LAND ACQUISITION AND RESETTLEMENT

1. Lae Port is the largest, busiest, and most important port in Papua New Guinea (PNG). It is a gateway linking a large hinterland—covering approximately half of the country and where about half of the population lives—to the world market. For a country that is highly dependent on trade, maintaining and strengthening critical links in the logistics chain especially its port sector, cannot be overemphasized.

2. Since 1995, Lae Port has witnessed an average annual increase in cargo of 131,000 tons, with containerized cargo growing at more than 5% per year and general cargo at 2.5%. In 2005, the volume of cargo through Lae Port reached 2.4 million revenue tons, stretching Lae Port to the limit of its capacity.1 Given the country’s strong economic prospects, expanding Lae Port’s cargo-handling capacity was clearly imperative and received the largest project support from the Asian Development Bank (ADB).

3. Expanding the port necessitated the acquisition of land and relocation of families. Because of the magnitude of the project and the many issues that had to be resolved in connection with it, the country assistance program evaluation mission asked the following questions about the resettlement component: (i) Was resettlement undertaken in conformity with national laws and ADB’s safeguards policy? (ii) Were all reasonable alternatives considered? (iii) Was the resettlement component undertaken as per the optimal choice among the alternatives? (iv) Are there lessons for future ADB projects in PNG?

A. Land Laws and Customs in Papua New Guinea

4. Ninety-seven percent of land in PNG is customarily-owned, meaning that the land is owned in common by a distinct tribe, clan, or community, while individuals only have user rights to land. Only 3% is alienated land, i.e., owned by the state or a private individual or group. Much of customary land remains outside the country’s Torrens title system. Customary land registration has not progressed given the absence of a customary land registration law and the weak capacity of the government. There also is resistance to register under the Torrens system, as land ceases to be governed by custom once a Torrens title is issued.

5. **Tribal affinity closely linked to land.** The ancestry and identity of a tribe are inseparably linked to the land. The permanent loss of the entire customary land is seen as akin to the death of the tribe. Hence, customary landowners resist the purchase or outright transfer of ownership of even a portion of their land. They may consent to sell a portion, but only at an exorbitant price.

6. **Only the state can acquire customaty land.** Customary land can only be alienated to the state, not private individuals or groups, through voluntary or compulsory acquisition. Voluntary acquisition means through negotiation and agreement with the landholding tribe or customary group. Voluntary acquisition can be done either through purchase or lease. Compulsory acquisition is exercised through the use of the state’s power of eminent domain and can only be effected through purchase.

7. **Conditions for voluntary purchase of land.** The PNG Land Act sets conditions precedent to the voluntary purchase of land. The Minister of Land must first ascertain that the land is not currently used or will not be needed in the future by the customary owners. If the inquiry shows need in the future,

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the law prescribes that the Minister of Land shall execute a lease agreement instead. The law also prescribes government leases of customary land for agricultural or business purposes only. The alternative to voluntary purchase—compulsory acquisition—is a tedious, painstaking, and expensive process.

8. Leasing is the preferred option for land acquisition so as to retain customary ownership. The reasons are cultural, economic, and legal. Customary landowners prefer leasing because the land, upon the expiration of the lease, reverts to its original customary status. Leasing also provides a steady stream of benefits for the duration of the agreement. In the past, land was lost in exchange for an axe or tobacco; such land today is prime property (e.g., Jackson International Airport), and this has made the sale of customary land extremely unpopular.

B. Challenges for Development Projects in Papua New Guinea

9. **Minimal displacement in the face of projects.** Land acquisition for development projects can result in physical and/or economic displacement of people. In PNG, large-scale physical displacement of people from their customary lands due to development projects is not common. Even in large open pit mining projects, the practice is simply to relocate housing and gardens from the affected part to other parts of the customary land. The same applies to highway projects, where customary landowners simply relocate outside the highway boundary.

10. **Resettlement is mainly pursued for agricultural and disaster-preparedness purposes.** The systematic resettlement of displaced tribes to the customary land of another tribe is also uncommon in PNG. The land or parts of the hosting tribe’s customary land would have to be voluntarily or compulsorily acquired by the government first. Other than those for natural resource projects, the noteworthy resettlement projects in PNG have been undertaken in preparation for or in the aftermath of a natural disaster and for the purpose of populating vacant land for agricultural projects, such as contracts for palm oil cultivation.

11. **Informal settlers not entitled to customary land rights or compensation.** Resettlement of informal settlers is unheard of in PNG. The predominant practice of government is to serve notice on the informal settlers to leave the land and then bulldoze the structures, as it did recently for the construction of a by-pass road to Jackson International Airport. Informal settlers usually occupy vacant or state land and are considered “builders in bad faith.” As such, they are not entitled to compensation, even for improvements, under PNG law.

12. For the above-mentioned reasons, land acquisition and resettlement are major challenges in developing infrastructure in PNG. Despite the abundance of land, it is difficult to access for direct use by large infrastructure projects or for the resettlement of those displaced for development.

C. Lae Port Project

13. **Resettlement hampered by disagreement among tribes and optimal use of property.** The Lae Port project experienced delays in detailed engineering design because of the difficulty to find suitable land to relocate 544 informal-settler families. The proposed resettlement site was north of the project area in customary land owned by the Bup clans of the Ahi Tribe. Negotiations to acquire land fell through because of disagreements among the three clans. A second reason was that the Bup land was zoned for port-related facilities. Residential development on the land was inconsistent with the best use of the property.

14. **Compensation and in-kind assistance extended to informal settlers.** Instead of a resettlement site, the government paid the informal settlers to leave the project area. There were extensive negotiations over the amount as government and ADB’s appraisal estimates were far apart from each
other. In the end, ADB’s valuation—which was more than double the government’s initial estimate—was used. All the 544 households received the amount of K31,116 and were given the choice of staying in Lae or returning to their home provinces. Sixty percent of all the households chose to stay while the remainder opted to be repatriated. In addition to the cash, the executing agency, the Independent Public Business Corporation (IPBC), provided assistance for transportation, shipping, and hired laborers to assist in dismantling the houses.

15. Payments were made to bank accounts opened by IPBC in the name of the affected households. They were released in two tranches: the first in the last week of December 2009 and the second after the affected households had vacated the project area. The last of the payments was deposited in March 2010. It took 11 months from approval and disclosure of the supplementary resettlement plan in April 2009. All told, the government spent K20 million, excluding the administrative and operational costs of the project management unit, which came from the IPBC’s budget.

16. **Infrastructure and livelihood support extended to affected households.** ADB provided a $1.2 million JFPR grant for the displaced households who had relocated in Lae as well as for the indirectly affected Labu tribe living and fishing along the coast where the new Lae Port is located. The grant had two components—infrastructure and livelihoods. The infrastructure component consisted of school rehabilitation and the construction of health clinics and water systems in the communities surrounding the Lae Port. The livelihood restoration consisted of microfinance; skills training prior to and after displacement; and livelihood projects such as aquaculture projects, cocoa processing, poultry-raising, and fish cages. The grant project was only implemented in Lae. No similar projects were implemented in the home provinces of the 40% of affected households who chose the option of repatriation.

17. **Compensation seen as setting an unusual precedent.** The use of cash, however, was not without consequences. The government had feared that the amount would set a precedent and that, in future projects, informal settlers would demand the same treatment. There is also ample evidence from the reports of IPBC and a survey conducted by the Independent Evaluation Department that payments were used for consumption and meeting obligations to the clan rather than for livelihood activities. The timing of the first payment (30% of the original amount) during the Christmas holidays also aggravated this risk.

18. **Compensation triggered household conflicts and unscrupulous schemes.** The large amount of cash triggered various conflicts and provided ample opportunity for con men or papafili to make money. Intra-household conflicts broke out between the heads of households and some of their children. Some of them brought court cases against their relatives in an effort to get their share. Former or absentee homeowners came back to demand their share. They too filed cases in court, and some of the affected households had to share the money with them. Con men deceived gullible people into believing that more compensation was forthcoming and got the latter to pay money to have their names included in a fraudulent beneficiary list.

19. **Repatriated families returned to Lae Port upon exhausting their compensation benefits.** By the PMU’s reckoning, 50%–60% of the heads of households who had chosen to be repatriated to other parts of Morobe Province and to other provinces had returned to Lae Port a year later—after presumably running out of cash and in the expectation that more compensation was forthcoming.

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2 ADB. 2007. *Proposed Grant Assistance to Papua New Guinea for the Lae Port Livelihood and Social Improvement Project.* Manila (Grant 9113).
D. Findings and Conclusions

20. The Lae Port was the first and thus far, only Category A project of ADB in PNG. The resettlement component was assessed along the following criteria, timeliness, cost, ; and effectiveness.

21. **Timeliness.** If reckoned from the approval and disclosure of the first resettlement plan in September 2007, implementation took about 30 months or 2.5 years. This is less than the average time of 3 years for a road project in PNG to complete land acquisition. The delay in the search for a resettlement site was largely because the consultant could not enter the area and start work unless it had been cleared. This, in turn, delayed the commencement of detailed engineering.

22. **Cost.** During this time, unfavorable global economic conditions were affecting PNG’s commodity exports, which led to the devaluation of the kina. This, in turn, raised the overall project cost. But even with the increase in project cost, the expected economic rate of return remained robust to absorb the increase. In this context, the increase in the resettlement budget from K6.5 million in 2007 to K20.0 million in 2009 can be viewed as a readjustment of the original estimates to accommodate the erosion in value of the kina. Framed against the current earnings of the Lae Port, the K20.0 million resettlement budget represented the equivalent of two months’ income for Lae Port. With the opening of the new Lae Port before the end of 2014, this income is expected to increase further, reducing the relative cost of the resettlement for the government. Faced with the alternative—further delays—the K20 million was a relatively small price to pay.

23. **Effectiveness.** The mitigating measures taken were examined to see if these resulted in (at the very least) the restoration of standards of living at pre-displacement levels or the achievement of minimum national standards, whichever is higher. The achievement of this objective is dependent on the means and country conditions.

24. Considered along the regular scheme of mitigating measures, cash is an acceptable and legitimate means of compensation, but it is never the instrument of first choice. Cash has two characteristics going against it: (i) it is fungible, meaning it can easily be diverted to uses other than the intention for its release; and (ii) its purchasing power is susceptible to erosion.

25. Cash is generally used when the loss of land is marginal or minor—approximately 20% of the land—and the residual continues to be viable. Where loss of land is severe, the optimal means of compensation is land for land replacement. In certain cases of severe land loss, cash is used when there are active land markets in the area and displaced people can reasonably access these markets. Affected households who chose to remain in Lae were able to secure alternate housing by leasing.

26. **Infrastructure improved but livelihoods were not restored or improved.** In the aftermath of the relocation, the infrastructure component of the JFPR grant registered sustainable gains. The livelihood component, however, had mixed results. Aquaculture, such as fish ponds and mud crab-raising, did not prosper because of water pollution from upstream mining and lack of feeding materials for the crabs. The cocoa processing has yet to exhibit results. Poultry-raising and the fish cages were successful because they were easier to execute. Post-relocation livelihood training was completed, but the follow-up microfinance subproject never took off because of the failure to find the right partner from the outset.

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4 The 20% has to be viewed in perspective. Twenty percent of a 1 hectare property is 2,000 square meters. There is still 8,000 meters remaining to the owner. All other things being equal, the impact is not significant if one takes 20% of a 100-square meter property.
27. In summary, while access to better educational, health, and water facilities improved (through the JFPR grant), livelihoods and incomes have not been restored. The strongest evidence for this is that 50%–60% of household heads returned to the vicinity of Lae Port (para. 19). This could mean that the cash had been used up or their businesses had not provided enough income to keep the household heads in their hometowns.

28. The right decision. Despite the unprecedented nature and eventual dissipation of compensation, ADB’s decision was the right thing to do. Given the predominant practice in PNG of simply bulldozing the housing of informal settlers without any compensation or assistance, the cash payment is indeed unprecedented. In spite of the unfortunate consequences and events that the cash payments triggered, on balance, it was still the most humane thing to do under the circumstances. In the process, ADB also avoided substantial reputational risks.

E. Recommendations

29. This evaluation notes several improvements that can be made in the course of resettlement.

30. Improve the social preparation phase, especially the social analyses and social impact assessment. Lae Port is a concentric project, and the impacts of these kinds of projects on one or several parcels of land are typically major, in contrast to linear projects such as highways. Even without fixing the geophysical boundaries of the Lae Port project, one could have readily estimated the magnitude of physical displacement as well as the need for a resettlement site. Hence, the search for such a site could have commenced earlier.

31. Carry out advanced social preparation. Early and good social analysis with good local input could have flagged the problems among the owners of the proposed site, including awareness of its feasibility (or the lack thereof). This should have triggered the search for alternative sites or means of compensation. Consultations with land and physical planning officials could have provided important input into the appropriateness of a dense residential development in proximity to the port. In-depth discussions with the PNG Ports Corporation officials could have indicated proposed plans (or the seeds of future plans) for the extension of port facilities in the direction of the proposed resettlement site. Environmental assessment of the proposed resettlement site could have revealed other issues with the location.

33. Provide options. These social analyses could have expanded the resettlement plan to consider alternative scenarios rather than get locked into the Bup-owned resettlement site. With greater choice, some of the issues could have been resolved more quickly. For instance, ADB, IPBC, and the Morobe Provincial Administration could have reached an understanding much earlier on the method of valuing compensation, resulting in joint rather than separate appraisals of affected improvements and livelihoods. Better social preparation would have reduced the delays and could have improved the implementation of the grant project, especially the timing of training interventions and the microfinance subproject.

34. Amend PNG’s land laws. In Lae Port, ADB confronted an emerging problem in PNG—migration into rapidly-growing urban areas and the dearth of land for housing, especially for poor migrants. This problem is not unique to PNG. Many developing countries face the same difficulties in finding a suitable resettlement site near the original location that will minimize disruption to livelihoods and maintain access to services at a similar cost. What is unique in PNG is the relatively undeveloped land market, which restricts possibilities for resettlement.

35. The desirable parcels of prime land are alienated, owned either by the state or by private groups or individuals. These are usually in the urban areas or planted with commercial crops and trees making them expensive. Also, the development of a resettlement site may not be consistent with the
land use plan of the area. Government may lease state land to informal settlers, but even if it were to do so, state lands would not be sufficient. It also has to deal with the political backlash of favoring informal settlers over its own employees.

36. Inevitably, government will have to turn to customary land. Customary land is not in the market, and PNG law prevents its alienation, except to the state. For the same reasons cited in the previous section, government is not likely to exercise its power of compulsory acquisition over customary land to house informal settlers. This leaves the government with no choice but to lease customary land, as already discussed.

37. Expand the list of purposes or projects for which government can lease customary land. Section 11 of the Land Act prescribes the purposes for which the Minister of Land can lease customary land. These include for special agriculture and business leases, but not for resettlement or housing purposes. Theoretically, government can avail of this option by framing resettlement as a business lease to a private developer, who will then develop the site and undertake estate management. A major hurdle is the willingness of a private developer, given that the customers are informal settlers belonging to the lowest income brackets, with minimal capacity to pay for rent or amortization. In other countries, policies have sought to address this incentive problem by requiring developers to bundle social housing with their profit-generating high and middle market real estate developments. These types of markets are present and developing in Port Moresby, but it may take some time before they emerge in other cities such as Lae.

38. With no private sector takers, government will need to make the first moves to develop resettlement sites within the overall framework of a social housing strategy and program. There is no public or social housing program yet in PNG, except for civil servants such as the one being planned by the Morobe Provincial Government for its employees. The government has yet to craft a housing strategy. Applying this to customary land may require an amendment of the Land Act, and the establishment and capacity building of a government entity for this purpose—two things not easy to do in PNG.

39. Provide incentives for customary landowners to share their land. It is inevitable that government will have to lease land, but the negotiations can be made smoother by providing additional incentives to customary landowners. Towards this end, the government has recently approved a policy of giving equity to customary landowners in projects or parts of projects that generate a steady stream of revenues. The new policy was mentioned in connection with the government’s plans in the power sector to improve its generating capacity, achieve universal electrification, and gradually privatize PNG Power.

40. The current practice in the energy sector is to lease the land for 25 years, pay compensation for improvements, and provide them with development cash assistance for a specified number of years. With the equity scheme, the government hopes to put an end to protracted negotiations over land use agreements. For customary landowners, the scheme makes them part owners rather than landlords, and gives them a share of the project’s revenues. It will replace the development cash assistance, which will then be phased out.

41. The current policy is limited to customary owners of land where government facilities will be located. It does not include customary owners who would host persons physically displaced by projects. Hence, even if the policy had been in effect in 2009, it would not have helped in negotiations with the Bup clans. Nonetheless, if successful, it can be extended to customary landowners who can and will host resettlement sites. The equity to be given to landowners would not be a substitute for compensation but a benefit share. Compensation will have to be paid prior to land taking and displacement.
42. The scheme may work best in public–private partnership projects where a concessionaire or developer designs, builds, and operates the facility. It is not applicable in projects with no steady stream of revenues, such as open-access highways, but can be implemented for toll roads.