>(2) The Preparation Team will conduct the Public Consultation as referred to in paragraph (1) of the Development Plan at the office of the village officials or office of the sub-district office at the location, or at places that the Preparation Team and Entitled Parties have agreed upon.</p> <p>Article 31</p> <p>(1) The Preparation Team invites the Entitled Parties as referred to in Article 29 and the affected community as referred in Article 30 to be present at the Public Consultation.</p> <p>(2) The invitation, as referred to in paragraph (1) is conveyed directly to the Land Rights Holders, as referred in Article 29, and the affected communities as to referred in Article 30 within 3 (three) days prior to the commencement of the</p>		

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	<p>Public Consultation.</p> <p>(3) In proving the acceptance of the invitation, there should be a receipt of acceptance signed by the Land Rights Holders and the affected communities or the village officials or other name.</p> <p>(4) In a situation where the Entitled Parties whereabouts/address/location are not known, then the notification is given through:</p> <ul style="list-style-type: none"> a. Notification at the local village office or other administrative title or sub-district of the site; and b. Printed or electronic media. <p>Article 32</p> <p>(1) The Preparation Team will explain about the Land Acquisition Plan in the public consultation as referred in Article 29.</p> <p>(2) The explanation as referred to in paragraph (1) includes:</p> <ul style="list-style-type: none"> a. Purpose of the Development Plan in the public interest; b. Stages and timeline of the Land Acquisition; c. The role of the appraiser in determining the compensation value; d. The incentive that the holder of the land rights will receive; e. Objects that will be appraised for compensation; f. The form of the compensation; and g. The rights and responsibilities of the Land Rights Holders. <p>Article 33</p> <p>(1) In the Public Consultation, there should be a dialogue between the Preparation Team and the Entitled Parties, as referred to in Article 29, and the affected community as referred to in Article 30.</p> <p>(2) The public consultation as referred to in paragraph (1) may be conducted through representatives who hold the power of attorney from and by the Entitled Parties.</p> <p>(3) Entitled parties and the affected communities/people or the holders of the powers of attorney will be given the opportunity to address their views/responses on the location of the development plan.</p> <p>(4) The attendance of the entitled parties and the affected communities/ people or the holders of the powers of attorney as referred in paragraph (2) is proven by the attendance list.</p> <p>Article 34</p> <p>(1) In the case of the Public Consultation among the Entitled Parties and the affected communities there is disagreement or objections to the location of the development</p>		

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	<p>plan, then the Public Consultation must be repeated. (2) The repeated Public Consultation as referred to in paragraph (1) is organized within 30 (thirty) working days since the date of the report of agreement.</p> <p>Law 14 of 2008 on Public Information Openness contains relevant provisions, as follows:</p> <p>Article 3 The objectives of this Law are to:</p> <ol style="list-style-type: none"> a. guarantee citizens right to acknowledge public policy making plans, public policy programs, public decision making process, and the grounds of a public decision making; b. encourage public participation in public policy making process; c. to increase active public involvement in the public policy making and good public body governance; d. constitute good governance which are transparent, effective, efficient, and accountable; e. acknowledge the grounds of public policies that have eminent effects on people's lives; f. develop science and to enhance the intellectual life of the nation; and/or g. improve management and service of information in public bodies in order to constitute excellent information service. <p>Law 1 of 2011 on Housing and Resettlement Area provides more detailed relevant provisions as follow:</p> <p>Article 106 To provide land for development of house, housing and settlement area can be carried out through:</p> <ol style="list-style-type: none"> f. land acquisition for development of public use as regulated in provisions of the law and regulations. <p>Government Regulation No 88 of 2014 on Housing and Settlement Area Article 2 paragraph 2 states: Housing and Settlement Development Advisory is carried out in hierarchy as follow:</p> <ol style="list-style-type: none"> a. Minister to Governor, Regent/Mayor and stakeholders b. Governor to Regent/mayor and stakeholders; and c. Regent/Mayor to Stakeholders. <p><i>Elucidation of Article 2 defines "stakeholders" as private parties, finance institution,</i></p>		

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	<p><i>developer, contractor, academician from universities and community member.</i></p> <p>Article 8 says that housing and settlement development advisory is carried out through: f. assistance and empowerment</p> <p>Article 15 paragraph (3) says that empowerment as intended in paragraph 1 is carried out to improve government’s capacity and competence, regional government and stakeholders.</p> <p>Article 16 says: Empowerment of stakeholders as intended in Article 15 paragraph 3 can be carried out through: a. facilitate housing and settlement area development forum; b. to accommodate public participation in developing housing and settlement area; and c. to improve supervision over housing and settlement area development</p> <p>Law 23 of 2014 on Local Government</p> <p>Article 354 states: (i) In the regional administration, local government encourages public participation (ii) In encouraging community participation as referred to in paragraph (1), the Local Government a. convey information about the regional administration to the public; b. encourage community groups and organizations to play an active role in the regional administration through the support of community development; c. developing institutional and decision-making mechanisms that allow groups and community organizations participate effectively; and / or d. other activities in accordance with the provisions of the legislation.</p>		
<p>Key Element (2): Inform all displaced persons of their entitlements and resettlement options.</p>	<p>Law 2 of 2012 on Land Acquisition for Development for Public Interest provides equal provisions as follow:</p> <p>Article 1 paragraph 8 says that “Public Consultation” means any communication process by a dialogue and consultation among stakeholders to achieve understanding and agreement in the planning of acquisition of land for development in the public interest.</p> <p>Article 19 (1) Public Consultation of development plan as mentioned in Article 18 paragraph (3) is</p>	<p>Full Equivalence</p>	<p>None required</p>

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	<p>conducted in order to achieve an agreement regarding location of the development plan from the Entitled Party. <i>Elucidation of Article 19 (1) of Law 2 of 2012 says that In the Public Consultation, the Agency needing land shall explain, among others, the Development Plan and Compensation calculation method the Appraiser may apply.</i></p> <p>Article 30 The results of the announcement or verification and improvement as intended by Article 29 shall be confirmed by the Land Agency (BPN) and shall constitute the ground on which the Entitled Parties to Compensation are determined.</p> <p>Article 35 Where a certain parcel of land affected by the Acquisition of Land results in the remaining portion not being functional⁴ to its allocation and use, the Entitled Party may claim Compensation for his/her parcel of land as a whole.</p> <p>Article 36 The giving of Compensation may be made in the form of:</p> <ul style="list-style-type: none"> a. money (cash); b. substitute land; c. resettlements; <i>Elucidation of Article 36 (c): "Resettlements" means a process of replacing the Entitled Party's land with the land of different location as agreed upon during the process of Acquisition of Land.</i> d. shareholding; or <i>Elucidation of Article 36 (d): "Shareholding" means placement of shares in the relevant development activities in the public interest and/or the management thereof is made by agreement of the parties.</i> e. other forms as agreed upon by both parties. <i>Elucidation of Article 36 (e): Other forms as agreed upon by both parties are, for example, a combination of two (2) or more forms of Compensation as intended by point (a), point (b), point (c), and point (d).</i> 		

⁴ Elucidation of Article 35: "Not being functional" means that a parcel of land becomes unusable to the original allocation and use, for example, a dwelling house becomes divided so that any other part of it cannot be used as dwelling house. By reason thereof, the party who possesses/owns the land may claim Compensation for his/her land as a whole.

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	<p>Article 37 (1) The Land Agency shall conduct a negotiation with the Entitled Parties within thirty (30) working days of the submission of the results of appraisal of the Appraiser to the Land Agency for determination of the form and/or the amount of Compensation under the results of appraisal of Compensation as intended by Article 34. (2) The results of agreement in the negotiation as intended by section (1) shall constitute the basis of Compensation to the Entitled Parties as stated in the official record of the agreement</p> <p>Article 55: In the performance of Acquisition of Land, the Entitled Parties shall have the rights to: a. have knowledge of the performance of the Acquisition of Land; and b. receive information about the Acquisition of Land.</p> <p>Perpres 71 of 2012 on Implementation of Land Acquisition for Development in the Public Interest</p> <p>Article 32 (1) The Preparation Team shall explain Land Acquisition Plan during Public Consultation as referred to in Article 29. (2) The explanation as referred to in paragraph (1) shall cover: a. The objectives and purposes of the development plan for public interests; b. Stages and process of land acquisition; c. Roles of valuator in setting the compensation rate; d. Incentive to be given to the Entitled Parties; e. Objects eligible for compensation; f. The form of compensation; and g. Rights and obligations of the Entitled Parties.</p> <p>Article 33 (1) During Public Consultation, dialogue process between the Preparation Team and the Entitled Parties as referred to in Article 29 and the affected communities as referred to in Article 30 shall take place.</p> <p>Article 68 (1) Land Acquisition Implementating Unit shall organize deliberation forum with the Entitled Parties no later than 30 (thirty) working days as from the acceptacne of valuation</p>		

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	<p>results made by Appraiser by the chairman of Land Acquisition Implementating Unit as referred to in Article 66 paragraph (3)</p> <p>(2) Deliberation forum as referred to in paragraph (1) shall be made directly to establish the form of Compensation based on the Compensation assessment as referred to in Article 65 paragraph (1).</p> <p>(3) During the deliberation forum as referred to in paragraph (1), the chairman of Land Acquisition Implementating Unit shall convey the amount of Compensation as recommended in Compensation assessment as referred to in Article 65 paragraph (1).</p>		
<p>Key Element (3): Ensure their participation in planning, implementation, and monitoring and evaluation of resettlement programs.</p>	<p>Law 2 of 2012 on Land Acquisition for Development for Public Interest provides equal provisions as follow:</p> <p>Article 1 paragraph 8 says that “Public Consultation” means any communication process by a dialogue and consultation among stakeholders to achieve understanding and agreement in the planning of acquisition of land for development in the public interest.</p> <p>Article 2 “Principle of Participation” means any support through public participation in the performance of Acquisition of Land, either directly or indirectly, from planning to construction activity.</p> <p>Article 55 In the performance of Acquisition of Land, the Entitled Parties shall have the rights to:</p> <ul style="list-style-type: none"> a. have knowledge of the performance of the Acquisition of Land; and b. receive information about the Acquisition of Land. <p>Article 57 In the performance of Acquisition of Land in the Public Interest, the public may participate to, inter alia:</p> <ul style="list-style-type: none"> a. provide inputs either in writing or orally of the Acquisition of Land; and b. support the performance of Acquisition of Land. <p><i>Elucidation of Article 57 (b):</i> “Support” means to accept the program and to smooth the process of Acquisition of Land.</p> <p>Article 19 (2) A Public Consultation as intended by paragraph (1) shall be convened</p>	<p>Full Equivalence</p>	<p>None required</p>

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	<p>involving the Land Rights Holders and the affected community and held at the place of the Development Plan in the Public Purposes or at the agreed-upon place.</p> <p><i>Elucidation of Article 19 (2): "Affected community" is, for example, any community directly contiguous to the location of the Acquisition of Land.</i></p> <p>(3) Involvement of the Land Rights Holders as intended by paragraph (2) may be through representation by a power of attorney of and by the Parties Entitled to the location of the Development Plan.</p> <p><i>Elucidation of Article 19 (3): "Power of attorney" means a power of attorney to represent at the Public Consultation sessions in accordance with the provisions of laws and regulations. "Of and by the Parties Entitled" means that the attorney in-fact and the grantor of power are both from the Land Rights Holders.</i></p> <p>Perpres 71 of 2012 on Implementation of Land Acquisition for Development in the Public Interest</p> <p>Article 115 Land National Agency (BPN) carries out the monitoring and evaluation towards the control, ownership, utilization and benefits of the results of the Land Acquisition for Development in the Public Interest.</p> <p>Law 23 of 2014 on Local Government</p> <p>Article 354 states:</p> <ul style="list-style-type: none"> (i) In the regional administration, local government encourages public participation (ii) In encouraging community participation as referred to in paragraph (1), the Local Government <ul style="list-style-type: none"> a. convey information about the regional administration to the public; b. encourage community groups and organizations to play an active role in the regional administration through the support of community development; c. developing institutional and decision-making mechanisms that allow groups and community organizations participate effectively; and / or d. other activities in accordance with the provisions of the legislation. <p>Law 25 of 2009 on Public Services</p> <p>Article 18 states: Society is entitled:</p> <ul style="list-style-type: none"> a. to know the truth of the contents of service standards; 		

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	<ul style="list-style-type: none"> b. to oversee the implementation of service standards; c. to receive a response for the complaints; d. to get advocacy, protection, and / or fulfillment of services; e. to notify the leaders and implementers to improve services if the services provided are not in accordance with the standards; f. Denounce the implementers who perform standard deviations of service 		
<p>Key Element (4): 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.</p>	<p>Law 2 of 2012 on Land Acquisition for Development for Public Interest stipulates following equivalent provisions:</p> <p>Article 1 paragraph 2 says that “Acquisition of Land” means any activity to make land available by giving reasonable and just compensation to the entitled party. Article 1 paragraph 4 “Object of the Acquired Land” means land, over-ground and underground space, buildings, plants, objects related to land, or other appraisable objects. Article 1 paragraph 8 says that “Public Consultation” means any communication process by a dialogue and consultation among stakeholders to achieve understanding and agreement in the planning of acquisition of land for development in the public interest.</p> <p>Article 2 states that Acquisition of Land in the Public Purposes shall be implemented under the principles of:</p> <ul style="list-style-type: none"> a. humanity <i>Elucidation: “Principle of humanity” means that the Acquisition of Land must proportionally protect and honor the human rights, dignity, and degrees of every citizen and residents of Indonesia.</i> c. welfare <i>Elucidation: “Principle of welfare” means that the Acquisition of Land for development can bring added value to the viability of the Land Rights Holders and the public in general.</i> <p>In addition to Law 2 of 2012, Law 39 of 1999 on Human Rights provides provision on “vulnerable groups” as stated in Article 5.</p> <ul style="list-style-type: none"> (1) Everyone is recognized as an individual who has the right to demand and obtain equal treatment and protection before the law as be fits his or her human dignity. (2) Everyone has the right to truly just support and protection from an objective, impartial judiciary. (3) <u>All members of vulnerable groups in society, such as children, the poor, and the disabled, are entitled to greater protection of human rights.</u> <i>Elucidation of Article 5 of Law 39 of 1999 says that groups that are considered</i> 	<p>Full Equivalence</p>	<p>None Required</p>

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	<p><i>vulnerable includes elderly, children, poor, pregnant woman and the disabled.</i></p> <p>Article 570 of the Indonesian Civil Code (KUH Perdata) says that the ownership rights is right to enjoy goods freely and to do anything toward goods fully free unless does not violate laws and general regulations enacted by the authorized entity/party and does not disturb other people' rights; all the rights cannot prevent possibility of right's expropriation for public use and suitable compensation regulated by laws and regulations.</p> <p>Article 3 of the International Covenant on Economic, Social and Cultural Rights (1976) that has been ratified by Law 5 of 2011: The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.</p>		
<p>Key Element (5): Establish a grievance redress mechanism to receive and facilitate resolution of the affected persons' concerns.</p>	<p>Law 2 of 2012 on Land Acquisition for Development for Public Interest provide equivalent provisions as follow:</p> <p>Article 1 paragraph 2 "Acquisition of Land" means any activity to make land available by giving reasonable and just compensation to the entitled party. Article 1 paragraph 8 "Public Consultation" means any communication process by a dialogue and consultation among stakeholders to achieve understanding and agreement in the planning of acquisition of land for development in the public interest.</p> <p>Article 20 (1) A Public Consultation on a Development Plan as intended by Article 19 shall be held within sixty (60) working days. (2) If within a sixty (60) working day period of the Public Consultation on a Development Plan as intended by paragraph (1) there is a party objecting to the planned location of development, a Public Consultation shall be repeated by engagement of the objecting party within thirty (30) working days. <i>Elucidation of Article 20 (2): A party objecting to the planned location of development shall present his/her objections in writing along with the reasons therefor.</i></p> <p>If there are still objections to the location of the development, then as explained in Article 21 the procedures are: (1) If in the repeated Public Consultation as intended by Article 20 paragraph (2) there are still parties objecting to the planned location of development, the Agency needing land shall report such an objection to the local governor.</p>	<p>Full Equivalence</p>	<p>None required</p>

(A) ADB Safeguard Policy Statement	(B) Corresponding DMC Legal Provisions	(C) Extent of Equivalence ¹	(D) Recommended Gap-filling Measures
	<p>(2) The governor shall form a team to make a study of the objections to the planned location of development as intended by paragraph (1). <i>Elucidation of Article 21 (2): Study of the objections to the planned location of development” means a study of objection documentation presented by the Land Rights Holders.</i></p> <p>(3) The team as intended by paragraph (2) shall include:</p> <ul style="list-style-type: none"> a. provincial secretary or designated official as chairman serving concurrently as member; b. the Head of the Provincial Office of the National Land Agency as secretary serving concurrently as member; c. an agency in charge of the regional Development Planning as member; d. the Head of the Provincial Office of the Ministry of Law and Human Rights as member; e. the regent/mayor or a designated official as member; and f. an academic(s) as member(s). <p>(4) The team as intended by paragraph (3) shall have the duties to:</p> <ul style="list-style-type: none"> a. make inventory of the problems due to which a reason(s) to object arise; b. hold a meeting or make clarification with the objecting party; and c. make a recommendation whether the objection is accepted or rejected. <p>(5) The study findings of the team as intended by paragraph (2) shall be made by a recommendation whether the objection to the planned location of development is accepted or rejected within fourteen (14) working days of the receipt of the application by the governor</p> <p>(6) The governor upon the recommendation as intended by paragraph (4) shall issue a letter of the acceptance or rejection of objections to the planned location of development.</p> <p>Article 22</p> <p>(1) Where the objection to the planned location of development as intended by Article (21) paragraph (6) is rejected, the governor shall confirm the location of development.</p> <p>(2) Where the objection to the planned location of development as intended by Article (21) paragraph (6) is accepted, the governor shall notify the Agency needing land to submit the planned location of development elsewhere.</p> <p>Article 23</p> <p>(1) Where upon the confirmation of the location of development as intended by Article 19 paragraph (6) and Article 22 paragraph (1) there is still an objection, the Land Rights Holder to the confirmed location may file a lawsuit with the local</p>		

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	<p>State Administrative Court within thirty (30) working days of the issue of the location confirmation.</p> <p>(2) The State Administrative Court shall hold whether to accept or reject the lawsuit as intended by paragraph (1) within thirty (30) working days of the receipt of the lawsuit.</p> <p>(3) The objecting party to the decision of the State Administrative Court as intended by paragraph (2) may within fourteen (14) working days file a petition for cassation with the Supreme Court of the Republic of Indonesia.</p> <p>(4) The Supreme Court must issue a decision within thirty (30) working days of the receipt of the petition for cassation.</p> <p>(5) The final and binding court decision shall be the basis on whether or not to continue the Acquisition of Land for Development in the Public Purposes.</p> <p>The length of time that it takes for the confirmation of the Development Plan location has a period of two years for completion and a possibility of an extension of one year as stated in Article 24: "The confirmation of the development location in the Public Purposes as intended by Article 19 paragraph (6) or Article 22 paragraph (1) shall be distributed within two (2) years, with extension of not exceeding one (1) year."</p> <p>Article 26</p> <p>(1) The governor together with the Agency needing land shall announce the location confirmation for development in the Public Purposes.</p> <p>(2) The announcement as intended by paragraph (1) shall aim to notify the community that the relevant location that is affected by development is in the Public Purposes.</p> <p>Article 35</p> <p>(1) In the case that the repeated Public Consultation as stated in Article 34 paragraph (1) there are still parties objecting to the location of the Development Plan, the government institution that needs the land shall report the objection to the Governor through the Preparation Team.</p> <p>(2) The governor will set up an Objection Evaluation Team to conduct on analysis of the objections to the Development Plan as referred to in paragraph (1).</p> <p>(3) The Objection Evaluation Team as referred to in paragraph (2) consists of:</p> <ul style="list-style-type: none"> a. Secretary of the Provincial Government or appointed official acting as the chairperson and member; b. Head of Regional office of the BPN as the secretary and member; c. Relevant institution dealing with local government development plans 		

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	<p>as a member; d. Head of the local office of the Ministry of Law and Human Rights as a member; e. Head of district/mayor or appointed official as a member; and f. Academic as a member.</p> <p>(4) The Objection Evaluation Team as referred to in paragraph (3) have the responsibility to: a. Inventory the underlying issues of the objection; b. Carry out meetings or clarifications with the objecting parties; and c. Make recommendations to accept or reject the objection.</p> <p>(5) In order to facilitate the implementation of the tasks as intended in paragraph (4) the chairperson of the Objection Evaluation Team can form a secretariat.</p> <p>Article 38 (1) Where there is agreement on the form and/or the amount of Compensation, The Entitled Parties may file an objection with the local district court within fourteen (14) working days of the negotiation on determination of Compensation as intended by Article 37 section (1). (2) The district court shall decide the form and/or the amount of Compensation within thirty (30) working days of the receipt of the filing of objection. <i>Elucidation of Article 38 (2): For consideration in the making of a decision on the amount of Compensation, the interested parties may procure an appraisal expert witness for his/her opinion to be heard for comparison in the assessment of Compensation.</i> (4) The objecting party to the decision of the district court as intended by section (2) may within fourteen (14) working days therefrom file a petition for cassation with the Supreme Court of the Republic of Indonesia. (5) The Supreme Court must render its decision within thirty (30) working days of the receipt of the petition for cassation. (6) A final and binding decision of the district court/the Supreme Court shall constitute the ground for payment of Compensation to the party filing an objection.</p> <p>Article 39 Where the Entitled Parties reject the form and/or the amount of Compensation but do not file an objection within such period as intended by Article 38 section (1), the Entitled Parties shall by operation of law be deemed to accept the form and the amount of Compensation as intended by Article 37 section (1).</p> <p>Perma 2 of 2016 Concerning Guidelines for the Dispute of Location Determination</p>		

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	<p>for the Development of Public Interest at State Judicial Administration⁵</p> <p>Article 2 states: “The Court has authority to examine, decide and resolve disputes of Location Determination for Development of Public Interest.”</p> <p>Article 3 The entitled party may file a lawsuit to the competent court which demanded that the location determination is declared void or invalid.</p> <p>Article 4 Filing a lawsuit as referred to in Article 2 shall be no later than 30 days since the announcement of location determination.</p> <p>Perma 3 of 2016 Concerning Procedure for Filing Objections and Custody Compensation to Court for Land Acquisition for Development of Public Interest</p> <p>Article 2 The Court has authority to examine, hear, decide and finalize Objection to the form and / or the amount of compensation based on deliberation of compensation.</p> <p>Article 3 The objection referred to in Article 2 submitted in the form of petition.</p> <p>Article 4 Grievances may be filed by: a. the entitled party or their proxies who present but refused the result deliberation of determination of compensation; and / or b. the entitled party who are not present and does not authorize, who rejected the determination of compensation</p>		
Key Element (6): Support the social and	Law No 2 of 2012 on Land Acquisition for Development for Public Interest provides equal provisions:	Full Equivalence⁶	None Required

⁵ Government of Indonesia, 2016. Regulation of Supreme Court 2 of 2016 Concerning Guidelines For the Dispute of Location Determination for the Development of Public Interest at State Judicial Administration⁵

⁶ Law 1 of 2011 on Housing and Settlement Area and its implementing regulation: Government Regulation No 88 of 2014 stipulates provision on settlement that must be referred because law 1 of 2011 is the “lex specialist” law that specifically regulates housing and settlement development including the community affected by public use project activities.

(A) ADB Safeguard Policy Statement	(B) Corresponding DMC Legal Provisions	(C) Extent of Equivalence ¹	(D) Recommended Gap-filling Measures
cultural institutions of displaced persons and their host population.	<p>Article 15 (2): The Land Acquisition planning documentation as intended by section (1) shall be prepared under the feasibility study made in accordance with the laws and regulations.</p> <p><i>Elucidation of Article 15 (2):</i> <i>The feasibility study shall include:</i></p> <ul style="list-style-type: none"> <i>a. social-economic survey;</i> <i>b. location feasibility;</i> <i>c. analysis of cost and development benefit to the area and the community;</i> <i>d. estimated land value;</i> <i>e. environmental impacts and social impacts that may arise out of the Acquisition of Land and construction; and</i> <i>f. other study as necessary (could be study on the community culture, study on politics and security, or study on religious affairs to anticipate any specific impact due to the development of public purposes)</i> <p>Article 1 of Law 1 of 2011 on Housing and Settlement Areas in the following paragraphs:</p> <ol style="list-style-type: none"> 1. Housing and settlement area is a unitary system that consist of advisory, housing and settlement area development, maintenance, improvement, prevention and quality enhancement toward slum housing and settlement, to provide land, fund, finance facility, and public participation. 2. Housing is collection of house as part of settlement either in urban or rural area that is provided along with facilities (<i>prasarana</i> and <i>sarana</i>) and public utilities as consequence for fulfilling decent houses. 3. Settlement area is part of environment outside of conservation area in urban or rural areas that aims as environment for live or living and activities to support live and livelihood. 5. Settlement is part settlement area that consist of more than a housing unite that provide public facilities (<i>prasarana</i> and <i>sarana</i>), public utility and provide support for other functions in urban or rural area. 21. Basic facility (<i>Prasarana</i>) is basic facility of surrounding settlement that fulfils certain standard for decent living, healthy, secure and comfortable. 22. Support facility (<i>Sarana</i>) is facility of surrounding settlement that aims to support economic activities. 23. Public utility is supporting facility for community service. 		

(A) ADB Safeguard Policy Statement	(B) Corresponding DMC Legal Provisions	(C) Extent of Equivalence ¹	(D) Recommended Gap-filling Measures
<p>Key Element (7): Where involuntary resettlement impacts and risks are highly complex and sensitive, compensation and resettlement decisions should be preceded by a social preparation phase.</p>	<p>Law No 2 of 2012 on Land Acquisition for Development for Public Interest</p> <p>Article 15 (1) Land Acquisition plan in the Public Interest as intended by Article 14 section (1) shall be prepared in the form of Land Acquisition planning documentation that contains at least:</p> <ul style="list-style-type: none"> a. the objectives and purposes of the development plan; b. consistency with the Regional Spatial Planning and the National/Regional Development Plan; c. land location; d. land size needed; e. general description of the land status; f. estimated period of the implementation of Acquisition of Land; g. estimated period of the implementation of construction; h. estimated land value; and i. budget plan. <p><i>Elucidation of Article 15 (1):</i> <i>Preparation of Land Acquisition planning documentation may be made together with the Agency needing land and the relevant technical agency (ies) or with the assistance of professional institutions designated by the Agency needing land.</i></p> <p>(2) The Land Acquisition planning documentation as intended by section (1) shall be prepared under the feasibility study made in accordance with the laws and regulations.</p> <p><i>Elucidation of Article 15 (2):</i> <i>The feasibility study shall include:</i></p> <ul style="list-style-type: none"> a. social-economic survey; b. location feasibility; c. analysis of cost and development benefit to the area and the community; d. estimated land value; e. environmental impacts and social impacts that may arise out of the Acquisition of Land and construction; and f. other study as necessary. (could be study on the community culture, study on politics and security, or study on religious affairs to anticipate any specific impact due to the development of public purposes) 	<p>Full Equivalence⁷</p>	<p>None required.</p>
<p>Policy Principle 3: 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</p>			

⁷ A social preparation plan is required to be included in the feasibility study that covers: socioeconomic survey, location feasibility, cost and benefit analysis, land valuation, environmental and social impact analysis. In this respect the legal framework goes beyond the requirements for this Key Element,

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schemes where possible.			
<p>Key element (1): Improve, or at least restore, the livelihoods of all displaced persons through 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.</p>	<p>Law 2 of 2012 on Land Acquisition for Development for Public Interest stipulates equal provisions as follow:</p> <p>Article 1 paragraph 2 says that “Acquisition of Land” means any activity to make land available by giving <u>reasonable and just compensation to the entitled party</u>.</p> <p>Article 1 paragraph 10 says that “Compensation” means <u>any reasonable and just compensation</u> given to the entitled party in exchange for acquisition of land.</p> <p>Law 2 Article 2 states that Acquisition of Land in the Public Purposes shall be implemented under the principles of:</p> <ul style="list-style-type: none"> b. justice <i>Elucidation: “Principle of justice” means to guarantee any reasonable reward in exchange for the acquired land to the Entitled Parties in the process of Acquisition of Land such that they have opportunity to live their better life.</i> c. benefit <i>Elucidation: “Principle of benefit” means that the outcome of the Acquisition of Land can give to a large extent benefit to the public, the nation, and the state.</i> h. welfare <i>Elucidation: “Principle of welfare” means that the Acquisition of Land for development can bring added value to the viability of the Entitled Parties and the public in general.</i> <p>Article 33 Appraisal of the amount of Compensation by the Appraiser as stated by Article 32 section (1) shall be made on a parcel-by-parcel basis, including:</p> <ul style="list-style-type: none"> a. land b. overground space and underground space of the land c. buildings d. plants e. objects related to the land; and/or f. other appraisable losses. <p><i>Elucidation of Article 33 (f): “Other appraisable loss” means nonphysical loss equivalent to money value, for example, loss due to loss of business or job, cost</i></p>	<p>Full Equivalence</p>	<p>None Required</p>

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	<p><i>of change of location, cost of change of profession, and loss of value of the remaining property.</i></p> <p>Article 36 The giving of Compensation may be made in the form of:</p> <ul style="list-style-type: none"> a. money (cash); b. substitute land; c. resettlements; <i>Elucidation of Article 36 (c): "Resettlements" means a process of replacing the Entitled Party's land with the land of different location as agreed upon during the process of Acquisition of Land.</i> d. shareholding; or <i>Elucidation of Article 36 (d): "Shareholding" means placement of shares in the relevant development activities in the public interest and/or the management thereof is made by agreement of the parties.</i> e. other forms as agreed upon by both parties. <i>Elucidation of Article 36 (e): Other forms as agreed upon by both parties are, for example, a combination of two (2) or more forms of Compensation as intended by point (a), point (b), point (c), and point (d).</i> <p>Perpres 71 of 2012 on Implementation of Land Acquisition for Development in the Public Interest</p> <p>Article 81 (1) The distribution of other forms of Compensation agreed to by both parties could be a combination of 2 (two) or more of the forms of compensation as referred in article 74 paragraph (1) letter a to d. (2) The distribution of Compensation as referred to in paragraph (1) is implemented using the principle of mutatis mutandis as referred to in Article 76 through Article 80</p> <p>Law 11 of 2005 on Ratification of ICESC Rights:</p> <p>Article 11 States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent.</p>		

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	<p>Article 570 of the Indonesian Civil Code (KUH Perdata): The ownership rights is right to enjoy goods freely and to do anything toward goods fully free unless does not violate laws and general regulations enacted by the authorized entity/party and does not disturb other people' rights; all the rights cannot prevent possibility of right's expropriation for public use and suitable compensation regulated by laws and regulations.</p> <p>– Standard Penilaian Indonesia/Indonesian appraisal standard 306(SPI): the appraisal requires "solacium" to compensate for emotional distress created by land acquisition/ involuntary resettlement process⁸.</p>		
<p>Key element (2): Improve, or at least restore, the livelihoods of all displaced persons through prompt replacement of assets with access to assets of equal or higher value.</p>	<p>Law 2 of 2012 on Land Acquisition for Development for Public Interest stipulates equal provisions as follow:</p> <p>Article 1 paragraph 2 says that "Acquisition of Land" means any activity to make land available by giving reasonable and just compensation to the entitled party.</p> <p>Article 1 paragraph 10 says that "Compensation" means any reasonable and just compensation given to the entitled party in exchange for acquisition of land.</p> <p>Article 33 Appraisal of the amount of Compensation by the Appraiser as stated by Article 32 section (1) shall be made on a parcel-by-parcel basis, including:</p> <ol style="list-style-type: none"> a. land b. overground space and underground space of the land c. buildings d. plants e. objects related to the land; and/or f. other appraisable losses. <p><i>Elucidation of Article 33 (f): "Other appraisable loss" means nonphysical loss equivalent to money value, for example, loss due to loss of business or job, cost of change of location, cost of change of profession, and loss of value of the remaining property.</i></p> <p>Head of BPN Regulation 5 (2012), Art. 29(1) In case of the agreed compensation in the form of replacement land, agency needing land provides replacement land not later than</p>	<p>Full Equivalence</p>	<p>None Required</p>

⁸ The SPI standard is used by independent appraisers in Indonesia under MAPPI (the Indonesian Professional Appraisal Society). All professional appraisers are required to be members of MAPPI.

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	<p>6 (six) months since the determination of the form of compensation by land acquisition team.</p> <p>(2) In case of agency needing land has gained land replacement and has agreed by the Entitled Party, the agency needing the land transfer the replacement land to the Entitled Party after obtaining validation from the chairman of the land acquisition implementation team.</p> <p>Article 570 of the Indonesian Civil Code (KUH Perdata) says that the ownership rights is right to enjoy goods freely and to do anything toward goods fully free unless does not violate laws and general regulations enacted by the authorized entity/party and does not disturb other people' rights; all the rights cannot prevent possibility of right's expropriation for public use and suitable compensation regulated by laws and regulations.</p> <p>Standard Penilaian Indonesia / Indonesian appraisal standard 306 (SPI) the appraisal requires "solacium" to compensate for emotional distress created by land acquisition/ involuntary resettlement process⁹.</p>		
<p>Key element (3): Improve, or at least restore, the livelihoods of all displaced persons through prompt compensation at full replacement cost for assets that cannot be restored.</p>	<p>Law 2 of 2012 on Land Acquisition for Development for Public Use stipulates equal provisions as follow:</p> <p>Article 1 paragraph 2 "Acquisition of Land" means any activity to make land available by giving reasonable and just compensation to the entitled party.</p> <p>Article 1 paragraph 4 "Object of the Acquired Land" means land, over-ground and underground space, buildings, plants, objects related to land, or other appraisable objects.</p> <p>Article 1 paragraph 10 says that "Compensation" means any reasonable and just compensation given to the entitled party in exchange for acquisition of land.</p> <p>Standard Penilaian Indonesia / Indonesian appraisal standard 306(SP) the appraisal requires "solacium" to compensate for emotional distress created by land acquisition/ involuntary resettlement process</p> <p>Article 570 of the Indonesian Civil Code (KUH Perdata) says that the ownership rights is right to enjoy goods freely and to do anything toward goods fully free unless does not violate laws and general regulations enacted by the authorized entity/party and does not disturb other people' rights; all the rights cannot be prevented from possibility of right's</p>	<p>Full Equivalence.</p>	<p>None required</p>

⁹ The SPI standard is used by independent appraisers in Indonesia under MAPPI (the Indonesian Professional Appraisal Society). All the professional appraisers are required to be members of MAPPI.

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	expropriation for public use and suitable compensation regulated by the laws and regulations.		
<p>Key element (4): Improve, or at least restore, the livelihoods of all displaced persons through additional revenues and services through benefit sharing schemes where possible.</p>	<p>Law 2 of 2012 on Land Acquisition for Development for Public Interest stipulates equal provisions as follow:</p> <p>Article 1 paragraph 2 says that “Acquisition of Land” means any activity to make land available by giving reasonable and just compensation to the entitled party. Article 1 paragraph 10 says that “Compensation” means any reasonable and just compensation given to the entitled party in exchange for acquisition of land.</p> <p>Article 2 of Law 2 of 2012 states that Acquisition of Land in the Public Purposes shall be implemented under the principles of:</p> <ul style="list-style-type: none"> b. justice <i>Elucidation: “Principle of justice” means to guarantee any reasonable reward in exchange for the acquired land to the Land Rights Holders in the process of Acquisition of Land such that they have opportunity to live their better life.</i> c. benefit <i>Elucidation: “Principle of benefit” means that the outcome of the Acquisition of Land can give to a large extent benefit to the public, the nation, and the state.</i> h. welfare <i>Elucidation: “Principle of welfare” means that the Acquisition of Land for development can bring added value to the viability of the Land Rights Holders and the public in general.</i> <p>Perpres 71 of 2012 on Implementation of Land Acquisition for Development in the Public Interest</p> <p>Article 80 (1) The Compensation in the form of ownership shares as referred to in Article 74 paragraph (1) letter d is given by a State Owned Company (<i>Badan Usaha Milik Negara</i>), which is a publicly listed company and has received special tasks from the Government. (2) Ownership of share as referred to in paragraph (1) is implemented based on agreement between the Entitled Party and the State Owned Company (<i>Badan Usaha Milik Negara</i>) that has received a special assignment from the Government.</p>	Full Equivalence	None required

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	(3) The distribution of compensation as referred in paragraph (1) must be carried out at the same time as the Entitled Party relinquishes its rights.		
<p>Policy Principle 4: 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.</p>			
<p>Key element (1): Provide physically and economically displaced persons with needed assistance, including, if there is relocation, secured tenure to relocation land, better housing at resettlement sites with comparable access to employment and production opportunities. Integrate resettled persons economically and socially into their host communities, and extend project benefits to host communities.</p>	<p>Law 2 of 2012 on Land Acquisition for Development for Public Interest stipulates equal provisions as follow:</p> <p>Article 1 paragraph 2 says that “Acquisition of Land” means any activity to make land available by giving reasonable and just compensation to the entitled party. Article 1 paragraph 10 says that “Compensation” means any reasonable and just compensation given to the entitled party in exchange for acquisition of land.</p> <p>Perpres 71 of 2012 on Implementation of Land Acquisition for Development for Public Interest</p> <p>Article 78 (1) ...Compensation in the form of resettlement as referred to in Article 74 paragraph (1) letter c is to be provided by the government institution needing land through the Land acquisition Implementation Team. (2) Resettlement as referred to in paragraph (1) is given for and under the name of the Entitled Party.</p> <p>Article 79. In case the form of Compensation with replacement land or resettlement, then public dialog is conducted as follows: In the distribution of replacement land or resettlement as the form of Compensation, public dialogue as referred to in article 68 is to determine the location of the replacement land or of the resettlement.</p> <p>Law 1 of 2011 on Housing and Settlement Areas in the following relevant articles and paragraphs :</p> <p>Article 1 of the following paragraphs say: 1. Housing and settlement area is a unitary system that consist of advisory, housing and settlement area development, maintenance, improvement, prevention and quality</p>	<p>Partial Equivalence</p> <p>The legal framework provides secure tenure to land, better housing at resettlement sites, public facilities (<i>prasarana and sarana</i>) and public utility, and other functions in urban or rural areas. However, it does not provide comparable access to employment and production activities. It does not stipulate integration of resettled persons into their host communities and extension of project benefits to host communities.</p>	<p>The legal framework should require that relocated persons are provided comparable access to employment and production activities. It should also require extension of project benefits to host communities</p>

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	<p>enhancement toward slum housing and settlement, to provide land, fund, finance facility, and public participation.</p> <p>2. Housing is collection of house as part of settlement either in urban or rural area that is provided along with facilities (prasarana and sarana) and public utilities as consequence for fulfilling decent houses.</p> <p>3. Settlement area is part of environment outside of conservation area in urban or rural areas that aims as environment for live or living and activities to support live and livelihood.</p> <p>5. Settlement is part settlement area that consist of more than a housing unite that provide public facilities (prasarana and sarana) public utility and provide support for other functions in urban or rural area.</p> <p>21. Basic facility (Prasarana) is basic facility of surrounding settlement that fulfil certain standard for decent living, healthy, secure and comfortable.</p> <p>22. Support facility (Sarana) is facility of surrounding settlement that aims to support economic activities.</p> <p>23. Public utility is supporting facility for community service</p> <p>Article 106 To provide land for development of house, housing and settlement area can be carried out through:</p> <p>f. land acquisition for development of public use as regulated in provisions of the law and regulations.</p> <p>Government Regulation No 88 of 2014 on Housing and Settlement Area sets the following relevant provisions:</p> <p>Article 2 paragraph 2 states: Housing and Settlement Development Advisory is carried out in hierarchy as follow:</p> <ol style="list-style-type: none"> Minister to Governor, Regent/Mayor and stakeholders Governor to Regent/mayor and stakeholders; and Regent/Mayor to Stakeholders. <p><i>Elucidation of Article 2 defines "stakeholders" as private parties, finance institution, developer, contractor, academician from universities and community member.</i></p> <p>Article 8 says that housing and settlement development advisory is carried out through;</p> <p>f. assistance and empowerment</p> <p>Article 15 paragraph (3) says that empowerment as intended in paragraph 1 is carried out to improve government capacity and competence, regional government and stakeholders.</p>		

(A) ADB Safeguard Policy Statement	(B) Corresponding DMC Legal Provisions	(C) Extent of Equivalence ¹	(D) Recommended Gap-filling Measures
	<p>Article 16 says: Empowerment of stakeholders as intended in Article 15 paragraph 3 can be carried out through:</p> <ul style="list-style-type: none"> a. facilitate housing and settlement area development forum; b. to accommodate public participation in developing housing and settlement area; and c. to improve supervision over housing and settlement area development 		
<p>Key element (2): Provide physically and economically displaced persons with transitional support and development assistance, such as land development, credit facilities, training, or employment opportunities.</p>	<p>Law 2 of 2012 on Land Acquisition for Development for Public Interest stipulates equal provisions as follow:</p> <p>Article 1 paragraph 2 says that “Acquisition of Land” means any activity to make land available by giving reasonable and just compensation to the entitled party. Article 1 paragraph 4 “Object of the Acquired Land” means land, over-ground and underground space, buildings, plants, objects related to land, or other appraisable objects. Article 1 paragraph 10 says that “Compensation” means any reasonable and just compensation given to the entitled party in exchange for acquisition of land.</p> <p>Perpres 71 of 2012 on Implementation of Land Acquisition for Development for Public Interest</p> <p>Article 36 indicates the task of appraiser to carry out the appraisal of the amount of compensation parcel by parcel, which includes:</p> <ul style="list-style-type: none"> a. Land; b. Space above and below the surface of the land; c. Buildings; d. Plants; e. Objects related to the land; and/or f. Other losses that can be appraised. <p><i>Elucidation of Article 36 (f): “Other appraisable loss” means nonphysical loss equivalent to money value, for example, loss due to loss of business or job, cost of change of location, cost of change of profession, and loss of value of the remaining property.</i></p> <p>Law 1 of 2011 on Housing and Settlement Areas in the following relevant articles and paragraphs :</p> <p>Article 1 of the following paragraphs say:</p>	<p>Partial Equivalence</p> <p>The resettlement support is limited to i) housing and settlement area development and moving cost but does not include land development, credit facilities, training, or employment opportunities.</p>	

(A) ADB Safeguard Policy Statement	(B) Corresponding DMC Legal Provisions	(C) Extent of Equivalence ¹	(D) Recommended Gap-filling Measures
	<p>1. Housing and settlement area is a unitary system that consist of advisory, housing and settlement area development, maintenance, improvement, prevention and quality enhancement toward slum housing and settlement, to provide land, fund, finance facility, and public participation.</p> <p>2. Housing is collection of house as part of settlement either in urban or rural area that is provided along with facilities (<i>prasarana</i> and <i>sarana</i>) and public utilities as consequence for fulfilling decent houses.</p> <p>3. Settlement area is part of environment outside of conservation area in urban or rural areas that aims as environment for live or living and activities to support live and livelihood.</p> <p>5. Settlement is part settlement area that consist of more than a housing unite that provide public facilities (<i>prasarana</i> and <i>sarana</i>) public utility and provide support for other functions in urban or rural area.</p> <p>21. Basic facility (<i>Prasarana</i>) is basic facility of surrounding settlement that fulfil certain standard for decent living, healthy, secure and comfortable.</p> <p>22. Support facility (<i>Sarana</i>) is facility of surrounding settlement that aims to support economic activities.</p> <p>23. Public utility is supporting facility for community service</p> <p>Article 106 To provide land for development of house, housing and settlement area can be carried out through: f. land acquisition for development of public Interest as regulated in provisions of the law and regulations.</p> <p>Government Regulation No 88 of 2014 on Housing and Settlement Area sets the following relevant provisions:</p> <p>Article 2 paragraph 2 states: Housing and Settlement Development Advisory is carried out in hierarchy as follow: a. Minister to Governor, Regent/Mayor and stakeholders b. Governor to Regent/mayor and stakeholders; and c. Regent/Mayor to Stakeholders. <i>Elucidation of Article 2 defines "stakeholders" as private parties, finance institution, developer, contractor, academician from universities and community member.</i></p> <p>Article 8 says that housing and settlement development advisory is carried out through; f. assistance and empowerment</p>		

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	<p>Article 15 paragraph (3) says that empowerment as intended in paragraph 1 is carried out to improve government capacity and competence, regional government and stakeholders.</p> <p>Article 16 says: Empowerment of stakeholders as intended in Article 15 paragraph 3 can be carried out through:</p> <ul style="list-style-type: none"> a. facilitate housing and settlement area development forum; b. to accommodate public participation in developing housing and settlement area; and c. to improve supervision over housing and settlement area development 		
<p>Key element (3): Provide physically and economically displaced persons with civic infrastructure and community services, as required.</p>	<p>Law 2 of 2012 on Land Acquisition for Development for Public Interest stipulates equal provisions as follow:</p> <p>Article 1 paragraph 2 says that “Acquisition of Land” means any activity to make land available by giving reasonable and just compensation to the entitled party. Article 1 paragraph 10 says that “Compensation” means any reasonable and just compensation given to the entitled party in exchange for acquisition of land.</p> <p>Law 1 of 2011 on Housing and Settlement Areas in the following relevant articles and paragraphs :</p> <p>Article 1 of the following paragraphs say:</p> <ol style="list-style-type: none"> 1. Housing and settlement area is a unitary system that consist of advisory, housing and settlement area development, maintenance, improvement, prevention and quality enhancement toward slum housing and settlement, to provide land, fund, finance facility, and public participation. 2. Housing is collection of house as part of settlement either in urban or rural area that is provided along with facilities (prasarana and sarana) and public utilities as consequence for fulfilling decent houses. 3. Settlement area is part of environment outside of conservation area in urban or rural areas that aims as environment for live or living and activities to support live and livelihood. 5. Settlement is part settlement area that consist of more than a housing unite that provide public facilities (prasarana and sarana) public utility and provide support for other functions in urban or rural area. 21. Basic facility (Prasarana) is basic facility of surrounding settlement that fulfil certain standard for decent living, healthy, secure and comfortable. 22. Support facility (Sarana) is facility of surrounding settlement that aims to support economic activities. 	<p>Full Equivalence</p>	<p>None Required</p>

(A) ADB Safeguard Policy Statement	(B) Corresponding DMC Legal Provisions	(C) Extent of Equivalence ¹	(D) Recommended Gap-filling Measures
	<p>23. Public utility is supporting facility for community service</p> <p>Article 106 To provide land for development of house, housing and settlement area can be carried out through: f. land acquisition for development of public use as regulated in provisions of the law and regulations.</p> <p>Government Regulation No 88 of 2014 on Housing and Settlement Area sets the following relevant provisions:</p> <p>Article 2 paragraph 2 states: Housing and Settlement Development Advisory is carried out in hierarchy as follow: a. Minister to Governor, Regent/Mayor and stakeholders b. Governor to Regent/mayor and stakeholders; and c. Regent/Mayor to Stakeholders. <i>Elucidation of Article 2 defines “stakeholders” as private parties, finance institution, developer, contractor, academician from universities and community member.</i></p> <p>Article 8 says that housing and settlement development advisory is carried out through; f. assistance and empowerment</p> <p>Article 15 paragraph (3) says that empowerment as intended in paragraph 1 is carried out to improve government capacity and competence, regional government and stakeholders.</p> <p>Article 16 says: Empowerment of stakeholders as intended in Article 15 paragraph 3 can be carried out through: a. facilitate housing and settlement area development forum; b. to accommodate public participation in developing housing and settlement area; and c. to improve supervision over housing and settlement area development</p>		
<p>Policy Principle 5: 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.</p>			
Key element (1):	Law 2 of 2012 on Land Acquisition for Development for Public Interest stipulates	Full Equivalence	None required

(A) ADB Safeguard Policy Statement	(B) Corresponding DMC Legal Provisions	(C) Extent of Equivalence ¹	(D) Recommended Gap-filling Measures
<p>Improve the standards of living of the displaced poor and other vulnerable groups, including women, to at least national minimum standards.</p>	<p>equal provisions as follow:</p> <p>Article 1 paragraph 2 says that “Acquisition of Land” means any activity to make land available by giving reasonable and just compensation to the entitled party. Article 1 paragraph 10 says that “Compensation” means any reasonable and just compensation given to the entitled party in exchange for acquisition of land.</p> <p>Article 2 states that Acquisition of Land in the Public Purposes shall be implemented under the principles of:</p> <ul style="list-style-type: none"> a. humanity <i>Elucidation: “Principle of humanity” means that the Acquisition of Land must proportionally protect and honor the human rights, dignity, and degrees of every citizen and residents of Indonesia.</i> b. justice <i>Elucidation: “Principle of justice” means to guarantee any reasonable reward in exchange for the acquired land to the Land Rights Holders in the process of Acquisition of Land such that they have opportunity to live their better life.</i> b. benefit <i>Elucidation: “Principle of benefit” means that the outcome of the Acquisition of Land can give to a large extent benefit to the public, the nation, and the state.</i> c. welfare <i>Elucidation: “Principle of welfare” means that the Acquisition of Land for development can bring added value to the viability of the Land Rights Holders and the public in general.</i> <p>Law 39 of 1999 on Human Rights</p> <p>Article 5. includes the following provision: (3) All members of vulnerable groups in society, such as children, the poor, and the disabled, are entitled to greater protection of human rights.</p> <p>Article 11 of the ICESCR Rights as ratified by Law 11 of 2005 on Ratification of ICESCR Rights says that the States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right,</p>		

(A) ADB Safeguard Policy Statement	(B) Corresponding DMC Legal Provisions	(C) Extent of Equivalence ¹	(D) Recommended Gap-filling Measures
	<p>recognizing to this effect the essential importance of international cooperation based on free consent.</p> <p>Law 11 of 2009 on Social Welfare</p> <p>Article 1 (2) Implementation of Social Welfare is an purposeful, integrated and sustainable efforts carried out by the Government, local government, and community in the form of social services in order to meet the basic needs of every citizen, which includes social rehabilitation, social security, social empowerment, and social protection.</p> <p>Article 5. Implementation of social welfare is prioritized to those who have a life that is not worth humanly and has criteria of social issues: a. poverty; b. neglect/displacement; c. disability; d. remoteness; e. impaired social and behavioural deviations; f. victims of disasters; and / or g. victims of violence, exploitation and discrimination.</p> <p>Article 6. Implementation of social welfare include; a. Social rehabilitation; b. Social Security; c. Social empowerment; and d. Social protection.</p> <p>Article 12 (2) Social empowerment shall be done through: a. an increase in the willingness and ability; b. digging potential and resources; c. extracting the basic values; d. granting access; and / or e. granting of business assistance.</p> <p>(3) Social empowerment is in the form of: a. diagnosis and motivation;</p>		

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	<ul style="list-style-type: none"> b. skills training; c. accompaniment/assistance; d. providing of capital stimulants, business equipment, and place of business; e. increasing market access for production result; f. supervision and social advocacy; g. strengthening social harmony; h. environmental regulation; and / or i. Further guidance. 		
<p>Key Element (2): In rural areas provide them with legal and affordable access to land and resources.</p>	<p>Law 2 of 2012 on Land Acquisition for Development for Public Interest stipulates equal provisions as follow:</p> <p>Article 1 paragraph 2 says that "Acquisition of Land" means any activity to make land available by giving reasonable and just compensation to the entitled party. Article 1 paragraph 10 says that "Compensation" means any reasonable and just compensation given to the entitled party in exchange for acquisition of land.</p> <p>Article 2 states that Acquisition of Land in the Public Purposes shall be implemented under the principles of:</p> <ul style="list-style-type: none"> a. humanity <i>Elucidation: "Principle of humanity" means that the Acquisition of Land must proportionally protect and honor the human rights, dignity, and degrees of every citizen and residents of Indonesia.</i> c. welfare <i>Elucidation: "Principle of welfare" means that the Acquisition of Land for development can bring added value to the viability of the Land Rights Holders and the public in general.</i> <p>Article 36 of Perpres 71 of 2012 indicates the task of appraiser to carry out the appraisal of the amount of compensation parcel by parcel, which includes:</p> <ul style="list-style-type: none"> a. Land; b. Space above and below the surface of the land; c. Buildings; d. Plants; e. Objects related to the land; and/or f. Other losses that can be appraised. <i>Elucidation of Article 36 (f): "Other appraisable loss" means nonphysical loss equivalent to money value, for example, loss due to loss of business or job, cost of change of location, cost of change of profession, and loss of value of the remaining property.</i> 	<p>Full Equivalence.</p>	<p>None required</p>

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	<p>In addition to Law 2 of 2012, Law 39 of 1999 on Human Right provides provision on “vulnerable groups” as stated in Article 5.</p> <p>It says that (1) Everyone is recognized as an individual who has the right to demand and obtain equal treatment and protection before the law as be fits his or her human dignity. (2) Everyone has the right to truly just support and protection from an objective, impartial judiciary. (3) All members of vulnerable groups in society, such as children, the poor, and the disabled, are entitled to greater protection of human rights.</p> <p>Article 11 of ICESCR as ratified by Law 11 of 2005 on ICESCR Rights: States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent.</p> <p>Law No 16 of 2011 on Legal Aid provides equal provisions as follow:</p> <p>Article 1 paragraph 1 says that Legal aid is Pro Bono legal services that is granted by legal aid provider to recipient of legal aid freely (without any charges). Article 1 paragraph 2 says that legal aid recipient is a person or group of poor people. Article 1 paragraph 3 legal aid provider is legal aid institution or civil society group that provides legal aid services based on this law.</p> <p>Law 39 of 1999 on Human Rights</p> <p>Article 5 includes the following provision on “vulnerable groups:” (3) <u>All members of vulnerable groups in society, such as children, the poor, and the disabled, are entitled to greater protection of human rights.</u></p>		
<p>Key Element (3): In urban areas provide them with appropriate income sources and legal and affordable access to adequate housing.</p>	<p>Law 2 of 2012 on Land Acquisition for Development for Public Interest stipulates equal provisions as follow:</p> <p>Article 1 paragraph 2 says that “Acquisition of Land” means any activity to make land available by giving reasonable and just compensation to the entitled party. Article 1 paragraph 10 says that “Compensation” means any reasonable and just compensation given to the entitled party in exchange for acquisition of land.</p>	<p>Full Equivalence</p>	<p>None Required</p>

(A) ADB Safeguard Policy Statement	(B) Corresponding DMC Legal Provisions	(C) Extent of Equivalence ¹	(D) Recommended Gap-filling Measures
	<p>Article 2 states that Acquisition of Land in the Public Purposes shall be implemented under the principles of:</p> <ul style="list-style-type: none"> a. humanity <i>Elucidation: "Principle of humanity" means that the Acquisition of Land must proportionally protect and honor the human rights, dignity, and degrees of every citizen and residents of Indonesia.</i> b. justice <i>Elucidation: "Principle of justice" means to guarantee any reasonable reward in exchange for the acquired land to the Land Rights Holders in the process of Acquisition of Land such that they have opportunity to live their better life.</i> b. benefit <i>Elucidation: "Principle of benefit" means that the outcome of the Acquisition of Land can give to a large extent benefit to the public, the nation, and the state.</i> c. welfare <i>Elucidation: "Principle of welfare" means that the Acquisition of Land for development can bring added value to the viability of the Land Rights Holders and the public in general.</i> <p>Perpres 71 of 2012 on Implementation of Land Acquisition for Development in the Public Interest Article 36 indicates the task of appraiser to carry out the appraisal of the amount of compensation parcel by parcel, which includes:</p> <ul style="list-style-type: none"> a. Land; b. Space above and below the surface of the land; c. Buildings; d. Plants; e. Objects related to the land; and/or f. Other losses that can be appraised. <p><i>Elucidation of Article 36 (f): "Other appraisable loss" means nonphysical loss equivalent to money value, for example, loss due to loss of business or job, cost of change of location, cost of change of profession, and loss of value of the remaining property.</i></p> <p>Law 39 of 1999 on Human Rights Article 5 includes the following provision on "vulnerable groups:"</p> <p>(3) All members of vulnerable groups in society, such as children, the poor, and the disabled, are entitled to greater protection of human rights.</p>		

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	<p>Law 11 of 2005 on Ratification of ICESCR Rights provides relevant provisions:</p> <p>Article 11 of the ICESCR Rights says that the States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent.</p> <p>Law No 16 of 2011 on Legal Aid provides equal provisions as follow:</p> <p>Article 1 paragraph 1 says that Legal aid is Pro Bono legal services that are granted by legal aid provider to recipient of legal aid freely (without any charges). Article 1 paragraph 2 says that legal aid recipient is a person or group of poor people. Article 1 paragraph 3 legal aid provider is legal aid institution or civil society group that provides legal aid services based on this law.</p> <p>Law 14 of 2008 on Public Information Openness contains relevant provisions, as follow:</p> <p>Article 3 The objectives of this Law are to:</p> <ul style="list-style-type: none"> a. guarantee citizens right to acknowledge public policy making plans, public policy programs, public decision making process, and the grounds of a public decision making; b. encourage public participation in public policy making process; c. to increase active public involvement in the public policy making and good public body governance; d. constitute good governance which are transparent, effective, efficient, and accountable; e. acknowledge the grounds of public policies that have eminent effects on people's lives; f. develop science and to enhance the intellectual life of the nation; and/or g. improve management and service of information in public bodies in order to constitute excellent information service. <p>Law 1 of 2011 on Housing and Settlement Areas in the following relevant articles and paragraphs :</p>		

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	<p>Article 1 of the following paragraphs say:</p> <ol style="list-style-type: none"> 1. Housing and settlement area is a unitary system that consist of advisory, housing and settlement area development, maintenance, improvement, prevention and quality enhancement toward slum housing and settlement, to provide land, fund, finance facility, and public participation. 2. Housing is collection of house as part of settlement either in urban or rural area that is provided along with facilities (prasarana and sarana) and public utilities as consequence for fulfilling decent houses. 3. Settlement area is part of environment outside of conservation area in urban or rural areas that aims as environment for live or living and activities to support live and livelihood. 5. Settlement is part settlement area that consist of more than a housing unite that provide public facilities (prasarana and sarana), public utility and provide support for other functions in urban or rural area. 21. Basic facility (Prasarana) is basic facility of surrounding settlement that fulfil certain standard for decent living, healthy, secure and comfortable. 22. Support facility (Sarana) is facility of surrounding settlement that aims to support economic activities. 23. Public utility is supporting facility for community service <p>Article 106 To provide land for development of house, housing and settlement area can be carried out through:</p> <ol style="list-style-type: none"> f. land acquisition for development of public Interest as regulated in provisions of the law and regulations. <p>Government Regulation No 88 of 2014 on Housing and Settlement Area Article 2 paragraph 2 states: Housing and Settlement Development Advisory is carried out in hierarchy as follow:</p> <ol style="list-style-type: none"> a. Minister to Governor, Regent/Mayor and stakeholders b. Governor to Regent/mayor and stakeholders; and c. Regent/Mayor to Stakeholders. <p><i>Elucidation of Article 2 defines "stakeholders" as private parties, finance institution, developer, contractor, academician from universities and community member.</i></p> <p>Article 8 says that housing and settlement development advisory is carried out through;</p> <ol style="list-style-type: none"> f. assistance and empowerment 		

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	<p>Article 15 paragraph (3) says that empowerment as intended in paragraph 1 is carried out to improve government's capacity and competence, regional government and stakeholders.</p> <p>Article 16 says: Empowerment of stakeholders as intended in Article 15 paragraph 3 can be carried out through:</p> <ul style="list-style-type: none"> a. facilitate housing and settlement area development forum; b. to accommodate public participation in developing housing and settlement area; and c. to improve supervision over housing and settlement area development 		
<p>Policy Principle 6: 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.</p>			
<p>Key Element (1): Develop procedures in a transparent, consistent, and equitable manner if land acquisition is through negotiated settlement.</p>	<p>Law 2 of 2012 on Land Acquisition for Development for Public Use stipulates equal provisions as follow:</p> <p>Article 1 paragraph 2 says that "Acquisition of Land" means any activity to make land available by giving reasonable and just compensation to the entitled party.</p> <p>Article 1 paragraph 4 "Object of the Acquired Land" means land, over-ground and underground space, buildings, plants, objects related to land, or other appraisable objects.</p> <p>Article 1 paragraph 10 says that "Compensation" means any reasonable and just compensation given to the entitled party in exchange for acquisition of land.</p> <p>Article 2 e: <i>"Principle of transparency" means that the Acquisition of Land for development shall be implemented by provision of public access to information concerning Acquisition of Land.</i></p> <p>Article 121 of Perpres 71 of 2012 and Perpres No. 40 of 2014 state in the framework of efficiency and effectiveness, the acquisition of land in the Public Purposes that is less than five (5) hectares, the Government Institution that needs the land can directly meet with the holder of land rights by purchasing or exchanging or other means agreed upon by the two parties.</p> <p>Government Regulation on Land Deed Making Official (PPAT/Pejabat Pembuat Akta Tanah)</p>	<p>Full Equivalence</p>	<p>None required</p>

(A) ADB Safeguard Policy Statement	(B) Corresponding DMC Legal Provisions	(C) Extent of Equivalence ¹	(D) Recommended Gap-filling Measures
	<p>Article 2</p> <p>1. Main task of PPAT is to carry out part of land registration activities by making a deed as an evidence of certain legal action concerning land rights or strata title right that will be a basis for registration of land registration data change as a result of the legal action.</p> <p>2. Legal action as intended in Paragraph 1 is as follow:</p> <ul style="list-style-type: none"> a. sell and buy; b. Exchange; c. Grant; d. Revenue for a company (inbrenng); e. Division of joint property; f. Granting HGB (Building Use Right)/Use Right on land ownership rights; g. Granting mortgage rights; h. Power of attorney of mortgage encumbrance. <p>Regulation of Ministry of Agrarian and Spatial Planning/National Land Agency 6 of 2015 on Amendment of Regulation of Head of National Land Agency 5 of 2012 on Technical Guidance of Land Acquisition Implementation</p> <p>Article 53</p> <p>(1) For efficiency and effectiveness, land acquisition for public interest which land is not more than 5 hectares, can be made directly by agency needing the land with the entitled party, by way of purchasing or exchanging or other means as agreed by both parties.</p> <p>(4) Agency needing the land uses independent appraiser valuation in determining value of purchase or exchange or other means agreed by both parties.</p> <p>(5) Land acquisition as referred to paragraph (1) is conducted in accordance with regional spatial planning.</p>		
<p>Key Element (2): Ensure that those people who enter into negotiated settlements will maintain the same or better income and livelihood status.</p>	<p>Law 2 of 2012 on Land Acquisition for Development for Public Interest stipulate the equal provisions as follow:</p> <p>Article 1 paragraph 2 says that “Acquisition of Land” means any activity to make land available by giving reasonable and just compensation to the entitled party.</p> <p>Article 1 paragraph 4 “Object of the Acquired Land” means land, over-ground and underground space, buildings, plants, objects related to land, or other appraisable objects.</p> <p>Article 1 paragraph 10 says that “Compensation” means any reasonable and just compensation given to the entitled party in exchange for acquisition of land.</p>	<p>Full Equivalence</p>	<p>None Required</p>

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	<p>Perpres 40 of 2014 (The first amendment of Perpres 71 of 2012) Article 121: In the framework of efficiency and effectiveness, the acquisition of land in the Public Purposes that is less than five (5) hectares, the Government Institution that needs the land can directly meet with the holder of land rights by purchasing or exchanging or other means agreed upon by the two parties.</p> <p>Article 2 of Government Regulation on Land Deed Making Official (PPAT/Pejabat Pembuat Akta Tanah) 1. Main task of PPAT is to carry out part of land registration activities by making a deed as an evidence of certain legal action concerning land rights or strata title right that will be a basis for registration of land registration data change as a result of the legal action. 2. Legal action as intended in Paragraph 1 is as follow: a. sell and buy; b. Exchange; c. Grant; d. Revenue for a company (inbrenng); e. Division of joint property; f. Granting HGB (Building Use Right)/Use Right on land ownership rights; g. Granting mortgage rights; h. Power of attorney of mortgage encumbrance.</p>		
<p>Policy Principle 7: Ensure that displaced persons without titles to land or any recognizable legal rights to land are eligible for resettlement assistance and compensation for loss of non-land assets.</p>			
<p>Key Element (1): 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</p>	<p>Law 2 of 2012 on Land Acquisition for Development for Public Interest stipulates equal provisions as follow: Article 1 paragraph 2 says that "Acquisition of Land" means any activity to make land available by giving reasonable and just compensation to the entitled party. Article 1 paragraph 4 "Object of the Acquired Land" means land, over-ground and underground space, buildings, plants, objects related to land, or other appraisable</p>	<p>Partial Equivalence¹⁰ Law 2 of 2012 states that in the case that the buildings, plants, or other objects related to land have not yet held or are owned without a land title, compensation shall be given to the owners of</p>	<p>Requirement of resettlement assistance need to be regulated.</p>

¹⁰Consistent with Policy Principle 7, Law 2 of 2012 only applies for acquiring land for public use activities. If land needed to develop public use project is already owned by an institution needing land but illegally occupied/controlled by other parties, law 2 of 2012 cannot be applied. In this case, Law 51 of 1960 on prohibition of using land without permission from the owner or its representative is the right law that could be used to resolve/settle the case). The issue that can be raised here is not legal rules but law enforcement issue. Those who are trespassing other property has violated the law therefore there is no need to compensate the illegal occupier with compensation except their assets they owned on the land they occupy. Law 2 of 2012 recognizes non-land right holder and will compensate "only" the asset not the land.

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non-land assets.	<p>objects. Article 1 paragraph 10 says that "Compensation" means any reasonable and just compensation given to the entitled party in exchange for acquisition of land.</p> <p>Article 33 Appraisal of the amount of Compensation by the Appraiser as stated by Article 32 section (1) shall be made on a parcel-by-parcel basis, including: ... f. other appraisable losses. <i>Elucidation of Article 33 (f): "Other appraisable loss" means nonphysical loss equivalent to money value, for example, loss due to loss of business or job, cost of change of location, cost of change of profession, and loss of value of the remaining property.</i></p> <p>Article 40 The giving of Compensation for Objects of the Acquired Land shall be directly made to the Entitled Party <i>Elucidation of Article 40: The giving of compensation must in principle be given directly to the entitled party entitled to compensation. Failing him/her, the entitled party may by operation of law, assign the powers to other party or successor. The attorney-in-fact may only receive the powers from one person entitled to Compensation.</i></p> <p>In the case that the buildings, plants, or other objects related to land have not yet held or are owned without a Land Title, Compensation shall be given to the owners of the buildings, plants, or other objects related to land.</p> <p>Perpres 71 of 2012 on Implementation of Land Acquisition for Development in the Public Interest</p> <p>Article 17: (1) The Land Rights Holders as referred to in Article 16 are individuals, legal entities, social institutions, religious institutions or government institution that hold or control the land according stipulations in the legislation. (2) Land Rights Holders as referred to in paragraph (1) include: a. Holders of the Land Rights b. Holders of the Right to Develop; c. Endowed Land Trustees; d. Owners of former indigenous lands;</p>	<p>the buildings, plants, or other objects related to land.</p> <p>Article 570 of the Indonesian Civil Code stipulates that taking any private property (private belonging/ownership/possession) for public use must be compensated).</p> <p>Article 6 of Law 51 stipulates that illegal occupants could be charged with "criminal offense." As such, all "illegal occupants" are not entitled any assistance, transitional support, and other assistance. This is considered as partially equivalent as the ADB SPS principle considers non-titled displaced persons eligible for resettlement assistance.</p>	

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	<p>e. Indigenous Communities; f. Parties in control of state lands in good faith; g. Holders of basic control over land; h. Owners of buildings, land and other objects connected to the land.</p> <p>Article 18: The holder of land rights as referred in Article 17 paragraph (2) letter a, is an individual or institution in which the right is determined by stipulations in the regulations.</p> <p>Article 19: The holder of the right to develop as referred in Article 17 paragraph (2) letter b is the State's right to control in which the authority is delegated to the holder of the right based on stipulations in the regulations.</p> <p>Article 20: (1) Endowed Land trustee (<i>nadzir</i>) as referred to in Article 17 paragraph (2) letter c is a party who receives land endowment (<i>wakaf</i>) from the endower to manage and develop the land according to the land use. (2) Compensation on the endowed land (<i>wakaf</i>) is implemented in accordance with stipulations in the regulations on endowed land.</p> <p>Article 21: (1) Owners of former indigenous land as referred in Article 17 paragraph (2) letter d is the holder of right of former indigenous land as regulated in stipulations on conversion in Agrarian regulations. (2) The ownership of the former indigenous land as referred to in paragraph (1) must be proven by: a. Proof of land tax payment of the uncertified lands (<i>Petuk Pajak Bumi/Landrete, Girik, Pipil, ketitir, verponding Indonesia</i>) or any other written proof as referred in articles II, VI, VII in the stipulations on conversion in the Basic Agrarian Law (Law Number 5 of 1960); b. Uncertified agreement on transfer of right with the signature of witnesses by the head of a customary group, head of village, or other administrative title that was issued prior to the application of Government Regulation Number 10 of 1961 on Land Registration by also attaching the basis for land ownership of the transferred land; c. Signed letter proving ownership that was issued based on related Swapraja (previous local government) regulation;</p>		

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	<p>d. Letter from an authorized official on the granting of ownership rights either prior or since the application of the law Number 5 of 1960 on Basic Agrarian Legislation that does not assert the obligation to register the granted right, but all of the pertaining obligations have been fulfilled; or</p> <p>e. Record of land history that was prepared by the Office for Land and Building Tax Service along with the basis for land ownership of the transferred land.</p> <p>Article 22: (1) The indigenous communities (<i>masyarakat hukum adat</i>) as referred to in Article 17 paragraph (2) letter must fulfill the following requirements: a. A group of people that are bound with their indigenous law as a collective community in association with certain adat law association (<i>persekutuan</i>) that acknowledges and implements provisions applicable to the association in their daily life; b. There is a specified <i>tanah ulayat</i> land (communal land rights) that becomes the place for living of the people of that indigenous community and they do their daily activities in that land; and c. There are instruments of indigenous law (<i>hukum adat</i>) on how to manage, control and utilize the indigenous land that are applicable and obeyed by the people who are part of the association of the indigenous law. (2) The existence of the indigenous law community as referred to in paragraph (1), is acknowledged after conducting research and determined with regional regulations of the location.</p> <p>Article 23: (1) The Parties in possession of state lands in good faith as referred to in Article 17 paragraph (2) letter f who could be individuals, legal entities, social institutions, religious institutions or government institutions that physically control, utilize, benefit, and maintain the state land inherited from the older generation in certain period of time and/or obtained it in a lawful way. (2) The possession of state land as referred to in article (1) shall be proven by the evidence of: a. Expired certificate of holder of land right; b. Rental of land document; c. Document on received land in land reform;</p>		

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	<p>d. Permit to cultivate/open up the land; or e. Document on assigned (<i>penujukan</i>)/purchase of the replacement land.</p> <p>Article 24: (1) The holder of land as referred to in article 17 paragraph (2) letter g is the party with proof of possession from an authorized official. (2) The basis of possession of the land as referred to in paragraph (1) is proven by the proof of possession, which are in the forms of: a. Contract (<i>akta jual beli</i>) of purchase of land that has already had a certificate but has not yet been transferred to the buyer; b. Contract of purchase of adat owned right (<i>hak milik adat</i>) in which the certificate has not yet been issued; c. Permit to occupy the land; d. Minutes of auction; or e. Contract of land (<i>wakaf</i>) endowment, replacement contract of land endowment, or agreement of land endowment.</p> <p>Article 25: (1) Owners of buildings, plant or other objects related to the land as referred to in Article 17 paragraph (2) letter h are individuals, legal entities, social entities, religious institutions, or government institutions with proof of possession of the building, plant or other related objects on the land from authorized officials. (2) The basis of the ownership of the building, plants or other related object on the land as referred to in paragraph (1) is proven by the: a. Construction permit and proof of the physical construction; b. Statement of physical possession; or c. Proof with bills or payment of electricity, telephone or water company within the last 1 (one) month.</p> <p>Article 26: In a situation where the proof of control (<i>penguasaan</i>) or ownership (<i>kepemilikan</i>) of the land as referred in Article 21 and Article 23 is absent then a written statement from the holder and trusted statement from at least 2 (two) witnesses who do not have family relationship with the holder down to second degree either in vertical or horizontal relationship, which confirms that the person who owns or possesses that land is sufficient.</p> <p>Article 33 indicates the task of appraiser to carry out the appraisal of the amount of</p>		

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	<p>compensation parcel by parcel, which includes:</p> <ul style="list-style-type: none"> a. Land; b. Space above and below the surface of the land; c. Buildings; d. Plants; e. Objects related to the land; and/or f. Other losses that can be appraised. <p><i>Elucidation of Article 33 (f): "Other appraisable loss" means nonphysical loss equivalent to money value, for example, loss due to loss of business or job, cost of change of location, cost of change of profession, and loss of value of the remaining property.</i></p> <p>Article 570 of the Indonesian Civil Code (KUH Perdata) says that the ownership rights is right to enjoy goods freely and to do anything toward goods fully free unless does not violate laws and general regulations enacted by the authorized entity/party and does not disturb other people' rights; all the rights cannot prevent possibility of right's expropriation for public use and suitable compensation is provided regulated by laws and regulations. The article 570 also stipulates that every owner of material has a rights to sue to anyone who mater it, to refund the material in such circumstances as before.</p> <p>Law 51/1960 on the Ban on Land Use Without Permission of the Entitled or their Proxies</p> <p>Article 4</p> <ul style="list-style-type: none"> (i) The illegal occupants must move any objects on the occupied land and leave the land with their owned resources. So the occupants must bear all cost related to movement of their belonging. More than that, <p>Article 6</p> <ul style="list-style-type: none"> (i) The illegal occupants could be charged with "criminal offense". 		
<p>Policy Principle 8: 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.</p>			
<p>Key element (1): Prepare a resettlement plan elaborating on displaced persons' entitlements.</p>	<p>Law 2 of 2012 on Land Acquisition for Development for Public Interest stipulates equal provisions as follows:</p> <p>Article 1 paragraph 2 says that "Acquisition of Land" means any activity to make land</p>	<p>Full Equivalence</p>	<p>None required.</p>

(A) ADB Safeguard Policy Statement	(B) Corresponding DMC Legal Provisions	(C) Extent of Equivalence ¹	(D) Recommended Gap-filling Measures
	<p>available by giving reasonable and just compensation to the entitled party. Article 1 paragraph 4 "Object of the Acquired Land" means land, over-ground and underground space, buildings, plants, objects related to land, or other appraisable objects. Article 1 paragraph 10 says that "Compensation" means any reasonable and just compensation given to the entitled party in exchange for acquisition of land.</p> <p>Article 28 (1) Inventory and identification of possession, ownership, use, and utilization of land as intended by Article 27 section (2) point (a) shall include: a. surveying and mapping on a parcel-by-parcel basis; and b. gathering data on the Entitled Parties and the Objects of the Acquired Land. (2) Inventory and identification of possession, ownership, use, and utilization of land as intended by section (1) shall be conducted within thirty (30) working days.</p> <p><i>Elucidation of Article 28:</i> <i>Inventory and identification shall be conducted to ascertain the Entitled Parties and Objects of the Acquired Land. The results of the inventory and identification shall contain the list of the nominated Entitled Parties and Objects of the Acquired Land. The Entitled Parties shall include the items of name, address, and employment of the parties who possess/own the land. The Objects of the Acquired Land shall include the items of location, size, status, and type of use and utilization of land.</i></p> <p>Article 30 The results of the announcement or verification and improvement as intended by Article 29 shall be confirmed by the Land Agency (BPN) and shall constitute the ground on which the Entitled Parties to Compensation are determined.</p> <p>Perpres 71 of 2012 on Implementation of Land Acquisition for Development in the Public Interest</p> <p>Article 5 (1) ...the Land Acquisition Plan as referred to in Article 3 shall be prepared in the form of a Land Acquisition Planning document The objectives and purposes of development plan as referred to in paragraph (1) letter [a] shall point out the objectives and purposes of the planned development and their outcomes for public interests. (7) The estimated land price as referred to in paragraph (1) letter [h] shall point out the estimated Compensation for the Objects of Land Acquisition inclusive of: land, space over and beneath the land, building, plants, assets relating to land, and/or other monetary damages.</p>		

(A) ADB Safeguard Policy Statement	(B) Corresponding DMC Legal Provisions	(C) Extent of Equivalence ¹	(D) Recommended Gap-filling Measures
	<p>Article 6</p> <p>(3) Location Suitability as referred in paragraph (1) letter b, is conducted to analyze the location's physical suitability for the development plan that will be implemented in the public interest and is inserted into the map of the plan for the development location.</p> <p>(4) Benefit Cost analysis for the area and the people as referred in paragraph (1) letter [c] is conducted to analyze the costs incurred and the development benefits for the area and the people.</p> <p>(5) Land value estimation as referred in paragraph (1) letter [d] is conducted to estimate the compensation value of the acquired land.</p> <p>Article 32</p> <p>(1) The Preparation Team will explain about the Land Acquisition Plan in the public consultation as referred in Article 29.</p> <p>(2) The explanation as referred to in paragraph (1) includes:</p> <ul style="list-style-type: none"> d. The incentive that the holder of the land rights will receive; e. Objects that will be appraised for compensation; f. The form of the compensation; and g. The rights and responsibilities of the Land Rights Holders. 		
<p>Key element (2): Prepare a resettlement plan elaborating on the income and livelihood restoration strategy.</p>	<p>Perpres No. 71 of 2012 on Implementation of Land Acquisition for Development for Public Interest, Article 5,</p> <p>(2) Land Acquisition Plan as referred to in Article 3 shall be prepared into Land Acquisition Planning document containing to include but not limited to:</p> <ul style="list-style-type: none"> a. Objectives and purposes of development plan; b. The suitability with Regional Spatial Planning and Development Priorities as referred to in Article 3 paragraph (1); c. The location of land; d. Area of land required; e. General description of land status; f. Estimated land acquisition time; g. Estimated development implementation time; h. Estimated land price; and i. Budgeting plan. <p>Law 2 of 2012 on Land Acquisition for Development for Public Interest stipulate equal provisions as follow:</p>	<p>Partial Equivalence</p> <p>Although the principles of Law 2 of 2012 emphasize that the entitled parties have to have opportunity to live better (principle of justice) and that the acquisition of land for development can bring added value to the viability of the Entitled Parties and the public in general, yet there is no clear provisions in the law on the income and livelihood strategy.</p>	<p>Provision on income and livelihood restoration strategy need to be strengthened.</p>

(A) ADB Safeguard Policy Statement	(B) Corresponding DMC Legal Provisions	(C) Extent of Equivalence ¹	(D) Recommended Gap-filling Measures
	<p>Article 1 paragraph 2 says that “Acquisition of Land” means any activity to make land available by giving reasonable and just compensation to the entitled party.</p> <p>Article 1 paragraph 4 “Object of the Acquired Land” means land, over-ground and underground space, buildings, plants, objects related to land, or other appraisable objects.</p> <p>Article 1 paragraph 10 says that “Compensation” means any reasonable and just compensation given to the entitled party in exchange for acquisition of land.</p> <p>Article 2 states:</p> <p>b. justice <i>Elucidation: “Principle of justice” means to guarantee any reasonable reward in exchange for the acquired land to the Entitled Parties in the process of Acquisition of Land such that they have opportunity to live their better life.</i></p> <p>c. welfare <i>Elucidation: “Principle of welfare” means that the Acquisition of Land for development can bring added value to the viability of the Entitled Parties and the public in general.</i></p> <p>Article 36 of Perpres 71 of 2012 indicates the task of appraiser to carry out the appraisal of the amount of compensation parcel by parcel, which includes:</p> <p>a. Land; b. Space above and below the surface of the land; c. Buildings; d. Plants; e. Objects related to the land; and/or f. Other losses that can be appraised.</p>		
<p>Key element (3): Prepare a resettlement plan elaborating on the institutional arrangements and time bound implementation schedule.</p>	<p>Law 2 of 2012 on Land Acquisition for Development for Public Interest</p> <p>Article 13 Stages of land acquisition are planning, preparation, implementation and result delivery. a. Preparation of land acquisition plan</p> <p>Article 14 (1) An Agency needing land shall make a plan of Acquisition of Land in the Public Interest in accordance with the laws and regulations.</p> <p>Article 15</p>	<p>Full Equivalence</p> <p>The outline of the land acquisition plan does not elaborate on institutional arrangement, yet Law 2 and implementing regulations clearly stipulates on institutional arrangement of land acquisition process from planning, preparation, implementation, and</p>	<p>None Required</p>

(A) ADB Safeguard Policy Statement	(B) Corresponding DMC Legal Provisions	(C) Extent of Equivalence ¹	(D) Recommended Gap-filling Measures
	<p>(1) Land Acquisition plan in the Public Interest as intended by Article 14 section (1) shall be prepared in the form of Land Acquisition planning documentation that contains at least:</p> <ul style="list-style-type: none"> a. the objectives and purposes of the development plan; b. consistency with the Regional Spatial Planning and the National/Regional Development Plan; c. land location; d. land size needed; e. general description of the land status; f. estimated period of the implementation of Acquisition of Land; g. estimated period of the implementation of construction; h. estimated land value; and i. budget plan. <p>Article 16 An Agency needing land together with the provincial government shall:</p> <ul style="list-style-type: none"> a. make notification of the development plan; b. perform preliminary data collection of the location of the development plan; and c. hold a Public Consultation on a development plan. <p>Article 27 (1) Under the location confirmation for development in the Public Interest as intended by Article 26 section (1), an Agency needing land shall submit the Land Acquisition implementation to the Land Agency (BPN) (National Land Agency). <i>Elucidation of Article 27 (1):</i> <i>The Acquisition of Land shall in principle be implemented by the Land Agency (BPN), which in its application, may involve or coordinate with the provincial governments or the district/city governments.</i></p> <p>Perpres 71 of 2012 on Implementation of Land Acquisition for Development in the Public Interest</p> <p>Article 32 (1) The Preparation Team will explain about the Land Acquisition Plan in the public consultation as referred in Article 29. (2) The explanation as referred to in paragraph (1) includes: ... b. Stages and timeline of the Land Acquisition;</p> <p>Notes:</p>	<p>hand over of acquired land.</p>	

(A) ADB Safeguard Policy Statement	(B) Corresponding DMC Legal Provisions	(C) Extent of Equivalence ¹	(D) Recommended Gap-filling Measures
	<p>The fastest implementation of land acquisition is 238 working days (excluding time for delivering the result of land acquisition, and no break between steps of land acquisition)</p> <p>The longest implementation of land acquisition is 492 working days (excluding time for delivering the result of land acquisition, time for negotiation and no break between steps of land acquisition)</p> <p>c. The role of the appraiser in determining the compensation value;</p> <p>Article 78: (1) The Compensation in the form of resettlement as referred to in Article 74 paragraph (1) letter [c] is to be provided by the government institution needing land through the Land Acquisition Implementation Team. (2) The Compensation in the form of resettlement as referred to in Article 74 paragraph (1) letter c is to be provided by the government institution needing land upon the written request from the Head of the Land Acquisition Implementation Team.</p> <p>Article 80 (1) The Compensation in the form of ownership shares as referred to in Article 74 paragraph (1) letter [d] is given by a State Owned Company (<i>Badan Usaha Milik Negara</i>), which is a publicly listed company and has received special tasks from the Government. (2) Ownership of share as referred to in paragraph (1) is implemented based on agreement between the Entitled Party and the State Owned Company (<i>Badan Usaha Milik Negara</i>) that has received a special assignment from the Government.</p> <p>Perpres 71 of 2012 and Perpres 148 of 2015 stipulate timeline of land acquisition activities at preparatory phase of land acquisition, implementation of land acquisition, and handover of acquired land.</p>		
<p>Key Element (4): Prepare a resettlement plan elaborating on the monitoring and reporting framework.</p>	<p>Law 2 of 2012 on Land Acquisition for Development for Public Use</p> <p>Article 51 National Land Agency is responsible to conduct monitoring and evaluation toward occupation, ownership, use and benefit as result of land acquisition.</p> <p>Perpres 71 of 2012 on Implementation of Land Acquisition for Development in the Public Interest</p>	<p>Full Equivalence</p> <p>The outline of land acquisition plan does not include chapter on monitoring and reporting, yet the law and regulation require monitoring and reporting.</p>	<p>None required</p>

(A) ADB Safeguard Policy Statement	(B) Corresponding DMC Legal Provisions	(C) Extent of Equivalence ¹	(D) Recommended Gap-filling Measures
	<p>Article 115 National Land Agency carry out monitoring and evaluation on the control, ownership, use, and utilization of land acquisition result for the development in the public interest.</p>		
<p>Key Element (5): Prepare a resettlement plan elaborating on the budget.</p>	<p>Law 2 of 2012 on Land Acquisition for Development for Public Interest</p> <p>Article 53 (1) Fund for Acquisition of Land as intended by Article 52 shall include the fund for: a. planning; b. preparation; c. implementation; d. result delivery; e. administration and management; and f. socialization.</p> <p>(2) Funding for Acquisition of Land in the Public Interest shall be made by the Agency and stated in the budgeting documentation in accordance with the provisions of laws and regulations.</p> <p>(3) The provisions concerning the mechanism of the implementation of funding for Acquisition of Land in the Public Interest shall be governed by Regulation of the President.</p> <p>Article 54 The availability of funding for Acquisition of Land in the Public Interest shall be guaranteed and allocated by the Agency in accordance with the provisions of laws and regulations.</p>	<p>Full Equivalence</p>	<p>None required</p>
<p>Policy Principle 9: 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.</p>			
<p>Key Element (1): Disclose a draft resettlement plan, including documentation of the consultation process in a timely manner, before project appraisal. The disclosed resettlement plan</p>	<p>Perpres 71 of 2012 on Implementation of Land Acquisition for Development in the Public Interest</p> <p>Article 29 (1) Public consultation of the Development Plan as referred in Article 28 paragraph (2) is carried out to obtain agreement with the Entitled Parties. (2) The Preparation Team will conduct Public Consultations on the Development Plan at the office of village officials or office of sub-district office at the location, or at a location</p>	<p>Full Equivalence</p> <p>Although there is no requirement to disclose the RP, yet the Law 2 of 2012 requires disclosure on project plan, the result of inventory and identification of land to be acquired.</p>	<p>None required</p>

(A) ADB Safeguard Policy Statement	(B) Corresponding DMC Legal Provisions	(C) Extent of Equivalence ¹	(D) Recommended Gap-filling Measures
<p>should be in an accessible place and a form and language(s) understandable to affected persons and other stakeholders.</p>	<p>that the Preparation Team and the Entitled Parties have agreed upon. (3) The Public Consultation as referred in paragraph (2) can be done in stages and more than 1 (one) time according to the local situation. (4) The Public Consultation as referred to in paragraph (3) is conducted within 60 (sixty) working days starting from the signing of the temporary list as referred in Article 28 paragraph (1).</p> <p>Law 2 of 2012 on Land Acquisition for Development for Public Use sets equal provisions as follow:</p> <p>Article 16 An Agency needing land together with the provincial government shall: a. make notification of the development plan; c. hold a Public Consultation on a development plan.</p> <p>Article 17 Notification of the development plan as intended by Article 16 t (a) shall either directly or indirectly be provided to the community living at the location of development plan in the public interest. <i>Elucidation of Article 17:</i> <i>Direct notification shall be, inter alia, through socialization, in person, or notice. Indirect notification shall be, inter alia, through print media or electronic media.</i></p> <p>Article 29 (1) The results of the inventory and identification of possession, ownership, use, and utilization of land as intended by Article 28 must be announced at the urban/rural village administration office, the sub-district office, and at the place where Acquisition of Land is conducted, for fourteen (14) working days. (2) The results of the inventory and identification of possession, ownership, use, and utilization of land as intended by Article 28 must be announced in stages, in part or in whole. (3) The announcement of the results of the inventory and identification as intended by section (2) shall include the subjects of title, size, location, and map(s) of the parcel of land of the Objects of the Acquired Land. (4) Where the Entitled Party does not receive the results of the inventory as intended by section (3), he/she may file an objection with the Land Agency (BPN) within fourteen (14) working days of the announcement of the results of the inventory. (5) Where there is an objection to the results of the inventory as intended by section (4),</p>		

(A) ADB Safeguard Policy Statement	(B) Corresponding DMC Legal Provisions	(C) Extent of Equivalence ¹	(D) Recommended Gap-filling Measures
	<p>verification and improvement thereof shall be made within fourteen (14) working days of the receipt of the filing of an objection to the results of the inventory. (6) The inventory and identification shall be made in accordance with the laws and regulations</p> <p>Perpres 71 of 2012 on Implementation of Land Acquisition for Development for Public Interest stipulates the following equal provisions:</p> <p>Article 31: (1) the Preparation Team invites the Entitled Parties as referred to in Article 29 and the affected community as referred in Article 30 to be present at the Public Consultation. (2) The invitation, as referred to in paragraph (1) is conveyed directly to the Land Rights Holders, as referred in Article 29, and the affected communities as to referred in Article 30 within 3 (three) days prior to the commencement of the Public Consultation. (3) In proving the acceptance of the invitation, there should be a receipt of acceptance signed by the Land Rights Holders and the affected communities or the village officials or other name. (4) In a situation where the Entitled Parties whereabouts/address/location are not known, then the notification is given through: a. Notification at the local village office or other administrative title or sub-district of the site; and b. Printed or electronic media.</p> <p>Article 32: (1) The Preparation Team will explain about the Land Acquisition Plan in the public consultation as referred in Article 29. (2) The explanation as referred to in paragraph (1) includes: a. Purpose of the Development Plan in the public interest; b. Stages and timeline of the Land Acquisition; c. The role of the appraiser in determining the compensation value; d. The incentive that the holder of the land rights will receive; e. Objects that will be appraised for compensation; f. The form of the compensation; and g. The rights and responsibilities of the Land Rights Holders.</p> <p>Article 33 (5) The results of the agreement on the Development Plan's location that is achieved in the Public Consultation will be inserted into the report (Berita</p>		

(A) ADB Safeguard Policy Statement	(B) Corresponding DMC Legal Provisions	(C) Extent of Equivalence ¹	(D) Recommended Gap-filling Measures
	<p>Acara) of agreement.</p> <p>Article 34: (3) The agreement on the location of the development plan that is made in the repeated Public Consultation as referred to in paragraph (1) will be inserted into the report of agreement of the Public Consultation.</p> <p>Article 45 (1) The governor together with the Institution requiring land shall announce the Determination of Location for the Development in Public Interests. (2) The announcement of the Determination of Development Location as referred to in paragraph (1) shall contain the number and date of decision on Location Determination, maps of development locations, the objectives and purposes of development, layout and are of lands required, estimated Land Acquisition implementation time and estimated development implementation time.</p> <p>Article 46 (1) The announcement of the Determination of Development Location as referred to in Article 45 paragraph (1) shall be made by: a. Attaching to kelurahan/village offices or otherwise, kecamatan offices and/or district/municipal office and at the development location; and b. Announcing in printed and/or electronic media. (2) The announcement of the Determination of Development Location as referred to in paragraph (1) shall be made no later than 3 (three) days since the issuance of Development Location Determination. (3) The announcement of the Determination of Development Location as referred to in paragraph (1) letter a shall be made in 14 (fourteen) days time. (4) The announcement of the Determination of Development Location via printed media as referred to in paragraph (1) letter b shall be published in local and national newspapers at least for 1 (one) edition in working day. (5) The announcement of the Determination of Development Location via electronic media as referred to in paragraph (1) letter b shall be made in the websites of province government, district/city government or the Institution requiring the lands.</p> <p>Law 14 of 2008 on Public Information Openness:</p>		

(A) ADB Safeguard Policy Statement	(B) Corresponding DMC Legal Provisions	(C) Extent of Equivalence ¹	(D) Recommended Gap-filling Measures
	<p>Article 1</p> <p>(1) Information means any description, statement, idea, and signs that contains value, meaning and message either as data, fact or their elucidation that may be seen, heard and read which is presented in various packages and formats in-line with information and communication technology development electronically or non-electronically.</p> <p>(2) Public Information means any information produced, stored, managed, sent and/or received by a public body in relation with governments and governance of state and/or operators and governance of other public bodies pursuant to this Act, and other information concerning public interest.</p> <p>(3) Public Body means executive, legislative, judicial and other institutions which functions and main duties are related to state governance, which all or part of its funding originated from State Revenue and Expenditure Budget and/or the Local Revenue and Expenditure Budget, or non-governmental organizations provided that all or part of its funding originated from State Revenue and Expenditure Budget and/or the Local Revenue and Expenditure Budget, public donation, and/or foreign origin.</p> <p>Article 2</p> <p>(1) Public Information shall be in nature open and accessible to Public Information User.</p> <p>(2) Exempted Public Information shall be strict and limited.</p> <p>(3) Public Information shall be obtained by Public Information Requester in a quick and timely, inexpensive, and uncomplicated manner.</p> <p>(4) Exempted Public Information shall be in nature confidential pursuant to legislations, appropriateness, and public interest based on the test of consequences that will emerge if an information is disclosed to public and after meticulously measured that confining the Public Information may protect a greater interest compared to disclosing it, or vice versa.</p> <p>Article 4</p> <p>(1) A Person is entitled the right to obtain Public Information pursuant to the provisions of this Law.</p> <p>(2) A Person is entitled the right to:</p> <ul style="list-style-type: none"> a. see and acknowledge Public Information; b. attend meetings that are open to public in order to obtain Public Information; c. obtain copies of Public Information in the course of a request pursuant to this Law; and/or d. disseminate Public Information pursuant to regulations. <p>(3) Public Information Requester is entitled the right to file Public Information request along with the grounds of the request.</p> <p>(4) Public Information Requester is entitled the right to file a lawsuit to the court of law in</p>		

(A) ADB Safeguard Policy Statement	(B) Corresponding DMC Legal Provisions	(C) Extent of Equivalence ¹	(D) Recommended Gap-filling Measures
	<p>case of receiving obstruction or failure in obtaining Public Information pursuant to provisions of this Law.</p> <p>Article 7</p> <p>(1) Public Body shall provide, disclose and/or issue Public Information under its authority to Public Information Requester, except for exempted information according to regulations.</p> <p>(2) Public Body shall provide accurate, correct and non-misleading Public Information.</p> <p>(3) To perform the obligation as referred to in paragraph (2), Public Body shall build and develop information and documentation system to manage Public Information in a proper and efficient manner so as to be easily accessible.</p> <p>(4) Public Body shall provide written consideration of every policy taken in order to fulfill the right of individual to Public Information.</p> <p>(5) The consideration as referred to in paragraph (4) contains among others, political, economic, social, cultural and/or state defense and security consideration.</p> <p>(6) In order to fulfill the obligations as referred to in paragraph (1) to (4), public body may utilize electronic and non-electronic facilities and/or media.</p>		
<p>Key Element (2): Disclose the final resettlement plan and its updates to affected persons and other stakeholders.</p>	<p>Law 2 of 2012 on Land Acquisition for Development for Public Interest,</p> <p>Article 15</p> <p>(1) Land Acquisition plan in the Public Interest as intended by Article 14 section (1) shall be prepared in the form of Land Acquisition planning documentation that contains at least:</p> <ul style="list-style-type: none"> a. the objectives and purposes of the development plan; b. consistency with the Regional Spatial Planning and the National/Regional Development Plan; c. land location; d. land size needed; e. general description of the land status; f. estimated period of the implementation of Acquisition of Land; g. estimated period of the implementation of construction; h. estimated land value; and i. budget plan. <p><i>Elucidation of Article 15 (1):</i></p>	<p>Full Equivalence¹¹</p>	<p>None required</p>

¹¹ After planning documentation is finalized and certified by the institution needing land, the document is disclosed to the entitled parties and provincial government through public consultation. Inputs are expected during the public consultation that will revise the planning document and will be subject to further revision if there is still objection from the affected persons/groups.. This process clearly indicates and shows that land acquisition document is updated and disclosed to the affected community in order to get the location confirmation (*Penetapan Lokasi*)

(A) ADB Safeguard Policy Statement	(B) Corresponding DMC Legal Provisions	(C) Extent of Equivalence ¹	(D) Recommended Gap-filling Measures
	<p><i>Preparation of Land Acquisition planning documentation may be made together with the Agency needing land and the relevant technical agency(ies) or with the assistance of professional institutions designated by the Agency needing land.</i></p> <p>(2) The Land Acquisition planning documentation as intended by section (1) shall be prepared under the feasibility study made in accordance with the laws and regulations.</p> <p><i>Elucidation of Article 15 (2): The feasibility study shall include:</i></p> <ul style="list-style-type: none"> <i>a. social-economic survey;</i> <i>b. location feasibility;</i> <i>c. analysis of cost and development benefit to the area and the community;</i> <i>d. estimated land value;</i> <i>e. environmental impacts and social impacts that may arise out of the Acquisition of Land and construction; and</i> <i>f. other study as necessary.</i> <p>(3) The Land Acquisition planning documentation as intended by section (2) shall be certified by the Agency needing land.</p> <p>(4) The Land Acquisition planning documentation as intended by section (3) shall be submitted to the provincial government.</p> <p>Article 16 An Agency needing land together with the provincial government shall under the Land Acquisition planning documentation as intended by Article 15:</p> <ul style="list-style-type: none"> a. make notification of the development plan; b. perform preliminary data collection of the location of the development plan; and c. hold a Public Consultation on a development plan. <p>Article 17 Notification of the development plan as intended by Article 16 point (a) shall either directly or indirectly be provided to the community living at the planned location of development in the Public Interest.</p> <p><i>Elucidation of Article 17: Direct notification shall be, inter alia, through socialization, in person, or notice. Indirect notification shall be, inter alia, through print media or electronic media.</i></p> <p>Article 18 (1) Preliminary data collection of the location of the development plan as intended by Article 16 point (b) shall include the preliminary data gathering of the Entitled Parties and the Objects of the Acquired Land. (2) Preliminary data collection as intended by section (1) shall be made within thirty (30)</p>		

(A) ADB Safeguard Policy Statement	(B) Corresponding DMC Legal Provisions	(C) Extent of Equivalence ¹	(D) Recommended Gap-filling Measures
	<p>working days of the notification of the development plan.</p> <p>(3) The results of preliminary data collection as intended by section (1) shall be used as data to hold a Public Consultation on a development plan as intended by Article 16 point (c).</p> <p>Article 19 (3) Involvement of the Entitled Parties as intended by section (2) may be through representation by a power of attorney of and by the Parties Entitled to the location of the development plan. <i>Elucidation of Article 19 (3):</i> "Power of attorney" means a power of attorney to represent at the public consultation sessions in accordance with the provisions of laws and regulations. "Of and by the Parties Entitled" means that the attorney in-fact and the grantor of power are both from the Entitled Parties.</p> <p>(4) Agreement as intended by section (1) shall be stated in the form of minutes of agreement.</p> <p>Article 20 (1) A Public Consultation on a development plan as intended by Article 19 shall be held within sixty (60) working days. (2) If within a sixty (60) working day period of the Public Consultation on a development plan as intended by section (1) there is a party objecting to the planned location of development, a Public Consultation shall be repeated by engagement of the objecting party within thirty (30) working days. <i>Elucidation of Article 20 (2):</i> A party objecting to the planned location of development shall present his/her objections in writing along with the reasons therefor.</p>		
<p>Policy Principle 10: 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.</p>			
Key element (1):	Law 2 of 2012 on Land Acquisition for Development for Public Interest	Full Equivalence. ¹²	None required

¹² The planning document prepared by the agency needing land must demonstrates adequate data and information regarding land acquisition's benefit, risk, impact and other impacts – including environmental and social impacts. Required references to existing spatial planning, development priorities and temporal plans are further evidence that that land acquisition cannot be separated with the overall project/program development.)

(A) ADB Safeguard Policy Statement	(B) Corresponding DMC Legal Provisions	(C) Extent of Equivalence ¹	(D) Recommended Gap-filling Measures
<p>Conceive and execute involuntary resettlement as part of a development project or program.</p>	<p>Article 14 (2) Land Acquisition plan in the Public Interest as intended by section (1) shall refer to the Regional Spatial Planning and the development priority as stated in the Medium-Term Development Plan, the Strategic Plan, and the Working Plan of the relevant Agencies.</p> <p>Article 15 (1) Land Acquisition plan in the Public Interest as intended by Article 14 section (1) shall be prepared in the form of Land Acquisition planning documentation that contains at least:</p> <ul style="list-style-type: none"> a. the objectives and purposes of the development plan; b. consistency with the Regional Spatial Planning and the National/Regional Development Plan; c. land location; d. land size needed; e. general description of the land status; f. estimated period of the implementation of Acquisition of Land; g. estimated period of the implementation of construction; h. estimated land value; and i. budget plan. <p><i>Elucidation of Article 15 (1):</i> <i>Preparation of Land Acquisition planning documentation may be made together with the Agency needing land and the relevant technical agency (ies) or with the assistance of professional institutions designated by the Agency needing land.</i></p> <p>(2) The Land Acquisition planning documentation as intended by section (1) shall be prepared under the feasibility study made in accordance with the laws and regulations.</p> <p><i>Elucidation of Article 15 (2):</i> <i>The feasibility study shall include:</i></p> <ul style="list-style-type: none"> a. social-economic survey; b. location feasibility; c. analysis of cost and development benefit to the area and the community; d. estimated land value; e. environmental impacts and social impacts that may arise out of the Acquisition of Land and construction; and f. other study as necessary. 		
<p>Key element (2) Include the full costs of resettlement in the presentation of project costs</p>	<p>Law 2 of 2012 on Land Acquisition for Development for Public Use</p> <p>Article 52 (1) Funding for Acquisition of Land in the Public Interest shall be derived from the State</p>	<p>Full Equivalence</p>	<p>None required</p>

(A) ADB Safeguard Policy Statement	(B) Corresponding DMC Legal Provisions	(C) Extent of Equivalence ¹	(D) Recommended Gap-filling Measures
and benefits.	<p>Budget (APBN) and/or the Regional Budget (APBD).</p> <p>(2) Where an Agency needing land is a State-Owned Legal Entity/State-Owned Entity with special assignment, the funding shall be derived from the internal company or other sources in accordance with the provisions of laws and regulations. <i>“State-Owned Legal Entity” is, for example, the Oil and Gas Upstream Regulatory Body (BPMIGAS). “State-Owned Entity” is, for example (State Electricity Company).</i></p> <p>(3) Special assignment as intended by section (2) shall be under the provisions of laws and regulations.</p> <p>Article 53</p> <p>(1) Fund for Acquisition of Land as intended by Article 52 shall include the fund for:</p> <ol style="list-style-type: none"> a. planning; b. preparation; c. implementation; d. result delivery; e. administration and management; and f. socialization. <p>(2) Funding for Acquisition of Land in the Public Interest shall be made by the Agency and stated in the budgeting documentation in accordance with the provisions of laws and regulations.</p> <p>(3) The provisions concerning the mechanism of the implementation of funding for Acquisition of Land in the Public Interest shall be governed by Regulation of the President.</p> <p>Article 54</p> <p>The availability of funding for Acquisition of Land in the Public Interest shall be guaranteed and allocated by the Agency in accordance with the provisions of laws and regulations.</p>		
<p>Key element (3): For projects with significant involuntary resettlement impacts, consider implementing the involuntary resettlement component of the project as a stand-alone operation.</p>	<p>Law 2 of 2012 on Land Acquisition for Development for Public Interest</p> <p>Article 14</p> <p>(1) An Agency needing land shall make a plan of Acquisition of Land in the Public Interest in accordance with the laws and regulations.</p> <p>(2) Land Acquisition plan in the Public Interest as intended by section (1) shall refer to the Regional Spatial Planning and the development priority as stated in the Medium-Term Development Plan, the Strategic Plan, and the Working Plan of the relevant Agencies.</p> <p>Article 15</p>	<p>Full Equivalence.</p> <p>There are several regulations and Ministerial Decree stipulating National Strategic Projects with specific arrangement and funding for land acquisition.</p>	None required

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	<p>(1) Land Acquisition plan in the Public Interest as intended by Article 14 section (1) shall be prepared in the form of Land Acquisition planning documentation that contains at least:</p> <ul style="list-style-type: none"> a. the objectives and purposes of the development plan; b. consistency with the Regional Spatial Planning and the National/Regional Development Plan; c. land location; d. land size needed; e. general description of the land status; f. estimated period of the implementation of Acquisition of Land; g. estimated period of the implementation of construction; h. estimated land value; and i. budget plan. <p><i>Elucidation of Article 15 (1):</i> <i>Preparation of Land Acquisition planning documentation may be made together with the Agency needing land and the relevant technical agency (ies) or with the assistance of professional institutions designated by the Agency needing land.</i></p> <p>(2) The Land Acquisition planning documentation as intended by section (1) shall be prepared under the feasibility study made in accordance with the laws and regulations.</p> <p><i>Elucidation of Article 15 (2):</i> <i>The feasibility study shall include:</i></p> <ul style="list-style-type: none"> a. social-economic survey; b. location feasibility; c. analysis of cost and development benefit to the area and the community; d. estimated land value; e. environmental impacts and social impacts that may arise out of the Acquisition of Land and construction; and f. other study as necessary. <p>Perpres 3 of 2016 on Acceleration of National Strategic Project Implementation</p> <p>Article 1 Paragraph 1 says “National Strategic Project is a project undertaken by the Government, Local Government, and / or entities business that has a strategic nature for increased growth and equitable development in order to improve social welfare and regional development.</p> <p>Article 9 (1) Location determination or location permit for National Strategic Projects provided by the Provincial or District/City BPMPTSP accordance with its authority based on</p>		

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	<p>technical considerations of land.</p> <p>(2) In the case of business entities have acquired land rights and / or License of Borrow and Use of Forest Areas, the Enterprises is not required to obtain location permits.</p> <p>(3) Technical consideration of land as intended in paragraph (1) shall be granted by the Land Office located in the project sites</p> <p>Article 10</p> <p>(1) In terms of technical considerations of land referred to in Article 9 paragraph (3) has been given, the process of determining the location or the location permit shall be made after Responsible party for National Strategic Projects submit commitment to solicit license and non-license to the fulfillment of technical requirements;</p> <p>(2) In terms of technical considerations of land referred to in Article 9 paragraph (3) has been granted and the Minister / agency head, governors and regents / mayors has not set license and non-license in the list of eligibility (checklist), the process of location determination or location permit is conducted simultaneously with the process of issuance of environmental permits, building permits, interference permits, and approval of technical plan of the building through the use of shared data (data sharing);</p> <p>Article 11</p> <p>(1) In terms of the location of the National Strategic Projects are found in several locations in the district / city, but they are an integral part of the National Strategic Projects, the licensing and non-license is enough to be given once for all locations of the National Strategic Project by BPMPTSP Regency / City;</p> <p>(2) In term of the projects are located in several districts/cites in one province, the permit or non-permit shall be given once for all locations by provincial BPMPTSP;</p> <p>(3) In term of the projects cross provinces, the permit or non-permit shall be given one for the entire project locations by National PTSP;</p> <p>Article 12</p> <p>(1) In terms of licensing and non-licensing requirements submitted to the regents / mayors have been met and licensing and non-licensing are not provided within a predetermined time, the Head of the BKPM through National PTSP conveys to</p>		

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	<p>the governor for imposing administrative sanctions in accordance with the legislation in the field of local governance</p> <p>(2) In the case of administrative sanctions have been imposed and licenses are not issued by regents / mayors, the governor took over the granting of licenses referred</p> <p>Article 13</p> <p>(3) In the case of administrative sanctions have been imposed and licensing and non-licensing is not issued by the governor, the Minister of Home Affairs take over the granting of the licenses.</p> <p>Article 14</p> <p>(1) Development / construction of the National Strategic Projects can started after obtaining the permit at least:</p> <p>a. Location determination location permit;</p> <p>b. Environmental Permit; and</p> <p>c. Building permit.</p> <p>Perpres 102 of 2016 on Land Acquisition Financing for Development of Public Interest in Framework of National Strategic Development</p> <p>Article 2</p> <p>Land acquisition for the development of the Public Interest consists of:</p> <p>a. Land acquisition for the development of the Public Interest in the framework of the National Strategic Projects; and</p> <p>b. Land Acquisition for the development of the Public Interest which is not in the framework of the National Strategic Projects.</p> <p>Article 3</p> <p>(1) Land Acquisition Funding for the development of the Public Interest in National Strategic Projects can be done through financing of investments by the Government with the mechanisms:</p> <p>a. Compensation payments is provided directly to the entitled parties by the Minister; and / or</p> <p>b. the use of Enterprises funds in advance.</p> <p>(2) Funding for land acquisition for the development of Public Interest which are not for the National Strategic Project, it shall be done in accordance with the provisions of the</p>		

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	<p>legislation</p> <p>Article 12</p> <p>(1) for the implementation of Land Acquisition for the implementation of the National Strategic Project by ministries / agencies or State owned Enterprise, the supervision shall be carried out by Financial and Development Supervision Agency (<i>Badan Pengawasan Keuangan dan Pembangunan</i>).</p> <p>(2) Supervision shall include supervision over the implementation phases of Land Acquisition up to the establishment of compensation.</p> <p>Article 13</p> <p>(1) The supervision by the Financial and Development Supervisory Agency is carried out through monitoring of implementation phases of Land Acquisition until the determination of compensation.</p> <p>(2) Supervision shall be conducted following a request from the Minister.</p> <p>(3) Financial and Development Supervisory Agency report monitoring results to The Minister.</p> <p>(4) Cost of supervision may be charged to the Minister</p> <p>Article 19</p> <p>Land Acquisition Funding for the implementation of the National Strategic Projects can use fund of business entities that obtain authorization under the agreement to act on behalf of the ministries / agencies in order to provide infrastructure for public interest</p>		
<p>Policy Principle 11: Pay compensation and provide other resettlement entitlements before physical or economic displacement. Implement the resettlement plan under close supervision throughout project implementation.</p>			
<p>Key Element (1): Pay compensation and provide other resettlement entitlements before physical or economic displacement.</p>	<p>Law 2 of 2012 on Land Acquisition for Development for Public Interest sets for equal provisions as follow:</p> <p>Article 1 paragraph 2 says that "Acquisition of Land" means any activity to make land available by giving reasonable and just compensation to the entitled party.</p> <p>Article 1 paragraph 4 "Object of the Acquired Land" means land, over-ground and underground space, buildings, plants, objects related to land, or other appraisable objects.</p>	<p>Full Equivalence</p>	<p>None required</p>

(A) ADB Safeguard Policy Statement	(B) Corresponding DMC Legal Provisions	(C) Extent of Equivalence ¹	(D) Recommended Gap-filling Measures
	<p>Article 1 paragraph 10 says that “Compensation” means any reasonable and just compensation given to the entitled party in exchange for acquisition of land.</p> <p>Article 5 The Entitled Party must release his/her land during the implementation of the acquisition of land in the public Interest after the giving of compensation or after a final and binding court decision.</p> <p>Article 41 (2) Upon giving Compensation, the Entitled Parties to Compensation must: a. release title(s); and b. Deliver evidence of possession or ownership of Objects of the Acquired Land to the Agency needing land through the Land Administrator</p> <p>Article 48 (1)The Land Administrator shall hand over the results of the Acquisition of Land to the Agency needing land after: (a) the Compensation to the Entitled Parties and Release of Titles as intended by Article 41 section (2) point (a) have been given/made; and/or (b) the Compensation given has been deposited with the district court as intended by Article 42 section (1). (ii) An Agency needing land may begin to perform the construction activities upon the handover of the results of the Acquisition of Land as intended by section (1).</p> <p>Article 49 (i) Acquisition of Land in the Public Interest in emergency circumstances due to natural disaster, wars, escalating social conflicts, and epidemics may immediately proceed to construction upon confirmation of the location of development in the Public Interest. (i) Prior to confirmation of the location of development in the Public Interest as intended by section (1), notification shall be first given to the Entitled Parties. (ii) Where there is an objection or lawsuit against this implementation of the Acquisition of Land, the Agency needing land shall remain to perform the construction activities as intended by section (1).</p> <p>Perpres 71 of 2012 on Implementation of Land Acquisition for Development in the Public Interest</p> <p>Article 76</p>		

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	<p>(3) The monetary compensation as referred to in paragraph (2) must be distributed at the same time as the Entitled Parties relinquish their rights. (4) The payment of the compensation as referred in paragraph (2) should be distributed within 7 (seven) working days since the determination of compensation form by the Land Acquisition Implementation Team.</p> <p>Article 77 (5) The compensation as referred to in paragraph (3) must be carried out the same time as the Entitled Party relinquishes their rights without waiting for the availability of the replacement land. (7) The process of providing substitute land as referred to in paragraph (3) is conducted within 6 (six) month [from] the determination of the form of compensation by the Land Acquisition Implementation Team.</p> <p>Article 78 (3) The Compensation as referred to in paragraph (1) is carried out at the same time with the Release of Rights by the Entitled Party without waiting for the completion of the development resettlement area. (4) The Compensation as referred to in paragraph (1) is carried out at the same time with the Release of Rights by the Entitled Party without waiting for the completion of the development resettlement area. (5) During the process of resettlement as referred to in paragraph (5), the fund to provide resettlement is deposited at the bank by and under the name of the Government Institution. (6) The implementation of the provision of resettlement as referred to in paragraph (3) is carried out within 1 (one) year since the determination of the form of compensation by the Land Acquisition Implementation Team.</p> <p>Article 80 (3) The distribution of compensation as referred in paragraph (1) must be carried out at the same time as the Entitled Party relinquishes its rights.</p> <p>Article 81 (1) The distribution of other forms of Compensation agreed to by both parties could be a combination of 2 (two) or more of the forms of compensation as referred in article 74 paragraph (1) letter a to d. (2) The distribution of Compensation as referred to in paragraph (1) is implemented using the principle of mutatis mutandis as referred to in Article 76 through Article 80</p>		

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	<p>Article 100 (1) For the object of land acquisition that has been compensated or its Compensation has been consigned in district court or its right waiver has been made, its legal relationship between the Entitled Party and the land shall legally disconnect.</p> <p>Article 112 (1) The chairman of Land Acquisition Implementing Unit shall submit the land acquisition results to the Institution requiring the land attached with land acquisition data as referred to in Article 100 no later than 7 (seven) working days since the right waiver of the object of land acquisition.</p> <p>Article 113 Institution requiring the land can start the development at the submission of land acquisition results by the chairman of Land Acquisition Implementing Committee.</p> <p>(iii)</p>		
<p>Key Element (2): Implement the resettlement plan under close supervision throughout project implementation</p>	<p>Law 2 of 2012 on Land Acquisition for Development for Public Interest</p> <p>Article 51 (i) Monitoring and evaluation of the performance of Acquisition of Land in the Public Interest as intended by Article 13 shall be made by the Government. (ii) Monitoring and Evaluation of the results of the handover of the Acquisition of Land in the Public Interest as intended by Article 48 section (1) shall be made by the Land Administrator</p> <p>Perpres 71 on Implementation of Land Acquisition for Development in the Public Interest</p> <p>Article 115: Land National Agency (BPN) carries out the monitoring and evaluation towards the control, ownership, utilization and benefits of the results of the Land Acquisition for Development in the Public Interest.</p>	<p>Full Equivalence</p>	<p>None required</p>
<p>Policy Principle 12: 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.</p>			

(A) ADB Safeguard Policy Statement	(B) Corresponding DMC Legal Provisions	(C) Extent of Equivalence ¹	(D) Recommended Gap-filling Measures
<p>Key Element (1): 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.</p>	<p>Law 2 of 2012: on Land Acquisition for Development for Public Interest</p> <p>Article 1 paragraph 2 says that “Acquisition of Land” means any activity to make land available by giving reasonable and just compensation to the entitled party. Article 1 paragraph 4 “Object of the Acquired Land” means land, over-ground and underground space, buildings, plants, objects related to land, or other appraisable objects. Article 1 paragraph 10 says that “Compensation” means any reasonable and just compensation given to the entitled party in exchange for acquisition of land.</p> <p>Perpres 71 of 2012 on Implementation of Land Acquisition for Development in the Public Interest</p> <p>Article 115: Land National Agency (BPN) carries out the monitoring and evaluation towards the control, ownership, utilization and benefits of the results of the Land Acquisition for Development in\ the Public Interest.</p> <p>Perpres 102 of 2016 on Land Acquisition Financing for Development of Public Interest in Framework of National Strategic Development</p> <p>Article 12</p> <p>(1) for the implementation of Land Acquisition for the implementation of the National Strategic Project by ministries / agencies or State owned Enterprise, the supervision shall be carried out by the Financial and Development Supervision Agency (<i>Badan Pengawasan Keuangan dan Pembangunan</i>). (2) Supervision shall include supervision over the implementation phases of Land Acquisition up to the establishment of compensation.</p> <p>Article 13</p> <p>(1) The supervision by the Financial and Development Supervisory Agency is carried out through monitoring of implementation phases of Land Acquisition until the determination of compensation. (2) Supervision shall be conducted following a request from the Minister. (3) Financial and Development Supervisory Agency report monitoring results to The Minister. (4) Cost of supervision may be charged to the Minister</p>	<p>Partial Equivalence</p> <p>Land acquisition Law and Regulations require monitoring of the progress of land acquisition implementation, use of acquired land by agencies needing land, but not of land acquisition impacts to the livelihoods and living standards of displaced persons or entitled persons, and whether the objectives of the resettlement plan have been achieved.</p> <p>MSP/NLA is only responsible to manage the implementation and delivering result stage. The planning stage is responsibility of institution needing land and preparation step is responsibility of institution needing land and provincial government).</p>	<p>The legal framework should require monitoring and assessment of 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.</p>

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	<p>Instruction of Ministry of Agrarian and Spatial Planning/Head of National Land Agency (MASP/NLA) 2/Inst/VIII/ 2016¹³</p> <p>Fifth: Directorate General of Land Acquisition carries out monitoring and evaluation on the implementation of strategic projects at the regional offices of National land Agencies implementing national strategic development. Sixth: Experts in Land Acquisition carry out evaluation directly on the progress of land acquisition implementation for the national strategic developments throughout Indonesia and take steps for solutions of the rising issues.</p>		
<p>Key Element (2): Disclose monitoring reports.</p>	<p>Perpres 71 Tahun 2012 on Implementation of Land Acquisition for Development in the Public Interest</p> <p>Article 115 Land National Agency (BPN) carries out the monitoring and evaluation towards the control, ownership, utilization and benefits of the results of the Land Acquisition for Development in the Public Interest.</p> <p>Law 14 of 2008 on Public Information Openness</p> <p>Article 9 (1) Public Body shall publish Public Information periodically. (2) Public Information as referred to in paragraph (1) shall cover: a. information related to the Public Body; b. information concerning activities and performance of the Public Body; c. information concerning financial report; and/or d. other information deemed necessary by legislations. (3) The obligation to disclose and provide Public Information as referred to in paragraph (2) shall be carried out at most once every 6 (six) months. (4) The obligation to disseminate Public Information as referred to in paragraph (1) shall be carried out in a manner that is easily accessible by the people and in the language easily understandable. (5) The manners as referred to in paragraph (4) shall be specified further by Information and Documentation Management Officer in the respective Public Body. (6) Further provisions regarding Public Body's obligation to disclose and provide Public Information periodically as referred to in paragraph (1), paragraph (2), and paragraph (3) shall be established in the Technical Guidance of Information Commission.</p>	<p>Full Equivalence</p>	<p>None Required</p>

¹³ Government of Indonesia, 2016; Instruction of Ministry of Agrarian and Spatial Planning/Head of National land Agency 2/Inst/VIII/2016 on Acceleration of Land Acquisition for Public Interest for Implementation of the National Strategic Development.

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	<p>Article 10 (1) Public Body shall promptly publish information that may impose threats to people's lives and public order. (2) The obligation to disseminate Public Information as referred to in paragraph (1) shall be carried out in a manner easily accessible by the people and in the language easily understandable.</p>		