

Public Disclosure Authorized

FRAMEWORK DEVELOPMENT AND INFRASTRUCTURE FINANCING TO SUPPORT PUBLIC PRIVATE PARTNERSHIPS

RESETTLEMENT POLICY FRAMEWORK (RPF)

Executive Summary



July 2018



**Government of Sri
Lanka**

Ministry of Finance

**National Agency for
Public Private
Partnership**

Public-Private Partnerships (PPPs), although complex and time-consuming, are seen as one of the solutions that will provide value for money for projects that are well prepared and structured, where suitable. There are several constraints faced by the Government in executing a successful PPP program including: over-reliance on unsolicited proposals, multiple agencies with overlapping functions, poorly prepared projects have adversely affected recent PPP procurement, limited long-term debt and liquidity, legal framework not conducive for private sector investment, limited institutional capacity for PPPs. Limited ability to manage contingent liabilities.

The Government's recent economic policy framework (Vision 2025) features PPPs as an integral part. Vision 2025 highlights the Government's commitment to encourage PPPs to strengthen the country's growth framework. It identifies the importance of empowering the private sector and reducing reliance on public sector borrowing in the provision of public assets and services. Furthermore, the Government envisions expanding PPPs beyond the current sectors of transport and energy into health care, leisure, tourism, and education.

I. Project Description

The PDO is to support the preparation of Public-Private Partnerships that will enable GOSL to utilize private sector finance.

Component A: Improving the Enabling Environment (US\$2.5 million)

This component aims to improve and strengthen the enabling environment for PPPs in Sri Lanka by building on the various PPP related support that has been previously provided by the World Bank and other IFIs/donors (e.g. US AID).

A.1 Establishing the Institutional environment for sustainability of PPPs

This subcomponent will strengthen the institutional framework to improve sustainability of the PPP program, by: (a) organizing and staffing NAPPP; (b) establishing institutional arrangements for the provision of long term infrastructure financing for PPPs and funding for project development with a focus on addressing the existing weaknesses in the infrastructure financing sphere; (c) establishing mechanisms to channel Viability Gap Funding (VGF) to improve financial viability of PPPs; (d) developing principles for the assessment of contingent liabilities arising from PPPs and (e) establishing and strengthening other key institutions which would contribute to the successful implementation of the PPP program, such as the establishment of PPP nodes in line agencies, and establishment of institutions critical in enhancement of the enabling environment such as procurement appeals committee and arbitration center. The establishment of these key institutions is expected to contribute towards the sustainability of the program.

A.2: PPP Capacity Building

Proposed activities will encompass capacity building for PPPs for both GoSL and private sector that is critical for successful implementation and sustainability of PPPs. This subcomponent will provide specific capacity building for NAPPP to carry out its functions, and training to acquire required skills. The programs will also focus on Government agencies, the Attorney General's department and National Planning Department. The project will provide specific training for agencies already involved in the PPP process as

well as decision makers in Government, particularly Cabinet Appointed Negotiating Committees to facilitate the expeditious processing of the PPP transactions. The project will also carry out capacity building for staff at central and provincial levels with focus on female Government staff. The capacity building program will also include the local private sector and the banking Industry for the imperative for the sustainability of the PPP Program.

A.3: Communications and Stakeholder Engagement for PPP

This component will support the development of a PPP communication strategy and private sector (and other stakeholders) engagement. Engaging stakeholders and having a robust communication strategy is seen as a critical element in ensuring successful implementation of PPPs that require buy-in from all stakeholders and general acceptability from the public. This subcomponent will support NAPPP in the development and implementation of a robust communication strategy intended to ensure that all stakeholders are adequately informed and engaged in the GoSL's PPP program and the program is sustainable. Through increased awareness, this subcomponent will seek to address the historic misconception that PPPs are privatization, foster support and buy-in from the media, help mitigate some of the risks associated with the political economy of the country and contribute to broadening the program. This sub component will also support in organizing roundtables and consultations etc. with the private sector and other stakeholders to gain their input into the design and sustainability of the PPP program.

Component B: Preparation of PPP Transactions (US\$20 million)

The Project will support the transactions selected and prioritized by NAPPP in consultations with various sector Ministries and line agencies, and: (i) for which an outline business case has already been prepared; or (ii) which are already being prepared and/or negotiated but need additional support to achieve financial close.

B1: Feasibility Studies

Under this subcomponent, the Project will: (i) carry out the due diligence necessary to assess all project related aspects and scope of the project. It will include due diligence work to assess the technical, legal, economic, and financial feasibility of the proposed transaction (technical scoping, concept design, economic and financial analysis including value for money analysis). It will also cover other assessments such as gender analysis, traffic surveys and willingness-to-pay surveys; address mechanisms for citizens engagement, grievance redress and management of labor influx; as well as environment and social assessments (although they will not be carried out independent of the feasibility study); and (ii) provide technical assistance to agencies where policy or strategic decisions are needed prior to initiating PPPs. The objective of these activities will be to strengthen the likelihood of economic viability of the transactions proposed by GoSL for public private partnership.

B.2 Project Structuring and Transaction Advisory Services

Under this subcomponent, the Project will support the structuring of the transactions, preparation of procurement documentation and negotiations of the contractual documents with the selected bidder up to the financial closure of one or more selected transactions. It will ensure that the GoSL, through NAPPP, receives transaction, legal and financial advisory support in the structuring and negotiation of

transactions, to supplement NAPPPs in-house resources. This component will include market sounding, design of risk allocation, financial modelling, preparation of the PPP project documents (concession and other agreements), provision of professional and experienced skills for GoSL negotiations with the selected bidder to increase value for money, up to financial close, including the assessment of GoSL's contingent liabilities for each transaction and, where necessary, the structuring of risk mitigation instruments to improve bankability.

Component C: Project Management (US\$2.5 million)

Under this component, the Project will support the costs of operation of NAPPP for the management of GoSL's PPP program. It will finance the day to day activities of NAPPP, goods and services required for the preparation and operation of NAPPP, as well as the cost of consultants for certain pre- identified positions for skills that cannot be easily accessed in the market.

II. Objective of the Resettlement Policy Framework

The Project is primarily envisaged as technical assistance to develop a comprehensive mechanism and system for PPP in Sri Lanka. Based on the initial assessment of the Project activities, even though social development issues, including those relating to gender and citizen engagement would apply to the entire project components and sub-components, social safeguards issues, and accordingly, this RPF would be applicable for the following subcomponents:

- A.2. PPP Capacity Building
- B1. Feasibility studies
- B2. Project Structuring and Transaction Advisory Services

Under capacity building, the capacity of the NAPPP to ensure that the overall due diligence process is in place when developing and managing PPPs for social safeguards management will be put in place with qualified staffing and training. Under development of the PPP project pipeline, a tentative list of prioritized PPP transactions is in place (Annex 1). The project will provide assistance to carry out feasibility studies for about 4 PPP transactions under sub-component B.1. Under these feasibility studies, there will be requirements social impact assessments and preparation of safeguards action plan (e.g., RAP) for each of the PPP project.

The RPF sets out principles and guidelines for assessing and mitigating social impacts caused due to PPP projects in a manner consistent with Sri Lankan law and regulations, the National Policy on Involuntary Resettlement (NIRP) and World Bank's Operational Policy 4.12 on 'Involuntary Resettlement'. The RPF includes guidelines for social screening, impact assessment, and preparation of action plans for addressing adverse social impacts. Additionally, it lays down principles and procedures for providing entitlements, institutional arrangements for implementing social/resettlement action plans including grievance redress, consultation, participation, disclosure, monitoring and evaluation of progress and outcomes.

III. Legal Framework and Past Experiences

Sri Lanka's legal framework for safeguards consists of Acts of Parliament (environmental and social), Cabinet decisions, precedents created by Case Law and administrative procedures. The Land Acquisition Act (LAA) 1950 permits acquisition of private lands for public purposes, paying compensation and grievance redress. However, it does not address resettlement issues, including impacts on non-titleholders. NIRP 2001 provides for addressing resettlement and rehabilitation issues including payment of compensation at replacement cost. The Land Acquisition Regulations 2008 and 2013 incorporate many of NIRP principles and sets out refined procedures including payment of compensation based on market value for land, structures and crops affected by the project. The government has previous experience in managing projects involving LA and applying Rehabilitation and Resettlement (R&R) policies acceptable to external donors such as World Bank, ADB and JICA.

IV. Social Management and Mitigation Measures

RPF in addition to setting out the principles and guidelines, elaborates on the key steps to be taken in involuntary resettlement planning and execution. The Cut-off date for eligibility for entitlement is the start of the census survey and/or the date of publication of a Section 2 Notice under the LAA. Persons who encroach on the project affected area after the cut-off-date are not entitled to claim compensation or any other form of resettlement assistance. The Entitlement Matrix explains the category and type of losses and the eligible category for entitlements. As the LAA does not address all types of losses, the NIRP and World Bank safeguards are applied to address such gaps. The acquired properties will be compensated at replacement cost based on the prevailing market rates. Additionally, income restoration strategies will be adopted which suggest that those who will incur income or livelihood losses will be provided with income assistance for several months or livelihood restoration assistance.

V. Labour, Gender and Inclusion, and Citizen Engagement

The RPF as well as the overall design of the Project emphasizes on the need to pay special attention to issues of gender, inclusion, social accountability, labor management, and citizen engagement. It provides principles for strengthening social accountability and inclusion through public information; citizen involvement in planning and monitoring of services; guidelines for ensuring participation of women in the overall Project as well as resettlement planning process; special assistance to the economically weak, women-headed and vulnerable households for restoring their livelihoods and incomes that may be affected due to resettlement; and measures to address the risks and adverse impacts on communities from the project induced labour influx, including those related to risks of social conflict, illicit behaviour, burden on and competition for public service provision, risks of sexually transmitted diseases and gender-based violence.

VI. Information Disclosure, Consultations and Grievance Redress Mechanism

The RPF provides a framework for information disclosure and consultation with participation of the relevant stakeholders in planning and implementing RAPs for various PPP projects supported under this Project. Affected Persons (APs) will be informed of their rights and responsibilities from the planning stage to the implementation process, and consulted during the PPP prioritization, planning and implementation.

VII. Implementation Arrangement

The implementation of the RPF by the line Ministry or line agencies, the private partner and other partner agencies, especially the preparation of PPP-project specific RAPs and other safeguards instruments, will be overseen by a dedicated environmental and social safeguards person within the Ministry of Finance and Mass Media (MoFMM), and the NAPP once it is legally constituted. The sub-projects will be consulted and supervised by the relevant line Ministry, agencies under the Provincial Councils and other relevant public bodies or local government authorities. The institutional arrangements for implementing RPF/RAP will include establishment/ strengthening of the Social Management Cell at relevant line Ministry/Agency and the NAPP; establishing LA and R&R teams in the relevant line Ministry and line agencies and to carry out or coordinate social screening and resettlement impact survey; preparation and implementation of RAPs for the activities (with the help of consultants, if needed); and establishment of a Grievance Redress Mechanism. The overall coordination of LA and Rehabilitation and Resettlement (R&R) activities will be vested with relevant line Ministry or line agency.

The World Bank project task team, specifically the social specialists, will provide close supervision and necessary implementation support including:

- Undertaking of prior review and provide feedback on all safeguards instruments
- Clearing of safeguard instruments
- Sharing of knowledge on technologies and best practices
- Providing training support on Bank's safeguard policies and requirements of the project.

VIII. Structure of the RPF

The RPF has 12 chapters. The first three chapters provide information on the background of the project as well as baseline socio-economic conditions and the sectors that will potentially be covered under the PPP arrangements. Chapter 4 includes potential social impacts of the project, including loss of land, assets, income/livelihoods; construction related impacts; and impacts on women and vulnerable groups, followed by Chapter 5 which outlines the objective of the RPF. The national regulations, World Bank's policy requirements and measures to be adopted to address the gaps between national legislations and World Bank requirements are elaborated in Chapter 6. Chapter 7 details the key steps in resettlement planning under the project, including social screening and categorization of the project; Social Impact Assessment, assessing both land and non-land related social impacts; preparation of Project-Specific safeguards management instruments (e.g., Resettlement Action Plan); discussion on the eligibility, entitlements and entitlement matrix that details the compensation and R&R assistance for the project; and approval process for resettlement plans. Chapter 8 and 9 address issues of gender development, inclusion and management of potential impacts from labour influx. Chapter 10 is on consultation and participation strategy for the project as well as the two-tier grievance redress mechanism developed for the project. Chapter 11 is on the implementation arrangements and budget considerations for the safeguards instruments of the Projects.

The RPF also includes supportive Annexes that provides further information and guidance including the following:

Annex I: Sample of Social Screening Checklist/Guidelines

Annex II: Procedures involved in the process of acquiring land for public purposes

Annex III: Process to be followed by the concerned line Ministry/Agency implementing the PPP projects for land acquisition

Annex IV: Sample of Social Screening Report

Annex V: Sample Outline of Resettlement Action Plan

Annex VI: Sample Outline of Abbreviated Resettlement Action Plan

Annex VII: Sample Questionnaire for census survey

Annex VIII: Social Survey Questionnaire (Households) for Relocation Assistance

Annex IX: Sample Terms of Reference for Carrying out Social Impact Assessment and Resettlement Planning

Annex X: Sample Terms of Reference for hiring external monitoring and review consultants

Annex XI: Sample of Social Impact Mitigation Plan