

# Resettlement Framework

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July 2016

## AFG: Panj-Amu River Basin Sector Project

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**Linked Document 12:**  
**Land Acquisition and Resettlement Framework**

## List of Acronyms

ADB	Asian Development Bank
AH	Affected Household
AP	Affected Person
CS	Census Survey
DDT	Due Diligence Team
DMS	Detailed Measurement Survey
EMA	External Monitoring Agency
EU	European Union
FS	Feasibility Study
GoA	Government of Afghanistan
IA	Implementing Agency
IP	Indigenous Peoples
IPSA	Initial Poverty Social Assessment
IR	Involuntary Resettlement
IWRM	Integrated Water Resources Management
LAL	Land Acquisition Law
LARF	Land Acquisition and Resettlement Framework
LARP	Land Acquisition and Resettlement Plan
MAIL	Ministry of Agriculture, Irrigation and Livestock
MEW	Ministry of Energy and Water
MoF	Ministry of Finance
NGO	Non-Governmental Organization
PARB	Panj-Amu River Basin
PARBP	Panj-Amu River Basin Project
PMO	Project Management Office
PPTA	Project Preparation Technical Assistance
RBA	River Basin Authority
RF	Resettlement Framework
SBA	Sub-Basin Authority
SB	Sub-Basin
SPS	Safeguard Policy Statement
WUA	Water Users Association

## Glossary

<b>Affected persons (APs)</b>	All the people affected by the project through land acquisition, relocation, or loss of incomes and include any person, household (sometimes referred to as project affected family), firms, or public or private institutions. APs therefore include; i) persons affected directly by the right-of-way acquisition, or construction work area; (ii) persons whose agricultural land or other productive assets such as trees or crops are affected; (iii) persons whose businesses are affected and who might experience loss of income due to the project impact; (iv) persons who lose work/employment as a result of project impact; and (v) people who lose access to community resources/property as a result of the project. Although this definition of affected person is at variance with the usage in the SPS (2009), this is how it is understood and officially used in Afghanistan, and it is not materially different from 'displaced person' defined in the SPS.
<b>Affected Household (AH)</b>	All members of a household residing under one roof and operating as a single economic unit. It may consist of a single main family or an extended family group. This unit is the most important compensation/rehabilitation recipient.
<b>AFN</b>	Local currency of Afghanistan, which is the Afghani.
<b>Compensation</b>	Payment in cash or kind for an asset to be acquired or affected by a project at replacement cost at current market value.
<b>Cut-off-date</b>	The date after which people will NOT be considered eligible for compensation, i.e., they are not included in the list of APs as defined by the census. Normally, the cut-off date is the start date of the project census and detailed measurement survey.
<b>Detailed measurement survey</b>	The detailed inventory of losses that is completed after detailed design and marking of project boundaries on the ground.
<b>Entitlement</b>	The range of mitigation measures comprising cash or kind compensation, relocation cost, income rehabilitation assistance, transfer assistance, income substitution, which are due to the APs by virtue of being displaced by a development project, depending on the type and degree of their losses, to restore their social and economic base.
<b>Inventory of losses</b>	The pre-appraisal inventory of assets as a preliminary record of affected or lost assets.
<b>Jerib</b>	Traditional unit for measurement of land in Afghanistan. One Jerib is equivalent to 2000 square meter of land. One hectare consists of 5 jeribs.
<b>Jirga</b>	A jirga is a traditional assembly of leaders that make decisions by consensus and according to the teachings of Islam.
<b>Land acquisition</b>	The process whereby a person is compelled by a public agency to alienate all or part of the land she/he owns or possesses, to

the ownership and possession of that agency, for public purposes, in return for fair compensation.

**Non-titled**

Those who have no recognizable rights or claims to the land that they are occupying and includes people using private or state land without permission, permit or grant, i.e., those people without legal title to land and/or structures occupied or used by them. ADB's policy explicitly states that such people cannot be denied compensation.

**Poor**

Based on Ministry of Rural Rehabilitation and Development study of Nationwide Risk and Poverty Assessment of Afghanistan, the latest national poverty line for the period 2011-2012, has been determined as AFN 1,710 per person per month. An updated, corresponding current figure is not available. Therefore, those falling below this benchmark are considered poor.

**Replacement cost**

The calculation of compensation considering the elements: (i) fair market value; (ii) transaction costs; (iii) interest accrued, (iv) transitional and restoration costs; and (v) other applicable payments, if any.

**Significant impact**

200 persons (individuals) or more will experience major impacts, which are defined as; (i) being physically displaced from housing, or (ii) losing ten per cent or more of their productive assets (income generating).

**Vulnerable**

Any one who might suffer disproportionately or face the risk of being marginalized from the effects of resettlement and includes; (i) female-headed households with dependents; (ii) disabled household heads; (iii) poor households (within the meaning given previously); (iv) landless or without title to land; (v) elderly households with no means of support; (vi) households without security of tenure; (vii) ethnic minorities; and (viii) marginal farmers (with landholdings of five Jeribs or less).

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## I. INTRODUCTION

1. The proposed Panj-Amu Basin Project (a sector grant project) will increase agricultural productivity in the Panj-Amu River Basin through improving access and use of water at farm, scheme and river levels. The project will support the government strategy, which aims to increase per-capita income and reduce poverty among rural and pastoral communities. It will improve cropping intensities, irrigated areas, and crop yields on a command area of 74,500 hectares (ha) and as a result, increase annual farm incomes in the range \$123-615 per household for over 55,000 households, and create approximately 11,000 full-time rural jobs per annum, with an estimated value of \$10.4 million. The project will also improve food security, substitute imports for wheat, and improve self-sufficiency, and increase in exports of high-value products such as fruit and nuts. The project will also create more economic opportunities for agribusiness development, particularly for input suppliers and processors of and market intermediaries for agricultural products. The project is included in ADB's Country Operations Business Plan for Afghanistan, 2016–2018.

2. Project interventions will be undertaken through the delivery of three outputs as follows:

3. **Output 1: Water allocation and availability improved.** This output will provides the capacity and resources for MEW, and associated river basin agency (RBA), and sub-basin agencies (SBAs) in the Panj-Amu river basin, to: (i) improve the conveyance and allocation of water to irrigated areas through rehabilitating and upgrading head works and main canals in priority schemes with command area over 400 ha;<sup>1</sup> (ii) establish and strengthen the capacity of 112 water user associations (WUAs) to operate and maintain (O&M) conveyance infrastructure in these schemes to better distribute water between the head, middle and tail end of canals more equitably; and for them to work with RBA and SBAs to facilitate water sharing between schemes; and (iii) enhance the capacity of MEW, RBA and SBAs for more effective water allocation between schemes to benefit downstream users. In addition, support will also be provided to Afghan members of the Afghanistan-Tajikistan transboundary technical working group to prepare them for technical meetings and strengthen their ability to conduct negotiations regarding the set-up and operations of the Pyanj River Basin Commission.

4. **Output 2: On-farm water management enhanced.** This output will provides the capacity and resources for MAIL, and associated DAILs in the Panj-Amu river basin, to: (i) improve irrigation infrastructure at the secondary and tertiary canal level in schemes identified for improvement under Output 1 in order to secure an integrated approach; (ii) establish and strengthen the capacity of at least 105 irrigation associations to operate and manage irrigation infrastructure in these schemes to improve distribution of water within schemes; and (iii) improve water use efficiency at the farm level by improved on-farm water management and agronomic techniques (such as land levelling, bed and furrow irrigation, and intercropping) with at least 6,300 farmers having improved knowledge from 21 demonstration plots.

5. **Output 3: Watersheds properly managed and protected.** This output provides the capacity and resources for MAIL, and associated DAILs in the Panj-Amu river basin to improve community-based watershed management. This output includes (i) preparation of a community-based natural resources management technical manual and guidebook; (ii) training of DAILs' staff as master trainers who will conduct training of communities; (iii)

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<sup>1</sup> Twenty-one schemes have been selected as first priority schemes covering a command area of 74,500 in the Lower Kunduz, Taloquan, Kokcha and Lower Panj-Amu sub-basins. List of eligible candidate schemes/sub-projects is accessible from the list of linked documents in Appendix 2.

identification of approximately 21 watershed/rangeland sites for restoration and protection; (iv) creation of community forestry/rangeland associations for these sites; and (v) preparation and implementation of natural resource management plans for these sites. These activities will help restore 10,500 hectares of forestry and/or rangeland in the vicinity of 21 prioritized subprojects and protect irrigation structures under Outputs 1 and 2 from flash floods and sedimentation.

6. 21 priority candidate irrigation schemes in the basin have been selected for interventions. Implicit least-cost analysis was undertaken to select projects to ensure that severe environmental and social impacts are avoided, and that schemes are large enough to attain economies of scale. The following eligibility and prioritisation criteria were used:

7. Eligibility criteria (If not eligible, cancelled)

- An irrigation rehabilitation and upgrading project, i.e., not for example a river training project, or dam building.
- No significant potential environmental impact as outlined in the ADB Safeguard Policy Statement (June 2009). More specifically, GoIRA Category 1 subprojects, and Category 2 subprojects for which NEPA requires EIA, are excluded from Project financing as are ADB Category A subprojects.
- Not in an environmentally protected area.
- Approved by government (i.e. government priority)
- No major social impact, i.e., no significant resettlement impact as outlined in the ADB Safeguard Policy Statement (June 2009) for category A for resettlement, and no physical displacement and loss of livelihood.

8. Prioritisation criteria:

- Command area size: Small - less than 400ha (0 points), Medium - 400-3000 ha (3 points), >3000ha (6 points).
- Command area of sub-basin (>3000ha, 3 points, <3000ha 0 points)
- Accessibility: Within 2 hours of Sub-basin Agency (SBA) (1 point)
- Accessibility: No major winter cut-off (1 point)

9. In case additional sub-projects are identified during identification, the above mentioned eligibility and selection criteria will be used.

10. Note that the above criteria is to be used to determine sub-projects on which to undertake further feasibility and detailed design studies. Inclusion of sub-projects as priority sub-projects does not necessarily mean they are technically, environmentally, socially and economically feasible. For this to be determined more detailed field surveys and analysis will be undertaken to determine that the sub-project: (i) is pro-poor (i.e. benefits will mainly accrue to poor farming households); (ii) has demonstrated water availability in sufficient quantity and quality to ensure the intended benefits of the project can be achieved; (iii) works are technically feasible; (iv) has demonstrated commitment from local government authorities; (v) has commitment from water users to establish a WUA to operate and maintain structures post-project and to distribute water in an equitable manner; (vi) is economically feasible (EIRR >12%). At the feasibility and detailed design stage, interventions are designed according to social and environmental safeguards criteria.

11. In order to assess the viability of the project, three representative sub-projects (RSPs) were chosen from the list of candidate sub-projects as being representative of the type of scheme that will be assisted in the project, and which will be the first to be implemented. Selection of the RSPs was also based on government priority and ease of access from both a security and logistical point of view. The three RSPs are Laqi canal, in Aliabad district in Kunduz province (Lower Panj sub-basin), Sharawan-Takhar canal in Takhar province



(Taloquan sub-basin) and Seyaab canal in Keshim district in Badakshan province (Upper Panj sub-basin).

12. Details on each of these RSPs are included in Supplementary Documents. Land Acquisition and Resettlement Plans (LARPs) have been prepared for each and are included as Linked Documents 13, 14 and 15.

## **II. LAR PROCESSING REQUIREMENTS**

13. Under a sector loan, the EA or IA is primarily responsible for identifying, prioritizing, formulating, appraising, approving, and implementing subprojects in accordance with technical, financial, and economic appraisal criteria, as well as social and environmental safeguards criteria. The three RSPs will serve as models for preparing other subprojects and addressing the safeguard requirements.

14. As part of the screening exercise for subproject selection, primary consideration will be given to no land acquisition and no loss of livelihood, apart from community demand for the project benefits. The subproject selection will be based on such parameters. To this end, an involuntary resettlement screening checklist is appended as Appendix 1, to be filled for each potential subproject by the IAs and submitted to ADB for review and concurrence.

## **III. LARP APPROVAL PROCESS**

15. LARP preparation according to the provisions of this LARF will be the responsibility of the Implementing Agency's (IA) Project Management Office (PMO). The LARPs will be endorsed and approved by the IA and reviewed and accepted by ADB, prior to implementation.

## **IV. SOCIOECONOMIC INFORMATION**

16. The IAs will conduct socioeconomic survey(s), based on a sample, a 100% project census survey, as well as an assets inventory of the affected persons with appropriate socioeconomic baseline data to identify all persons who will be affected by each subproject and to assess the project's socioeconomic impacts on them. For this purpose, a cut-off date for eligibility of receiving compensation will be established and disclosed by the IA when the socio-economic survey and census of affected persons (APs) are completed. Information regarding the cut-off date will be documented and disseminated throughout the project area through consultations. For each subproject, the cut-off date shall be the start date of the 100% project census survey and will be disseminated by the IA. The social impact assessment will be incorporated as a chapter of the subproject LARP. As required by the SPS, the social impact assessment will include:

- i. identified past, present and future potential social impacts,
- ii. an inventory of APs and their lost assets including valuation,
- iii. an assessment of the lost income and livelihoods (if any), and
- iv. gender-disaggregated information pertaining to the economic and sociocultural conditions of displaced persons.

## V. LEGAL AND POLICY BACKGROUND

### a. Afghanistan Laws on Land Acquisition and Resettlement<sup>2</sup>

#### i. Introduction

17. The text below is based on the existing laws and regulations of Afghanistan. It must be noted that a new legislation (amendment) has been drafted, but has not been endorsed by the Cabinet of Ministers and passed by Parliament yet. Once this draft legislation has turned into law, this LARF shall be updated according to the latest legislation.

#### ii. The National Constitution

18. The Constitution of the Islamic Republic of Afghanistan (January 26, 2004) provides that:

- Property shall be safe from violation. No one shall be forbidden from owning property and acquiring it, unless limited by the provisions of law. No persons' property shall be confiscated without the order of the law and decision of an authoritative court. Acquisition of private property shall be legally permitted only for the sake of public interests, and in exchange for prior and just compensation. Search and disclosure of private property shall be carried out in accordance with provisions of the law (chapter 2, article 40).
- Lease of immovable property for the purpose of capital investment shall be permitted in accordance with the provisions of the law. The sale of estates to diplomatic missions of foreign countries as well as international organizations to which Afghanistan is a member shall be allowed in accordance with the provisions of the law (chapter 2, article 41).
- Any individual suffering damage without due cause from the administration shall deserve compensation, and shall appeal to a court for acquisition. Except in conditions stipulated by law, the state shall not, without the order of an authoritative court, claim its rights (chapter 2, article 51).

#### i. Law on Managing Land Affairs (31 July 2008, Serial No. 958)

19. The Law on Managing Land Affairs lays out principles of land classification and documentation (land deeds), and the principles governing allocations of state land, land leasing, land expropriation, settlement of land rights, and restoration of lands. The law encourages commercial investment in state-owned agricultural land with opportunities for long leases. The main objectives of the law are: (i) creation of a unitary and reliable order across the country; (ii) management of property books and land registration based on credible documents of relevant offices; (iii) solving the problems resulting from performance of land related reforms of former regimes; (iv) segregation of government, individual, virgin and arid and pasture (grazing) and endowed lands; (v) distribution of government land and restoration of land distributed illegally; (vi) provision of adequate opportunities for active and broad private sector participation in landholding; prevention of government land confiscation and providing the opportunity to people to access land (chapter 1, article 2). The following are the key provisions under the Law on Managing Land Affairs:

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<sup>2</sup> This chapter is broadly based on the following document: ADB, 2014: REG: Mainstreaming Land Acquisition and Resettlement Safeguards in the Central and West Asia Region- Afghanistan country assessment.

- Management of landownership-related affairs is the responsibility of the Ministry of Agriculture, Irrigation and Livestock (MAIL) (chapter 2, article 4).
- Principal book for registration of private lands is a book in which quantitative and qualitative particulars, as well as transfers and alterations of the fragment(s) belonging to individuals and legal entities are registered on the basis of valid deeds (chapter 1, article 3, item 20).
- The Ministry of Agriculture, Irrigation and Livestock shall conduct the process of landholding settlement and management from technical and administrative points of view. The Supreme Court of the Islamic Republic of Afghanistan, Finance, Energy and Water and Agriculture, Irrigation and Livestock Ministries, General Administration of Geodesy and Cartography as well as relevant local departments shall be jointly responsible to implement the landholding settlement and management (chapter 3, article 13).
- In case a landowner does not possess the title deed and the land possessed by him is not registered in the state properties book, such land up to 100 jeribs (1 jerib = 2000 square meter) shall be deemed to be his property on the basis of his possession, provided (a) no other individual has a claim on that land, (b) there are signs of agricultural construction observed on that land, and (c) the landowners holding lands having joint borders with his land have confirmed the land under his possession for 35 years. However, where the government finds the land documents superseding possession of the person, the land shall be deemed to be government land and up to 10 jeribs of first category land or equivalent shall be provided free of cost to the occupant and the balance shall be sold to the occupant at the current market price payable in installments over five years (chapter 2, article 8).
- To settle the landholding area, a settlement commission shall perform its functions which shall consist of: (a) representative of the land management organization of Ministry of Agriculture Irrigation and Livestock, as chief, (b) officer-in-charge of settlement affairs of the land management organization, as member, (c) officer-in-charge of administrative affairs of the land management organization, as Member, (d) representative of Ministry of Finance, as member, (e) Representative of the Ministry of Energy and Water, as member, (f) representative of local promotion and propagation department of the Ministry of Agriculture, Irrigation and Livestock, as member and (g) representative of the General Department of Geodesy and Cartography, as member (chapter 3, article 14).
- The land settlement commission shall be responsible for: (a) Settlement of landholding areas, distribution of document and land; (b) Determining the limits, category, water rights and tax of the land; (c) Determining and segregation of individual, state, as well as grazing, endowed, virgin and arid lands, jungles and so forth; (d) Referring the disputes and lawsuits related to grazing, endowed, virgin and arid lands, jungles and so forth to the competent authorities; (e) Registration of land settlement conclusions in the relevant book; (f) Referring the conclusions of land settlement for registration in the principal books of properties (Amlak) and local tax as well as preparing legal document in the relevant court; (g) Restoration of previously illegally-distributed land to the owner, or to his legal inheritors; (h) Sending performance report to the relevant provincial land management department and to the central land management organization; (i) Other duties for the purpose of enforcement of provisions of the present law that are assigned by Ministry of Agriculture, Irrigation and Livestock (chapter 3, article 15).
- In order to render better cooperation and to provide technical and administrative support for implementation of field activities as well as to overcome problems

resulting from implementation of land settlement, two commissions shall be constituted: (1) Central Commission for Land Management consisting of Minister of Agriculture, Irrigation and Livestock, as chairman; Head of General Land Management Department, as vice-chairman; Representative of the Supreme Court, as member; President of Promotion and Propagation Department of Ministry of Agriculture, Irrigation and Livestock, as member; President of Water Management of the Ministry of Energy and Water, as member; President of General Department of Geodesy and Cartography, as member; and President of Revenues of the Ministry of Finance, as member; and (2) Provincial Commission for Land Management consisting of the Governor, as chairman; Head of Agriculture, Irrigation and Livestock Department, as vice-chairman; Head of Appeal Court, as member; Mustofee, as member; Head of Energy and Water Department, as member; Head of Department of Geodesy and Cartography, as member; and Head of Land Management Department, as secretary-cum-member (chapter 3, articles 19 and 20).

- In order to ensure public interests, the State, if necessary and according to provisions of the law, can appropriate the land of a person, which shall take place after the land settlement (chapter 3, article 21).
- A land under a project, which has been changed into residential quarters prior to settlement, shall not be settled by the settlement commission, and shall be appropriated by the relevant departments upon observing valid documents possessed by the owner or his heirs (chapter 3, article 22).
- Land-related disputes and claims, if cannot be settled by the settlement commission, shall be referred to the court for settlement (chapter 3, article 23).
- For persons that are absent and their lands left abandoned, the Land Management Department shall lease these abandoned lands till their owners or legal heirs appear and the lease money shall be temporarily deposited to the bank and shall be returned to the absent person (chapter 3, article 32).
- The state lands that are not required for any project or for establishment of a farm shall be distributed to eligible persons based on the recommendations of MAIL and upon approval by the President of the Islamic Republic of Afghanistan. The price of the land shall be determined in conformity with the local land price by the commission consisting of representatives from the Supreme Court, Ministry of Agriculture, Irrigation and Livestock, Ministry of Finance, Ministry of Energy and Water, Land Management Department and the Geodesy and Cartography (Cadaster) Department of the relevant province. The price shall be paid by the eligible person in ten yearly installments (chapter 5, article 39).
- The owner (an eligible person and a settler after paying the entire installments of the land price and after obtaining the legal deed as well as heirs of the eligible person with their shares having being confirmed) has the right to transfer his property irrevocably or temporarily on the basis of a legal deed by the relevant court of the place through the Land Management Department (chapter 7, article 50).
- Transfer of the State land to State departments and institutions shall take place after determining the price of land on the basis of an agreement between the Land Management Department and the end-user department after the agreement of the Minister of Agriculture, Irrigation and Livestock and approval by President of the Islamic Republic of Afghanistan (chapter 7, article 53).
- Pastures (virgin and arid lands), on which state and individual possession has not been proved legally, are deemed public property and shall be kept unoccupied for the sake of public requirements of local villagers (for cattle grazing, graveyard, threshing ground and etc.) (chapter 9, article 82).

- Land being endowed shall no longer remain under the ownership or possession of the owner and selling, giving in gift, transferring or inheriting the endowed land is not permitted (chapter 9, article 84).
- Construction of roads, buildings and establishments, and non-agriculture activities are not allowed on agriculture lands. In exceptional cases the users are required to obtain in advance agreement of the Ministry of Agriculture, Irrigation and Livestock and approval by the president of the Islamic Republic of Afghanistan (chapter 11, article 90).

ii. *Land Expropriation Law (2001, Serial No.794)*

20. The Land Expropriation Law recognizes private property and provides that acquisition of private land for public purposes should be done with great care and by the competent authorities and compensation for all other assets e.g., structures, crops, trees etc., on the land should be paid based on market rate. But the law does not specifically provide for resettlement and rehabilitation, i.e., provision of additional assistances to the affected families, restoration of business/income loss to be compensated and other assistance/rehabilitation measures.

21. The Land Expropriation Law provides that:

- The expropriation of a plot or a portion of plot, for public interest, is decided by the Council of Ministers and shall be compensated at fair value based on the current market rates (chapter 1, article 2).
- The expropriation of a plot or part of it should not prevent the owner from using the rest of the property or hamper its use. If this difficulty arises, the whole property shall be expropriated (chapter 1, article 4).
- For determining the damages and losses due to expropriation of land, a commission consisting of the following members shall be formed by the municipality (1) the landlord or person who uses the land or their representatives; (2) the official representative of the agency that needs to acquire the land (end-user); (3) a representative of the local municipality; (4) a representative of the Ministry of Finance; and (5) a representative of the Ministry of Justice (chapter 1, article 5).
- The right of the owner or land user shall be terminated 3 months prior to start of civil works on the project and after the proper reimbursement to the owner or person using the land has been made. The termination of the right of the land owner or the person using the land would not affect their rights on collecting their last harvest from the land, except when there is emergency evacuation (chapter 1, article 6).
- When expropriating land, the following indemnities for the damages shall be considered for compensation: (1) value of the land, (2) value of residential houses, buildings and rest of the structures existing on the land, and (iii) value of trees, orchards, and other assets on the land (chapter 2, article 8).
- Valuation of land under expropriation shall be determined by the Council of Ministers.
- During the valuation, grade and geographical location of the land shall be considered (chapter 2, article 10).
- Value of residential houses, buildings and rest of the structures on the land belonging to the owner/user shall be determined by the municipal authorities (chapter 2, article 11).
- A person whose residential land is subject to expropriation shall receive a new plot of land of the same value. He has the option to get residential land or a house on government property in exchange, under proper procedures (chapter 2, article 13).

- It can be arranged with the owner if he wishes to exchange his property, subject to acquisition, with government land. The difference on the value of land shall be calculated (chapter 2, article 14).
- Value of fruit, non-fruit trees and other assets, which exist on the land under expropriation, and belong to the owner, shall be determined by competent municipality and agriculture department's authorities. The owner has the authority to retain the fruit, non-fruit trees & other assets on the expropriated land (chapter 2, article 15).
- If the owner/user of the land is unable to harvest the land before the expropriation of the land, the institution that needs the land (end-user) shall compensate for the crop and tree losses to the owner/user. Value of the indemnity of the affected crops shall be determined by a team of representatives from municipality, agriculture department and governor taking into account the rate of seeds, expenses on irrigation and other services provided by the owner/user. The total value of compensation for crops and trees shall not exceed the total actual income from the affected crops and trees which shall be based on the average output up to five years, (chapter 2, article 19).
- The owner/user shall be notified 3 months prior to expropriation of land and the price. Non-availability of the owner/user or their representatives in the council of pricing of the lands, despite prior notification, shall not hamper the activities of pricing (chapter 2, article 20).
- The expropriating department is obliged to obtain the official deed of the land from the owner during the expropriation process. The owner is obliged to render the official deed of the land to the expropriating department. If part of the land, contended in the official deed, is expropriated, the specific expropriated portion of the land shall be deducted from the overall land official deed, but the official deed shall remain with the owner. Any claim of the owner after obtaining compensation for the land and other assets, will be void (chapter 3, article 22).

## **b. ADB IR Safeguard Requirements**

22. The borrower's requirements on the ADB policy on involuntary resettlement is elaborated in ADB's Safeguard Policy Statement of 2009 (SPS) in Appendix 2 —Safeguard Requirements 2: Involuntary Resettlement.

### *i. SPS Key Principles*

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

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

25. The implementation of the SPS IR requirements is required of all projects that involve physical and/or economic displacement. The requirements apply regardless of the numbers of affected persons involved and of whether losses are full or partial, permanent or

temporary. The SPS requirements also cover involuntary resettlement actions conducted by the borrower/client in anticipation of ADB support.

26. The SPS includes 12 key policy principles for IR. These are reproduced below:

- 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.
- Carry out meaningful consultations with affected persons, host communities, and concerned nongovernment organizations. Inform all displaced persons of their entitlements and resettlement options. Ensure their participation in planning, implementation, and monitoring and evaluation of resettlement programs. Pay particular attention to the needs of vulnerable groups, especially those below the poverty line, the landless, the elderly, women and children, and Indigenous Peoples, and those without legal title to land, and ensure their participation in consultations. Establish a grievance redress mechanism to receive and facilitate resolution of the affected persons' concerns. Support the social and cultural institutions of displaced persons and their host population. Where involuntary resettlement impacts and risks are highly complex and sensitive, compensation and resettlement decisions should be preceded by a social preparation phase.
- 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.
- 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
- 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.
- 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.
- 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.
- 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.

- 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.
- Conceive and execute involuntary resettlement as part of a development project or program. Include the full costs of resettlement in the presentation of projects' 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.
- Pay compensation and provide other resettlement entitlements before physical or economic displacement. Implement the resettlement plan under close supervision throughout project implementation.
- 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.

27. The SPS distinguishes three categories of displaced persons, with variable compensation needs:

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

28. For categories (i) and (ii) above, borrowers are required to provide compensation at full replacement cost for lost land, structures, land improvements and relocation assistance. For DPs in category (iii) (informal settlers), the borrower/client is required to compensate all assets developed on land other than land (i.e. buildings, trees, crops, businesses) at full replacement cost. The risk of opportunistic encroachment on land designated for acquisition by the project is managed through a cut-off date.

29. There is no specific valuation method or standards followed in Afghanistan for the valuation of lost assets. As required by ADB, land will be valued at replacement cost based on current market values assessed, based on a survey of transactions in the year before the provision of compensation and agreed upon with the APs in Jirgas. In addition to the fair market value, replacement cost will include transaction costs, interest accrued (if necessary), transitional and restoration costs, and any other applicable payments.

30. When land for land compensation is provided, replacement plots with access to basic facilities ( e.g. water supply, sanitation, roads, drainage and electricity) no less than what existed in the original plot will be provided. The LARP will detail costs for site preparation and for the provision of basic facilities and will clearly detail site preparation and resettlement schedules. In managing the relocation against land compensation, the socio-cultural and religious characteristics of the APs and host communities will be taken into consideration and the distance between the old and new locations will be minimized as much as possible.

31. Crops: Cash compensation at full gross market rate for full harvest, based on average production of the crops, taking the average from MAIL price bulletins of the previous year.



32. Trees: Fruit bearing trees will be compensated at the value of 1 harvest multiplied by the number of years needed to re-grow a tree at the same productive level of the tree lost. Non-fruit bearing/timber trees will be valued based on the market value of their dry wood volume.

33. Compensation for all other assets is to be provided in cash at replacement cost without deductions for depreciation of structures and assets. It is good practice that salvaged material may be kept by the owner.

34. The SPS importantly establishes that where land acquisition is achieved without the exercise of the right of Eminent Domain through negotiated settlements (sale based on free buyer and free seller conditions) SR2 does not apply. In such cases, ADB requires, however, that the negotiation and settlement processes be properly documented and validated by an independent external party.

#### *ii. Resettlement Planning and Documentation*

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

- i. Undertaking a Social Impact Assessment involving: a) a detailed measurement survey of all impacts; b) a detailed Census of all affected parties and affected persons and; c) a socio- economic surveys to be based on a statistical sample of the APs detailing the livelihood situation in project affected areas;
- ii. A review of the local laws and regulations and an assessment of the impacts and risks against these laws and regulations.
- iii. Preparation of a Resettlement Plan addressing the SPS IR requirements based on the SIA and in consultation with affected persons. An outline for a Resettlement Plan is provided in the Annex to Appendix 2 of the SPS.

#### **c. Gap Analysis**

36. This section identifies the gaps between the IR requirements of the SPS and of Afghan laws and regulations through a direct comparison. The exercise takes into consideration both formal principles and the way these principles are applied in practice by ADB and the Government (application). This section also proposes the action needed to reconcile the ADB and the Afghan position and the level of the action needed. The outcome of the gap analysis is reflected in the Entitlement matrix.

#### *i. Livelihood Rehabilitation Standards*

37. Afghan law does not define compensation as targeting the rehabilitation of the APs livelihood. It instead focuses on the mere compensation of directly measurable physical impacts. This may create problem while applying ADB's principles especially for what concerns the compensation for loss of income or of indirectly affected items that become unusable after impacts or for the provision of severe impacts, vulnerable APs and relocation allowances. It generally appears that the law does not allow an interpretation of its mandates to cover ADB requirements without the need of legal reform.

*ii. Entitlement to Compensation*

38. Afghan Law and ADB policy are consistent regarding the compensation entitlements of Legal APs. The local LAR system however, does not distinguish between legalizable and not legalizable APs which are lumped together into a non-legal category, which in principle are not eligible to compensation. Where land was obtained from 30th November 1979 – 28th April 1992 (9th Qaws 1357 – 8th Sawr 1371) with special official documents of that time and if such land is required for the public purposes, only the structures and other assets on the land shall be compensated, and compensation for land shall not be paid. The SPS, instead, mandates that legalizable APs are treated as legal APs and compensated accordingly, and that non-legalizable APs are to be identified and compensated for all non-land impacts (including buildings, trees, crops and income).

39. **Loss of Land leases.** Afghan law does not separately deal with compensation for land leases. While ADB IR Policy does not specifically mention of the loss of land leases, it is understood that compensation for this item is to be given at replacement cost. Such a requirement is practically implemented either through the provision of another comparable leased plot or of the expected net income of the leased plot lost for the number of years remaining before the expiration of the original lease. The law instead envisions only the provision of a replacement lease.

40. **Loss of indirectly affected parts of an asset.** ADB has no policy requirement for loss of indirectly affected parts of an asset. The Afghan Law on Managing Land Affairs provides that in case a part of the land is acquired and the owner is unable to use the rest of the land, the whole land shall be acquired and compensated.

41. **Loss of structures/buildings.** Based on ADB requirements, compensation is to be given at replacement cost (free of deduction of depreciation, or transaction costs). Afghan Law mandates that, when expropriating land, compensation for the value of residential houses, buildings and the rest of the structures existing on the land shall be paid. The local LAR system is however, silent on any deductions for depreciation but provides that the construction materials of residential houses and rest of the structures shall freely belong to the owner/user after they are compensated for. Although not specifically mentioned in SPS it is considered good practice that the owner of lost structures is allowed to salvage the materials.

42. **Loss of trees.** Afghan law mandates that, when expropriating land, value of fruit and non-fruit trees (like any other private property) existing on the land affected by a public project is to be compensated. The owner has the authority to retain the fruit, non-fruit trees and other assets on the expropriated land conditional to the fact that he has not received its indemnity. In practice, however, this happens selectively depending on the understanding of the law by the valuing authorities and tree type and impact scope/value. By default, the Afghan provision aims at compensating for the losses in case of legal APs. Legalizable APs and non-legal APs are not compensated for. ADB policy requires that irrespective of legal land occupancy status, compensation is to be paid at market rate. As such, reconciliation is needed on the scope and methodology for determining compensation for loss of trees. The following are the principles, consistent with the SPS, applied in previous ADB projects.

- **Valuation of Wood/unproductive trees.** Compensation for non-fruit/wood trees is calculated based on the yield of the common wood tree in the project area. Generally, the height of non-fruit/wood tree is 10 m and girth of 0.5 m and produces about 700 kg of firewood. Based on the cost of firewood (per kilo- gram), the compensation is calculated. Since MAIL price bulletins do not include prices for firewood, local market

rates (from the nearest main market place) should be used. The compensation of the tree is free of deduction for the value of the wood left to the AH.

- **Valuation of Productive trees.** Compensation for fruit trees is calculated for each tree type based on the annual average production, market prices of the yield and number of years needed to re-grow the tree to the same productive level. For market prices not covered by MAIL price bulletins (e.g. mulberries), local market rates (from the nearest main market place) should be used.

43. Although not specifically mentioned in the SPS, it is considered good practice that the owner of lost trees is allowed to salvage the fruits of the trees, as well as the wood.

44. **Loss of crops.** As per Afghan law, if the owner is unable to harvest the crop on the affected land, compensation for the crops loss is to be paid based on the cost of seeds, expenses on irrigations and other services. By default, the Afghan provision aims at compensating for the losses in case of legal APs. Legalizable APs and non-legal APs are not compensated for. ADB policy requires that irrespective of legal land occupancy status, compensation is to be paid at replacement cost. As such, reconciliation is needed on the scope and methodology for determining compensation for loss of crops. What should be done and how it should be done.

45. **Loss of jobs.** ADB policy provides for the indemnification of APs who lose a job due to land/assets acquisition under a public interest project. ADB policy compounds the matter as an income rehabilitation issue and thus requires that the actual job income lost by the APs is fully reimbursed to them. This approach covers temporary and permanent job losses and is generally implemented through an allowance providing the APs their declared monthly salary for the number of months of business stoppage. For informal permanent jobs without declared salaries the approach is the same but based on national minimum salary. However, the Afghan law does not have any specific provision for indemnification of APs who lose a job due to land/assets acquisition under a public interest project.

### *iii. Resettlement Planning and Identification of Project Impacts*

46. **LARP Preparation.** ADB requires a broad LAR planning process with early scoping of LAR impacts and timely preparation of a LARP providing a thorough impact assessment and mitigation measures based on: a) a detailed measurement survey of all affected assets, b) an AP census identifying all affected persons and c) a socio-economic survey elaborating on the livelihood conditions of the affected population. The LARP will include a budget for implementing the LAR activities and will provide information on compensation entitlements, income/livelihood restoration strategies, institutional arrangements, implementation schedules, monitoring reporting, public consultation and information disclosure, and a grievances redress mechanism.

47. Afghan law and practice, on the other hand, do not require a LARP detailing background information on its preparation and implementation. The impacts assessment is primarily based on available official records and the verification of these records through a detailed measurement survey in the field is generally carried out for registered plots or fixed building but not for non-registered assets. Other affected items such as trees, crops and other improvements are also assessed. Business or income losses, loss of jobs and other special impacts to vulnerable or severely affected APs are also not assessed. Finally, local practice does not envisage the execution of a 100% project census and socio-economic survey of the project affected persons.

*iv. Procedural Mechanisms*

48. **Information disclosure and Public consultation.** Afghan law does not provide for public consultation or specific disclosure instructions. ADB policies provide for a meaningful public consultation with and information disclosure to the project affected persons.

49. **Grievance Redress Mechanism.** The ADB IR policy requires the establishment of a (sub)project level grievance redress mechanism to receive and facilitate the resolution of APs' concerns and grievances about displacement and other impacts. As per the Afghan law, there is no specific requirement for the establishment of project specific grievance redress mechanism.

*v. Special Assistance to Vulnerable and Severely Affected APs*

50. Unlike the ADB IR Policy that requires special assistance to vulnerable, severely affected and relocating APs for improving their standards of living, Afghan law is silent on special livelihood rehabilitation allowances.

*vi. Chapter Summary and Conclusion*

51. All issues signaled in the above analysis and requiring reconciliation of policy or policy application listed in this chapter have already been reconciled on a project by project basis in previous ADB Projects. It is thus expected that the mainstreaming of the ADB policy requirements may not require legal reform and may be dealt with decrees or ordinances. To simplify Government approval of mainstreamed provisions it is recommended that these are not approved one by one but through the wholesale approval of an integrated framework gathering all of them. Table 1 schematizes the findings of this chapter's analysis. In the table the SPS policy principles are accompanied by the way they are actually applied in Afghanistan in the course of ADB projects implementation. In many cases there is a gap between the national legislation and the SPS; in the case of P-ARBP, the SPS requirements will prevail. The gap analysis is tabulated below.

*Table 1: Overview of ADB and Afghan policy and legislation*

	<b>Issues</b>	<b>SPS 2009</b>	<b>Afghan Legislation</b>
1	Livelihood rehabilitation	ADB Policy requires rehabilitation/ improvement of AP livelihood standards	Notion of livelihood rehabilitation not sanctioned by national law.
2	Compensation entitlements	A. APs with formal title have to be compensated for lost land/other assets. B. APs with legalizable title have right to be compensated for lost land and assets after the EA helps them in legalizing their assets. C. APs with no legal title are compensated for lost non- land assets.	A. APs with formal title are compensated for lost land/other assets. B. /C. APs with legalizable or no legal title. Legalizable are not distinguished and considered non- legal as legalization is a burden of the APs. Non-legal APs have no right to be compensated for land and non-land assets.
3	Compensation	A. Replacement of leased land. Based on replacement of lost income through cash compensation of gross income x the remaining lease years or through a replacement land lease B. Loss of structures/ buildings. Cash compensation at replacement cost for lost item free of depreciation, transaction costs, or any other deductions. C. Business losses. Reimbursement of actual losses + business re- establishment costs. For application based on tax declared income for period of business stoppage. In	A. Replacement of leased land. Based on lease replacement.  B. Loss of structures/buildings. Cash compensation at market rate. Law is silent on any deduction for depreciation.  C. Loss of business. There is no provision for payment of compensation for loss of business.

	Issues	SPS 2009	Afghan Legislation
		absence of tax declaration based on maximum non- taxable salary.	
		<p>D. Loss of productive trees.</p> <p>E. Loss of crops. Irrespective of legal land occupancy status, compensation is to be paid at market rate replacement cost</p> <p>F. Loss of jobs. An allowance providing the APs their declared monthly salary for the number of months of business stoppage. For informal permanent jobs without declared salaries the approach is the same but based on national minimum salary.</p>	<p>D. Loss of productive trees. Value of trees existing on the land is to be compensated for. The owner can retain the fruits/wood conditional to the fact that the owner has not received its indemnity. By default, the Afghan provision aims at compensating for the losses in case of legal APs. Legalizable APs and non-legal APs are not compensated for. Valuation standards not defined.</p> <p>E. Loss of crops. Mandated by law. By default, the Afghan provision aims at compensating for the losses in case of legal APs. Legalizable APs and non-legal APs are not compensated for.</p> <p>F. Loss of jobs. AFG law does not provide for indemnification of APs who lose jobs due to land/asset acquisition under a public interest.</p>
4.	LAR Planning, assessment and valuation of impacts	<p>A. Resettlement Plan (LARP). LARP preparation includes: a) impacts assessment/AP census; b) definition of entitlements, income/livelihood restoration strategy, compliance &amp; grievance mechanisms, institutional arrangements; c) consultation results, d) monitoring schemes, e) budget and implementation schedule. A RP requires the following surveys:</p> <p>i. Measurement survey. Measures all affected items.</p> <p>ii. AP Census. Identifies all APs and establishes legitimate beneficiaries based on legal status.</p> <p>iii. Socio-economic survey. Provides background information on AP's socio-economic features.</p> <p>iv. Valuation survey.</p> <p>a) Land: If land market exists based on a survey of recent transactions; without land market based on land productivity/ income;</p> <p>b) Buildings and structures. Replacement cost of materials, labor and transport and special features of building/structure without discounting depreciation, salvaged materials and transaction costs;</p> <p>c) Trees/crops. Based on the methodology detailed in section 2.</p>	<p>A. Resettlement Plan. There are no requirements to prepare integrated and stand-alone LARPs. LAR planning entails similar but less extensive/simpler assessment/survey efforts than ADB Policy, as detailed below</p> <p>i. Measurement survey. Land and buildings impacts measured. Other impacts identified but not measured.</p> <p>ii. APs Identification. Identifies only legal APs.</p> <p>iii. Socio-economic survey. No comparable requirements exist.</p> <p>iv. Valuation survey</p> <p>a) Land: valued by a committee at market rate taking into account the government rate for the area.</p> <p>b) Buildings and structures. Market value of materials, labor, transport and special building features.</p> <p>c) Trees/crops. Valued based on market rates.</p>
5	Procedural mechanisms	<p>A. Information disclosure. Resettlement-related documents to be timely disclosed in the AP local language.</p> <p>B. Public consultation. Meaningful public consultations are to be held with the APs. APs should be informed about their entitlements and options, as well as resettlement alternatives</p>	<p>A. Afghanistan legislation is silent on timely disclosure of land acquisition and resettlement related documents.</p> <p>B. There is no provision in the legislation for consultation. However, a 3 months advance notice to the DP on government's decision on expropriation of his/her property is required under legislation.</p>

	Issues	SPS 2009	Afghan Legislation
		<p>C. Grievance procedure. A Grievance Redress Mechanism (GRM) is to be established for each project. Information on GRM to be communicated to the APs</p> <p>D. Asset acquisition conditions. Property can be acquired only after full compensation is paid to the APs</p>	<p>C. Afghanistan legislation requires the Settlement Commission to redress and resolve the grievances arising from the land expropriation process. This process is limited to the prior-to-compensation stage. It requires nullifying any grievance after the DP receives compensation.</p> <p>D. No comparable requirements exist.</p>

#### **d. LARF Principles for Entitlement and Eligibility**

52. Based on the above analysis of national provisions and ADB's SPS 2009, and the broad resettlement principles for this LARF, the EA has drafted a specific framework detailing the compensation eligibility and entitlements for this project which are presented below:

- The negative impact on AP must be avoided or minimized as much as possible;
- Where negative impacts are unavoidable, the persons affected by the project will be identified and assisted in improving or regaining their standard of living.
- Information related to the preparation and implementation of resettlement plan will be disclosed to all stakeholders and people's participation will be ensured in planning and implementation. Relevant information from all RPs prepared will be disclosed to the APs;
- Land acquisition for the project would be done as per the Land Acquisition Law of Afghanistan. The Act specifies payment of adequate compensation for the properties to be acquired. Additional support would be extended for meeting the replacement cost of the property, that includes all transactions costs and without deduction for depreciation. APs who neither have titles nor recognized or recognizable claims to land will be compensated for their structures and for other improvements to the land.
- Before taking possession of the acquired lands and properties, compensation and resettlement and rehabilitation (R&R) assistance will be paid in accordance with the provision described in this document although, the livelihood restoration measures may continue beyond taking possession of the acquired lands;
- An entitlement matrix for different categories of people affected by the project has been prepared and provisions will be kept in the budget for those who were not present at the time of census survey as a contingency amount (10%). However, people moving in the project area after the disclosed cut-off date will not be entitled to any compensation and assistance. In case of land acquisition the date of notification for acquisition will be treated as cut-off date. For non-titleholders such as squatters and encroachers the start date of the project census survey or a similar designated date declared by the EA will be considered as cut-off date;
- An appropriate grievance redress mechanism will be established to ensure speedy resolution of disputes, available through the project cycle;
- All activities related to resettlement planning, implementation, and monitoring would ensure the involvement of women and other vulnerable groups;
- Consultations with the APs will continue during the implementation of resettlement and rehabilitation works; and
- Compensation and assistance will be provided before the affected land is acquired.

#### e. Eligibility to Compensation and Rehabilitation

53. APs entitled to compensation or rehabilitation under the Project are:

- i. All APs with formal title, formal or customary deed, or traditional land right as vouched by the local Jirga, elders or Community Development Council;
- ii. Tenants and sharecroppers, whether registered or not;
- iii. Owners of buildings, crops, plants, or other objects attached to the land (including those with no legal rights to the land); and
- iv. APs losing business, income, and salaries (including those with no legal rights to the land).

54. Compensation eligibility will be limited by a cut-off date to be set on the first day of the AP census and detailed measurement survey exercise. All APs settling in affected areas after that date and who cannot prove that they are displaced users of affected plots will not be eligible for compensation.

#### f. Entitlements and valuation

55. APs are entitled to various types of compensation and resettlement assistance as detailed below:

- **Acquisition of land** will be compensated at replacement cost either through replacement plots of similar value and condition or in cash based on replacement/current market price to be determined by a commission consisting representatives from various government entities, agreed-upon by the APs and endorsed by the Council of Ministers.
- **Houses, Structures and Buildings** will be compensated in cash at replacement cost free of depreciation or transaction costs. Replacement costs are calculated in consultation with local governments, MEW engineers and AP and will not include depreciation. A lump sum shifting allowance of will be paid for each relocated AH in addition to building compensation. This lump-sum will be based on transportation.
- **Loss of crop** will be compensated at market rate along with additional assistance for purchase of seeds and restoration of future crop activities.
- **Loss of trees:** Fruit bearing trees will be compensated at the value of 1 harvest multiplied by the number of years needed to re-grow a tree at the same productive level of the tree lost. Non-fruit bearing/Timber trees will be valued based on the market value of their dry wood volume. The compensation for the tree will be free of deduction for the value of the wood left to the DH.
- **Loss of business** will be compensated based on tax receipts/other valid documents or, if these are not available, based on the average net income of similar typical businesses in project areas as determined by surveys. Compensation for permanent business losses will amount to up to six month of actual income or of the monthly allowance. Compensation for temporary business losses will cover income losses during the interruption period.
- **Income losses for workers and employees** – Indemnity for lost wages for the period of business interruption up to a maximum of three months.
- **Sharecroppers and agricultural workers:** Sharecroppers will receive their share of harvest at market rates plus one additional crop compensation. Agricultural workers, with contracts to be interrupted, will get a cash indemnity corresponding to their salary in cash up to a maximum of three months.

- **Vulnerable Households** – Vulnerable people (APs) such as female headed households and mentally challenged headed households, etc. will be provided an additional three months of average household income allowance as assistance and will be given priority in employment in project-related jobs.
- **Severe agricultural land impacts** – When 10% or more of an AP's agricultural land or any other income generating asset is affected; the AP will get an additional allowance for severe impacts equal to the market value of a year's net income crop yield of the land lost.
- **Transitional livelihood allowance** — AHs forced to relocate will receive a livelihood allowance for three months. This allowance is based on the daily minimum wage for a period of 26 days per month.
- **Community structures and public utilities** — Will be fully replaced or rehabilitated so as to satisfy their pre-project functions.
- **Impacts on irrigation channels** — The project will ensure that irrigation channels are diverted and rehabilitated to previous standards.

56. The determination of replacement cost will be based on a detailed assessment undertaken to verify local market rates from local people (based on land transactions done in the area in the last year) and government rates (if any) for the region (e.g. MAIL price bulletin data for crops). However, in Afghanistan there may be situations where land or building markets are insufficiently developed and land sales prices are not systematically recorded. In these cases, valuation will be based on local government revenue rates and will then be negotiated with the local communities. The replacement value rates payable to the affected households will be determined based on extensive consultations with the local Jirgas and the affected households. These negotiated rates will be adopted once endorsed by the Governor's Office. The LARPs will detail the consultation and negotiation activities that led to the definition of the final land rates so as to document the fairness and transparency of the land valuation process and the final agreement of the APs.

57. The above-described entitlements are summarized in the Entitlements Matrix provided in Table 2 below.

*Table 2: Entitlement matrix*

Item	Application	Eligibility	Compensation entitlements
Agricultural/ residential/ commercial land loss	Land affected by RoW	AP with title, formal/customary deed, or traditional land right as vouched by local Jirga, elders or Community Development Council	- Cash compensation at replacement cost. All fees, taxes, or other charges, as applicable under relevant laws are to be borne by the project
Residential and commercial buildings loss	Residential/ commercial structure affected	Owners of structures (including informal settlers)	- Cash compensation for affected structure and other fixed assets at replacement cost of the structure free of depreciation, taxes/fees and salvaged materials. - In case of partial impacts full cash assistance to restore remaining structure. - Right to salvage material from demolished structure
Crops losses	Crops on affected land	Owners of crops / sharecroppers	- Cash compensation equal to replacement cost of crop lost plus cost of replacement seeds for the next season
Trees Losses	Trees on affected land	Owner of trees (including informal settlers)	- Fruit bearing trees will be compensated at the value of 1



			<p>harvest multiplied by the number of years needed to re-grow a tree at the same productive level of the tree lost.</p> <ul style="list-style-type: none"> <li>- Non-fruit bearing/timber trees will be valued based on the market value of their dry wood volume.</li> <li>- The compensation of the tree will be free of deduction for the value of the wood left to the AH.</li> </ul>
Business losses by shop owners and employees	Permanent / temporary business losses along the RoW	Business / shop owners (including informal settlers), employees	<ul style="list-style-type: none"> <li>- Business compensation based on monthly income from that business by month of business stoppage. The compensation for business loss will be calculated based on tax receipts or when these are not available based on fixed rates.</li> <li>- Employees: indemnity for lost wages up to three months'</li> </ul>
Transitional Allowance	Residential/Commercial Structures affected	All AHs	Relocated owners/renters will receive a transitional monthly allowance for livelihood losses for a period of up to 3 months
Relocation Allowance	Residential/Commercial Structures affected	All AHs	Relocated owners/renters (including informal settlers) will receive a relocation allowance. Based on minimum wages.
Assistance to vulnerable AH	Affected by land acquisition, resettlement etc.	AH which are: female-headed or headed by handicapped/disabled persons, or AHs that cannot produce their land deed.	<ul style="list-style-type: none"> <li>- Vulnerable households will be provided an additional three months of average household income allowance as assistance.</li> <li>- Preferential employment in the project construction.</li> </ul>
Severe impact allowance	Agricultural land	Agricultural land owners, leaseholders or sharecroppers losing $\geq 10\%$ of their holdings.	Allowance for severe land impacts equal to replacement cost of a year's net income from crop yield of land lost.
Unidentified Impacts.		AH or individuals	Unforeseen impacts compensated based on above entitlements during project implementation by the EA.
Loss of Community, Cultural, Religious, or Government Sites	Temporary or permanent loss due to the Project activities.	Community/ Affected households	Conservation, protection and cash compensation for replacement (e.g. Schools, mosques, communal centres, markets, health centres, shrines, other religious or worship sites, tombs). Cash compensation for affected structures based on the above structures entitlements.
Impact on irrigation channels	Temporary or permanent loss due to the Project activities.	Community/ affected households.	Irrigation channels are diverted and rehabilitated to previous standards.

58. While not a resettlement entitlement, sub-projects will also include a budget for domestic and livestock water access points along canals as a project benefits enhancement measure. It is estimated that 105 domestic water access points (at an estimated cost of

US\$5,762 each) and 42 livestock water access points (at an estimated cost of US\$27,459 each) will be constructed.

## **VI. INSTITUTIONAL ARRANGEMENT RESPONSIBILITIES AND IMPLEMENTATION**

### **a. The implementing agencies**

59. The PMOs under MEW and MAIL have overall responsibility of planning, implementation and monitoring of LAR activities in sub-projects under the sector loan. They are tasked to:

- ensure availability of a budget for LAR activities;
- select and appoint organizations for specific activities (e.g. for preparing LARPs and payment of compensation);
- coordinate with line departments, other agencies and implementing organizations;
- train project implementation offices relevant staff (PIOs) on resettlement matters.

60. PMO staff will include part-time social safeguard officers in the MEW and MAIL PMOs (who themselves will be trained by an international consultant).

### **b. Implementing organizations**

61. MEW will engage a feasibility study and detailed design firm to assist the preparation of the involuntary resettlement screening checklist and LARPs, while this will be done by the PMO in MAIL (the social safeguards officer) for works at the secondary and tertiary level.

62. Staff at the PIOs will be responsible for monitoring implementation of the LARP, which will generally be done by the civil works contractor (or as identified otherwise in the LARP). The contractor will be responsible for paying compensation before civil works begin.

## **VII. CONSULTATION AND INFORMATION DISCLOSURE**

63. The LARF will be updated as needed from time to time but, the standards set for the entitlements will not be lowered. It will be available to download from the ADB website, and available on request in Afghanistan to interested stakeholders.

64. LARP preparation and implementation will be accompanied by an intensive public information and consultation program involving the APs, local institutions and village officials. The objective of these tasks will be to ensure that the APs can play a role in the definition of LAR compensation options and that their needs are reflected in the compensation program detailed in the LARPs. Information and consultation will be carried out through individual meetings, community meetings and through pamphlets and questionnaires. The date, location, number of participants and matter discussed and how the project addresses these will be documented in the LARPs.

65. Relevant information from the LARP will be disclosed in the local language to APs and sub-project stakeholders through a public disclosure leaflet/booklet as well as consultations. Relevant information includes a subproject brief, information on compensation and entitlement, implementation schedule, consultations, and subproject level grievance redress mechanism.

66. The Sub-basin Agencies/Departments of Agriculture, Irrigation and Livestock, with support from the PIOs, as well as WUAs and irrigation associations will act as conduits for

disseminating the leaflets. It is particularly important that APs can read such leaflets so where literacy is an issue, the PIOs will assist in verbally explaining the document.

## **VIII. GRIEVANCE REDRESS MECHANISM**

67. A grievance redress mechanism will be available to allow an aggrieved AP to appeal any disagreeable decision, practice, or activity arising from land or other assets compensation. APs will be fully informed of their rights and of the procedures for addressing complaints during consultation, surveys, and time of compensation.

68. The various queries, complaints and problems that are likely to be generated among the APs and that might require mitigation, include the following:

- APs not listed;
- Losses not identified correctly;
- Compensation/assistance considered inadequate or not as per entitlement matrix;
- Dispute about ownership;
- Delay in disbursement of compensation/assistance; and
- Improper distribution of compensation/ assistance in case of joint ownership.

69. The GRM will be established prior to compensation payment and commencement of construction in each sub-project.

70. APs will be able to make a complaint in writing to the WUA/irrigation association (or if not set-up then mirabs) by filling in a logbook which will be used to provide complaints and comments. Logbooks will be provided by the PIO. WUAs/irrigation associations or the mirab will be tasked of informing APs as to this process, and the wider community made aware, preferably through a sign board.

71. The WUA/IA heads (or mirabs in their absence) will inform the PIO of new logbook entries within one week, using pro-forma letters prepared by the PMO social safeguards officer.

72. PIO will respond to complaints within 30 days of the complaint registration date. PIO construction supervisors will attempt to address the complaint at field level. If they are unsuccessful, they will refer the matter to the PIO director, who may communicate with or call a meeting of contractors, PMO and PIO staff, and/or ISC consultants. If this is unsuccessful, s/he will refer the matter to PMO for resolution which should respond within 45 days.

73. An aggrieved AP always has final recourse through Afghanistan's legal channels and referred to the appropriate courts; however, every effort will be made to avoid this since the system is presently critically weak.

## **IX. BUDGET AND FINANCING**

74. All land acquisition and resettlement costs are to be paid by the ADB or EU grant. Cost have been included in the budget for social safeguard officers, an international consultant and an external monitoring agent/individual for compliance review. Specific sub-project costs will be included in BOQs for civil work contracts as defined in LARPs.

75. LARPs for subprojects under the Project will provide detailed compensation and rehabilitation costs assessments and will clearly describe the methodology followed to identify the replacement rate for each affected asset.

76. Sub-projects will also include a budget for domestic and livestock water access points along canals. It is estimated that 105 domestic water access points (at an estimated cost of US\$5,762 each) and 42 livestock water access points (at an estimated cost of US\$27,459 each) will be constructed.

77. Estimates of resettlement costs are provided in the accompanying draft LARPs for each RSP. The final cost for resettlement will be updated and finalized in the draft LARP prepared under this framework to cover other LAR costs that are not yet included, which may become apparent once detailed designs are completed. ADB review and endorsement of the project LARP will be required.

## **X. MONITORING, REPORTING AND EVALUATION**

78. Monitoring, reporting and evaluation will comprise:

- On-going monitoring by the PIO of sub-project LARP implementation;
- Consolidation of such monitoring by the PMO into a semi-annual monitoring report;
- External monitoring of LARP implementation compliance.

79. **On-going monitoring.** PIO staff (construction supervisors) will be responsible for ensuring that the LARP is adhered to, and that the implementing organization (normally the civil works contractor) compensates APs before construction work begins (through a review of contractor records and payment slips). This can be phased however such that compensation and work starts on one part of the canal, and is then followed by compensation and construction in another part. The social safeguard officer at PMO level will provide monitoring reports templates and training for this purpose. Such monitoring reports can be included as part of the progress reports that the PIOs will submit to the PMO as part of the Project Performance Monitoring System.

80. **Semi-annual monitoring reports.** Based on these short monitoring reports (and the LARP implementation compliance reports – see below), the social safeguards officer will then prepare a semi-annual monitoring report to be sent to ADB for review and posting on the ADB website. Initial training and setting up of a template for this will be provided by the international safeguards specialist. The report will include information on:

- Information campaign and consultation with APs;
- Status of land acquisition and payments on land compensation;
- Compensation for affected structures and other assets;
- Relocation of APs;
- Payments for loss of income;
- Selection and distribution of replacement land areas (if any); and
- Income restoration activities

81. **LARP implementation compliance report.** Once the LARP has been fully implemented the PMO will engage an External Monitoring Agency (EMA) or Individual (e.g. an NGO, academic institute or independent consultant) to review the implementation of the LARP and will prepare the LARP implementation report based on which ADB will give the clearance for the civil works. If the sub-project civil works are staggered then compliance can be verified in a staggered process as well by producing short compliance reports so as not to hold up civil work commencement. Once all compensation is undertaken, then a final

compliance report can be produced. The report will include information on whether the compensation program has been carried out based on the LARP provisions and ADB policy and with the AP's satisfaction.

82. External monitoring tasks will include a satisfaction survey. The objective of this survey is to establish whether APs are better or worse off. Tasks will include:

- i. Review and verify internal monitoring reports prepared by the PIO;
- ii. Review of the socio-economic baseline census information of pre-displaced persons;
- iii. Identification and selection of impact indicators;
- iv. Impact assessment through formal and informal surveys with the affected persons;
- v. Consultation with APs, officials, community leaders for preparing review report; and
- vi. Assessment of the resettlement efficiency, effectiveness, impact and sustainability, drawing lessons for future LARPs.

83. As part of the final compliance report, the EMA will also assess the status of project affected vulnerable groups such as female-headed households and the disabled/elderly. The following will be considered as the basis for indicators in monitoring and evaluation of the project, although only indicators relevant to the LARP will be used:

- i. Socio-economic conditions of the APs in the post-resettlement period;
- ii. Communications and reactions from APs on entitlements, compensation, options, alternative developments and relocation timetables etc.;
- iii. Changes in housing and income levels;
- iv. Rehabilitation of informal settlers;
- v. Valuation of property;
- vi. Grievance procedures;
- vii. Disbursement of compensation; and
- viii. Level of satisfaction of APs in the post resettlement period.

## APPENDIX 1: INVOLUNTARY RESETTLEMENT SCREENING CHECKLIST

Probable Involuntary Resettlement Effects	Yes	No	Not Known	Remarks
<b>Involuntary Acquisition of Land</b>				
1. Will there be land acquisition?				
2. Is the site for land acquisition known?				
3. Is the ownership status and current usage of land to be acquired known?				
4. Will easement be utilized within an existing Right of Way (ROW)?				
5. Will there be loss of shelter and residential land due to land acquisition?				
6. Will there be loss of agricultural and other productive assets due to land acquisition?				
7. Will there be losses of crops, trees, and fixed assets due to land acquisition?				
8. Will there be loss of businesses or enterprises due to land acquisition?				
9. Will there be loss of income sources and means of livelihoods due to land acquisition?				
<b>Involuntary restrictions on land use or on access to legally designated parks and protected areas</b>				
10. Will people lose access to natural resources, communal facilities and services?				
11. If land use is changed, will it have an adverse impact on social and economic activities?				
12. Will access to land and resources owned communally or by the state be restricted?				
<b>Information on Displaced Persons:</b>				
Any estimate of the likely number of persons that will be displaced by the Project?				
<input type="checkbox"/> No <input type="checkbox"/> Yes				
Are any of them poor, female-heads of households, or vulnerable to poverty risks?				
<input type="checkbox"/> No <input type="checkbox"/> Yes				
Are any displaced persons from indigenous or ethnic minority groups?				
<input type="checkbox"/> No <input type="checkbox"/> Yes				