



# Resettlement Framework

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Updated Resettlement Framework

## Vanuatu: Cyclone Pam Road Reconstruction Project Additional Financing

Prepared by the Ministry of Infrastructure and Public Utilities, Government of Vanuatu for the Asian Development Bank.



## ABBREVIATIONS

ADB	Asian Development Bank
CPP	Consultation and Participation Plan (for the project)
CSS	Country safeguard system
DEPC	Department of Environment Protection and Conservation (within MCC)
DMS	detailed measurement survey
DFAT	Department of Foreign Affairs and Trade (Australian Government)
DP/AP	displaced person/affected person
DSC	Design and supervision consultant
EARF	Environmental Assessment and Review Framework
EIA	environmental impact assessment
EPCA	Environment Protection and Conservation Act 2010 (as amended)
GDP	gross domestic product
IEE	initial environmental examination
IOL	inventory of losses
IWG	Infrastructure Working Group
LAA	Land Acquisition Act (as amended in 2000 and 2014)
MFEM	Ministry of Finance and Economic Management
MIPU	Ministry of Infrastructure and Public Utilities
MLNR	Ministry of Land and Natural Resources
MOU	Memorandum of understanding
PDNA	Post Disaster Needs Assessment (prepared by government and development partners)
PEA	Preliminary environmental assessment
PMU	Project Management Unit (within MIPU for the project)
PWD	Public Works Department (within MIPU)
RF	resettlement framework
ROW	right-of-way
RP	resettlement plan
SIA	social impact assessment
SPS	Safeguards Policy Statement 2009 (of ADB)

## CURRENCY EQUIVALENTS

(as of 3 April 2017)

Currency unit	= Vatu (VT)
VT1.00	= \$110.00
\$1.00	= VT 0.0091

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## I. INTRODUCTION

1. **The disaster.** Between March 12 and 14, 2015, Tropical Cyclone Pam struck Vanuatu as an extremely destructive Category 5 cyclone, with estimated wind speeds of 250km/h and wind gusts that peaked at around 320km/h. At approximately 11 p.m. local time, the center of the cyclone passed east of Efate Island, which is home to the capital city of Port Vila, and then continued southward, passing just west of Erromango Island and Tanna Island (Figure 1.1).

2. Severe and widespread damage was worst on the larger islands of Tanna, Erromango, and Efate, while there was less damage on the smaller islands of Aneityum, Aniwa, and Futuna in the southern region. Eleven fatalities were subsequently confirmed in Tafea and Shefa Provinces. An estimated 65,000 people were displaced from their homes. Approximately 17,000 buildings were damaged or destroyed, including houses, schools, clinics, and other medical facilities. The tropical cyclone destroyed crops on a large scale and compromised the livelihoods of at least 80% of Vanuatu's rural population.

Figure 1.1: Vanuatu islands and towns



3. **Damage, losses and impacts.** Based on the best available information at the time, the Post Disaster Needs Assessment (PDNA)<sup>1</sup>, estimated total economic value of the effects (damage and losses) caused by Tropical Cyclone Pam was estimated to be approximately VT 48.5 billion (US\$449.4 million). This is equivalent to 64.1% of the gross domestic product (GDP) in Vanuatu<sup>2</sup>, giving an indication of the scale of impact (Table 1.1). The PDNA collected data during the short time frame of the assessment and faced difficulties, as in many instances data were either not available or had not yet been processed. Accordingly, the PDNA is not a full assessment of total damage and loss.

**Table 1.1: Summary of Damage and Losses by Sector**

Sector	Disaster effects (VT millions)			Share of disaster effects (%)	
	Damage	Losses	Total	Of sector	Of total
<b>Productive</b>	<b>8,525</b>	<b>10,403</b>	<b>18,928</b>		<b>38.98</b>
Agriculture	1,421	4,641	6,062	32.03	12.49
Commerce & industry	1,196	2,152	3,348	17.69	6.90
Tourism	5,908	3,610	9,518	50.29	19.60
<b>Social</b>	<b>14,429</b>	<b>629</b>	<b>15,058</b>		<b>31.01</b>
Housing	9,542	440	9,982	66.29	20.56
Health	870	107	977	6.49	2.01
Education	3,908	79	3,987	26.48	8.21
Culture	109	3	112	0.74	0.23
<b>Infrastructure</b>	<b>6,403</b>	<b>2,926</b>	<b>9,329</b>		<b>19.21</b>
Transport	3,017	2,137	5,154	55.25	10.62
Public buildings	532	12	544	5.83	1.12
Water	414	284	698	7.48	1.44
Energy	179	106	285	3.05	0.59
Communication	2,261	387	2,648	28.38	5.45
<b>Other - environment</b>		<b>5,238</b>	<b>5,238</b>		<b>10.79</b>
<b>TOTAL</b>	<b>29,357</b>	<b>19,196</b>	<b>48,553</b>		

Source: Government of Vanuatu – PDNA (2015).

4. The PDNA found that Tropical Cyclone Pam produced different effects across the different economic and social sectors. The sectors that sustained the greatest damage were the productive sector (39% of all disaster effects) and social sector (31% of all disaster effects). Within the productive sector, tourism accounted for 50% of sector effects and 20% of the total disaster effects while within the social sector housing accounts for 66% of sector effects and 21% of total disaster effects followed by education accounting for 26% of sector effects and 8% of total disaster effects. In addition, the environmental sector suffered significant losses to ecosystem services, although these losses are not accounted within the impacts to GDP.

<sup>1</sup> Government of Vanuatu. 2015. *Post Disaster Needs Assessment, Tropical Cyclone Pam, March 2015*. Port Vila

<sup>2</sup> The 2013 nominal GDP was VT 75.8 billion, according to the Vanuatu National Statistics Office.

5. Damage was the greatest in Shefa Province, whereas expected losses are the greatest in Tafea Province. Total damage and losses are estimated at VT 31.9 billion (66% of the total) for Shefa Province, VT 10.3 billion (21%) for Tafea Province, VT 3.0 billion (6%) for Penama Province, and VT 2.9 billion (6%) for Malampa Province.

6. Tropical Cyclone Pam affected communities and individuals in a number of ways that will require support, intervention, and monitoring. The cyclone has seriously harmed the livelihoods of over 40,000 households, severely limiting their capacities to generate income and resulting in losses of around VT 1.6 billion in personal income. Tropical Cyclone Pam also extensively damaged or destroyed community infrastructure, disrupting daily life and—at a time when incomes have been lost—requiring extra expenditures to pay for repairs or replacement. While the destruction of physical assets by the cyclone occurred in March 2015, production losses and associated higher costs of production will linger for some time. The negative impact of the disaster on overall economic conditions in the country will thus be felt for several years to come.

7. **Damage and losses in the transport sector.** By the estimated costs of damage and losses, the infrastructure sector accounted for 19% of total disaster effects, transport infrastructure accounts for 55% of sector effects and 11% of total disaster effects followed by communication infrastructure accounting for 28% of sector effects and 5% of total disaster effects. The damage and loss estimate for the transport sector provided in the PDNA is VT 5.15 billion, of which roads and bridges accounts for 47% (VT 2.44 billion). Damages and losses in Shefa Province (where Efate is located) accounts for 90% of total transport infrastructure damages and losses.

8. The transport infrastructure networks and facilities throughout Vanuatu suffered severe physical damage as a result of Tropical Cyclone Pam. Most damage was recorded in the provinces of Malampa, Penama, Shefa, and Tafea, which were located directly in the cyclone's path. Vanuatu's transport infrastructure was severely damaged by Tropical Cyclone Pam. Partial damage was incurred at all three international airports and at 11 or more of the minor domestic airports and airfields. Partial damage was also recorded to wharves and jetties, and there was significant damage to marine vessels, in particular the smaller fleet. Damage to roads and bridges was confined to bridge-approach, culvert, and pavement washouts and blocked drains. About 80% of the road network was completely blocked due to fallen trees.

9. The immediate effect on the transport sector was to (i) sever all modes of transportation, (ii) hamper access to markets in Port Vila and other business centers and the surrounding communities, and (iii) hinder access to education and health facilities in villages and communities. Even though the cyclone path itself missed the northern provinces of Torba and Sanma, the associated rain caused flooding damage to culvert crossings, road pavements, and aerodromes in these two provinces.<sup>3</sup> Losses in the sector were the result of delays in travel time at blocked sections of major and heavily trafficked paved roads and bridge-approach washouts; loss of revenue to the aviation sector as a result of cancelled flights; and loss of business to the maritime sector resulting from ships' inability to sail (in particular, the staying away of cruise liners) and the salvage costs of those passenger vessels that either sunk or ran aground during the cyclone.

10. The PDNA concluded that transport infrastructure remains vulnerable to further damage and total failure unless emergency protective repairs are carried out immediately and restoration work is designed with sound engineering solutions to make the infrastructure climate resilient.

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<sup>3</sup> For consistency, damage and losses in Torba and Sanma were omitted from the PDNA transport assessment.

11. Emergency attention is required to address (i) the airport at Lamén Bay on Epi Island; (ii) the landslide at Klehm's Hill on the Efate ring road; and (iii) the washed-out sections to the north of the Efate ring road. Proper engineering solutions that include climate-proofing measures need to be implemented immediately before further damage is inflicted by heavy rain.

12. **Summary of recovery and reconstruction costs.** Total recovery and reconstruction is estimated at VT 34.1 billion (US\$316 million). Of this amount VT 10.3 billion (US\$95 million) is focused over the short-term (12 months to four years). The estimated cost of reconstruction in the transport sector is a total of VT 3.92 billion, with VT 2.18 billion required to address short-term needs (next 12 months) and VT 1.73 billion required to address medium term needs (next 2-4 years).

13. **The project.** Vanuatu's transport sector is of critical importance to—and underlies—its economic and social development. For example, 70% of rural communities live near the coastline, and 66% of rural communities rely on artisanal and subsistence fishing to meet a portion of their subsistence and income needs. Thus the transport systems not only support the country's economic life; they also affect the ease and cost with which government administration and businesses operate, and with which households and communities interact and access markets and social and cultural facilities.

ADB emergency assistance will be provided for reconstruction and rehabilitation of priority sections of the Efate Ring Road damaged by the cyclone. The project was approved on 25 November 2015. An additional financing will be prepared to extend similar work including reconstruction of additional bridges and rehabilitation and drainage improvement among the same road. The impact of the overall project will be socioeconomic activities restored to at least pre-Tropical Cyclone Pam levels. The outcome will be damaged infrastructure restored and more resilient connectivity provided. The project will have one output: transport infrastructure in priority locations reconstructed, and climate and disaster-proofed. The subprojects will include reconstruction of roads, bridges, bridge approaches, culverts, head walls, scour protection works (road, approach roads, river banks, abutments, piers), river training works, selected rivers and streams, drainage systems, including disaster and climate proofing, and reinstatement of landslide at Klehm's Hill all on Efate ring road.

14. **Project implementation.** The original project will be implemented between October 2015 and March 2019, which is longer than the typical period of two years for emergency assistance projects. This extended implementation period is justified because the project will not only assist with reconstruction and restoration, but will also adopt a "building back better" approach, providing transport infrastructure assets with improved disaster and climate resilience. The additional financing will be implemented from June 2017 until December 2018.

15. Project preparation for the original project was undertaken between June and July 2015 in response to the March request from the government to provide emergency assistance. The expanded work to be financed under the additional financing has been identified as part of the original project's feasibility study. The Ministry of Infrastructure and Public Utilities (MIPU) will be implementing agency. The Public Works Department (PWD) within MIPU will be involved in day-to-day implementation through its Project Management Unit (PMU). The PMU will report to Infrastructure Working Group (IWG) comprising Director Generals of Ministry of Finance and Economic Management (MFEM), MIPU, Ministry of Education and Training, and Ministry of Health. This is already established for infrastructure reconstruction in transport, health, education and public buildings. The IWG reports to the Prime Minister's Office.



16. **Anticipated impacts.** The project is not expected to involve significant land acquisition and resettlement impacts, as the rehabilitation and/or reconstruction of road sections and bridges and rehabilitation and drainage improvement will be within the existing ring road corridor. It is unlikely that subprojects will cause physical displacement (loss of residential houses and structures). Loss of major income generating assets (e.g. businesses) is also not expected.

17. However, small areas may be required for coastal protection and civil works will require temporary land use or access during construction and may involve some impacts such as loss of trees and crops on the respective land needed for access or storage areas during construction. Specific impacts for the additional sites under the additional financing will be known only after the feasibility and detailed design completion according to site specific requirements of the repair works.<sup>4</sup>

18. **Safeguards frameworks.** This resettlement framework (RF) has been prepared to address potential land acquisition/resettlement impacts that may arise during construction. The RF describes procedures for (a) screening of land acquisition/resettlement impacts; (b) social impact assessment and preparation of resettlement plan (RP), if needed; (c) negotiation and agreements for land access; (d) resettlement principles and entitlements; and (e) implementation and monitoring arrangements. It is based on applicable laws and regulations of the Government of Vanuatu and ADB's *Safeguard Policy Statement* (2009). Due to the short processing time for emergency project, the RP will be prepared during implementation, if needed.<sup>5</sup> The MIPU will be responsible for implementation of the RF assisted by Resettlement Specialist financed under the project.

## II. OBJECTIVES, LEGAL AND POLICY FRAMEWORK AND ENTITLEMENTS

### A. Objectives

19. The objective of the project is to avoid land acquisition and resettlement impacts to a maximum possible extent; to minimize resettlement impacts by exploring project and design alternatives; to enhance, or at least restore, the livelihoods of all displaced persons (DPs)<sup>6</sup> relative to pre-project levels; and to improve the standards of living of the poor DPs and other vulnerable groups. The RF provides a process of resettlement impact assessment, preparation of the RP and implementation of compensation and income restoration measures for DPs. It 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 area.

20. To avoid and minimize resettlement impacts, the project will adopt following resettlement criteria in selection of subprojects: (i) a candidate subproject should be an existing

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<sup>4</sup> The Due Diligence Report for the original project has already been prepared as per the Resettlement Framework. Three out of the 20 sites identified will be part of the additional financing. The DDR is available at <https://www.adb.org/projects/documents/van-cprp-nov-2016-rpddr>.

<sup>5</sup> ADB. 2015. Staff Instructions on Processing and Administration of Emergency Assistance Loans. *Compendium of Staff Instructions*. Manila.

<sup>6</sup> Displaced person is the term used in ADB safeguard policy and includes any person who is physically displaced (relocation, loss of residential land, or loss of shelter) and/or economically displaced (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 or on access to legally designated parks and protected areas. Terms displaced person (DP) and affected person (AP) are used synonymously in this document.

infrastructure; (ii) preference will be given to those subprojects which can be undertaken within existing ROW/boundary or on government/public land; and (iii) if land acquisition cannot be totally avoided, only subprojects without significant land acquisition/resettlement impacts and where landowners are willing to negotiate will be selected. The screening form enclosed in Annex 1 will be used as the screening tool to ascertain significance or category of potential impacts.

21. If land acquisition/resettlement impacts are identified for any subprojects under the project, the MIPU will follow the policies and procedures spelled out in this RF in compliance with the applicable laws and regulations of the Vanuatu government and the safeguard policy requirements of ADB on involuntary resettlement.

## **B. Vanuatu Legal Framework for Land Acquisition**

22. Land acquisition, resettlement, and associated land issues are recognized in legal terms in Vanuatu by the Constitution and more than 10 laws (or acts). This section presents a brief overview of the salient national legal instruments pertaining to land acquisition and resettlement.

23. **The Constitution.** The Constitution of the Republic of Vanuatu came into being on 30 July 1980. The Constitution, as the supreme law of Vanuatu, contains two relevant sections that relate to land acquisition and resettlement. Chapter 5, Articles 29-32, of the Constitution refers to the “National Council of Chiefs”. Of relevance is Article 30, which recognizes the National Council of Chiefs membership having the competence to discuss, and may be consulted on, any issue related to customs, culture, and its preservation in any matter, as required by the government.

24. When described under the Constitution, the Council is not a decision-making body but rather a high-level advisory group. Although a very short chapter, considering the traditional ties between Vanuatu nationals and the land, Chapter 12 of the Constitution is devoted to land. Most discussions related to Land have centred on Articles 30 (in Chapter 5) and Articles 73, 74, 75, and 76 of Chapter 12. However, of relevance to land acquisition and resettlement are all nine articles (Articles 73-81). This states that all land is owned by its traditional, customary owners; parliament prescribes the criteria for compensation payment for land; the government may own and acquire land for State interest and may redistribute land away from traditional owners in such cases as informal settlements and relocating of residents from other islands; and disputes in land ownership.

25. **Land Acquisition Act.** The Land Acquisition Act No. 5 of 1992 (as amended in 2000 and 2014) (LAA). This is the key law directly related to land acquisition and resettlement. This act, gives the Ministry of Lands and Natural Resources (MLNR), full discretionary powers to acquire land on behalf of the government. It covers to an extent that which will be compensated under the act; compensation for damages made during the process of land valuation; compensation entitlements for land and for rents and business losses; basic rights for grievance and appeals; and notice periods, as mentioned in para. 15 above. This act does recognize market value compensation for land but is very vague in compensation entitlements for rents and businesses, making it very open to misinterpretation. There is well-documented evidence as to how compensation is determined for land acquisition and structures. However, there is no published compensation method that could be identified indicating how compensation is to be determined for losses in income to business and for vulnerable (female-headed households, poor, elderly, and landless) APs.

26. **Land Reform Act.** The Land Reform Act No. 35 has been updated a number of times (1981, 1983, 1985, 1992, and 2000). This act specifies that all land titles will be customary or transferred to the traditional owners, whose percentage can be traced back locally to 200 years. It specifically discusses indigenous owners and non-indigenous land users. This act, like the Land Acquisition Act, is an important one to understand when preparing an RP for involuntary land acquisition and resettlement.

27. **Custom land laws.** The Custom Land Management Act 2013 provides for the determination of customary owners and the resolution of disputes over ownership of customary land. The Customary Land Tribunal Act No. 7 (2001) details the set-up of customary land tribunals at the village, island, etc. level; basic terms of reference, especially for dispute resolution; and the process for APs to appeal tribunal decisions.

28. **Valuation of Land Act.** The Valuation of Land Act No. 22 (2002) relates to the organization of the Valuer General Office and its role. The Act does not stipulate a minimum approach to the valuation of land, which is more directly specified in the Land Acquisition Act.

29. Furthermore, this Act is unclear about the role of the Valuer General's Office in terms of relocation/involuntary resettlement of households as well as valuation of structures, incomes, and businesses.

30. **Land Surveyors Act.** The Land Surveyors Act No. 11 (1984) is basically a code of conduct, or a terms of reference for registered land surveyors, who must be registered through the Land Surveyors Board.

### **C. Current Practices in Land Acquisition for Government Purposes in Vanuatu**

31. **Identification of areas for acquisition.** A majority of government land acquisition in Vanuatu has been for smaller social services projects such as for village health facilities and educational institutions. Apart from Bauerfield, Santo, and Tanna airports, and some urban areas in Port Vila (i.e. along the river at Freswota in order to maintain a level of river protection and reduce urban encroachment issue) and Luganville (Santo) the government has not acquired land. In Port Vila the land acquisition legislation and process have not been utilized for urban development infrastructure projects; the Efate ring road has not been officially acquired or gazetted.

32. In the year prior to an infrastructure development project, each ministry and other government agencies develop their work plans for the following fiscal year. This is inclusive of the other feasibility study requirements such as budgeting, environmental, engineering, etc. At this time, proposals for projects where land acquisition is involved should be submitted. This is subject to the approval of the Council of Ministers. There is no minimum standard that requires projects to minimize land acquisition and impact on the community. Interestingly, the Council of Chiefs, the peak body representing customary issues including land at the national level, does not necessarily have an input at this or any other stage of the process. At the same time, MLNR is in the process of developing customary lands tribunals in each province of the country to assist in settling customary land disputes. Customary lands identification is still an ongoing process since 1980, given that there are limited records to prove the ties of people to certain plots of land.

33. **Process for relocation or acquiring land.** On an annual basis, the government allocates in its national budget Vatu 200 million for government land acquisition projects. According to MLNR, if the budget is not spent, the remaining amount accrues on top of the

annual Vatu 200 million budget. In the event that the budget is used up, with finances still required, the government and ministry executing a project are responsible to find further finances to cover the necessary land acquisition budget requirement. Once an area of land is selected by the government for a government project, a notice signed by the minister of MLNR is provided to the customary owners/title holders and a public notice is erected in full public view. The notice is made for a minimum of 30 days. After this period, the land is assessed and valued. The land valuation is stipulated by law, but generally involves valuing of the following:

- (i) Lease type – residential/agricultural/commercial/special industrial;
- (ii) Location of property from the CBD, aesthetic view, amenities, waterfront, type of neighborhood;
- (iii) Marketability – number of properties marketed nearby in recent times and price range of those transactions;
- (iv) Physical characteristics – terrain, vegetation, soil type, improvements made, size; and
- (v) Intangibles – interest, customary, and other resource rights attached.

34. According to MLNR, valuations include both land and structures affected and may include value of income produced from land. However, this does not include non-land producing incomes such as from a shop or business. Any damage to the land, caused by valuation investigations is by law liable for compensation to the existing owners. Once the valuation has been made and signed by the Minister, the owners have 30 days to file objections; at the same time, MLNR must disclose information on the valuation and proposed land acquisition over a 30-day period by radio at least three times on separate occasions, in one national newspaper each week, on the main notice boards, and on the land itself. Objections must be lodged within this 30-day period, and on decision by the Minister, the objector, if dissatisfied, may appeal the Minister's decision through the Supreme Court of Vanuatu. However, if the issues are related to tradition and custom, then the National Council of Chiefs may be consulted if necessary, although it is not compulsory.

35. **Acquisition of land/structures.** After a 30-day notice period, and as long as all conflict claims and complaints are resolved, the physical compensation processes can then commence. MLNR is responsible for this process, monitored by the MFEM. However, problems in moving through this stage may include complaints about the process of valuation to compensation itself; and the process of the assessment of disputes. This is generally supposed to be settled through the Customary Lands Tribunal, or if unresolved, through the Supreme Court system.

36. **Land-use agreement through memorandum of understanding.** An alternative to the acquisition is the process of agreeing and negotiating access to land for feasibility study, construction, and then ongoing access for operations and maintenance. This involves consultations with custom owners and signing of agreement (by all custom owners) in respect of access to land for public or community infrastructure (wharf, road, health center) wherein the owners and users will not be materially affected by loss of the land and will benefit from the project. In such a case the procedures for voluntary donation/land-use will be documented through a memorandum of understanding (MOU) to ensure: (i) landowners have been consulted, including on the selection of site, etc. (ii) there will be no major impacts; (iii) agreement is truly voluntary and documented in a written agreement; (iv) verification by a third party (NGO or legal authority). The application of this approach/process to the project is explained in para. 43-44 and 47.

#### **D. ADB Safeguard Policy**

37. The ADB Safeguard Policy Statement 2009 (SPS) requires ADB-assisted projects to (i) avoid resettlement impacts wherever possible; (ii) minimize impacts by exploring project and design alternatives; (iii) enhance, or at least restore, the livelihoods of all DPs in real terms relative to pre-project levels; and (iv) improve the standards of living of the affected poor and other vulnerable. It covers both physical displacement and economic displacement.

38. The key principles of the ADB safeguard policy on resettlement are as follows:

- (i) Screen early the project's resettlement impacts and risks.
- (ii) Carry out meaningful consultations with and participation of DPs, inform all DPs of their entitlements and resettlement options. Pay particular attention to the needs of vulnerable groups. Establish a grievance redress mechanism.
- (iii) Improve, or at least restore, the livelihoods of all DPs through (i) land-based resettlement or cash compensation at replacement cost, as relevant, (ii) prompt replacement of assets, (iii) prompt compensation at full replacement cost, and (iv) additional revenues and services through benefit sharing schemes where possible.
- (iv) Provide DPs with needed assistance, including: (i) if there is relocation, secured tenure to relocation and, better housing; (ii) transitional support and development assistance; and (iii) civic infrastructure and community services, as required.
- (v) Improve the standards of living of the displaced poor and other vulnerable groups to at least national minimum standards.
- (vi) Develop procedures in a transparent, consistent, and equitable manner if land acquisition is through negotiated settlement.
- (vii) Ensure that DPs without titles are eligible for resettlement assistance and compensation for loss of non-land assets.
- (viii) Prepare a RP elaborating on DPs' entitlements, income and livelihood restoration strategy and so on.
- (ix) Disclose a RP in an accessible place and a form and language(s) understandable to DPs and other stakeholders.
- (x) Conceive and execute resettlement as part of a development project or program.
- (xi) Provide compensation and other entitlements before physical or economic displacement.
- (xii) Monitor and assess resettlement outcomes, their impacts on the standards of living of DPs.

## E. Gaps between ADB SPS and Vanuatu Laws and Gap-filling Measures

39. Table 2.1 summarizes the differences between ADB SPS requirements and Vanuatu laws on land acquisition/involuntary resettlement, and gap-filling measures.

**Table 2.1: Comparison of Vanuatu Law and ADB Policy and Gap-filling Measures**

<b>ADB SPS Requirements on Involuntary Resettlement</b>	<b>Gaps between ADB SPS and Vanuatu Laws</b>	<b>Gap-filling Measures</b>
Avoid involuntary resettlement wherever possible. Minimize involuntary resettlement by exploring project and design alternatives.	No minimum standard that requires that a project avoid resettlement impacts. No explicit reference to the need for minimizing resettlement impacts by exploring alternatives.	The RF includes measures on avoiding/minimizing land acquisition and resettlement impacts.
Enhance, or at least restore, the livelihoods of all displaced persons in real terms relative to pre-project levels.	Laws do not prescribe measures to restore/ improve standard of living. Compensation is determined based on issues including land type, crops etc. This does not include non-land	For this project, compensation will be at replacement cost and cover losses from businesses and employees' salaries. Land is valued by Valuer General in

ADB SPS Requirements on Involuntary Resettlement	Gaps between ADB SPS and Vanuatu Laws	Gap-filling Measures
	income producing assets (shops, businesses etc). It does not require compensation be provided to level that will improve DP living conditions.	MLNR.
Improve the standards of living of the displaced poor and other vulnerable groups.	Law in Vanuatu does not recognize standards of living of poor and vulnerable in determining compensation or additional measures.	The RF includes measures on compensation at replacement cost for affected land/assets and to restore, if not, improve living standard of DPs.
Screen the project early on to identify past, present, and future involuntary resettlement impacts and risks.	Other than requirement for project budget to consider and include associated resettlement and land acquisition costs, there is no provision for screening.	The RF requires screening as first stage to determine the scope of land acquisition and need for subsequent assessment and documentation.
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.	No specific requirements for census, cut-off date, impact assessment and scoping of resettlement planning.	The RF includes measures on survey/census, cut-off-date, assessment of impacts and resettlement planning.
Carry out meaningful consultations with APs, host communities, and concerned NGOs. Inform all displaced persons of their entitlements and resettlement options. Ensure their participation in planning, implementation, and monitoring and evaluation of resettlement programs. Pay particular attention to the needs of vulnerable groups, especially those below the poverty line, the landless, the elderly, women and children, and Indigenous Peoples, and those without legal title to land, and ensure their participation in consultations.	No specific provisions for preparing and implementing RP based on meaningful consultations with DPs, including the poor, the landless, elderly, women, and other vulnerable groups	The RF includes measures on consultations with DPs, including vulnerable groups, during screening and if required the preparation and implementation of RPs (or due diligence report).
Establish a grievance redress mechanism to receive and facilitate resolution of the affected persons' concerns. Support the social and cultural institutions of displaced persons and their host population.	No requirements for a project-specific grievance redress mechanism.	The RF includes measures on project-specific grievance redress mechanism.
Improve, or at least restore, the livelihoods of all displaced persons through (i) land-based resettlement strategies when affected livelihoods are land based where possible or cash compensation at replacement value for land when the loss of land does not undermine livelihoods, (ii) prompt replacement of assets with access to assets of equal or higher value, (iii) prompt compensation at full replacement cost for assets that cannot be restored, and (iv) additional revenues and services through benefit sharing schemes where possible.	No specific requirement for land-based resettlement, replacement of assets, and benefit sharing.	The RF includes measures of on-site relocation, replacement of affected structures, compensation at replacement cost and priority of project employment to DPs.
Provide physically and economically DPs with needed assistance,	Vanuatu laws have no specific provisions on relocation, transitional	For any subprojects that will trigger the need for relocation, the RF

<b>ADB SPS Requirements on Involuntary Resettlement</b>	<b>Gaps between ADB SPS and Vanuatu Laws</b>	<b>Gap-filling Measures</b>
including: (i) if there is relocation, secured tenure to relocation land, better housing with comparable access to employment and production opportunities, integration of resettled persons economically and socially into host communities, and extension of project benefits to host communities; (ii) transitional support and assistance, such as land development, credit facilities, training, or employment opportunities; and (iii) civic infrastructure and community services, as required.	support and civic infrastructure and services.	includes measures on-site relocation of affected structures, transitional allowances and restoration of civic infrastructure. <i>Note: it is unlikely that the project will require relocation or land acquisition.</i>
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.	Laws do not prescribe measures on improvement of living standard and restoration of livelihoods of the poor and vulnerable groups.	The RF includes measures on restoration/improvement of livelihoods of DPs, including the poor and vulnerable groups.
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.	Laws do not specifically require third-party verification of negotiated agreement.	The RF describes procedures for the negotiation with landowner groups through memoranda of understanding (MOUs) to be verified by a third-party.
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	There is nothing in the SOL Laws to address the issue of displaced persons without land title or legal land rights.	The entitlement matrix for the project provides for resettlement assistance and compensation for non-land assets to non-titled DPs as well.
Prepare a RP elaborating on displaced persons' entitlements, the income and livelihood restoration strategy, institutional arrangements, monitoring and reporting framework, budget, and time-bound implementation schedule.	Laws have no provision for preparing RP.	The RF includes measures on preparation of RP for subprojects in case they involve land acquisition/resettlement impacts.
Disclose a draft RP, including documentation of the consultation process in a timely manner, before project appraisal, in an accessible place and a form and language(s) understandable to affected persons and other stakeholders. Disclose the final RP and its updates to affected persons and other stakeholders.	No requirements on disclosure of an RP.	The RF includes disclosure measures, including posting of documents on ADB website as well as providing information to DPs.
Conceive and execute involuntary resettlement as part of a development project or program. Include full costs of resettlement in the presentation of project's costs and benefits. For a project with significant involuntary resettlement	No equivalent provision	Land acquisition/resettlement costs will be included and financed out of the project cost.

ADB SPS Requirements on Involuntary Resettlement	Gaps between ADB SPS and Vanuatu Laws	Gap-filling Measures
impacts, consider implementing the involuntary resettlement component as a stand-alone operation.		
Pay compensation and provide other resettlement entitlements before displacement. Implement the RP under close supervision throughout project implementation.	There is nothing in the LAA to require payment before displacement.	The RF includes measures on payment of compensation for affected assets before start of civil works on affected land.
Monitor and assess resettlement outcomes and impacts on DPs. Disclose monitoring reports.	No equivalent provision	The RF includes monitoring measures, including requirements for semi-annual safeguard monitoring and reporting.

## F. Project Resettlement Policy Principles and Entitlements

40. **Project resettlement principles.** Consistent with the SPS, this RF will apply to three categories of DPs as follows: (i) persons with formal or legal rights to land lost in its entirety or in part; (ii) persons who lost the land they occupy in its entirety or in part who have no formal legal rights to such land, but who have claims to such land that are recognized or recognizable under national laws; and (iii) persons who lost the land they occupy in its entirety or in part (as of the cut-off date) who have neither formal legal rights nor recognized or recognizable claims to such land.

41. The project will follow both the national laws and the ADB safeguard policy. In case of any gap, the ADB policy will apply. The project's key resettlement principles are: (i) it will avoid or minimize involuntary land acquisition and resettlement through careful design; (ii) DPs will receive compensation at replacement cost and/or assistance so that they will be as well-off as without the project; (iii) DPs will be consulted during project cycle; (iv) absence of formal title will not be a bar to compensation for house, structures and trees/crops, and particular attention will be paid to vulnerable groups; (v) land compensation and resettlement assistance will be completed before start of civil works; and (vi) land acquisition and resettlement will be conceived as part of the project and costs related to resettlement will be included in and financed out of the project cost.

42. **Memorandum of understanding.** For infrastructure that directly benefit local communities, the MIPU often consults with the communities and landowner groups to get their agreement in constructing such infrastructures on the community/customary land. If the landowners and any other persons who claim an interest in the land agree on use of the land for the project purpose or voluntarily donate the land, the agreement is documented in the form of a MOU which is signed by the members of the community/landowner group and the government. There is no change in title under this process.

43. The MOU sets out the agreed terms and conditions, including details of compensation to the landowners to be provided by the MIPU in return for use of the community land for the project. While the MIPU wishes to continue this tradition of consultation and MOU, the project will follow adequate safeguards and legal process in obtaining community/customary land, including: (i) local communities will be consulted on selection of subproject location/alignment and on options to minimize resettlement impacts; (ii) landowners will not be forced to give their land; (iii) affected persons/households will be provided compensation (at replacement cost) for their loss of individual structures and other improvements such as crops, trees, etc., in addition to in-kind compensation to community/groups for affected customary land, (iv) procedures on



purchase or lease of customary land in compliance with the LAA will be followed, as relevant; (iv) a written MOU will be signed with all members of the landowner group(s); and (v) the MOU will be validated by a third party such as a civil society organization or a magistrate. The procedures on obtaining community/customary land through MOU are in Annex 2.

44. **Entitlements.** The project will follow eligibility and provisions in the RF for compensating all types of losses resulting from land acquisition or restriction on land use or access. DPs will receive compensation at replacement cost, and other resettlement assistance such as shifting allowance. Titled DPs will receive compensation for land acquired by the project. Non-titled DPs are not eligible for compensation of land, but will receive compensation for assets attached to land and other assistance as required. Households headed by women and other vulnerable households will receive further assistance. Table 2.2 presents the entitlement matrix.

**Table 2.2: Entitlement Matrix**

<b>Impact/Type of Loss</b>	<b>Application</b>	<b>Entitled DPs</b>	<b>Entitlement</b>
Loss of use of land through temporary occupation by the project including any damages within land used temporarily  Loss of access during construction causing inconvenience to APs or impacting livelihoods	Customary land required during repair/ rehabilitation activities	Landowners/users of customary land	Rent as negotiated with landowners. All temporary use of land will be through written agreement with the landowner/lease-holder and land will be returned to the landowners after rehabilitation to original or better condition.  Compensation at replacement cost for any damages within land used for project.  The project will ensure that APs have uninterrupted access to their land and livelihood sources. In case of any unavoidable loss of access, APs will be provided compensation for their losses at replacement cost.
	Alienated land required during repair/rehabilitation activities	Lease-holder	
Permanent loss of residential or homestead land	Customary land required for the project construction	Landowners/users of customary land	Landowners will be provided equivalent size and quality of land, or cash compensation at replacement cost.
	Alienated land to be resumed for the project construction	Lease-holders	Cash compensation as agreed between the COL and lease-holders; OR New FTE lease for alternative land, with no cost to DPs for relinquishing original lease and/or processing alternative lease.
Permanent loss of various types of land (other than residential)	Customary land required for project construction	Landowners/users of customary land	In-kind compensation or cash compensation, at replacement cost, to landowners group, as agreed between MIPU and landowners.
	Alienated land required for the project construction	Lease-holders, tenants and users of land	Cash compensation to leaseholders for affected land. New FTE lease for alternative land, with no cost to DPs.  Cash compensation for affected crops at replacement cost.  A portion/share of compensation amount will be provided to sharecroppers/tenants for portion of land sharecropped according to sharecropping/rental agreement.
Loss of gardens, trees, crops, perennials, and/or productive trees/plants	Standing crops, trees in the ROW	Owner(s) of crops or trees	Compensation at replacement cost as determined by the Forest Division for timber trees and the Department of Agriculture for crops or productive plants/trees.
Partial or total removal of structure (house or commercial structure)	Structures in ROW	Owner of structure	Compensation for structures affected or removed at replacement cost without deductions for salvaged materials; and assistance in locating suitable alternative housing or commercial building.  Shifting allowance <sup>7</sup> for relocating household or business goods.

<sup>7</sup> The shifting/relocation allowance will be agreed between the MIPU and the household/DP on a case-by case basis. The shifting allowance will be adequate to cover (i) dismantling of the structure; (ii) transport of structure/housing materials salvaged and all household effects/commercial goods; and (iii) costs of alternative accommodation, if required, while the structure is being re-built.

Impact/Type of Loss	Application	Definition of DPs	Entitlement
Affected vulnerable households	Vulnerable households losing assets to the project	Vulnerable households identified through consultation with community leaders. In the project's context vulnerable groups include households headed by women, elderly, disabled, poor households, and physically relocating households.	<p>Access to training programs developed under the Project; Employment during construction and maintenance for two household members (one male and one female). Vulnerable groups will get priority in these activities.</p> <p>Additional cash assistance depending on extent of disruption to vulnerable AP's livelihood mechanism. Amount to be specified in the RP.</p>
Displacement of community structure	Community structure or resources within ROW if removed for project interest	Community representatives as identified by the social impact assessment	<p>Replacement as agreed with community or cash compensation under law with additional grants as required to meet replacement cost without deductions for any materials salvaged.</p> <p>Assistance with dismantling and reconstructing structure or property.</p>
Unforeseen or unintended impacts	Any impact identified during implementation	Concerned affected people	Determined as per the spirit of this resettlement framework.

### III. SOCIAL IMPACT ASSESSMENT AND PREPARATION OF RESETTLEMENT PLAN

#### A. Subproject Screening

45. Each subproject will be screened for its land acquisition and resettlement impacts (screening form attached as Annex 1). The screening will reflect if there will be any such impacts. This means that at least preliminary designs are required to indicate the type and extent of works. The screening form will be completed after site visits, and, as relevant, in consultations with potential DPs to understand land use/ownership arrangements.

46. **Due diligence report.** For subprojects that will not require land acquisition and will not create any resettlement impacts and where a MOU (Annex 2) is agreed with the custom land owners, the process will be documented in a due diligence report. The report will include the signed MOU and be validated by a third party. The report will include the agreed terms and conditions, including details of compensation to the landowners to be provided by the MIPU in return for use of the community land for the project. While the MIPU wishes to continue this tradition of consultation and MOU, the project will follow adequate safeguards and legal process in obtaining community/customary land, including: (i) local communities will be consulted on selection of subproject location/alignment and on options to minimize resettlement impacts; (ii) landowners will not be forced to give their land; (iii) affected persons/households will be provided compensation (at replacement cost) for their loss of individual structures and other improvements such as crops, trees, etc., in addition to in-kind compensation to community/groups for affected customary land, (iv) procedures on purchase or lease of customary land in compliance with the LAA will be followed, as relevant; (iv) a written MOU will be signed with all members of the landowner group(s); and (v) the MOU will be validated by a third party such as a civil society organization or a magistrate. The procedures on obtaining community/customary land through MOU are in Annex 2.

47. The screening is conducted as a first step to see wherever resettlement impacts can be avoided, mitigated or minimized as much as possible. Where the screening identifies that a subproject will require land acquisition/resettlement, an assessment of social impact needs to be undertaken to prepare an RP.

#### B. Social Impact Assessment and Documentation

48. **Preparation of resettlement plan.** Any subprojects that involve involuntary land acquisition and resettlement impacts will follow the guidelines set out in this RF in respect of assessment of impacts (census of DPs, inventory of losses, and socioeconomic survey) and preparation of an RP. The scope and level of detail of an RP will vary depending on the magnitude and complexity of land acquisition and resettlement issues. This RF includes an outline of a RP (Annex 3) and, where required, RP will be prepared accordingly.

49. A comprehensive assessment of impacts based on reliable information about the scope of land acquisition and its impacts on DPs will be a prerequisite for preparation of an RP. In coordination with the MLNR, the MIPU will carry out consultations with village leaders and DPs and necessary surveys including inventory of losses (IOL) and census of DPs. The IOL and census will be undertaken covering all DPs during feasibility study and updated after detailed design. It will be conducted in a participatory manner to estimate the losses and impacts. A cut-off date will be established as the date of the commencement of an IOL and this will be publicized in advance by the MIPU.

50. The landowners and/or users that have documented claims to affected land, crops, trees and/or structures as of the cut-off date will be eligible for compensation and/or rehabilitation assistance.

51. The IOL will document the losses and impacts resulting from the land and/or resource/asset acquisition. The survey form will also contain a number of questions about the socio-economic status of DPs in order to furnish information required for the elaboration of livelihood restoration and stabilization measures. The form will cover the following:

- (i) Information of DP/household – number of people in household; gender and age of head of household; tenure of land; ownership of assets; education of household members; livelihood activities (paid and unpaid); cash income; subsistence production;
- (ii) Loss of land – by type of land affected (i.e., residential; agricultural; commercial; fishpond, etc.); total area of land (including other plots), area of land affected; tenure of land;
- (iii) Loss of assets - by type, i.e., structures, crops and trees (type, area affected, number lost, etc.); time required to rebuild or relocate;
- (iv) Loss of, or impacts on livelihood activities – type, dependency, how impacted, restoration measures required; and
- (v) Other impacts or losses.

52. Each of survey forms will be entered onto a database, and analyzed to provide a profile of DPs, to describe the losses and impacts, and assist in the calculation of compensation for the losses and impacts. Data will be disaggregated, as relevant, by gender, ethnic group and income group. The conditions, needs, and priorities of women will be analyzed to ensure that land acquisition and resettlement does not disadvantage women and other vulnerable groups.

53. A RP will be prepared based on the assessment of impacts and finalized in consultation with DPs. The RP will summarize the scope of land acquisition and resettlement; socio-economic information; consultation process; legal and institutional framework; entitlements; and implementation arrangements. It will also identify gender concerns and ensure that it does not disadvantage women. The plan will include sufficient budget and specify source of funds. The budget will be based on published rates from relevant government authorities and include additional grants, if required, to ensure that compensation rates for affected land and assets are at replacement cost. The RP will also include an implementation schedule linked with the civil works to ensure that civil works will not commence until compensation and/or assistance has been paid to DPs. The draft RP will be disclosed to DPs and other stakeholders for their comments. The RP will be finalized incorporating comments from DPs. The final RP will be produced in English, with summaries in Bislama, as needed.

54. The preparation of the RP will be coordinated with the government's formal land acquisition procedure in accordance with the LAA, as relevant.

55. **Endorsement and disclosure.** The due diligence reports and/or RPs will be endorsed by the MIPU and will be submitted to ADB for review and approval. A “no objection” for the due diligence reports and/or RPs will be received from ADB prior to implementation of a subproject.

56. The due diligence reports and/or RPs will be uploaded to ADB's website and disclosed locally.

#### IV. INSTITUTIONAL RESPONSIBILITIES

57. **Executing agency.** The MFEM is the executing agency and has overall responsibility to manage the land acquisition/resettlement aspects. The MIPU will undertake the surveys and prepare the RP with the help of qualified experts and relevant authorities. The MIPU will ensure that entitlements and measures in the RP are consistent with this RF and suitable budgetary provisions are made for timely implementation of the RP. The MIPU will also coordinate with the MLNR and other relevant government agencies in land acquisition process.

58. **Implementation agency.** The MIPU will implement the project through the PWD and its PMU. The PMU will be responsible to implement the overall project. The MIPU will assign a project manager at PMU to manage the project, including social safeguard activities. The project manager will ensure that all relevant safeguard plans are implemented so as to meet their intended requirements. The project manager, assisted by safeguard staff and consultants, will undertake the following activities to fulfil the PMU's role:

- (i) Screen and assess subprojects.
- (ii) Prepare due diligence reports and/or RPs for subprojects, as required, to meet the project's requirements according to the safeguard policies of ADB and the government.
- (iii) Undertake adequate consultations with and dissemination of relevant information to DPs, including public disclosure of draft and final safeguard reports and plans, in accordance with the RF.
- (iv) Ensure that the PMU's design engineers take into account safeguard issues and try to avoid or minimize social impacts through appropriate design. The social safeguard team will brief PMU technical design team in this regard.
- (v) Address any project-related grievances of DPs and facilitate in resolving disputes on landownership.
- (vi) Undertake public consultation to inform DPs of the subproject scope and schedule of the sub-project activities, including land acquisition and compensation activities.
- (vii) Following the award of the civil works contract, the safeguard team will arrange a briefing to the contractors to raise their awareness on safeguard requirements.
- (viii) Coordinate with relevant authorities including the MLNR to ensure that land acquisition and compensation activities are completed prior to start of the construction activities.
- (ix) Undertake regular monitoring and reporting on implementation progress of safeguard plans.
- (x) Implement relevant community development and income generation activities to restore and improve the living standards of DPs.

59. MIPU has established a safeguard unit which comprises a social safeguards officer and community liaison officer. In addition, the design and supervision consultant will include an international social safeguard specialist (ISS) to build capacity of MIPU safeguards officers and help implement the project.

60. The MIPU safeguards unit supported by the ISS will be responsible for preparation and implementation of the due diligence reports, resettlement plans, to negotiate settlements and prepare MOUs (including facilitating third party validation), prepare other safeguard plans, and facilitate consultations as required at various stages of the project.

61. Specifically during the land acquisition and resettlement process, the safeguards unit will ensure that entitlements and mitigation measures established in the RP are consistent with this

RF; and suitable budgetary provisions are made for timely RP implementation. The safeguards unit will also ensure that funds for compensation and entitlements under the RP, provided through the MIPU or its contractors, are fully provided to DPs prior to the commencement of works/activities. For each subproject, the safeguards unit will prepare either (i) a satisfactory RP as per the agreed RF for subproject's involving land acquisition and resettlement; or (ii) a due diligence report documenting the screening and consultation process when an RP is not required.

62. The ISS will train and supervise the national safeguard staff and other relevant personnel in carrying out safeguard activities. The ISS will take overall responsibility in implementation and monitoring of the project's safeguard activities in compliance with this resettlement framework and ADB safeguard policy. During the initial stage of the project implementation, the ISS will organize a training program for relevant PMU staff and government officials to orient them on: (i) the government policies and procedures for acquisition of land; (ii) ADB policies and procedures on social safeguards; (iii) applying the government and ADB policies in the project; and (iv) methods on surveys and data collection to prepare an RP and conduct community consultations and awareness programs. The training will target people from the MIPU, the MLNR, provincial and district authorities, and other organizations involved in land acquisition and compensation activities.

63. **Ministry of Land and Natural Resources.** As required for subprojects necessitating land acquisition or resettlement, the MLNR and its relevant divisions will provide necessary support to the MIPU in carrying out land acquisition activities. If any subprojects require acquisition of land, the MIPU assisted by the safeguards unit and MLNR will identify land, landowners or lease-holders, participate in consultations, prepare declarations and notices as required, and undertake a land acquisition survey.

64. For subprojects involving land acquisition and resettlement, the safeguards unit and MLNR will undertake a census and IOL survey, prepare an RP. In addition, for subprojects affecting community/custom land, following consultations, a MOU will be prepared and signed by custom owner(s) and a representative of the government (the MIPU and the MLNR to decide) on use of community land for the project. The safeguards unit will be responsible for documenting the process, the MOU will outline the responsibilities of each party and what compensation will be provided to the landowners/community for loss of land and identify individuals/households who are using the land and the compensation they will receive for any lost or removed assets.

## **V. CONSULTATION AND INFORMATION DISCLOSURE**

65. Consultation will be undertaken during preparation and implementation of subprojects. The MIPU, primarily through the safeguards unit, will consult affected households, leaders, and representatives of communities to ascertain their needs and concerns about land/asset acquisition. The MIPU will carry out surveys in a participatory manner with the head of the household working with the safeguards unit to estimate the losses and impacts.

66. The MIPU will ensure participation of DPs in planning and implementation of the process, and specific consultations in relation to land/asset acquisition will be detailed in the RP. Individual meetings with directly affected households will also be undertaken and recorded in the RP.

67. In respect of information disclosure, the MIPU will publicly disclose project-related information at various times during the project cycle. The MIPU will inform affected communities of their entitlements through public consultations and the entitlement matrix will be translated into Pidgin and be made available in the MIPU head office in Port Vila, Shefa Government Office, and in subproject areas. This RF (and a summary of it) and any due diligence reports and/or RPs prepared under the project will be publicly disclosed as per the disclosure policy of ADB and current practice of the MIPU to DPs and other stakeholders.

## **VI. GRIEVANCE REDRESS MECHANISM**

### **A. Resolving Disputes over Land Ownership**

68. Any disputes arising over alienated land, usually in relation to compensation as ownership is clear, are referred to the Magistrates Court and follow the procedure set out in the LAA and other relevant law. Disputes over the award of compensation for resumed title, or where an existing lease-holder seeks to get compensation for “unimproved” land, are settled in the Supreme Court.

69. As per the Custom Land Management Act, for disputes over customary land, there is a two-step process; through mediation; and if it cannot be resolved through mediation it will be determined through customary procedures via either the nakamal<sup>8</sup> or the custom area land tribunal. If the dispute cannot be resolved by nakamal or custom area land tribunal it may be referred to Island Court or even Supreme Court.

### **B. Grievance Redress Mechanism**

70. During the course of the project, it is possible that people may have concerns with the project’s safeguards performance including implementation of any RPs. The following process will be used to address concerns quickly and transparently at project level based on the existing system for dispute resolution.

- (i) Any DP may discuss their complaint with the Chief in their village. The DP or both DP and Chief take the complaint to the subproject office. Straightforward complaints will be resolved by determination of issues locally on the spot. All such issues are recorded by the subproject staff.
- (ii) If the DP is not satisfied with the outcome, the complaint is next discussed by the complainant and the MIPU-PMU assisted by the safeguards unit, or local government members, and the head of the land owning group (in respect of customary land). The safeguards unit will record all complaints (date, complainant, grievance, attempts to resolve the complaint, and outcomes) and have a maximum of one week to resolve the complaint and convey a decision to the DP.
- (iii) If the complaint of the DP is dismissed, the DP will be informed of their rights in taking it to the next step. A copy of the decision is to be sent to next level of authority.
- (iv) Should the DP not be satisfied with decision of the PMU or MIPU, depending on the nature of the complaint, the DP may take the complaint to the MLNR, who will appoint a representative to review the complaint in the case of alienated land or to

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<sup>8</sup> The nakamal is a customary institution that operates as the seat of governance for a particular area. A nakamal may be related to a single custom owner group or extended family group, or may be related to a number of custom owner groups or extended family groups living in a village or larger area. Nakamal has the same meaning as farea in parts of Efate.



a custom land officer (under the Custom Land Management Act) for customary land. The MLNR will have two weeks to make a determination. The determination by nakamal or custom area land tribunal will follow the timelines established in the Custom Land Management Act.

- (v) If a satisfactory conclusion cannot be obtained through this process or at any times, the DP can take the matter to the courts (nakamal, custom area land tribunal, Island Court or Supreme Court). This will be at the DPs cost but if the court shows that the government ministries have been negligent in making their determination, the DP will be able to seek costs.

71. The complaints and grievance redress procedures will be outlined in the RP prepared for an individual subproject to ensure stakeholder participation in the implementation process and to ensure there is a publicly acceptable forum with which to deal with any issues or complaints arising through land acquisition. Through public consultations, DPs will be informed that they have a right to complaint/grievance resolution. The record of the grievance redress mechanism will be the subject of monitoring.

72. In addition, during construction/implementation, a grievance register will be held at each subproject site office, maintained by the subproject manager and monitored by the safeguards unit. All complaints arriving at a site office are to be entered in a Register (by, date, name, contact address and reason for the complaint) that is kept at site. A duplicate copy of the entry is given to the DP for their record at the time of registering the complaint. The Register will show who has been directed to deal with the complaint and the date when this was made together with the date when the DP was informed of the decision and how the decision was conveyed to the DP.

73. The Register is then signed off by the person who is responsible for the decision and dated. The Register is to be kept at the front desk of the site office and is a public document. The duplicate copy given to the DP will also show the procedure that will be followed in assessing the complaint, together with a statement affirming the rights of the DP to make a complaint. For anybody making a complaint no costs will be charged to the DP.

74. In the event of grievances that cannot be resolved at the local level, the MIPU and MLNR will hold the compensation amounts in escrow or trust account. Compensation will be paid in full upon final resolution of the case in the courts or other forum, in accordance with the entitlements of the DP.

## **VII. BUDGET AND FINANCING**

75. All land acquisition, compensation, resettlement, and income restoration costs (if needed) for the project will be financed by the government using counterpart funds. The budget for such activities will be estimated during feasibility based on interviews with affected communities. This will be updated after the detailed survey and investigation, and further consultations with DPs. The government will release sufficient budget for implementation of compensation, resettlement and rehabilitation activities in an appropriate and timely manner.

76. Any RP prepared under the project will be required to identify the costs of resettlement including: compensation (including in-kind compensation), describing the valuation of land and assets and how replacement cost will be achieved; livelihood restoration, where this is required; costs of implementing the plan (including administration charges and contingency); and, monitoring.

77. Compensation for any land or assets lost will be at replacement cost. The value of the free hold land to be resumed is valued through the MLNR. Valuation reports are prepared based on the size and condition of land, any improvements made to the land, and assessment in respect of the closest comparable values that are obtainable. The valuation of all improvements to land is done through the Valuer General's Office (MLNR), with assistance from relevant other ministries as required.

78. For removal of crops and trees, compensation will be based on the published schedules of the Department of Agriculture and Rural Development within Ministry of Livestock, Agriculture, Forestry, Fisheries and Biosecurity for root crops and tree crops and the Forestry Division for plantation trees and wood/timber trees. The rates for root crops are based on value of product per square meters and tree crops are valued according to age, size and productivity of individual trees. The MIPU has also established compensation rates for certain types of trees and crops on other similar projects and these will be used as a starting point for negotiations.

79. Structures (houses and commercial structures) are valued through MLNR. Government buildings are valued according to government rates. Private and community buildings and assets are valued at replacement rate plus relocation expenses.

80. During RP preparation, the safeguards unit (with the help of a valuation specialist, as needed) will undertake a market rates appraisal to determine if the official rates applied will meet the threshold of replacement cost for any assets affected. If the official rates are insufficient, additional grants or payments will be clearly identified in the RP budget and cost estimate. The budget section of the RP will also describe the flow of funds for compensation payments and the process for recording payments. The process of compensation award will be the subject of monitoring.

## **VIII. MONITORING AND EVALUATION**

81. The RP will contain a monitoring framework consistent with the generic parameters/indicators set out in this RF (Table 7.1). The safeguard unit staff and ISS will assist the PMU in monitoring the progress of all aspects of land acquisition/RP implementation, if any. It will particularly monitor the delivery of resettlement entitlements to DPs. The safeguards unit will involve leaders and representatives of community associations to assist with the monitoring. The monitoring will also cover DPs' satisfaction with consultation, timeliness of compensation payment, and restoration of livelihoods (ability of DPs to restore livelihoods to at least pre-project levels).

82. The PMU will also submit progress reports on screening, due diligence reports, land acquisition/RPs to ADB on semi-annual basis, and the findings will be incorporated into the progress reporting of the CPIU. ADB review missions will specifically check the progress of any resettlement and land acquisition undertaken for subsequent investments or subprojects.

**Table 7.1: Generic Indicators for Monitoring**

<b>Aspect</b>	<b>Indicators</b>
RP implementation	<ul style="list-style-type: none"> <li>• General and overall compliance of resettlement activities with the RP, including payment of compensation: (i) full payment to be made to all affected persons before commencement of works; (ii) adequacy of payment to replace affected assets; and</li> <li>• The level of satisfaction of DPs with various aspects of the RP process.</li> </ul>
Consultation, participation, disclosure and grievance redress	<ul style="list-style-type: none"> <li>• Public information dissemination and consultation procedures conform to the process established in the RP;</li> <li>• The participatory process and various mechanisms as well as measures taken, both in terms of the quality and meaningfulness of this process, and the extent that primary stakeholders actively participate in the process;</li> <li>• The disclosure of the RPs, whether DPs know their entitlements and whether they have received all of their entitlements; and</li> <li>• Monitor the effectiveness of the grievance mechanism, types of grievances, if and how resolved, and satisfaction of DPs with the process.</li> </ul>
Gender issues	<ul style="list-style-type: none"> <li>• The institutional and staffing mechanisms;</li> <li>• Collection and disaggregation of gender sensitive data;</li> <li>• Women's representation and participation in the detailed planning and implementation process;</li> <li>• Gender inclusiveness such as technical training to both men and women;</li> <li>• Delivery of replacement leases or land titles in the names of both husband and wife;</li> <li>• Whether compensation has been delivered to both husband and wife, together; and</li> <li>• The effectiveness of livelihoods programs for restoring and developing women's income and living standards.</li> </ul>
Vulnerable groups issues	<ul style="list-style-type: none"> <li>• Assessment of the appropriateness and effectiveness of various entitlements, programs and activities and methods of delivery for various vulnerable households and groups, and the need for adjustment or additional measures.</li> </ul>
Transparency	<ul style="list-style-type: none"> <li>• How information is distributed and to whom, in order to make sure that all DPs have the proper information and access to knowledge; Functioning of decision-making bodies and how this information is properly recorded and made available.</li> </ul>

### ANNEX 1: SCREENING FORM

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

Note: Please attach additional information on the project, as necessary.

<sup>9</sup> Impacts are classified as Category A when 200 or more persons experience major resettlement impacts either through being physically displaced from housing, or losing 10% or more of their productive (income generating) assets. Not significant impacts (i.e. other than Category A) will be classified as Category B. No impacts will be classified as Category C.

## ANNEX 2: PROCEDURES FOR MEMORANDUM OF AGREEMENT

1. Following the screening, the MIPU will coordinate with the MLNR to undertake project related land access/acquisition activities, including purchase or lease of customary land, as needed.

2. **Identification of land requirement and survey.** The MIPU will identify the land requirement based on the detail engineering design. The MIPU will undertake survey of land and other properties required for the subproject through private or government surveyors and will get the survey reports approved by the surveyor general, if needed. The MIPU will also consult with local communities/stakeholders in selecting the subproject location(s). The MIPU's safeguards unit will facilitate consultations with customary land owners and other relevant people.

3. **Consultation with landowners.** The MIPU through MLNR and the safeguards unit will identify landowners and their representatives. The MIPU will inform land owners about land requirements for the subproject. MLNR and SU will obtain views of the land owners as to whether they support the subproject and are willing to provide the land for the subproject. In cases where the land owners are willing to further discuss, MLNR and safeguards unit will document the considerations requested by the land owners.

4. **Publication of notice.** Public notices are publicly disclosed through publication in newspaper and/or being put up in the villages of the land owners and villages adjacent to the subproject area. The public notice will document: (i) the objectives of the overall project; (ii) the nature, scope, and timeframe, of the subproject (including a map if applicable); (iii) a list of the land owners as identified; (iv) that cash compensation to be provided for crops, trees or structures as per the project's resettlement framework; (v) types of in-kind compensation being considered in return for the customary land. In the event that additional land owners come forward, their validity as land owners will be verified, and if they found to be landowners, they will participate in the process. Responses to any written or verbal comments on the public notices, if required, will be made by the MIPU.

5. **Memorandum of understanding (MOU).** One month after the public notices have been published, MLNR will prepare a valuation report and a draft agreement on land use (lease or purchase). Discussions will be held with the landowners about whether the transaction will be through lease arrangements or complete purchase. Once agreed, MOU will be signed by all the parties: the landowners, representative(s) of the government (the MIPU and the COL will decide), and representative(s) of Provincial Government. The MOU will establish obligations of each party to the agreement. The determination of compensation of crops, trees or structures, if required, will follow the project's entitlement matrix in the resettlement framework.

6. **Documentation and third-party validation.** The project's safeguards specialist(s) will document the consultations and agreements reached. A third party, such as a civil society organization or a magistrate, will provide independent verification/validation that (i) the consultations have been undertaken, meaningfully, freely, and in good faith; (ii) the landowners are willing to provide land to the subproject; and (iii) the in-kind compensation for land and cash compensation for other improvements have been agreed to by the land owners. The process of third party verification/validation will include following tasks:

- (i) Undertaking interviews and meetings as required;
- (ii) Review of the process for identification and verification of relevant land owners;

- (iii) Review of any and all meeting minutes and documentation of the consultation process leading up to the signing of the MOUs;
- (iv) Validation that the agreement is voluntary;
- (v) Validation that the land owners speak for, and reasonably represent, the community;
- (vi) Verification that the provision of the land to the project will not cause hardship to any individual;
- (vii) Validation that any crops, trees or structures belonging to individuals have been identified and sufficiently compensated;
- (viii) Validation that in-kind compensation for loss of customary land being provided by the MIPU to the landowners/community represent a fair and reasonable replacement value for the affected land; and
- (ix) Documentation of the foregoing in a short report.

7. **Documentation of due diligence:** The MIPU will include in the RP (or a separate due diligence report, as relevant) descriptions of the process followed and outcome achieved through the process mentioned above. The MIPU will submit the RP/due diligence report to ADB for approval and provide agreed compensation package to affected people/communities before awarding the civil works contracts for the respective subprojects.

### ANNEX 3: OUTLINE OF A RESETTLEMENT PLAN

A resettlement plan is required for all subprojects involving land acquisition and resettlement impacts. Its level of detail and comprehensiveness will be commensurate with the significance of potential resettlement impacts and risks.

- A. **Executive Summary:** This section provides a concise statement of project scope, key survey findings, entitlements and recommended actions.
- B. **Project Description:** This section provides a general description of the project, discusses projects components that result in land acquisition, involuntary resettlement, or both and identify the projects area. It also describes the alternatives considered to avoid or minimize resettlement include a table with quantified data and provide a rationale for the final decision.
- C. **Scope of Land Acquisition and Resettlement :** This section:
  - i. discusses the project's potential impacts, and includes maps of the areas or zone of the impact of the 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:** The section outlines the results of the social impact assessment, the census survey, and other studies, with information and /or data disaggregated by gender, vulnerability, and other social groupings, including:
  - i. define, identify, and enumerate the people and communities to be affected;
  - ii. describe the likely impacts of the land and asset acquisition on the people and communities affected taking social, cultural, and economic parameters into account;
  - iii. discuss the project's impacts on the poor, indigenous and /or ethnic minorities, and other vulnerable groups; and
  - iv. identify gender and resettlement impacts, and the socioeconomic situation, impacts, needs, and priorities of women.
- E. **Information Disclosure, Consultations, and Participation:** 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 the project design and preparation for engaging stakeholders;
  - 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:** 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 gender sensitive.
- G. **Legal Framework:** 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 requirement; and discuss how any gaps will be addressed;
  - ii. describes the legal and policy commitments from the executing agency for all types of displaced person;
  - iii. outlines the principles and methodologies used for determining valuations and compensation rates at replacement cost of 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:** This section:
- i. defines displaced persons' entitlements and eligibility, and describes all resettlement assistance measures (includes an entitlement matrix);
  - ii. specifies all assistance to vulnerable groups, including women, and other special groups; and
  - iii. outlines opportunities for displaced persons to derive appropriate development benefits from project.
- I. **Relocation of Housing and Settlement:** 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 transfers 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:** This section:
- i. identifies livelihood risks 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; and



- v. describes training programs.
- K. **Resettlement Budget and Financial Plan:** This section:
- i. provides an itemized budget for all resettlement activities, including for the resettlement unit, staff training 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; and
  - iv. includes information about the source of funding for the resettlement plan budget.
- L. **Institutional Arrangements:** 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 roles of NGOs, if involved, and organizations of affected persons in resettlement planning and management; and
  - iv. describes how women's groups will be involved in resettlement planning and management.
- M. **Implementation Schedule:** 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:** 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.