

Resettlement Plan

Proposed Sewage Waste Treatment Plant for Port Vila

June 2011

Vanuatu: Port Vila Urban Development Project

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

RESETTLEMENT PLAN

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ABBREVIATIONS

ADB	-	Asian Development Bank
AP	-	affected persons/people
APE	-	affected private entity
APF	-	affected private firm
CBD	-	central business district
DP	-	displaced person
ha	-	hectare
MFEM	-	Ministry of Finance and Economic Management
MIPU	-	Ministry of Infrastructure and Public Utilities
MLNR	-	Ministry of Lands and Natural Resources
PPTA	-	project preparatory technical assistance
SPS	-	Safeguard Policy Statement
STP	-	sludge treatment plant
VPMU	-	Vanuatu Project Management Unit

GLOSSARY

Compensation	payment in cash or kind for an asset to be acquired or affected by a project at replacement cost at current market value.
Cut-off date	the date after which people will NOT be considered eligible for compensation, i.e., they are not included in the list of APs as defined by the census. Normally, the cut-off date is the date of the detailed measurement survey.
Displaced Persons	also known as affected persons (APs,); all the people affected by the project through land acquisition, relocation, or loss of incomes, including any person, household (sometimes referred to as project-affected family), firms, or public or private institutions. APs therefore include i) persons affected directly by the safety corridor, right-of-way, tower or pole foundations, or construction work area; (ii) persons whose agricultural land or other productive assets such as trees or crops are affected; (iii) persons whose businesses are affected and who might experience loss of income due to the project impact; (iv) persons who lose work/employment as a result of project impact; and (v) people who lose access to community resources/property as a result of the project.
Detailed measurement survey	the detailed inventory of losses that is completed after detailed design and marking of project boundaries on the ground.
Encroachers	those people who move into the project area after the cut-off date and are therefore not eligible for compensation or other rehabilitation measures provided by the project.
Entitlement	the range of measures comprising cash or in-kind compensation, relocation cost, income rehabilitation assistance, transfer assistance, income substitution, relocation assistance, and/or business restoration assistance that are due to APs, depending on the type and degree nature of their losses, to restore their social and economic base.
Inventory of losses	the preappraisal inventory of assets as a preliminary record of affected or lost assets.
Land acquisition	the process whereby a person is compelled by a public agency to alienate all or part of the land s/he owns or possesses to the ownership and possession of that agency, for public purposes, in return for fair compensation.
Nontitled	those who have no recognizable rights or claims to the land that they are occupying, including people using private or state land without permission, permit, or grant, i.e., those people without legal title to land and/or structures occupied or used by them. ADB's policy explicitly states that such people cannot be denied compensation for nonland assets and resettlement assistance.
Poor	those falling below the official national poverty line.

Replacement cost	the method of valuing assets to replace the loss at current market value, or its nearest equivalent; it is the amount in cash or in-kind needed to replace an asset in its existing condition, without deduction of transaction costs or for any material salvaged.
Sharecropper	the same as tenant cultivator or tenant farmer; a person who cultivates land s/he does not own for an agreed upon proportion of the crop or harvest.
Significant impact	200 people or more 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).
Vulnerable	any people who might suffer disproportionately or face the risk of being marginalized from the effects of resettlement, including (i) female-headed households with dependents, (ii) disabled household heads, (iii) poor households (within the meaning given previously), (iv) landless, (v) elderly households with no means of support, (vi) households without security of tenure, (vii) ethnic minorities, and (viii) marginal farmers (with landholdings of 2 hectares or less).

EXECUTIVE SUMMARY

The Government of Vanuatu has requested the Asian Development Bank (ADB), Australian Agency for International Development, and other cofinancing institutions for funding for the Port Vila Urban Development Project to implement the first stage of the Drainage and Sanitation Master Plan. The aim of the project is to assist the Government of Vanuatu to improve drainage, roads, and sanitation systems within Port Vila Municipality and adjacent urban and periurban areas in Shefa Province. Five outputs or project components¹ have been selected for the loan, one of which involves “improved sanitation in greater Port Vila” (output 2). This includes the construction of a sludge treatment plant. The executing agency for the project is the Ministry of Finance and Economic Management (MFEM). The key implementing agencies are the Public Works Department in the Ministry of Infrastructure and Public Utilities (MIPU) and Department of Environmental Protection and Conservation in the Ministry of Lands and Natural Resources (MLNR). This Resettlement Plan (RP) has been prepared for this subproject in accordance with the provisions set out by the ADB’s safeguard requirements on involuntary resettlement as embedded in the Safeguards Policy Statement (2009), and with the laws of Vanuatu. This RP is based upon information gathered through field observations, surveys, and consultations with stakeholders conducted from July 2010 until March 2011.

The proposed sludge treatment plant requires an area of approximately 6.5 hectares (250 x 250 m), inclusive of the area for expansion during subsequent stages of master plan implementation. The cost of this first stage of the sludge treatment plant will be financed by ADB. The actual cost will be determined at the time of the RP updating, once detailed design is completed.

The basic resettlement policy principles set out in the RP are as follows: (i) land acquisition will be avoided or at least minimized; (ii) compensation will ensure maintenance of preproject living standards of affected persons (APs)/affected private firms (APFs); (iii) APs/APFs will be fully consulted/informed about compensation options; (iv) APs/APFs’ sociocultural institutions will be supported/utilized wherever possible; (v) resettlement and land acquisition procedures will equally apply to women and men; (vi) lack of formal title will not prevent providing compensation for nonland assets and resettlement assistance under the entitlement matrix; (vii) land acquisition and resettlement will be conceived and executed as an integral part of the project, with budgets for land acquisition and resettlement to be included in project (subproject) costs; (viii) impact to structures will be avoided; (ix) all land acquisition, resettlement and compensation payments will be completed prior to civil works commencement in the subproject. Table 1 shows the entitlement matrix for type of losses that have been identified while Table 2 shows the impact matrix.

MFEM, as the executing agency, will be responsible for overall guidance and project implementation. A Vanuatu Project Management Unit (VPMU)² will be established at MFEM and headed by a director that will be responsible for overall planning, implementation, management, coordination, supervision, and progress monitoring of the subproject including the RP update and implementation. The VPMU will be supported by a team of international and national project management consultants. The VPMU will ensure compliance with assurances,

¹ The outputs comprise (i) improved road network and drainage systems, (ii) improved sanitation system, (iii) improved hygiene facilities, (iv) improved capacity of government and community organizations, and (v) efficient project management services.

² The Government will establish the VPMU as a dedicated unit for managing large and nationally significant projects with allocation of budget and core staff.

including safeguards and preparing and submitting the RP update, reports, and RP monitoring reports. The VPMU will internally monitor and report to the executing agency on a monthly basis, and the executing agency will then report quarterly to ADB.

Table 1: Entitlement Matrix

Type of Losses	Entitled Person	Entitlement	Entitlement Issues/Guidelines
Agricultural land – landowners	Legal owner(s) of land at the time of Minister of Lands and Natural Resources (MNLN) serving notice of land acquisition as per the land acquisition law of Vanuatu	<ol style="list-style-type: none"> 1. Current market value of affected land in cash compensation to be provided through government trustee for future customary land owner claimant, when and if identified. 2. Loss of potential rent income value. 3. Changing of title to reflect 6.5 hectares transferred to government and to reflect a nonagricultural or industrial land-use, without cost to the land holders' account. 	<ol style="list-style-type: none"> a. Assessment of type and quantity of land to be carried out jointly by the valuer general from the MNLN and VPMU resettlement specialist(s). b. Calculated through interest from contract rent for the remaining period of the lease (20 years) (using the accepted national government discount rate of 8%). c. Title updating
Agricultural land (Loss of pasture land use) – Leaseholder	The leaseholder - the firm / company raising cattle on the site, as part of a larger 50-year leaseholding	<ol style="list-style-type: none"> 1. Paid cash compensation, based on the production yield of the cattle using the improved pasture that would be lost over the next 20 years of the lease. Rate will be equal to the cut value of the pasture. 2. Cash payment for the interest on the loss of the profit from land use over the next 20 years remaining on the lease. 3. Change in the lease removing the 6.5 hectares of land area from the leasehold, at no cost to the leaseholder 	<ol style="list-style-type: none"> a. Valued based on net future income from the pasture use. b. Based on the interest calculated on the profit made from the rental investment, or profit rent, using 8% discount rate, as accepted by the government c. Updating of lease
Loss of income from	The leaseholder - the firm / company	Value of lost income on beef cattle for the	Valued, based on net income from beef cattle.

Type of Losses	Entitled Person	Entitlement	Entitlement Issues/Guidelines
livestock - Leaseholder	that is the landuser raising the livestock on the site	remaining period of the lease.	
Trees	The leaseholder - the firm / company that is the land user, who is charged to develop the land as per instructions on the lease	<ol style="list-style-type: none"> 1. Unproductive mature coconut tree: cash compensation based on wood production – wood volume x market value. 2. Wood trees – cash compensation based on value of wood volume x market value of the wood. 3. Banyan trees – at government-valued price 	Values determined by the Ministry of Agriculture, who has set annual valuations for each type of tree, fruit, and vegetable species based on wood, fruit, or aesthetic value of certain tree and plant types.

This RP is based on several site visits and consultations with representatives of the APE (lessee) and the lessor, represented by the Ministry of Lands and Natural Resources as trustee of the land. The RP will be disclosed on the ADB website, and will be made available to the APE at the MFEM office and MLNR office. Furthermore, at the time of the RP update, the disclosure process will similarly occur. Great care will also be taken to prevent grievances. The first level of grievance redress in the event that any person/community submits an objection will be a committee made up of AP representatives, community representatives, and representatives of the customary owners, which will be set up and will meet to resolve the issue. Level two is the VPMU, with the decision made on the advice of MLNR. If still not satisfied the third and fourth levels of grievance involve the customary land tribunals and the Supreme Court, respectively.

Table 2: Summary of impacts

Impact Category	Magnitude of Impacts
Permanently affected	1 affected firm and a customary lease currently in government trust (customary landholder/owner not identified).
Permanent land acquisition	6.5 hectares
Improved pasture loss	6.5 hectares
Land rental losses	20 years remaining on lease for lessor and lessee losing profit on investment
Income losses by lessee	Beef cattle bred and sold over 20 years remaining investment is lost
Trees	To be removed – compensated for wood/timber value, as are adult unproductive or wood product trees
Vulnerable families affected	Nil
Budget costs	Vatu 27,188,039.12 (approximately USD 280,290)

I. INTRODUCTION

A. Background and Project Description

1. Port Vila is situated on the south coast of the island of Efate in Shefa Province, Vanuatu. With an area of about 5 km², Port Vila city serves as home to a multicultural population, and is the economic and commercial center of Vanuatu. Port Vila Municipality has already outgrown its original urban boundaries due to substantial population growth, along with urban migration and rapid development of squatter and informal settlements, increasing the extent of the commercial and infrastructural requirement. Poor urban planning and ineffective plan implementation for urban development in Vanuatu are also attributed to the institutional responsibilities, which are not clearly delineated among the relevant agencies. Hence, a Master Plan for Port Vila's Urban Development¹ was prepared, focusing on drainage and sanitation; followed by a feasibility study for investment in the master plan's first phase implementation, taking into consideration the technical, socioeconomic, environmental, and institutional issues.

2. The Government of Vanuatu has requested the Asian Development Bank (ADB), Australian Agency for International Development (AusAID), and other cofinancing institutions for funding for the Port Vila Urban Development Project for the implementation of the first stage of the Drainage and Sanitation Master Plan. The aim of the project is to assist the Government of Vanuatu to improve drainage, roads, and sanitation systems within Port Vila Municipality and adjacent urban and periurban areas in Shefa Province. Five outputs or project components have been selected for the loan, one of which involves improved sanitation in greater Port Vila" (output 2). This includes the construction of a sludge treatment plant (STP). The proposed STP requires an area of approximately 6.5 hectares (250 x 250 m), inclusive of the area for expansion during subsequent stages of master plan implementation. The cost of this first stage of the STP will be financed by ADB. The executing agency for the project is the Ministry of Infrastructure and Public Utilities (MIPU). This RP for the subproject is associated with the relevant land acquisition and compensation for the construction of a new STP. The subproject is located north north west (NNW) of Port Vila central business district (CBD), close to the airport (Figure 1). The site is agricultural, leased by one company, with no encroachers or communities using this plot of land, which is managed by a government-appointed trustee² under the kastom policies set out in the Vanuatu Constitution³.

3. This RP has been prepared in accordance with the provisions set out by ADB's safeguard requirements on involuntary resettlement as embedded in the Safeguards Policy Statement (2009), and with the laws of Vanuatu. The RP is based upon information gathered through field observations, surveys, and consultations with stakeholders conducted from July 2010 until March 2011. The RP contains an estimate of affected persons/businesses, types of impacts, and compensation procedures, implementation arrangements, monitoring, reporting, and grievance redress procedures.

¹ The Port Vila Urban Development Master Plan (Drainage and Sanitation) was prepared under Project Preparatory Technical Assistance 7345 VAN in 2010.

² The Land Survey Department of the Ministry of Lands and Natural Resources (MLNR).

³ Under kastom since 1980 all land in Vanuatu is under customary ownership. However, in many cases, the customary owners of land have not yet been, or cannot be, identified in order to pass on title to the rightful customary owner. However, the government must hold on to profits from rents and land sales, etc, on behalf of the yet –to- be- identified customary owners, and these profits will be handed over from the government- run trust to the customary owners when or if identified.

4. During implementation of the subproject, the VPMU, with the support of international and national consultants, will be responsible for supervising and conducting internal monitoring of this RP (or its update) associated with the project. They will also be responsible for updating this RP based on the detailed design. The contractor will not be permitted to commence civil works in impact areas until the land acquisition and compensation payments have been completed.

B. Measures to Minimize Resettlement and Land Acquisition

5. To fit ADB requirements, all efforts have been made to avoid/minimize as much as possible, negative impacts. The following measures are adopted by this RP and subproject design in order to minimize impacts:

- Built-up areas and housing compounds are avoided.
- Farm structures, such as fence lines and livestock water sources, have been avoided.
- As many productive and unproductive trees as possible have been avoided.
- A suitable location was sought from land users with larger plots of land, in order to minimize numbers of affected people and impact magnitude on any single, vulnerable affected family.

C. Objectives of Resettlement Plan

6. The key objective of this RP is to provide an effective and practical guideline to prepare and implement land acquisition, resettlement, and compensation processes with sound planning principles and requirements of current laws and practices of Vanuatu and in compliance with ADB policies.

7. The key tenets that will guide compliance with involuntary resettlement provisions during the project are the following: (i) land acquisition will be avoided or at least minimized; (ii) compensation will ensure maintenance of preproject living standards of displaced/affected persons (APs)/Affected Private Firms (APFs); (iii) APs/APFs will be fully consulted/informed on compensation options; (iv) APs'/APFs' sociocultural institutions will be supported/utilized wherever possible; (v) resettlement and land acquisition procedures will apply equally to women and men; (vi) lack of formal title will not prevent compensation and assistance prescribed in the entitlement matrix; (vii) land acquisition and resettlement will be conceived and executed as an integral part of the project, with budgets for land acquisition and resettlement to be included in project (subproject) costs; (viii) impact to structures will be avoided; and (ix) all land acquisition, resettlement and compensation payments will be completed prior to civil works commencement in the subproject.

Figure 1 – Satellite Image of the Subproject Site and Port Vila



II. SCOPE OF LAND ACQUISITION AND RESETTLEMENT

A. General Description of Impacts

8. A site survey and consultations with the representative of the land user were conducted during March 2011, during which impact surveys were also carried out. This RP will require updating once the subproject's detailed design is completed during the implementation period. During that update, the final day of detailed measurement survey of losses (including of census and socioeconomic survey if circumstances require) will be the cut-off date for entitlement.

9. Originally, during master plan design stage, three sites were proposed across Port Vila, adjacent to Port Vila Golf Course, in the area of Blacksands (to the north of Port Vila), and Pango on the southern side of Port Vila. The 6.5-hectare (ha) site selected is adjacent to Port Vila Golf course, on an area of leased agricultural land. After discussions with leaseholders and Government⁴ trustees of the site, the current area was confirmed.

10. Calculations for assessing the impacts are based on technical design requirements for the proposed STP and biogas plant and the future full-scale sewage treatment facility, as designed in the master plan. This will require a total area of 6.5 ha. Since the lease-holding is specifically for a business investment over a 50-year period, with 20 years remaining on the lease, all calculations have assumed compensation related to a 20-year business loss.⁵ The affected area is approximately 1.17% of the total land holding leased by the APF. No additional area for temporary impacts for construction space has been considered, given that this is an adequate land area and is located on an existing public roadway access.

B. Permanent and Temporary Land Impacts

11. The total permanent and temporary impacts in relation to the STP location, based on the results of the detailed site survey and consultations with the leaseholder and MLNR, are provided below (also refer to Table 1):

- i. **Permanent land impacts.** In total, one parcel of land of 6.5 ha (1.17% of leaseholding) is required for the project, to be permanently acquired. The full 6.5 ha is located on leased agricultural grazing land. Land will be compensated at full replacement value plus percentage interest in revenue from loss of rent profits of the 6.5 ha, based on the current lease agreement from which rental income would have accrued to the lessor for the next 20 years.
- ii. **Crops permanently affected.** Across the 6.5-hactare parcel of land, there are no crops per se grown on site. However, the location is covered by improved pasture, as required by the lease, and it is still used for grazing cattle. Therefore, a compensation figure for the loss of the improved pasture use will be calculated. In addition, this land has been developed by the lessee, as per terms of the lease, with the expectation of a business investment income return over a 50-year period, with 20 years on the lease now remaining.

⁴ The Government of Vanuatu is the current trustee of the land under customary lands acts and land legislation.

⁵ This was discussed and agreed upon as per Vanuatu law, during consultations with a Vanuatu Valuer General's Office representative.

Therefore, as well as compensation for the improved pasture, interest in lost income revenue from the pasture and land use will be additionally calculated on the basis of full rent value.

- iii. **Loss of income.** The company (lessee) grazes cattle on the land at approximately 3 head/ha or approximately 20 heads for 6.5 ha, for income. This is almost the maximum number the lease allows per hectare of cattle for grazing. The loss of business/income from the reduced number of livestock as a result of the reduced land available for the remaining lease period will be compensated, particularly because this is a long-term investment with little opportunity available for replacement land to be leased.
- iv. **Temporary impacts.** No temporary impacts are expected as a result of the project. Areas for construction space will be limited to the permanently acquired 6.5 ha and accessibility to site from the existing road.
- v. **Loss of Trees.** A few trees will be coconut trees, 4 banyan trees and 2 fuel wood trees, each to be compensated at their adult productive rates.
- vi. **Houses and structures.** No impacts on buildings or structures will occur. The detailed design ensures that no structures will be affected or no APs will be relocated during implementation as a result of the project development. However, as a part of the construction specifications, a fence will be constructed around the site.

Table 1: Scope of Impacts and Losses

Type of Impact	Detail	Unit	Total
Land	Loss to land owners 250 x 250 square metre plot ^a (lessor)	hectares	6.5 ha
Pasture	Loss of improved 250 x 250 square meter plot to leaseholder (lessee)	hectares	6.5 ha
Income	Annual income loss of 3 beef cattle per ha per year of lease (lessee)	hectares	6.5 ha
Income from rental investment	- Lessor – Interest accrued for 20 years at 8% discount rate - Loss of profit from rental income under existing lease for the remaining 20-year validity - Lessee – Interest accrued for 20 years at 8% discount rate - Loss of profits from investment income after developing the land for beef cattle production for the remaining 20 years	hectares	6.5 ha
Trees	Coconut (mature unproductive) for timber (lessee)	Trees	14
	Fuel wood – mature size - lessee	Trees	2
	Banyan trees (adult) - lessee	Trees	4

^a = Land ownership in all of Vanuatu is customary. Since customary owners are not identified; land holding and any profits for this are managed by the government trustee and will all be handed over to the customary owners if and when they are identified in the future.

C. Project-Affected Persons / Affected Firm

12. The land to be acquired is currently leased by a company from the government, which holds the land as a customary landowner trustee under the 1980 Constitution and subsequent laws. The company is the only affected entity. There is no affected household/people living on the site identified as possessing indigenous rights to the land or resources, or using the land resources, other than one business entity.

D. Other Impacts

13. Other impacts on other properties and structures or affected households are not expected. However, detailed design may necessitate reviewing this during the final RP updating and implementation to be conducted during the project implementation period and before civil works occurs. Although all efforts have been made to minimize land acquisition, and at the same time select the most technically and community favorable site, through consultation, the exact land area will be confirmed only during the detailed design period. Baseline information and impacts will need to be updated with a detailed survey and AP census at the detailed design stage by a resettlement team or specialist) at that time. A generic terms of reference for this task is provided in Annex 1. A generic format of inventory of losses is presented in Annex 2.

III. INFORMATION ON THE LEASE STATUS

14. Generally an RP records the socioeconomic status of the displaced persons (DPs), in order to ensure that elements of vulnerability are identified and that a baseline of the DPs is recorded to monitor that they have the same or better status as prior to the project and RP preparation. However, for the purposes of this RP, only one company, as lessee, and the government holding the land in trust (as lessor) are involved. Therefore, this section notes some of the issues relating to the lease of the affected plot of land.

15. As of 1980, at the time of independence, all land ownership in Vanuatu was based on “kastom,” meaning it was customary land. As required by law, the government holds all unclaimed customary lands in trust. All profits such as from leases and purchases are deposited into a trust fund on behalf of the customary land holders in perpetuity or until such time that the customary owners are identified and legally claim the land area and to whom the trust fund will be liquidated.

16. Based on due diligence discussions with MLNR in Port Vila, and viewing of the MLNR files regarding the plot and its land titling, the subproject area is yet to be claimed by its customary owners and has no registered private trustee's⁶ involvement. The government, as required by kastom law, must hold all these lands in trust, with a specific bank account into which leasehold rents are deposited along with any other profits from the land in question. Therefore, the government, through a department of MLNR, acts as trustee for this specific plot of land and deposits all profits from leases and from any approved land sales into a special trust fund for the customary owners, once a claim is made, proven, and title deeds are handed over. Given this, if the land to be acquired is purchased for the State, then the profits from the land purchase will be deposited into this account for the benefit of the land claimants, when and if found.

17. The affected firm is registered in Vanuatu but is wholly owned by a New Caledonian-based company and has shareholders predominantly from New Caledonia and France as well as from Australia. The land is a business investment, on which beef cattle are bred for income.

18. The lease is an agricultural lease to last 50 years from July 1980 (after kastom legislation was brought in), by which the lessee must develop for agriculture only, and no structures are to be built without permission from the lessor. However, the lease does restrict pasture improvements and tree clearing to areas having not more than 25 degrees of slope and places restrictions on water courses through the property. These conditions do not affect the selected site, since the land is flat and there are no visible watercourses on the site. Furthermore, it may be necessary for MLNR/MIPU and the provincial authorities to seek a change in land use status of the acquired 6.5 ha to enable it to be built on for industrial purposes. The area leased is 556 ha, of which 6.5 Ha (1.17%) is to be acquired. Therefore, the acquisition is not significant, under ADB's Safeguard Policy Statement (SPS) 2009 definitions.

19. Given the land use and ownership status of this land holding, the purchase of land and any interest due to loss of the remaining years of rent (20 years) will be held for the lessor, or the customary owner, when identified, while the improved pasture, value of livestock profits, and interest lost on income from the rental of the land over the future 20 years of the lease period and

⁶ Some communities have set up corporations as trustees of land plots, managing the leases for a fee. These trustee companies are run as businesses.

compensation for the trees on the site to be acquired will be eligible for the lessee. This information is explained further in the ensuing sections of the RP below.

IV. LEGAL AND POLICY FRAMEWORK

A. Policy and Legal Framework for Land Acquisition and Resettlement

20. The policy framework for the project is based on ADB's safeguard requirements on involuntary resettlement as embedded in the SPS (2009), the Constitution of Vanuatu, and the laws of Vanuatu. Where differences exist between the local laws and ADB requirements, the resettlement policy will be resolved in favor of the latter.

B. Legal Instruments in Land Acquisition and Resettlement in Vanuatu

21. 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.

1. Constitution of Vanuatu

22. 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.

23. 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 National Government. When described under the Constitution, the Council is not a decision-making body but rather a high-level advisory group.

24. 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 centered 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.

2. Legal Acts Pertaining to Land Acquisition and Resettlement

25. As previously mentioned, there are more than ten Acts related to Land Acquisition and Resettlement. The main Acts which relate to the Land Acquisition and Land ownership/development include as follows:

a. **The Land Acquisition Act No. 5 of 1992 (Amendment Act No. 34 of 2000)**

26. This is the key law directly related to land acquisition and resettlement. This act, gives the 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.

b. **Land Reform Act No. 35 (1980, updated in 1981, 1983, 1985, 1992, and 2000)**

27. 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.

c. **Customary Land Tribunal Act No. 7 (2001)**

28. As per the title, this Act 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.

d. **Valuation of Land Act No. 22 (2002)**

29. This 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. 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.

e. **Land Surveyors Act No. 11 (1984)**

30. This 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 Resettlement and Land Acquisition for Government Purposes in Vanuatu

1. Identification of Areas for Acquisition

31. 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 Tanna airport, in Port Vila the government has acquired land along the river at Freswota in order to maintain a level of river protection and reduce urban encroachment issues. In Port Vila however, the land acquisition legislation and process have not been utilized for urban development infrastructure projects.

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.

33. 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 that, by law, must go back more than 200 years.

2. The Process for Relocation or Acquiring Land

34. 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 normal, 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.

35. Once an area of land is selected by the government for the 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.

36. After this period, the land is assessed and valued. The land valuation is stipulated by law (refer to para 16), but generally involves valuing of the following:

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

37. According to MLNR, valuations include both land and structures affected and may include value of income produced from land. However, this does not include nonland producing incomes such as from a shop or business.

38. 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.

3. Acquisition of Land/Structures

39. 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 Ministry of Finance and Economic Management (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.

D. ADB's Policy on Involuntary Resettlement

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

41. The key principles of the ADB safeguards policy on resettlement are as follows:

- Screen the project's resettlement impacts and risks early
- Carry out meaningful consultations with the participation of APs/ DPs. Inform all APs/DPs of their entitlements and resettlement options. Pay particular attention to the needs of vulnerable groups.
- Establish a grievance mechanism.
- Improve, or at least restore, the livelihoods of all APs/DPs through (i) land-based resettlement or cash compensation at replacement value 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.
- Provide APs/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.
- Improve the standard of living of the displaced poor and vulnerable groups to at least national minimum standards.
- Develop procedures in a transparent, consistent, and equitable manner if land acquisition is through negotiated settlement.
- Ensure that APs/DPs without titles are eligible for resettlement assistance and compensation for loss of nonland assets.
- Prepare an RP elaborating on AP/DP entitlements, income, and livelihood restoration strategy, etc.
- Disclose an RP in an accessible place and in a form and languages understandable to the APs/DPs and other stakeholders.
- Conceive and execute resettlement as part of a development project or program.
- Provide compensation and other entitlements before physical or economic displacement.
- Monitor and assess resettlement outcomes and their impacts on the standards of living of APs/DPs.

E. Policy Differences and Reconciliation

42. A comparison between ADB policies and the laws and practices of land acquisition and resettlement used by the Government of Vanuatu was conducted and a summary prepared (Table 2). Any differences between the laws and practices of the Government of Vanuatu and ADB SPS 2009 will be resolved in favour of the latter.

Table 2: Comparison of Land Acquisition and Resettlement in Vanuatu and ADBs SPS 2009

Item	ADB SPS 2009 Safeguards	Comparisons to Vanuatu Law	Reconciliation Provisions
1	Avoid resettlement impacts wherever possible.	There is no minimum standard that requires the projects to avoid resettlement impacts.	The project will ensure that all resettlement and land acquisition and impacts on community and business/productive interests are avoided, wherever possible.
2	Minimize impacts by exploring project design alternatives	There is no minimum standard that requires the projects to minimize land acquisition and impacts on the community.	The project will ensure that all resettlement and land acquisition and impacts on community and business/productive interests are minimised wherever possible.
3	Enhance or at least restore the livelihoods of all APs/DPs in real terms relative to preproject levels.	Compensation is determined based on issues including land type, crops, etc. However, this does not include nonland producing incomes such as income from shops, businesses, etc. It also does not necessarily require that compensation be provided and that conditions of APs be the same level or better than the preproject situation.	For this project, compensation for losses by businesses and for employees' salaries will be considered in the entitlement. Land is valued by the Valuer General in MLNR. The Valuer General will be used (refer to item 8).
4	Improve the standard of living of the affected poor and other vulnerable persons. It covers both economic and physical displacement.	Laws and practices in Vanuatu do not recognize the standards of living of the poor and vulnerable in determining compensation for land acquisition and resettlement per se.	ADB SPS 2009 will be enforced in that assistance will be provided to vulnerable APs/DPs, if any are identified, to ensure that living standards are the same as, or wherever possible better than, preproject levels.
5	Screen early the projects resettlement impacts and risks.	Laws and practices in Vanuatu relating to government capital works projects, require that the project budget consider and include associated resettlement and land acquisition costs. However, there are no other assessments of	ADB SPS 2009 will be enforced to recognize resettlement impacts and risks, including through this RP and subsequent RP updates.

Item	ADB SPS 2009 Safeguards	Comparisons to Vanuatu Law	Reconciliation Provisions
		resettlement impacts required prior to budget approval, hence capital works commencing.	
6	Carry out meaningful consultations with the participation of APs/DPs. Inform all APs/DPs of their entitlements and resettlement options. Pay particular attention to the needs of vulnerable groups.	The law and current practices do require the land acquisition and relocation orders to be disclosed several times over radio and in the printed media over a 1-month period, as well as being displayed on-site. However, there is no recognition of vulnerable groups nor consultation with, or participation of, APs/DPs at any part of the process, except in the case of people given opportunity to make objections.	ADB SPS 2009 will be enforced in that the prepared RP and its implementation will require a level of participation and consultation.
7	Establish a grievance mechanism.	Vanuatu already has a grievance redress system for general village matters, followed by the chief. MLNR has also recently been set up at provincial level, through the Customary Land Tribunal.	ADB SPS 2009 will be enforced to ensure an appropriate multiple-level grievance redress system that allows AP/DP participation, relatively rapid action and results, as well as encompassing existing grievance procedures.
8	Improve, or at least restore the livelihoods of all APs/DPs through (i) land-based resettlement or cash compensation at replacement value 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.	In Vanuatu valuation of land is stipulated by law and is conducted based on several factors regarding that specific plot of affected land such as lease and ownership type, location of property, amenities, market price of nearby properties, physical land characteristics, and intangibles. The law specifically points out times for disclosure prior to valuation, and a time for objection to valuation and acquisition of lands and assets. However, the law does not provide any clauses for compensation, income restoration, and entitlements to be provided to the AP/DP in a prompt manner.	Land is valued by the Valuer General in MLNR. The Valuer General will be used to determine compensation requirements relating to land and to land-based income losses. All other compensation, such as nonagricultural businesses and employee entitlements, will be at existing market rates. At the end of the disclosure period, as soon as practicably possible, as per ADB SPS 2009, compensation will be provided promptly.
9	Provide APs/DPs with needed assistance including	In Vanuatu, land acquisition, resettlement, and compensation for land-based losses are included under	ADB SPS 2009 will be enforced in supplementing the law of Vanuatu, in order to

Item	ADB SPS 2009 Safeguards	Comparisons to Vanuatu Law	Reconciliation Provisions
	(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.	the law. However, impacts on businesses and their employees are less clear, and there is no recognizable transitional support mechanism under the law.	cover transition assistance requirements, businesses, and employees impacted, as required.
10	Develop a procedure in a transparent, consistent and equitable manner if land acquisition is through negotiated settlement.	As a project under the Government of Vanuatu, all lands by law must be acquired for capital works based on the orders of the Minister for MLNR.	This aspect of the SPS 2009 relating to negotiated land acquisition is not applicable. Therefore, Vanuatu laws and practices will be adopted for this purpose.
11	Ensure that APs/DPs without titles are eligible for resettlement assistance and compensation for loss of nonland assets.	Laws have no clauses that recognize encroachers in any way to be entitled or NOT entitled to compensation or rehabilitation.	ADB SPS 2009 will be enforced to recognize encroachers, who are legitimately affected at the time of the census/detailed measurement survey conducted.
12	Prepare an RP elaborating on AP/DP entitlements, income, and livelihood restoration strategy, etc.	Under Vanuatu law, land acquisition and resettlement and compensation are carried out focusing on households affected and the values of the land a structures affected. However, an RP per se is not necessarily required.	ADB SPS 2009 will be enforced to ensure that an RP is prepared and is updated at the time of detailed design.
13	Disclose an RP in an accessible place and in a form and languages understandable to the APs/DPs and other stakeholders.	Although the law does not require an actual RP to be prepared, its clauses do necessitate notices and official valuations by MLNR to be prepared. The law and current practices also requires that land acquisition and relocation orders for a specific site be disclosed several times over radio and in the printed media over a 1-month period, as well as being displayed on-site. However, only the radio would be useful for the illiterate to become informed of any pending land acquisition and resettlement activity on a specific site.	This practice will be maintained in addition to the RP being disclosed on the ADB website. If APs are found to have low literacy, a further disclosure through public meetings may be held.

Item	ADB SPS 2009 Safeguards	Comparisons to Vanuatu Law	Reconciliation Provisions
14	Conceive and execute resettlement as part of a development project or program.	MLNR does have a Vatu 200 million budget for land acquisition and resettlement for capital works projects allocated on an annual basis. The year prior to an infrastructure development project, government agencies develop their work plans for the following fiscal year. 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.	Laws and practices in Vanuatu, relating to government capital works projects, require that the project budget consider, and include, associated resettlement and land acquisition costs. No supplementary measure required.
15	Provide compensation and other entitlements before physical or economic displacement.	Compensation is to be provided after a period of disclosure and a period for objection has finished. However, legislation does not clearly state that compensation will be provided prior to commencement of construction, which would force physical/economic displacement impacts to occur.	ADB SPS 2009 will be enforced to ensure that land acquisition, resettlement, and/or compensation measures are completed prior to construction commencing.
16	Monitor and assess resettlement outcomes and their impacts on the standards of living of APs/DPs.	There is no specific clause in the law or practice in Vanuatu that requires monitoring and assessment of APs/DPs during or after land acquisition and resettlement.	ADB SPS 2009 will be enforced to ensure that an internal monitoring and evaluation program is set up for this subproject. Although not expected under the current project design conditions, an external monitoring program may be required if land acquisition and resettlement impacts become significant, based on SPS 2009 policy definitions.

F. Principles and Policies for the Project

43. Given the assessment of the Vanuatu laws and practices and the ADB policy differences referred to in Table 2, some additions have been made on top of the provisions set out under the Vanuatu laws in order to ensure consistency with the resettlement principles of ADB's SPS (2009), especially safeguards on land acquisition and compensation. For the reference of MIPU in preparing and subsequent implementation of resettlement activities under the project, the following project principles and policies will apply:⁷

⁷ These are the project's general resettlement principles which will be applied to different project components/subproject to varying degrees. As this subproject involves only a private firm and a government trust, all of these principles may not apply in this particular case.

- (i) Involuntary resettlement and loss of land, structures, and other assets and incomes will be avoided and minimized by exploring all viable options.
- (ii) APs will be provided with compensation for their lost assets, incomes, and businesses, and provided with rehabilitation measures sufficient to assist them to improve or at least maintain their preproject living standards, income levels, and productive capacity.
- (iii) Lack of legal rights to the assets lost will not preclude APs from receiving entitlement in form of compensation for nonland assets and/or rehabilitation measures.
- (iv) Affected land assets will be replaced at their current market values, based on the Valuer General's approval.
- (v) Preparation of resettlement plans and their implementation will be carried out with the participation and consultation of APs and the Vanuatu government and authority – MLNR.
- (vi) The budget for resettlement planning and implementation will be incorporated into MFEM's budgetary cycle as required at the time of financing. This will require close consultation with MFEM and MLNR, and approval by the Council of Ministers of Vanuatu.
- (vii) Payment of compensation or replacement of affected assets and any resettlement to new locations will be completed prior to civil works implementation.
- (viii) Rehabilitation measures will also be in place before the start of civil works, but not necessarily completed, as these may be ongoing activities. There will be no perceived negative impact on either DPs or the host community, if any; otherwise mitigation measures will be introduced.
- (ix) Compensation and rehabilitation assistance for socially disadvantaged such as households headed by women, the disabled, and elderly will be carried out with respect for their cultural values and specific needs.
- (x) Where significantly large or entire land holdings are affected by a project, the general mechanism for compensation for affected agricultural, residential, or commercial land will be through provision of "land for land" arrangements of equivalent size and productivity and at a location acceptable to the AP, if possible.
- (xi) If a house or other structure is only partly being affected by the project and the remaining structure is rendered unviable for continued use or in area less than the minimum relevant structure size under the prevailing standards, the AP will be entitled to surrender the entire structure and to compensation for the entire structure at full replacement cost without depreciation or deductions for salvaged material.
- (xii) APs whose land or assets are temporarily taken by the works under the project will be fully compensated for their net loss of income, damaged assets, crops, and trees, as the case may be. The contractor will also ensure that all temporarily acquired land and structures are returned in their preproject state.
- (xiii) Compensation for APs dependent on land and natural resource-based activities will be land-based or access-based⁸ wherever possible.
- (xiv) APs that stand to lose only part of their physical assets will not be left with a proportion that will be inadequate to sustain their current standard and convenience of living; the minimum size will be identified and agreed upon during the resettlement planning process.

⁸ This is to ensure coverage of affected communities who rely on traditional accessibility to marine-based livelihoods.

- (xv) APs will be systematically informed and consulted about the project, the rights and options available to them, and proposed mitigating measures.
- (xvi) Adequate budget support by MFEM will be fully committed and made available to cover the compensation and resettlement within the agreed upon implementation period. Clear budget commitments are required for critical activities such as formal detailed physical surveys and administrative functions associated with compensation and resettlement.
- (xvii) Community facilities and infrastructure damaged due to the project will be restored or repaired as the case may be, at no cost to the community.
- (xviii) Where local communities or individuals elect to make voluntary contribution of affected land without compensation, or in accordance with traditional practices, this will be acceptable only if the following safeguards are in place:
 - full consultation with landowners and any nontitled AP on site selection;
 - voluntary donations should not severely affect the living standards of AP;
 - any voluntary donation will be confirmed through written record and verified by an independent third party such as a nongovernment organization or legal authority; and
 - an adequate grievance redress mechanism should be in place.

G. Compensation and Rehabilitation Eligibility

44. APs or APE entitled to compensation or at least rehabilitation provisions under the project are:

- all those losing land, crops, or income with or without title, formal land use rights, or traditional land use rights; and
- tenants whether registered or not.

45. Compensation will be limited by a cut-off date to be set at the end of the new detailed measurement survey and AP/APE Census of losses, which will be carried out immediately after the conclusion of the technical detailed design. All APs/APEs who will settle in the affected area after the cut-off date and who cannot prove that they are displaced users of the affected plots will not be eligible for compensation. Forced resumption of the land area for construction will only be considered after all other efforts are exhausted.

H. Compensation and Rehabilitation Entitlement

46. Entitlement provisions apply to APs/APE losing land, crops, business income, and relevant interest as a result of permanently acquiring land for the construction of the STP. There is no need for temporary land acquisition for any reason, including for workspace or accessibility to the site. The budget was calculated in consultation with and assistance of an MLNR-registered land valuer working with the Valuer General's Office and with the Ministry of Agriculture. The entitlements are detailed below:

- **Land permanently acquired.** Cash compensation will be paid to the land title holder at market replacement rate for the permanent acquisition purchase of the 6.5-ha plot of land. This will be held by the government trustee, as required by law, for the specific customary land users (lessor) when identified. As there is an existing lease, for which a profit is being collected, the lessor, the title holder, will be entitled to the

interest calculated as a result of the lost contract rent income over the next 20 years, calculated using the present value 8% discount rate, as per the law of Vanuatu.

- **Loss of land-use rights on permanently acquired land.** The leaseholder (lessee) has signed a 50-year agreement that was done purely as a business income investment, gaining profit through rental of land and usage of a land plot, which will be lost for the last 20-years of investment. Therefore, the lessee will be entitled to loss of land use rights calculated as the interest payable from loss of rental use of the land area for business profit (at 8% discount rate). Furthermore, the lessee will receive the value of the improved pasture, calculated based on the pasture loss against yield on the cattle production over the 20 year lease period.
- **Loss of Income.** The loss in potential cattle production is calculated at 20 heads of cattle (3 heads per ha) based on the average weight and price of a steer. This is converted to net operating income for the 20 head of cattle and is then calculated in terms of the loss foreseen over the remaining 20-year lease.
- **Loss of fuel wood trees.** The two trees are valued based on the average wood volume multiplied by the market value of the tree's wood from an adult tree. This value is provided through the Ministry of Agriculture. This will be payable to the leaseholder.
- **Loss of banyan trees.** The value is based on the average wood volume x the market value of the tree's wood from an adult tree. This value is provided through the Ministry of Agriculture. This will be payable to the leaseholder.

I. Entitlement Matrix

47. The entitlement matrix (Table 3) provides for compensation and entitlements as described in the likely impacts of the project. In the update of this RP, changes in impacts may necessitate a change in this entitlement matrix.

Table 3: Entitlement Matrix

Type of Losses	Entitled Person	Entitlement	Entitlement Issues/Guidelines
Agricultural land – landowners	Legal owner(s) of land at the time Minister of Lands and Natural Resources serves notice of land acquisition as per the land acquisition law of Vanuatu	Current market value of affected land in cash compensation to be provided through government trustee for future customary land owner claimant when and if identified. Loss of potential rent income value. Changing of title to reflect 6.5 ha transferred to the government, and to reflect a non-agricultural or	a. Assessment of type and quantity of land to be carried out jointly by the Valuer General from MLNR and the VPMU resettlement specialist(s). b. Calculated through interest from contract rent for the remaining period of the lease (20 years) (using the accepted national government discount rate of 8%).

Type of Losses	Entitled Person	Entitlement	Entitlement Issues/Guidelines
		"industrial land", without cost to the land holders' account.	c. Title updating
Agricultural land (loss of pasture land use) - leaseholder	The leaseholder - the firm / company raising cattle on the site, as part of a larger 50-year leaseholding	<p>Paid cash compensation, based on the production yield of the cattle using the improved pasture that would be lost over the next 20 years of the lease. Rate will be equal to the cut value of the pasture.</p> <p>Cash payment for the interest on the loss of the profit from land use over the next 20 years remaining on the lease.</p> <p>Change in the lease removing the 6.5 ha land area from the leasehold, at no cost to the leaseholder</p>	<p>a. Valued based on net income from the pasture use.</p> <p>b. Based on the interest calculated on the profit made from the rental investment, or profit rent, using 8% discount rate, as accepted by the government</p> <p>c. Updating of lease</p>
Loss of income from livestock - leaseholder	The leaseholder - the firm/company that is the land user raising the livestock on the site	Value of lost income from beef cattle for the remaining period of the lease.	Valued based on net income from beef cattle.
Trees	The leaseholder - the firm/company that is the land user, that is charged to develop the land as per instructions on the lease	<p>Unproductive mature coconut trees: cash compensation based on wood production – wood volume multiplied by the market value.</p> <p>Wood trees – cash compensation based on value of wood volume multiplied by the market value of the wood.</p> <p>Banyan trees – at government valued price</p>	Values determined by the Ministry of Agriculture, which has set annual valuations for each type of tree, fruit, and vegetable species based on wood, fruit, or aesthetic value of certain tree and plant types.

V. CONSULTATION, PARTICIPATION, AND DISCLOSURE

A. Consultation and Participation

48. This RP has been prepared in close consultation with representatives of the affected parties – representatives of the leaseholder and the land owners.⁹ Two sections of MLNR have also been consulted, one being those responsible for holding land in trust on behalf of the customary land owners prior to their being identified, and the separate Valuer General's Department. The project team also visited the affected site. The following consultations were conducted:

- Meeting with representatives of the affected firm (10 March 2011). Issues discussed included potential sites on the leasehold land that were being considered for the subproject; the leaseholder's recognition and endorsement gained for the proposed acquisition; and the leaseholder's preferred site for land to be acquired for the subproject (Annex 3).
- Meeting with MLNR, Land Survey Department¹⁰ (customary lands ownership representative). Discussions regarded the potential of an existing customary land claim on the site, of which there are none¹¹; and the process of how the land is managed in trust, when customary owners are yet to be identified, under the land law of Vanuatu, which recognizes that all Vanuatu lands are customary (Annex 4).
- The Land Valuers Department. This was consulted in July 2010, as part of the Project Preparatory Technical Assistance (PPTA) master plan preparation in order to discuss the processes by which the government acquires land according to the laws of Vanuatu. The Valuer General's Office also assisted in preparing the compensation entitlement valuations for this RP.

49. A review of this RP during the detailed design and an update of impacts and AP surveys will be carried out along with a new round of AP/APE information/consultation to ensure full stakeholder participation in project preparation. This task will be carried out by international and national specialists engaged for updating the RP in coordination with the VPMU and MLNR Valuer General's Office, which are in charge of the land acquisition and compensation process under the laws of Vanuatu.

50. During project implementation, AP/APE consultation and awareness will be ensured through regular meetings organized by the resettlement specialists (Annex 1). These will be used to ensure that those affected are aware of the construction plans, detailed design, and updated RP implementation. They will also identify with the APs/APEs any RP implementation problems and undertake timely remedial actions. Given the small magnitude of land acquisition and those affected, only internal monitoring has been recommended.

B. Disclosure

⁹ Customary land owners yet to be identified. Under the law, land and its profits are held in trust by a government-appointed trustee, which may be a section of MLNR or a private trustee, until such time as the customary owners are identified and the land, with accumulated profits, will be handed over to them.

¹⁰ The Land Survey Department is responsible for identifying customary land owners and providing them with the legal titles to their land. They also represent the interests of those customary owners yet to be identified.

¹¹ This was confirmed by documents obtained from MLNR.

51. Disclosure of the RP will be carried out. It will be disclosed to affected parties in English, with the notices including summary of land acquisition translated to the two other official languages – Bislama and French, as required by Vanuatu law. A copy of the RP will be made available at the MFEM, MIPU/PWD and MLNR offices. If an affected party requests, the summary of the RP may also be translated into French and/or Bislama.

52. At the time of updating this RP, VPMU and MIPU/PWD, with MLNR, will be responsible for disclosure requirements, as necessary under the law of Vanuatu, and as below:

- A notice of intent to acquire land will be disclosed on the site for 30 days prior to RP completion and approval by MIPU/PWD and MLNR.
- The updated RP will be provided to the leaseholders, and to the customary land holders (if any are identified and have legal claim to the land) or the trustees.
- After the RP is approved by MFEM as endorsed by MIPU/PWD, MLNR, and ADB, the land acquisition notice will be published in the newspaper and on radio, and a notice will be placed on the site in order to comply with Vanuatu disclosure laws in full.
- The RP will similarly be disclosed on the ADB website.
- At each stage, consideration will be given to disclosing the RP through awareness sessions in affected communities (if any) in order to ensure that illiterate community residents are kept informed.

VI. GRIEVANCE REDRESS

53. Grievance and complaints procedures are set up to provide

- support to APs/DPs on problems arising from land acquisition and associated impacts, and
- a means by which the various conflicting stakeholders may be consulted and a negotiated agreement reached.

54. The following levels of grievance redress are adopted. Apart from the case of a community objection (there are no communities directly affected by this land acquisition), the affected firm may enter a grievance process with Level II - Project Level and follow through levels III and IV as the situation necessitates:

- I. **Community level** (in the case of any community residents having a grievance). A community committee made up of AP/APE representatives, community representatives, and representatives of the customary owners will be set up and will meet in case a complaint is lodged.¹² A decision should be made within 7 days of the complaint being lodged. The committee will be chaired by the village chief. In the event that the village chief is a customary owner (if identified in the future), the chair of the committee may be the community's religious leader.
- II. **Project level.** If not satisfied with the decision, the complainant has the option to appeal to the project level, represented by a VPMU in MFEM and on advice of MLNR. This will be the first level of entry in the case of an APF having a grievance. The grievance from the APF must be submitted in writing to the VPMU project director. A decision must be made within 14 days of receipt of the appeal.
- III. **Customary Land Tribunal.** If not satisfied with the project level decision, the complainant may choose to appeal to the Customary Land Tribunal and MLNR, as per the current land acquisition law. Under the law and current procedures in Vanuatu, the complaints procedure can last up to 30 days. The decision of the tribunal is generally final, unless the tribunal procedures are challenged.
- IV. **Legal Procedures.** Further appeal may be made through the Supreme Court of Vanuatu only in the case that the customary tribunal procedures were faulty in the specific case.

¹² A complaint may be lodged with the VPMU if the complaint is to be lodged prior to a committee being set up. In this case, the VPMU would be obligated to set up the community level committee to hear the grievance. The VPMU must set up the community level committee within 5 days of the complaint submission.

VII. INSTITUTIONAL FRAMEWORK

A. Institutional Arrangements

55. MFEM will be the executing agency responsible for overall guidance and project implementation. The VPMU¹³ at MFEM headed by a director will implement the project and will be responsible for overall planning, management, coordination, supervision, and progress monitoring of the subproject including the RP update and implementation. The VPMU will be supported by a team of international and national project management consultants. The VPMU will ensure compliance with assurances, including safeguards, and preparing and submitting the RP update, reports, and RP monitoring reports.

56. To ensure effective implementation of the land acquisition and resettlement aspects, at least one international and one national resettlement specialist will be recruited to assist the VPMU. The VPMU/MFEM will submit reports on a quarterly basis to ADB. Corrective actions are to be taken when necessary based on close monitoring and results of the grievance redress process.

57. MFEM will work also together with the MIPU/PWD, and MLNR at the time of actual handing over of compensation money.

B. Implementation Arrangements

58. The resettlement safeguards specialist will be recruited (Annex 1 provides a generic terms of reference) to

- (i) update the resettlement plan, based on the detailed design of the STP;
- (ii) coordinate with the MLNR Valuer General's Office regarding land ownership, titles, and compensation; and
- (iii) assist the VPMU in RP implementation and preparing an internal monitoring report to be submitted to ADB confirming compliance with the RP.

59. When the updated RP is finalized through identification of specific impacts and revised compensation costs, the APs/APE will sign a document signifying their satisfaction with the compensation. The resettlement specialist will prepare a pro-forma document to be used for the settlement of obligations in land acquisition and compensation.

60. Disbursement of cash will follow the approval of budgets for cash compensation. The VPMU, with the resettlement specialist, will inform the APs/APE of the schedule of funds release. They will also advise the APs/APE to produce acceptable legal documents pertaining to their identification for claiming the compensation. It is the main responsibility of the VPMU to ensure that all the compensations and entitlements have been paid to and settled with the APs prior to clearing the construction sites. MFEM/VPMU will arrange with MLNR and MIPU, as per the law of Vanuatu, for the compensation to be dispersed directly to the APs/APE on presentation of identification. The APs/APE will sign a document indicating receipt of their compensation and entitlements. The compensation for the purchase of land will be placed with the government trustee, that is responsible for managing the trust account for this land area on behalf of the yet to be identified (or yet to claim) customary land owners. For all land of Vanuatu, since 1980, the law gives all land title back to its customary owner, once attachment to

¹³ The government will establish the VPMU as a dedicated unit for managing large and nationally significant projects with budget allocation and core staff.

the land plot is shown.

C. Resettlement Database Records

61. All information concerning resettlement issues related to land acquisition, information on the acquired land and affected structures, inventory of losses by individual APs/APEs, compensation and entitlements, payments, and relocation will be recorded by the VPMU. These data will form the basis of information for implementation, monitoring, and reporting purposes and will facilitate efficient management and monitoring of compensation distribution. The company representative of the APE will be required to sign the inventory of losses form prepared and a payment ID form at the time of compensation distribution. The payment ID form will contain particulars of the census of losses and the agreed upon compensation amount to be provided to the particular AP/APE.

D. Post-Resettlement Plan Implementation

62. Monitoring of compliance of the project policies is the main agenda in this phase. Internal monitoring is the responsibility of the VPMU but will be conducted with the assistance of the resettlement specialist. Given the small magnitude of just one affected firm and the customary title being kept by a government trustee, no external monitoring is recommended. Internal monitoring reports will be submitted to ADB with the quarterly progress reports, and the final internal monitoring report will also be submitted by the executing agency. ADB will issue to the MFEM/VPMU a no-objection, which will then signify for the contractor to commence civil works in the affected area. The details of monitoring and evaluation are discussed in Section X. During the midterm review, ADB will also ensure that there are no other adverse involuntary resettlement effects.

VIII. RESETTLEMENT BUDGET

63. The total compensation budget has been calculated for the value of permanent land acquisition of agricultural land, improved pasture losses, and productive value of trees to be removed for construction purposes. In addition, interest due to loss of leased land use by the lessor and lessee has also been calculated in the budget.

64. The executing agency (MFEM) will be responsible for obtaining financing for all the costs of the compensation/rehabilitation program for the impacts caused by the project through its own budgetary sources. This includes compensating land, crops, trees, and relevant administration costs. The executing agency (MFEM), with the Vanuatu government, will set aside and provide the funds for RP implementation in an efficient and timely manner during the course of the project.

65. Table 4 summarizes the cost estimates and budget for land acquisition and the RP. The provisions for administrative costs and contingencies are included in this budget. The total estimated budget for implementation of the RP is Vatu 27,188,039.12 or 280,289.06 USD (approximately).

Table 4: Summary of Land Acquisition and Resettlement Plan Budget

Details	Unit	Total Amount	Unit Rate (in Vatu)	Total Amount (in Vatu)
<u>Agricultural Land (A)</u>				
Permanent acquisition	hectares	6.5	2,000,000.00	13,000,000.00
Plus interest (land loss to owners)	hectares	6.5	21,448.38	139,414.50
Subtotal (A)				13,139,414.50
<u>Pasture (B)</u>				
Land use – loss of improved pasture	hectares	6.5	350,517.69	2,278,365.00
Plus interest – loss of land use	hectares	6.5	312,557.00	2,031,622.00
Subtotal (B)				4,309,987.00
<u>Trees (C)</u>				
Coconut	mature unproductive	14	950.00	13,300.00
Banyan	adult	4	1,000.00	4,000.00
Fuel wood	adult	2	1,000.00	2,000.00
Subtotal (C)				19,300.00
<u>Loss of Livestock (D)</u>				
Income loss from cattle production	head of cattle	20	113,918.25	2,278,365.00
Sub-Total (D)				2,278,365.00
Total - Impacts compensation (A+B+C+D)				19,747,066.50
Administrative (E) (10%)				
Personnel (F)				1,974,706.65
International	person-month	1	1,440,000.00	1,440,000.00
National	person-month	1	480,000.00	480,000.00
Subtotal (F)				1,920,000.00
(Total(H = A+B+C+D+E+F))				23,641,773.15
Contingency (15%) (G)				3,546,265.97
Grand Total (H+G)				27,188,039.12
Grand Total (US\$)				280,289.06

IX. IMPLEMENTATION SCHEDULE

66. The orderly undertaking of resettlement activities, as laid out in this RP, is essential to prevent undue delays in the construction schedule. The RP has been prepared based on the time requirements set out by the laws of Vanuatu such as notices of intent to acquire land and required minimum disclosure periods. At the same time, the schedule has been prepared to reduce any time lag between tasks and ensure that APs/APEs are compensated as fast as possible. The schedule will be updated after the detailed design. Table 5 shows the implementation schedule for the RP.

Table 5: Implementation Schedule

Tasks	Months								
	1	2	3	4	5	6	7	8	9
A. Finalization of detailed design	—								
B. Final LARP preparation									
Initial notice of land acquisition (30 days)		—							
Detailed surveys			—						
Resettlement plan updating			—						
ADB review/approval				—					
Government approves RP				—					
Disclosure of approved RP (30 days)					—				
C. RP implementation									
Allocation of funds	—	—	—	—	—	—			
Internal monitoring							—	—	
Compensation delivery							—	—	
Preparation of compliance report							—	—	—
Notice of approval									—
Commence civil works									—

X. MONITORING, EVALUATION, AND REPORTING

67. Given that the magnitude of land acquisition and compensation under this subproject is small and has no significant impacts, external monitoring is not envisaged. However, internal monitoring will be necessary, and the executing agency will prepare a monitoring report documenting both the land acquisition and compensation provided to the affected company and the trust fund that will eventually be handed over to the customary land claimants, if and when identified.

68. Monitoring will be conducted by the MFEM/VPMU. Monitoring and evaluation reporting will cover the following:

- compliance with resettlement and land acquisition compensation policies;
- adequacy of the organizational mechanism for implementing the RP;
- the handling of complaints and grievances; and
- the APF (company) and trust fund will have been fairly compensated, as per the RP.

69. Monitoring will be carried out for a baseline, midterm, and end of land acquisition and compensation period. Monitoring will be reported to ADB mainly on a baseline, midterm, and end of land acquisition and compensation period basis, but summary status will be reported with the semiannual and monthly reporting of the executing agency to ADB. The MFEM/VPMU will be responsible for determining if any follow-up actions are necessary and ensuring that these actions are undertaken.

70. Prior to distribution of compensation to the APF and customary trust fund, the MFEM/VPMU (internal monitoring office) will announce the compensation schedule dates, including a detailed compensation schedule, to each affected party. No construction in the affected area will commence until RP implementation, including all compensation, has been fully completed.

ANNEX 1. GENERIC TERMS OF REFERENCE FOR LAND ACQUISITION AND RESETTLEMENT SPECIALIST

A. Introduction

1. These terms of reference have been prepared for resettlement specialists to assist the project in preparing/updating and implementing of the Resettlement Plan during implementation of the project.
2. Following ADB and Government of Vanuatu policies on recruitment of consultants, the resettlement specialists will be recruited with the implementation consultants bidding and will be made up of qualified international and national specialists.

B. Scope of Works

3. The main responsibility of the consultants will be to ensure that the project is implemented in accordance with the Resettlement Framework/Plan prepared during the PPTA and relevant safeguard policies, handbooks, and guidelines of ADB and the government. The consultants' scope of works includes, but is not limited to the following tasks:
 - Review previous loan and PPTA documentation with the view of improving methodology for preparing social safeguards of the project.
 - Coordinate with engineers and other team members on-site to identify land and household areas that will be impacted by the project activities, requiring temporary and permanent resettlement or land acquisition. Categorize the significance of impact on APs as per ADB's safeguard policy on involuntary resettlement
 - Undertake a socioeconomic Survey of 10% DPs, and 20% DPs with major impacts due to resettlement and/or land acquisition by the project.
 - Conduct a census/detail measurement survey of 100% of APs recording all losses of land and structures and livelihood as a result of the project.
 - Prepare an RP and updates, as per ADB's safeguard policies on involuntary resettlement, the project RF, and government laws.
 - Prepare a budget for resettlement and land acquisition, as per the entitlement matrix, and update the entitlement matrix to suit the subproject situation. Salvageable materials should not be included in costing.

C. Staffing Inputs and reporting

4. The resettlement team will consist of one international and one national specialist with demonstrated experience in resettlement following ADB safeguard policies. A registered valuer from MLNR will also be involved to ensure that all compensations are calculated and approved within the laws of Vanuatu. Furthermore, the RP and any updates, and its implementation compensation completion, will be approved by ADB at the completion of each of these stages.
5. The following reports will be required for submission:
 - (i) inception report of detailed design study team,
 - (ii) RP and any necessary updates with budget,
 - (iii) full details of persons consulted,
 - (iv) awareness materials, and
 - (v) internal evaluation reports and completion report.

ANNEX 2. INVENTORY OF LOSSES FORMAT RECOMMENDATION

No. Persons (HH) / Affected Firm	Land				Trees, Pasture and Crops				Livestock					Assistances		US \$	Comments
	Category*	Area (sqm)	Unit Rate	Sub- total	Categories (indicate unit)	Quantity	Unit Rate	Sub- total	Items	Unit	Quantity	Unit Rate	Sub- total	Type of Assistance	Amount in Vatu		

HH = household

(Source: Asian Development Bank, 2004)

ANNEX 3. CONSULTATION WITH LESSEE REPRESENTATIVE

Port Vila Urban Development Project.

NOTE OF MEETING BETWEEN “GILLARD AND KADDOR” REAL ESTATE AGENTS, AND PPTA TEAM

Date: 10 March 2011

Present: Loic Bernier, Gillard and Kaddor
Harold Qualao, Qualao Consulting Ltd.
Elias Kassis, Egis International
Peter Dawes, Egis International

Subject: Land for Sludge Treatment Plant Site.

Points discussed:

The purpose of the meeting was to confirm an earlier informal conversation between Mr. Qualao and M. Bernier,

The following points were confirmed.

1. Gaillard and Kaddour were the appointed agents of the owner of the land proposed for the sewage treatment plant site, Messrs. XXXXX based in Noumea, New Caledonia.
2. M. Bernier had contacted Messrs. XXXXX ,and who had confirmed that in principle they were prepared to dispose of some 6.5 hectares of their leased land holding at Mele, Port Vila, to the Government of Vanuatu, for the purpose of constructing a sludge treatment plant.
3. They preferred the selected site to be on the periphery of their land holding.
4. M. Bernier anticipated that the value of such a site would be in the region of Vatu 20,000,000 to 60,000,000 (US \$210,000 up to \$630,000 approximately), but the figure would depend upon the land zoning (eg., agricultural/industrial/residential/subdivision) and land use.

ANNEX 4. CONSULTATION WITH LAND OWNER REPRESENTATIVE

NOTE OF MEETING BETWEEN MINISTRY OF LANDS AND NATURAL RESOURCES (MLNR), LAND SURVEY SECTION (LAND OWNER REPRESENTATIVE) AND PPTA TEAM

Date: 14 March 2011

Present: Mr Martin Sokomanu , Surveyor General, Land Survey Section, MLNR
Roger McIntyre, Egis International

Subject: Land for Sludge Treatment Plant Site.

Points discussed

The purpose of the meeting was to confirm if the proposed project land area had any customary land owners identified and, facilities available for compensating unidentified customary land owners.

The following points were confirmed.

1. Mr Sokomanu explained briefly about how all land in Vanuatu is, by law and according to the Constitution, customary (kastom) land, since Independence in 1980.
2. MLNR is still working to identify and register customary owners with their own traditional lands. Some customary land owners have been identified and some may be identified in the future.
3. In the case of the land where the sludge treatment plant subproject is proposed to be located, the customary owners have not yet been identified.
4. In this case, it was explained, that if a plot of land is bought by the government, or when a plot of land is leased, all profits are held in trust by a government-appointed trustee. This trust account is then transferred to the customary owners when, and if, identified.
5. Land proposed to be acquired for the proposed sludge treatment plant would need to be valued by a government-registered valuer.
6. Any compensation payable to the customary owners, in this case, would be held by the government-appointed trustee for the said land area.