

RESETTLEMENT FRAMEWORK

Supplementary Appendix to the
Report and Recommendation of the President
to the Board of Directors

on the

Multi-sector Project for Infrastructure Rehabilitation in Jammu and Kashmir

INDIA

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The report is available on request.

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RESETTLEMENT FRAMEWORK

A. Introduction

1. Based on the discussions between the Government of India and Asian Development Bank (ADB), it was agreed to consider the provision of a loan for the investment in the state of Jammu and Kashmir (J&K). The proposed Project in the State of J&K would aim at rehabilitation of social infrastructure facilities including roads and bridges, water supply and other urban facilities, which have deteriorated or been damaged over the last 15 years of conflict in the state. In this regard, Infrastructure Rehabilitation Project in J&K is proposed to be undertaken in the state. The proposed Project primarily covers two components, namely, (i) Roads and bridges, including upgrading of state, urban rural roads, and rehabilitation and/or reconstruction of bridges and (ii) Urban Infrastructure, including repair, upgrading and completion of water supply, drainage and the purchase of garbage/drainage clearing equipment.

B. Land Acquisition and Resettlement in Sample Subprojects

3. In accordance with ADB's procedure for sector lending, sample subprojects have been selected in the provinces of Srinagar & Jammu for project preparation and processing. Out of these subprojects, the road and bridges subprojects have been identified in Srinagar Province and includes upgradation of Quazigund – Kulgam Road (16.5 km), Raithan – Palmaidan Arizal road (14.1 Km) and Kanikadal bridge (31 km). Under the urban infrastructure component, two sample subprojects namely Water supply and Storm water drainage, both in the Jammu city, have been selected. The projects include (i) Right Bank Tawi Water Supply Scheme and (ii) Talab Tilo Drainage Scheme in Jammu City.

4. As the Project entails rehabilitation of the existing infrastructure in the State, the sample subprojects under both the Components primarily involves up-gradation and revamping of the existing facilities wherein the land acquisition and resettlement impacts will be minimal. Under the Roads & Bridges Component the resettlement impact has been avoided by adopting most feasible design option. In case of the Kanni Kadal Bridge in Srinagar, it is noted that a project-associated approach road is being constructed by the Government of J&K through its own domestic funds, under a separate Project. Since the construction of these approach roads is interlinked with the bridge construction, the EA will probe further & assess the resettlement impacts of the approach road once the preliminary designs for this Project have been prepared. Based on this, Resettlement Plan will be prepared by the EA, as per the National Policy on Resettlement and Rehabilitation (NPRR) 2004, and ADB Policy on Involuntary Resettlement as laid down in this framework. The EA shall submit the RP to ADB for approval, prior to the award of civil contracts. In case of the urban infrastructure sample subproject, construction of the two reservoirs and pumping station would not entail any land acquisition as the land in case of pumping station is already available to the government and is free of any encumbrances or encroachments. However, laying pipelines and construction of drainage might lead to temporary disruptions and losses, the exact extent of which can only be measured at the detailed design stage.

5. This Resettlement Framework has been prepared for use in all subprojects, including sample subprojects, where the exact impact can only be measured at detailed design and for additional subprojects as required under ADB policy for sector lending. It outlines the objectives, policy principles and procedures for acquisition of land, if any, compensation and other assistance measures for affected persons, if any, and procedures for preparation of additional subprojects under the Loan. Economic Reconstruction Agency (ERA) will be the Executing Agency for the Project and will be responsible for preparing social analysis and resettlement plans for all subprojects, including sample subprojects (if required) as per this framework and submit to ADB for review and approval prior to contract award for each

subproject. Since the Project involves two sectors and several locations, there would be four Project Implementation Units, two each at Jammu (Urban and Roads) and Srinagar (Urban and Roads). The PIU (Urban) will implement the water supply and drainage components while the PIU (Roads/Bridge) will implement the roads and bridges components of the Project. PMU will oversee PIUs preparation and implementation of all resettlement plans for all subprojects under its responsibility.

C. Resettlement Policy and Framework

6. In India, compensation for land acquisition (LA) and resettlement assistance for project-affected people is generally governed by the Land Acquisition Act (1894), which has been amended from time to time. The State of Jammu and Kashmir holds a special constitutional status under Article 370 of the Constitution of India. The State has a separate Constitution promulgated in 1957. The separate Constitution of the State and Article 370 of the Constitution of India provide the State with much greater flexibility in managing its own affairs. The most important characteristic is that the residual authority of political, economic and social legislation vest with the State Government and not with the Central Government. Consequently, the land acquisition procedure in the state is governed by the State Land Acquisition (LA) Act, 1990. In J&K there is a unique system wherein each government line department has their designated officer known as Collector – Land Acquisition (LA) of the rank of Assistant Commissioner, who has the authority to initiate action on LA which makes the process simple and faster. The compensation under this process is given as per the circle rate. However, the Act is inadequate to provide mitigation to many of the project-related affected persons in accordance with ADB policy.

7. Following the state laws and regulation on land acquisition and incorporating ADB policy on *Policy on Involuntary Resettlement*¹ as well as the National Policy on Resettlement and Rehabilitation (NPRR) which was approved by the Government of India (GOI) in February 2004, the basic principles for the Project will include these elements with respect to each subproject, including sample subprojects, namely (i) as a matter of policy, land acquisition, and other involuntary resettlement impacts would be minimized as much as possible; (ii) any land acquisition and/or resettlement will be carried out and compensation provided in order to improve or at least restore the pre-Project income and living standards of the affected people; (iii) consultation with affected people on compensation options and preparation Resettlement Plan (RP) in accordance with this Framework; (iv) payment of compensation for acquired assets at market/replacement rates; (v) payment of compensation for lost land, housing, assets and resettlement allowances in full prior to the commencement of any construction activities; (vi) resettlement assistance to affected persons including non-titled persons (e.g., informal dwellers/squatters, and encroachers) prior to the contractor taking physical acquisition of the land and prior to the commencement of any construction activities; (vii) income restoration and rehabilitation; and, (viii) special attention to vulnerable groups.

8. In the absence of a policy consistent with ADB's *Policy on Involuntary Resettlement*, this Framework and resettlement procedural guidelines shall apply to all subprojects (sample as well as additional subprojects) under the Project so as to ensure that persons affected by land acquisition will be eligible for appropriate compensation and rehabilitation assistance. ADB's Policy on Involuntary Resettlement will prevail in case of any difference between such policy and the State's laws and regulations

¹ *Involuntary Resettlement*, Asian Development Bank, Manila, 1995.

9. Regarding the eligibility of compensation, all affected people will be provided with compensation and rehabilitation if their land is reduced, income source adversely affected, houses partially or fully demolished, and other properties such as crops, trees and other facilities or access to these properties will be reduced or damaged due to the Project – including during road/bridge construction or augmentation of water supply/drainage system. Lack of legal documents of their customary rights of occupancy/titles shall not affect their eligibility for compensation. During the Project implementation stage if there are any changes in the sample subproject design thereby adversely affecting the land, livelihood or other assets of the people, the same shall be compensated in keeping with this Framework.

10. Further, in case of land acquisition since land-for-land may not be a feasible option, the Framework stipulates payment of compensation as per the assessed value of the land and structure to the affected persons (AP). In addition to compensation payments made by the competent authority, the APs will receive additional assistance to match replacement costs, which is the difference between the market value and the assessed value, if any, for lost assets (land and houses), transaction costs such as stamps/registration costs (in case of purchase of replacement land) and other cash grants and resettlement assistance such as shifting allowance, compensation for loss of workdays/income due to dislocation. Female-headed households and other vulnerable households (such as ST/SC, disabled, elderly) will be eligible for further cash assistance for relocation and house reconstruction.

11. Also, Income Restoration assistance shall be made available to all those losing their main source of livelihood as a result of the Project construction in the subprojects. The income restoration strategy will focus on economic activities that will provide a sustained source of income over a longer period of time to enable restoration, or better still, improvements in APs' standard of living. A detailed inventory of losses will be made, based on the different kinds of losses incurred by the APs. In addition, a detailed assessment of existing skills will be made of the affected Persons, in keeping with which skill development inputs and trainings would be provided to them. Assistance will be provided for income generating vocational training and skill upgradation options, including starting suitable production or service activity and establishing linkages to local or national economic development and employment programs in the project area. The affected squatters shall be reorganized and relocated based on the severity of the impact. Enterprise development shall be especially promoted amongst the APs so as to contribute towards a sustainable income restoration opportunity to them.

12. The Entitlement Matrix Table lists various types of losses, identification/eligibility and entitlements and provides basic parameters for preparation of compensation and resettlement benefits. The matrix would apply to sample subprojects as well as additional subprojects, based on the specific project impacts.

D. Procedures for Resettlement Plan (RP) Preparation

13. Each additional subproject will be prepared, and the additional detailed design of each sample subprojects will be undertaken by the ERA in keeping with the following:

- (i) Social impact assessment surveys including Census survey and 20% socio-economic survey of the APs will be carried out for each of the subprojects (for both Roads & Bridges & Urban Infrastructure Components) based on preliminary technical designs;
- (ii) If impacts are found to be “significant,”² a full RP will be prepared for each subproject for approval prior to award of contracts for that subproject; and

² Source: *Asian Development Bank Operations Manual –Operational Procedure on Involuntary Resettlement*

- (iii) If subproject impacts are less than significant, a short RP will be prepared for that subproject for approval prior to award of contracts for that subproject.
- (iv) The RP would also include measures to ensure that socio-economic condition, needs and priorities of women are identified and that the process of land acquisition and resettlement does not disadvantage women.

14. The Project Implementation Consultants for preparatory studies for all subprojects, including the transitional TA consultants for sample subprojects, should include expert resettlement specialist familiar with ADB policy and procedures for preparation of additional subprojects RPs. The RPs must comply with ADB's *Policy on Involuntary Resettlement* and other social safeguard guidelines. In case impacts on Indigenous People are identified, then an Indigenous People's Development Plan (IPDP) must be prepared in keeping with ADB policy on *Indigenous People and IPDP Framework*. The ERA will submit the RPs to ADB for approval, which will be a condition for contract of civil work, including compensation payments prior to displacement.

E. Institutional Responsibilities

15. Resettlement Plan will include adequate institutional arrangements to ensure effective and timely design, planning, consultation, and implementation of compensation, resettlement and rehabilitation measures. The Project Implementation Units (PIUs) will have the primary responsibility of the preparation of RPs and their implementation. ERA/PMN would ensure that RPs are prepared and approved prior to award of contracts for each subproject, and for monitoring any changes to subproject design which may require re-evaluation of the need for and adequacy of the RP. PIUs will hire experienced NGOs/agency for assisting in preparation as well as implementation of RP. The ERA will also appoint a Resettlement Officer (RO) to supervise and do internal monitoring of the implementation work. The Resettlement Officer, PIU and the NGO/agency staff will undergo an orientation and training in resettlement management. The training activities will focus on issues concerning (i) principles and procedures of land acquisition; (ii) public consultation and participation; (iii) entitlements and compensation disbursement mechanisms; (iv) Grievance Redressal and (v) monitoring of resettlement operation. Independent monitoring agency/expert will be hired by ERA in agreement with ADB to undertake external monitoring for the entire project.

16. The ERA will further ensure resettlement budgets are delivered on time to the competent authority and the implementing NGOs for timely RP implementation.

F. Disclosure, Consultation and Grievances

17. Each RP will be prepared and implemented in close consultation with the stakeholders and will involve focus group discussion (FGD) and meetings, particularly with the affected households. This Framework will be made available in local language(s) during the public meetings at the community level. Copies of draft RPs will be made available at the local level public offices such as *tehsil* (revenue) and district offices, Block Development Office (BDO), and *gram panchayats* to stakeholders for local inputs prior to award of civil

Involuntary Resettlement Category A: Significant means 200 or more people will experience major impacts, which are defined as (i) being physically displaced from housing, or (ii) losing 10% or more of their productive assets (income generating). Categories A projects require a full resettlement plan. Some of these projects may require a resettlement framework prior to the full resettlement plan. Involuntary Resettlement Category B: Not Significant include involuntary resettlement impacts that are not deemed significant and require a short resettlement plan. Some of these projects may require a resettlement framework prior to the short resettlement plan.

work contract. The summary of the RP will be disclosed on ADB website and the consultation will continue throughout the project implementation period.

18. Complaints and grievance procedures will be outlined in each RP. The grievances will be redressed at the local level in a consultative manner and with full participation of the affected households, or their representatives, project officials and local government representatives by the Grievance Redressal Committee (GRC). The GRC shall comprise of members from District Land and revenue Department, representatives of affected people, including women and vulnerable groups. Grievances will be redressed within two to four weeks from the date of lodging the complaints. All costs incurred in resolving the complaints will be borne by the project.

G. Monitoring and Evaluation

19. The NGO will submit monthly progress report of RP implementation to ERA through the respective PIU. The ERA supported by the PIUs will conduct regular internal monitoring of resettlement implementation and prepare quarterly progress reports for submission to ADB. The reports will contain progress made in RP implementation with particular attention to compliance with the principles and matrix set out in the resettlement plan. The report will also document consultation activities conducted, provide summary of issues or problems identified and actions taken to resolve the issues, and provide summary of grievances or complaints lodged by households and actions taken to redress such complaints. The independent agency/monitoring expert will submit its reports biannually directly to ADB. The monitoring will be carried out biannually during project implementation.

Table 2: Entitlement Matrix TABLE

Type of Loss	Identification of Affected Households	Entitlement	Details
A: LOSS OF LAND			
1. Loss of agricultural land	Owner/operator of the affected plot	Compensation at Market/Replacement value	<p>a). Replacement land as per the law or cash compensation at replacement cost; Plus refund of transaction cost (land registration cost, stamps etc) incurred for replacement land.</p> <p>b). If the replacement value if land is more than the compensation determined by the competent authority, the difference will be paid as grant by the project directly to AP.</p> <p>c). APs with traditional title/occupancy rights will also be eligible for full compensation for land, plus the difference or additional grant.</p> <p>d) Replacement land would be purchased within one year.</p>
2. Loss of residential and commercial land	Owner and APs with traditional land rights	Compensation at market /replacement value	<p>a). Cash compensation under the LA Act plus replacement value.</p> <p>b). In addition, refund of transaction cost (land registration cost, stamps etc) incurred for replacement land.</p> <p>c) Replacement land would be purchased within one year.</p>
3. Temporarily affected agricultural land due to laying down of pipelines/ drainage system, plant site for contractors etc	Owner/operator of the affected plot	Cash compensation for loss of income potential	<p>a). Compensation for standing crops and trees as per the market rate.</p> <p>b). Restoration of land to its previous or better quality.</p> <p>c). Contractor to negotiate a rental rate with the owner for temporary acquisition of land.</p> <p>d). Compensation for crop losses for the duration of temporary occupation plus one more year necessary for the soil to be adequately prepared to its original productiveness. Land restored to its original condition and returned to the owner.</p> <p>e). Project and contractor to ensure that persons other than the owner affected as a result of the temporary acquisition are compensated for the temporary period.</p>
B: LOSS OF RESIDENTIAL & OTHER STRUCTURES			
4. Loss of frontage, residential and commercial structures by owners	Owner of affected structure/ tenants of the structure	Compensation at replacement cost	<p>a). Reconstruction cost (without depreciation) for lost frontage/structure; affected person shall be allowed to take salvageable at no costs.</p> <p>b). A lump sum transfer grant (based on type of structures) as per the prevalent rate for shifting households assets and other belonging to relocated sites.</p> <p>c). Rental assistance as per the prevalent rate in the form of grant to cover maximum three month rental accommodation.</p> <p>d) Tenants would only be given rental assistance for a period of three months.</p> <p>e) Additional structures erected by tenants will also be compensated and deducted from owner's compensation amount.</p> <p>f) Any advance deposited by the tenants will be deducted from owners total compensation package.</p>
C: LOSS OF CROPS & TREES			
5. Loss of crops and trees	Owner/sharecropper/	Compensation at 'market	a) Advance notice to APs to harvest their crops.

	Tenants affected	value'	<p>b) Incase of standing crops, cash compensation for loss of agricultural crops at current market value of mature crops based on average production.</p> <p>c) Compensation for loss of timber trees at current market value of wood/timber or firewood depending on the kind of tree.</p> <p>d) In case of fruit trees, compensation at average fruit production for next 15 years to be computed at current market value.</p>
D: LOSS OF LIVELIHOOD SOURCE			
6. Income from business/land through wage earning and other labor	Individual affected (titleholders, squatters & encroachers)	Lump sum	<p>a). This is valid for persons indirectly affected due to the employer having being displaced, on case-by-case, based on local wage rates for three months</p> <p>b). Alternative economic rehabilitation grant for vulnerable groups at the rate of Rs 3,000 per eligible person on a lump sum basis.</p> <p>c) Compensation assistance equivalent to three months income based on type of business – small, medium, large on a case to case basis.</p>
7. Loss of primary source of income	Households affected	Additional Assistance for income restoration and training	<p>a) Assistance will be provided for income generating vocational training and skill upgradation options as per APs choice, including starting suitable production or service activity.</p> <p>b) Economic rehabilitation support and training</p>
E: LOSSES OF NON-TITLEHOLDERS			
8. Encroachers	Household affected by ROW	No compensation for land but assistance for assets to vulnerable	<p>a). Encroachers will be notified a time in which to remove their assets to be affected.</p> <p>b). Encroachers who are vulnerable (BPL) to be assisted case-by-case considering relevant facts on family income and existing assets.</p> <p>c). Compensation for structure at replacement cost to the vulnerable person.</p>
9. Loss of structure by squatters and informal settlers	Households affected by ROW	No compensation for land but compensation for structure at replacement cost and other assistance	<p>a). Compensation for loss of structure at replacement cost to be paid by the Project.</p> <p>b). A lump sum shifting allowance of Rs1,500 for temporary, Rs2,000 for Semi-temporary and Rs5,000 for permanent structures.</p> <p>c). Provision for training, including income generating assistance linked to productive activity.</p>
F: LOSS OF COMMON PROPERTY RESOURCES			
10. Loss of Common Property Resources	Affected community	Cash compensation/ reconstruction	a). Cash compensation or reconstruction of the community structure in consultation with the community.
G: REHABILITATION MEASURES			
11. Additional assistance to vulnerable groups	Households categorized as vulnerable (BPL households, female-headed households, SC/STs, disabled/elderly)	Lump sum assistance	a). Additional lump sum assistance of Rs2,000 per household to vulnerable groups such as –female headed households, households with disabled family members, indigenous people etc.
12. Any unanticipated adverse impact due to project intervention	Any unanticipated consequence of the project will be documented and mitigated based on the spirit of the principles agreed upon in this policy framework.		

