

Involuntary Resettlement Due Diligence Report

Project Number: 49450-004
September 2016

Pacific Renewable Energy Investment Facility (Cook Islands: Rarotonga Battery Storage Supply Systems)

Prepared by the Ministry of Finance and Economic Management, Government of Cook Islands
for the Asian Development Bank.

This Due Diligence Report is a document of the borrower. The views expressed herein do not necessarily
represent those of ADB's Board of Directors, Management, or staff, and may be preliminary in nature.

In preparing any country program or strategy, financing any project, or by making any designation of or
reference to a particular territory or geographic area in this document, the Asian Development Bank does
not intend to make any judgement as to the legal or other status of any territory or areas

ACRONYMS AND ABBREVIATIONS

ADB	-	Asian Development Bank
AP	-	Affected Person
BESS	-	Battery Energy Storage System
CIGPC	-	Cook Islands Government Property Corporation
CIIC	-	Cook Islands Investment Corporation
DDR	-	Due Diligence / Social Compliance Report
GEF	-	Global Environment Facility
GIS	-	geographic information system
GRM	-	Grievance Redress Mechanism
IA	-	Implementing Agency
MFEM	-	Ministry of Finance and Economic Management
OEC	-	Office of Energy Commissioner
PMU	-	Project Management Unit
PV	-	Photovoltaic
REDD	-	Renewable Energy Development Division
TAU	-	<i>Te Aponga Uira o Tumu Te Varovaro</i>

Table of Contents

1. Introduction	1
2. Project Overview	1
3. Methodology.....	3
4. Project Components and Screening of Resettlement Impacts.....	3
5. Due Diligence and Compliance Audit	4
6. Consultations and Disclosure	1
7. Grievance Redress Mechanism.....	1
8. Follow up Actions	2
9. Monitoring and Reporting.....	2

1. Introduction

1. This Due Diligence / Social Compliance Report (DDR) is for the proposed Phase 2 subprojects to be funded by the Global Environment Facility (GEF) and the Green Climate Fund (GCF) on the island of Rarotonga. ADB has classified the proposed Phase 2 GEF/GCF-funded subproject on Rarotonga as Category C for Involuntary Resettlement—meaning “A proposed project has no involuntary resettlement impacts. No further action is required” <http://www.adb.org/site/safeguards/safeguard-categories>). The due diligence review presented here supports that classification.

2. Project Overview

2. The proposed Renewable Energy Sector Project will assist the Government of the Cook Island to reduce the country’s heavy reliance on imported fossil fuels for power generation by providing a secure, sustainable, and environmentally sound source of electricity for private and commercial consumers. The impact of the project will be increased energy security in an environmentally sustainable manner. The outcome will be increased access to a higher share of electricity generated by renewable energy sources.

3. The proposed subprojects on Rarotonga, which is the subject of this DDR, will be funded by GEF and GCF and will install a Battery Energy Storage System (BESS) and a second stage of energy storage (R-ESS-2) subproject into the Rarotonga grid. This will enable more renewable generation to be installed and better utilised than would otherwise be possible. The outcomes will be reduced diesel fuel consumption, greenhouse gas savings, progress towards the Cook Islands renewable policy target, and security for local renewable generation supply businesses.

4. The project Executing Agency is the Ministry of Finance and Economic Management. The Implementing Agencies (IA) are *Te Aponga Uira* (TAU) for the Rarotonga subproject and Renewable Energy Development Division (REDD) for the subprojects on Aitutaki, Atiu, Mitiaro, Mauke, and Mangaia. The Office of Energy Commissioner provides overall planning and coordination. The Cook Islands Investment Corporation (CIIC) provides support to the IAs in project implementation especially for land acquisition. CIIC is the parent company of the state-owned enterprise (TAU) that owns the electric utility assets, and CIIC carries out land acquisitions for those assets.

5. Detailed institutional arrangements for the GEF/GCF-funded subproject on Rarotonga are as follows:

6. MFEM: As the executing agency (EA) of the project, Ministry of Finance and Economic Management (MFEM) will have overall responsibility through the IAs to ensure implementation of the project, including land acquisition, implementation of any mitigation measures, and reporting on safeguards. MFEM will also be responsible to ensure through relevant agencies updating of the RP and obtaining lands required for the project. MFEM will submit social safeguard monitoring reports to ADB.

7. OEC: As the cross-sector coordinating agency, Office of Energy Commissioner (OEC) will coordinate the project implementation with REDD, CIIC, and IAs and provide assistance in liaising with other government ministries and agencies as needed.

8. CIIC: As the government investment corporation and owner of power utilities, CIIC will lead the land acquisition process and compensation payment to landowners. All costs for the project related land acquisition, compensation, surveys, implementation, and monitoring will be provided by the Cook Islands government through CIIC. The costs of consultants and experts will be funded under the ADB loan.

9. REDD: As the Implementing Agency (IA) for Phase 1 subprojects, REDD through the Project Management Unit (PMU) and in coordination with CIIC, has the responsibility to implement day-to-day activities related to land acquisition and compensation. Its responsibilities include:

- (i) Collaborating with relevant government agencies in land acquisition and compensation;
- (ii) Providing resources to carry out surveys and investigations;
- (iii) Collaborating with the government agencies for negotiations and agreements with landowners;
- (iv) Carrying out consultations with APs ensuring that they are informed about the project and its policies and procedures, ensure that all requirements are carried out on public disclosure of the provisions for land acquisition and compensation, and implement and monitor the grievance redress process;
- (v) Updating the RP, including confirmation of the cut-off date, compensation amount, and other details, and submit to ADB with necessary approvals;
- (vi) Monitoring the process of allocation and disbursement of funds and ensuring that funds are available and compensation is paid in a timely manner; and
- (vii) Carrying out all other activities including internal monitoring of land acquisition and compensation activities.

10. PMU: The project management unit (PMU), composed both of consultants and staff from the IA, will be established for implementing the project. The PMU will have a Team Leader/Manager and other project implementation specialists including social safeguards specialists to ensure project activities including the RP are implemented, monitored, and reported to ADB.

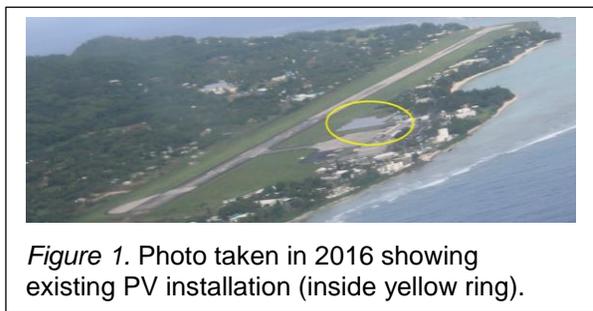
3. Methodology

11. The methodology for this DDR included consultation with national and local stakeholders, a site visit, and review of emails, cadastral maps, lease documents, and project design documents.

4. Project Components and Screening of Resettlement Impacts

12. The plan for the first stage GEF-funded subproject on Rarotonga is to install a Battery Energy Storage System (BESS) into the Rarotonga grid. The BESS is to be housed in containers positioned on one of two potential sites located on government-owned freehold land at the Rarotonga airport on the northwest coast of Rarotonga. Access to both sites would be from public roads across the parcels in question. Storage of materials and staging during construction would be on the same respective parcels.

13. The preferred and most likely site for the BESS is on the airport property inside the security fence encircling the existing solar photovoltaic (PV) array just southwest of the terminal building (see Figure 1, right, and Figure 2).



14. The GCF-funded subproject or second stage battery storage (R-ESS-2) is on the south side of the runway adjacent to the substation that serves the airport and its PV array, and also located at the existing TAU main power station site. The R-ESS-2 location was the original alternative site for BESS as illustrated in Figure 2.

Figure 2: Site options for GEF subproject works on Rarotonga (Google Earth photo, 2014).



15. Figure 3 (below) shows an aerial photo of the area with GIS overlays of coastal hazard zones (red, blue, and yellow fill) and cadastral boundaries (dashed white lines). The boundary shown in fluorescent-green marks the preferred BESS location inside the security fence surrounding the existing PV array. The R-ESS-2 site at the *Te Aponga Uira o Tumu Te Varovaro* (TAU) substation is marked by an olive-green dot on the south side of the runway.

5. Due Diligence and Compliance Audit

16. All government-owned land is vested in the Cook Islands Government Property Corporation (CIGPC) established under and by virtue of the Cook Islands Government Property Corporation Act 1969 (Section 5, as amended, 1999).

17. The Cook Islands Investment Corporation (CIIC) administers and manages CIGPC as an “in-substance subsidiary” in accordance with Section 31 (2) of the Cook Islands Investment Corporation Act 1998 (CIGPC Annual Report 2013, p. 5). The Cook Islands Investment Corporation (CIIC) is a statutory Corporation of the Cook Islands Government established in 1998 (<http://ciiconline.com/about-ciic/>).

18. The Airport Authority manages the airport (Airport Authority Act 1985) including the airport land.

19. CIIC administers and manages the Airport Authority as its subsidiary (<http://ciiconline.com/about-ciic/>). CIIC also administers and manages the electric power utility, TAU, as its subsidiary (*ibid*).

20. An “agreement” or lease document dated May of 2014 shows that TAU has leased the BESS site (“PV site”) from the Airport Authority for a period of 20 years with no right of renewal specified. Article 1 of the Deed of Lease (p. 2) specifies that the land “shall be used for the establishment, improvement, maintenance, operation and management of facilities for

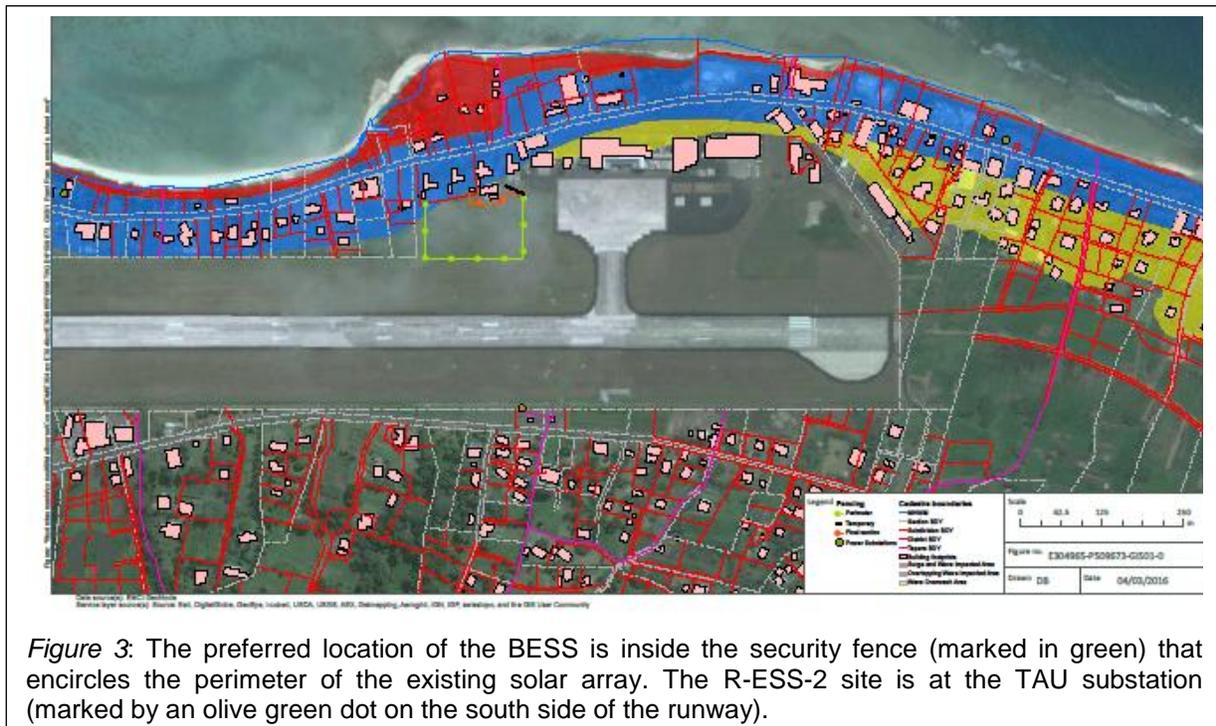


Figure 3: The preferred location of the BESS is inside the security fence (marked in green) that encircles the perimeter of the existing solar array. The R-ESS-2 site is at the TAU substation (marked by an olive green dot on the south side of the runway).

generation, transmission and distribution of energy...and any purpose ancillary thereto” (emphasis added), which would appear to cover the BESS.

21. Another lease document dated May of 2000 shows that TAU has also leased the R-ESS-2 site (“Substation site”), consisting of two contiguous parcels, from the CIGPC for a period of 60 years computed from the 1st day of April, 1999, with no right of renewal specified. Article 1 of the Deed of Lease (p. 2) specifies that the land “shall be used for the establishment, improvement, maintenance, operation and management of facilities for generation, transmission and distribution of energy...and any purpose ancillary thereto” (emphasis added), which again would appear to cover the R-ESS-2. The last site for the R-ESS-2 is the existing TAU main power station site leased by TAU from the Government of the Cook Islands.

22. By the chain of laws and leases described above, TAU has come to control all potential subproject sites under government leases. All parties to the leases are bodies of the national government. TAU itself will own and operate the BESS and R-ESS-2 proposed for installation on the three sites that TAU itself holds. Therefore, the proposed subproject to install a BESS and R-ESS-2 on these three sites will not require any land acquisition. No private, non-land assets exist on either of the two sites. Thus, the proposed subproject will not involve involuntary resettlement of non-land assets. There are, therefore, no Affected Persons.

23. The PV site appears not to have been surveyed when the Airport Authority leased the area to TAU. Thus, there is no survey map showing the location and boundaries of the area that is the preferred site for the BESS subproject.

24. Nevertheless, numerous design drawings, emails, and face-to-face meetings between the Airport Authority and TAU during planning of the solar project and more recently between the Airport Authority, TAU, and the subproject consultants during planning and due diligence for the BESS subproject, indicate full understanding of and agreement between the Airport Authority and TAU that the leased area proposed as the BESS subproject site is indeed that area now encircled by the security fence around the PV array (Figure 4, above, showing potential local of BESS containers in red).

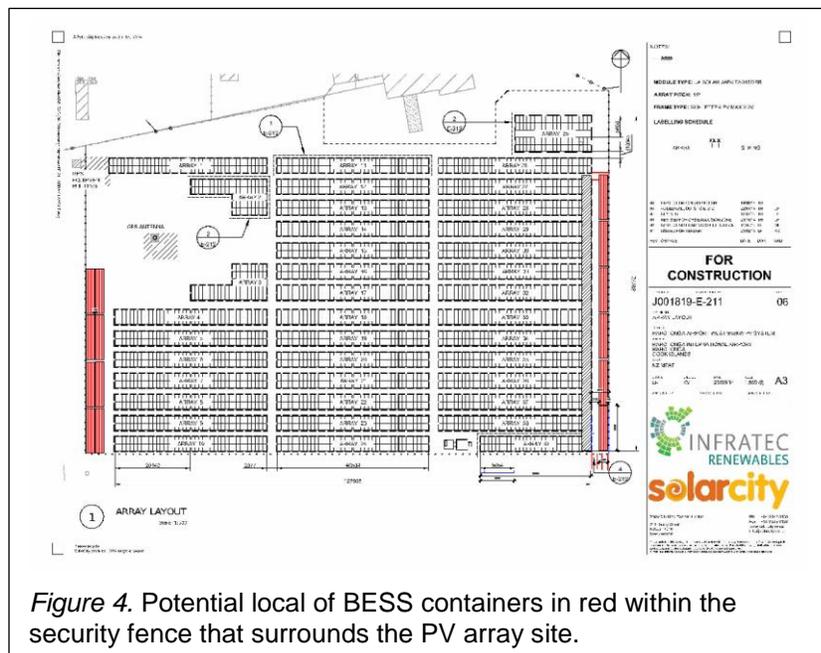


Figure 4. Potential local of BESS containers in red within the security fence that surrounds the PV array site.

25. Figure 5 (right) shows the two surveyed lease areas that together make up the site that houses the TAU substation, which is the preferred option for housing the R-ESS-2.

26. Note that neither survey map ties the surveyed boundaries into a known datum point, so the maps do not indicate the locations of the two leased areas on the ground or how the two leased areas might fit together. Thus, neither the lease documents themselves nor the accompanying survey maps tell us exactly where the parcels are located.

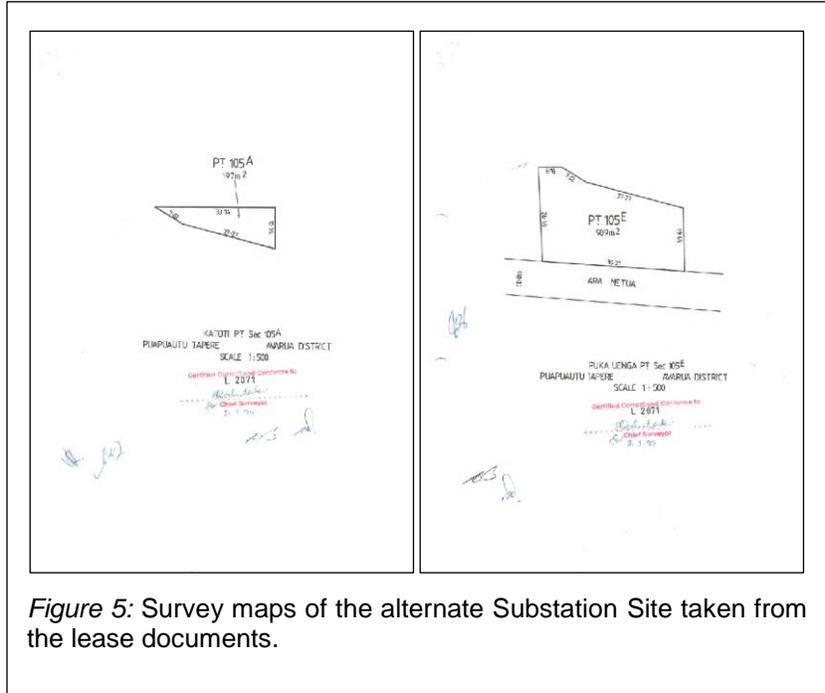


Figure 5: Survey maps of the alternate Substation Site taken from the lease documents.

27. Figure 6 (right) shows where the two lease areas appear to lie on the ground and how they appear to fit together when the survey boundaries are superimposed along with cadastral boundaries on an aerial photo of the area. The two leased areas appear to correspond to the TAU substation site on the south side of the airport runway.

28. As documented above, both potential subproject sites are owned by the national government and are held under valid, long-term leases by the statutory government entity (TAU) that would own and operate the BESS and R-ESS-2. All existing economic assets on the two sites are also owned by TAU.

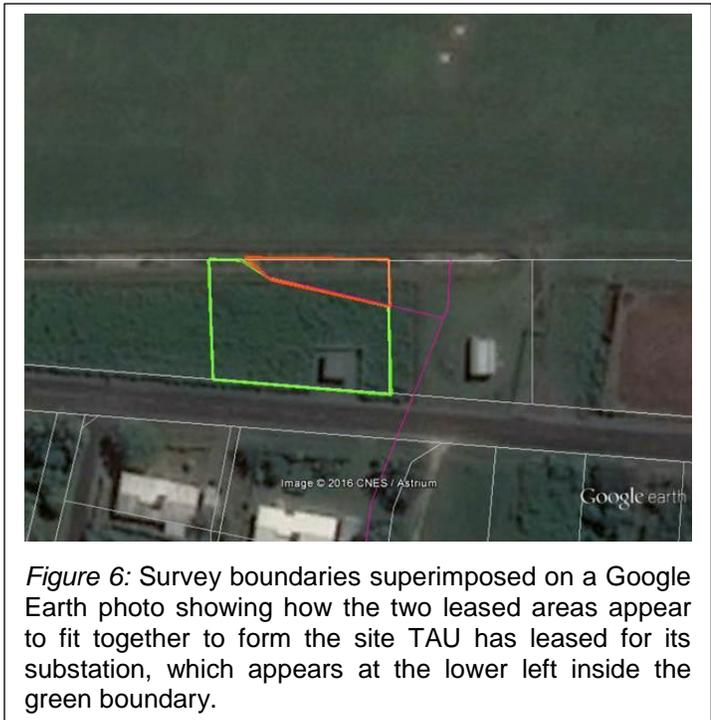


Figure 6: Survey boundaries superimposed on a Google Earth photo showing how the two leased areas appear to fit together to form the site TAU has leased for its substation, which appears at the lower left inside the green boundary.

6. Consultations and Disclosure

29. The project team met in mid to late 2015 with CIIC, Crown Law, TAU, and other officials as listed below:

Name	Organization
Elizabeth Wright-Koteka	Office of the Prime Minister
Repeta Puna	Office of the Prime Minister
Aprii Timoti	Te Aponga Uira
Elizabeth Tome	Te Aponga Uira
Alex Napa	Te Aponga Uira
Steve Anderson	Te Aponga Uira
Peter Tierney	MFEM
Vanessa Jenner	MFEM
Charmaine Dolan	MFEM
Tangi Tereapii	REDD
Ngateina Rani	REDD
Tamarii Tutangata	CIIC
Lloyd Miles	CIIC
Mike Henry	CIIC
Malcolm Sword	CIIC
Catherine Evans	Crown Law
Joseph Mahew	NZ High Commission
Steve Henderson	NZ High Commission
Woo Yul Lee	ADB

30. The project team also carried out a site visit on Rarotonga on 23 Feb, 2016, and met with CIIC, TAU, and the Airport Authority in person and by emails and Skype calls as listed below.

Name	Organization
Joe Ngamata	Chief Executive Officer, Airport Authority
Tamarii Tutangata	Chief Executive Officer, CIIC
Lloyd Miles	Legal Advisor, CIIC
Aprii Timoti	Chief Executive Officer, Te Aponga Uira
Dallas Young	Commercial Manager, Te Aponga Uira
Tama Heather	Electrical Engineer, Te Aponga Uira
Steve Anderson	Board Member, Te Aponga Uira
Elizabeth Wright-Koteka	Chief of Staff, Office of the Prime Minister

31. This DDR will be disclosed to the general public through distribution of the written reports, posting documents on the government web sites, and electronic access to the reports on the ADB project web site.

7. Grievance Redress Mechanism

32. The Grievance Redress Mechanism proposed for this site will be the same with the other sites as follows:

33. In order to receive and facilitate the resolution of any concerns or complaints of any Affected Person (AP) about the project's social and environmental safeguards compliance, a Grievance Redress Mechanism (GRM) has been developed for the project to be established at each subproject site. When and where the need arises, this mechanism will be used to address any concerns or complaints that may arise during implementation and operation of the project.

34. The GRM will address APs concerns and complaints promptly and transparently through the process outlined below. The GRM will be gender responsive and readily accessible to all APs at no cost. The GRM will not impede APs access to the Cook Islands' judicial or administrative remedies. Implementing Agencies (IAs) in coordination with CIIC and Islands Councils will further inform APs about the GRM.

35. The key functions of the GRM are to: (i) record, categorize, and prioritize the grievances; (ii) resolve the grievances in consultation with complainant(s) and other stakeholders; (iii) inform the aggrieved parties about the solutions; and (iv) forward any unresolved cases to higher authorities for resolution.

36. The Project Management Unit (PMU) will be the grievance focal point to receive, record, review, and address project-related concerns in coordination with government authorities. APs have been and will be made fully aware of their rights during consultations about land requirements. Since the PMU had not yet been set up at the time of consultations with APs and other stakeholders in May and June of 2015, people were advised to submit any concerns or complaints to the REDD office. APs and other stakeholders are all familiar with the REDD office, and the PMU will be located in the REDD office one established.

37. Any complaint will be recorded and investigated by the PMU working with relevant staff of the individual subproject. The PMU will inform or update the relevant IA immediately of any complaints. A complaints register will be maintained that will record the details and nature of each complaint, who makes the complaint, the date, and what actions are taken as a result of the resulting investigation. The register will also cross reference any non-compliance report and/or corrective action report or other relevant documentation.

38. When subproject implementation starts, a sign will be erected at all sites providing the public with updated project information and summarizing the grievance redress process including contact details of the relevant person at the PMU. All corrective actions and responses carried out on site will be reported back to the PMU. The PMU will report on the complaints register and on corrective actions and other responses in its progress reports to the ADB. In the whole process, relevant Cook Islands national agencies will be always available to review public complaints and advice on the PMU's performance for grievance redress.

39. Any APs or village elected or traditional leaders can take a grievance to the PMU or to the site office. On receipt of a complaint in any form (in person, telephone, written), the PMU focal officer for the subproject will log the details in a complaints register. The PMU will review and find a solution to the problem within two weeks in consultation with village or traditional chief and relevant local agencies. Then PMU will report back the outcome of the review to the source within a week. If the complainant is dissatisfied with the outcome at the PMU level or has

received no report in the allotted time period, he or she can take the grievance through island council to relevant national agencies (CICC, REDD, etc.). The relevant national agency reviews and reports back to the source on the outcome. If unresolved or at any time complainants is not satisfied, he or she can take the matter to an appropriate court. The PMU will report both resolved and unresolved complaints to ADB.

40. The table below sets out the process to record and resolve any project-related grievances.

Grievance Redress Process

Stage	Process	Duration
1	Affected Person (AP), island elected or traditional chief, or other concerned party takes grievance to PMU.	Any time
2	PMU reviews and finds solution to the problem in consultation with island elected or traditional chief and relevant agencies.	2 weeks
3	PMU reports back an outcome to people who submitted the grievance.	1 week
If unresolved or not satisfied with the outcome at PMU level		
4	Concerned party takes grievance through Island Council to relevant national agency (CIIC, REDD, etc.).	Within 2 weeks of receipt of decision in step 3
5	National agency reviews and finds a solution.	4 weeks
6	National agency reports back to the people who made the complaint.	1 week
If unresolved or at any stage if AP is not satisfied		
Concerned party can take the matter to appropriate court.		As per judicial system

8. Follow up Actions

41. A Resettlement Plan is not required for this subproject. The subproject will not cause any physical and economic displacements nor require any land acquisition since the scope of work will be confined within state-owned land. CIIC should survey or re-survey the chosen site to tie in the boundaries to a known datum point. This will not affect the proposed subproject, however, and need not be ordered as a project condition.

9. Monitoring and Reporting

45. No monitoring and reporting is required for land acquisition and resettlement issues as there are none. Relevant information related to safeguards, if any, will be reported in the project's progress report. Any unanticipated issues will be dealt with in accordance with ADB's Safeguard Policy Statement (2009) and the project's resettlement framework.