

Land Acquisition and Resettlement Framework (LARF)

August 2014

**PAK: Federally Administered Tribal Areas Water
Resources Development Project (FWRDP)**

ABBREVIATIONS

ADB	-	Asian Development Bank
AP	-	Affected Person
CAS	-	Compulsory Acquisition Surcharge
CPS	-	Country Partnership Strategy
DDR	-	Due Diligence Report
DFs	-	Displaces Families
DHs	-	Displaces Households
DMC	-	Developing Members Country
DMS	-	Detail Measure Survey
DPC	-	Displaced Person's Committee
DPs	-	Displaced Persons
EA	-	Executing Agency
EM	-	External Monitor
EMA	-	External Monitoring Agency
FATA	-	Federally Administrative Tribal Area
FWRDP	-	FATA Water Resources Development Project
FCR	-	Frontier Crimes Regulation
GIA	-	Gender Impact Assessment
GOP	-	Government of Pakistan
GRC	-	Grievance Redress Committee
IPSA	-	Initial Poverty and Social Assessment
ISA	-	Initial Social Assessment
IA	-	Implementing Agency
IP	-	Indigenous People
IPP	-	Indigenous People Plan
IPPF	-	Indigenous Peoples Planning Framework
IR	-	Involuntary Resettlement
KP	-	Khyber Pakhtunkhawa
LAA	-	Land Acquisition Act
LARC	-	Land Acquisition & Resettlement Cell
LARF	-	Land Acquisition and Resettlement Framework
LARP	-	Land Acquisition and Resettlement Plan
LAS	-	Land Acquisition Survey
M&E	-	Monitoring and Evaluation
OM	-	Operations Manual
PIU	-	Project Implementation Unit
PMU	-	Project Management Unit
RoW	-	Right of Way

RF	-	Resettlement Framework
RP	-	Resettlement Plan
SES	-	Socio Economic Survey
SIA	-	Social Impact Assessment
SPS	-	Safeguards Policy Statement
TA	-	Technical Assistant

GLOSSARY

Kharif: Summer cropping season of the year (15 April – 15 September)

Rabi: Winter cropping season of the year (15 September – 15 April)

DEFINITION OF TERMS

Affected person (AP): Means any person or persons, household, firm, private or public institution that, on account of changes resulting from the Project, will have its (i) standard of living adversely affected; (ii) right, title or interest in any house, land (including residential, commercial, agricultural, forest, salt mining and/or grazing land), water resources or any other moveable or fixed assets acquired, possessed, restricted or otherwise adversely affected, in full or in part, permanently or temporarily; and/or (iii) business, occupation, place of work or residence or habitat adversely affected, with or without displacement. In the case of a household, the term AP includes all members residing under one roof and operating as a single economic unit, who are adversely affected by a subproject or any of its components.

Displaced Households: All members of the affected household residing under one roof, operating as a single economic unit and consist of a single nuclear family or an extended family group, who are adversely affected by the project or any of its components or activity;

Compensation: Means payment in cash or in kind to replace losses of lands, housing, income and other assets caused by the Project. All compensation is based on the principle of replacement cost, which is the method of valuing assets to replace the loss at current market rates, plus any transaction costs such as administrative charges, taxes, registration and titling costs.

Encroachers/squatters: People who have trespassed onto an unauthorized private or community land. If such people arrived before the entitlements cut-off date, they are eligible for compensation for any structures, crops or land improvements that they will lose.

Entitlement: Range of measures comprising compensation, income restoration, transfer assistance, income substitution, and relocation, to restore their economic and social base of the displaced persons.

Host Population: Community living in or near to the area, where the affected people are to be relocated.

Income Restoration: Re-establishment of income sources and livelihoods of DPs.

Involuntary Resettlement: Economic and physical dislocation resulting from a development project

Improvements: Structures constructed (dwelling unit, fence, waiting sheds animal pens, utilities, community facilities, stores, warehouses, etc.) and crops/plants planted by the person, household, institution, or organization.

Inventory of Losses (IOL): This is the process where all fixed assets (i.e., lands used for residence, commerce, agriculture, including ponds; dwelling units; stalls and shops; secondary structures, such as fences, tombs, wells; trees with commercial value; etc.) and sources of income and livelihood inside the Project right-of-way (project area) are identified, measured, their owners identified, their exact location pinpointed, and their replacement costs calculated. Additionally, the severity of impact to the affected assets and the severity of impact to the livelihood and productive capacity of APs will be determined.

Land Acquisition: The process whereby a person is compelled by a government agency to alienate all or part of its owned land or possesses to the ownership and possession of the government agency for public purpose.

Meaningful Consultation: A process that (i) begins early in the project preparation stage and is carried out on an ongoing basis throughout the project cycle; (ii) provides timely disclosure of relevant and adequate information that is understandable and readily accessible to affected people; (iii) is undertaken in an atmosphere free of intimidation or coercion; (iv) is gender inclusive and responsive, and tailored to the needs of disadvantaged and vulnerable groups; and (v) enables the incorporation of all relevant views of affected people and other stakeholders into decision making, such as project design, mitigation measures, the sharing of development benefits and opportunities, and implementation issues.

Resettlement Plan (RP): This is a time-bound action plan with budget setting out compensation and resettlement strategies, objectives, entitlement, actions, responsibilities, monitoring and evaluation.

Rehabilitation: Compensatory measures provided under the ADB Policy Framework on Involuntary Resettlement other than payment of the replacement cost of acquired assets.

Relocation: The physical resettlement of displaced persons at his/ her planned place of residence.

Replacement Cost: The financial value determined on current market rates as the fair compensation for the loss of agricultural and residential land, crops, trees, and other commodities such as; cost of rebuilding houses and structures at current market prices of building materials and labor, without depreciation or deductions for salvaged building material.

Resettlement Impact: The nature and value of livelihood loss caused by the acquisition of land and/or assets.

Severely affected households: This refers to affected households who will (i) lose 10% or more of their total productive land and/or assets, (ii) have to relocate; and/or (iii) lose 10% or more of their total income sources due to the subproject.

Vulnerable Groups: Distinct group of people who may suffer disproportionately from resettlement effects. The policy defines vulnerable groups as households below the poverty line, the elderly, those without legal title to assets, landless, women, children and indigenous people.

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I. Introduction

A. Background

1. The proposed Federally Administrated Tribal Areas (FATA) Water Resources Development Project (FWRDP) is located along the western border of Pakistan with Afghanistan. It complements ADB's investment in three agencies of FATA (Mohmand, Bajaur and Khyber) made through Asian Development Bank (ADB) -financed FATA Rural Development Project (FRDP) which was completed in March 2012. The scope of the proposed project is based on the recommendation of the water assessment study carried out under FRDP which addresses the issues such as water scarcity, insufficient irrigation facilities, water conservation and weak water resources management. The study identified that ground water aquifers in all the watersheds were depleting even under average weather conditions because of the unplanned exploitation of ground water for irrigation and domestic use, and recommended shift from ground water to surface water. It identified potential for developing surface water resources for irrigated agriculture and other uses and integrating that with the watershed management and command area development to ensure sustainable use of the resources without degrading the watersheds.

2. This Land Acquisition Resettlement Framework (LARF) has been prepared for the proposed Water Resources development Project for FATA in Pakistan. This Resettlement Framework (RF) has prepared in consultation and coordination with the office of FATA Secretariat, political administration, local elders and Maliks (state recognized tribal leaders) of the area. Keeping in view the security, socio cultural conditions and other ground realities of the FATA, a selection criterion was fixed for each subproject with the consensus of all stakeholders. It was decided that only those subprojects will be executed, which fulfill the conditions; (i) that, communities would agree to voluntarily provide land for construction of storage facility, inundation area, channel, and any appurtenant structures as their share in the subproject costs. (ii) "Subprojects requiring involuntary resettlement will be not selected". But if, there is a need of land acquisition and involuntarily resettlement, then Asian Development Bank's (ADB) Policy on Involuntary Resettlement, applicable operations manuals (OM) and provision made in Frontier Crimes Regulations (FCR) 2011 and land acquisition and resettlement practices prevail in FATA will be followed.

3. This RF addresses the likely impacts and resettlement of affected persons (APs) under the proposed development interventions, and is an integral part of the proposed FATA Water Resources Development Project. The LARF sets out the resettlement policy and operational guidelines for the preparation and implementation of Land Acquisition and Resettlement (LAR) tasks arising from potential impacts and steers the preparation of LARPs (if required) including implementation mechanisms for project and its components to ensure that they conform to ADB's SPS. An outline of land acquisition & resettlement plan (LARP) is provided as, Annex- A to serve as a guideline for preparation of the future LARPs for the relevant proposed schemes/subprojects

under this Project. The subprojects, if need land acquisition and/or cause adverse effects to the APs, to any significance level, for each such subproject a resettlement Plan (RP), will be prepared and submitted along with its proposal and would be implemented upon receiving formal approval from ADB.

4. It will be used as the broad framework within which social safeguards for subprojects with land acquisition and resettlement impacts will be formulated. The purpose of this LARF is to establish the screening, planning and management procedures for involuntary resettlement (IR) inconformity with ADB's Safeguard Policy Statement (SPS 2009). The LARF entails objectives, policy, principles, eligibility criteria for subprojects, Affected Persons (APs) and, entitlements, legal institutional and implementation framework, modes of compensation, participation and consultation procedures and grievance redress mechanisms that will be employed to compensate, resettle and rehabilitate the living standards of the APs. LARP implementation will commence as soon as possible. All compensation and entitlements will be paid prior to economic or physical displacement in accordance with the requirements of the (SPS) 2009.

5. No indigenous people with a social and cultural identity distinct from the dominant society that makes them vulnerable to being disadvantaged in the development process – are known to exist in the Three FATA agencies. Therefore, a separate Indigenous Peoples Planning Framework (IPPF) is not required. However if such groups are identified during the project implementation, the proponents will develop an Indigenous People Plan (IPP), in compliance with the ADB policy and get it approved by the Bank. An Impact Categorization Form is attached in (Annex-B) and an outline of indigenous people plan (IPP) is attached in (Annex-C).

6. The framework, agreed between the GoP/FATA administration and ADB, sets out the safeguard principles, procedures, compensation, entitlements and implementation, disclosure and monitoring arrangements to be applied when identifying, designing, preparing and implementing LARPs.

B. The Project

7. The Federally Administered Tribal Areas Water Resources Development Project is being proposed as a sector project and cost is tentatively estimated \$40 million with ADB financing of \$30 million under a sector loan from the Asian Development Bank (ADB). The Project impacts will be increased farm incomes of beneficiary households and outcomes will be improved productivity of selected watersheds and their associated natural resource base. The output will be (i) irrigated agriculture improved and (ii) project planning, management and support strengthened. The aim of the project to reduce poverty and enhance food security through irrigation systems and the enhancement of agricultural productivity in Mohmand, Khyber and Bajour selected Agencies in FATA. The following interventions are proposed to achieve the desired outcome and outputs by irrigating rain fed land and bringing new land under cultivation.

- i. Construction of small reservoirs/ponds, diversion weirs, and conveyance channels.
- ii. Command area developed.
- iii. Watershed management.
- iv. Capacity building of FATA staff and communities.
- v. Developing operation and maintenance protocols.

C. History of the Area.

8. FATA is located in a narrow belt along the Afghanistan-Pakistan border. A brief regarding FATA history is explained in (Annex- D) It consists of seven (sub-territories), namely, the Bajaur, Mohmand, Khyber, Orakzai, Kurram, North Waziristan and South Waziristan agencies. Agencies and six bordering frontier regions that are attached to the adjacent settled districts of Khyber Pukhtoonkhawa (KP) and is of immense strategic geographic and political importance. FATA acceded to Pakistan at Partition from India on the understanding that they would remain autonomous, and are characterized by cultural conservatism and adherence to traditional values and practices. Although directly administered by the federal government, FATA's inhabitants maintain strong kinship alliances and economic linkages with neighboring Afghanistan.

9. The FATA region is physically as well as constitutionally a marginal area. Physically, the entire FATA region is generally arid, hilly, sparse and resource poor, where poverty is endemic and pervasive. Constitutionally, the FATA region falls outside the normal laws of Pakistan; instead, it is governed by a special set of rules, known as the Frontier Crimes Regulation (FCR). Moreover, the tribal code is the way of life and customary rights and responsibilities are the prevailing law of the land.

D. Society and culture

10. The population is divided along the lines of traditional clan and tribe loyalties. The people are accustomed to managing their own affairs without outside interference. But for many people, belonging to a tribe or clan is not simply a question of identity. Ownership of natural resources is also determined according to clan or tribe, with each group controlling resources within its own area and making decisions about management and use. Tribal society is dominated by men. Cultural tradition, social practices and low literacy have left women in a vulnerable position. Women are for the most part restricted to performing household work, and are excluded from decision-making both on the domestic front and at the community level. Their access to education and health care is limited in part because such services are not available close to home but that is not the only reason.

11. Within conservative tribal society, there is strong resistance to change among some quarters. Many fail to see the importance of education (especially for girls), health care (especially for mothers), women's rights and environmental conservation. In many cases, tribal elites manipulate the common people, while enmities spanning generations and sporadic disputes of more recent origin disturb everyday life. The structure of tribal society and the strong customary tradition of resource management are helpful in the execution of certain types of projects. For most development activities, however, the tribal structure is a hindrance since it shifts the focus onto clan interests rather than the good of the community as a whole.

12. The three northern agencies of Bajaur, Mohmand and Khyber agencies are the most income and natural resource deficient and development interventions to-date have been minimal. A brief history of three agencies is explained in (Annex- E). Hence, these three agencies have been selected as the target area for the proposed Project. Land and people of the area in the three agencies of the Project area are described in (Annex-F).

E. Poverty Status

13. In terms of economic activity, the region is generally very poor. Traditionally the local people managed to survive in this harsh terrain by utilizing the available resources, as meager as they may be, in a very calculated way maintaining equilibrium with nature. However, with the increased interface of the region with the outside world, an increase in population that coincided with decreasing landholding has put strains on the local resources. As a result, in the project area and the region at large, some people have opted for new professions like mining and service in the armed forces for alternate source of income, but very limited livelihood base has thwarted upward mobility of the people. In addition, youth form a bulk of the total population but a severe lack of facilities for education hinders the efforts of the local youth to enter into a more diverse job market outside of the Bajaur, Khyber and Mohmand agencies. There is high unemployment and nominal initiatives are set in place from the government side for the economic uplift of the people in project area. As a corollary, poverty is rampant in the villages of the project area. Main causes for the economic disparity of the region as compared to the rural areas of KP and Punjab are as follows:

- i. A significant proportion of population is practicing agriculture on highly limited agricultural land that is mainly rain-fed.
- ii. In general due to lack of opportunities and literacy, the rate of unemployment is high.
- iii. Absence of major industries and under developed agriculture and livestock sectors do not form a potential for labor absorption. As a result, the project is expected to have a healthy effect on the labor and employment market of the project area.

F. Project objectives.

14. The Project has been designed with the specific objective of achieving poverty reduction through various community development interventions that will be identified and implemented through active community participation during the course of the Project. The project will provide irrigation supplies in three agencies to increase crop production of the rain fed area and unutilized land to be brought under cultivation. It will (i) construct small reservoirs/ponds, diversions weirs and conveyance channels; (ii) develop command area and (iii) improve watershed management.

G. Country Partnership strategy.

15. The country partnership strategy (CPS 2009 to 2013) prioritizes improving the irrigation infrastructure. ADB's agriculture sector evaluation (2006) for Pakistan emphasized improving water resources and irrigation. FATA sustainable development plan (SDP: 2007-2015) of the Government of Pakistan aims to ensure the optimal and equitable use, and sustainable management of existing water resources to bring more land under irrigated agriculture. The strategy proposed in the SDP to achieve this goal includes: (i) creating efficient management system for water sources and infrastructures; (ii) conserving and recharging groundwater aquifers; (iii) harnessing seasonal runoff to provide additional sources for irrigations; (iv) harvesting surface water for irrigation; and (v) scaling up efficient irrigation systems.

II. Legal Policy and Framework

A. The Land Acquisition Act (LAA) of 1894

16. The Pakistan law governing land acquisition is the LAA of 1894 and successive amendments. The LAA regulates the land acquisition process and enables the federal and

provincial governments to acquire private land for public purposes and for companies through the exercise of the right of eminent domain. Land acquisition is a provincial responsibility and each province has province specific implementation regulations and rules. The law deals with matters related to the acquisition of private land and other immovable assets required for public purpose. The LAA also contains provisions for acquisition of land and assets on an emergency basis. In a situation where a project of public purpose has to be implemented urgently, the requesting department may request the revenue department to acquire land on an emergency basis. The revenue department, as per the LAA, determines the emergency nature and accordingly applies the LAA.

B. Salient Features of the Land Acquisition Act 1894.

17. A brief explanation and salient features of different sections of LAA is given in Table 1. The right to acquire land for public purposes is established when Section 4 of the LAA is triggered. The LAA specifies a systematic approach for acquisition and compensation of land and other properties for development projects. It stipulates various sections pertaining to notifications, surveys, acquisition, compensation and apportionment awards, along with disputes resolution, penalties and exemptions. Surveys for land acquisition are to be disclosed to the displaced persons.

Table 1: Salient Features of the Land Acquisition Act 1894 and Successive Amendments

Key Sections	Salient Features of the LAA (1894)
Section 4	Publication of preliminary notification and power for conducting survey.
Section 5	Formal notification of land needed for a public purpose. Section 5a covering the need for enquiry
Section 6	The Government makes a more formal declaration of intent to acquire land.
Section 7	The Land Commissioner shall direct the Land Acquisition Collector (LAC) to take order the acquisition of the land.
Section 8	The LAC has then to direct that the land required to be physically marked out, measured and planned.
Section 9	The LAC gives notice to all displaced persons (DPs) that the Government intends to take possession of the land and if they have any claims for compensation then these claims are to be made to him at an appointed time.
Section 10	Delegates power to the LAC to record statements of DPs in the area of land to be acquired or any part thereof as co-proprietor, sub-proprietor, mortgagee, and tenant or otherwise.
Section 11	Enables the Collector to make enquiries into the measurements, value and claim and then to issue the final "award". The award includes the land's marked area and the valuation of compensation.
Section 16	When the LAC has made an award under Section 11, he will then take possession and the land shall thereupon vest absolutely in the Government, free from all encumbrances.
Section 17	Urgency acquisition
Section 18	In case of dissatisfaction with the award, DPs may request the LAC to refer the case onward to the court for a decision. This does not affect the Government taking possession of the land.
Section 23	The award of compensation for the owners for acquired land is determined at its market value plus 15% in view of the compulsory nature of the acquisition for public purposes.

Section 28	Relates to the determination of compensation values and interest premium for land acquisition
Section 31	Section 31 provides that the LAC can, instead of awarding cash compensation in respect of any land, make any arrangement with a person having an interest in such land, including the grant of other lands in exchange.

C. ADB safeguards Policy.

18. The ADB Safeguard Policy Statement (SPS) of 2009 builds upon the three previous safeguard policies on the environment, involuntary resettlement and indigenous peoples, and brings them into one single policy that enhances consistency and coherence and more comprehensively addresses environmental and social impacts and risks. ADB Safeguard Policy Statement (2009) which affirms that environment and social sustainability is a cornerstone of economic growth and poverty reduction in Asia and the Pacific. ADB's Strategy 2020 therefore emphasizes assisting DMCs to pursue environmentally sustainable and inclusive economic growth. In addition, ADB is committed to ensuring the social and environmental sustainability of project outcomes by protecting the environment and people from projects' potential adverse impacts, the objectives of ADB's safeguards are to: (a) avoid adverse impacts of projects on the environment and affected people, where possible; (b) minimize, mitigate, and/or compensate for adverse project impacts on the environment and affected people when avoidance is not possible; (c) and help borrowers/clients to strengthen their safeguards systems and develop the capacity to manage environmental and social risks.

19. All the stakeholders including Irrigation department of FATA, Political Administration, communities, Jirga (Annex- G) and the TA consultant were consulted during the process of preparation of the LARF. A project Policy on entitlement and compensation matrix (Annex-H) has been developed under ADB's, SPS to compensate the project impacts in accordance with the assessment of compensation unit rates by the Political Administration of the three selected Agencies in consultations with tribal elders, maliks and locals of the area. The entitlements also cover livelihood restoration assistance, shifting of utilities, provision of shifting assistance and provision for unseen or unanticipated damages or impacts.

D. ADB's Safeguards Requirements on Land Acquisition and Resettlement:

20. The policy covers both 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 land acquisition or restriction on land use, or on access to parks and protected areas. The SPS's key policy principles are: (1) Screen early and assess resettlement impacts; (2) Carry out consultations with DPs/APs and develop a grievance redress mechanism; (3) Improve/restore livelihoods of DPs/APs through land-based strategies, replacement of lost assets, compensation at replacement cost, and additional benefits, as appropriate; (4) Provide appropriate assistance to physically displaced DPs/APs; (5) Improve living standards of poor DPs/APs and other vulnerable groups; (6) develop transparent procedures for negotiations; (7) provide assistance and compensation to non-titled DPs/APs for loss of non-land assets; (8) Prepare Resettlement Plans (RPs) or due diligence reports (DDR), with necessary provisions; (9) disclose RPs to DPs/APs and other stakeholders and document the consultation process; (10) conceive and

execute resettlement as part of the project; (11) deliver entitlements to DPs/APs before their physical or economic displacement; and (12) monitor and assess resettlement outcomes.

21. The ADB's SPS (2009) also states that if there are impacts on indigenous peoples, their identity, dignity, human rights, livelihood systems, and cultural uniqueness must be safeguarded so they can receive culturally appropriate social and economic benefits. The other relevant policy is ADB's Policy on Gender and Development, which requires all ADB financed projects to enhance involvement of and benefits to women.

E. ADB's Policy Principles for Involuntary Resettlement.

22. The ADB's experience indicates that involuntary resettlement under development projects, if unmitigated, often gives rise to severe economic, social, and environmental risks: production systems are dismantled; people face impoverishment when their productive assets or income sources are lost; people are relocated to environments where their productive skills may be less applicable and the competition for resources greater; community institutions and social networks are weakened; kin groups are dispersed; and cultural identity, traditional authority, and the potential for mutual help are diminished or lost. This policy includes safeguards to address and mitigate these impoverishment risks. The ADB's policy principles and objectives for Involuntary Resettlement (IR) are described in (Annex- I). When land other than the unencumbered government-owned land is to be acquired then a LARP is required. The IR checklist for screening and categorizing subprojects is attached in (Annex J).

F. Land Laws and Regulation in FATA

23. In Pakistan, the Land Acquisition Act of 1894 (as amended) is the core legislation used for acquiring private lands for a public purpose. But this Act, as with most other laws of Pakistan, the act is not applicable to the Federally Administered Tribal Areas (FATA). Local needs for land acquisition are addressed through the tribal system of land rights and distribution. (FATA region's rules and practices regarding Land Acquisition for Public Purposes are described in Annex-K). Normally, for the government aided development interventions, relatively small and insignificant pieces or strips of lands are taken for free under a community contribution. However, there are exceptions to this general practice, especially where the land required is large or is productive and/or otherwise economically significant. Recently, there have been increasing incidences of land compensation being paid if the land is productive or commercial, mainly in response to the pressing demands of the affected persons (APs).

24. As already described that the Tribal Areas are not ruled by the National law and project implementation will follow a completely different legal and administrative stipulation based on negotiations and consensus building. In the absence of a law or formal policy for land acquisition and resettlement, a project-specific set of resettlement principles consistent with ADB policy requirements has been adopted in this Project, in the event that any sub-project does have any resettlement impacts. In this case, the affected small business enterprises (SBEs) and households will be entitled to a combination of compensation measures and resettlement assistance; depending on the nature of ownership rights of lost assets and scope of the impact and the social and economic vulnerability of the APs. In general terms, the APs will be compensated for the loss of their lands and trees, and assisted financially to restore their affected structures/assets and

livelihoods, at least to the pre-project levels. Female-headed households and other vulnerable households will be eligible for further cash assistance for relocation and house or structure reconstruction. Plans for Sub-project resettlement/land acquisition will be based on a full evaluation of the impact of proposals and contain a complete list of all APs together with the type and size of losses will be prepared, and the amount of compensation and/or financial assistance assessed for each AP.

G. Water Resources

25. According to the Survey of Pakistan Atlas, the area consists mostly of hills that consist predominantly of sedimentary rocks belonging to the tertiary and quaternary periods. The percentage of plain area in these catchments is small (Geological Survey of Pakistan, 1997). There are no major water bodies in the area. None of the area's major rivers are located within the project area. The lack of a potable drinking water supply system is a major problem experienced in the area, where the majority of the inhabitants do not have access to safe drinking water supplies. The ill effects of this situation were noted by the health service facilities operating in all agencies, which indicated that many patients suffer from waterborne diseases.

H. The Frontier Crimes Regulation (FCR)

26. The Frontier Crimes Regulation (FCR) 1901 comprises a set of laws of Pakistan that are applicable to the Federally Administered Tribal Areas. The FCR has its origins in laws that were enacted by the British rule in the Pakhtuns-inhabited tribal areas in the Northwest of British India. They were specifically devised to counter the opposition of the Pakhtuns to British rule, and their main objective was to protect the interests of the British Empire. Over a century later, the laws continue to be applied to FATA residents by the Government of Pakistan. In 2011 the FCR was amended by the President of Pakistan through an Ordinance and added the clause 56 for payment of compensation to individuals for damages and land acquired for public purposes on the rates assessed with consensus or as applicable in settled areas. All contracts and agreements are enforced under the Frontier Crimes Regulation by a jirga, and not through the judicial channels available elsewhere in Pakistan.

I. Need for Land

27. The project will require land for construction of subprojects which will be provided by the communities' beneficiary groups as their voluntary contributions, as part of their community participation share. It will be explained by the ESU of FWRDP team in detail to the tribes/locals of selected subprojects that the piece of land will be provided to FWRDP for construction of any work without claiming any financial obligations from the Project. It will also be clarified through focus group discussions that the tribe/locals will not be entitled for any tribal commission or land compensation rather this will be deemed as a contribution from community to the Project. Moreover, keeping in view the requirement for land a Terms of Partnership (ToP) would be signed in between the PMU, FATA administration and local beneficiaries.

J. Selection Criteria of Subprojects

28. Based on the water assessment study of FRDP, a long list of 87 Irrigation subprojects has been prepared. The list will be refined in consultation with the FATA Secretariat, Irrigation, Agriculture and Forest departments, Political Administration and the farming communities of the project area by keeping in view the social, economic and security conditions. The integrated approach of managing watersheds and developing command area along with construction of irrigation infrastructure would ensure sustainable use of the natural resources in the project area. The subproject selection criteria is as under;

- i. The communities agree to voluntarily provide land for both constructions of the storage facility, the inundation area, channel, and any appurtenant structures as their share in the subproject costs.
- ii. The communities are willing to take ownership for operation and maintenance of weirs, channels and on farm facilities from their own resources.
- iii. Subprojects should be free of conflict with regard to land and water rights.
- iv. Subprojects requiring involuntary resettlement will not be selected.
- v. Subprojects must meet all social and environmental safeguards requirements of ADB.
- vi. Subproject area should not have major security concerns.
- vii. The community organizations must ensure equity. Subprojects must benefit all potential farmers and not just those located at the head reach of channels.
- viii. Land ownership of one farmer should not exceed 25% of the total command area under the subproject.
- ix. Subprojects should not affect water supplies (ground and surface) currently exploited for domestic or other uses.
- x. Small reservoirs and ponds should be sited to minimize conveyance and evaporation losses.
- xi. Small reservoirs must be developed with international best practices for safety and should not increase flood risk to local communities.
- xii. Maximum height of a dam will not exceed 15 meters.
- xiii. Subprojects will be assessed for technical and economic viability before approval.
- xiv. Subprojects identified only by the water assessment study conducted under FWRDP will be considered.
- xv. Duplication with other interventions in the project area will be avoided.
- xvi. Minimum 75 % of proposed command area should have soils suitable for agriculture.

III. Institutional Framework

A. ADB

29. ADB will be the funding agency of the Program. Besides supervising periodically the Project, ADB will review all LARPs and/or Due Diligence Reports and provide clearance to contract awards signing and initiation of civil works to all subprojects with LAR.

B. FATA Secretariat and Project Management Unit

30. The FATA Secretariat is the main administrative body for the FATA region dealing with administration, finance, law & order, planning & development, projects and social welfare. The FATA Secretariat will be the executing agency (EA) and will work with its line department's

agriculture, forest and irrigation directorate. A project management unit (PMU) will be established for implementing the project and three project implementation units (PIUs) will be established in each agency. The FATA secretariat has experience of successfully implementing the ADB financed FRDP and projects financed by other donors. If there is a need of Land acquisition for any subproject, resettlement will be conducted through the PMU, under the responsibility of the Deputy Director, Resettlement. For each of the three subareas, the Bajaur, Khyber, and Mohmand agencies will have a political tehsildar assigned to attend specifically to the project-related land acquisition and resettlement activities. The LARC will be strengthened with externally provided technical assistance through an environment and social unit (ESU) of PMU in order to meet Project resettlement needs, especially according to the ADB Involuntary Resettlement Policy, if required.

C. Political Agents and Administration

31. The FATA region is administered by political agents (PA). Each agency's PA is assisted by a number of assistant political agents, tehsildars (administrative head of a tehsil) and naibtehsildars (deputy tehsildar), as well as members from various local police (khassadars) and security forces (levies, scouts). As part of administrative functions, the political agent oversees the working of line departments and service providers. PA is responsible for handling inter-tribal disputes over boundaries or the use of natural resources, and for regulating the trade in natural resources with other agencies or the settled areas. The political agent will play a vital role for development of projects and combating the disputes which can occur in the time of implementation and afterwards.

32. Currently, these government agencies do not have the capacity to plan and implement the resettlement activities as desired by ADB because they lack the expertise required for planning and implementing involuntary resettlement under ADB policy and guidelines. To fill in the gap, a resettlement specialist will be included in the supervisory consultant's team for the entire project period, to provide the necessary technical assistance for the PMU and agencies, on a continual basis. In addition, a nongovernment organization (NGO)/ consultants will be hired by the Project to provide assistance in community organization/participation activities. (NGO)/Consultants will also be responsible for providing assistance to the LARC, under the guidance of resettlement specialist, in implementing the resettlement plans in an effective manner. It will have a specific role to play in information disclosure and conflict resolution pursuits, especially in matters related to entitlements and compensation payments to people affected. They will also be responsible for ensuring that all procedures for voluntary land donated under the Project are conducted in a transparent manner and that land is donated without duress.

D. Affected Persons' Committee.

33. For each subproject if there is land acquisition and resettlement impacts, an Affected Persons' Committee (APC) will be formed. The various social and geographical categories of APs would delegate representatives to the APC and a President will head the committee. The APC will participate in the planning, implementation and monitoring of all land acquisition and resettlement-related activities and issues in a consultative role, including preparation of inventories and valuation of assets, assessment of damage to land and structures, payment of compensation livelihood restoration measures, grievance redress and LARP review. The ESU will mobilize and assist the APCs in regard to their social and environmental issues.

E. Remedial Measures to Reconcile Gaps between the FCR/FATA rules and ADB SPS 2009.

34. This LARF has prepared according to the provisions of the prevailing law of Frontier Regulations, tribal people customs, ADB Safeguards Policy Statement (2009) and applicable operations manuals (OM). Where there are gaps between FATA/GoP laws and the ADB SPS requirements on land acquisition and resettlement, the project will ensure that these gaps are filled by measures to meet the SPS (2009) stipulations. For example, FATA law does not specifically require monitoring and assessment of land acquisition or resettlement outcomes. But any Resettlement Plans (RPs) for subprojects will include indicators and baseline data to monitor the impacts on APs. In the absence of specific rules for LAR in FATA, the project specific resettlement issues will be addressed to assist non-titled persons, and bridge the gap between existing practice and the main guidelines of SPS with regard to involuntary resettlement. To reconcile the inconsistencies between the FATA/FCR rules and SPS, the government has drafted this LARF. Provision of subsidies or allowances will be given for affected households that maybe relocated, suffer business losses, or maybe vulnerable. As detailed in the SPS, the content and complexity of a LARP will vary depending on the scale and severity of subprojects impacts.

IV. Entitlements and Compensation Eligibility

A. Entitlements

35. The entitlements for Compensation, Resettlement and Rehabilitation Assistance may be enhanced to mitigate and improve livelihoods of the DPs (if required) but not be reduced or lowered in any of the subproject LARPs. Details are provided in the entitlement matrix.

B. Eligibility

36. The DPs eligible for compensation or rehabilitation provisions under the Program are:

- i. All land owning DPs losing land or non-land assets, i.e., crops and trees whether covered by legal title or traditional land rights, whether for temporary or permanent acquisition.
- ii. Tenants and share-croppers, whether registered or not; for all non-land assets, based on prevailing tenancy arrangements.
- iii. DPs losing the use of structures and utilities, including titled and non-titled owners, registered, unregistered, tenants and leaseholders plus encroachers and squatters.
- iv. Displaced persons losing business, income and salaries of workers or a person or business suffering temporary effects, such as disturbance to land, crops and business operations both permanently and also temporarily during construction.
- v. Loss of communal property, lands, and public infrastructure.
- vi. Vulnerable displaced persons identified through the impact assessment and FGD.
- vii. In the event of physical relocation, all DPs will receive transitional and other support to reestablish shelter and livelihoods.

37. In order to avoid an influx of outsiders, compensation eligibility will be limited by a cut-off date for each subproject on the day of the beginning of the sub-projects impacts and census survey. The cut-off date will be announced through village institutions.

C. Relocation Assistance and Income Restoration

38. In the case of relocation, PMU will provide the affected persons with relocation assistance, registration and secured tenure to new land plots (for eligible affected persons), equal or better housing at resettlement sites, and civic infrastructure and community services as required. As feasible, affected persons will remain in near locality to their current land, so that they retain their social network. The affected persons will be actively involved in the planning and consideration of potential alternatives for relocation. This can be facilitated through public consultation process and focus group discussions with the affected communities.

39. Affected persons, whose livelihood is impacted by the project, will get preference in jobs associated with the subprojects construction and implementation. The proposed FWRDP can provide employment opportunities to some of the affected persons or their household members based on their professional and educational background. Those who are unskilled, if desired will be employed in civil works as feasible. Employment of the affected persons and/or their household members in some other establishments will also be pursued by PIU.

D. Valuation of Affected Assets

40. In accordance with the resettlement and rehabilitation policy for the project, all APs will be entitled to a combination of compensation measures and resettlement assistance, depending on the nature of ownership rights of their lost assets and scope of the impacts. The following methodology will be adopted for the assessment of unit values for assets to be compensated in coordination with Jirga, COs, political administration and other line departments involved in the process.

- i. Land: if acquired for the project will be valued at the replacement cost of land of approximately equal type and quality determined through replacement cost survey for the period of no more than one year preceding the cut-off date for the project.
- ii. Buildings and other structures will be valued based on precise measurement, quality and measurement of materials and will be calculated based on replacement cost (i.e., cost of new building materials and labor) with no depreciation for age and deduction for salvageable materials, sufficient to cover the cost of materials and labor.
- iii. Crops will be valued at the current market rates for the net harvest actually lost.
- iv. Trees will be compensated on the basis of their local market values to reflect replacement income. The cost of wood trees will be calculated based on the average volume of wood produced, quality of wood size classes, as determined by girth, diameter at breast height or volume. Fruit bearing trees will be compensated based on the compensation for loss of fruit trees at current market value depending on type and productive age of the fruits trees and market value of the produce for the time required to grow a tree of equivalent productive capacity.

E. Database

41. All information concerning resettlement issues related to land acquisition, socioeconomic information of the affected land, structures, inventory of losses by individual affected persons, compensation and entitlements, payments and relocation will be entered onto a computer database by the PIU/PMU. This database will form the basis of information for preparation and

implementation of LARP, monitoring and reporting purposes and facilitate efficient management and monitoring of compensation distribution. The collected data and their analysis shall quantify degree of losses and implications for the affected households in terms of living conditions, livelihoods, income loss, intangible loss and other impoverishment risks.

V. RP preparation and implementation

A. Resettlement Procedural Guidelines.

42. Specific resettlement procedure guidelines have been established to guide the preparation of appropriate resettlement plans that will be adequate for the magnitude of the land acquisition for subsequent subprojects. These resettlement procedural guidelines will require that: (i) ESU carry out an initial social assessment survey of the target area once the scope of each subproject is identified, based on its preliminary technical designs (and, if need be, revise it according to the finalized design). (ii) If involuntary LAR impacts are identified, a full resettlement plan will be prepared for each subproject.

B. Resettlement Policy Principles for the subprojects:

43. The project will comply with both ADB's safeguard requirements and FATA's laws and regulations applicable to land acquisition and resettlement. The resettlement objectives and policy principles adopted for the subproject are as follows:

- i. Land acquisition and resettlement will be minimized through careful engineering design. All efforts will be made to avoid physical displacement of people.
- ii. APs will be consulted meaningfully over the project cycle, and effective mechanisms will be established for hearing and resolving grievances.
- iii. The RPs or DDRs for the subprojects prepared by the PPTA will be updated after the detailed design, and, if needed, new RPs/DDRs will be prepared for sites selected during implementation.
- iv. APs who are customary landowners will receive compensation at replacement cost for their loss of assets to ensure that they will be as well off as without the project.
- v. Such compensation will be paid to APs prior to commencement of civil works.
- vi. Absence of formal title will not be a bar to compensation and assistance for loss of non-land assets. Particular attention will be paid to women, women-headed households, the elderly and other vulnerable people's customary land and property and inheritance rights.
- vii. Land acquisition and resettlement (if any) will be conceived of as part of the project and related costs will be included in and financed out of the project cost and deemed to be included in the civil works cost.
- viii. Resettlement impacts (if any), including any unforeseen losses that may occur during construction will be monitored and remedial steps taken as required.

C. Initial screening.

44. Any subproject that is to be considered will be screened and prioritized based on technical and socio-economic criteria agreed between the Government of Pakistan and ADB. Moreover,

consistent with the overriding concern of the RF that every effort must be exhausted to ensure that any and all adverse social impacts of subprojects are avoided or mitigated, a subproject will have to be evaluated using the IR screening Checklists (Annex- J) The screening checklists aims to provide the Executing Agency and the ADB preliminary information on involuntary resettlement that will aid them to decide on whether or not a subproject is worth pursuing. Specifically, the screening matrix will provide a preliminary estimate of the scale and magnitude of involuntary resettlement, coupled with an assessment of the capacity and preparedness of the Government to address said adverse social impacts, if there are any.

D. RP preparation.

45. If resettlement impacts are unavoidable and preparation of a resettlement plan is therefore required, a RP will be prepared following detailed design using the following procedures:

- i. Undertake a census of all APs.
- ii. Undertake detailed measurement survey (DMS) of all losses of all APs. At the same time, inform potential APs (without discrimination) of the subproject, it's likely impacts, and principles and entitlements as per the RF.
- iii. Undertake a socioeconomic survey (SES) of all APs.
- iv. Undertake a replacement cost survey for various types of affected assets as a basis for determining compensation rates at replacement cost. Determine the losses in accordance with the entitlement matrix.
- v. Provide project and resettlement information to all persons affected in a form and language that is understandable to them, and closely consult them on compensation and resettlement options, including relocation sites and economic rehabilitation.
- vi. Prepare the draft RP with time-bound implementation schedule, procedures for grievance mechanism and monitoring and evaluation, and a budget.
- vii. Finalize the subproject RP and translate the summary Project Information Book (PIB) in local language.
- viii. Disclose the draft and final RP in accordance with ADB's policy on public communications to the affected communities and on ADB's website. The draft RP will be disclosed to APs prior to submission to ADB for approval. The final RP will be disclosed after approval.

E. Surveys for RP Preparation.

46. Table 2 shws surveys that will be required for the preparation of a Resettlement plan as (if required) described in the table no 2.

Table 2: Surveys for RP Preparation

Detailed Measurement Survey (DMS)	<p>The census and detailed measurement survey (DMS) of lost assets will collect data on the affected assets from 100% of APs following detailed engineering design. The data collected during the DMS will constitute the formal basis for determining AP entitlements and levels of compensation. For each AP, the scope of the data will include:</p> <ul style="list-style-type: none"> • Total and affected areas of land, by type of land assets;
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	<ul style="list-style-type: none"> • Total and affected areas of structures, by type of structure (main or secondary); • Legal status of affected land and structure assets, and duration of tenure and ownership; • Quantity and types of affected crops and trees; • Quantity of other losses, e.g., business or other income, jobs or other productive assets; estimated daily net income from informal shops; • Quantity/area of affected common property, community or public assets, by type; • Summary data on AHs, by ethnicity, gender of head of household, household size, level, whether household is headed by women, elderly, disabled, poor or indigenous peoples; • Identify whether affected land or source of income is primary source of income. • AP knowledge of the subproject and preferences for compensation and, as required, relocation sites and rehabilitation measures.
Socioeconomic Survey	<p>The socioeconomic survey (SES) will collect information from a sample of all AHs, disaggregated by gender and ethnicity. The purpose of the socioeconomic survey is to provide baseline data on AHs to assess resettlement impacts, and to be sure proposed entitlements are appropriate, and to be used for resettlement monitoring. The scope of data to be collected includes:</p> <ul style="list-style-type: none"> • Household head: name, sex, age, livelihood or occupation, income, education and ethnicity; • Household members: number, livelihood or occupation, school age children and school attendance, and literacy, disaggregated by gender; • Living conditions: access to water, sanitation and energy for cooking and lighting; ownership of durable goods; and • Access to basic services and facilities.
Replacement Cost Survey	<p>The replacement cost survey (RCS) will be done in parallel with DMS and SES activities by collecting information from both secondary sources and primary sources (direct interviews with people in the affected area, material suppliers, house contractors, local governments), and from both those affected and those not affected. Compensation rates will be continuously updated to ensure that APs receive compensation at replacement cost at the time of compensation payment.</p>

F. Implementation schedule.

47. The RP implementation schedule will vary from subproject to subproject. The process can be lengthy in most of the cases if it involves land acquisition (in Pakistan normally it takes 10 to 15 months). In general, the project implementation will consist of the major phases of project preparation, land acquisition and rehabilitation of APs. The specific resettlement-related activities to be performed such as social impact assessment, census and socio-economic survey, resettlement planning, public consultation, development of mitigation measures and income restoration

measures, implementation RP, monitoring and evaluation, and their subproject implementation schedule will all be detailed in the resettlement planning document.

48. Disbursement of cash will follow the approval of budgets for cash compensation. The PMU will inform the APs of the schedule of fund release. They will also advise the APs to produce acceptable legal documents pertaining to their identification for claiming the compensation. It is the main responsibility of the PMU to ensure that all the compensations and entitlements have been paid to and settled with APs prior to the construction activities. The APs will sign a document signifying their satisfaction with and receipt of the compensation package. Proposed Implementation Schedule is provided in Table no 3.

Table 3: Implementation Schedule

Activity	No	Description of Activity	Responsibility
Subproject Preparation	1.	Finalization of Sites for subprojects	Consultants/PMU/ESU/Jirga
	2.	Detailed scoping of potential land acquisition and resettlement impacts	Consultants/ESU/PMU/Jirga
	3.	Review/update of subproject design indicating whether LAR is necessary	Consultants/ESU/RS/APCs
	4.	Roles, responsibilities and action plan for LARP tasks	Consultants/ESU/RS
LARP Preparation	1.	Proposal to Revenue Dept. with summary of subproject and LAR component	LARC/RS
	2.	Publication of Notice of Intent to acquire land according to land acquiring practices in FATA. (if required)	PA & administration/FATA Secretariat.
	3.	Preparation of census, impact assessment and socio-economic surveys.	Consultants/RS/ESU
	4.	Training of survey, assessment and valuation teams.	Consultants/RS/ESU
	5.	Verification of land ownership	PA & administration/ LARC/APCs/Jirga
	6.	DMS, valuation survey	Consultants/RS/ESU
	7.	Review of census, socio-economic and other social surveys	Consultants/RS/ESU
	8.	Public consultations and negotiations.	Consultants/RS/ESU/APC/Jirga
	9.	Preparation of LARPs with results of census and socio-economic survey	RS/ESU
	10.	Approval of LARP	PMU/FATA Secretariat/LARC
	11.	Submission of LARP to ADB	P&DD FATA
LARP implementation	1.	LARP public disclosure	Consultants/RS/ESU/ADB
	2.	Award of cheques for land compensation	PA & administration/FATA Secretariat /LARC
	3.	Award of other compensation, assistance and rehabilitation	PA & administration/

	measures	FATA Secretariat/ LARC/ RS/PMU
	4. Relocation and reconstruction	PMU/Contractor's/ESU
	5. Income rehabilitation and substitution activities	PMU/APC/RS
	6. Approval of subproject contract awards	ADB
	7. Review of LARP implementation	PMU/ADB/Consultants
Post Implementation/Recurring Tasks	1. Internal monitoring: monthly report to PMU; quarterly report to ADB	RS/ESU
	2. External monitoring: biannual report to P&DD FATA and ADB	EM
	3. External evaluation of LARP program	EM
	4. Grievance redress	FATA-PA administration/Jirga/APCs ESU/PMU
	5. Communication with APs	FATA-PA & administration/ Jirga/APCs ESU/PMU
	6. Review and facilitation meetings	LARC/RS/PMU/RSU/Jirga

PMU= Project Management Unit, ESU= environment and social unit, RS= Resettlement specialist, APC= affected Person committee, PA= Political agent, LARC= Land acquisition & resettlement cell, P&DD= Planning & development department. Jirga=Local influential elders. EM= External Monitor

49. PMU will ensure that the RF is implemented in coordination with the requirements set in the Land Acquisition and resettlement Framework.

G. Consultation Participation and Disclosure

50. Each resettlement plan will be prepared and implemented in close consultation with the stakeholders and will involve focus group discussions and meetings, particularly with the APs. Consultations will be gender inclusive and ensure vulnerable households are included. The decisions of such meetings will be recorded, and these records will indicate the responsibility and timeline for implementing the decisions. Each resettlement plan will document all public consultations held and the disclosure of resettlement information. During resettlement plan preparation, resettlement information will be disclosed to all DPs in their own language, and their views and opinions will be taken into consideration in finalizing the plans. Since many DPs are likely to be non-literate, the LARPs will be explained to them in separate groups. Particular attention will be placed on including women and vulnerable groups in all consultations. The summary of the RP/s will be disclosed on ADB and FATA Secretariat websites and the consultation will continue throughout the project implementation period. In case there is no impact and no RP, the EA will make disclosure of the same – informing the main villages, habitations, market places in the subproject area that no land or structure will be affected by any activities of this project. Final LARPs will be translated into local languages and disclosed through public notices posted at the EA/IA offices and posted on ADB's website. Affected people will be closely consulted in resettlement site selection and livelihood restoration as relevant.

VI. Vulnerability, Gender, and Ethnicity

51. If there are any LAR impacts, the vulnerable AHs are distinct groups of people who might suffer disproportionately or face the risk of being further marginalized by the effects of resettlement. These are female-headed households with dependents, disabled household heads and households falling under the generally accepted indicator for poverty, children and elderly who are landless and with no other means of support, landless households, ethnic minorities. Particular attention will be given to poor and vulnerable AHs during RP preparation and implementation. Separate consultation meetings will be conducted with these households on specific resettlement concerns, such as compensation and entitlements, rehabilitation of livelihoods and relocation as relevant. All public information and consultation meetings will ensure that vulnerable households are present.

52. With regard to gender strategy, it includes specific activities to ensure project benefits for women as shown below.

- i. Consultation meetings on resettlement activities will be held separately with women, female headed households and elderly women;
- ii. The resettlement working group will include women representatives from affected Households;
- iii. At the inception of the Project, a capacity building training program on resettlement activities will be designed for the women and men local officials, and women and men from affected households to orient them about resettlement activities. Participation of poor women, female headed households in the training will be ensured;
- iv. The training will include information on resettlement activities, management of cash assistance received, grievance procedures and impact of the project on livelihood activities
- v. The capacity building training on resettlement issues will be conducted separately for women including the female-headed households;
- vi. During the conduct of the DMS, men and women from the households will participate in the said activity;
- vii. Livelihood activities will be planned with active involvement of women; need assessment for livelihood activities and skill development of livelihood activities will be conducted separately for women members, poor women, female-headed households, and elderly women;
- viii. Assistance for affected non-land assets and other allowances will be given to both men and women from the households; Specific attention will be provided for the poor women headed households, elderly women in paying the compensation on time and developing suitable livelihood activities for elderly and poor female headed households;
- ix. Separate discussion with women members, female headed households, elderly women, ethnic minority household for selection of relocation sites, housing structure, and other social infrastructures, including timing of relocation;
- x. Special measures will be taken in the relocation of elderly, disabled and female headed households in terms of location of new site together with their extended families/relatives.

- xi. Disaggregated monitoring indicators by gender will be developed for monitoring of Social benefits, economic opportunities, livelihood program, and resettlement.

VII. Grievance Redress Mechanism

53. Complaints and grievance procedures will be outlined in each resettlement plan and grievance redress committees will be established at each agency for subprojects. This committee will be chaired by the political agent, assisted by a political tehsildar, with representatives from the LARC, line departments, those affected, and project NGOs. For all disputes other than those relating to legal ownership rights, the committee will review grievances involving all resettlement benefits, relocation, and other assistance. The GRCs" will function as open forums for hearing complaints and exploring quick resolutions to resolving conflicts. Each GRC will record its deliberations and inform the concerned parties of a resolution within 2-4 weeks of its findings and recommendations. To ensure women have access to the grievance mechanism, separate focus group discussions will be held with them to design protocols that are suited to their needs including procedures and mechanisms to enable their access to the mechanism.

VIII. Resettlement Budget and Financing

54. Detailed budget estimates for each RP will be prepared which will be included in the overall project estimate. The budget shall include: (i) detailed costs of land acquisition, relocation, and livelihood and income restoration and improvement; (ii) source of funding; (iii) administrative costs (iv) monitoring cost (v) cost of hiring consultants (vi) arrangement for approval, and the flow of funds and contingency arrangements. The land acquisition, compensation, relocation and rehabilitation, administrative, monitoring and consultant cost, income and livelihood restoration cost will be considered as an integral component of project costs. All land acquisition and resettlement costs will be in the project budget and funded through the loan, with the EA to ensure timely disbursement of funds to the concerned authorities for compensation to the affected households and persons.

IX. Monitoring and Evaluation

A. Internal monitoring:

55. The Project Implementation Units will serve as the Project's internal monitoring body. Quarterly reports will be submitted to the Project Management Unit (PMU) starting from the commencement of RP updating, which coincides with the conduct of the detailed measurement survey and other RP updating activities. The PMU in turn will include updates on resettlement in its regular progress reports to ADB. Social monitoring reports will be made available to the affected households and will be submitted to ADB for web posting.

56. Internal monitoring and supervision will have the following objectives:

- i. Compensation and other entitlements are computed at rates and procedures as provided in the approved RP, with no discrimination according to gender, vulnerability, or any other factor.

- ii. Affected households are paid their compensation and other entitlements as per approved Updated RP, ensuring that all entitlements are delivered as planned and agreed, including compensation in cash or in kind, allowances, replacement land, resettlement sites developed and people moved onto them.
- iii. Livelihood restoration programs designed and delivered including modifications in the programs and provision of additional cash and in-kind assistance to the participating affected households as and when necessary.
- iv. Public information, public consultation and grievance redress procedures are followed as described in the approved RP.
- v. Capacity of APs to restore/re-establish livelihoods and living standards. Special attention will give to severely affected and vulnerable households. Focus will also be given if the objective of improving socio-economic condition of vulnerable households is achieved.
- vi. Affected public facilities and infrastructure are restored promptly; and
- vii. The transition between resettlement and commencement of civil works is smooth and that sites are not handed over for civil works until affected households have been satisfactorily compensated and resettled.

B. External monitoring:

57. The main objective of external monitoring is to provide an independent periodic review and assessment of (i) achievement of resettlement objectives; (ii) changes in living standards and livelihoods; (iii) restoration and/or improvement of the economic and social base of the affected people; (iv) effectiveness and sustainability of entitlements; and (v) the need for further mitigation measures.

58. The external monitoring agency (EMA) will be recruited by the PIU or PMU prior to RP updating activities. Relative to compliance monitoring during resettlement implementation, the main activities of the EMA will revolve around the following:

- i. Review existing baseline data and gather additional socio-economic information, as necessary, on sample affected households;
- ii. Monitor updating and implementation of the RP;
- iii. Identify any discrepancy between policy requirements and actual implementation of resettlement.
- iv. Monitor the resolution of complaints and grievances of affected households; and
- v. Provide recommendations for improving resettlement updating and implementation.
- vi. Review compliance with regard to use of ADB loan funds for land acquisition and resettlement.
- vii. Issue certification that each AP has received the full payment.
- viii. Carry out resettlement audit

59. Specific to resettlement updating and implementation activities, the EMA will monitor and evaluate specific issues such as the following:

- i. Public consultation and awareness of resettlement policy and entitlements;
- ii. Coordination of resettlement activities with construction schedule;

- iii. Construction/Rebuilding of replacement houses and structures to new relocation sites.
- iv. Level of satisfaction of AHs with the provisions and implementation of the RP;
- v. Grievance redress mechanism (documentation, process, resolution);
- vi. Effectiveness, impact and sustainability of entitlements and income restoration programs and the need for further improvement and mitigation measures
- vii. Relocation site development (housing and market) from identification of sites in consultation with AHs, to resettlement site development and relocation of AHs.
- viii. Capacity of affected households to restore/re-establish livelihoods and living standards. Special attention will be given to severely affected households and vulnerable households focusing on achieving project objectives of improving socio-economic status of vulnerable households;

OUTLINE OF A RESETTLEMENT PLAN

1. This outline is part of the Safeguard Requirements. A resettlement plan is required for all commensurate with the significance of potential involuntary resettlement impacts and projects with involuntary resettlement impacts. The level of detail and comprehensiveness is risks. The substantive aspects of the outline will guide the preparation of the resettlement plans, although not necessarily in the order shown. If indigenous people are affected, the plan will identify the risks and include special provisions to mitigate these risks.

A. Executive Summary

2. This section provides a concise statement of project scope, key survey findings, entitlements, and recommended actions.

B. Project Description

3. This section provides a general description of the project, discusses project components that result in land acquisition, involuntary resettlement, or both and identify the project area. It also describes the alternatives considered to avoid or minimize resettlement. The section is also to include a table with quantified data and provide a rationale for the final decision.

C. Scope of Land Acquisition and Resettlement

4. This section:

- (i) discusses the project's potential impacts, and includes maps of the areas or zone of impact of project components or activities;
- (ii) describes the scope of land acquisition (provide maps) and explains why it is necessary for the main investment project;
- (iii) summarizes the key effects in terms of assets acquired and displaced persons; and
- (iv) provides details of any common property resources that will be acquired.

D. Socioeconomic Information and Profile

5. This section outlines the results of the social impact assessment, the census survey, and other studies, with information and/or data disaggregated by sex, vulnerability, and other social groupings, including:

- (i) define, identify, and enumerate the people and communities to be affected; describe the likely impacts of land and asset acquisition on the people and communities affected taking social, cultural, and economic parameters into account;
- (ii) identify all households (including list of names) eligible for livelihood assistance to support livelihood loss due to delayed land compensation.
- (iii) discuss the project's impacts on the poor, and other vulnerable groups; and
- (iv) identify gender and resettlement impacts, and the socioeconomic situation, impacts, needs, and priorities of women.

E. Information Disclosure, Consultation, and Participation

6. This section:

- (i) identifies project stakeholders, especially primary stakeholders;
- (ii) describes the consultation and participation mechanisms to be used during the different stages of the project cycle;
- (iii) describes the activities undertaken to disseminate project and resettlement information during project design and preparation for engaging stakeholders including women;
- (iv) summarizes the results of consultations with displaced persons (including host communities), and discusses how concerns raised and recommendations made were addressed in the resettlement plan;
- (v) confirms disclosure of the draft resettlement plan to displaced persons and includes arrangements to disclose any subsequent plans; and
- (vi) describes the planned information disclosure measures (including the type of information to be disseminated and the method of dissemination) and the process for consultation with displaced persons during project implementation.

F. Grievance Redress Mechanisms

7. This section describes mechanisms to receive and facilitate the resolution of displaced persons' concerns and grievances. It explains how the procedures are accessible to displaced persons and provides access to women. It described the terms of reference, operating procedures, protocols outreach program and linkages to the provincial ombudsman's office.

G. Legal Framework

8. This section:

- (i) describes national and local laws and regulations that apply to the project and identify gaps between local laws and ADB's policy requirements; and discuss how any gaps will be addressed;
- (ii) describes the legal and policy commitments from the executing agency for all types of displaced persons;
- (iii) outlines the principles and methodologies used for determining valuations and compensation rates at replacement cost for assets, incomes, and livelihoods; and set out the compensation and assistance eligibility criteria and how and when compensation and assistance will be provided; and
- (iv) describes the land acquisition process and prepare a schedule for meeting key procedural requirements.

H. Entitlements, Assistance and Benefits

9. This section:

- (i) defines displaced persons' entitlements and eligibility, and describes all resettlement assistance measures (includes an entitlement matrix);
- (ii) identify and document the households who will be eligible for transitional livelihood support if compensation payments for land are delayed for six months;
- (iii) specifies all assistance to vulnerable groups, including women, and other special groups; and.

- (iv) outlines opportunities for displaced persons to derive appropriate development benefits from the project.

I. Relocation of Housing and Settlements

10. This section:

- (i) describes options for relocating housing and other structures, including replacement housing, replacement cash compensation, and/or self-selection (ensure that gender concerns and support to vulnerable groups are identified);
- (ii) describes alternative relocation sites considered; community consultations conducted; and justification for selected sites, including details about location, environmental assessment of sites, and development needs;
- (iii) provides timetables for site preparation and transfer;
- (iv) describes the legal arrangements to regularize tenure and transfer titles to resettled persons;
- (v) outlines measures to assist displaced persons with their transfer and establishment at new sites;
- (vi) describes plans to provide civic infrastructure; and
- (vii) explains how integration with host populations will be carried out.

J. Income Restoration and Rehabilitation

11. This section:

- (i) identifies livelihood risks particularly to vulnerable and indigenous people (if affected) and prepare disaggregated tables based on demographic data and livelihood sources;
- (ii) describes income restoration programs, including multiple options for restoring all types of livelihoods (examples include project benefit sharing, revenue sharing arrangements, joint stock for equity contributions such as land, discuss sustainability and safety nets);
- (iii) outlines measures to provide social safety net through social insurance and/or project special funds;
- (iv) describes special measures to support vulnerable groups;
- (v) explains gender considerations; and
- (vi) describes training programs.

K. Resettlement Budget and Financing Plan

12. This section:

- (i) provides an itemized budget for all resettlement activities, including for the resettlement unit, staff training, monitoring and evaluation, and preparation of resettlement plans during loan implementation.
- (ii) describes the flow of funds (the annual resettlement budget should show the budget-scheduled expenditure for key items).
- (iii) includes a justification for all assumptions made in calculating compensation rates and other cost estimates (taking into account both physical and cost contingencies), plus replacement costs.
- (iv) includes information about the source of funding for the resettlement plan budget.

L. Institutional Arrangements

13. This section:

- (i) describes institutional arrangement responsibilities and mechanisms for carrying out the measures of the resettlement plan;
- (ii) includes institutional capacity building program, including technical assistance, if required;
- (iii) describes role of nongovernment organizations (NGOs), if involved, and organizations of displaced persons in resettlement planning and management; and
- (iv) describes how women's groups will be involved in resettlement planning and management,

M. Implementation Schedule

14. This section includes a detailed, time bound, implementation schedule for all key resettlement and rehabilitation activities. The implementation schedule should cover all aspects of resettlement activities synchronized with the project schedule of civil works construction, and provide land acquisition process and timeline.

N. Monitoring and Reporting

15. This section describes the mechanisms and benchmarks appropriate to the project for monitoring and evaluating the implementation of the resettlement plan. It specifies arrangements for participation of displaced persons in the monitoring process. This section will also describe reporting procedures.

Indigenous Peoples Impact Categorization Form for FWRDP

A. Project Data

Country/ Project Title:

Department/ Division: **Processing Stage:**

Retroactive Financing: **New Project:**

Lending Modality: Project Loan Financial Intermediation Loan or Equity Investment
 Program Loan Emergency Loan
 Sector Loan SDP Loan

Categorization Status: New Re-classification Previous Category

B. Identification of indigenous peoples in project area

				Remarks or identified
Impact on indigenous peoples (IPs)/ ethnic minority(EM)	Not known	Yes	No	problems, if any
Are there IPs or EM groups present in project locations?				
Do they maintain distinctive customs or economic activities that may make them vulnerable to hardship?				
Will the project restrict their economic and social activity and make them particularly vulnerable in the context of project?				
Will the project change their socioeconomic and cultural integrity?				
Will the project disrupt their community life?				
Will the project positively affect their health, education, livelihood or social security status?				
Will the project negatively affect their health, education, livelihood or social security status?				
Will the project alter or undermine the recognition of their knowledge, preclude customary behaviors or undermine				

customary institutions?

In case no disruption of indigenous community life as a whole, will there be loss of housing, strip of land, crops, trees and other fixed assets owned or controlled by individual indigenous households?

C. Anticipated project impacts on indigenous peoples

Project activity and output	Anticipated positive effect	Anticipated negative effect
1.		
2.		
3.		
4.		
5.		

D. Decision on Categorization

After reviewing the answer above, the Social safeguards specialist/team agree that the project:

- Should be categorized as an **A project**, an Indigenous Peoples Development Plan (IPDP) is required or, for sector/FI projects, an Indigenous Peoples Development Framework (IPDF) is required
- Should be categorized as a **B project**, a specific action favorable to indigenous peoples/ethnic minority is required and addressed through a specific provision in RRP and in related plans such as a Resettlement Action Plan, a Gender Action Plan or a general Community Participatory Plan
- Should be categorized as a **C project**, no IPDP/IPDF or specific action required.

Project Team Comments:

Proposed by: _____ Reviewed by _____

Project Management Unit Official

Social Safeguard Specialist

Date: _____

Date _____

Approved By ADB

Date.

OUTLINE OF AN INDIGENOUS PEOPLES PLAN

This outline is part of the Safeguard Requirements 3. An Indigenous Peoples plan (IPP) is required for all projects with impacts on Indigenous Peoples. Its level of detail and comprehensiveness is commensurate with the significance of potential impacts on Indigenous Peoples. The substantive aspects of this outline will guide the preparation of IPPs, although not necessarily in the order shown.

A. Executive Summary of the Indigenous Peoples Plan

This section concisely describes the critical facts, significant findings, and recommended actions.

B. Description of the Project

This section provides a general description of the project; discusses project components and activities that may bring impacts on Indigenous Peoples; and identify project area

C. Social Impact Assessment

This section:

- (i) reviews the legal and institutional framework applicable to Indigenous Peoples in project context.
- (ii) provides baseline information on the demographic, social, cultural, and political characteristics of the affected Indigenous Peoples communities; the land and territories that they have traditionally owned or customarily used or occupied; and the natural resources on which they depend.
- (iii) identifies key project stakeholders and elaborate a culturally appropriate and gender-sensitive process for meaningful consultation with Indigenous Peoples at each stage of project preparation and implementation, taking the review and baseline information into account.
- (iv) assesses, based on meaningful consultation with the affected Indigenous Peoples communities, the potential adverse and positive effects of the project. Critical to the determination of potential adverse impacts is a gender-sensitive analysis of the relative vulnerability of, and risks to, the affected Indigenous Peoples communities given their particular circumstances and close ties to land and natural resources, as well as their lack of access to opportunities relative to those available to other social groups in the communities, regions, or national societies in which they live.
- (v) includes a gender-sensitive assessment of the affected Indigenous Peoples' perceptions about the project and its impact on their social, economic, and cultural status.
- (vi) identifies and recommends, based on meaningful consultation with the affected Indigenous Peoples communities, the measures necessary to avoid adverse effects or, if such measures are not possible, identifies measures to minimize, mitigate, and/or compensate for such effects and to ensure that the Indigenous Peoples receive culturally appropriate benefits under the project

D. Information Disclosure, Consultation and Participation

This section:

- (i) describes the information disclosure, consultation and participation process with the affected Indigenous Peoples communities that was carried out during project preparation;
- (ii) summarizes their comments on the results of the social impact assessment and identifies concerns raised during consultation and how these have been addressed in project design;
- (iii) in the case of project activities requiring broad community support, documents the process and outcome of consultations with affected Indigenous Peoples communities and any agreement resulting from such consultations for the project activities and safeguard measures addressing the impacts of such activities; (iv) describes consultation and participation mechanisms to be used during implementation to ensure Indigenous Peoples participation during implementation; and
- (v) confirms disclosure of the draft and final IPP to the affected Indigenous Peoples communities.

E. Beneficial Measures

This section specifies the measures to ensure that the Indigenous Peoples receive social and economic benefits that are culturally appropriate, and gender responsive.

F. Mitigative Measures

This section specifies the measures to avoid adverse impacts on Indigenous Peoples; and where the avoidance is impossible, specifies the measures to minimize mitigate and compensate for identified unavoidable adverse impacts for each affected Indigenous Peoples groups.

G. Capacity Building

This section provides measures to strengthen the social, legal, and technical capabilities of (a) government institutions to address Indigenous Peoples issues in the project area; and (b) Indigenous Peoples organizations in the project area to enable them to represent the affected Indigenous Peoples more effectively.

H. Grievance Redress Mechanism

This section describes the procedures to redress grievances by affected Indigenous Peoples communities. It also explains how the procedures are accessible to Indigenous Peoples and culturally appropriate and gender sensitive.

I. Monitoring, Reporting and Evaluation

This section describes the mechanisms and benchmarks appropriate to the project for monitoring, and evaluating the implementation of the IPP. It also specifies arrangements for participation of affected Indigenous Peoples in the preparation and validation of monitoring, and evaluation reports.

J. Institutional Arrangement

This section describes institutional arrangement responsibilities and mechanisms for carrying out the various measures of the IPP. It also describes the process of including relevant local organizations and NGOs in carrying out the measures of the IPP.

K. Budget and Financing

This section provides an itemized budget for all activities described in the IPP.

History of FATA

1. The areas that today make up FATA were once part of the colonial conflict of the 19th century. For the British colonial administrators of India, effective control of the region was imperative for the defense of their Indian possessions, serving as a bulwark against Russian expansionism in Central Asia. It proved difficult, however, for the colonial government to establish its writ in the tribal areas.

2. Colonial administrators oversaw but never fully controlled the region through a combination of British-appointed agents and local tribal elders. The people were free to govern internal affairs according to tribal codes, while the colonial administration held authority in what were known as protected and administered areas over all matters related to the security of British India.

3. Although various tribes cooperated with the British off and on in return for financial incentives, this quid pro quo arrangement was never completely successful. Throughout the latter half of the 19th century, British troops were embroiled in repeated battles with various tribes in the area. Between 1871 and 1876, the colonial administration imposed a series of laws, the Frontier Crimes Regulations, prescribing special procedures for the tribal areas, distinct from the criminal and civil laws that were in force elsewhere in British India. These regulations, which were based on the idea of collective territorial responsibility and provided for dispute resolution to take place through a jirga (council of elders), also proved to be inadequate.

4. Frustrated in their efforts to subdue the region, the British in 1901 issued a new Frontier Crimes Regulation that expanded the scope of earlier regulations and awarded wide powers, including judicial authority, to administrative officials. In the same year, a new administrative unit, the North-West Frontier Province, was created by carving out parts of the then Punjab province and adding certain tribal principalities. The province, as it was constituted at the time, included five settled districts (Bannu, Dera Ismail Khan, Hazara, Kohat and Peshawar) and five tribal agencies (Dir-Swat-Chitral, Khyber, Kurram, North Waziristan and South Waziristan), and was placed under the administrative authority of a chief commissioner reporting to the Governor-General of India (Hunter et al., 1840-1900).

5. The institution of the political agent was created at this time. Each agency was administered by a political agent who was vested with wide powers and provided funds to secure the loyalties of influential elements in the area. It was also during this period that the maliki system was developed to allow the colonial administration to exercise control over the tribes. Under this system, local chiefs (maliks) were designated as intermediaries between the members of individual tribes and the colonial authorities, and assisted in the implementation of government policies..

6. Despite these efforts, bolstered by repeated military campaigns, the colonial administration retained what was at best a tenuous hold on the area until the British quit India in 1947. Soon after Independence, the various tribes in the region entered into an agreement with the government of Pakistan, pledging allegiance to the newly created state. Some 30 instruments of accession were subsequently signed, cementing this arrangement. To the tribal agencies of Khyber, Kurram, North Waziristan and South Waziristan were later added Mohmand Agency (in 1951), and Bajaur and Orakzai (in 1973).

7. Accession did not subsume the political autonomy of the tribes. The instruments of accession, signed in 1948, granted the tribal areas a special administrative status. Except where strategic considerations dictated, the tribal areas were allowed to retain their semi-autonomous status, exercising administrative authority based on tribal codes and traditional institutions. This unique system, given varying degrees of legal cover in each of the country earlier constitutions, was crystallized in Pakistan Constitution of 1973.

Location and Demography of the Three Selected Agencies

1. Bajaur Agency

1. Bajaur Agency lies between latitude 34° 30' and 34° 59' N and longitude 71° 14' and 71° 48' E. It is drained by Watalai River and its tributaries, which is a tributary of Jandool River that eventually falls into the Panjkora River. In 1998, the estimated total population was about 590,000 residing in 598 settlements and has increased to about 1.2 million by 2013, assuming a growth rate of about 4.3%¹. The geographic area of the agency is spread over 1,290 km² with a present population density of about 930 per kmand male-female ratio is 1:1.05. The total cultivated area of the agency is about 75,350 ha², while the forest area is about 26,471 ha. The major crops grown are wheat, maize, vegetables and orchid.

2. The agency experiences extreme climate. The winter season begins in November and lasts up to March. The weather in winter is extremely cold. The months of December, January and February are generally the coldest, during which temperature plunges below freezing point. The mean minimum and maximum temperature in these months range from 5°C to 16°C³. The summer season starts in April and lasts till end October. June, July and August are the hottest months, during which the mean minimum and maximum temperatures range between 23°C and 36°C. Rains during winter and spring are common and the average annual rainfall is about 738 mm.

2. Khyber Agency

3. Khyber Agency covers an area of 2,556 km² and is located between latitude 34° 45' and 34°-20' North and longitude 70° 26' and 71° 32'E. The area drains into Kabul River in the north and Bara River towards south. Total population of the agency in 1998 was about 547,000 living in 325 settlements, and is estimated to have increased to about 1.0 million by 2013, with growth rate of 3.92%. The population density is about 391 persons per km² while the male-female ratio is 1:1.09. Area cultivated is 20,075 ha and forest area is about 2,070 ha. The major crops grown are wheat, maize and vegetables. The agency has severe weather i.e. very cold in winters and very hot in summers. December and January are the coldest months of the year. The summer temperatures range from 23°C to 45°C and average annual rainfall is about 519 mm.

3. Mohmand Agency

4. The Mohmand Agency lies between latitude 34° 08' and 34° 21' N and longitude 70°-58' and 71° 42'E. It is drained by tributaries of the Kabul and Swat rivers. It covers an area of 2,296 km². As per 1998 census, the total population was about 334,000 residing in 283 settlements and estimated to have increased to about 600,000 by 2013 with growth rate of 4.28 %. The population density is about 261 persons per km² and male-female ratio is 1:1.10. The total cultivated area is about 21,434 ha and forest area is about 9,883 ha. The major crops grown are wheat and sorghum. Climate of the agency is hot in summer and cold in winter. The summer season commences from May and ends in August. The winter season starts from November and ends in February. The

¹ FATA Development Statistics 2012

² FATA Development Statistics 2012

³ Pakistan Meteorological Department, 2008

rainfall is scanty and mostly received during winter season. The average annual rainfall is about 422 mm.

a. Soils in the Project Area

5. The Project area consists of an interesting blend of sedimentary, igneous and metamorphic rocks. The most common sedimentary formations consist of sandstone, limestone, shale and conglomerates. Metamorphic rocks in the area include schist, slate and marble, and thick patches of pure clay are also significant. The soils are derived mainly from the local weathering of bedrock deposited by streams and rivers, though windblown soil also exists to some extent. Landform in the area is varied and includes piedmont, plains, valleys, gravel fans, rough broken land and gullied land. Level areas are loamy, while lowlands are calcareous in nature. The organic matter and phosphorus content are very low

Land and People of Project Area

a. Land Types and Use Patterns

1. Land use pattern of a region is a product of the available natural resources and the human effort. The richer the natural resources and higher the human effort, the more beneficial use patterns of land, water and other natural resources. Topographically, the project area has two types of lands, the rocky hills and the alluvial valleys. Overall, the rocky hills dominate the project area, which surround the alluvial valleys of varying sizes. This unfavorable land condition is further hampered by lack of rainfall and groundwater resources. As a consequence, only less than one-fourth of the total land area of the project agencies is presently cultivated, of which approximately one-fourth has irrigation water, while the remaining lot depends solely on the natural rainfall conditions.

2. In addition, a fairly large portion of the lands is wasteland which is largely barren and lying unused. These lands have a limited to fairly good potential for development for agriculture, horticulture, pasture and tree (firewood/timber) production, provided the lands are developed and irrigation water is made available. The existing pasture and oak forests together cover another one-fourth of the total project area, but with nominal to poor growth of the respective vegetations.

b. Land Rights

3. In FATA region, all the natural resources (land, forests, pastures, water, minerals, etc.) are shared by both ownership and utilization based on the blood-line, clan, lineage and family. In the past, most these Agency sub-tribes were practicing *weshor* periodic redistribution or randomized rotation system. Accordingly, the sub-tribe would hold a *wesh-jirga* after every 30 to 50 year period to hold a random-draw by each clan, and the clan by each lineage and family to decide where to move with their families, livestock and all movable belongings to other villages within the sub-tribal territory. As a result, the residents of each valley/village-A may move to valley/village-C for the next *wesh*-period. This was for the purposes collective ownership and equitable utilization of the resources and collective security concerns.

4. But now the traditional *wesh*-system has been abandoned in most of the FATA region, and the clans and lineages are now permanently settled in their respective territories, mostly comprising different watershed and sub-watershed. They no longer shift now from valley to valley or village to village, and the land and water ownership and usufruct rights are fairly clearly defined and established by clans and lineages. The ownership of land by families (extended/joint) is more evident where its dominant use is made for housing and agricultural production. In contrast, the forest, pasture and water resources are considered as the common resources by sub-tribes and clans, with equal usufruct rights for all, while the incomes from the sale of timber forest trees are shared proportionately, by the number of male members.

5. There are generally two systems of distribution of land and water rights, namely, the *Khanate* system and the tribal bloodline distribution system. A third category is that of *seri* lands, the lands given historically permanently by the *Pukhtuns* to the religious clans, especially the *Syedsor Sahibzadgan*, which are also distributed further among the brothers and their off-springs,

by following the same bloodline distribution system. Under the *khanate* system, found in most parts of Bajaur agency only, the land, water and all other natural resources (i.e., forest, pasture and minerals) are owned by the *khans*, while all the other people are given customary tenancy and usufruct rights. The land-holdings are usually possessed and managed collectively by the lineage leader, usually the eldest man, tilled by permanent tenants on sharecrop basis, and the produce is distributed among the constituent *khan* families according to their respective shares. In some cases, the land and/or produce share is also given to the women.

6. There are two crop-sharing tenancy systems in the area. Where the *khan* provides all inputs, he collects 50 percent share of produce, but where he does not provide anything except land, he gets 20 to 25 percent of the produce. Besides the customary tenants (who run as such through generations), there lives a large population of the landless, who have traditionally been provided with small housing plots by the *khans*, whereupon they have constructed houses by themselves. They were traditionally settled in to provide various services in agriculture and estate security, and are given limited usufruct rights. Some of the traditional tenants and the landless have become small landowners by purchasing small pieces of agricultural and housing lands from the *khans*. This trend began in the 1970s when heavy manpower out-flow occurred to the middle-east, and many of these people brought in big money that enabled them to buy land in the agency as well as in various areas in the nearby settled districts, such as, Dir, Charsaddah, Mardan, Swabi and Peshawar. Some well to do among them have purchased lands even in urban centers, like Karachi, Peshawar and Mardan cities.

7. The traditional bloodline distribution system of land and natural resources is, however, is practiced across the board in both Mohmand and Khyber agencies, while it is found in small areas of Bajaur agency, especially in Utmankhel and Barang *tehsils*. Under this system, all the land, water and other natural resources are distributed equally the male members of the clans, lineages and families. In practice, however, there are two major exception to this so-called “equal-distribution”. Firstly, the people working down-country and abroad have been purchasing lands with externally earned money, both within their respective agencies as well as in the nearby settled districts and/or the far-off urban centers, like Karachi, Peshawar, Rawalpindi-Islamabad, etc. And, secondly, there have historically been a number of incidences, particularly in Khyber agency, of explicit forced-possession of lands, water, forest and mineral resources, reportedly, through stronger socio-political power or prolonged gunfights.

d. Water Rights

9. Water rights in the Project area follow customary practices, known as *warbandi* (rotational irrigation water supply). Customary law provides water rights on the basis of tribe or clan, with principles for use at the household level. Generally, the upstream tribe or clan has the first right, while the one on the downstream has secondary right. Where several tribes reside in the vicinity of a water source, each tribe or clan has a nonflexible mandatory diversion point. If quantities available from a particular source are limited, high delta crops are grown in alternate years by different tribes. Each tribe allocates the water for agricultural and other uses to the member households. The amount of water distributed depends on the size of the cultivated area but if water is scarce, small farmers’ right is protected by restricting the quantities available to the larger landowner. If water source lies within an individual’s land, that person has the first right. The maintenance of the irrigation channels and watercourses is the joint responsibility of the households

that use them. Each family provides labor for cleaning and maintenance according to the share in the water. Households that cannot contribute labor provide food to others during maintenance works. The system is working satisfactorily. In case of occasional conflicts, the disputes are resolved by the jirga.

Role of Jirga in tribal system

a. Jirga

1. A Pashto term for a decision making assembly of male elders; "most criminal cases are handled by a tribal Jirga rather than by laws or police"
2. *Jirga* system in *Pashtuns* represents a formal traditional institution of Justice, which is practiced in the *Pashtun's* society from the time immemorial. According to the Pashto Descriptive Dictionary *Jirga* is an original Pashto word, which in its common usage refers to the gathering of a few, or a large number of people. The roots of *Jirga* systems have been traced back to the Athenian democracy while some scholars argue that the *Pashtuns* are practicing *Jirga* even before the Athenian times.

b. Proceedings of Jirga system

2. The proceedings of *Jirga* are carried out in a Mosque, *Hujra* "Guest House" or under the shade of a huge tree. There is no governing officer neither hierarchal position in a *Jirga*. The *Jirga* system is conducted in two ways. In case of family or individual disputes the concerned parties themselves appeal to *Jirga* while the *Jirga* assembles on its own and take *Suo Moto* action in case of any serious threat to the tribe or under grave social problems. In the latter case the *Jirga* is organized by volunteers called "*Khadims*" who perform the role of messengers announcing the date, timings and venue in all the villages of the tribe and also provide necessary arrangements for conducting *Jirga*. *Jirga* members usually gather in form of a huge circle resembling round table conference giving the message that no one is superior in the eyes of *Pashtunwali* " legal code of *Pashtuns*".
3. There is no systemized mechanism or basic criteria for the selection of *Jirga* Judiciary Council. Mostly noble elders of the tribe called "*SpeenGirey*" (White beard men) are chosen for this purpose who have known repute for their honesty, wisdom and a firm understanding and knowledge of *Pashtunwali* and *Sharia*. However in case of grand *Jirga* the leaders of different clans are the members of *Jirga* Judiciary Council. The number of council members is not fixed and varies with the importance, sensitivity and type of dispute but mostly comprises from two to ten members. Any member of the *Jirga* council who do not practice *Pashtunwali* in his daily life is usually excluded from the *Jirga* Council.
4. The operation of *Jirga* is carried out in a democratic way. Both the parties are given time to present their case and there is no discrimination made on any basis. The *Jirga* operation in minor cases is carried out for a day or two while in major cases it may take as long as nine to ten days. During the functioning of *Jirga* maximum participation from both the parties and the members of judicial council is highly encouraged. This aids in understanding the nature of problem more effectively and providing possibilities for negotiations between the two parties. The crowd is not allowed to participate or interfere in the proceedings of *Jirga*. Decency, smoothness of the trial, and decorum of the *Jirga* is highly ensured during the whole process.
5. After hearing both the parties and in the light of witnesses the *Jirga* officially announces its decision. The decisions in based on *Sharia*, *Pashtunwali*, local traditions and fair play. Every

possible effort is made to reach a fair and pragmatic solution to the problem. Wealth, Social status and political power of any party do not influence the decision of *Jirga* in any case. In case of very sensitive matters like murder, abduction etc a Quranic oath is taken which is necessary to prove one's innocence, as religion is the highest authority in Pashtun society. The decision is based on the consensus of majority members of the *Jirga* council. The *Jirga* members ask the related parties before it announces its verdict to the public. The decision of *Jirga* becomes an obligation and both the parties have to respect the *Jirga* decision.

6. The *Jirga* system does not take the right from either party of appealing against the decision of *Jirga* council. The unsatisfied party can appeal on the basis of precedents and rules called "Narkh" and have the right to reject the decision of *Jirga* Council. The *Jirga* council may face difficulty in revising its decision in case when different tribes have different *Narkhs* on the same issue. In that case the appealing party can call for an another *Jirga* gathering the decision of which is considered final.

7. The *Pushtoon Jirga* exclusively enjoys the role of Judiciary, Executive and Legislature. In case if any party fails to respect the decision of *Jirga* called "*MakhArawal*" meaning "turning of face", than the *Jirga* council has the right to impose its judgment by any means. Sanctions are imposed on the rebellious party which may range from imposition of heavy fines, confiscation of weapons and ex-communication with non complying party depending upon the seriousness of matter. If still the party refuses to follow the decision of *Jirga* than the *Jirga* has the right to burn down the house of non-complying party by sending *Lashkar* "The tribal Army". Also in disobeying the decision of *Jirga*, the dissident party may lose the protection right ensured by the *Jirga* and may be killed by his opponents.

8. In absence of Government Judicial system in tribal areas, *Jirga* system provides *Pashtun* with an effective way of attaining cheap and speedy Justice. Moreover it enriches the very basic foundations of *Pashtun* culture and tradition by ensuring the maintenance of peace and justice in *Pashtun society*. It provides protection to the poor and weak from being oppressed by the rich and strong. Even when many progressed societies still lack an affective judicial system, the *Pashtun Jirga* system has been quite successful in dispensing justice. It adheres to the principles of equality and fairness for all, an accomplishment many judicial systems are still struggling to achieve.

Entitlement Matrix

Assets lost	Specification	Displaced Person	Compensation Entitlements
Agricultural land, including cultivable land and uncultivable wasteland	All land losses irrespective of impact severity	Owner	<ul style="list-style-type: none"> • Cash compensation for land based on current open market value, or as negotiated with a committee comprising landowners' and tribal/village elder's <i>jirga</i> and by the FATA secretariat officials by following the principle of negotiation. • Permanent/traditional tenants will be paid part of the compensation, as mutually negotiated and agreed with, or as decided by the tribal elders' <i>jirga</i>, and FATA administration which may be 25%, 33% or 50% of the total assessed amount. • Cash compensation for loss of crops at current market value of mature crops.
		Sharecropper/Tenant (registered or not)	
		Lease Tenant (registered or not)	
		Encroacher/Squatter	
Residential and commercial structures		Owner of the structure, including Encroachers/Squatters	<ul style="list-style-type: none"> • Genuine owners of the lands under built-up residential/ commercial structures and similar other assets will be paid land compensation at current open market values, or negotiated with or decided by the <i>jirga</i> of tribal elders and FATA Administration office. • The encroachers/squatters will not be eligible for land compensation; however, they will be entitled to compensation for the loss of their structures. • Cash compensation at full replacement cost for affected structures and other fixed assets, free of salvageable materials, depreciation and transaction cost and also transportation cost; or if partial loss, full cash assistance to restore the remaining structure. Fees and taxes (if applicable) will be waived. The option of relocation and relevant support will be discussed during the focus group discussions and included in the LARPs in coordination with FATA secretariat officials.
		Renter/Leaseholder	<ul style="list-style-type: none"> • Cash compensation equivalent to three months rent or a value proportionate to the duration of the remaining lease.

Community Assets			<ul style="list-style-type: none"> Rehabilitation/substitution or cash compensation at full replacement cost of the affected structures and utilities.
Businesses		All DPs so impacted	<ul style="list-style-type: none"> Cash compensation equal to income during the interruption period, as determined through the determined through the Social Impact Assessment (SIA) and included in the LARP.
Employment		All DPs so impacted	<ul style="list-style-type: none"> Indemnity for lost wages for the period required to reestablish business as determined through the SIA and included in the LARP.
Crops	Affected crops	Cultivator of crop	<ul style="list-style-type: none"> Crop compensation in cash at the full market rate for one year agricultural income (both rabbi and kharif harvests). If sharecropped or a tenant then compensated according to shares.
Trees	All affected trees	Owner	<ul style="list-style-type: none"> Fruit trees: compensation to reflect income replacement as assessed by forest or agriculture department based on market value of annual produce, projected for number of years Required to grow a tree of equivalent productive capacity. Timber trees: trees grown and/or used for timber then compensation is to reflect the market value of tree's wood content, based on the wood measurement survey of forest department.
Allowances for Severe Impacts	AH with >10% agricultural income loss or more to be relocated	All severely affected AHs including informal settlers	<ul style="list-style-type: none"> 1 additional crop compensation covering 1 year yield for APs affected by severe agricultural income losses and rehabilitation allowance of 6 months at minimum salary for relocated AHs..
Shifting of Water Supply Lines	All affected beneficiaries		<ul style="list-style-type: none"> The requisite amounts for shifting/ reinstallation of water supply lines are included in the LRAP budget. PHED will shift water supply lines at nearby place available, FATA secretariat/PMU will pay relocation cost to PHED based on cost estimates provided by PHED.
Relocation	Transport/ transition	All DPs to be relocated	<ul style="list-style-type: none"> Provision of allowances to cover transport costs and transitional costs on actual cost basis at

	costs		current market rates. If physical relocation of the affected households is required and requested by the displaced persons, appropriate relocation sites will be developed or through support provided to flood victims. The need for support during the transitional period will be assessed through the SIA and included in the LARP.
Vulnerable DP livelihood support		Poor and female headed households and other vulnerable households, including the elderly or other groups as identified through the SIA.	<ul style="list-style-type: none"> • Cash allowance equivalent to at least 6 months of minimum wages of PKRs 7000/- per month as fixed by the GOP. (In accordance with figures released by the Province) using the poverty line index or as determined through the social impact assessment surveys.
Temporary impacts		All AHs	<ul style="list-style-type: none"> • Due rent and rehabilitation for temporarily affected assets will be provided.
Unidentified Losses	Unanticipated impacts	All DPs	<ul style="list-style-type: none"> • Dealt with as appropriate during sub-project implementation according to the ADB policy.

INVOLUNTARY RESETTLEMENT PRINCIPLES AND OBJECTIVES

ADB'S SAFEGUARD POLICY STATEMENT (ADB SPS 2009)

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.

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.

Policy Principles:

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.
2. Carry out meaningful consultations with displaced persons, host communities, and concerned non-government 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. These include the landless, the elderly, women and children. Specific safeguards cover Indigenous People, including those without statutory title to land, including those having communal rights, and ensure their participation in consultations. Establish a grievance redress mechanism to receive and facilitate resolution of the displaced 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 and where it is possible to give 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 these are possible.
3. 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.

4. 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.

5. 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.

6. 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.

7. 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.

8. 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 displaced persons and other stakeholders. Disclose the resettlement plan and its updates to displaced persons.

9. 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.

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

11. 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 the resettlement monitoring. Disclose monitoring reports.

Source: Asian Development Bank, SPS 2009.

Involuntary Resettlement Impact Categorization

A. Instructions:

- (i) **The project team completes and submits the form to the Environment and Safeguards Division for endorsement by ADB.**
- (ii) **The classification of a project is a continuing process. If there is a change in the project components or/and site that may result in category change, the Director submits a new form and requests for re-categorization. and endorsement by ADB. The old form should be attached for reference.**
- (iii) **In addition, the project team may propose in the comments section that the project is high) complex and sensitive (HCS), for approval by the ADB. HCS projects are a subset of category A projects that ADB deems to be highly risky or contentious or involve serious and multidimensional and generally interrelated potential social and/or environmental impacts.**

B. Project Data:

New Project: _____

Retroactive Financing:

Project Title/No: -----

Department: -----

Processing Stage: -----

Modality:

Project Loan:_____ Program Loan:_____ Financial Intermediary:_____ Sector
Loan:_____ MFF:_____

Emergency Assistance:_____ Grant:_____ General Corporate Finance: _____ Other
Financing Mod:_____

C. Involuntary Resettlement Category:

Category A: _____ Category B: _____ Category C: _____ Category FI: _____

D. Project Team Comments: -----

E. Approval:

Proposed by : _____ Reviewed by: _____

Date: _____ Date: _____

Project Director/PMU Social safeguards Specialist (ADB)

F. Approved by ADB Highly Complex and sensitive Project: Yes___ No___
Date_____

INVOLUNTARY RESETTLEMENT IMPACT SCREENING/CATEGORIZATION CHECKLIST

Probable Involuntary Resettlement Effects	Yes	No	Not Applicable (NA)	Remarks
Involuntary Acquisition of Land				
1. Will there be land acquisition (LA)?				
2. Will the alternatives options considered to avoid the LA.				
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 agricl and other productive assets due to LA?				

7. Will there be losses of crops, trees, and fixed assets due to LA?				
8. Will there be loss of businesses or enterprises due to LA?				
9. Will there be loss of income sources and means of livelihoods due to LA?				
10. Are there any non-titled people who live or earn their livelihood within the subproject ROW?				
Involuntary restrictions on land use or on access to legally designated parks and protected areas				
Will people lose access to facilities, services, or natural resources?				
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?				
Information on Displaced Persons:				
Any estimate of the likely number of persons that will be displaced by the Project? <input type="checkbox"/> No <input type="checkbox"/> Yes If yes, approximately how many? _____				
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				

Land Acquisition for Public Purposes

1. Most laws of Pakistan are not applicable in FATA, which is governed under the Frontier Crime Regulation (FCR). Similarly, the Land Acquisition Act, 1894, which applies to all the settled districts of the four provinces, is not applicable to FATA region, and thus, in the Project area, comprising the Bajaur, Mohmand and Khyber Agencies. Local needs for land are addressed by tribal system of land rights and distribution. Normally, for the government aided development interventions, relatively small and insignificant pieces or strips of lands are taken for free, as the community contribution.

2. However, there have been found exceptions to this general practice, especially for a considerably large size or a productive and economically significant piece of land being utilized for a public purpose or a development intervention. Recently, there have been increasing incidences of land compensation, in at least, last three decades, mainly in response to the pressing demands of the affected people (APs). Currently, three modes of land compensation are practiced in a relatively flexible manner. They are:

- a. Tribal Commission;
- b. Compensatory Employment; and,
- c. Land Compensation (in cash).

a. Tribal Commission

3. Tribal Commission is usually paid to the concerned communities for acquiring a right-of-way (ROW) for constructing a new road in the FATA region. But usually little payments are made for the up gradation, improvement and widening of the existing roads, pathways and village-streets. However, if there comes a resistance on the part of some relatively vocal and politically stronger affected persons, they may be given a negotiated amount of money by the PA or the Contractor to smoothly proceed with the construction work ahead.

4. Traditionally, a one-sixteenth part (6.25%) of the total road construction cost is allocated as the tribal commission for the affected area. In fact, the tribal commission is not just a cash compensation for the affected land, rather it also ensures security of the road, traffic and the commuters. In other words, it is a goodwill payment to the concerned tribal communities, especially the Malaks⁴, for acquiring the right-of-way, utilization land and local material and security of the subproject. In practice, the total amount of money allocated as the tribal commission is handed over by the concerned department to the Political Agent (PA). In the Proposed FATA water resources development project, tribal commission is not applicable.

b. Compensatory Employment

5 The next common practice to compensate the affected persons for the land acquired for a public purpose in the FATA region is to provide low-grade (Class IV) employment to them or their

⁴Malaks are the government's appointed tribal community leaders who act as intermediaries in political matters and catalysts for planning and implementing development schemes in their respective communities.

nominees. Such nominations for the jobs are usually made by the *Malaks* through community/sub-clan *jirgas* or the *Khans* for their tenants, and recommended to the PA and/or the concerned line department, who then make the final selection and issue employments orders. Often times, the number of the recommended persons or the nominees far exceeds the available job openings.

6. The compensatory jobs are normally offered only to the directly affected persons, landowners or their permanent tenants. The lands acquired for the community service buildings, like, dispensaries, schools, etc., are mostly small in size but highly in value because such public facilities are usually constructed close to the villages and on the agricultural lands. Consequently, fewer people are affected but severely, and thus, two to three regular low-grade jobs are provided to them to compensate for the loss of their incomes. Providing jobs for the affected persons in such cases is relatively simple, as there is usually not much competition.

7. On the contrary, the roads and irrigation channels affect larger sizes of lands, which are mostly constructed on the least productive barren lands causing minimal impact on the shareholders or sole-owners of the lands affected. The concerned people are provided jobs as low-grade maintenance crew, which is a considerable benefit for the poor against an insignificant or nominal loss of mostly commonly owned barren land. Often times, there are a few job-openings for which a large number of persons come forth in competition, most of whom carrying strong recommendations from the *Malaks* or *Khans*. Consequently, the selection process gets prolonged and the decisions difficult, and thus, a compromise is sought.

c. Land Compensation

8. Recently, there has a move on the part of the government towards paying cash compensations for the private lands affected by various development interventions in the FATA region, specially the relatively large infrastructure projects/schemes. These include the construction of small dams and ponds for storing rainwater for irrigation and drinking purposes, and sports stadiums, hospitals and colleges.