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REG: Mainstreaming Land Acquisition and Resettlement Safeguards in the Central and West Asia Region

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Abbreviations and Acronyms

ADB     Asian Development Bank
APs     Affected Persons
AFG     Islamic Republic of Afghanistan
CA      Country Assessment
CSO     Civil Society Organization
DP      Displaced Person
EA      Executing Agency
EM      Entitlement Matrix
GRM     Grievance Redress Mechanism
IR      Involuntary Resettlement
LARF    Land Acquisition and Resettlement Framework
LARP    Land Acquisition and Resettlement Plan
LAR     Land Acquisition and Resettlement
MFF     Multi Tranche Financial Facility
MAIL    Ministry of Agriculture, Irrigation and Livestock
MEW     Ministry of Energy and Water
MOF     Ministry of Finance
MPW     Ministry of Public Works
MRM     Management Review Meeting
NGO     Non-government Organization
PIU     Project Implementation Unit
PPTA    Project Preparation Technical Assistance
PMO     Program Management Office
RETA    Regional Technical Assistance
SPS     Safeguard Policy Statement 2009
USAID   United States Agency for International Development
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CHAPTER 1

INTRODUCTION

1.1 Goal and Objectives

1. This Country Assessment (CA) for the Islamic Republic of Afghanistan (AFG) is prepared under the ADB Regional Technical Assistance (RETA) 7433: Mainstreaming Land Acquisition and Resettlement Safeguards in the Central and West Asia Region. The RETA objective is to foster more effective infrastructure development in the region through the improvement of land acquisition and resettlement (LAR) practices. This objective includes the following outcomes:

   (i) increased understanding amongst the governments and civil society organizations (CSO) about LAR, as defined in the 2009 ADB Safeguard Policy Statement (ADB Policy) and about the improvements needed for effective LAR implementation in each participating country;
   (ii) improved country ownership of appropriate LAR practices;
   (iii) closer alignment between ADB Policy and local practice as per the national laws on land acquisition and resettlement; and
   (iv) improved procedures/technical tools to prepare and execute resettlement plans.

2. The above outcomes are pursued in each country by implementing four RETA components:

   (i) preparation of a LAR Country Assessment (CA);
   (ii) establishment of a LAR Capacity Building Plan (CBP);
   (iii) implementation of the LAR CBP, focusing on regulatory changes or technical standards that do not require formal legal reform; and
   (iv) provision of on-the-job coaching for Executing Agencies (EA) on LAR preparation/implementation for ADB projects.

1.2 Methodology

3. This CA entailed an analysis of project documents, a review of national legislation and interviews with representatives of state agencies, other international organizations, NGOs, and LAR-affected communities. These efforts were then complemented with in-depth studies of actual LAR cases. These studies allowed the identification of LAR planning and implementation constraints emerging within a practical context.

4. The identification of LAR preparation/implementation issues in the country arises from elements in both the country system and in ADB Policy or procedures. The evidence gathered through the assessment instruments noted above is thus analyzed in comparative fashion by juxtaposing AFG and ADB LAR requirements/practice. The objectives are to locate critical differences requiring reconciliation and to propose reconciliation measures.

5. The comparison of formal ADB Policy requirements/policy application with pertinent laws/implementing regulations and related policy reconciliation issues is elaborated in Chapter 2. The comparison of ADB and AFG processes for LAR and the definition of alignments needed are provided in Chapter 3. Chapter 4 focuses on overarching institutional and technical improvements needed to close the gaps between the application of ADB Policy principles and national law. Finally Chapter 5 summarizes the issues to be addressed by the CBP.

1 Appendix 6 includes case studies of projects funded by ADB with LAR impacts. These case studies primarily bring out:
   (i) poor LAR planning; (ii) lack of understand of the ADB LAR policy requirements, (iii) poor socio-economic survey and impacts assessment, and (iv) poor LARP implementation.
The Government established a Working Group through official letter no. 24527/291 dated 7 February 2012. The country assessment was carried out for the most part between January 2013 and September 2013.

1.3 Overview of the Land Management in Afghanistan

7. Afghanistan is a landlocked, mountainous, geographically remote, sparsely populated, ethnically diverse, yet geo-politically important country. It has long been one of the poorest countries in the world, falling near the bottom in terms of average per-capita income and UNDP's human development index. Nevertheless, Afghanistan was at peace between the 1930s and the late 1970s, and underwent a modest degree of economic and social development. Modernization was concentrated in the cities and towns, however, and most rural areas retained their traditional mores, governance structures, and social practices. The Afghan state remained relatively weak and had limited reach in most of the country. More than two decades of conflict since 1978, combined with about three-year drought, resulted in widespread human suffering and massive displacement of population (both within Afghanistan and as refugees in neighboring countries).

8. Decades of conflict, population displacement within and outside of Afghanistan, changes in national political and economic ideologies, and variable climatic conditions (including drought) have resulted in a complex and unsettled land ownership and land management situation. Land rights are perceived to be highly insecure and disputes are widespread. This instability undermines prospects for the greater investment needed to increase agricultural productivity and enhance economic recovery. This instability also increases the vulnerability of millions of Afghan households to poverty, and the Taliban and others use land disputes to foment general social unrest and conflict.

9. The new Constitution enacted in 2004 established a legal framework for property rights that safeguards the right of individuals to own property. The 2007 Land Policy addressed bottlenecks in land rights administration and the overlapping authority of institutions, and was followed by the 2008 Law on Managing Land Affairs, which lays out principles of land classification and documentation, governs settlement of land-rights, and encourages commercial investment in state owned agricultural land with opportunities for long leases. The Ministry of Justice estimates that about 80-90% of Afghans continue to rely on customary law and local dispute-resolution mechanisms. More than 30 years of conflict have decimated the centuries-old customary land dispute resolution mechanisms. Those systems that are functioning are stressed by the need to manage the layers of competing interests: populations have moved to urban areas to avoid conflict, and populations displaced by earlier conflicts have made efforts to reclaim both rural and urban properties.

1.3.1 History of Land Distribution

10. Afghanistan's total land area is about 652,090 square kilometers. The population is estimated at 30 million people, with 22% living in urban areas. Of the 78% percent of the population that lives in rural, roughly 20% are classified as nomadic. An estimated 3.5 million rural Afghans are extremely poor, and another 10.5 million are vulnerable to extreme poverty. Afghanistan is a high, arid country, much of which is mountainous or desert. Agricultural land accounts for 58% of the total land area, but only 12% is useable farmland, with the balance pasture land, which supports the country's large nomadic and semi-nomadic population and its livestock. Forests make up 1.3% of the country's total land area. Deforestation is occurring at a rate of 3% per year. Roughly 0.3% of the total land area is designated as protected.

11. Afghanistan has more than 40 ethnic groups, the largest of which is the Pashtun (53%), generally residing in the eastern and southern regions. The Tajiks in northeast (17%) and Turkic groups in northern plains (20%) are the second- and third-largest groups. Land distribution is unequal, a situation that has plagued Afghanistan almost from the beginning of the modern Afghan state. In 1880, the reigning monarch, Abdur Rahman Khan, gave land grants to Pashtuns, who were loyal to the monarchy, as a means to secure the border against Russia and to subdue the local people (especially the Hazaras) through imposition of tribal and feudal serfdoms. The land grants overlaid but did not replace existing localized tribal
land relations. Over the next century, many regimes attempted reforms designed to address the inequality in landholdings to some degree. However, the combination of weak legislation, ill-considered resettlement schemes, strong ethnic and tribal ties, and enduring systems of customary tenure limited the reforms' intended impact.

12. Beginning in 1963, the government initiated an effort to survey and registers the country’s land. The project was expensive and time-consuming. By 1977 about 45% of land was surveyed (between 20% and 30% of arable land); no title deeds were issued. The process helped identify government land, and the state put 2.6 million hectares of pasture and barren land under state ownership. In 1978, responding to the continued inequality in landholdings, the communist government initiated new land reforms that reduced the ceiling for land holdings, allowed the state to seize excess land without paying compensation, provided for free distribution of land to landless and poor households, and banned local usury. The reforms were hatched in an urban setting and unpopular in the rural areas, especially among the conservative religious groups. The alien ideology promoted in the more permissive urban culture clashed with rural traditions, and real change for small farmers was slow to arrive. There was inadequate land to redistribute, farmers lost their ability to borrow money to pay for inputs, and the reforms did not address water rights. The government—supported by the Soviet Union—responded to the rural discontent with a campaign of ideological education. Operating under Russian advisers, the Afghan government scaled back reform legislation, crafting exemptions to ceilings and creating new cooperatives rather than acquiring and redistributing ceiling surplus land. The government returned some seized land to large landowners as small farmers fled the rural areas that were under siege by Soviet troops.

13. Following Soviet withdrawal, the Afghan government attempted to revive the rural economy by exchanging land reforms for policies supporting commercial agriculture. The government gave local leaders weapons to help secure the countryside from uprisings by fragmented groups Religious extremists, warlords, and militias seized land from farmers, invaded and developed state land for cultivation of poppies and other high-value crops, constructed unplanned housing developments, and caused extensive land degradation. In the 1990’s, the mujaheddin and later the Taliban captured Kabul and proclaimed the country an Islamic state. The Taliban enacted a series of 26 decrees governing the rural sector, including decrees intended to restore land holdings to what they had been in the pre-reform period.

14. When the Afghanistan Transitional Authority took control of the government in 2001–2002, it inherited a legislative framework that, while dominated by Taliban decrees, also included: remnants of decades of legislative efforts to control land rights; elements of customary tenure systems based on tribal and ethnic ties; and enduring historical patterns of land use. The new government also inherited a skewed pattern of land distribution and high levels of tenure insecurity. Currently, 5% of farms in Afghanistan are located on 40% of the arable land. Seventy-three percent of farms are less than five hectares. Average farm size is 1.6 hectares. Nationally, 21% of rural households are landless. The poorest households are those headed by women and the landless. Almost 5 million refugees have returned to Afghanistan from Pakistan and Iran since 2002; a majority of these are landless or have returned to find that their land had been taken in their absence. They are often forced to join the growing population that inhabits squatter settlements in urban areas. Of the 2 million more refugees waiting in Pakistan, 90% reportedly have no access to land or housing in Afghanistan.

1.3.2 Legal Framework

15. The Constitution of Afghanistan (2004). The Constitution provides that property shall be safe from violation, no one shall be forbidden from owning and acquiring property except by law, and private property can only be confiscated by legal order. Acquisition of private property shall be legally permitted only for the sake of public interests. Any individual suffering damage without due cause from the administration shall deserve compensation.

16. The Law on Managing Land Affairs (2008). The law lays out principles of land classification and documentation (land deeds), and the principles governing allocations of state land, land leasing, land expropriation, settlement of land rights, and restoration of lands. The law encourages commercial investment in state-owned agricultural land with opportunities for long leases. The objectives are: (i) Creation of a unitary and reliable land management order across the country (ii) Management of property
books and land registration based on the credible documents of relevant offices (iii) Collection of authentic figures and statistics of lands for the purpose of using them in the future economic and development plans of government (iv) Solving the problems resulting from performance of land related reforms of former regimes (v) Segregation of government, individual, virgin and arid and pasture (grazing) and endowed lands (vi) Distribution of government lands as well as virgin and arid lands (vii) Restoration of lands distributed illegally (viii) Provision of adequate opportunities for active and broad private sector participation in landholding sphere (ix) Prevention of government land confiscation (x) Providing the opportunity for the people to access land.

17. **The Land Expropriation Law (2001).** Land Expropriation Law, which is administered through the Council of Ministers, is a pre-Taliban law with some amendments in the recent years. This law is still in force and applicable. The law recognizes private property and provides that acquisition of private land for public purposes should be done with great care and by the competent authorities and compensation for all other assets e.g., structures, crops, trees etc., on the land should be paid based on market rate. But the law does not specifically provide for resettlement and rehabilitation i.e., provision of additional assistances to the eligible vulnerable affected families, restoration of business/income loss to be compensated and other assistance/rehabilitation measures.

18. Issues that are not covered by the Law on Managing Land Affairs are governed by the country’s Civil Code, which in large measure reflects the Hanafi School of Islamic law (Shari’a). Islamic law governs when the Civil Code is silent on an issue. Customary law dominates in Afghanistan, and the Civil Code recognizes the application of customary law with regard to land rights. The Constitution is silent on the authority of customary law but prohibits the adoption of laws that are inconsistent with the tenets of Islam. Customary law is in large measure consistent with Shari’a, and Shari’a permits the practice of customary law so long as it does not interfere with tenets of Islam. Customary law systems vary but share the following characteristics: (i) use of customary village councils (known in Dari as shura, or jirga in Pashtu) that use mediation and arbitration techniques of dispute resolution; (ii) the application of principles of apology and forgiveness; and (iii) the concept of restorative justice.

### 1.3.3 Land Tenure Types

19. **Afghanistan’s land is vested**: (1) individually in private individuals and entities; (2) communally in families, clans, and communities; and (3) in the government.

20. **Ownership.** Ownership is the most common tenure type in Afghanistan. Ownership may be based on formal or customary law, and ownership rights can extend to all land classifications. Ownership confers a right of exclusive possession of land, and owners are entitled to use and dispose of land freely. Under the Law on Managing Land Affairs (2008), all land not proved to be private is deemed to be state land.

21. **Leasehold.** The Law on Managing Land Affairs (2008) permits leasing between private parties, subject to requirements for written leases that describe the land and set forth the agreement of the parties regarding the length of the lease and payment terms. For purposes of attracting investment, Afghan Land Authority (ALA) created under the Ministry of Agriculture, Irrigation and Livestock (MAIL) can lease agricultural land to individuals and entities for purposes of agricultural activities for periods up to 50 years for fertile land and 90 years for virgin and arid (i.e., uncultivated) land. Virgin and arid land can be leased for non-agricultural investment purposes with the agreement of other departments and consistent with considerations of land type and proportion. Other ministries and departments can lease land for non-investment purposes for periods up to five years. Leases of private land, which have primarily been governed by customary law, are generally quite brief, often extending only a season. Sharecropping is a common arrangement: the landowner contracts with the sharecropper to cultivate the land, with the parties agreeing to terms regarding the production shares and payment for inputs.

22. **Agreed Rights of Access.** The Law on Managing Land Affairs (2008) provides that pasture land is public property that neither the state nor any individual can possess (except as otherwise provided by Shari’a), and which must be kept unoccupied for the public use for activities such as grazing and threshing.
grounds. Customary law provides that individuals and communities can obtain exclusive or non-exclusive rights of access to government-owned pasture land through customary use and deeds.

23. **Occupancy Rights.** In urban areas, landholders in formal settlements generally have formal rights to the land. Occupants of informal settlements, including squatters, usually have some type of informal rights that are based on principles of customary law, the nature of the land, and the means by which the occupants took possession of the land.

24. **Mortgage.** Formal and customary law recognize two types of land mortgage: one type operates as a debt secured by the land. The second type, which is the most common, is a use mortgage under which the lender takes possession of the land until the borrower repays the debt.

### 1.3.4 Land Title Documents

25. Before the enforcement of the Law on Managing Land Affairs (2008), the only proof of ownership for the land was the official title deed. Title documents that are now recognized by the government according to proof of ownership covering the following:

(i) A deed issued by a court in respect of purchase, ownership, gift, inheritance, division, land exchange, letter of quittance, letter of correction as well as document of the final decision issued on the basis of former property deeds and meeting the following conditions:

   a. To have been registered with a judicial court.
   b. The superseding deed should not exist.
   c. The land under legal deed, if subject to taxation, should be recorded in the tax book.

(ii) Government decree and/or a deed regarding purchase of land from government’s properties meeting the following conditions:

   a. To have been issued by a competent organization.
   b. The superseding deed should not exist.
   c. To have been recorded in the tax book if the land is subject to tax payment.

(iii) The tax payment documents meeting the following conditions:

   a. The superseding deed should not exist.
   b. To have been registered in the principal books of properties (Amlak) and should have tax payment ticket of before 15th of Asad (1354) of Aug 1975.

(iv) The water rights document meeting the following conditions:

   a. Its superseding document should not exist.
   b. To have been registered in the principal books of properties (Amlak) and tax.

(v) A customary deed is legally valid and recognized as title document under the following conditions:

   a. The ex-owner should have a valid official deed.
   b. Where the customary deed has been prepared before the 15th of Asad, (1354), and the buyer having filled the declaration form before the year 1357 and submitted it to the relevant office after being confirmed by the farmers whose lands having joint borders at the same fragment. In locations where declaration forms were either not distributed or distributed before the year (1357) but the registration book has become extinct, and where no claim to the land existed and the land purchase and the possession thereof by the buyer has been confirmed by the landowners holding lands having joint border with the above fragment, as well as by the inhabitants of the locality where the land is situated.
(vi) A formal title deed meeting the following conditions:

- The legal title deed should exist.
- To have been issued after legal settlement.
- To have been registered in the principal books of properties (Amlak) and tax.
- No claim to the land should exist.
- Landownership document (the title deed) having the following conditions:
  - To have been prepared and issued by the relevant court after legal settlement of the land.
  - To have been registered in the principal books of properties (Amlak) and tax.

26. In case a landowner does not possess the title deed and the land possessed by him is not registered in the state properties book, such land up to 100 jeribs (1 jerib = 2000 square meter) shall be deemed to be his property on the basis of his possession, provided (a) no other individual has a claim on that land, (b) there are signs of agricultural construction observed on that land, and (c) the landowners holding lands having joint borders with his land have confirmed the land under his possession for 35 years. However, where the government finds the land documents superseding possession of the person, the land shall be deemed to be government land and up to 10 jeribs of first category land or equivalent shall be provided free of cost to the occupant and the balance shall be sold to the occupant at the current market price payable in installments over five years.

1.3.5 Types of Land Ownership

27. The system of property rights is broadly divided into two categories: formal (legal system), and informal (legalizable system). Under the formal system, the land law defines ownership of immovable property as private, public and Mowat lands. Written evidences of land ownership under the formal system of property rights are different kinds of deeds (wasayeq shari’a) or legal documents with copies in the Court Registries. Other evidences of land ownership are the (i) Cadastre records which are available for owners up to 1960 and can be found in the Cadastral Department under Afghan Geodesy and Cartography Department; (ii) the books of Integrated Land Size and Progressive Taxation prepared for 75% of owners during the 1970s, based on self reporting of land ownership; and (iii) tax receipts since 1880s but was formalized during the 1930s, possessed by taxpayers for direct or indirect property taxes.

28. **Private land.** Immovable property owned by an individual is considered as private property (Article 481 of the Civil Code). The constitution does not provide for immovable property owned by a group of individuals or body corporate but according to Islamic Law, private property can be owned individually or collectively. Private ownership may be acquired through (a) purchase, (b) allocation from the Municipality, and (c) transfer of ownership; the most common are sale and inheritance. In addition, private land can be acquired through the principle of “dead land” or “zameen-e-Bayer”.

29. **Public land.** Public land is classified as (a) owned by the government, (b) owned by public juridical persons, (c) allocated for public interests, and (d) recognized by law as public property. In addition to the above, cultivable land which has no owner is deemed to be public land. The law prohibits acquisition of such land without the permission of the government (article 1991 of the Civil Code). The government has recently strengthened its grip over land based on a ‘statute of limitation’ created pursuant to a recent Presidential Decree (Issue 83 dated 18/8/382), which governs that all individual claims to any land that has been held by the government for a period exceeding 37 years should be barred and the government should be considered the owner of the property (article 2). Moreover, the decree provides that all land in which the ownership of individuals is not established legally should be considered the property of the government (article 3).

30. **Mawat Land.** Mawat land or “zameen-e-mawat” or “zameen-e-bayer” means “dead land”. In practice, this term refers to land which is not suitable for cultivation. The concept of mawat requires three elements: 1) the ownership history of the land is not known i.e., neither private nor public, 2) it has not been cultivated and no construction works have been undertaken on such land, and 3) currently the land is not owned by any person. Even barren land (zameen-e-bayer) that does not have an owner is deemed government’s land and may only be acquired with the permission of the government. The person who
acquires and develops barren land with the permission of the government will own the land (Article 1992 Civil Code.). Islamic law generally recognizes mawat land as property neither owned by a private individual nor by the government and which could be acquired through renovation. Consistent with this, mawat land is recognized under the laws of Afghanistan, and whoever wants to acquire mawat land must first secure permission from the head of government (Article 1992 of the Civil Code and Law on Managing Land Affairs (O.G 795, 2008.) In theory then, private property may be acquired in accordance with this concept. If mawat land is in the process of being legally acquired or have been acquired by an individual but some formal legal requirements have not been complied with, the possessor/owner is entitled to compensation for his/her affected land.

31. Under the informal system, there are two types of owners/possessors. The first classification is the customary or traditional organic owners of land and their heirs. These are individuals who inherited land that their ascendants occupied for more than fifty years. In urban areas, these lands were originally under villages, later urbanized and formed part of a city. The original owners were either individuals who received royal land grants (Firman) in the form of decrees or legal letters, etc from the ruler of the time, or the original settlers of the land or their survivors who peacefully occupied the land for many generations. In the rural areas, these occupants have (i) tax receipts or are included in the tax records, (ii) unofficial land deeds and (iii) declared as legitimate users of lands by community development councils, jirgas or local elders. Households or persons who hold customary or traditional deeds for their properties are people who acquired de facto ownership of their land through purchase from customary or traditional owners of land.

32. The other type of owners/possessors under the informal system are de facto owners of property who have bought land or house from legal owners but did not fulfill the legal formalities required to formalize ownership. The transaction was legal but the legal formalities required to obtain a legal deed from the competent court were not completed. In many instances, buyers and sellers conclude customary agreements based on good faith and traditional norms and disregard the need to formalize the sales transaction in a competent court. Many Afghans perceive that a customary deed suffices to prove ownership of their property, especially when the original owner holds a formal document.

1.4 Land Registration and Land Markets

33. Land ownership in AFG can be acquired through purchase, government land allocation, and transfer of ownership, such as through inheritance. Most people acquire rural land through inheritance transfers, which often precede death. Nomadic or semi-nomadic people may acquire pasture land for grazing their livestock through application to the local authorities stating the need for land, and through the identification of vacant land (mawat). Individuals can apply for ownership rights to mawat land by showing that no one has ownership rights to the land and that the land is not cultivated or improved, and by agreeing to cultivate or improve the land. Most people acquire urban land through purchase, lease, or squatting. The Constitution prohibits foreign individuals from owning immovable property in Afghanistan.

34. Afghanistan’s land titling system is complicated, expensive, and time consuming with complex and lengthy procedures which caused every buyer/owner to avoid official titling and remain in customary way of being titled with the proof of Qabala Khat Orfi (customary title deed not registered with government). This customary title deed is well recognized as an evidence of ownership among the communities. Holders of land rights under customary law cannot obtain ownership simply through the passage of time and exclusive possession of land. The formal law also does not provide a means to formalize informal rights to land or regularize de facto ownership. In general, land rights tend to be highly insecure. In rural areas the key drivers of the insecurity are: (1) a history of inequitable relations within communities with regard to access and rights to land and water; (2) multiple unresolved interests over the same land, including rights of nomads; (3) failure to develop accepted principles governing holdings of non-agricultural land; and (4) continuing violence and disorder, uncontrolled poppy production, warlordism, land invasions, and ethnic disputes. In urban areas, the vast majority of landholdings are informal, often contrary to formal law, and insecure. The exodus of Afghans to other countries during decades of conflict has been a significant cause of tenure insecurity. Afghans returning to Afghanistan find their land and houses inhabited by other families and communities. In other cases, changes in government result in loss of rights. The successive
monarchies governing Afghanistan from 1880–1973 issued royal decrees supporting the expropriation of land by the Pashtuns. When northern Afghanistan thereafter, came under the control of local indigenous commanders, the northern groups forced many Pashtuns out of the northern provinces, even though they had lived in the region for generations. These displaced households were left to migrate south and assert claims to ancestral land they and their families left decades earlier.

35. A USAID funded project – Land Titling and Economic Restructuring in Afghanistan (LTERA) (2004–2009) – supported the government of Afghanistan in its effort to improve land tenure security through improvements to the legal framework, implementation of a pilot land survey, mapping, and registration system, and regularization of land rights in informal settlements. LTERA helped in simplification of the process with a one-stop-shop concept. The ultimate goal was to reduce Afghanistan’s formerly cumbersome land registration process from more than 30 steps to only 4 steps for land and 3 steps for buildings that is manageable and would induce individuals to keep the records updated and clear. LTERA entailed, among others, the major tasks as capacity building programs for the land administration agencies in inclusion of spatial information of lands in the deeds, development of database (Legal Document Information System) to accommodate the legal information of the deeds and to cater to the different phases of data input, maintenance, and queries concerning deeds. Land title transfer and documentation is done free of charges by the relevant courts as provided in the Law on Managing Land Affairs (article 51). Before the implementation of LTERA, it was estimated that about 80 percent of all property transactions were informal, and that 70 percent of all urban lands were unregistered. For agricultural land, estimates were even higher. Under the pre-LTERA registration system procedures could take up to 250 days, but use of the new system reduced that time period to an estimated 64 days, and further efficiencies are anticipated as records are computerized. The transfer tax has also been reduced from 7% to 5% (4% in some circumstances). The process of computerizing land records is underway, and statistics collected in those offices show a substantial increase in the number of transactions being registered. However, the system is not yet linked to a cadastral or mapping system, and previous estimates suggest up to 80-90% of transactions are conducted informally and without registration. Almost all land is registered in the name of the male head of household. In urban settings, female heads of household and widows are increasingly asserting their rights to land, but they are unlikely to try to register their rights formally because the process is time consuming and costly.

36. The rural land market ranges from nonexistent to vibrant, with the most active markets centred on the limited amount of irrigated land. The urban land market is active and prices are rising as a result of rapid urbanization. The process for selling land was streamlined by the government in 2009 to encourage formal registration of land transactions. While these changes improve and simplify the conveyancing process, an increase has been seen in the number of transactions, registered titles can be subject to attack by others claiming superior rights in land. Most Afghans transfer land by informal deeds. They rely on oral history and community knowledge for identification and use witnesses for authentication of identity and enforceability of rights. Land owners have been reluctant to formalize their rights with title documents because it puts them on the grid for tax payments.

37. In Afghanistan there are no open markets for sale or purchase of land. The sale or purchase of land through any open market is also constrained by customary law (known as shafa rules), which require landowners wishing to sell their land to offer it first to their heirs and second to the neighbors. Only after both groups pass on their right of first refusal can the owner offer the land on the open market. It is to be noted that today land markets remain unevenly developed across the country with the country’s remote areas having much less developed real estate markets than cities or more developed areas. In such remote localities the number of formal transactions is minimal and often insufficient to establish a statistically acceptable base to calculate market value. With the support of provisions in the 2008 Law on Managing Land Affairs allowing for long leases (50 and 90 years, depending on land type), the Afghanistan Land Authority (ALA) is actively seeking domestic and foreign investors to lease state land for the establishment of agribusinesses and other enterprises.
1.5 Eminent Domain and Land Valuation Issues

38. The Constitution of Afghanistan (2004) and the Law on Managing Land Affairs (2008) authorize the government to acquire private land for public purposes in accordance with the law. The Land Acquisition Law (Land Expropriation Law) allows the state to acquire private or government land for public interest upon paying fair market value. The establishment of a project as a public purpose activity endowed with juridical personality and triggering the right of Eminent Domain is contingent on the approval of the project as part of the general budget passed by the Parliament. Such an approval clearly establishes that the project fits the public interest characters defined by the Law, identifies the EA and the project location and local governments involved, provides a preliminary assessment of the properties to be acquired under the right of eminent domain based on cadastral data and estimate relative costs based on cadastral values.

1.5.1 Land Expropriation

39. Under the current legislation, the exercise of eminent domain through expropriation is possible. In recent years, the Afghanistan government has exercised its power to expropriate land in order to provide land for infrastructure development, such as roads, schools, weirs, and channels. These lands have been acquired for various projects funded by donors, including ADB. The Land Expropriation Law (2001) describes general land acquisition principles for public purpose projects which include: a) land can be expropriated for a project in public interest, b) such a decision shall be taken by the Council of Ministers, c) the expropriated land shall be compensated at fair value based on current market value, and b) the valuation of the land shall be determined by the Council of Ministers. When the state acquires land and property for a public purpose, the owner shall receive the compensation which shall include the value of land; value of residential houses, buildings and other structures existing on the land; and value of fruit, non-fruit and other assets existing on the land. The right of the owner or land user shall be terminated 3 months prior to start of construction works and after the payment of compensation to the owner or person using the land has been made. The termination of the right of the land owner or the person using the land would not affect their rights on collecting their last harvest from the land, except when there is emergency evacuation.

40. The Law on Managing Land Affairs provides that construction of roads, buildings and establishments, and all other non-agricultural activities are not allowed on agricultural lands. In exceptional cases, the users are required to obtain advance agreement of the Ministry of Agriculture, Irrigation and Livestock, which requires further approval by the President of the Islamic Republic of Afghanistan. Since there are urgent needs for the infrastructure development in AFG, e.g., construction of roads, power lines and others, this provision of the law is being ignored by all the government departments while executing projects affecting the agricultural lands.

41. The Land Expropriation Law does not provide for public consultation regarding the land acquisition and compensation options. The law only grants compensation to those with formal ownership rights, not those with customary ownership or use. The compensation is determined by a legally constituted committee consisting of: (1) the landlord or person who uses the land or their representatives; (2) the official representative of the agency that needs to acquire the land; (3) a representative of the local municipality; (4) a representative of the Ministry of Finance; and (5) a representative of the Ministry of Justice. The committee also serves as the appellate body that addresses disputes regarding its valuation of property.

1.5.2 LAR Process and Modalities

42. The LAR process for public projects in AFG generally varies depending on project implementing agency, nature of project, scale of resettlement impacts and source of funding. Nonetheless, there are key standard steps (see Chapter 3), which are common to all public projects and are unavoidable to implement the LAR process. The approach for LAR planning and implementation including compensating the impacts of public purpose projects has undergone considerable changes since 2006-07. In the last 5-6 years, LAR practice has become more nuanced and inclusive, reflecting growing civil society or local community concerns on public participation, human rights, and gender considerations. Today, LAR practice incorporates at least some considerations for public consultation, property rights, grievance management,
and community cohesion\(^2\). Yet, clear implementing procedures to address these concerns are still to be established. Poor regulation results in significant variability in how various EAs/local governments address citizen’s concerns and in inconsistent or non-transparent LAR execution standards. The main issues to be addressed are: inconsistency in valuation methods/procedures, unsystematic public consultation, loosely-defined complaint handling mechanisms, and poor information disclosure patterns. Each of these issues is briefly analyzed in the next paragraphs.

43. **Valuation of Land.** In accordance with the Land Expropriation Law, the land under expropriation is to be compensated at fair value based on current market rates. However, in Afghanistan there are no open markets for sale or purchase of land. Furthermore, all the sale and purchase transactions are not registered. Generally, very negligible land registration takes place officially in respect of sale/purchase of land in courts. Moreover, there are no established official rates for various types of lands. Thus, there is lack of an acceptable method for valuation of land which leads to disputes. If the land rates are not acceptable to the land owners, the finalization of LARPs becomes time consuming and complicated. The current methodology of deriving rates for affected lands is to hold Jirgas of participants from affected communities as well as the government officials of different departments to agree on affected land prices taking into account the current market and replacement rate. The land is valued per “Jerib” in districts which is equivalent to 2,000 sqm, while in cities, the land is valued per “Biswa” which is equivalent to 100 sqm (one Jerib is equivalent to 20 Biswa). For the valuation of the agricultural land, the lands are divided into seven categories: Category 1: orchard or vineyard; Category 2: double crops irrigated; Category 3: single crop irrigated land (upto 50 percent of which is cultivated or irrigated annually); Category 4: single crop irrigated land; Category 5: rain-fed land which is cultivated every other alternate year; Category 6: rain-fed land, which is cultivated every two alternate years; and Category 7: rain-fed land, which is cultivated for more than two alternate years. For the valuation of residential or commercial land, the location and type of land influence the actual price. The nearer the land to a built-up area, the higher the valuation. These lands are valued based on three categories: (a) urban; (b) semi-urban and (c) rural

44. **Transfer of government land to government departments and institutions for public purpose projects** will take place after determining the price of land on the basis of an agreement between the land management department and the end-user department after the agreement of Minister of Agriculture, Irrigation and Livestock and approval by the President of the Islamic Republic of Afghanistan (Article 53, Law on Managing Land Affairs). Even though the law stipulates this, currently the end-user department does not pay any amount and considers it as a government to government transfer and proceeds with the execution of the projects.

45. **Grievances.** There is no accepted protocol for registering/reviewing grievances. Although the Law provides that committee appointed for determining the land valuation shall also serve as the appellate body that addresses disputes regarding its valuation of property, the disputes are seldom resolved. The affected persons also do not approach the courts. As such, there is a lack of fully binding and appropriate mechanisms to accept and review complaints. As a result, most complainants fail to either lodge complaints or at a loss as to where to file the complaints. In this situation, the shuras or jirgas play a predominant role in local matters, including public consultation, valuation of land prices, other land issues and disputes. Land disputes and conflicts are described in detail in next paragraph.

46. **Public Information and AP consultation.** The Land Expropriation Law does not provide for public consultation regarding the land acquisition and compensation options. The public consultation process undertaken by EA’s is mostly superficial and often does not meaningfully incorporate inputs from stakeholders. Generally public consultations, during project preparation, continue to follow patterns where only authorities are invited to meaningful meetings. In cases where citizens are invited the presentation

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\(^2\) These practices have emerged based on experience gained by implementing a number of ADB projects in the past.
takes more the form of information about decisions already taken than the form of a proper consultation. In these cases there is very little interactive discussion or presentation of the various options or opportunities.

1.6 Land Disputes and Conflicts

48. Land disputes are common and often violent. The most pervasive causes of land disputes are: the inability of the formal and informal systems to address the land claims of returning refugees and IDPs; land seizures by elites and warlords; ethnic tension between Pashtun and non-Pashtun interests; the prevalence of fraudulent land documents; absence of agreements over rights to pasture land and forests; inheritance rights to private property; and population pressure in urban areas. The AFG Law on Managing Land Affairs has set out constitution of land settlement commissions with the following composition:

At centre (Kabul):

(i) Minister of Agriculture, Irrigation and Livestock (MAIL), as Chairman.
(ii) Head of General Land Management Department, as Vice-Chairman.
(iii) Representative of the Supreme Court, as Member.
(iv) President of Promotion and Propagation Department of MAIL, as Member.
(v) President of Water Management of the Ministry of Energy and Water, as Member.
(vi) President of General Department of Geodesy and Cartography, as Member.
(vii) President of Revenues of the Ministry of Finance, as Member.

At the provincial level:

(i) The Governor of the Province, as Chairman.
(ii) Head of Agriculture, Irrigation and Livestock Department, as Vice-Chairman.
(iii) Head of Appeal Court, as Member.
(iv) Mustofee (Revenue Department of MoF), as Member.
(v) Head of Energy & Water, as Member.
(vi) Head of Department of Geodesy and Cartography, as Member.
(vii) Head of Land Management Department, as Secretary-cum-Member.

49. The formal court system has courts at district, municipal, provincial, and national levels, but has limited capacity. These courts are perceived by many to be corrupt, and few consider approaching the formal courts for relief. Land disputes in respect of land acquired for public purposes are not many. Land transactions are done mostly in customary and informal ways, and the courts are left behind the scene and are not aware of the transactions. As such, the land settlement commissions and courts practically are unable to resolve disputes that arise. The aggrieved party resolves land disputes primarily through informal mechanisms and institutions. Aggrieved parties take disputes initially to family members, neighbors, and a local notable person or leader. They also take disputes to a village council (shura or jirga) or the head of a wider community area. People consider these persons and entities to be more accessible and less expensive, and to have more capacity, than formal institutions. In some areas, nomadic groups and sedentary farmers work out coexistence and shared-use agreements using local forums.

3 In the informal/customary land deals, which are very common and are being practiced everywhere in the country, the seller and the buyer agree on the price of the land with all the conditions applicable before some elders of the community and write down a customary deed and agreement paper (Qabala Khat Orfi) which is prepared by literate individuals among the community. The Qabala Khat Orfi gives reference about the land under the deal. An example of such document is: "Person A' bought 2 Jeribs of land from "Person B' at a price of 100,000 Afg. per Jerib on 12/2/2010. The land is located in Sorkhord village of Nangarhar province. The piece of land is adjoined to 'Person C's' private land on its northern side, to 'Person D's' private land on its southern side, to 'Person E's' private land on its eastern side and to main road on its western side." The dead will be witnessed by the elders and 3 or 4 witnesses will sign the Qabala Khat including the seller and the buyer. The above informal deals are very common mostly in rural areas while in urban areas it is less common.
1.7 Government Institutions Responsible for LAR

50. Various agencies or institutions within the government have different functions in the LAR process, as detailed below:

(i) National Parliament. The National Parliament in AFG is the only authorized body that is mandated to pass and amend relevant laws on LAR.

(ii) Council of Ministers. As per chapter 1, article 2 of the Land Expropriation Law, the expropriation of a plot or a portion of plot, for public interest, is decided by the Council of Ministers and is compensated at fair value based on the current market rates. The valuation of land under expropriation is determined by the Council of Ministers. The LARPs prepared by the EAs, along with the budget, are required to be submitted to the Council of Ministers for approval before LARP budget is allocated by the Ministry of Finance.

(iii) Ministry of Finance (MOF). The Ministry of Finance is responsible for allotment of LARP budget as per the approval of the Council of Ministers. Upon approval of LAR budget, the EAs submit the details of the AHs, the amounts of compensation and the bank account details, etc., to the Ministry of Finance for release of payments to the AHs. After due diligence, the Ministry of Finance transfers the compensation amounts to the bank accounts of the AHs.

(iv) Ministry of Agriculture, Irrigation and Livestock (MAIL) and Afghanistan Land Authority (ALA). The Department of Land (Amlak) with the Ministry of Agriculture, Irrigation and Livestock (MAIL) was primarily responsibility for land administration/registration in rural and urban areas. In September 2010, the Afghanistan Land Authority (ALA) or better known as ‘Arazi’ was created under MAIL with the primary responsibility to inventory all government-owned land, establish fair and transparent procedures for its leasing, and set up a one-stop window that makes leasing attractive to both domestic and foreign investors and reduces application time and bureaucratic steps. ALA (Arazi) will develop and implement a strategy to lease land for agricultural, agro-processing, and industrial purposes. ALA’s primary function will be to manage government-owned land in an effort to market that land for commercial activities and generate rents for the national budget. As of now, its status is still in flux, although a chief executive and staff have been hired and are functioning. ALA (Arazi) will coordinate its activities with the government of Afghanistan, line ministries and private sector organizations to ensure that land needed for productive investment is made available throughout the country.

(v) Municipalities. The municipalities have responsibility for land acquisition and land allocation. The Department of Cadastre Survey, General Department of Geodesy and Cartography is responsible for land surveys and settlement and maintains land records. The representative of the municipality is a member of the commission that is responsible for valuation of land and non-land asset losses.

(vi) Local government. The local government (that includes the Provincial Governor and District Governors) performs various state administrative functions at the provincial and district level. The officials of MAIL, MOF, MOJ, EA, etc., work under the administrative control of the Provincial Governor. The local government assists in LAR planning and implementation, public consultation, etc.

(vii) Village councils (shura, or jirga). These institutions are active in local matters, including public consultation, valuation of land prices, other land issues and disputes. The shuras or jirgas play a predominant role in AFG in LAR planning and implementation.

(viii) EAs. The EA initiates LAR (or establish the public purpose project) after the project has been approved as part of the government budget and it has been assigned as the EA. Once mandated by the government to lead the LAR process, the concerned EA initiates the LAR processes and prepares a LARP. After the LARP is approved and the budget is allotted, the EA proceeds to implement the endorsed measures to compensate and/or rehabilitate APs.
1.8 ADB experience in managing projects with LAR in the AFG

51. ADB resumed its operations in AFG in around 2002. In the initial years, a few road and energy sector projects were implemented as part of emergency infrastructure rehabilitation program. These projects did not entail land acquisition since the projects were implemented mostly on the existing alignment and the construction works did not extend beyond public lands or in the immediate proximity of residential houses, businesses or other private property. Moreover, most projects were implemented on unused state or municipal lands, requiring no land acquisition or resettlement of private owners. In the history of ADB projects in the AFG, there were no involuntary resettlement issues up to 2006-07. It was only in around 2006-07 that the projects in AFG involved land acquisition and involuntary resettlement and therefore, due consideration was given to prepare the projects in accordance with ADB’s requirements for LAR.

52. To start with, the LARPs for the (i) North-South Corridor Project (Loan 2257-AFG, Grant 0054-AFG and JFPR 9097-AFG) and (ii) Loan 2304/Grant 0230: Regional Power Transmission Interconnection Project were prepared taking into account the ADB policy requirements. Against the backdrop of the ADB policy requirements, the EA’s addressed LAR issues while preparing the LARPs for projects in transport, energy and other sectors as they arose. A protocol was established for all EA’s to follow LAR procedures, combined with sufficient downstream supervision by the ADB, leading to a situation where resettlement impacts were sufficiently recognized and losses were adequately addressed. Public consultation and grievance redressal mechanisms were the key features introduced for the first time in planning and implementing LAR in AFG. There were however, considerable delays in implementation of LARPs by the EAs. In early 2009, changes in the application of the ADB policies were initiated. Following the adoption of the current policy (the ADB Safeguards Policy Statement of 2009), more emphasis was placed on implementation level supervision and enforcement. These changes were manifested, among others, in the creation of the safeguard unit within the EAs, e.g., Project Management Office (PMO) at the Ministry of Public Works (MPW), which is the EA for all transport sector projects, and in introducing requirements for the EA to monitor safeguard issues during the project implementation phase and beyond. All the LARPs, which were prepared before 2009 but had not been implemented, were updated in accordance with ADB’s SPS before implementation.

53. Difficulties experienced in LAR Planning and Implementation. Since there was no familiarity of the EAs with either the national requirements or the ADB’s LAR policy requirements in AFG and there was an absence of standard LARP preparation process, difficulties were experienced in preparation and implementation of LARPs in the past, some of which are described as follows:

(i) Often the government delays in approval of LARPs and funding due to lack of awareness of the government officials of the LAR principles: loss of land and non-land assets, entitlements and valuation, and compensation as reflected in the LARP. Moreover, since the national laws do not deal with the compensation for all non-land losses (e.g., business/income loss) and resettlement assistance, the government officials often approve the budget only for the land compensation and not for other losses as well as for resettlement. While disagreeing with the payment of resettlement allowances, they insist that since it is not covered under the national laws, the government is under no obligation to pay for such compensation. In respect of the past projects, ADB’s extensive discussions with the government officials, especially the Ministry of Finance and the EAs, could help in their understanding of the ADB policy requirements for LAR to approve the appropriate budgets for LARPs.

(ii) Due to lengthy implementation period, the LARPs are not implemented and the EAs initiate construction works in the affected areas in violation of the ADB policy requirements as well as the national laws. Approval of LAPRs and the related budget take very longer time than usual and the affected persons are displaced without proper compensation before demolishing their properties and commencing works.

(iii) Due to the security situation in AFG, LAR planning and implementation is adversely affected. During socio-economic survey and data collection, access to many areas become restricted due to the perceived security threat. Since the international resettlement specialists are not
able to visit the project sites due to the perceived security risks, the task survey and data collection is handled by the inexperienced national counterparts. The national enumerators do not have full knowledge of ADB policy requirements in terms of identification of different types of impacts, APs and the land and non-land losses. Therefore, the accuracy of the data including census is not dependable. Absence of precise and accurate data collection and identification of APs and measurement of their losses affects smooth implementation of LARPs.

(iv) In the first-ever LARP implemented in Afghanistan for the energy sector, it was observed that the person responsible in the EA to implement the LARP which was already approved by ADB and government and the overall budget was released to EA’s account to pay the compensation amounts to the affected families according to the modalities set out in the LARP denied to pay the allowances to the vulnerable families. This was because the EA staff was not fully familiar with ADB’s policy requirements.

(v) The institutional arrangement for LAR planning and the implementation is weak in AFG. EAs do not have well-trained staff to handle LAR activities to supervise the preparation and implementation of LARPs. For Category A projects (more 200 affected families) having significant LAR impact, the EAs mostly engage NGOs under separate contractual arrangements for preparation and implementation of LARPs. For Category B projects (with less than 200 families affected), which are mostly in energy sector, the implementation of LARP and the delivery of compensation amounts to AFs is handled by EA’s staff that has no knowledge of ADB involuntary resettlement policy and no experience in LARP implementation. This results in delay in implementation and improper delivery of compensation (e.g., non-payment of compensation amounts to AFs as set and agreed in the LARPs). EAs must, therefore, establish resettlement units within the PIUs/PMOs with at least one staff fully trained in LAR activities to ensure proper supervision of LAR activities, including liaison with the office of the council of ministers through MoF, to expedite the required approvals, processing of the LARP budget and transfer to compensation amounts to the AFs.
CHAPTER 2

COMPARATIVE ANALYSIS OF ADB POLICY AND NATIONAL LEGISLATION PRINCIPLES

54. This chapter analyzes the ADB and the AFG principles for LAR. The Objective is to identify inconsistencies or gaps that may complicate LARP preparation/implementation and indicate the available solutions.

2.1 AFG Legal Framework and Entitlements for LAR

2.1.1 Relevant Provisions of AFG Laws and Regulations

A. The National Constitution

55. The Constitution of the Islamic Republic of Afghanistan (January 26, 2004)\(^4\) provides that:

(i) Property shall be safe from violation. No one shall be forbidden from owning property and acquiring it, unless limited by the provisions of law. No person’s property shall be confiscated without the order of the law and decision of an authoritative court. Acquisition of private property shall be legally permitted only for the sake of public interests, and in exchange for prior and just compensation. Search and disclosure of private property shall be carried out in accordance with provisions of the law (chapter 2, article 40).

(ii) Foreign individuals shall not have the right to own immovable property in Afghanistan. Lease of immovable property for the purpose of capital investment shall be permitted in accordance with the provisions of the law. The sale of estates to diplomatic missions of foreign countries as well as international organization’s to which Afghanistan is a member shall be allowed in accordance with the provisions of the law (chapter 2, article 41).

(iii) Any individual suffering damage without due cause from the administration shall deserve compensation, and shall appeal to a court for acquisition. Except in conditions stipulated by law, the state shall not, without the order of an authoritative court, claim its rights (chapter 2, article 51).

B. Law on Managing Land Affairs (31 July 2008, Serial No. 958)

56. The Law on Managing Land Affairs lays out principles of land classification and documentation (land deeds), and the principles governing allocations of state land, land leasing, land expropriation, settlement of land rights, and restoration of lands. The law encourages commercial investment in state-owned agricultural land with opportunities for long leases. The main objectives of the law are: (i) creation of a unitary and reliable order across the country; (ii) management of property books and land registration based on credible documents of relevant offices; (iii) solving the problems resulting from performance of land related reforms of former regimes; (iv) segregation of government, individual, virgin and arid and pasture (grazing) and endowed lands; (v) distribution of government land and restoration of land distributed illegally; (vi) provision of adequate opportunities for active and broad private sector participation in landholding; prevention of government land confiscation and proving the opportunity to people to access land (chapter 1, article 2). The following are the key provisions under the Law on Managing Land Affairs:

(i) Management of landownership-related affairs is the responsibility of Ministry of Agriculture, Irrigation and Livestock (MAIL) (chapter 2, article 4).

\(^4\) The present Constitution of the Islamic Republic of Afghanistan was agreed upon at the Constitutional Loya Jirga (December 13, 2003 - January 4, 2004). The Constitution was formally ratified by President Hamid Karzai at a ceremony in Kabul on January 26, 2004.
(ii) Principal book for registration of private lands is a book in which quantitative and qualitative particulars, as well as transfers and alterations of the fragment(s) belonging to individuals and legal entities are registered on the basis of valid deeds (chapter 1, article 3, item 20).

(iii) The Ministry of Agriculture & Irrigation and Livestock shall conduct the process of landholding settlement and management from technical and administrative points of view. The Supreme Court of the Islamic Republic of Afghanistan, Finance, Energy & Water and Agriculture & Irrigation and Livestock Ministries, General Administration of Geodesy and Cartography as well as relevant local departments shall be jointly responsible to implement the landholding settlement and management (chapter 3, article 13).

(iv) In case a landowner does not possess the title deed and the land possessed by him is not registered in the state properties book, such land up to 100 jeribs (1 jerib = 2000 square meter) shall be deemed to be his property on the basis of his possession, provided (a) no other individual has a claim on that land, (b) there are signs of agricultural construction observed on that land, and (c) the landowners holding lands having joint borders with his land have confirmed the land under his possession for 35 years. However, where the government finds the land documents superseding possession of the person, the land shall be deemed to be government land and up to 10 jeribs of first category land or equivalent shall be provided free of cost to the occupant and the balance shall be sold to the occupant at the current market price payable in installments over five years (chapter 2, article 8).

(v) To settle the landholding area, a settlement commission shall perform its functions which shall consist of: (a) representative of the land management organization of Ministry of Agriculture Irrigation and Livestock, as chief, (b) officer-in-charge of settlement affairs of the land management organization, as member, (c) officer-in-charge of administrative affairs of the land management organization, as Member, (d) representative of Ministry of Finance, as member, (e) Representative of Ministry of Energy and Water, as member, (f) representative of local promotion and propagation department of Ministry of Agriculture, Irrigation and Livestock, as member and (g) representative of the General Department of Geodesy and Cartography, as member (chapter 3, article 14).

(vi) The land settlement commission shall be responsible for: (a) Settlement of landholding areas, distribution of document and land; (b) Determining the limits, category, water rights and tax of the land; (c) Determining and segregation of individual, state, as well as grazing, endowed, virgin and arid lands, jungles and so forth; (d) Referring the disputes and lawsuits related to grazing, endowed, virgin and arid lands, jungles and so forth to the competent authorities; (e) Registration of land settlement conclusions in the relevant book; (f) Referring the conclusions of land settlement for registration in the principal books of properties (Amlak) and local tax as well as preparing legal document in the relevant court; (g) Restoration of previously illegally-distributed land to the owner, or to his legal inheritors; (h) Sending performance report to the relevant provincial land management department and to the central land management organization; (i) Other duties for the purpose of enforcement of provisions of the present law that are assigned by Ministry of Agriculture, Irrigation and Livestock (chapter 3, article 15).

(vii) In order to render better cooperation and to provide technical and administrative support for implementation of field activities as well as to overcome problems resulting from implementation of land settlement, two commissions shall be constituted: (1) Central Commission for Land Management consisting of Minister of agriculture, irrigation and livestock, as chairman; Head of general land management department, as vice-chairman; Representative of the Supreme Court, as member; President of promotion & and propagation department of ministry of agriculture, irrigation and livestock, as member; President of water management of the ministry of water & energy, as member; President of general department of geodesy and cartography, as member; and President of revenues of the ministry finance, as member; and (2) Provincial Commission for Land Management consisting of the Governor, as chairman; Head of agriculture, irrigation and livestock department, as vice-chairman; Head of appeal court, as member; Mustofee, as member; Head of energy & water, as member; Head of department of geodesy and cartography, as member; and Head of land management department, as secretary-cum-member (chapter 3, articles 19 and 20).

(viii) In order to ensure public interests, the State, if necessary and according to provisions of law, can appropriate the land of a person, which shall take place after the land settlement (chapter 3, article 21).
A land under project, which has been changed into constructions, establishments or into residential quarters prior to settlement, shall not be settled by the settlement commission, and shall be appropriated by the relevant departments upon observing valid documents possessed by the owner or his heirs (chapter 3, article 22).

Land-related disputes and claims, if cannot be settled by the settlement commission, shall be referred to the court for settlement (chapter 3, article 23).

Persons that are absent and their lands are left abandoned, the land management department shall lease these abandoned lands till their owners or legal heirs appear and the lease money shall be temporarily deposited to the bank and shall be returned to the absent person (chapter 3, article 32).

The state lands that are not required for any project or for establishment of a farm shall be distributed to eligible persons based on the recommendations of MAIL and upon approval by the President of the Islamic Republic of Afghanistan. The price of the land shall be determined in conformity with the local land price by the commission consisting of representatives from the Supreme Court, ministry of agriculture, irrigation and livestock, ministry of finance, ministry of energy & water, land management department and the geodesy and cartography (cadastre) department of the relevant province. The price shall be paid by the eligible person in ten yearly installments (chapter 5, article 39).

The owner (an eligible person and a settler after paying the entire installments of the land price and after obtaining the legal deed as well as heirs of the eligible person with their shares having being confirmed) has the right to transfer his property irrevocably or temporarily on the basis of a legal deed by the relevant court of the place through land management department (chapter 7, article 50).

Transfer of the State land to State departments and institutions shall take place after determining the price of land on the basis of an agreement between the land management department and the end-user department after the agreement of minister of agriculture, irrigation and livestock and approval by president of the Islamic Republic of Afghanistan (chapter 7, article 53).

Pastures (virgin and arid lands), on which state and individual possession has not been proved legally, are deemed public property and shall be kept unoccupied for the sake of public requirements of local villagers (for cattle grazing, graveyard, threshing ground and etc.) (chapter 9, article 82).

Land being endowed shall no longer remain under the ownership or possession of the owner and selling, giving in gift, transferring or inheriting the endowed land is not permitted (chapter 9, article 84).

Construction of roads, buildings and establishments, and non-agriculture activities are not allowed on agriculture lands. In exceptional cases the users are required to obtain in advance agreement of the ministry of agriculture, irrigation and water and approval by the president of the Islamic Republic of Afghanistan (chapter 11, article 90).

C. Land Expropriation Law (2001, Serial No.794)

The Land Expropriation Law recognizes private property and provides that acquisition of private land for public purposes should be done with great care and by the competent authorities and compensation for all other assets e.g., structures, crops, trees etc., on the land should be paid based on market rate. But the law does not specifically provide for resettlement and rehabilitation i.e., provision of additional assistances to the eligible vulnerable affected families, restoration of business/income loss to be compensated and other assistance/rehabilitation measures.

The Land Expropriation Law provides that:

(i) The expropriation of a plot or a portion of plot, for public interest, is decided by the Council of Ministers and shall be compensated at fair value based on the current market rates (chapter 1, article 2).
(ii) The expropriation of a plot or part of it should not prevent the owner from using the rest of the property or hamper its use. If this difficulty arises, the whole property shall be expropriated (chapter 1, article 4).

(iii) For determining the damages and losses due to expropriation of land, a commission consisting of the following members shall be formed by the municipality (1) the landlord or person who uses the land or their representatives; (2) the official representative of the agency that needs to acquire the land (end-user); (3) a representative of the local municipality; (4) a representative of the Ministry of Finance; and (5) a representative of the Ministry of Justice (chapter 1, article 5).

(iv) The right of the owner or land user shall be terminated 3 months prior to start of civil works on the project and after the proper reimbursement to the owner or person using the land has been made. The termination of the right of the land owner or the person using the land would not affect their rights on collecting their last harvest from the land, except when there is emergency evacuation (chapter 1, article 6).

(v) When expropriating land, the following indemnities for the damages shall be considered for compensation: (1) value of the land, (2) value of residential houses, buildings and rest of the structures existing on the land, and (iii) value of trees, orchards, and other assets on the land (chapter 2, article 8).

(vi) Valuation of land under expropriation shall be determined by the Council of Ministers. During the valuation, grade and geographical location of the land shall be considered (chapter 2, article 10).

(vii) Value of residential houses, buildings and rest of the structures on the land belonging to the owner/user shall be determined by the municipal authorities (chapter 2, article 11).

(viii) A person whose residential land is subject to expropriation shall receive a new plot of land of the same value. He has the option to get residential land or a house on government property in exchange, under proper procedures (chapter 2, article 13).

(ix) It can be arranged with the owner if he wishes to exchange his property, subject to acquisition, with government land. The difference on the value of land shall be calculated (chapter 2, article 14).

(x) Value of fruit, non-fruit trees and other assets, which exist on the land under expropriation, and belong to the owner, shall be determined by competent municipality and agriculture departments’ authorities. The owner has the authority to retain the fruit, non-fruit trees & other assets on the expropriated land (chapter 2, article 15).

(xi) If state lands are possessed and are underutilization by state departments, are required by the state, shall be expropriated by municipality or other departments. In this case only the construction materials of the structures shall belong to the previous possessors, value of land and construction shall not be paid (chapter 2, article 16).

(xii) If the owner/user of the land is unable to harvest the land before the expropriation of the land, the institution that needs the land (end-user) shall compensate for the crop and tree losses to the owner/user. Value of the indemnity of the affected crops shall be determined by a team of representatives from municipality, agriculture department and governor taking into account the rate of seeds, expenses on irrigation and other services provided by the owner/user. The total value of compensation for crops and trees shall not exceed the total actual income from the affected crops and trees (chapter 2, article 19).

(xiii) The owner/user shall be notified 3 months prior to expropriation of land and the price. Non-availability of the owner/user or their representatives in the council of pricing of the lands, despite prior notification, shall not hamper the activities of pricing (chapter 2, article 20).

(xiv) The expropriating department is obliged to obtain the official deed of the land from the owner during the expropriation process. The owner is obliged to render the official deed of the land to the expropriating department. If part of the land, contended in the official deed, is expropriated, the specific expropriated portion of the land shall be deducted from the overall land official deed, but the official deed shall remain with the owner. Any claim of the owner after obtaining compensation for the land and other assets, will be void (chapter 3, article 22).
2.2 ADB Safeguard Requirements

59. The current ADB policy on involuntary resettlement is elaborated in the ADB’s Safeguard Policy Statement of 2009 (SPS) and specifically in Appendix 2 “Safeguard Requirements 2: Involuntary Resettlement.” (see Appendix 3)

2.2.1 SPS Key Principles and its Structure

60. The overarching objectives of the SPS are “avoid involuntary resettlement wherever possible; minimize involuntary resettlement by exploring project and design alternatives; enhance, or at least restore, the livelihoods of all displaced persons in real terms relative to pre-project levels; and improve the standards of living of the displaced poor and other vulnerable groups.”

61. The scope of the SPS includes all projects entailing physical displacement (relocation, loss of residential land, or loss of shelter) and economic displacement (loss of land, assets, access to assets, income sources or means of livelihoods) as a result of (i) involuntary acquisition of land, or (ii) involuntary restrictions on land use or on access to legally designated parks and protected areas. It covers them whether such losses and involuntary restrictions are full or partial, permanent or temporary.

62. The implementation of SPS requirements is required for all projects as long as there is either physical or economic displacement or both. The requirements apply regardless of the numbers of affected parties involved and of whether losses are full or partial, permanent or temporary.

63. The SPS includes 12 key policy principles for IR. These can be summarized as follows:

(i) Screen the project early on to identify past, present, and future involuntary resettlement impacts and risks. Determine the scope of resettlement planning through a survey and/or census of displaced persons, including a gender analysis, specifically related to resettlement impacts and risks.

(ii) Carry out meaningful consultations with affected persons, host communities, and concerned nongovernment organizations. Inform all displaced persons of their entitlements and resettlement options. Ensure their participation in planning, implementation, and monitoring and evaluation of resettlement programs. Pay particular attention to the needs of vulnerable groups, especially those below the poverty line, the landless, the elderly, women and children, and Indigenous Peoples, and those without legal title to land, and ensure their participation in consultations. Establish a grievance redress mechanism to receive and facilitate resolution of the affected persons’ concerns. Support the social and cultural institutions of displaced persons and their host population. Where involuntary resettlement impacts and risks are highly complex and sensitive, compensation and resettlement decisions should be preceded by a social preparation phase.

(iii) Improve, or at least restore, the livelihoods of all displaced persons through (i) land-based resettlement strategies when affected livelihoods are land based where possible or cash compensation at replacement value for land when the loss of land does not undermine livelihoods, (ii) prompt replacement of assets with access to assets of equal or higher value, (iii) prompt compensation at full replacement cost for assets that cannot be restored, and (iv) additional revenues and services through benefit sharing schemes where possible.

(iv) Provide physically and economically displaced persons with needed assistance, including the following: (i) if there is relocation, secured tenure to relocation land, better housing at

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5 A benchmark of 200 severely affected individuals (losing more than 10% of their income or to be relocated) is however considered to define the impacts significance of a project. When the severely affected individuals are less than 200 the project is classified as “B” for impacts severity, when they are more than 200 the project will be classified as “A” for impacts severity. Independent monitoring of LARP implementation is compulsory for “A” projects.
resettlement sites with comparable access to employment and production opportunities, integration of resettled persons economically and socially into their host communities, and extension of project benefits to host communities; (ii) transitional support and development assistance, such as land development, credit facilities, training, or employment opportunities; and (iii) civic infrastructure and community services, as required.

(v) Improve the standards of living of the displaced poor and other vulnerable groups, including women, to at least national minimum standards. In rural areas provide them with legal and affordable access to land and resources, and in urban areas provide them with appropriate income sources and legal and affordable access to adequate housing.

(vi) Develop procedures in a transparent, consistent, and equitable manner if land acquisition is through negotiated settlement to ensure that those people who enter into negotiated settlements will maintain the same or better income and livelihood status.

(vii) Ensure that displaced persons without titles to land or any recognizable legal rights to land are eligible for resettlement assistance and compensation for loss of non-land assets.

(viii) Prepare a resettlement plan elaborating on displaced persons’ entitlements, the income and livelihood restoration strategy, institutional arrangements, monitoring and reporting framework, budget, and time-bound implementation schedule.

(ix) Disclose a draft resettlement plan, including documentation of the consultation process in a timely manner, before project appraisal, in an accessible place and a form and language(s) understandable to affected persons and other stakeholders. Disclose the final resettlement plan and its updates to affected persons and other stakeholders.

(x) Conceive and execute involuntary resettlement as part of a development project or program. Include the full costs of resettlement in the presentation of project’s costs and benefits. For a project with significant involuntary resettlement impacts, consider implementing the involuntary resettlement component of the project as a stand-alone operation.

(xi) Pay compensation and provide other resettlement entitlements before physical or economic displacement. Implement the resettlement plan under close supervision throughout project implementation.

(xii) Monitor and assess resettlement outcomes, their impacts on the standards of living of displaced persons, and whether the objectives of the resettlement plan have been achieved by taking into account the baseline conditions and the results of resettlement monitoring. Disclose monitoring reports.

64. The SPS distinguishes three categories of affected persons, with variable compensation needs:

(i) **Legal APs**: APs with formal legal rights to land lost in its entirety or in part;
(ii) **Legalizable APs**: APs without formal legal rights to land lost in its entirety or part but who have claims to such lands that are recognized or are recognizable under national law; and
(iii) **Non-legal APs**: APs who have neither formal legal rights nor recognized/recognizable claims to land lost in its entirety or in part.

65. For categories (i) and (ii) above, borrowers are expected to provide compensation at full replacement cost for lost land, structures, land improvements and relocation assistance. For APs in category (iii) (informal settlers), the borrower/client is expected to compensate all assets other than land (i.e. buildings, trees, cops, businesses) at full replacement cost. The risk of opportunistic encroachment on land designated for acquisition by the project is managed through a cut-off date.

66. Compensation for lost land may be in form of replacement land (preferable if feasible) or in cash. When “land for land” compensation is not feasible cash compensation can be valued based on market rates or, in absence of land markets, through other methods (i.e. land productivity or reproduction costs)\(^6\). Independently from the valuation method used compensation is to be provided at “full replacement cost”. This includes:

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\(^6\) Based on the SPS (Appendix 2, para 10) in absence of well-established land markets land compensation will be provided based on a thorough study of the land transaction, use, cultivation and productivity patterns in project areas. One method accepted by ADB in such a situations would be to provide land compensation based on land productivity or land reproduction costs.”
(i) transaction costs,
(ii) interest accrued,
(iii) transitional and restoration costs, and
(iv) other applicable payments, if any.

67. Compensation for all other assets is to be provided in cash at replacement cost without deductions for amortization, salvaged materials and transaction costs.

68. The SPS importantly establishes that where land acquisition is achieved without the exercise of the right of Eminent Domain through negotiated settlements (sale based on free buyer and free seller conditions) SR2 does not apply. In such cases, ADB requires, however, that negotiation be properly documented by an independent third party.

### 2.2.2 Resettlement Planning and Documentation

69. The IR policy defined by the SPS envisions the following sequence of activities:

(i) Preparation of a Social Impact Assessment (SIA) involving: a) a detailed measurement survey of all impacts; b) a detailed Census of all affected parties and affected persons and; c) a socio-economic surveys to be based on a statistical sample of the APs detailing the livelihood situation in project affected areas;
(ii) A review of the local laws and regulations and an assessment of the impacts and risks against these laws and regulations.
(iii) Preparation of a Resettlement Plan addressing all SPS requirements. Based on the SIA and on consultation with affected persons, the RP should provide:

a. An executive summary;
b. A Project description;
c. A precise assessment of land acquisition and resettlement;
d. A detailed census of the affected parties and persons;
e. A socio-economic profile of the affected population;
f. A clear asset valuation methodology;
g. The results of information disclosure and consultation;
h. A description of the grievance redress mechanism;
i. A description of the administrative organization and responsibilities for LAR;
j. A description of the local legal framework and an analysis of gaps against key ADB requirements;
k. A description of entitlements, including an entitlement matrix;
l. A description of proposed measures for relocation of settlements and housing if needed;
m. A description of proposed measures for livelihood restoration;
n. The budget and funding plan, implementation arrangements and schedule,
o. A description of monitoring and reporting provisions;

70. For Multi-tranche Financial Facilities (MFF) loans and for sector investment loans (loans with multiple sub-projects) involving resettlement impacts, the borrower/client is expected to agree with ADB before project approval on a Resettlement Framework (RF) to guide subproject selection, screening and categorization, social and environmental assessment, and preparation and implementation of Resettlement Plans for subprojects that may require them.

### 2.2.3 Resettlement Plan Preparation, Loan Approval and Project implementation

71. The Preparation of a Resettlement Plan approved by the Borrower and disclosed to the APs is a condition for loan appraisal (in case of single project loans) for the approval of a project tranche (in case of

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7 To avoid misunderstandings in the Central Asia Region the document is called Land Acquisition and Resettlement Plan (LARP)
8 Or Land Acquisition and Resettlement Framework (LARF)
MFFs). Ideally Resettlement Plan meeting loan/MFF tranche requirements should be a fully finalized document. However, when due to specific project circumstances the document is not final (i.e. when the project design has allowed only a preliminary definition of the project impacts footprint) loan appraisal or MFF tranches can be approved by ADB based on an acceptable Draft Resettlement Plan\(^9\). The final “implementation-ready” Resettlement Plan will be completed and later implemented during the early loan administration phases and in any event prior to land taking and the start of civil works. Based on the practice of the Central and Western Asia Regional Department an acceptable draft is a document based on actual DMS surveys on the ground of all impacts expected based on the available design.

2.2.4 **ADB’s Public Communications Policy**

72. The ADB’s Public Communications Policy (PCP, 2011) is relevant to land acquisition and resettlement issues in so far as it establishes principles applicable to disclosure of information, and specifically to disclosure of resettlement planning documentation. These principles apply to both the borrower and the ADB itself and are the following:

- ADB shall post (PCP, para 52) on its website the following documents submitted by the borrower and/or client:
  - (i) a draft resettlement plan and/or resettlement framework, endorsed by the borrower and/or client before appraisal;
  - (ii) the final resettlement plan endorsed by the borrower and/or client after the census of affected persons has been completed;
  - (iii) a new or updated resettlement plan, and a corrective action plan, if any, prepared during project implementation, upon receipt by ADB; and
  - (iv) the resettlement monitoring reports, upon receipt by ADB.

73. In practice, clients are expected to disclose documentation locally (PCP, para. 47 and 129), in the local language and in a culturally appropriate manner (which may require tools other than the sheer disclosure of reports). The full ADB Public Communications Policy is available at [www.adb.org/sites/default/files/pcp-2011.pdf](http://www.adb.org/sites/default/files/pcp-2011.pdf).

2.2.5 **Due Diligence for Multi Tranche Financial Facilities**

74. One lending instrument widely used by ADB is the Multi-tranche Financing Facility, in addition to usual Project finance. For these financial instruments, the requirements include the establishment of a Resettlement Framework and are as follows:

- A Resettlement Framework for the project as a whole, including an outline of the social impact assessment and census methodologies, to be agreed between borrower/client and ADB before loan appraisal
- At least acceptable Resettlement Plans drafts for tranche 1 subprojects prepared and submitted by the borrower/client and reviewed by ADB prior to loan appraisal
- At least acceptable Resettlement Plans for the subsequent tranches before tranche approval.

2.3 **Gap Analysis**

75. This section identifies the gaps between the IR requirements of the SPS and of AFG law and regulations through a direct comparison. The exercise takes into consideration both formal principles (principles) and the way these principles are applied in practice by ADB and the Government (application).

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\(^9\) It is assumed that to be acceptable a draft resettlement plan tentative as it may be is to be based on actual measurement surveys in the field of all impacts known based on the level of design available at the time of its preparation.
This section also proposes the action needed to reconcile the ADB and the AFG position and the level of the action needed.

2.3.1 Livelihood Rehabilitation Standards

76. AFG law does not define compensation as targeting the rehabilitation of the APs livelihood. It instead focuses on the mere compensation of directly measurable physical impacts. This may create problem while applying ADB’s principles especially for what concerns the compensation for loss of income or of indirectly affected items that become unusable after impacts or for the provision of severe impacts, vulnerable APs and relocation allowances. It generally appears that the law does not allow an interpretation of its mandates to cover ADB requirements without the need of legal reform.

Reconciliation needs. No reconciliation of principles needed as AFG law is silent on the issue of rehabilitation. ADB’s principles have been applied on a case to case basis for previous ADB projects, and hence, this needs to be mainstreamed without any legal reform through a special Decree by the Council of Ministers or directives by the Ministry of Finance for ADB projects.

2.3.2 Entitlement to Compensation

77. AFG Law and ADB policy are consistent regarding the compensation entitlements of Legal APs. The local LAR system however, does not distinguish between legalizable and not legalizable APs which are lumped together into a non-legal category, which in principle are not eligible to compensation. Where land was obtained from 9th (Qaws) 1357 – 8th (Sawr) 1371 with special official documents of that time and if such land is required for the public purposes, only the structures and other assets on the land shall be compensated, and compensation for land shall not be paid\textsuperscript{10}. The SPS, instead, mandates that legalizable APs are to be identified, legalized and then compensated and that non-legalizable APs are to be identified and compensated for all non-land impacts (including buildings, trees, crops and income).

Reconciliation needs. Reconciliation needed both for principle and application to allow the full compensation of legalizable APs and of all non-land losses of non-legal APs. ADB’s principles have been applied on a case to case basis for previous ADB projects, and hence, this needs to be mainstreamed without any legal reform through a special Decree by the Council of Ministers or directives by the Ministry of Finance for ADB projects.

2.3.3 Compensation for Affected Assets

78. Permanent loss of land. Both ADB and AFG law require that permanent loss of land is to be compensated at replacement cost to APs either via compensation in cash at market rate or replacement land\textsuperscript{11}. There is no difference in principle or application.

Reconciliation needs. No reconciliation issues for this point. However, as discussed in para 2.3.2 above, eligibility for compensation shall also include legalizable APs.

79. Loss of Land leases. ADB policy requires that affected land leases are to be compensated. However, AFG law does not separately deal with compensation for land leases. ADB Policy provides that compensation for this item is to be given at replacement cost. Such a requirement is practically implemented either through the provision of another comparable leased plot or of the expected net income of the leased plot lost for the number of years remaining before the expiration of the original lease. The law instead envisions only the provision of a replacement lease.

Reconciliation needs. As the law does not have specific provisions for land leases, no principle reconciliation is needed. Application reconciliation instead is needed to clarify how lost leases are to be compensated. Although reconciliation has been already achieved on a case by case basis for

\textsuperscript{10} Land Expropriation Law 2001, Chapter 2 Article 9
\textsuperscript{11} Land Expropriation Law 2001, Chapter 1 Article 2
previous ADB projects, the technical aspects of lease compensation will have to be improved with additional provisions for lease replacement in cash. This needs to be mainstreamed without any legal reform through a special Decree by the Council of Ministers or directives by the Ministry of Finance for ADB projects.

80. **Loss of indirectly affected parts of an asset.** ADB Policy requires that indirectly affected assets that become unusable after impact are to be compensated as direct impacts. AFG law provides that in case a part of the land is acquired and the owner is unable to use the rest of the land, the whole land shall be acquired and compensated.

   **Reconciliation needs.** *No principle and application reconciliation is needed.* However, as discussed in para 2.3.2 above, eligibility for compensation shall also include legalizable APs.

81. **Loss of structures/buildings.** Based on ADB requirements, compensation is to be given at replacement cost (free of deduction of depreciation, salvaged materials or transaction costs). AFG Law mandates that, when expropriating land, compensation for the value of residential houses, buildings and rest of the structures existing on the land shall be paid. The local LAR system is however, silent on any deductions for depreciation but provides that the construction materials of residential houses and rest of the structures shall freely belong to the owner/user after they are compensated for.

   **Reconciliation needs.** *Reconciliation needed for application only.* Reconciliation requires clarity on allowing the compensation of structures/building at replacement cost free of depreciation or transaction costs deductions. Reconciliation has been already done on a case by case basis for previous ADB projects. This needs to be mainstreamed without any legal reform through a special Decree by the Council of Ministers or directives by the Ministry of Finance for ADB projects.

82. **Loss of business.** There is no specific provision under AFG law for compensating business losses contrary to the ADB Policy that mandates that all losses (including incomes lost, opportunity costs and liabilities to the third parties) are to be compensated. Hence, for the purpose of compensating for business losses, ADB practice adopted in the case of previous projects to compensate the lost income based on tax records for the number of months of business stoppage, subject to a maximum of 12 months (this maximum corresponds to the number of months to be paid for permanent stoppage). For non registered business the compensation methodology used by ADB would follow the same parameters but would be based on maximum non-taxable income.

   **Reconciliation needs.** *As there is no provision under AFG law, no principle reconciliation is needed.* However application reconciliation is needed to compensate for both registered and unregistered permanent and temporary businesses. Application reconciliation has been already made on a case by case basis for previous ADB projects. This needs to be mainstreamed without any legal reform through a special Decree by the Council of Ministers or directives by the Ministry of Finance for ADB projects.

83. **Loss of trees.** AFG law mandates that, when expropriating land, value of fruit and non-fruit trees (like any other private property) existing on the land affected by a public project is to be compensated. The owner has the authority to retain the fruit, non-fruit trees and other assets on the expropriated land conditional to the fact that he has not received its indemnity. In practice, however, this happens selectively depending on the understanding of the law by the valuing authorities and tree type and impact scope/value. By default, the AFG provision aims at compensating for the losses in case of legal APs. Legalizable APs and non-legal APs are not compensated for. ADB policy requires that irrespective of legal land occupancy status, compensation is to be paid at market rate. As such, reconciliation is needed on the scope and methodology for determining compensation for loss of trees. In the case of previous ADB projects,
reconciliation done. The following are the principles, consistent with the SPS, applied in previous ADB projects:

i. Valuation of Wood/unproductive trees. Compensation for non-fruit/wood trees is paid for the cost of reproducing the tree to the level of growth it was cut and is calculated based on the yield of the common wood tree in the project area. Generally the height of non-fruit/wood tree is 10 m and girth of 0.5 m and produce about 1,000 kg of firewood. Based on the cost of firewood (per kilogram), the compensation is calculated. The compensation of the tree is free of deduction for the value of the wood left to the AH.

ii. Valuation of Productive trees. Compensation for fruit tree is calculated for each tree type based on the annual average production, market prices of the yield and number of years needed to re-grow the tree to the same productive level.

Reconciliation needs. No Policy reconciliation is needed as the AFG law mandates for tree compensation. However, application reconciliation is needed to ensure that compensation is systematically provided by default to legal, legalizable and non-legal APs and in accordance with SPS principles and valuation requirements. To fit ADB policy the product of these trees is to be compensated based on an assessment considering the actual period of income loss. Application reconciliation has been made on a case to case basis for the previous ADB projects. This needs to be mainstreamed without any legal reform through a special Decree by the Council of Ministers or directives by the Ministry of Finance for ADB projects.

84. Loss of crops. The SPS requires payment of crop compensation. ADB practice requires that crops are compensated by default irrespective of the timing of the harvest. As per AFG law, if the owner is unable to harvest the crop on the affected land, compensation for the crops loss is to be paid based on the cost of seeds, expenses on irrigations and other services. By default, the AFG provision aims at compensating for the losses in case of legal APs. Legalizable APs and non-legal APs are not compensated for. ADB policy requires that irrespective of legal land occupancy status, compensation is to be paid at market rate. As such, reconciliation is needed on the scope and methodology for determining compensation for loss of crops.

Reconciliation needs. Reconciliation for application is needed to ensure that crops are compensated by default to legal, legalizable and non-legal APs and in accordance with SPS principles and valuation requirements. This has been done on a case to case basis for previous ADB projects but this needs to be mainstreamed without any legal reform through a special Decree by the Council of Ministers or directives by the Ministry of Finance for ADB projects.

85. Loss of jobs. ADB policy provides for the indemnification of APs who lose a job due to land/assets acquisition under a public interest project. ADB policy compounds the matter as an income rehabilitation issue and thus requires that the actual job income lost by the APs is fully reimbursed to them. This approach covers temporary and permanent job losses and is generally implemented through an allowance providing the APs their declared monthly salary for the number of months of business stoppage up to a maximum of 12 months which is the benchmark for permanent job loss. For informal permanent jobs without declared salaries the approach is the same but based on national minimum salary. However, the AFG law does not have any specific provision for indemnification of APs who lose a job due to land/assets acquisition under a public interest project.

Reconciliation needs. As there is no provision under AFG law, no reconciliation is needed for principles. Application reconciliation is however needed to: a) ensure the rehabilitation of both formal and informal permanent employees; b) provide compensation parameters ensuring the compensation of actual income losses of both temporarily and permanently affected employees and c) guarantee that the APs automatically receive their compensation. Application has been already reconciled on a case to case basis for previous ADB projects hence, this needs to be

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16 Land Expropriation Law 2001, Chapter 2 Article 19
mainstreamed without any legal reform through a special Decree by the Council of Ministers or directives by the Ministry of Finance for ADB projects.

2.3.4 Resettlement Planning and Identification of Project Impacts

86. **LARP Preparation.** ADB requires a broad LAR planning process with early scoping of LAR impacts and timely preparation of a LARP providing a thorough impact assessment based on: a) a detailed measurement survey of all affected assets, b) an AP census identifying all affected parties and individuals and c) a socio-economic survey elaborating on the livelihood conditions of the affected population. In addition the LARP will identify LAR budgets and will provide information on compensation entitlements, income/livelihood restoration strategies, institutional arrangements, implementation schedules, LAR budgets, monitoring schemes, public consultation activities and complaints and grievances mechanisms.

87. AFG law and practice, instead, do not require a stand-alone LARP detailing background information on its preparation and implementation and entails investigations/determination of compensation which are not as extensive or detailed as those required by ADB. The impacts assessment is primarily based on available official records and the verification of these records through a detailed measurement survey in the field is generally carried out for registered plots or fixed building but not for non-registered assets. Other affected items such as trees, crops and other improvements are also assessed. Business or income losses, loss of jobs and other special impacts to vulnerable or severely affected APs are also not assessed. Finally local practice does not envisage the execution of a socio-economic survey.

**Reconciliation needs.** No principle reconciliation needed as law and regulation are silent on these technical issues. LAR preparation documents and surveys fitting ADB requirements have been already agreed with the EAs on a case to case basis for previous ADB projects. Technical improvements are however needed to mainstream SPS requirements and improve consistency and accuracy of LAR assessments and surveys. This is particularly so for what concerns the execution of detailed measurement surveys for all affected items and the compilation of AP lists including also legalizable and non-legal APs. This can be done through a set of technical instructions for ADB projects.

Application reconciliation is needed instead for the valuation survey. Application has been already reconciled on a case by case basis for previous projects but this need to be mainstreamed without any legal reform through a special Decree by the Council of Ministers or directives by the Ministry of Finance for ADB projects (see chapter 4 for details).

2.3.5 Procedural Mechanisms

85. **Information disclosure and Public consultation.** AFG law does not provide for public consultation or specific disclosure instructions. ADB policies provide for a meaningful public consultation and information disclosure.

**Reconciliation needs** No principle or application reconciliation is needed because the law is silent on this. ADB’s principles have been adopted on a case to case basis for previous ADB projects but needs to be mainstreamed for which instructions for more effective public information/disclosure fitting SPS requirements are to be developed through technical guidelines. (see: chapters 3 and 4).

86. **Grievance Redress Mechanism.** ADB policy required the establishment of a grievance redress mechanism to receive and facilitate the resolution of APs’ concerns about displacement and other impacts. As per the AFG law, there is no specific requirement for the establishment of project specific grievance redress mechanism.

**Reconciliation needs.** No reconciliation is needed because the AFG law is silent on this. ADB’s principles have been adopted on a case to case basis for previous ADB projects but needs to be mainstreamed for which instructions for more effective public information/disclosure fitting SPS requirements are to be developed through technical guidelines
87. **Payment of compensation prior to property acquisition.** As with ADB Policy, AFG law specifically states that AP compensation is to be paid in full before an affected property is acquired for a project\(^\text{17}\). This provision is supported by Constitutional norms explicitly stating that ‘acquisition of private property shall be legally permitted only for the sake of public interest and in exchange for prior and just compensation’. However, executing these provisions in practice proves to be difficult as the EAs tend short-cuts this rule to meet project and contracts deadlines.

**Reconciliation needs.** No reconciliation needed. However greater attention to ensure that the APs are not affected before being compensated is needed

2.3.6 Special Assistance to Vulnerable and Severely Affected APs

88. Unlike ADB Policy that requires special assistance to vulnerable, severely affected and relocating APs, AFG law is silent on special livelihood rehabilitation allowances.

**Reconciliation needs.** The law is silent on this but the implementation of these provisions was already achieved on a case to case basis in previous ADB-financed projects. However formal reconciliation of the application mechanisms details is needed. This can be mainstreamed through a special Decree (or an approval by the Council of Ministers) for ADB projects.

2.3.7 Chapter Summary and Conclusion

89. All issues signaled in the above analysis and requiring reconciliation of policy or policy application listed in this chapter have been already reconciled on a project by project basis in previous ADB Projects. It is thus expected that the mainstreaming of the ADB policy requirements may not require legal reform and may be dealt with decrees or ordinances. To simplify Government approval of mainstreamed provisions it is recommended that these are not approved one by one but through the wholesale approval of an integrated framework gathering all of them (see chapter 4 section on the Country Land Acquisition and Resettlement Framework). Table 2.1, next page, schematizes the findings of this chapter’s analysis. In the table the SPS policy principles are accompanied by the way they are actually applied in AFG in the course of ADB projects.

### Table 2.1 Comparison of LAR provisions between ADB Policy and AFG law

<table>
<thead>
<tr>
<th>Issues</th>
<th>ADB SPS (2009) and ADB practice for application*</th>
<th>AFG law</th>
<th>Reconciliation Needs</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Livelihood rehabilitation</td>
<td>ADB Policy requires rehabilitation/ improvement of AP livelihood standards.</td>
<td>Notion of livelihood rehabilitation not sanctioned by national law.</td>
<td>No Policy reconciliation needed. Application already reconciled in previous ADB projects but needs to be streamlined regarding indirect/livelihood impacts rehabilitation.</td>
</tr>
</tbody>
</table>
| 2. Compensation entitlements  | A. APs with formal title have to be compensated for lost land/other assets.  
B. APs with legalizable title have right to be compensated for lost land and assets after the EAs help them in legalizing their assets.  
C. APs with no legal title are compensated for lost non-land assets. | A. APs with formal title are compensated for lost land/other assets.  
B. / C. APs with legalizable or no legal title. Legalizable are not distinguished and considered non-legal as legalization is a burden of the APs. Non-legal APs have no right to be compensated for land and non-land assets. | A. Same in principle/application. No reconciliation needed  
B. / C. Critically different in principle and application. Policy and application reconciliation needed to allow the full compensation of legalizable APs and of all non-land losses of non-legal APs. Reconciliation done in previous ADB projects but needs to be mainstreamed through decree by the council of ministers or |

\(^{17}\) Land Expropriation Law 2001, Chapter 1 Article 6
<table>
<thead>
<tr>
<th>Issues</th>
<th>ADB SPS (2009) and ADB practice for application*</th>
<th>AFG law</th>
<th>Reconciliation Needs</th>
</tr>
</thead>
<tbody>
<tr>
<td>3. Compensation</td>
<td></td>
<td></td>
<td>directives by the Ministry of Finance for ADB projects.</td>
</tr>
<tr>
<td><strong>A. Permanent loss of land.</strong> Replacement land as preferred option or cash compensation at full market rate. At least for legal/legalizable APs.</td>
<td><strong>A. Permanent loss of land.</strong> Cash compensation at market rate or replacement land for legal/legalizable APs.</td>
<td><strong>A. Same in principle/application. Technical improvement of valuation mechanisms/process needed.</strong> Eligibility for compensation should also include legalizable APs.</td>
<td></td>
</tr>
<tr>
<td><strong>B. Replacement of leased land.</strong> Based on replacement of lost income through cash compensation of gross income x the remaining lease years or through a replacement land lease</td>
<td><strong>B. Replacement of leased land.</strong> Based on lease replacement.</td>
<td><strong>B. No policy reconciliation needed. Application reconciliation needed to clarify how lost leases are to be compensated. Technical aspects of lease compensation will have to be improved with additional provisions for lease replacement in cash. Reconciliation done in previous ADB projects but needs to be mainstreamed through decree by the council of ministers or directives by the Ministry of Finance for ADB projects.</strong></td>
<td></td>
</tr>
<tr>
<td><strong>C. Loss of structures/buildings.</strong> Cash compensation at replacement cost for lost item free of depreciation, transaction costs, other deductions</td>
<td><strong>C. Loss of structures/buildings.</strong> Cash compensation at market rate. Law is silent on any deduction for depreciation.</td>
<td><strong>C. Reconciliation needed for application. Compensation at replacement cost free of depreciation or transaction costs deductions. Reconciled in previous ADB projects but needs to be mainstreamed through decree by the council of ministers or directives by the Ministry of Finance for ADB projects.</strong></td>
<td></td>
</tr>
<tr>
<td><strong>D. Loss of indirectly affected items.</strong> Non affected parts of an asset no longer usable after impact will have to be compensated as well.</td>
<td><strong>D. Loss of indirectly affected assets.</strong> Law provides to compensate the whole if the non-affected portion of land is no longer usable.</td>
<td><strong>D. No reconciliation needed. Eligibility for compensation should also include legalizable APs.</strong></td>
<td></td>
</tr>
<tr>
<td><strong>E. Business losses.</strong> Reimbursement of actual losses + business re-establishment costs. For application based on tax declared income for period of business stoppage. In absence of tax declaration based on maximum non-taxable salary.</td>
<td><strong>E. Loss of business.</strong> There is no provision for payment of compensation for loss of business.</td>
<td><strong>E. Application reconciliation needed to compensate for registered and unregistered permanent and temporary businesses. Reconciled in previous ADB projects but needs to be mainstreamed through decree by the council of ministers or directives by the Ministry of Finance for ADB projects.</strong></td>
<td></td>
</tr>
<tr>
<td><strong>F. Loss of wood/unproductive trees.</strong></td>
<td><strong>F. Loss of wood/unproductive trees.</strong> Value of trees existing on</td>
<td><strong>F. Application reconciliation is needed to ensure that</strong></td>
<td></td>
</tr>
</tbody>
</table>


<table>
<thead>
<tr>
<th>Issues</th>
<th>ADB SPS (2009) and ADB practice for application*</th>
<th>AFG law</th>
<th>Reconciliation Needs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Irrespective of legal land occupancy status compensation at market rate. Application based on tree type/wood volume or other methods ensuring AP rehabilitation.</td>
<td>the land is to be compensated for. The owner can retain the tree/wood conditional to the fact that the owner has not received its indemnity. By default, the AFG provision aims at compensating for the losses in case of legal APs. Legalizable APs and non-legal APs are not compensated for. Valuation standards not defined.</td>
<td>compensation is systematically paid by default to legal, legalizable and non-legal APs and in accordance with SPS principles and valuation requirements. Reconciled in previous ADB projects but needs to be mainstreamed through decree by the council of ministers or directives by the Ministry of Finance for ADB projects.</td>
<td>G. As above.</td>
</tr>
<tr>
<td>G. Loss of productive trees. Compensation at replacement cost based for application on various methods: tree reproduction cost, income lost (x tree type x market value of 1 year income x full production years lost).</td>
<td>G. Loss of productive trees. Value of trees existing on the land is to be compensated for. The owner can retain the fruits/wood conditional to the fact that the owner has not received its indemnity. By default, the AFG provision aims at compensating for the losses in case of legal APs. Legalizable APs and non-legal APs are not compensated for. Valuation standards not defined.</td>
<td>G. As above.</td>
<td></td>
</tr>
<tr>
<td>H. Loss of crops. Compensation of crop in cash at market price.</td>
<td>H. Loss of crops. Mandated by law. By default, the AFG provision aims at compensating for the losses in case of legal APs. Legalizable APs and non-legal APs are not compensated for. Valuation standards not defined.</td>
<td>H. As above.</td>
<td></td>
</tr>
<tr>
<td>I. Loss of jobs. Indemnity for lost income ensuring AP rehabilitation. Based for application on stoppage period up to a maximum of 12 months of declared salary (formal employees) or minimum salary (informal employees.) Compensation directly disbursed to APs.</td>
<td>I. Loss of jobs. AFG law does not provide for indemnification of APs who lose jobs due to land/asset acquisition under a public interest.</td>
<td>I. Application reconciliation needed to establish mechanisms to assess temporary/permanent income loss and indemnity of both formal and informal employees and guaranteeing direct disbursement to the APs. Reconciled in previous ADB projects but needs to be mainstreamed through decree by the council of ministers or directives by the Ministry of Finance for ADB projects.</td>
<td>I. As above.</td>
</tr>
</tbody>
</table>

4. LAR Planning, assessment and valuation of impacts

**A. Resettlement Plan (LARP).** LARP preparation includes: a) impacts assessment/AP census; b) definition of entitlements, income/livelihood restoration strategy, compliance & grievance mechanisms, institutional arrangements; c) consultation results, d) monitoring schemes, e) budget and implementation schedule. A RP requires the following surveys:

**A. Resettlement Plan.** There are no requirements to prepare integrated and stand-alone LARPs. LAR planning entails similar but less extensive/simpler assessment/survey efforts than ADB Policy, as detailed below:

**A. Partly different in principle and application.** No reconciliation needed as law/regulation is silent on this matter and SPS requirements have been already applied in previous ADB projects. Still, clear instructions for ADB projects ensuring the measurement of all impacts and the counting of all AP are needed for mainstreaming purposes.
<table>
<thead>
<tr>
<th>Issues</th>
<th>ADB SPS (2009) and ADB practice for application*</th>
<th>AFG law</th>
<th>Reconciliation Needs</th>
</tr>
</thead>
<tbody>
<tr>
<td>ii. AP Census.</td>
<td>Identifies all APs and establishes legitimate beneficiaries based on legal status.</td>
<td>ii. APs Identification. Identifies only legal APs</td>
<td>ii. Detailed count of individuals to be mainstreamed.</td>
</tr>
<tr>
<td>iii. Socio-economic survey.</td>
<td>Provides background information on AP's socio-economic features.</td>
<td>iii. Socio-economic survey. No comparable requirements exist.</td>
<td>iii. The execution of the survey is to be mainstreamed.</td>
</tr>
<tr>
<td>iv. Valuation survey. a) Land:</td>
<td>If land market exist based on a survey of recent transactions; without land market based on land productivity/ income; b) Buildings and structures.</td>
<td>iv. Valuation survey. a) Land: valued by a committee at market rate taking into account the government rate for the area. b) Buildings and structures.</td>
<td>iv. Valuation survey. a) If land market exist based on a survey of recent transactions; without land market based on land productivity/ income; b) Already reconciled for previous ADB projects but Formal reconciliation needed. c) Already reconciled for previous ADB projects but Formal reconciliation needed. Detailed valuation for each tree based on SPS requirements to be mainstreamed.</td>
</tr>
</tbody>
</table>

5. Procedural mechanisms

A. Information disclosure. Resettlement-related documents to be timely disclosed in the AP language.

B. Public consultation. Meaningful public consultations are to be held with the APs. APs should be informed about their entitlements and options, as well as resettlement alternatives.

C. Grievance procedure. A Grievance Redress Mechanism (GRM) is to be established for each project. Information on GRM to be communicated to the APs.

D. Asset acquisition conditions. Property can be acquired only after full compensation is paid to APs.

A. Information disclosure. No disclosure requirement exists.

B. Public consultation. No requirement to consult directly the APs.

C. Grievance Procedures. No specific procedure prescribed in the law.

D. Asset acquisition conditions. Property can be acquired only after full compensation is paid to APs.
<table>
<thead>
<tr>
<th>Issues</th>
<th>ADB SPS (2009) and ADB practice for application*</th>
<th>AFG law</th>
<th>Reconciliation Needs</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>compensation is paid to the APs</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6. Assistance to vulnerable and severely affected AP</td>
<td>A. These APs are to be identified and special assistance is provided to restore/improve their pre-project level of livelihoods.</td>
<td>A. No special consideration is given to these APs.</td>
<td>A. Critically different in principle/application. Permanent reconciliation through a decree for ADB projects needed.</td>
</tr>
</tbody>
</table>
CHAPTER 3

COMPARATIVE ANALYSIS OF ADB AND AFGHANISTAN LAR PROCESSES

90. This chapter contrasts LAR processing tasks under the usual ADB project preparation cycle with those under the standard AFG project preparation cycle. This comparison reveals procedural contradictions and capacity gaps within and across the ADB and the AFG system. The analysis then highlights points where greater cross-system coordination or enhancing action is needed proposing recommendations to improve processing efficiency and time frames. Tables 3.1 and 3.2 below outline the main stepping stones of the ADB and of the AFG LAR planning/implementation systems.

3.1 The ADB project preparation/implementation Cycle

91. The provision of an ADB stand-alone project or Multi-Tranche Financial Facility (MFF) loan to a borrower is usually preceded by a Project Preparation Technical Assistance (PPTA) which is financed by an ADB grant supporting the main preparation activities for the project or the Tranche 1 projects. These activities include engineering design, economic analysis, environmental studies and LARP preparation.

92. The preparation/implementation of a stand-alone Loan or of tranche 1 of an MFF is divided in two main phases: a) Loan/tranche processing and b) loan/tranche administration and proceeds as detailed below:

Loan/tranche 1 processing. This phase enfolds in three successive steps:

a. Concept paper/PPTA preparation entailing the project concept paper preparation and approval, PPTA planning and the consultants hiring;

b. PPTA implementation entailing actual project design and related tasks and the elaboration of final or at least draft project designs and LARP(s). If these are appraised as acceptable at the Management Review Meeting (MRM), recommendation is made to proceed with loan preparation.

c. Loan preparation proper entailing the planning/structuring of the loan. This step is concluded with loan negotiations and then loan approval.

Loan Administration. This phase entails the actual implementation of the project. It includes the bidding process for hiring the contractors and then civil works. However, as often detailed project design and LARP preparation are not fully finished at the time of loan approval, this phase may also start with project design and LARP finalization. When this is the case, design and LARP preparation will continue under loan finances and the physical implementation of the project(s) will start only once design and the other preparatory activities (including LARP implementation) are completed.

93. The process detailed above applies in particular to the preparation of projects under a single project loan or under the first tranche of an MFF. For MFF tranches after the first, the process is slightly different as those tranches are technically under the MFF Administration phase and thus are prepared from the start with loan finances without an initial PPTA by the MFF consultants. The structure of the process is however similar and is marked by a preparation and an implementation phase. The first entails the preparation of the tranche project(s) and relative LARP(s) and their approval by ADB as a condition to sign the Periodic Financial Request (PFR) for the tranche. The second entails the implementation of the LARP(s) and then of the project(s) civil works. Also in this case, if the PFR was approved based on draft designs and LARP(s) the implementation phase will start with project design and LARP finalization.

18 The projects under second or third MFF tranches are prepared by consultants hired under the loan.
94. Independently, from the loan type or MFF tranche number considered the significant points of the ADB project cycle pertaining to LAR are that: i) project design and LAR planning are carried out in parallel; ii) effective LAR planning and approval of at least of an acceptable draft LARP based on field surveys is a condition to loan appraisal and; iii) the finalization of an implementation-ready LARP and its full execution is a condition to start physical civil works (at least in the project areas with impacts.) The above is synthesized in table 3.1 below.

<table>
<thead>
<tr>
<th>Table 3.1 The ADB process for LAR Planning/Implementation</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Steps</strong></td>
</tr>
</tbody>
</table>
| 1 Loan Processing: Project concept/PPTA Preparation: | - Project Concept approved  
- TOR for project design/ LAR are prepared  
- Consultants are hired. |
| 2 Loan Processing: Project Preparation/PPTA implementation | - Engineering design,  
- Detailed LAR impact/ assessment; AP Census; Socio-economic survey  
- valuation survey,  
- Final/Draft LARP drafting and finalization. |
| 3 Management Review Meeting (MRM) | - Final/Draft LARP approved. |
| 4 Loan Processing Proper: Finalization of Loan processing | - If funds are available Draft LARP finalization continues. If finalized at this stage the LARP is approved by loan negotiations/approval. |
| 5 Loan Approval | - The loan is approved |
| 6 Loan Administration | - If LARP was not finalized earlier its finalization continues under loan funds.  
- LARP implementation is carried out. |
| 7 Civil works implementation | - LAR implementation due diligence  
- After the successful implementation of the LARP civil works can start |

3.2 The AFG project preparation and implementation cycle

94. Review of the country LAR processing system carried for this CA has posed a particular challenge since the regulatory basis governing the national project processing model is limited to only a few legal provisions and informal arrangements. These legal provisions are not supported by implementing rules or associated instructions systematically detailing all steps necessary to prepare a project. Also regarding sequence, neither the LAL nor any other LAL provisions in the country address the logical relation between project design and impact surveys, does not clearly distinguish between LAR preparation and LAR implementation phase and does not indicate when the LAR budgets are to be allocated by MOF. The projects implemented in the past in AFG were mainly funded by various donors. As such, the LAR processing system of the respective donor, to the extent applicable, was followed by the EA for a particular project. A few other projects financed out of Government budget were also implemented in the past though no uniform LAR processing system was followed. In light of this situation, the national project processing model had to be elaborated by filling the gaps in the LAL by bringing into the picture relevant provisions in other laws or regulations, by logically connecting LAL compensation provisions with the way the surveys have to be technically carried out and affected items have to be accounted for. Review of archival project documents, in-depth interviews with representatives of EAs or other state agencies, project officers at ADB headquarter and AFRM and observation of some of the on-going projects was also taken into account for such analysis. With adaptations, the scheme that finally emerged is practically applied with a range of

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19 Though there are no specific LAR processing system, the main legal provisions governing the LAR are reflected in the Constitution, Law on Managing Land Affairs, and Land Expropriation Act of the Islamic Republic of Afghanistan (please see also the chapter 2)
variation in the execution of specific steps depending on project type, EA and project situations. Through these analyses, a model LAR implementation scheme was developed, which is presented below:

(i) **Project Planning**
- Approval of a project as public purpose task (and thus implicitly invoking the right of Eminent domain). This approval is generally in the form of the yearly budget passed by the Parliament and approved by the President. This process identifies the project, establishes the EA and approves the preparation of a feasibility study (FS) and the related disbursement.

(ii) **Carrying out Feasibility Study**
- The concerned EA engages consultants to carry out the FS to explore different project alternatives and to provide technical-economical information needed for selecting the preferred option to be used as a basis for preparing Detailed Design. Each proposed alternative includes the definition of routes and layouts for the planned infrastructure and a general scoping of potential LAR impacts which will be taken into account in the choice of the final project alternative.
- The findings of the feasibility study are shared by the concerned EA, among others, with the Ministry of Economy and Ministry of Finance. After approval by the Ministry of Finance, budgetary provision for carrying out detailed design is included either in the supplementary budget or the annual budget to be passed by the Parliament and approved by the President.

(iii) **Carrying out Detailed Design and Detailed LAR Studies**
- The concerned EA engages consultants to carry out the detailed design of the project. The EA also appoints a due diligence team (DDT) to specifically look after the safeguard issues. Simultaneously, in accordance with the provisions of LAL, a commission is constituted for the purpose of determining the loss due to expropriation of land. Both the teams jointly manage all activities connected to impact assessment and AP identification, and facilitate communication with the affected populations and assist during public consultation, disclosure and complaints resolution tasks.
- The collection of detailed LAR information is taken up jointly by the design consultants, DDT and the commission in different phases, which involve; (i) marking and surveying in the field all affected properties, and (ii) carry out valuator a full evaluation at market or replacement cost rates of affected land, buildings, trees, crops, and, at least for Multi-lateral Lending Agency projects movable properties (businesses and job losses).
- The EA provides the alignment of the project and other details and requests the Ministry of Agriculture, Irrigation and Livestock (MAIL) to provide the land record data. The EA prepares a LAR proposal for the project based on preliminary investigations carried out through existing records and with the help of the MAIL officials. These include:
  a. Assessment of impacts (essentially land, structures, crops and trees)
  b. Identification of the APs and of the legal status of their affected properties
  c. Assessment of LAR costs
  d. Schedule for LAR execution.
- The detailed LAR study includes, among others, conducting a preliminary impacts assessment based on the existing records to be reviewed by the LAR Commission appointed by the municipality. Field surveys entail a measurement survey to confirm/update the preliminary data on land/buildings impacts and on affected parties; other impacts are also identified but not measured. Impact verification is followed by a valuation survey, by the preparation of a protocol for each AP detailing impacts and compensation. Valuation of the affected structures is determined by the municipal authorities. Similarly, the valuation of the trees and crops is determined by the municipal and agriculture department's authorities. Protocols and other

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20 Cadastral is generally not available in all offices in Afghanistan.
21 For determination of loss due to acquisition of land, a commission is established by the municipality consisting of (i) the affected person, (ii) authorized representative of the EA, (iii) authorized representative of the municipality, (iv) authorized representative of the ministry of finance, and (v) authorized representative of the ministry of justice.
documents are then submitted to the respective EA. The EA reviews all the documentation and submits the LAR documents for approval by the council of ministers.

- Consultation with the APs and resolution of their complaints and grievance is not practiced for the government funded projects. However, in the case of Multi-lateral Lending Agency projects, extensive public consultation takes place during this phase and complaints and grievances are addressed to the extent feasible.

- Unlike the ADB financed projects, a detailed Resettlement Plan is not prepared for the government funded projects. However, a report consisting of the details of the affected persons and the extent of loss, including the budget, is prepared by the EA. The EA also prepares an implementation plan, although this is not a specific requirement under the LAL.

(iv) Final Approval of LAR studies and plans
- The final impacts assessment and the valuation report is submitted by the concerned EA to the Council of Ministers. As per the provisions contained in the LAL, the expropriation of a plot or a portion of plot, for public interest, is decided by the Council of Ministers and is compensated at fair value based on the current market rates.

- Thereafter, the Ministry of Finance conveys the approval to the respective EA and makes a provision in the annual budget for payment of compensation to the APs. The compensation is paid by the Ministry of Finance, generally through bank transfer, based on the details of APs and losses provided by the EA and then civil works begin. This approval corresponds to an approval of the LAR studies.

(i) LAR implementation
- The APs are informed about their compensation.
- The budget for payment of compensation is allocated by the Ministry of Finance
- The concerned EA sends all the details regarding the APs, compensation, bank account details, etc., to the Ministry of Finance for payment of compensation.
- APs are paid generally through direct bank transfer.

(ii) Start of Civil Works
The right of the owner or land user shall be terminated 3 months prior to start of civil works on the project and after the proper reimbursement to the owner or person using the land has been made.

95. The basic feature of the local LAR processing system synthesized above and schematized in table 3.2 below, is that LAR planning is carried out as a subsidiary task only after a project is fully designed.

<table>
<thead>
<tr>
<th>Table 3.2 AFG Process for LAR Planning/implementation</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Steps</strong></td>
</tr>
<tr>
<td>Preliminary tasks</td>
</tr>
<tr>
<td>Feasibility Study</td>
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<tr>
<td></td>
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<tr>
<td>Detailed design and LAR Preparation</td>
</tr>
<tr>
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<td></td>
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</tbody>
</table>
• Identification of replacement land and a plan for their preparation/distribution
• Detailed Valuation of impacts in the field
• Preparation of a final LAR schedule
(viii)
Preparation of a report inclusive of schedules, action/implementation plan and budgets.

<table>
<thead>
<tr>
<th>Approval of LAR studies and plans</th>
<th>(ix) EA submits the plan for approval by the Council of Ministers.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(x) Ministry of Finance conveys the approval to the respective EA and makes a provision in the annual budget for payment of compensation</td>
</tr>
<tr>
<td></td>
<td>(xi) This approval corresponds to an approval of the LAR studies.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>LAR implementation</th>
<th>(xii) The APs are informed about their compensation.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(xiii) The concerned EA sends all the details regarding the APs, compensation, bank account details, etc., to the Ministry of Finance for payment of compensation through bank transfer.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Civil Works implementation</th>
<th>(xiv) Civil works starts</th>
</tr>
</thead>
</table>

### 3.3 Comparative analysis

96. The short outline of the ADB and AFG LAR processing steps detailed above shows a fundamental disconnect between the ADB and national practice. The AFG system does not view LAR preparation as an integral part of the project and postpones LAR tasks to the completion of project design. The ADB system, instead, envisions LAR preparation and project design as parallel tasks. If matched for comparison purposes against each other, the two systems have no solution of continuity and cannot be translated into each other. For this a compromised processing system for the country is required. This compromised approach has already informally emerged in the preparation of ADB-financed projects in the past through a reorganization of the various steps implied by the national system into the structure of action predicated by the ADB system. This new system however, still requires fine-tuning, codification in national instructions and broad mainstreaming.

97. It is important to note that the new LAR processing system has matured through a difficult process of adaptation involving mistakes, task implementation delays and substantial misunderstandings between ADB and EAs officers. The new scheme was formally adopted by ADB and Government during PPTA negotiations without a parallel elaboration of local requirements and clear understanding of its consequences for the implementation of specific tasks. Without this prior understanding, the initial execution of the new scheme clashed with un-reflected assumptions of ADB and EA officers, the former tending to take for granted the ADB approach and discounting its novelty for the EAs and the latter instinctively orienting their action based on known national practices and struggling to make the adaptations needed.

98. The above situation is rather usual in situations where real change requires not only formal but also practice modifications. While formal change can be obtained by changing regulations and instructions, practical change requires instead a trial- and- error process taking place as things enfold. Many issues detailed in this section have now been solved for EAs which have already prepared ADB loans. The same issues, however, can be repeated with new EAs partnering with ADB for the first time. In these cases, the repetition of the situation described above may be partly avoided if there is more consciousness of the various issues entailed by the merging of the ADB and national LAR planning systems.

### 3.4 Issues with the LAR implementation process for ADB-financed projects

99. The following section provides a comparative analysis of the practical merging of ADB and AFG LAR processing systems in the preparation of projects in AFG. This exercise highlights coordination gaps
and improvement needs and recommends solutions. The results of the analysis are summarized in Table 3.3 at the end of the chapter.

3.4.1 General Issues

100. **Project Design Level and options for LARP preparation**: The possibility to prepare a LARP and in particular initiate the impacts surveys is logically contingent on the prior availability of a project design identifying the impacts area (at least a tentative project alignment for linear projects, or a tentative location of basic project components for nonlinear projects). The level of details of the prior design is directly correlated with the level of details that can be achieved for the LARP prepared during a PPTA as a condition to project appraisal. Based on the overall ADB experience and on the assumption that the average time for a PPTA is six months, the situation is as follows:

(i) In the very rare case of a PPTAs starting with a fully finished detailed design, it may be expected that the LARP presented at MRM is a final document. Such a document will require only the allocation of compensation budget and other pre-implementation actions to be implementation-ready.

(ii) In case a PPTA starts with a finished Feasibility Study/preliminary design, it may be expected that the LARP prepared for MRM appraisal can be at least an advanced draft document based on a sufficiently detailed design to mark the final project footprint. Such a LARP may include all the basic impacts and APs information but may require better specification in the baseline, some fine-tuning of the compensation delivery modalities and minor changes in the impacts/AP baseline due to adaptations in the final project footprint elaborated during the execution of detailed design.

(iii) In case a PPTA starts without a prior Feasibility study, it may be expected that the LARP prepared for MRM will be only a very initial document based on a tentative project footprint that may substantially change after detailed design is finished. Most often such a draft LARP will be based on a combination of desk and field data may omit some basic information and will require extensive rewriting and modifications before it is finalized.

101. **Finalization of a Draft LARP**: The draft LARPs prepared for project appraisal purposes are usually finalized after Loan approval under Loan funds. This practice entails complications and leads to delays in LARP finalization between 1.5 and 2 years which exceed the time of work interruption between appraisal and Loan administration and the time to technically finish the work. Additional time is in fact spent for consultants hiring and mobilization, EA and consultant training (during the interval between appraisal and loan administration several members of the EA team may have changed and the consultants team will be a new one) and to restart anew many interrupted tasks. This could be avoided if it was possible to rely on the experience built by the original EA team and by the PPTA consultants and to maintain the early PPTA momentum. It is thus advisable that at the time of PPTA preparation ADB considers the option of financing PPTAs covering the entire period between PPTA inception and Loan approval. This would substantially increase the possibility that by Loan approval a LARP is fully finalized.

3.4.2 PPTA Preparation Issues

102. **Inadequate LAR planning, resource assessment and scheduling work**. Usually, during this phase no dedicated LAR preparation activity is carried out by ADB in the field. Beside a few inputs from the Resettlement specialists at headquarters, the PPTA paper and the consultants TOR are elaborated based on generic models/schedules without basic knowledge of the specific LAR situation of the project to come.

**Proposed action**: To properly launch project preparation activities it is recommended that:

(i) The ADB Safeguards Team (ST) either from HQs or RM is fielded at Reconnaissance Mission as a standard procedure. During the mission, the ST specialist will:
   a. visit project areas;
   b. based on SPU requirements and in consultation with the EA, assess the likely impacts magnitude;
   c. identify major LARP preparation issues and approaches needed;
   d. prepare a preliminary LARP preparation schedule inclusive of Government tasks, and;
e. coach the EA on the ADB LAR requirements and agree on a LAR processing plan to be adopted so as to fit both ADB and national requirements and ensure its smooth execution.

f. The above will be summarized in a LAR planning brief which will inform the preparation of PPTA paper, consultants TOR and borrower agreement. For difficult cases as projects implemented by any EA new to ADB procedures, ADB may also hire a staff consultant to advise the EA and the Project Team during the PPTA processing phase.

b) Given the difficulty to finalize a LARP within the PPTA administration period between the inception Mission and MRM, the PPTA Paper and the consultants TOR include financial and schedule provisions for possible extensions of the consultants work up to loan negotiations or Loan approval.

103. **Need of greater alignment of AFG’s and ADB’s Project/LAR processing system.** Greater understanding of AFG’s LAR preparation procedures is needed to avoid contradictions between the Country and the ADB project/LAR preparation system. In this respect particular attention is to be paid to the fact that under the AFG Country System the full initiation of actual design and LAR surveys in the field is contingent upon:

(i) The approval of the project as part of the annual budgets passed by the Parliament and approved by the President and approval of the start of design tasks and the allocation of relative finances. This generally takes time and requires extensive background activities by the Government.

(ii) The establishment of a project specific Commission which will coordinate LAR activities, LAR impact scopes based on the available data, assessing potential LAR costs, advise the EA, ensure surveys and valuation quality and legal standards and recommend the LAR Plan for approval.

104. These milestones should be in place before PPTAs activities start otherwise it may cause difficult project processing situations. Current project experience shows that this is particularly so if the LAR specialists under the PPTA consultants are fielded before the above activities are completed. When this happens, project design and LAR surveys may be slowed down or even idle and may be carried out unsatisfactorily due to administrative hurdles, potential AP resistance or lack of overall task-coordination.

**Proposed Action.** It is recommended that in the future ADB schedules PPTA activities so as to condition the fielding of PPTA design surveyors and LAR specialists to the execution of the desk surveys and the promulgation of the Eminent Domain Decree. This will allow a smooth and time-efficient execution of the surveys and allow the full use of the consultants time once they are fielded.

3.4.3 **PPTA Implementation Issues**

106. **Lack of experience of EAs and consultants with either ADB LAR requirements or AFG practice.** The LAR Commission appointed by the Municipality is an ad hoc institution specifically formed for one Project. Depending on Project magnitude, LAR Commission is composed of the various representatives from the stakeholders who have no experience with ADB practice and SPS requirements. In turn the consultants are mostly foreigners who may not be well acquainted with national LAR practice. Given the key roles of the commission and the consultants, this reciprocal lack of experience may result in serious complications during LAR preparation and implementation.

**Proposed Action.** It is recommended that during the Inception Mission and before the beginning of field surveys and other core LAR activities the following takes place:

(i) Clear implementing rules and regulations for the LAL are prepared by the Government and if requested with ADB assistance

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22 Based on the national processing system, where project design precedes LAR preparation, the project is approved as part of the annual budget much before the beginning of LAR tasks as a condition to start engineering design not LAR planning. Within a merged ADB and National processing system, however, design and LAR tasks starts start in parallel.

23 In principle, without a decree for a project, surveyors or valuators cannot enter private plots without the permission of their owners.
(ii) LAR Commission, EA and consultants plan the action to come together and are well coached both on SPS and AFG LAR provisions and LAR planning mechanisms for ADB projects.

(iii) LAR Commission, EA and consultants agree on a scheduled LAR preparation plan reflecting both ADB and Government requirements and detailing the action to be carried out with each concerned local government, and;

(iv) Local Governments are informed of the plan.

(v) To carry out this work the ST specialists at headquarters or at least the LAR consultants at RM will have to be mobilized to assist. The scheduled action plan will be prepared by the PPTA consultants and included in the inception report.

107. **Planning and Coordination of design and LAR tasks.** The execution of effective LAR impacts and valuation surveys necessarily follows the prior definition of a final project alignment and the identification of a well-defined impacts corridor. To avoid that design excessively delays LAR surveys, the former is to be planned as much as possible in function of the latter and what is to be taken as the impact area is to be clearly defined. For instance in this initial project preparation phase, design plans should selectively focus on the essential investigations needed to establish a clear project footprint (other dimensions of design work may follow later the LAR surveys are concluded). In parallel it would be important to agree from the start on whether the corridor of impacts is to be taken as the entire project right-of-way (ROW) or only as the area directly affected by civil works.

108. In addition, to make the best use of PPTA time, design tasks may need to be planned first in areas with impacts and may need to be coordinated with LAR activities based on a staggered process. This staggered process would involve the completion of design in small batches and the execution of LAR surveys for each batch immediately thereafter. Further time saving can be obtained if the design and LAR work is simultaneously carried out in different project sections by different teams of surveyors.

**Proposed Action.** The scheduled Action Plan proposed above should:

(i) Define area of impacts and design level needed to fix the alignment;
(ii) Discuss possible modifications in preliminary alignment to minimize impacts;
(iii) Phase project schedules in two phases one in areas without and with LAR and prioritize design work to be done in these latter;
(iv) Subdivide design work in batches finalizable in 2 weeks;
(v) Identify the optimal number of design and LAR team needed, and;
(vi) Schedule LAR surveys in each batch immediately after design is finished.

109. Finally, it is also to be noted that to appraise a loan, ADB requires Government approval of the LARP both when it is final or a draft. Again, this may create a substantial delay as Government approval requires lengthy reviews by the EA, Ministry of Finance and the council of ministers.

**Proposed Action.** To avoid unnecessary delays it is recommended that only final LARPs, which by definition are binding, are approved based on the above mentioned action. Draft LARPs can be instead approved only by the EA since they are yet to be finished and therefore, do not need to be binding.

3.4.4 **Loan Processing Issues**

110. **Establishment of additional capacity and finances for a rapid finalization of the LARP during the Loan Processing phase.** Based on the general ADB project preparation experience, the time and financial allocation for PPTA studies is often insufficient to fully finalize the LARP by the PPTA’s end and by the Management Review Meeting (MRM). When this happens, SPS requirements for MRM approval are satisfied by using a preliminary LARP draft. The draft LARP is finalized later under Project finances after the

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24 To assess whether the impact area is the whole right-of-way or only the corridor of impacts.
loan is approved and before the start of land acquisition and civil works. This scheduling format is required to expedite Loan Approval but leads to a time-gap in project preparation activities that causes very significant delays to the overall completion of project preparation.

**Proposed Action.** These delays could be avoided if the period between MRM and Loan Approval (usually about 6 months) could be utilized to further LARP preparation and, if possible, finalize it by Loan Approval. As already discussed above, it is thus recommended that the PPTA Paper and the consultants’ TOR prepared during the PPTA processing phase include financial and schedule provisions for possible extensions of the consultants to work up to loan negotiations or Loan Approval. To ensure continuity with the project preparation activities prepared during the PPTA administration phase it is also recommended that the Government keeps mobilized the EA LAR team, the LAR Commission and the concerned local governments.

### 3.4.5 Loan Administration Issues

#### 111. Eventual Continuation of LAR Preparation during Loan Administration.

In case the LARP was not finalized in the preceding phases, LAR preparation will continue in this phase through capacity (often provided by the Project Supervision Consultants team) financed under Loan proceedings. Experience indicates that the transfer of LAR preparation tasks from one consultant to another is particularly delicate and needs careful preparation to avoid delays and complications.

**Proposed Action.** To launch the work of the new consultants and ensure continuity, it is recommended that ADB takes action similar those taken during PPTA processing and administration. In particular it is recommended that:

(i) Before the consultants are hired the ST reviews the LAR preparation status for the project, prepares detailed TOR for the resettlement specialist and assists in the preparation of the contract as needed. In doing so the ST will have to ensure that the LAR capacity in the consultants team is sufficient and available when needed.

(ii) After the consultants are mobilized the ST carries a mission to visit field sites and review with the consultants, to brief the new team on priorities and modalities of work and to ensure good understanding between them, the EA and the LAR Commission.

(iii) Before initiating their core tasks the consultants include in the inception report an action plan of the work to come detailing tasks, sequences and schedules and modalities of work including if necessary a detailed plan for survey execution.

#### 3.4.5 LARP Implementation Issues

112. **Planning Tasks.** Whether the LARP was finalized by Loan Approval or later during Loan Administration, LARP implementation occurs regularly during Loan Administration. Most of the LARP implementation activities pertain to the Government but ADB needs to ensure proper planning and close supervision of the task to avoid delays and complications.

**Proposed Action.** Before the beginning of LARP implementation the Supervision Consultants prepare an action plan indicating in detail all tasks to be carried out, relative schedules, implementation issues and specific supporting action needed from EA or ADB.

113. **Finalization of legalization.** Before the start of actual LARP implementation it is common to find that many legalizable APs have not yet taken the administrative action necessary to clear or reconstitute their property title on which legalization is predicated. There are several reasons for this: the APs have no money to pay for the land office fees, they do not understand the relevant administrative rules, or simply are too busy with their daily chores to take action. To avoid the significant complications and delays entailed by this situation special measures are needed.
**Proposed Action.** Although the legalization action is a primary responsibility of the APs, the EA will have to be proactive in assisting them in order to accelerate LAR”. In this respect it is recommended that:

(i) The EA assigns one member of the LAR team to the task to: i) directly contact each AP with pending legalization issues, understand their case and provide advice on what is to be done; and ii) coordinate and intervene with the relevant administrative offices on the solution of the situation of each AP and on its establishment as a priority case.

(ii) The EA directly pays the administrative fees for each AP that has failed to do so (the fee will then be recovered from the APs as a deduction from their compensation dues). In case the EA has no finances to advance for this task ADB may want to consider the possibility of an advance from Project finances.

114. **LARP Finances Allocation.** Based on the approval of the Final LARP, EAs request the Ministry of Finance (MOF) to provide LARP compensation funds. The actual funds allocation takes longer time. The process, however, may be much longer and take more than one year if the requests of funds to MOF are made after the cut-off date for budget allocations in around July. This bottleneck can be solved by requesting an exception to the rule to be supported by a Decree to be signed by the Council of Ministers. This will expedite the delivery of funds but still requires significant time.

**Proposed Action.** In the eventuality that LARP approval is needed several months before the yearly budget allocation it is recommended that the EA includes in the LARP Decree also an authorization for the request of the out-of-budget funds. If this is not possible the EA can alternatively prepare simultaneously two decrees, one for LARP approval and the other for the extra budgetary allocation of money.

115. **Complaints and grievances.** The SPS provides that for each project requiring LAR an ad hoc mechanism to swiftly and transparently handle complaints and grievances at the level of the affected communities is established. The implementation of this mechanism requires the development of: a) basic procedures and schedules to record and manage each complaint and set up an appeals system; b) the establishment of a team involving EA, local governments, representatives of the APs and civil society to evaluate and provide recommendations on each case and; c) the definition of logistic arrangements to facilitate travel to complainants EA personnel and other stakeholders. AFG law does not specifically deal with the complaints and grievances and therefore, no clear protocol for this exists. Different EAs deal with complaints and grievances with different levels of direct engagement and most often leave the ultimate solution of difficult cases to the formal court process. The overall result of this situation is that in the country there is little experience with the establishment of grievance resolution mechanisms requiring community participation dynamics and organizational efforts as those required by ADB.

**Proposed Action.** It is recommended that for each project ADB fields its own LAR specialists to train and assists EAs and consultants in the planning and establishment of Complaint resolution mechanisms fitting SPS requirements.

116. **External Monitoring.** The ADB’s SPS requires that LARP implementation is supervised by an Independent Agency which is usually a civil society organization, a consultant or an academic institution and is hired by the EA. In the case of Afghanistan, this practice encounters an impediment: civil society organizations or NGOs or academic institutions lack the required expertise. If no solution is found, it will pose difficulties in implementation of an important requirement of the SPS.

**Proposed action.** As already done in the case of other projects, it is recommended that the independent monitoring agency is hired by ADB as a consultant and is trained for the task by the ST.

117. **Note on issues relative to LARP preparation under MFF tranches.** The text above applies in general to the LARP preparation situation in MFF tranches following tranche one but with some major adaptation as detailed below:
(i) As these tranches are completely prepared under loan finances by the MFF implementation consultants and do not entail a PPTA, the need to extend the duration PPTA to loan approval does not subsist. What is important in this case is that the borrowers pay the utmost attention to submit the PFR for ADB approval when the LARPs are fully finalized. As per ADB it is recommended that PFR endorsement is granted only when the LARPs are final.

(ii) As in the case of the first tranche, the MFF consultants responsible to prepare the LARPs will have to be thoroughly trained on the local project processing system and on national LAR principles and practice. However, since the consultants may be the same for different tranches the need to train them applies only for the first tranche they prepare. It is assumed that after that experience they will no longer need training. The same logic applies to the EA since it was already exposed to the merged ADB-local project processing system during tranche 1.

118. The Table 3.3 refers to self-standing project loans or first MFF tranches. It summarizes the above text in reference to self-standing project loans by matching the LAR action required by the ADB and the AFG system in the way they come together for ADB financed Projects. The table illustrates capacity and coordination issues emerging at each phase and step along the process.
Table 3.3  Comparison of the merged ADB and AFG LAR planning process and related streamlining/improvement needs

<table>
<thead>
<tr>
<th>Task</th>
<th>ADB</th>
<th>Activities</th>
<th>Wks</th>
<th>AFG</th>
<th>Activities</th>
<th>Wks</th>
<th>Streamlining/improvement Needs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Project concept and PPTA Processing</td>
<td></td>
<td></td>
<td></td>
<td>Launching of Feasibility Study and Detailed Studies</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. Reconnaissance mission</td>
<td></td>
<td></td>
<td></td>
<td>Approval of Project</td>
<td></td>
<td></td>
<td>Issues: Poor alignment of ADB/ local process tends to cause delays and often leads to incomplete surveys which will require substantial updates after loan agreement.</td>
</tr>
<tr>
<td>2. PPTA Concept paper preparation</td>
<td></td>
<td></td>
<td></td>
<td>Approval for Detailed Studies</td>
<td></td>
<td></td>
<td>Proposed GOV Action: For effective PPTA scheduling and implementation, the tasks are to be done before the consultants are fielded.</td>
</tr>
<tr>
<td>3. PPTA Concept paper review</td>
<td></td>
<td></td>
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<td></td>
<td>Proposed ADB Action: To speed up PPTA tasks it is recommended that the ST is fielded in this phase. ADB may also consider:</td>
</tr>
<tr>
<td>4. Consultants TOR/bidding</td>
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<td></td>
<td>a) hire a LAR consultant (1 month) to assist EA;</td>
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<td>5. PPTA Approval</td>
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<td></td>
<td>b) Add 2-3 months to PPTAs covering Feasibility Studies</td>
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<td>6. Consultant Contract signed</td>
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<td>c) Extend PPTA finances/ capacity to Loan approval.</td>
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<td>Average Total time A:</td>
<td>12</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Project Preparation and PPTA implementation</td>
<td></td>
<td></td>
<td></td>
<td>Detailed Studies</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. Consultants mobilization</td>
<td></td>
<td></td>
<td></td>
<td>A well-staffed LAR team is fielded.</td>
<td></td>
<td></td>
<td>Issues: To save time and improve PPTA effectiveness design and surveys need to be expedited and improved by better coordinating and planning design-LAR tasks.</td>
</tr>
<tr>
<td>2. Inception Mission</td>
<td>ADB ST fielded</td>
<td>1</td>
<td></td>
<td>LAR Group and Valuation committee/ Local GOV mobilized in support to PPTA consultants</td>
<td></td>
<td></td>
<td>Proposed Consultants Action: The consultants prepare an action plan to:</td>
</tr>
<tr>
<td></td>
<td>Consultants / EA prepare a time bound LAR Action Plan (APL).</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>- define design level needed for alignment;</td>
</tr>
<tr>
<td>3. LARP Preparation</td>
<td>Project design starts</td>
<td>16</td>
<td></td>
<td>Detailed LAR studies start</td>
<td></td>
<td></td>
<td>- split project in sections with-without LAR.</td>
</tr>
<tr>
<td></td>
<td>LARP Policy agreed with EA</td>
<td></td>
<td></td>
<td>Detailed LAR surveys.</td>
<td></td>
<td></td>
<td>- Plan more than 1 design team and LAR team working in parallel on different sections</td>
</tr>
<tr>
<td></td>
<td>LAR surveys done.</td>
<td></td>
<td></td>
<td>- impacts valuation.</td>
<td></td>
<td></td>
<td>- prioritizes design in sections with LAR.</td>
</tr>
<tr>
<td></td>
<td>AP Consultation</td>
<td></td>
<td></td>
<td>- EA team intensively coordinates with local GOV/relevant state agencies and resettlement commission.</td>
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<td></td>
<td>Initial LARP text</td>
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<td>- AP notified and legalization initiated.</td>
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</tr>
<tr>
<td>4. Technical review</td>
<td>ADB reviews LARP/ advises consultants</td>
<td>2</td>
<td></td>
<td>EA Team assists Consultants in LARP finalization and review</td>
<td></td>
<td></td>
<td>Proposed Government action. As full GOV approval of a LARP through an official ordinance is time consuming. It is recommended that when only a Draft LARP is available, approval is based on simplified and shortened procedures involving only the EA.</td>
</tr>
<tr>
<td>5. Final/Draft LARP finalized</td>
<td>Final/Draft LARP finalized</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Issues: Except for very rare occasions design and surveys are not completed by this phase. MRM thus approves based on a draft LARP based on field surveys and measurements but yet to be finalized.</td>
</tr>
<tr>
<td>6. Final/Draft LARP approval</td>
<td>ADB approves final/Draft LARP</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Proposed Government action. As full GOV approval of a LARP through an official ordinance is time consuming. It is recommended that when only a Draft LARP is available, approval is based on simplified and shortened procedures involving only the EA.</td>
</tr>
<tr>
<td>7. LARP Disclosure</td>
<td>Final/Draft LARP</td>
<td></td>
<td></td>
<td>Final LARP is disclosed to APs</td>
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<tr>
<td><strong>MRM</strong></td>
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<tr>
<td><strong>Average Total Time B.</strong></td>
<td>18 18</td>
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</tbody>
</table>

**Loan Processing**

**Detailed LAR Studies (continuation)**

Issues. Experience shows that usually at MRM: (a) design / LARPs are not final, (b) MRM approval is based on draft LARPs, and (c) project preparation is interrupted as PPTA funds are finished. LARP finalization is thus seriously delayed as it s postponed to Loan Administration.

Proposed ADB Action. This can be avoided if LARP finalization continues after MRM and ITA funds cover also this period. Based on this conclusion two LARP finalization scenarios are possible:
- **Scenario A**: with PPTA funds up to loan approval
- **Scenario B**: without additional PPTA funds

### SCENARIO A

<table>
<thead>
<tr>
<th>Wks</th>
<th>Continuation of Project and LAR preparation</th>
<th>Continuation of unfinished LARP finalization tasks</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>20</td>
<td>20</td>
</tr>
</tbody>
</table>

1. Appraisal Mission and Continuation of LARP preparation
   - ADB ST fielded Continuation of Design and LAR surveys
   - if design footprint fixed LARP finalization.
2. LARP Review
   - LARP reviewed (if final)
3. LARP Approval
   - ADB Approves LARP and waits for the Government approval.
4. Loan Negotiations
5. Advanced procurement of Supervision Consultants
6. LARP Disclosure
   - If final LARP in English is disclosed on ADB website
   - EA disclosure
   - EA assists as needed in the review
7. Board Approval
   - No LARP activity
8. Loan Signing

**Expected average total time**

| 31 |

### SCENARIO B

<table>
<thead>
<tr>
<th>Wks</th>
<th></th>
</tr>
</thead>
</table>

1. Appraisal Mission
   - Start of advanced procurement of Supervision consultant
2. Loan Negotiations
3. Board approval
4. Loan signing

**Proposed GOV Action.** The establishment of a shortened process for the preparation and approval for the LARP is needed to maintain the proposed schedule.

**Issues:** Need to simplify the process for the promulgation of Decrees.
| 1. Consultants mobilization and coaching. Loan Admin Mission | ADB fields the ST team, coaches the consultants on project issues.  | 3  | Redeployment of EA team, Valuation and Resettlement Commission and loc. Gov. The EA assists in the coaching of the consultants  | 3  | Issues: As above  
Proposed GOV Action. As above.  |
<table>
<thead>
<tr>
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<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>2. Continuation of project and LARP preparation. Design/LARP Finalization</td>
<td>ADB reviews Final LARP</td>
<td>2</td>
<td>EA assist as needed in the review</td>
<td>2</td>
<td></td>
</tr>
</tbody>
</table>
| 3. LARP Approval. | ADB approves Final LARP  | 6  | LARP surveys/valuation review  
LARP and LAR budget Approval.  | 6  |
| LARP Disclosure | LARP disclosed on ADB web  | 1  | EA Disclosure  
EA discloses LARP/Pamphlet  | 1  |
| **Expected Average Total Time** | **22**  | **22**  | **22**  | **22**  | **22**  |

<table>
<thead>
<tr>
<th><strong>Loan Administration</strong></th>
<th><strong>Detailed Studies (continuation)</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Continuation of LARP Preparation (if needed)</strong></td>
<td><strong>Continuation of LARP Preparation (if needed)</strong></td>
</tr>
<tr>
<td>LARP Implementation and final Project chores (BOTH SCENARIO A AND B)</td>
<td>Execution of Impacts Compensation</td>
</tr>
<tr>
<td>ADB Mission</td>
<td>Consultants prepare a LARP Implementation plan</td>
</tr>
<tr>
<td>Supervision consultants supervise LARP implementation Routine supervision of LARP implementation and compensation delivery.</td>
<td>AP legalization finalized, contracts signed and eventual expropriation initiated.</td>
</tr>
<tr>
<td>Compliance report review no objection to start civil works. ADB provides no objection letter.</td>
<td>Delivery of compensation</td>
</tr>
<tr>
<td><strong>Expected Average Total LARP Finalization time</strong></td>
<td><strong>30</strong></td>
</tr>
</tbody>
</table>

**Issues:** LARP implementation could be expedited with more proactive engagement of EA and ADB.  
**Proposed GOV Action:**  
- a) EA proactively engage in the finalization of AP legalization and possibly advances payment of land registration fees;  
- b) adapt work for the request of LAR funds to the schedule of LARP approval and national budget approval.  
**Proposed ADB Action:**  
- a) Provide sufficient ST support in this Project Preparation phase;  
- b) be prepared to advance finances to EA for land registration fees of legalizable APs and  
- c) Finance the hiring and coach External Monitoring Agency.
CHAPTER 4

OVERARCHING INSTITUTIONAL/TECHNICAL ISSUES RELATED TO LAR

119. This chapter looks at overarching LAR issues which require capacity building interventions at the level of the Country system as a whole. Many of these issues have already emerged in Chapter two as gaps between the SPS and the National law requirements, or in Chapter three as factors hindering the LAR preparation and implementation for a project. In those two chapters specific recommendations were provided on how to reconcile each single policy gap and on how to address LAR complications within the project development process. In this chapter these and other issues are taken up at a general country level in view of establishing a systemic mainstreaming action.

4.1 Institutional and Technical Capacity

120. As noted in previous chapters, LARP preparation is often hindered or slowed down by lack of experience of LAR Commission, EA, Local governments, valuators and consultants with SPS or AFG law requirements or with the project processing mechanisms merging ADB and local approaches to project planning. The situation mostly derive by the fact that SPS and law principles are not well integrated with clear application mechanisms and project preparation templates in a set of written instructions.

Proposed Mainstreaming Action for ADB Projects. In the future ADB may want to consider the preparation in consultation with a designated panel of National experts of the following:

A manual for ADB projects clearly describing the LAR process and detailing specific instructions to improve the coordination between the different agencies involved in the LAR for a project, the execution of surveys and calculate entitlements in a fashion fitting the SPS requirements. The manual will be distributed to and discussed with EAs, PIUs LAR teams, local Governments and Consultants at the start of preparation of a project and may include among other items:

(i) The definition of a clear survey methodology for the assessment of all impacts in the field;
(ii) The elaboration of improved measurement methods involving a better calibration of GPS data;
(iii) The preparation of standard formats/forms for impacts surveys, AP census, socio-economic surveys, public consultation reports and AP impact notices/compensation offers fitting both ADB and Government needs.
(iv) Training modules addressing the technical and administrative aspects of the various activities to be carried out during LARP implementation and preparation.

General Proposed General Mainstreaming Action. If requested by the Government, ADB may also want to consider the preparation of Implementing Rules and Regulations for the LAL addressing in detail the action and the modalities relative to its implementation for all projects irrespective of donor.

4.2 Valuation

121. Currently in AFG, an overarching regulatory basis does not exist to conduct property valuation for LAR subjected to the right of Eminent Domain. The law provides for payment of compensation for land at fair value based on current market rates but does not provide the basis for compensation for non-real estate impacts (i.e. valuation of trees, crops, business or other income losses). While the LAL states about the authorities in the government that will conduct property valuation, the absence of integrated valuation norms and standards for LAR purposes results in operational delays and creates substantial
misunderstandings, lack of uniformity and acceptance of such valuation by the APs and thus, leads to complications when the SPS principles are to be applied for calculating compensation rates. The valuators hired by the EAs and supervised by the Valuation Commission may be uncertain on what is to be done in these cases. In addition, valuators are local and may have little experience on how a valuation is to be presented so as to fit international standards and satisfy the understanding requirements of both national and international audiences.

**Proposed Mainstreaming Action for ADB Projects.** To harmonize the principles and procedures for property valuation with SPS requirements specific reconciliation measures should be addressed at least for ADB-financed projects, notably: a) adaptation of existing regulation; b) development of supplementary instructions on how to apply the LAR Valuation Standards in consonance with the SPS; c) development of guidance notes on the preparation of valuation reports fitting the parameters for state expertise review and ADB procedures; and d) develop the capacity of valuators to conduct valuation not only for specific LAR purposes but also for ADB LARPs.

(i) **Regulation development.** The development of specific valuation principles for LAR purposes and fitting national and SPS requirements should be introduced as special instructions for the implementation of ADB projects. For this, discussions will have to be initiated with an ad hoc multi-agency working group to review the current situation, identify pertinent issues and the legal level/modality of the action needed for the changes.

(ii) **Supplementary instructions on how to apply the Valuation Standards for LAR under ADB projects.** Based on the multi-agency working group recommendations, a body of Instructions should be developed to help valuators carry out valuation in line with National and SPS requirements. The Instructions would include specific guidance on how to calculate market values and assess/quantify livelihood losses, asset-based poverty levels, loss of employment, and special assistance to vulnerable people and the parameters to be used by the expertise agencies to review the compensation rates assessment for a LARP. The instructions will be developed by an agency, at the level of a Ministry, to be identified and approved by Governmental Decree.

(iii) **Guidance note for valuators on how to prepare valuation reports.** To complement the valuation instructions, ADB and an appropriate government agency will have to prepare a guidance note for valuators defining the requirements for the preparation of valuation reports for ADB-financed projects.

(iv) **Capacity of the valuators to conduct valuation for LAR purposes.** Once LAR valuation Instructions are developed, training on their implementation will have to be provided to valuators and concerned EAs.

### 4.3 Vulnerable Groups

122. It is apparent that the EAs do not necessarily have a clear understanding of the ADB requirement in respect of vulnerable people and of the activities they are expected to plan and implement in this respect. Based on the logic of the ADB policy, the special allowances for vulnerable people are meant to provide special assistance to parties that given their general socio-economic situation may be exceptionally affected by the LAR process. These allowances do not overlap with allowances vulnerable people receive as a standard contribution by the Country, if any, but are provided as an additional form of assistance directly related with their special needs exclusively during the relocation process. These principles have been accepted for the ongoing ADB projects but still need to be formalized in a clear methodological explanation.

123. It is to be noted however, that the issue is not whether these allowances are to be provided or not, but how and which vulnerable people are to be identified and what allowance amounts are to be given to ensure rehabilitation. The identification issue has been so far temporarily solved for the ongoing ADB projects with an agreement between the ADB project teams, EAs and PIUs that the vulnerable people are: the poor (households below poverty levels) and women headed households. The allowance amounts issue was instead solved by agreeing to give a variable number of months at minimum salary.
The model thus established may be acceptable also for future projects but more work is needed to establish a clear method to identify/account for the vulnerable parties and to establish proper allowance amounts. However, an issue exists regarding the proper definition of the allowances amounts. This is that so far it is unclear whether the amounts currently provided are sufficient to provide effective rehabilitation. The case should be further studied by the proper expertise agency either to confirm the current practice or modify it.

**Proposed Mainstreaming Action for ADB Projects.** The proposed actions include:

(i) Establishment of a process to maintain and update the official lists of poor households so as to ensure the rehabilitation of unrecorded but eligible poor households.

(ii) Preparation of a short study to establish allowance amounts fitting rehabilitation needs and establish clear principles and procedures for the identification of vulnerable parties. The final allowance amounts and the principles procedures can be detailed in an appendix of the LAR preparation/implementation instructions for ADB projects already recommended above.

(iii) Preparation of a guidance note detailing which AP is to be included among the vulnerable people, indicating rehabilitation allowance amounts and explaining how unrecorded eligible households can be included ex-novo in the official lists of poor households. The guidance note can be included in an appendix of the LAR preparation/instructions for ADB projects already recommended in the proposed action for section 4.1.

**4.4 Livelihood Restoration**

124. Similarly to vulnerable groups, EAs are unclear about what exactly they are expected to plan and implement in terms of livelihood restoration. In actual fact, little is done so far to monitor the restoration of livelihoods and/or to take action where livelihoods are affected. The ADB requirement is not necessarily known or understood.

**Proposed Mainstreaming Action for ADB Projects.** Carry a short study to prepare guidelines for identification of such impacts and determination of compensation amount which could be enough to restore to at least pre project standards. The methodology to be applied in the calculation of indemnities for both registered and non-registered losses will be defined in an appendix of the LAR preparation/implementation instructions for ADB projects already recommended above and will be reflected in the Country LAR Framework (CLARF) to be prepared during the capacity building phase of the RETA.

**4.5 Monitoring and Evaluation**

125. There is no standardized framework for LAR Monitoring and Evaluation. The LAL does not give any emphasis on monitoring and evaluation of LAR. This notwithstanding, LAR monitoring has been already done regularly for ADB projects although some EAs continue to have little understanding of what is required and expected in this respect. This particularly applies to: a) short-term internal and external monitoring inputs and outputs during LAR implementation; b) long-term internal and external valuation inputs and outputs after LAR implementation and; c) external monitoring/valuation requirements and modalities.

**Proposed Mainstreaming Action for ADB Projects.** ADB may want to prepare a set of instructions for M&E detailing the activities for short- and long- term tasks. These instructions may be included as an appendix to the LARP preparation/ implementation manual mentioned above.

**4.6 Financial facilitation of the reconciliation of Livelihood rehabilitation requirements**

126. The SPS includes among its requirements the provision of livelihood rehabilitation allowances to severely affected and vulnerable APs. These provisions are not considered under National law or regulation and therefore, do not need reconciliation. However, disbursement on the side of the
Government of finances for these allowances may encounter resistances as the expenditure may require laborious justifications to be accepted under the rules regulating the use of the national budgets.

**Proposed mainstreaming action for ADB Projects.** To avoid delays and project planning complications that may be caused by this issue it is recommended that ADB considers the possibility of financing the allowances for severely affected and vulnerable APs under the loan as a standard practice.

### 4.7 Simplification of the Government approval mechanisms

127. Based on AFG procedures, various steps of the LAR preparation and implementation process require the approval of various Ministries and Council of Ministers. These include approval for establishing the LAR Commission, approval of rates for land compensation by the Council of Ministers, approval of budgetary allocation and subsequent disbursement to the APs, etc. In one way or another, obtaining approvals entail complicated inter-agency processes and require substantial processing time. As the required government approvals are conditions to proceed with new LAR preparation/implementation steps, the time taken in various government approval often corresponds to a temporary interruption of LARP finalization activities.

**Proposed Mainstreaming Action for ADB Projects.** It is recommended that ADB studies with the appropriate government agency(s) the available options to shorten and simplify the approval process including the approval of draft LARPs only by the EA. The options adopted will be formalized in a working note acceptable to the Government.

### 4.8 Grievance Redress Mechanism

128. To ensure effective application of the GRM at the project level, a more effective process for accepting and reviewing complaints or claims has to be developed and mainstreamed into all ADB-funded projects. EAs need to understand the importance of identifying issues at an early stage and taking decisive action to remedy them. Past experience shows that neither EAs nor local governments have an adequate understanding about how to identify potential problems or to address specific claims in an efficient and satisfactory manner. This chapter highlights the lack of appropriate understanding, standardized processes or GRM documents for LAR purposes so that the ministries and the agencies have appropriate GRM mechanisms in place.

129. The level of intervention would include a sector-specific technical guidance note developed and adopted by the MOF and MOJ. The technical guidance note for developing and managing project level GRM for infrastructure projects would include standardized materials developed in cooperation with ADB. The package would include a standard application form in one of the local national languages as well as other standard forms such as a request of additional information or official notification to the claimant. A basic information leaflet for the claimant about their general rights and GRM procedures and a guideline for local government and the EA on how process, investigate and make a decision about the claim would also be part of the package. Training programs using the standard materials about GRM should be offered to key ministry, EA and local government staff as well as to relevant civil society groups. The package would also be provided to PPTA and supervision consultants, with a check list about GRM for the authors of the due diligence report.

**Proposed Mainstreaming Action for ADB Projects:** A standard package of GRM materials with GRM templates and with appropriate training programs may be developed and approved.

### 4.9 Preparation of a Country Land Acquisition and Resettlement Framework

130. Most of the policy gaps analyzed in chapter two have been already harmonized through *ad hoc* expedients during the preparation of specific projects. The same has happened for the identification and solution of the LAR planning challenges identified in chapter three. This piecemeal approach practically solves immediate problems, but is time consuming, requires intensive discussions for each project and leaves ADB teams and EAs uncertain on the final LARP approval of the expertise agencies.
Planning as-you-go was inevitable for the ADB projects so far implemented in AFG, when both ADB and EAs were learning about each-other practice and were discovering the complexities caused by their merging. With the progression of ADB lending to AFG, however, more project experience has accumulated and many LAR issues have become better known. Today this offers the possibility to map LAR problems likely to repeat at each project and mainstream the arrangements for their solution into integrated procedures and instructions.

**Proposed Mainstreaming action for ADB Projects.** In the current situation, a better option for predictable project development and simpler LARP preparation/approval would be to establish an exclusive Country Land Acquisition and Resettlement Framework (CLARF) applicable to all ADB-financed projects. The CLARF will integrate in one document: a) mainstreamed and reconciled LAR principles and principle application modality; b) LAR preparation and implementation mechanisms fitting both SPS and Country requirements; c), an established institutional and administrative context for LAR in AFG, and; c) establish a clear LAR process template indicating actions needed at each step of the process and relative responsibilities. CLARF preparation would require the collaborative effort of ADB and Government which will have to concur on the issues where alignment is needed or not needed, on policy reconciliation measures and on the arrangements to be taken at each step of the LAR process. The CLARF will have to be officially approved by Government and ADB as an international agreement. Government approval will also entail a full review process involving validation from the appropriate expertise agencies and ratification at the highest approval level.
CHAPTER 5

SUMMARY AND FINAL RECOMMENDATIONS

5.1 Summary of Report Findings and Recommendations

132. The previous three chapters have identified at different levels the main issues complicating the timely and effective planning/execution of LAR tasks for ADB projects in the AFG. In parallel with this exercise, the chapters above have also proposed solutions to be further developed in phase 2 of the RETA entailing the preparation of a capacity building program.

133. Chapter two has focused on the formal/legal alignment of Afghanistan law/law - application with SPS principles/ADB LAR practice. Two items require both legal and law-application reconciliation, these are a) the eligibility of non-legal APs to compensation for non-land losses and b) the provision of special rehabilitation assistance to vulnerable and severely affected APs. Items requiring only law-application reconciliation are: (a) loss of land leases, (b) loss of trees; (c) loss of crops loss of businesses and (d) loss of income/jobs. Some gaps do not need legal or law- application reconciliation but require the adoption of instructions sanctioning the legitimacy of SPS requirements and the definition of accepted mechanisms for their application. These are: (a) public consultation; (b) information disclosure; (c) grievance resolution and (d) preparation of LARPs and appropriate measurement and census surveys for all impacts and APs. All gaps will require a reconciliation Decree for ADB Projects except for public consultation; information disclosure, grievance resolution and LARP/surveys preparation which require only technical instructions. The interventions needed to harmonize and fill gaps between ADB Policy and the country systems are summarized in table 5.1 below.

<table>
<thead>
<tr>
<th>ADB Policy Requirement</th>
<th>Policy</th>
<th>Reconciliation/Action needed</th>
<th>Action needed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Compensation of non-legal APs</td>
<td>Reconciliation needed (for non-land losses).</td>
<td>Reconciliation needed</td>
<td>Already reconciled for previous projects but to be mainstreamed by a special Decree by the Council of Ministers or directives by the Ministry of Finance for ADB projects</td>
</tr>
<tr>
<td>Assistance to severely affected/ vulnerable APs</td>
<td>Reconciliation needed</td>
<td>Reconciliation needed</td>
<td>Already Reconciled for previous projects but to be mainstreamed by a special Decree by the Council of Ministers or directives by the Ministry of Finance for ADB projects</td>
</tr>
<tr>
<td>Loss of structures and buildings</td>
<td>Reconciliation Needed (for valuation of replacement cost free of depreciation, salvaged materials, transaction costs.)</td>
<td>Reconciliation needed</td>
<td>Already Reconciled for previous projects but to be mainstreamed by a special Decree by the Council of Ministers or directives by the Ministry of Finance for ADB projects</td>
</tr>
<tr>
<td>Loss of trees and crops</td>
<td>No Reconciliation needed</td>
<td>Reconciliation needed To ensure compensation by default and proper valuation method</td>
<td>Already Reconciled for previous projects but to be mainstreamed by a special Decree by the Council of Ministers or directives by the Ministry of Finance for ADB projects</td>
</tr>
<tr>
<td>Loss of Business/employment</td>
<td>No Reconciliation needed</td>
<td>Reconciliation needed (to distinguish short and long-term impacts)</td>
<td>Already Reconciled for previous projects but to be mainstreamed by a special Decree by the Council of Ministers or directives by the Ministry of Finance for ADB projects</td>
</tr>
</tbody>
</table>
6 Loss of Jobs

<table>
<thead>
<tr>
<th>Reconciliation needed</th>
</tr>
</thead>
<tbody>
<tr>
<td>(to distinguish short/long-term impacts, fully reflect income rehabilitation and guarantee the automatic disbursement of the compensation to the APs)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Responsibility</th>
</tr>
</thead>
<tbody>
<tr>
<td>Already Reconciled for previous projects but to be mainstreamed by a special Decree by the Council of Ministers or directives by the Ministry of Finance for ADB projects.</td>
</tr>
</tbody>
</table>

7 Compensation of indirect impacts

<table>
<thead>
<tr>
<th>No Reconciliation needed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Law silent on this point so no reconciliation is needed but application standards are to be formally agreed/defined by a special Decree by the Council of Ministers or directives by the Ministry of Finance for ADB projects.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Responsibility</th>
</tr>
</thead>
<tbody>
<tr>
<td>Law silent on this point so no reconciliation is needed but application standards are to be formally agreed/defined by a special Decree by the Council of Ministers or directives by the Ministry of Finance for ADB projects.</td>
</tr>
</tbody>
</table>

8 Public participation

<table>
<thead>
<tr>
<th>No Reconciliation needed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Specific approach to be agreed with RETA Working Group.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Responsibility</th>
</tr>
</thead>
<tbody>
<tr>
<td>Specific approach to be agreed with RETA Working Group.</td>
</tr>
</tbody>
</table>

9 Information disclosure

<table>
<thead>
<tr>
<th>No Reconciliation needed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Specific approach to be agreed with RETA Working Group.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Responsibility</th>
</tr>
</thead>
<tbody>
<tr>
<td>Specific approach to be agreed with RETA Working Group.</td>
</tr>
</tbody>
</table>

10 Grievance resolution

<table>
<thead>
<tr>
<th>No Reconciliation needed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Specific approach to be agreed with RETA Working Group.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Responsibility</th>
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</thead>
<tbody>
<tr>
<td>Specific approach to be agreed with RETA Working Group.</td>
</tr>
</tbody>
</table>

11 LAR Planning

<table>
<thead>
<tr>
<th>No Reconciliation needed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Specific approach to be agreed with RETA Working Group.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Responsibility</th>
</tr>
</thead>
<tbody>
<tr>
<td>Specific approach to be agreed with RETA Working Group.</td>
</tr>
</tbody>
</table>

134. Chapter three has focused on the LAR aspects of the ADB and AFG project cycles and on what happens when the two merge for ADB-financed projects. This analysis identified the need of greater LAR action coordination and several steps in the process requiring better planning, greater technical capacity, or ad hoc time-saving/quality improvement arrangements. Regarding process coordination the ensuing recommendation is that the fielding of PPTA consultants is conditioned to the approval for establishing the LAR Commission. As per planning issues the recommendations are: a) fielding of the ADB resettlement specialists during PPTA processing; b) expansion of PPTA finances/schedules to loan approval; c) preparation of action plans at each significant step in the process including start of PPTA administration; loan processing; loan administration and LARP implementation. Finally, regarding time-saving or efficiency interventions the analysis recommendations are: a) carry design and LAR surveys in accordance with a staggered and time-saving schedule prioritizing project sections with LAR; b) shortened/simplified procedures for various approvals; c) ad hoc arrangements to synchronize the request of LAR implementation funds to the Ministry of Finance with LAR implementation schedules; d) a proactive engagement of the EA and LAR Commission in the finalization of AP legalization involving the advance of land registration funds either by the EA or ADB; e) the hiring of the external Monitoring Agency by ADB. These issues are schematized in table 5.2 below.

<table>
<thead>
<tr>
<th>Table 5.2 Summary of Recommended Action to facilitate LAR</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Issues</strong></td>
</tr>
<tr>
<td>----------------------------------------------------------</td>
</tr>
<tr>
<td>Process Coordination</td>
</tr>
<tr>
<td>Planning/financing</td>
</tr>
</tbody>
</table>
implementation;
• Financing the allowances for severely affected and vulnerable APs under the loan

<table>
<thead>
<tr>
<th>Capacity</th>
<th>Action needed</th>
<th>Responsibility</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Training/coaching of EA, LAR Commission and consultants</td>
<td>ADB</td>
<td></td>
</tr>
<tr>
<td>• Development</td>
<td>ADB</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Time-saving/efficiency measures</th>
<th>Action needed</th>
<th>Responsibility</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Design and LAR surveys based on staggered schedules prioritizing work in project sections with LAR.</td>
<td>ADB, Consultants, EA, LAR Commission, - EA, LAR Commission, Government. - EA, possibly ADB - ADB</td>
<td></td>
</tr>
<tr>
<td>• Shorten/simplify the Decree/Ordinance promulgation process;</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Proactive engagement of EA and LAR Commission in the finalization of AP legalization including advancing to the APs the land registration fees;</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Hiring of external monitoring Agency by ADB</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

135. Chapter four has focused on background institutional and capacity issues to be addressed to improve general LAR performance in the future. The interventions recommended in the chapter are: a) provision of an extensive training program on SPS requirements to EAs, key Government agencies and selected local consulting firms; b) elaboration of valuation instructions fitting SPS provisions and ADB practice to be approved by an appropriate Government agency; and c) development of instructions on how to handle Complaint and Grievances (C&G) fitting the SPS. An additional and key issue signaled in this chapter is the need to carry out the mainstreaming of harmonized LAR policy and practices through an integrated CLARF to be validated and approved by the Government. The issues detailed in chapter four are summarized in table 5.3 below.

### Table 5.3  Country-wide capacity building action plan

<table>
<thead>
<tr>
<th>Issues</th>
<th>Action needed</th>
<th>Responsibility</th>
</tr>
</thead>
<tbody>
<tr>
<td>Administrative and Technical capacity for LAR preparation under ADB projects</td>
<td>• Preparation of a LAR preparation and implementation Manual with instructions on administrative, LAR planning and survey matters. • Preparation of a broad training program/training modules for EAs and local consultants supporting the manual • Possible preparation of Implementing Rules and Regulations for the LAL</td>
<td>ADB, appropriate Government Agency (T.B.D)</td>
</tr>
<tr>
<td>Valuation Capacity for LAR under ADB projects</td>
<td>• Update of valuation standards and formats. • Preparation of a valuation manual • Provision of training</td>
<td>ADB appropriate Government Agency (T.B.D)</td>
</tr>
<tr>
<td>Vulnerable/severely AP issues</td>
<td>• Preparation of instructions on how to identify these APs and on how to set allowance amounts • Finance the allowances under the loan</td>
<td></td>
</tr>
<tr>
<td>Business rehabilitation</td>
<td>• Preparation of instructions on how on how to set indemnities amounts</td>
<td></td>
</tr>
<tr>
<td>Simplification of Government Approvals</td>
<td>• Definition of a shortened/simplified process elaborated in a working note.</td>
<td></td>
</tr>
<tr>
<td>Monitoring and Evaluation</td>
<td>• Preparation of instruction detailing short- and long-term tasks and capacity needed</td>
<td></td>
</tr>
</tbody>
</table>
C&G handling
- Preparation of instruction on C&G organization and handling
ADB appropriate Government Agency (T.B.D)

LAR Policy/practice mainstreaming
- Preparation of a CLARF
ADB, RETA working group, Expertise agencies, House of Government

### 5.2 Next Steps

136. The issues analyzed and the improvement action proposed in this CA will be taken up again during phase two of the RETA which involves the preparation of a National Capacity Building Action Plan (NCBAP). NCBAP preparation will further advance the analysis done in this report in view of laying down a list of selected capacity building interventions and defining in detail type of action/responsibilities for each of them. These tasks will be led by the ADB team and by the RETA working Group and will require intensive consultation with the appropriate Ministries/Agencies in the Government. Before being implemented, the NCBAP and relative budgets will have to be approved by ADB and the Government. The level of Government approval need will be decided as the work for the NCBAP enfold.
APPENDIX 1

LETTER OF ESTABLISHMENT OF THE RETA WORKING GROUP

Islamic Republic of Afghanistan
Afghanistan Independent Land Authority (Arazi)

Letter of Establishment of the Reta Working Group

[Text of letter]

[Signatures and contact information]
To: Ministry of Finance

For better management of land acquisition and resettlement issues of Asian Development Bank’s projects in Afghanistan according to the policy of the bank and the proposed amendments to the land acquisition law of Afghanistan, Asian Development Bank has planned to provide technical assistance to the project implementing agencies of Afghanistan through seminars and trainings.

To accommodate the mentioned goals, we intend to form a working group comprising representatives from the Ministries of (Finance, Ministry of Public Works, Energy and Water, Mines and Petroleum, Independence Organization of Local Authorities IDLg, Aviation and Transport, Geodesy and Cartography and Directorate of De Afghanistan Brishna Shirkat (DABS) under the supervision and ownership of the Afghanistan Independent Land Authority.

Similarly, in agreement with the capacity building plan and country assessment report, the aforesaid representatives are supposed to participate in workshops and seminars of ADB's policy requirements regarding Land acquisition and resettlement issues.

Therefore, all cited Ministries are requested to introduce one of the related PMOs staff or an employee experienced with Land Acquisition and Resettlement and similarly be familiar with English language (If possible) along with their cell phone numbers and e-mail accounts to the Plan and Policy Department of Afghanistan Independent Land Authority.

For further details and information, do not hesitate to contact the following cell phone number please:

+ 93 (0) 779561032

Sincerely Yours,

Jawad Paikar
Chief Executive Officer
Afghanistan Independent Land Authority - AILA

Cc: Ministry of:
Ministry of Public Works MOPW
Ministry of Energy and Water MOEW
Ministry of Mines and Petroleum MOMP
Independent Organization of local Authorities IDLA
Ministry of Aviation and Transport
Geodesy and Cartography Office
Directorate of De Afghanistan Brishna Shirkat DABS
APPENDIX 2

SPS 2009 REQUIREMENTS ON INVOLUNTARY RESETTLEMENT

SPS SAFEGUARD REQUIREMENTS 2: INVOLUNTARY RESETTLEMENT

A. Introduction

1. ADB experience indicates that involuntary resettlement under development projects, if unmitigated, could give rise to severe economic, social, and environmental risks: production systems are dismantled; people face impoverishment when their productive assets or income sources are lost; people are relocated to environments where their productive skills may be less applicable, and the competition for resources greater; community institutions and social networks are weakened; kin groups are dispersed; and cultural identity, traditional authority, and the potential for mutual help are diminished or lost. ADB therefore seeks to avoid involuntary resettlement wherever possible; minimize involuntary resettlement by exploring project and design alternatives; enhance, or at least restore, the livelihoods of all displaced persons in real terms relative to pre-project levels; and improve the standards of living of the affected poor and other vulnerable groups.

2. Safeguard Requirements 2 outlines the requirements that borrowers/clients are required to meet in delivering involuntary resettlement safeguards to projects supported by the Asian Development Bank (ADB). It discusses the objectives, scope of application, and underscores the requirements for undertaking the social impact assessment and resettlement planning process, preparing social impact assessment reports and resettlement planning documents, exploring negotiated land acquisition, disclosing information and engaging in consultations, establishing a grievance mechanism, and resettlement monitoring and reporting.

B. Objectives

3. The objectives are to avoid involuntary resettlement wherever possible; to minimize involuntary resettlement by exploring project and design alternatives; to enhance, or at least restore, the livelihoods of all displaced persons in real terms relative to pre-project levels; and to improve the standards of living of the displaced poor and other vulnerable groups.

C. Scope of Application

4. The requirements apply to all ADB-financed and/or ADB-administered sovereign and non-sovereign projects, and their components regardless of the source of financing, including investment projects funded by a loan; and/or a grant; and/or other means, such as equity and/or guarantees (hereafter broadly referred to as projects). The requirements also cover involuntary resettlement actions conducted by the borrower/client in anticipation of ADB support.

5. The involuntary resettlement requirements apply to full or partial, permanent or temporary physical displacement (relocation, loss of residential land, or loss of shelter) and economic displacement (loss of land, assets, access to assets, income sources, or means of livelihoods) resulting from (i) involuntary acquisition of land, or (ii) involuntary restrictions on land use or on access to legally designated parks and protected areas. Resettlement is considered involuntary when displaced individuals or communities do not have the right to refuse land acquisition that results in displacement. This occurs in cases where (i) lands are acquired through expropriation based on eminent domain; and (ii) lands are acquired through negotiated settlements, if expropriation process would have resulted upon the failure of negotiation.

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1 In the context of involuntary resettlement, displaced persons are those who are physically displaced (relocation, loss of residential land, or loss of shelter) and/or economically displaced (loss of land, assets, access to assets, income sources, or means of livelihoods) as a result of (i) involuntary acquisition of land, or (ii) involuntary restrictions on land use or on access to legally designated parks and protected areas.
6. If potential adverse economic, social, or environmental impacts from project activities other than land acquisition (including involuntary restrictions on land use, or on access to legally designated parks and protected areas) are identified, such as loss of access to assets or resources or restrictions on land use, they will be avoided, or at least minimized, mitigated, or compensated for, through the environmental assessment process. If these impacts are found to be significantly adverse at any stage of the project, the borrower/client will be required to develop and implement a management plan to restore the livelihood of affected persons to at least pre-project level or better.

E. Requirements

1. Compensation, Assistance and Benefits for Displaced Persons

7. Displaced persons in a project area could be of three types: (i) persons with formal legal rights to land lost in its entirety or in part; (ii) persons who lost the land they occupy in its entirety or in part who have no formal legal rights to such land, but who have claims to such lands that are recognized or recognizable under national laws; and (iii) persons who lost the land they occupy in its entirety or in part who have neither formal legal rights nor recognized or recognizable claims to such land. The involuntary resettlement requirements apply to all three types of displaced persons.

8. The borrower/client will provide adequate and appropriate replacement land and structures or cash compensation at full replacement cost for lost land and structures, adequate compensation for partially damaged structures, and relocation assistance, if applicable, to those persons described in para. 7(i) and 7(ii) prior to their relocation. For those persons described in para. 7(iii), the borrower/client will compensate them for the loss of assets other than land, such as dwellings, and also for other improvements to the land, at full replacement cost. The entitlements of those under para. 7(iii) is given only if they occupied the land or structures in the project area prior to the cutoff date for eligibility for resettlement assistance.

9. Preference will be given to land-based resettlement strategies for displaced persons whose livelihoods are land-based. These strategies may include resettlement on public land, or on private land acquired or purchased for resettlement. Whenever replacement land is offered, displaced persons are provided with land for which a combination of productive potential, locational advantages, and other factors is at least equivalent to the advantages of the land taken. If land is not the preferred option of the displaced persons, or sufficient land is not available at a reasonable price, non-land-based options built around opportunities for employment or self-employment should be provided in addition to cash compensation for land and other assets lost. The lack of land will be demonstrated and documented to the satisfaction of ADB.

10. The rate of compensation for acquired housing, land and other assets will be calculated at full replacement costs. The calculation of full replacement cost will be based on the following elements: (i) fair market value; (ii) transaction costs; (iii) interest accrued, (iv) transitional and restoration costs; and (v) other applicable payments, if any. Where market conditions are absent or in a formative stage, the borrower/client will consult with the displaced persons and host populations to obtain adequate information about recent land transactions, land value by types, land titles, land use, cropping patterns and crop production, availability of land in the project area and region, and other related information. The borrower/client will also collect baseline data on housing, house types, and construction materials. Qualified and experienced experts will undertake the valuation of acquired assets. In applying this method of valuation, depreciation of structures and assets should not be taken into account.

11. In the case of physically displaced persons, the borrower/client will provide (i) relocation assistance, secured tenure to relocation land, better housing at resettlement sites with comparable access to employment and production opportunities, and civic infrastructure and community services as required; (ii) transitional support and development assistance, such as land development, credit facilities, training, or employment opportunities; and (iii) opportunities to derive appropriate development benefits from the project.

12. In the case of economically displaced persons, regardless of whether or not they are physically displaced, the borrower/client will promptly compensate for the loss of income or livelihood sources at full
replacement cost. The borrower/client will also provide assistance such as credit facilities, training, and employment opportunities so that they can improve, or at least restore, their income-earning capacity, production levels, and standards of living to pre-displacement levels. The borrower/client will also provide opportunities to displaced persons to derive appropriate development benefits from the project. The borrower/client will compensate economically displaced people under paragraph 7(iii) for lost assets such as crops, irrigation infrastructure, and other improvements made to the land (but not for the land) at full replacement cost. In cases where land acquisition affects commercial structures, affected business owners are entitled to (i) the costs of reestablishing commercial activities elsewhere; (ii) the net income lost during the transition period; and (iii) the costs of transferring and reinstalling plant, machinery, or other equipment. Business owners with legal rights or recognized or recognizable claims to land where they carry out commercial activities are entitled to replacement property of equal or greater value or cash compensation at full replacement cost.

13. Involuntary resettlement should be conceived of and executed as part of a development project or program. In this regard, the best strategy is to provide displaced persons with opportunities to share project benefits in addition to providing compensation and resettlement assistance. Such opportunities would help prevent impoverishment among affected persons, and also help meet the ethical demand for development interventions to spread development benefits widely. Therefore borrowers/clients are encouraged to ascertain specific opportunities for engaging affected persons as project beneficiaries and to discuss how to spread such opportunities as widely as possible among affected persons in the resettlement plan.

14. The borrower/client will ensure that no physical displacement or economic displacement will occur until (i) compensation at full replacement cost has been paid to each displaced person for project components or sections that are ready to be constructed; (ii) other entitlements listed in the resettlement plan have been provided to displaced persons; and (iii) a comprehensive income and livelihood rehabilitation program, supported by an adequate budget, is in place to help displaced persons improve, or at least restore, their incomes and livelihoods. While compensation is required to be paid before displacement, full implementation of the resettlement plan might take longer. If project activities restrict land use or access to legally designated parks and protected areas, such restrictions will be imposed in accordance with the timetable outlined in the resettlement plan agreed between the borrower/client and ADB.

2. Social Impact Assessment

15. The borrower/client will conduct socioeconomic survey(s) and a census, with appropriate socioeconomic baseline data to identify all persons who will be displaced by the project and to assess the project’s socioeconomic impacts on them. For this purpose, normally a cut-off date will be established by the host government procedures. In the absence of such procedures, the borrower/client will establish a cut-off date for eligibility. Information regarding the cutoff date will be documented and disseminated throughout the project area. The social impact assessment (SIA) report will include (i) identified past, present and future potential social impacts, (ii) an inventory of displaced persons and their assets, (iii) an assessment of their income and livelihoods, and (iv) gender-disaggregated information pertaining to the economic and sociocultural conditions of displaced persons. The project’s potential social impacts and risks will be assessed against the requirements presented in this document and applicable laws and regulations of the jurisdictions in which the project operates that pertain to involuntary resettlement matters, including host country obligations under international law.

16. As part of the social impact assessment, the borrower/client will identify individuals and groups who may be differentially or disproportionately affected by the project because of their disadvantaged or vulnerable status. Where such individuals and groups are identified, the borrower/client will propose and

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2 A population record of all displaced persons by their residence based on the census. If a census is not conducted prior to project appraisal and the resettlement plan is based on a sample survey, an updated resettlement plan will be prepared based on a census of displaced persons after the detailed measurement survey has been completed but before any land acquisition for the project.

3 The asset inventory is a preliminary record of affected or lost assets at the household, enterprise, or community.
implement targeted measures so that adverse impacts do not fall disproportionately on them and they are not disadvantaged in relation to sharing the benefits and opportunities resulting from development.

3. Resettlement Planning

17. The borrower/client will prepare a resettlement plan, if the proposed project will have involuntary resettlement impacts. The objective of a resettlement plan is to ensure that livelihoods and standards of living of displaced persons are improved, or at least restored to pre-project (physical and/or economic) levels and that the standards of living of the displaced poor and other vulnerable groups are improved, not merely restored, by providing adequate housing, security of land tenure and steady income and livelihood sources. The resettlement plan will address all relevant requirements specified in Safeguard Requirements 2, and its level of detail and comprehensiveness of the resettlement plan will be commensurate with the significance of involuntary resettlement impacts. An outline of resettlement plan is provided in the annex to this appendix.

18. A resettlement plan will be based on the social impact assessment and through meaningful consultation with the affected persons. A resettlement plan will include measures to ensure that the displaced persons are (i) informed about their options and entitlements pertaining to compensation, relocation, and rehabilitation; (ii) consulted on resettlement options and choices; and (iii) provided with resettlement alternatives. During the identification of the impacts of resettlement and resettlement planning, and implementation, the borrower/client will pay adequate attention to gender concerns, including specific measures addressing the need of female headed households, gender-inclusive consultation, information disclosure, and grievance mechanisms, to ensure that both men and women receive adequate and appropriate compensation for their lost property and resettlement assistance, if required, as well as assistance to restore and improve their incomes and living standards.

19. The borrower/client will analyze and summarize national laws and regulations pertaining to land acquisition, compensation payment, and relocation of affected persons in the resettlement plan. The borrower/client will compare and contrast such laws and regulations with ADB’s involuntary resettlement policy principles and requirements. If a gap between the two exists, the borrower/client will propose a suitable gap-filling strategy in the resettlement plan in consultation with ADB.

20. All costs of compensation, relocation, and livelihood rehabilitation will be considered project costs. To ensure timely availability of required resources, land acquisition and resettlement costs may be considered for inclusion in ADB financing. Resettlement expenditure is eligible for ADB financing if incurred in compliance with ADB's safeguard policy statement and with ADB-approved resettlement planning documents. If ADB funds are used for resettlement costs, such expenditure items will be clearly reflected in the resettlement plan.

21. The borrower/client will include detailed measures for income restoration and livelihood improvement of displaced persons in the resettlement plan. Income sources and livelihoods affected by project activities will be restored to pre-project levels, and the borrower/client will make every attempt to improve the incomes of displaced persons so that they can benefit from the project. For vulnerable persons and households affected, the resettlement plan will include measures to provide extra assistance so that they can improve their incomes in comparison with pre-project levels. The resettlement plan will specify the income and livelihoods restoration strategy, the institutional arrangements, the monitoring and reporting framework, the budget, and the time-bound implementation schedule.

22. The information contained in a resettlement plan may be tentative until a census of affected persons has been completed. Soon after the completion of engineering designs, the borrower/client will finalize the resettlement plan by completing the census and inventories of loss of assets. At this stage, changes to the resettlement plan take the form of revising the number of displaced persons, the extent of land acquired, the resettlement budget, and the timetable for implementing the resettlement plan. The entitlement matrix of the resettlement plan may be updated at this stage to reflect the relevant changes but the standards set in the original entitlement matrix cannot be lowered when the resettlement plan is revised and finalized. The borrower/client will ensure that the final resettlement plan (i) adequately addresses all involuntary resettlement issues pertaining to the project, (ii) describes specific mitigation measures that will
be taken to address the issues, and (iii) ensures the availability of sufficient resources to address the issues satisfactorily.

23. Projects with significant involuntary resettlement impacts will need adequate contingency funds to address involuntary resettlement impacts that are identified during project implementation. The borrower/client will ensure that such funds are readily available. Moreover, the borrower/client will consult with displaced persons identified after the formulation of the final resettlement plan and inform them of their entitlements and relocation options. The borrower/client will prepare a supplementary resettlement plan, or a revised resettlement plan, and will submit it to ADB for review before any contracts are awarded.

24. The borrower/client will use qualified and experienced experts to prepare the social impact assessment and the resettlement plan. For highly complex and sensitive projects, independent advisory panels of experts not affiliated with the project will be used during project preparation and implementation.

4. Negotiated Land Acquisition

25. Safeguard Requirements 2 does not apply to negotiated settlements, unless expropriation would result upon the failure of negotiations. Negotiated settlements help avoid expropriation and eliminate the need to use governmental authority to remove people forcibly. The borrower/client is encouraged to acquire land and other assets through a negotiated settlement wherever possible, based on meaningful consultation with affected persons, including those without legal title to assets. A negotiated settlement will offer adequate and fair price for land and/or other assets. The borrower/client will ensure that any negotiations with displaced persons openly address the risks of asymmetry of information and bargaining power of the parties involved in such transactions. For this purpose, the borrower/client will engage an independent external party to document the negotiation and settlement processes. The borrower/client will agree with ADB on consultation processes, policies, and laws that are applicable to such transactions; third-party validation; mechanisms for calculating the replacement costs of land and other assets affected; and record-keeping requirements.

5. Information Disclosure

26. The borrower/client will submit the following documents to ADB for disclosure on ADB’s website:
   (i) a draft resettlement plan and/or resettlement framework endorsed by the borrower/client before project appraisal;
   (ii) the final resettlement plan endorsed by the borrower/client after the census of affected persons has been completed;
   (iii) a new resettlement plan or an updated resettlement plan, and a corrective action plan prepared during project implementation, if any; and
   (iv) the resettlement monitoring reports.

27. The borrower/client will provide relevant resettlement information, including information from the documents in para. 26 in a timely manner, in an accessible place and in a form and language(s) understandable to affected persons and other stakeholders. For illiterate people, suitable other communication methods will be used.

6. Consultation and Participation

28. The borrower/client will conduct meaningful consultation with affected persons, their host communities, and civil society for every project and subproject identified as having involuntary resettlement impacts. Meaningful consultation is a process that (i) begins early in the project preparation stage and is carried out on an ongoing basis throughout the project cycle; (ii) provides timely disclosure of relevant and adequate information that is understandable and readily accessible to affected people; (iii) is undertaken in an atmosphere free of intimidation or coercion; (iv) is gender inclusive and responsive, and tailored to the needs of disadvantaged and vulnerable groups; and (v) enables the incorporation of all relevant views of affected people and other stakeholders into decision making, such as project design, mitigation measures, the sharing of development benefits and opportunities, and implementation issues. Consultation will be carried out in a manner commensurate with the impacts on affected communities. The borrower/client will pay particular attention to the need of disadvantaged or vulnerable groups, especially those below the
poverty line, the landless, the elderly, female headed households, women and children, Indigenous 
Peoples, and those without legal title to land.

7. Grievance Redress Mechanism

29. The borrower/client will establish a mechanism to receive and facilitate the resolution of affected 
persons’ concerns and grievances about physical and economic displacement and other project impacts, 
paying particular attention to the impacts on vulnerable groups. The grievance redress mechanism should 
be scaled to the risks and adverse impacts of the project. It should address affected persons’ concerns and 
complaints promptly, using an understandable and transparent process that is gender responsive, culturally 
appropriate, and readily accessible to the affected persons at no costs and without retribution. The 
mechanism should not impede access to the country’s judicial or administrative remedies. The 
borrower/client will inform affected persons about the mechanism.

8. Monitoring and Reporting

30. The borrower/client will monitor and measure the progress of implementation of the resettlement 
plan. The extent of monitoring activities will be commensurate with the project’s risks and impacts. In 
addition to recording the progress in compensation payment and other resettlement activities, the 
borrower/client will prepare monitoring reports to ensure that the implementation of the resettlement plan 
has produced the desired outcomes. For projects with significant involuntary resettlement impacts, the 
borrower/client will retain qualified and experienced external experts or qualified NGOs to verify the 
borrower’s/client’s monitoring information. The external experts engaged by the borrower/client will advise 
on safeguard compliance issues, and if any significant involuntary resettlement issues are identified, a 
corrective action plan will be prepared to address such issues. Until such planning documents are 
formulated, disclosed and approved, the borrower/client will not proceed with implementing the specific 
project components for which involuntary resettlement impacts are identified.

31. The borrower/client will prepare semiannual monitoring reports that describe the progress of the 
implementation of resettlement activities and any compliance issues and corrective actions. These reports 
will closely follow the involuntary resettlement monitoring indicators agreed at the time of resettlement plan 
approval. The costs of internal and external resettlement monitoring requirements will be included in the 
project budget.

9. Unanticipated Impacts

32. If unanticipated involuntary resettlement impacts are found during project implementation, 
the borrower/client will conduct a social impact assessment and update the resettlement plan or 
formulate a new resettlement plan covering all applicable requirements specified in this document.

10. Special Considerations for Indigenous Peoples

33. The borrower/client will explore to the maximum extent possible alternative project designs to avoid 
physical relocation of Indigenous Peoples that will result in adverse impacts on their identity, culture, and 
customary livelihoods. If avoidance is impossible, in consultation with ADB, a combined Indigenous Peoples 
plan and resettlement plan could be formulated to address both involuntary resettlement and Indigenous 
Peoples issues. Such a combined plan will also meet all relevant requirements specified under Safeguard 
Requirements 3.
OUTLINE OF A RESETTLEMENT PLAN

This outline is part of the Safeguard Requirements 2. A resettlement plan is required for all projects with involuntary resettlement impacts. Its level of detail and comprehensiveness is commensurate with the significance of potential involuntary resettlement impacts and risks. The substantive aspects of the outline will guide the preparation of the resettlement plans, although not necessarily in the order shown.

A. Executive Summary
This section provides a concise statement of project scope, key survey findings, entitlements and recommended actions.

B. Project Description
This section provides a general description of the project, discusses project components that result in land acquisition, involuntary resettlement, or both and identify the project area. It also describes the alternatives considered to avoid or minimize resettlement. Include a table with quantified data and provide a rationale for the final decision.

C. Scope of Land Acquisition and Resettlement. This section:
   (i) discusses the project's potential impacts, and includes maps of the areas or zone of impact of project components or activities;
   (ii) describes the scope of land acquisition (provide maps) and explains why it is necessary for the main investment project;
   (iii) summarizes the key effects in terms of assets acquired and displaced persons; and
   (iv) provides details of any common property resources that will be acquired.

D. Socioeconomic Information and Profile. This section outlines the results of the social impact assessment, the census survey, and other studies, with information and/or data disaggregated by gender, vulnerability, and other social groupings, including:
   (i) define, identify, and enumerate the people and communities to be affected;
   (ii) describe the likely impacts of land and asset acquisition on the people and communities affected taking social, cultural, and economic parameters into account;
   (iii) discuss the project’s impacts on the poor, indigenous and/or ethnic minorities, and other vulnerable groups; and
   (iv) identify gender and resettlement impacts, and the socioeconomic situation, impacts, needs, and priorities of women.

E. Information Disclosure, Consultation, and Participation. This section:
   (i) identifies project stakeholders, especially primary stakeholders;
   (ii) describes the consultation and participation mechanisms to be used during the different stages of the project cycle;
   (iii) describes the activities undertaken to disseminate project and resettlement information during project design and preparation for engaging stakeholders;
   (iv) summarizes the results of consultations with affected persons (including host communities), and discusses how concerns raised and recommendations made were addressed in the resettlement plan;
   (v) confirms disclosure of the draft resettlement plan to affected persons and includes arrangements to disclose any subsequent plans; and
   (vi) describes the planned information disclosure measures (including the type of information to be disseminated and the method of dissemination) and the process for consultation with affected persons during project implementation.

F. Grievance Redress Mechanisms. This section describes mechanisms to receive and facilitate the resolution of affected persons’ concerns and grievances. It explains how the procedures are accessible to affected persons and gender sensitive.
G. **Legal Framework.** This section:
   (i) describes national and local laws and regulations that apply to the project and identify gaps between local laws and ADB's policy requirements; and discuss how any gaps will be addressed.
   (ii) describes the legal and policy commitments from the executing agency for all types of displaced persons;
   (iii) outlines the principles and methodologies used for determining valuations and compensation rates at replacement cost for assets, incomes, and livelihoods; and set out the compensation and assistance eligibility criteria and how and when compensation and assistance will be provided.
   (iv) describes the land acquisition process and prepare a schedule for meeting key procedural requirements.

H. **Entitlements, Assistance and Benefits.** This section:
   (i) defines displaced persons’ entitlements and eligibility, and describes all resettlement assistance measures (includes an entitlement matrix);
   (ii) specifies all assistance to vulnerable groups, including women, and other special groups; and
   (iii) outlines opportunities for affected persons to derive appropriate development benefits from the project.

I. **Relocation of Housing and Settlements.** This section:
   (i) describes options for relocating housing and other structures, including replacement housing, replacement cash compensation, and/or self-selection (ensure that gender concerns and support to vulnerable groups are identified);
   (ii) describes alternative relocation sites considered; community consultations conducted; and justification for selected sites, including details about location, environmental assessment of sites, and development needs;
   (iii) provides timetables for site preparation and transfer;
   (iv) describes the legal arrangements to regularize tenure and transfer titles to resettled persons;
   (v) outlines measures to assist displaced persons with their transfer and establishment at new sites;
   (vi) describes plans to provide civic infrastructure; and
   (vii) explains how integration with host populations will be carried out.

J. **Income Restoration and Rehabilitation.** This section:
   (i) identifies livelihood risks and prepare disaggregated tables based on demographic data and livelihood sources;
   (ii) describes income restoration programs, including multiple options for restoring all types of livelihoods (examples include project benefit sharing, revenue sharing arrangements, joint stock for equity contributions such as land, discuss sustainability and safety nets);
   (iii) outlines measures to provide social safety net through social insurance and/or project special funds;
   (iv) describes special measures to support vulnerable groups;
   (v) explains gender considerations; and
   (vi) describes training programs.

K. **Resettlement Budget and Financing Plan.** This section:
   (i) provides an itemized budget for all resettlement activities, including for the resettlement unit, staff training, monitoring and evaluation, and preparation of resettlement plans during loan implementation.
   (ii) describes the flow of funds (the annual resettlement budget should show the budget-scheduled expenditure for key items).
   (iii) includes a justification for all assumptions made in calculating compensation rates and other cost estimates (taking into account both physical and cost contingencies), plus replacement costs.
(iv) includes information about the source of funding for the resettlement plan budget.

L. **Institutional Arrangements.** This section:
   (i) describes institutional arrangement responsibilities and mechanisms for carrying out the measures of the resettlement plan;
   (ii) includes institutional capacity building program, including technical assistance, if required;
   (iii) describes role of NGOs, if involved, and organizations of affected persons in resettlement planning and management; and
   (iv) describes how women’s groups will be involved in resettlement planning and management,

M. **Implementation Schedule.** This section includes a detailed, time bound, implementation schedule for all key resettlement and rehabilitation activities. The implementation schedule should cover all aspects of resettlement activities synchronized with the project schedule of civil works construction, and provide land acquisition process and timeline.

N. **Monitoring and Reporting.** This section describes the mechanisms and benchmarks appropriate to the project for monitoring and evaluating the implementation of the resettlement plan. It specifies arrangements for participation of affected persons in the monitoring process. This section will also describe reporting procedures.
APPENDIX 3

Land Expropriation Law

Law of the Republic of Afghanistan

CHAPTER 1

GENERAL PROVISIONS

Article 1:
This law is prepared to better manage expropriation of lands for the purpose projects of public interest.

Article 2:
The expropriation of a plot or a portion of plot, for public interest, is decided by the Council of Ministers and shall be compensated at fair value based on the current market rates.

Article 3:
Expropriation of a portion of or the entire land plot shall be authority of the council of ministers for the following purposes:

1- Construction of industrial institutions, highways, pipelines, extension of telecommunication lines, electrical transmission lines, sewerage networks, water supply networks, mosques and religious schools and construction of rest of for-public-interest institutions.
2- Extraction of underground mines and reservoirs.
3- Lands with scientific & cultural values, arable agricultural, large gardens & vineyards with economical values and jungles, in exceptional cases, shall require prior approval of council of ministers for their expropriation.

Article 4:
The expropriation of a plot or part of it should not prevent the owner from using the rest of the property or hamper its use. If this difficulty arises, the whole property shall be expropriated.

Article 5:
For determination of damages and loses due to expropriation of land, a commission consisting the following members shall be formed by municipality:

1- Owner/user or their representatives of the land under expropriation.
2- Authorized representative of the government institution that requires the land (end-user)
3- Representative of Municipality.
4- Representative of Ministry of Finance.
5- Representative of Ministry of Justice.
Article 6:

1- The right of the owner or land user shall be terminated 3 months prior to start of civil works on the project and after the proper reimbursement to the owner or person using the land has been made.

2- The termination of the right of the land owner or the person using the land would not affect their rights on collecting their last harvest from the land, except when there is emergency evacuation.

Article 7:

1- Geological, geodesy & research institutions, bureaus & organizations shall carry-out their temporary activities without expropriation of land with prior approval of municipality.

2- Commencement date and specific place of carrying-out research on lands shall be specified by the owner/user. In case of not obtaining agreement of owner/user, municipality shall specify the date and place of carrying-out the research.

CHAPTER 2

INDEMNITY

Article 8:

When expropriating land, the following indemnities for the damages shall be considered for compensation:

1- Value of the land.

2- Value of residential houses, buildings and rest of the structures existing on the land.

3- Value of fruit & non-fruit trees and other assets existing on the land.

Article 9:

People who obtained land from 9th (Qaws) 1357 – 8th (Sawr) 1371 with special official documents of that time, if such land is required for the public purposes, during expropriation, only compensation to structures and other facilities on the land shall be compensated, but compensation for land shall not be paid.

Article 10:

Valuation of land under expropriation shall be determined by the council of ministers. During the valuation, grade and geographical location of the land shall be considered.

Article 11:

Value of residential houses, buildings and rest of the structures on the land belonging to the owner/user, shall be determined by the municipal authorities.

Article 12:

Construction materials of residential houses and rest of the structures shall freely belong to the owner/user after they are compensated for. Thus, the demolition activities of the residential houses and rest of the structures shall be responsibility of the owner/user. This provision shall be applicable on those residential and other structures the lands of which were expropriated prior to enforcement of the current expropriation law, but the structures are not demolished yet.
Article 13:
A person whose residential land is subject to expropriation shall receive a new plot of land of the same value. He has the option to get residential land or a house on government property in exchange, under proper procedures.

Article 14:
It can be arranged with the owner if he wishes to exchange his property subject to acquisition with government land. The difference on the values of land shall be calculated.

Article 15:
1- Value of fruit, non-fruit trees and other assets, which exist on the land under expropriation, and belong to the owner, shall be determined by competent municipality and agriculture departments’ authorities.
2- The owner has the authority to retain the fruit, non-fruit trees & other assets on the expropriated land conditional to the fact that he has not received its indemnity.

Article 16:
If state lands are possessed and are under utilization by state departments, are required by the state, shall be expropriated by municipality or other departments. In this case only the construction materials of the structures shall belong to the previous possessors, value of land and construction shall not be paid.

Article 17:
Possession of state lands or urban free lands for the purpose of public interest shall be done without payment.

Municipality or district government shall only obtain the following expenses from the expropriating institution:
1- Expenses of plan and other expenses on making the land for construction
2- Expenses of concrete, asphalt, saplings plantation and streets, sub-streets & sewerage systems scheming.
3- Expenses of greenery and creation of playgrounds.
4- Expenses of water pipelines, sewerage network and electricity network.
5- All other expenses relevant to urban development.

Article 18:
1- Compensation for damages due to research activities on land, contained in article (7) of this law, shall be agreed upon by both parties. In case of non-agreement, compensation shall be determined by a team of municipality or governor’s office.
2- The team shall consist representatives from both parties and other interested departments.
Article 19:

1- If the owner/user of the land is unable to harvest the land and tree crop before the expropriation of the land, the institution that needs the land (end-user) shall compensate for the crops losses to the owner/user.

2- Value of the indemnity of the affected crops shall be determined by a team of representatives from municipality, agriculture department & governor taking into account the rate of seeds, expenses on irrigation & other services provided by the owner/user.

3- The total value of compensation to crops shall not exceed the total actual income from the affected crops.

Article 20:

The owner/user shall be notified 3 months prior to expropriation and the price. Non-availability of the owner/user or their representatives in the council of pricing of the lands, despite prior notification, shall not hamper the activities of pricing.

Article 21:

Compensation/exchange for the lands that are provided to the institutions or they are given permission to carry-out their research activities on the lands, shall be done by the relevant institutions.

CHAPTER 3

FINAL PROVISIONS

Article 22:

1- The expropriating department is obliged to obtain the official deed of the land from the owner during the expropriation process.

2- The owner is obliged to render the official deed of the land to the expropriating department.

3- If part of the land, contended in the official deed, is expropriated, the specific expropriated portion of the land shall be deducted from the overall land official deed, but the official deed shall remain with the owner.

4- Any claim of the owner after obtaining compensation for the land and other assets, will be void.

Article 23:

This law will be in force after it is signified and shall be published in the official gazette. Upon its enforcement, the land expropriation law and its modifications, published in official gazette No. 639 dated 10 (Saratan) 1366, will be obsolete.
APPENDIX 4

Amendment to Land Expropriation Law

Law of the Republic of Afghanistan

PRESIDENTIAL DECREES OF THE ISLAMIC REPUBLIC OF AFGHANISTAN CONCERNING MODIFICATION OF A SERIES OF ARTICLES OF THE LAND EXPROPRIATION LAW PUBLISHED IN THE OFFICIAL GAZETTE # (794), 1421 L.H.

NO: (7)
Date: 14/01/1384 (03/04/2005)

Article 1:
Sections (1&3) of article (3) and articles (12, 13, 16, 17, 20 and 22) shall be amended as follow:

1. Under section (1) of article 3 the expression ‘railway’ shall be added after the expression ‘highways’, and the text (and schools, implementation of urban plans) shall be added after the expression (seminaries or religious schools), and under section (3) of article 3 the expression (and legal) shall be added following the expression (canonical).

2. Article 12: Constructional materials, residential quarters and other buildings shall belong free of charge to the owner after payment of the costs thereof. Under such circumstance the process of demolishing the building shall be undertaken by the owner. In case of refusal or negligence on the part of the owner to voluntarily demolish, forced demolition shall take place by the municipality assisted by the security organs.

Residential quarters and other buildings which have not been demolished following the enforcement of the land expropriation law despite their lands being expropriated shall also be subjected to the provision of the present article.

3. Article 13: In accordance with the following criteria residential land plots shall be distributed to individuals whose lands or houses have been expropriated against a fixed project price:

- (One) land plot, where the person possesses up to 600 m² landed property;
- (Two) land plots, where the person possesses 600 to 1200 m² landed property;
- (Three) land plots, where the person possesses more than 1200 and up to 2000 m² landed property;
- (Four) land plots, where the person possesses more than 2000 and up to 5000 m² landed property;
- (Five) land plots, where the person possesses more than 5000 and up to 10000 m² landed property;
- (Six) land plots, where the person possesses more than 10000 and up to 20000 m² landed property; and
- Where a person possesses a landed property above 20000 m², he shall be granted (one) land plot in lieu of each additional 20000 m² landed property.

4. Article 16: Where the State-owned lands being used by State and mixed departments are possessed by the municipality, local chief or other departments, in that case only constructional materials shall belong to the former possessors, and shall not be paid the land and building prices.
5- Article 17:

(1) The State lands (inter alia, free urban lands) under individual possession shall belong free of charge to the municipality when needed for public needs at the time of implementation of urban projects plan.

(2) Where the land is distributed to State departments the Municipality shall only collect the following services charges from the relevant department or institution:

1. Planning and reclamation costs of the land under construction;
2. Concreting, asphalting and plantation costs, including construction costs of basic passageways and ditches.
3. Landscaping costs of the area under construction as well as construction costs of basic and secondary recreation grounds.
4. Water, drainage (canalization) and electricity charges.
5. Other urban development related charges.

6- Article 20:

(1) The owner or user of the land subject to expropriation, or their legal representative shall be notified three months in advance concerning land expropriation and the price thereof. Absence of the owner or the user of the land or their legal representative in the meeting of the commission assigning value to the property subject to expropriation despite being notified in advance shall not impede the work of the commission and plan implementation.

(2) Where the person concerned or his legal representative did not appear in accordance with paragraph (1) of the present article to complete the expropriation process the property shall be valued in his absence and the price thereof shall be deposited with the bank in the interest trust account and the plan shall be implemented.

7- Article 22:

(1) The expropriating department shall be obligated to collect from the owner the legal and lawful documents of the expropriated property.

(2) The owner shall be obligated to hand over lawful and legal documents related to the expropriated property to the expropriating department.

(3) Where a portion of the property recorded on the lawful and legal document is intended to be expropriated the area of the expropriated property shall be deducted from the original deed (qabala) shall be recorded on the original deed and kunda of the relevant book and the title deed shall be retained by the owner.

(4) Any claim whatsoever on the part of the owner after receiving and possessing the substituted property shall be void.

(5) Regulation for better implementation of the present law can be adopted.

Article 2:
The present decree shall be enforced from the very date of its approval and shall be published in the official gazette.

Hamid Karzai
President of the Islamic Republic of Afghanistan
Law on Managing Land Affairs
31 July 2008 Sr. No. (958)

Law of the Republic of Afghanistan

President of the Islamic Republic of Afghanistan
In regard to enactment
Of
Law on Land Managing Affairs

Issue: (62)

Date: 21 July 2008

Article 1:

Pursuant to the provision of article 79 of Constitution of Afghanistan, I hereby enact the Law on Land Managing Affairs, which has been confirmed in accordance with the approval No. (21) dated 21 July 2008 of Council of Ministers into (11) chapters and (95) articles.

Article 2:

Minister of Justice and the Minister of Government in Parliamentarian Affairs shall deliver this decree to the National Assembly within (30) days since its opening session.

Article 3:

This decree shall be effective from enactment date and with the law it shall be published in the Official Gazette.

Hamed Karzai, President of the Islamic Republic of Afghanistan
CHAPTER 1
GENERAL PROVISIONS

Base

Article 1:
This law has been enacted in accordance with the provision of paragraph 2 of article 9 of Afghanistan Constitution to manage land affairs.

Objective

Article 2:
The present law’s objectives are as follows:

1. Creation of a unitary and reliable order across the country.
2. Management of property books and land registration based on the credible documents of relevant offices.
3. Collection of authentic figures and statistics for the purpose of using them in the future economic and development plans of government.
4. Solving the problems resulting from performance of land related reforms of former regimes and endowed lands.
5. Segregation of government, individual, virgin and arid and pasture (grazing) and endowed lands.
6. Distribution of government lands as well as virgin and arid lands.
7. Restoration of land distributed illegally.
8. Provision of adequate opportunities for active and broad private sector participation in and holding sphere.
10. Providing the opportunity for people to access land.

Terms

Article 3:
Following are the terms with the meanings they stand for in the present law:

1. Landowner: An individual who actually owns his/her land on the basis of legal documents is known as landowner.

2. Inheritors: Individuals who after distribution of an inheritance are identified eligible according to Sharia provisions to possess the inherited properties of the deceased.


4. Settler: An individual to whom the government has distributed land in a place other than his proper place of residence.

5. Legal Attorney: A person being appointed as an attorney by the landowner, his inheritors or partners on the basis of a legal deed.

6. Agricultural Land: A landed area that can be used for agriculture in accordance with the provisions of the present law.
7- Private land: Plot(s) of lands belonging to individuals or non-governmental legal entities.

8- Government lands as:
- Plot(s) of orchard, irrigated and rain-fed lands, hills, parks, marshy lands, forests, pastures, reed-beds and other lands being registered in the principal book of the government lands.
- Lands which are deemed public lands, but are not registered in the principal book of government lands.
- Lands in respect of which individual ownership has not been proved legally during settlement.

9- Grazing (derelict) lands (Pastures, Harvest Ground, and inherited lands):
- Grazing lands are those virgin and arid lands in respect to which government or individuals’ ownership has not been proven legally.
- If a person having loud voice and standing at the last home of village or town calls loudly, this land up to the place where the voice of the loud voice having person is heard, is considered to be grazing land.

10- Endowed lands’ area:
Endowment is and endowed object that is dispossessed off the person who has endowed, but is not owned by the person for whom it has been endowed.

11- Virgin Land (Mawat): The land which has never been brought under cultivation.

12- Arid Land: Land which under normal conditions has not been cultivated for a period of 5 successive years, and which can be brought under cultivation after improvement or construction of a new irrigation system.

13- Fragment: A piece of land which is surrounded by public or private lands or by lands belonging to legal entities. The area under orchards or vineyards, despite being part of the same plot, shall be deemed a separate plot.

14- Small Fragment: A piece of land with an area of less than 5 Jeribs.

15- Additional Land: Portion of the area of landownership possessed by an individual, and which is proved to be in excess of the limits defined in the legally valid landownership document.

16- Legally valid deed: The deed in which characteristics of the owner’s land are recorded and which is deemed valid on the basis of the provisions of article 5 of the present law.

17- Changes and alterations in land: Change in the category, area, limits and right of irrigation water of land.

18- Declaration: A printed form which has been distributed prior to the year 1354 (1975) or is distributed after effectiveness of the present law for specifying the quantity and quality of fragment(s) of landholding area of persons and for determination of tax. The declaration form shall not be deemed a title deed and shall only be used for collecting lawful revenues (taxes).

19- Landless Farmer: A person who himself does not own land and is applicant for agricultural activities.
20- Principal book for registration of private lands: A book in which quantitative and qualitative particulars, as well as transfers and alterations of the fragment(s) belonging to individuals and legal entities are registered on the basis of valid deeds outlined in the provisions of the present law.

21- Principal book for registration of government lands: A book in which government lands are registered together with their quantitative and qualitative particulars.

22- Eligible person: A person to whom a land is distributed in accordance with the provisions of the present law.

Management authority

Article 4:

Management of landownership-related affairs is the responsibility of Ministry of Agriculture, Irrigation and Livestock.

CHAPTER 2

TITLE DEEDS

Deeds

Article 5:

The title deeds include:

1- A deed issued by a court in respect of purchase, ownership, gift, inheritance, division, land exchange, letter of quittance, letter of correction as well as document of the final decision issued on the basis of former property deeds and containing the following conditions:

- To have been registered with a judicial court.
- The superseding deed shall not exist.
- The land under legal deed, if subject to taxation, shall be recorded in the tax book.

2- State decree, government decree and a deed in respect of purchasing land from state’s landed properties with the following conditions:

- To have been issued by a competent organization.
- The superseding deed shall not exist.
- To have been recorded in the tax book if the land is subject to tax payment.

3- The tax payment document having the following conditions:

- The superseding deed shall not exist.
- To have been registered in the principal books of properties (Amlak) and shall have tax payment ticket of before 5th of Asad (154) &h of Aug 1975.

4- The water rights document having the following conditions:
- Its superseding document shall not exist.
- To have been registered in the principal books of properties (Amlak) and tax.

5- A customary deed shall be legally valid under the following conditions:
- A- The land seller should have a valid deed.
- B- Where the customary deed has been prepared before the 15th of Asad, (1354), and
  the buyer having filled the declaration form before the year 1357 and submitted it to the relevant office after
  being confirmed by the farmers whose lands having joint borders at the same fragment. In locations where
  declaration forms were either not distributed or distributed before the year (1357) but the registration book
  has become extinct, and where no claim to the land existed and the land purchase and the possession
  thereof by the buyer has been confirmed by the landowners holding lands having joint border with the
  above fragment, as well as by the inhabitants of the locality where the land is situated.

6. A formal title deed having the following conditions:
- The legal title deed shall exist.
- To have been issued after legal settlement.
- To have been registered in the principal books of properties (Amlak) and tax.
- No claim to the land shall exist.

7. Landownership document (the title deed) having the following conditions:
- To have been prepared and issued by the relevant court after legal settlement of the land.
- To have been registered in the principal books of properties (Amlak) and tax.

Exchange of title deed

Article 6:

The documents mentioned in the article 5 of the present law except for the document mentioned in its paragraph (1) shall he referred to the relevant court after land settlement by the settlement commission and be exchanged to title deed by the court.

Registration of immovable agriculture installations

Article 7:

Watermill, Paikoob (a foot-operated wooden machine for beating paddy and cereals and removing husk), as
well as other immovable agricultural installations and equipment existing in the landholding area of the
person and are deemed to be his property, shall be recorded in the principal land registration and tax book.

Not having a legal title deed

Article 8:

- Where the landowner is not in possession of a deed and the land possessed by him has not been
  registered in the State properties book, and other individuals did not make claim for the ownership
of the land, and where the signs of agricultural construction have been observed on the land, and where the landowners holding lands having joint borders with his land confirmed the location under his possession for 35 years and where it is not located under government project, the same land of till 100 Jeribs shall be deemed his property on the basis of his possession as owner.

- Where the government finds the documents superseding possession of the person mentioned in paragraph (1) of this article, the land shall be known as government property; and the following performances shall be observed in this case: Where the possessed landholding area is till (10) jeribs of first category land or equivalent to it, it shall, free of charge, be given under possession of landowner; and more than 10 jeribs equivalent of class one land category shall be sold to the landowner on the current market price and by installments of five years.

Additional land:

Article 9:

In regard to area which has an additional land, and is not under any government project, and meets the conditions of article 8 of the present law, up to 10 Jeribs of class one land or equivalent thereof shall be, free of charge, given under the possession of the landowner, and the land in excess of 10 Jeribs shall be sold to the landowner on the current price.

Granting the document to settler

Article 10:

(1) Settlers having obtained land from the State prior to enforcement of the present law shall be subject to the following actions:

a- Where the settler or his inheritors have paid the entire installments of the land price, they shall be granted the title deed.

b- Where the settler or his inheritors have partially paid installments of the land price. The remainder installments shall be determined according to current price, and after payment of these installments they shall be granted the title deed in respect of their related land.

c- Where the settler or his inheritors have not paid the installments of the land price, the land price shall be determined according to current land price, and after payment of entire price, they shall be granted the title deed in respect of their related land.

(2) Where the settler or his inheritors have abandoned land due to difficult environmental conditions, and where they make recourse while no State establishments are constructed on the land, and where the landowners possessing lands having joint border with his land as well as the local administration center confirmed their possession of the land, they can obtain the legal deed after payment of the entire installments of the land price on the basis of market rates.

Where State establishments are partially constructed on the derelict land of the settler and the settler having paid the entire installments of the land price, the remainder of the land shall be handed over to the settler, and the land portion over which the establishments have been constructed shall be appropriated by the state.

Where State establishments are totally constructed on the derelict land of the settler and the settler having paid the entire installments of the land price, the land shall still be appropriated by the State according to provisions of law.
Granting the land distribution certificate

Article 11:

The persons to whom land is distributed in accordance with the provisions of the present law in case they have not paid the entire land price, only the land distribution and possession certificate shall be granted to them by the settlement commission; after payment of land price and upon concluding the agreement in its entirety with the local land management department, the eligible person shall be granted the legal deed through the relevant court.

Granting the duplicate document

Article 12:

When the person loses legal deed or land distribution certificate, he shall be granted the duplicate thereof.

CHAPTER 3

LAND SETTLEMENT

Conducting the settlement process

Article 13:

(1) The Ministry of Agriculture & Irrigation and Livestock shall conduct the process of landholding settlement and management from technical and administrative points of view.

(2) The Supreme Court of the Islamic Republic of Afghanistan, Finance, Energy & Water and Agriculture & Irrigation and Livestock ministries, General Administration of Geodesy and Cartography as well as relevant local departments shall be jointly responsible to implement the provision stipulated under clause (1) of the present article.

(3) Practical work on the site shall be carried out by the settlement commission.

Composition of the land settlement commission

Article 14:

(1) To settle the landholding area, the settlement commission shall perform its functions with the following composition:

   a- Representative of the land management organization of Ministry of Agriculture, Irrigation and Livestock as chief.

   b- In charge of settlement affairs of the land management organization, as member.

   c- In charge of administrative affairs of the land management organization, as member.

   d- Representative of Ministry of Finance, as member.

   e- Representative of Ministry of Energy and Water, as member.

   f- Representative of local promotion and propagation department of Ministry of Agriculture, irrigation and Livestock, as member.
Obligations and powers of the settlement commission

Article 15:
The land settlement commission has the following obligations and powers:

1. Settlement of landholding areas, distribution of document and land.
2. Determining the limits, category, water rights and tax of the land.
3. Determining and segregation of individual, state, as well as grazing, endowed, virgin and arid lands, jungles and so forth.
4. Referring the disputes and lawsuits related to grazing, endowed, virgin and arid lands, jungles and so forth to the competent authorities.
5. Registration of land settlement conclusions in the relevant book.
6. Referring the conclusions of land settlement for registration in the principal books of properties (Amlak) and local tax as well as preparing legal document in the relevant court.
7. Restoration of previously illegally-distributed land to the owner, or to his legal inheritors.
8. Sending performance report to the relevant provincial land management department and to the central land management organization.
9. Other duties for the purpose of enforcement of provisions of the present law that are assigned by Ministry of Agriculture, Irrigation and Livestock.

Duties of cadastre team

Article 16:

(1) Cadastre team of the general department of Geodesy & Cartography is obligated to accomplish the following tasks, free of charge:

a. Provide information on the registered maps, results of cadastre as well as a list of the prospective owners and other cadastre-related documents.

b. Determine the area and design sketch of land plots.

c. Determine boundaries of the land plot.

d. Adjust local land measuring scale to Jerib.

e. Accomplish other tasks, for the purpose of enforcement of provisions of the present law, which might be assigned by Ministry of Agriculture, Irrigation and Livestock.

(2) Land settlement and survey shall take place concurrently.
Identification and determining land category

Article 17:

Representatives of the ministries of agriculture, irrigation and livestock, water & energy and finance are respectively obligated to identify and determine the category of the land plots, define the water rights as well as taxes of the land plots at the respective area.

Cooperation of land owner or his legal representative

Article 18:

The owner or his legal representative shall be obligated to render cooperation for settlement of the respective landholding area to the settlement commission on the site until the end of its work.

The central commission for land management

Article 19:

(1) In order to render better cooperation and to provide technical and administrative support to implementation of field activities as well as to overcome problems on the spot. The land management commission shall be created in the center with the following composition:

a- Minister of agriculture, irrigation and livestock, as chairman.

b- Head of general land management department, as vice-chairman.

c- Representative of the Supreme Court, as member.

d- President of promotion & and propagation department of ministry of agriculture, irrigation and livestock, as member.

e- President of water management of the ministry of water & energy, as member.

f- President of general department of geodesy and cartography, as member.

g- President of revenues of the ministry of finance, as member.

(2) The central commission of land settlement shall call its meeting once in each quarter of the year, and if necessary, shall call more meetings.

Establishment of provincial commission

Article 20:

(1) For better management of field activities of land settlement, and for overcoming the problems resulting from implementation of land settlement activities, the commission shall be formed in provinces with the following composition:

a- The governor as chairman.

b- Head of agriculture, irrigation and livestock department, as vice-chairman.

c- Head of appeal court, as member.
d- Mustofee, as member.

e- Head of energy & water, as member.

f- Head of department of geodesy and cartography, as member.

g- Head of land management department, as secretary-cum-member.

(2) The commission stipulated in the clause (1) of the present article shall call its meeting once a month, and if necessary, shall hold its meeting more than once.

**Expropriation of land of a person**

**Article 21:**

In order to ensure public interests, the State, if necessary and according to provisions of law, can appropriate the land of a person, which shall take place after the land settlement:

1- Where the entire or a portion of the land possessed by the owner or his heirs and/or by the settler or by the eligible person with the entire installments of the land price having been paid, falls under a project or is subject to permanent use by the State departments and institutions.

2- Where the settler or the eligible person has paid a portion of the installments of the land price, actions in regard to compensating the paid portion shall be taken in accordance with clause (1) of the present article.

**Expropriation by the relevant departments**

**Article 22:**

A land under project, which has been changed into constructions, establishments or into residential quarters prior to settlement, shall not be settled by the settlement commission, and shall be appropriated by the relevant departments upon observing valid documents possessed by the owner or his heirs.

**Referring the disputes to court**

**Article 23:**

Land-related disputes and claims, if could not be settled by the settlement Commission, shall be referred to the court for settlement.

**Inheritance**

**Article 24:**

The landholding area of a deceased shall be legally distributed among inheritors by the court.

**Area settlement based on the customary divisions**

**Article 25:**
Persons whose lands are recorded collectively on the basis of a legal document in the name of tribe, tribal elders, a reputed elder (an elder of a village), subterranean irrigation canal (kariz) or in the name of other persons, and the portion of each owner is being specified on the basis of customary distribution, the settlement commission can settle their respective landholding area as follows:

1- List of the area, limits and water rights shall be prepared in respect of each person who is practically in possession of the land.
2- Signature or fingerprint of each possessor shall be obtained on the above list.
3- The land belonging to each person shall be included in the forms for land area evaluation, re-registration and settlement of landholding area; and the comment on the settlement shall be issued.

**Settlement of undivided landholding area**

**Article 26:**

Where the title deeds belonging to various landowners are prepared on the basis of common boundaries and where their landholding area is commonly held, following actions shall be taken for their settlement:

1- Dimensions of the original area as well as class one equivalent of the property of each person shall be determined upon observing the title deed.
2- If the title deed is a tax document, considering its conditions, the amount of the annual tax up to S.H. 1354 in respect of each owner shall be obtained from the principal book for registration of properties and the landholding area of each person shall be determined in proportion to the amount of his annual tax payment.
3- Boundaries of commonly-held land, its original area as well as its equivalent of class one area shall generally be determined by the cadastre team.
4- Share of each person shall be separated in proportion to the area mentioned in the title deed or in proportion to tax payment document, and in case of disagreement of parties or inheritors; the issue shall be referred to the court.
5- The land possessed in excess of the area mentioned in the document of the landed property commonly held by the persons shall be deemed additional land and actions in respect thereof shall be taken in accordance with the provisions of the present law.

**Land property of person**

**Article 27:**

The land recorded in the books in the name of a person in the form of temporary tax and permanent farming (a life undertaking), and the person has paid its taxes for (40) years at minimum, shall be deemed property of the person concerned.

**Destruction of valid documents**

**Article 28:**

In places where principal property and tax books as well as valid land documents which could confirm the property of a person have been destroyed, and in case of non-existence of the books in the center, the landholding area of persons shall be settled after the property is confirmed legally.
CHAPTER 4

RESTORATION OF EXACTED LANDS TO THE LAND OWNERS

Performances in regard to the exacted lands

Article 29:

Lands being exacted (confiscated) from their owners or their inheritors without compensation on the basis of decrees and legislative documents of the then communist regime after 7 Saur. (S.H. 1357) on different grounds contrary to the Islamic Sharia, shall be subject to the following actions:

1- Where the land has not been distributed and has remained in its former state shall be restored to its real owner or his legal inheritors.
2- If the land has been distributed to persons in accordance with the then legislative documents, the owner or his inheritors, with mutual agreement of the parties, can collect the price of the distributed land on the current rate from the afore-mentioned persons or their inheritors. If there is disagreement between the parties, the land shall again be restored to the owner or his legal inheritors.
3- Where the land exacted from its owner, whether living or deceased, has been distributed to the state department. Institutions and agriculture farms and the establishments and constructions have been built on the land; the organization using the land shall pay the land price to its original owner or his legal heirs on the current rate. While determining the price of land, the original state of land without constructions and establishments shall be considered.

Changes on the land contrary to legislative documents of that time

Article 30:

Where the landholding area has been previously distributed to person and the person or his heirs have brought changes and made changes on the land contrary to enforced laws of that time, following actions shall be taken:

1- Where the distributed land has been transferred to others while non-agricultural changes have not been made, the distributed land shall be returned to its real owner and the persons who bought the land shall receive their money back from the land sellers.
2- Where the change on the land has been made by construction of establishments, the land price on the current rate shall be paid to owner of the land.
3- Where changes on the land have been brought in a way which decreases the price of land, the person that brought these changes or his legal representative/heirs is obligated to return the land back to its real owner and shall pay the compensation for the damages.

Exchange of previously-exacted landholding area of person

Article 31:

Following actions shall be taken in regard to a person whose previously-exacted landholding area has been exchanged with the landholding area of another person:

1- Provided that the arability of both lands being exchanged has not been altered, the exchange shall be nullified and either person shall be given his respective land.
2- If the exchanged land has been distributed to another person, the exchanged land shall be returned to its real owner.
3- Where establishments are constructed on the exchanged land, or a person whose land has been exchanged with the land of another person has brought changes and alterations at the exchanged land, the landowner shall have the right to either possess the land or to receive the land price.

Lands of absent persons

Article 32:

(1) Persons that are absent and their lands are left abandoned, the land management department shall lease these abandoned lands till their owners or legal heirs appear.
(2) In the case stipulated in clause (1) of the present article, the lease money shall be temporarily deposited to the bank and where the absent person refers, it shall be returned to him.

Actions in regard to arbitrary possession of land and its illegal distribution

Article 33:

(1) Where the landholding area of persons or the State is distributed to persons based on the then enforced laws and contrary to the principles of the Islamic Sharia, or the land is possessed by persons arbitrarily, the following actions shall be complied with:

a- Where the land is part of the property of persons, it shall be restored to the real owner, his legal representative or to his inheritors.
b- Where the land is part of the State properties, or the real owner has left no inheritors, the land shall be recorded in the total properties of the State.

(2) In the cases stipulated in the clauses (a and b) of the present article, the person shall not have the right to claim any compensation of loss.

CHAPTER 5

ELIGIBLE PERSONS

Eligibility requirements

Article 34:

(1) A person who has the following qualifications shall be entitled for land distribution:

a- To be citizen of the Islamic Republic of Afghanistan.
b- To have completed eighteen years of age.
c- The person shall make commitment to, himself or his family members, to cultivate the distributed land, make constructions on it and safeguard the land.

(2) Grade of eligible persons based on the eligibility grade shall be determined by the settlement commission.

Obligations of eligible person

Article 35:
After determination of eligibility, the eligible person shall observe the following conditions:

1- To fill out and deliver his land eligibility form to settlement commission within (15) days effective from submission date.
2- To take action to cultivate and construct the land after hand over of the land.
3- To pay installments of the land price and the tax at the appointed time.

**Determining the priority grade**

**Article 36:**

A person who meets the qualifications mentioned in the article 34 of the present law, his priority grade in distribution of land shall be determined as follows:

1- The grade one eligible person:
   - The landless farmer whose family members are more than the others.
   - The landless farmer that his under cultivation land has been possessed by the state for the purpose of public interest.

2- The grade two eligible person:
   - The landless farmer and an agricultural laborer of a village and locality at which distributable land exists.

**Death of eligible person**

**Article 37:**

Where the eligible person dies, the following provisions shall he observed:

1- Heirs of the eligible person can use the land by paying the installments of the distributed land price. After completion of all installments of the land price, the heirs have the right on the inheritance and definite transfer of the land.
2- If the heirs are minors or female, or if the eligible person based on the health-related excuses cannot cultivate the land, he can get a farmer to cultivate his land, or he can lease it.
3- If the eligible person or his heirs do not want to continue exploitation of the distributed land after effectiveness of the present law, he/they can restore the land to the state; in this case, the installments paid from the state budget shall be returned to the state.

**The priority right in land distribution**

**Article 38:**

A married eligible person or a person who is a livelihood and accommodation in charge of family shall have prior right in land distribution compared to a single eligible person with the same grade.
CHAPTER 6
LAND DISTRIBUTION

Distributable lands

Article 39:

1- The state lands provided that they are not needed for the establishment of a farm or a project thereon can be distributed.
2- Land distribution shall take place through recommendation of the ministry of agriculture, irrigation and livestock and upon approval by the president of the Islamic Republic of Afghanistan against a just price by a ten year installments; and till completion of installments, the land shall be kept as a borrow by the eligible person.
3- The price of the land to be distributed shall be determined in conformity with the local land price at the time of land distribution by the commission consists of representatives from the Supreme Court, ministry of agriculture, irrigation and livestock. Ministry of finance, ministry of energy & water, land management department and the geodesy and cartography (cadastre) department of the relevant province.
4- The time for payment of installments of price of the land that are distributed after effectiveness of this law, is started one year after distribution date.

Land categorization

Article 40:

For settlement, property confirmation, tax measurement and distribution purposes the land shall be divided into seven categories, and while adjusting categories into first category, the following coefficients shall be complied with:

1- Category one land: (Orchard or vineyard), coefficient (1.00).
2- Category two land: (double crops irrigated), coefficient (0.85).
3- Category three land: (A single crop irrigated land), up to 50 percent of which is cultivated or irrigated annually, coefficient (0.67).
4- Category four land: A single crop irrigated land, up to 50 percent of which is cultivated or irrigated annually, coefficient (0.40).
5- Category Five land: rain-fed land which is cultivated every other alternate year, coefficient (0.20).
6- Category six land: Rain-fed land, which is cultivated every two alternate years, coefficient (0.15).
7- Category seven land: Rain-fed land, which is cultivated for more than two alternate years, coefficient (0.10).

Land measurement unit

Article 41:

The land measuring scale unit is Jerib corresponding to (2000) m2.

Distribution of land based on the categories

Article 42:

The land is distributed for the applicant in one of the categories as follows:
1- Category one land (10) jeribs.
2- Category two land (12) jeribs.
3- Category three land (15) jeribs.
4- Category four land (25) jeribs.
5- Category five land (50) jeribs.
6- Category six land (66) jeribs.
7- Category seven land (100) jeribs.

**Determination of the annual average income**

**Article 43:**

The general average annual income of one Jerib land in localities is differently determined by agriculture, irrigation and livestock, geodesy and cartography (cadastre) and land management departments.

**Distribution of land based on the lot**

**Article 44:**

Where there are more eligible persons in respect of the land to be distributed, the land shall be distributed in the presence of the majority of the eligible persons on the basis of drawing lots.

**Distribution of small and sparse land parcels**

**Article 45:**

(1) The small and sparse land parcels hindered from distribution, shall be firstly distributed to a farmer who has little land with joint border; secondly to the landowner who has land with joint border and then to the landowner having the least land in the locality based on the market price. In this case, the landowner shall pay the full land price once.

(2) Where the landowner mentioned in the clause (1) of the present article wants not to buy the land, the land shall be sold through auction.

**Sale and transfer of virgin and arid lands**

**Article 46:**

(1) No person can possess virgin and arid lands, unless authorized by the president of the Islamic Republic of Afghanistan.

(2) Where a person arbitrarily possesses the properties (uncultivated lands) and decree of the President of the Islamic Republic of Afghanistan does not exist, upon arbitrary possession, such kind of properties (lands) are not deemed to be private. Permission of actual possession is only under authority of the President.

(3) Selling of virgin and arid lands to individuals, agriculture & livestock institutions, private and joint domestic companies by Ministry of Agriculture, Irrigation and Livestock shall take place on the basis of auction after being approved by the president of the Islamic Republic of Afghanistan.
(4) Virgin and arid lands shall be put at the disposal of the buyer after going through legal formalities against a just price by the Ministry of Agriculture, Irrigation and Livestock. Former possessor shall be granted the right of priority.

(5) The price of virgin and arid lands shall be determined upon considering the price of lands located next to it, on the site by commission of evaluation and land disposal composed of representatives of agriculture, irrigation and livestock, mines and finance ministries as well as the representatives of historical monuments department of ministry of information and culture and geodesy and cartography department. The determined price shall be submitted for confirmation by the council of ministers and for approval by the president of the Islamic Republic of Afghanistan.

(6) The price of virgin and arid (uncultivated) land shall be obtained by five equal installments within five years effective from the land distribution date.

**Determination of criteria for land sale**

**Article 47:**

(1) Lands being specified for sale shall be the net property of the State, or shall be virgin and arid lands, and shall not be under State projects, urban master plan, forests, pastures, mines and historical monuments.

(2) Evaluation of virgin and arid (uncultivated) lands before distribution shall be conducted by a technical delegation consisted of the representatives stipulated in clause (5) of article (46) of the present law to acquire the following goals:

1. Having the capability of construction and cultivation.
2. Conducting studies (survey) on the relevant site.
3. Identifying and determination of water sources and digging deep well, from viewpoint of existence of underground and on the earth surface water and their volumes.
4. Observing the rights of joint-border land owners for construction on the land due to water right and other required aspects.
5. Rehabilitation and construction of dams and streams for bringing the relevant area under irrigation.

**Distribution of virgin and arid lands for establishment of farms**

**Article 48:**

Sale of virgin and arid lands for the sake of establishing agriculture farms, to domestic private and joint-stock companies shall take place upon considering the volume of capital.

**Application for virgin and arid lands**

**Article 49:**

The application for receiving virgin and arid (uncultivated) land shall be submitted to the ministry of agriculture, irrigation and livestock. The application shall be reviewed by the evaluation and assessment commission within one month and shall be sent to the general land management department. Actions shall be taken in regard to sale of the relevant land through the general land management department in accordance with the provisions of the present law.
CHAPTER 7
TRANSFERS AND ALTERATIONS OF LAND

The right to transfer property

Article 50:

(1) The owner has the right to transfer his property irrevocably or temporarily.
(2) Irrevocable transfer of landed property as well as that of immovable installations and equipment existing in the landholding area shall take place on the basis of a legal deed.
(3) An eligible person and a settler after paying the entire installments of the land price and after obtaining the legal deed as well as heirs of the eligible person with their shares having being confirmed shall have the right to transfer their lands.

Transfer of landed property

Article 51:

Transfer of landed property shall take place by the relevant court of the place through the land management department. Registration of land transfers in principal land registration book as well as in the book of tax without charge.

Quantitative and qualitative alterations in the land

Article 52:

Qualitative and quantitative alterations in the land shall be registered in the principal land registration book as well as in the tax book on the basis of written information provided by the landowner with the approval of local agriculture, irrigation and livestock department after settlement.

Transfer of state land to departments

Article 53:

Transfer of the State land to State departments and institutions shall take place after determining the price of land on the basis of an agreement between the land management department and the end-user department after the agreement of minister of agriculture, irrigation and livestock and approval by president of the Islamic Republic of Afghanistan.

Exchange of personal land to state land

Article 54:

A person owning land parcels in several locations, can exchange his land located in a district or province with state land upon observing the category and price of land provided that the lands which would be exchanged are not farm land and are not under a project.
Exchange of land between individuals and state

Article 55:

Exchange of lands between individuals and State shall take place upon observing the category and price of the land, through mutual agreement between the parties provided that the lands which would be exchanged are not farm land or are not under a project.

Exchange of land on the basis of legal document

Article 56:

Exchange of land between individuals shall take place through land management department and by the relevant court of the place on the basis of a legal document and according to mutual agreement between parties.

Agriculture lands distributed to cooperatives

Article 57:

The state agricultural lands which were distributed to cooperatives, non-governmental institutions and companies after 7 Saur, 1357 till establishment of interim government, shall be subject to the following actions:

1- Where such cooperatives and institutions are active, they shall pay the land price on the current rate to the State.
2- Where such cooperatives and institutions are inactive, the land shall be appropriated by the State without compensation of loss of the user.

Invalid transfers

Article 58:

The transfers that take place contrary to the provisions of the present law, shall be considered invalid.

CHAPTER 8

LAND LEASING

Leasing the state land

Article 59:

(1) State and private lands shall be leased on the basis of a written agreement between lessor and lessee in accordance with the provisions of law.
(2) Parties to an agreement shall have legal capacity and authority.

Lease document

Article 60:

The lease document shall contain the following terms:
1- A description of lessor, lessee and witnesses.
2- A description of the characteristics of land plot(s) under lease.
3- Clarification of obligations of the parties to the agreement.
4- Confirming the lease period, the amount of lease charges, together with its due dates and payment procedure.
5- Conditions for annulment of the agreement.

**Obligations of lessee**

**Article 61:**

The lessee has the following obligations:

1- To safeguard the soil, irrigation network, installation and equipments existing on the land and which are essential for the benefits of land under lease.
2- To keep clean stream, kariz, brook and well related to the land under lease.
3- To cultivate the land in accordance with the terms of lease.
4- To pay the rental in accordance with the agreement. The lessee can make cash payment in lieu of lease charges, with agreement of the lessor.
5- To undertake partial repairs of equipment and fixtures of the land under lease.
6- To compensate losses caused to land and equipment to lessor.
7- To inform the lessor of any kind of intervention to the land under lease by individuals.
8- The lessee cannot use the right to irrigation water in respect of the land under lease for other purposes.
9- The lessee cannot take action in regard to transfer or in regard to give the land under lease as security.
10- To hand over the land under lease together with its equipment and fixtures to lessor upon the expiration of agreement.
11- Other obligations as might have been foreseen in the law.

**Obligations of lessor**

**Article 62:**

The lessor has the following responsibilities:

1- To handover the land under lease to the lessee together with the entire equipments and fixtures as stipulated in the lease agreement at the specified time.
2- To give a written receipt to the lessee for receiving the lease charges.
3- To undertake overall and essential repairs on installations and fixtures of the land in accordance with the local practice.
4- Other responsibilities foreseen in the present law.

**Payment of expenses after improvements**

**Article 63:**

Where the lessee brings improvements to the land under lease, the expenses thereof shall only be disbursed to him provided that the lessor has agreed in writing to pay them to the lessee.

**Period of land lease for encouragement of investments**

**Article 64:**
(1) For the purpose of encouragement and attraction of private sectors to establish agriculture, livestock and orchard farms and so on, the ministry of agriculture, irrigation and livestock can lease the fertile lands up to (50) years and the virgin and arid (uncultivated) lands up to (90) years to individuals, organizations and to (domestic and external) private and joint-venture agriculture companies on the basis of agreement and according to provisions of the present law.

(2) Upon observing the provisions of the Private Investment Law with agreement of relevant departments and in proportion to the type of land, the project and the measurement of capital, the ministry of agriculture, irrigation and livestock can lease the virgin and arid (uncultivated) lands to a private entrepreneur for investment purposes other than the purposes stipulated in the paragraph (1) of the present article.

(3) The ministries and state departments can lease their relevant landed properties for non-investment purposes up to five years and for investment purposes in accordance with the provisions stipulated in the paragraphs (1 and 2) of the present article.

(4) The ministries and state departments can rent or lease the respective inn, apartment, and shop and so on for up to five years.

(5) The ministries and state departments shall lease the properties stipulated in paragraphs (1, 2, 3 and 4) of the present article upon observing the auction principle and in accordance with provisions of law.

(6) The lessor shall not lease the land under lease to other person till expiration of the lease period or its annulment.

Determining the lease period

Article 65:

Taking the provision stipulated in the article 64 of the present law into account, the land lease period shall be determined by the ministry of agriculture, irrigation and livestock in proportion to the type of land of the relevant project and measurement of the capital.

Lease of virgin and arid lands

Article 66:

(1) The measurement of the virgin and arid (uncultivated) lands, which are leased to individuals, agriculture and livestock organizations, and to domestic and external private and joint-venture companies to construct, build and establish agriculture, livestock and orchard farms, shall be determined according to the type of land, project and use of the mechanized agricultural equipments and machinery and the measurement of capital, as follows:

a- To individuals up to (250) Jeribs.

b- To agriculture private and joint-venture companies up to (5000) Jeribs.

(2) The conclusion of agreement of the lands stipulated in the paragraph (1) of the present article is approved as follows:

a- Up to (1500) jeribs by the minister of agriculture, irrigation and livestock.

b- More than (1500) jeribs up to (5000) jeribs by the economic committee of council of ministers.

c- More than (5000) jeribs by council of ministers.

Period for recovery of virgin and arid lands

Article 67:

(1) The period for recovery and improvement of the virgin and arid (uncultivated) lands under lease shall be as follows effective from the conclusion date of agreement:
a- Where the area of virgin and arid land is up to two hundred and fifty (250) jeribs, the period shall be two years based upon the circumstances.

b- Where the area of virgin and arid land is further than two hundred and fifty (250) jeribs up to one thousand and five hundred (1500) jeribs, the period shall be up to four years based upon the circumstances.

c- Where the area of virgin and arid land is further than one thousand and five hundred (1500) jeribs up to five thousand (5000) jeribs, the period shall be up to eight years based upon the circumstances.

(2) The period for recovery and improvement of the land specified under paragraph (1) of this article does not include the period of lease agreement.

(3) The progress of recovery and improvement of the land under lease shall be supervised and controlled by the land management department and the private sector department of ministry of agriculture, irrigation and livestock every six months. Where the lessee fails to utilize the land under lease in the period specified under paragraph (1) of this article, the ministry of agriculture, irrigation and livestock can annul the agreement and can newly lease the land under lease in accordance with the provisions of law.

Utilization of lessee

Article 68:

The lessee shall utilize and use the land under lease for the purposes stipulated under article 66 of this law and according to the provisions of the agreement. In case of violation, the ministry of agriculture, irrigation and livestock can annul the agreement.

Separation of location and type of land

Article 69:

An evaluation committee comprised of representatives of agriculture, irrigation and water; finance; mines; energy and water; and urban development ministries and department of geodesy and cartography is assigned to separate the location and type of land and the quality and type of the project from view points of possibility of improvement, cultivation and utilization, recovery, sketch of the area, identifying the surface and underground water sources. The municipality representative shall definitely be as a member of the evaluation committee in the areas under the urban master plan.

Lease of land to private entrepreneur

Article 70:

Lease of the land to a private entrepreneur shall take place through land management department and private sector department of ministry of agriculture, irrigation and livestock.

Obtaining the lease charges

Article 71:

The ministry of agriculture, irrigation and livestock shall obtain the lease charges of fertile lands from the conclusion date of agreement and the charges of virgin and arid lands after expiry of the period specified under paragraph (1) of article 64 of this law and transfer it to the state incomes account.

Increasing the amount of lease charges

Article 72:
Upon observing the provision of article 64 of this law and in proportion to the type of land, project, capital amount and the capability of exploitation and cultivability, the ministry of agriculture, irrigation and livestock can increase the amount of lease charges of fertile lands and virgin and arid lands from one up to ten percent after every five years.

**Non-payment of expenses**

Article 73:

Where the lessee constructs installations on the land under lease, its expenditures shall be paid.

**Non-compensation of loss**

Article 74:

Where the land, fixtures and equipments are damaged or destroyed as a result of natural disasters, the lessee shall not be obligated to make compensation of the losses.

**Conditions for lease annulment**

Article 75:

The lessee can annul the lease agreement under one of the following circumstances:

1. Illness or reduction in the number of his family members.
2. Occurrence of disasters resulting from force majeure, which may compel the lessee to abandon the location or to render the land under lease uncultivable.
3. Other circumstances foreseen in the agreement and in this law.

**Annulment of lease before the end of the lease period**

Article 76:

Where the lessee wants to annul the lease before the end of the lease period, he shall communicate the issue at least three months before the collection of harvest to the land management department and to the lessor.

**Determining the lease charges of the state land**

Article 77:

In determining lease charges of the State land, product of the land next to the State land, shall be taken into consideration.

Where the lease charges are deemed unfair by the general land management department, it has the right to make objections.

**Suing the lessee**

Article 78:

Where a lessee acts contrary to commitments set forth in the agreement shall be sued.

**Information on agricultural disasters**

Article 79:

Where State lands under lease sustain losses as a result of agriculture pestilence, the lessee shall be obligated to communicate the issue till 5 days to the land management department. The extent of losses shall be determined by a local delegation comprising representatives of agriculture, irrigation and livestock,
Mustofyat and geodesy and cartography departments and the head of local council (Shura) on the spot. Recommendations of the delegation shall be final after being confirmed by the governor and the approval of the minister of agriculture, irrigation and livestock.

**Taking back the land under lease entirely or partially**

**Article 80:**

When the State needed taking back its land under lease entirely or partially, the following actions shall be taken in this regard:

1. Where the leasehold is taken back after harvesting time, the agreement shall be annulled and the lessee shall be obligated to pay lease charges in accordance with the lease agreement.
2. Where the leasehold is taken back before harvesting time, and where the lessee has made expenditures in respect of the leasehold, such expenditures shall be reimbursed to him in accordance with the local practice and the lease agreement shall be annulled thereupon.
3. Where a portion of the land is restituted before harvesting and another portion is taken back thereafter, the amount of lease charges shall be determined in proportion to the restituted land, and in regard to the remaining land, provided agreed upon by the parties, the agreement will remain the same.

**Referring the disputes to court**

**Article 81:**

Land lease-related disputes, if not settled by local branches of the land management departments, shall be referred to the court.

**CHAPTER 9**

**PASTURES AND ENDOWED LANDS**

**Pastures**

**Article 82:**

(1) Pastures are virgin and arid lands, on which state and individual possession has not been proved legally and they are deemed public property. An individual or the State can not possess pasture lands, unless otherwise stipulated by the Sharia.

(2) Pastures shall be kept unoccupied for the sake of public requirements of local villagers (for cattle grazing, graveyard, threshing ground and etc.

**Possession of pastures**

**Article 83:**

Where a person possesses pasture land, however long his possession of pasture land might be, and where it is legally confirmed to be pasture land, the person shall be dispossessed and the pasture land shall no longer remain under his possession.

**Endowed land**
Article 84:

(1) Land being endowed shall no longer remain under the ownership or possession of the owner.
(2) Selling, giving in gift, transferring or inheriting the endowed land is not permitted.
(3) The interests of the endowed land, for whatever purpose it might have been endowed, shall be utilized for the same purpose.

CHAPTER 10
PENAL PROVISIONS

Non-appearance of owner in the settlement area

Article 85:
Where the owner, his family members and/or his deputy do not appear in the landholding area without legal excuse until the end of work of the settlement commission after receiving notification, they shall be subject to legal prosecution and punishment.

Intentional destruction of irrigation installations

Article 86:
A person who intentionally destroys irrigation installations or buildings and equipments related to the fragment of the state land shall be subject to legal prosecution in addition to compensating the losses sustained by the State.

Not providing information on the new alterations and changes

Article 87:
A landowner who intentionally distorts information provided to the land management department on new changes and alterations brought in the land shall be subject to legal prosecution.

Usurpation of land or introducing as landowner

Article 88:
A person who usurps the state land, or falsely introduces himself as the landowner, shall be dispossessed and be subject to legal prosecution.
Article 89:
Where an error has taken place in measuring the landholding area of a person or state, or the land of a person or state is erroneously registered in the title deed of another person, the settlement commission shall investigate the issue and shall take action for the correction thereof through the court.

Non-agriculture activities on agriculture lands

Article 90:
Construction of roads, buildings and establishments, and non-agriculture activities are not allowed on agriculture lands. In exceptional cases the users are required to obtain in advance agreement of the ministry of agriculture, irrigation and water and approval by the president of the Islamic Republic of Afghanistan.

Keeping the settlement documents

Article 91:
At the end of work of the settlement commission on the site, the settlement documents shall be kept in the provincial archives of land documents related to the land management.

Confiscation or sequestration of land

Article 92:
After enforcement of the present law, the State can neither confiscate nor can sequestrate the lands belonging to persons.

Annexation of virgin and arid land to the land next to it

Article 93:
The fragment of virgin and arid (uncultivated) land can be annexed to the land next to the land of a landowner who owns the minimum landholding area, in lieu of a price under the following conditions:

1- Shall not be under any project.
2- Shall be cultivable, irrigation sources be provided for it and shall not trespass other’s water rights.
3- Shall not cause to disturb owners of the lands next to the mentioned land and residents of the relevant area.
4- The land correction form should have been filled and passed its legal procedures.

Suggestion of regulation and enactment of procedures

Article 94:
In order to better implement the provisions of the present law, the ministry of agriculture, irrigation and livestock can suggest regulation and enact procedures.

Enforcement

Article 95:
The present law shall enter into force upon being approved and published in the official gazette, and with the enforcement thereof the land management law published in the official gazette number (795) of the year 1421 according to the lunar year and other legal documents otherwise shall be abolished.
APPENDIX 6

CASE STUDY - 1

A. Background

1. ADB provided Loan 2304/Grant 0230: Regional Power Transmission Interconnection Project. This case study refers to the LARP prepared and implemented for the project. The Executing Agency (EA) was the Ministry of Energy and Water (MEW). The project involved construction of transmission line.

2. The involuntary resettlement safeguards were relatively new to Afghanistan. ADB’s involuntary resettlement policy—specifically, the principle of compensating all losses prior to the start of civil works and the use of replacement cost valuation for affected assets and other losses—required a shift from the traditional approach in the country, which normally involved the government simply taking over land and starting construction.

3. Under the PPTA approved by ADB, a land acquisition and resettlement plan (LARP) was prepared. The final LARP was prepared based on the detailed design and finalized alignment. EA was unfamiliar with the policy requirements and ADB and consultants had no prior experience with LAR in Afghanistan.

B. LARP Preparation and Implementation

4. LARP preparation was carried out by the consultants with minimal contributions from the EA and was marred by continuous discussions on entitlements required by ADB policy. Particularly, difficulties were experienced in the valuation of affected items since this was the first time the LARP was prepared based on ADB’s policies for any project in Afghanistan. The unit rates were finalized based on appropriate valuation methods (e.g., market rate/replacement cost, etc.) by the committee and were discussed with the affected persons.

5. The Ministry of Finance (MOF) approved the budget for payment of land compensation and assistance to the affected persons. The required funds were made available in the imprest account of the project (PIU maintains an imprest account to meet the day to day expenses, and the required funds for payment of compensation and assistance was transferred to the imprest account) out of which the cash was withdrawn by the PIU officials.

6. However, at the time of actual disbursement to the affected persons, the person responsible in the EA to implement the LARP which was already approved by ADB and government and the overall budget was released to EA’s account to pay the compensation amounts to the affected families according to the modalities set out in the LARP, denied to pay the allowances to the vulnerable families. This was due to lack of awareness of ADB’s LAR policy requirements of the EA staff.

C. ADB’s intervention to ensure compliance with LAR policy requirements

7. Since the allowances to the vulnerable families were not paid, though this was a part of the LARP already approved by ADB and government and the overall budget was released to EA’s account to pay the compensation amounts to the affected families according to the modalities set out in the LARP, the project

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4 The government officials lack awareness of the ADB’s LAR principles: loss of land and non-land assets, entitlements and valuation, and compensation as reflected in the LARP. Moreover, since the national laws do not deal with the compensation for all non-land losses (e.g., business/income loss) and resettlement assistance, the government officials often either approve the budget only for the land compensation and not for other losses as well as for resettlement or while making actual payment, do not pay the assistance in full. While disagreeing with the payment of resettlement allowances, they insist that since it is not covered under the national laws and the government is under no obligation to pay for such compensation.
did not meet with the ADB’s LAR policy requirements. After extensive discussions \(^5\) with the EA and the Ministry of Finance officials to comply with the policy requirements, the EA finally agreed to pay the undisbursed amount of allowances to the vulnerable families.

CASE STUDY – 2

A. Background

1. The construction of Bagramy–Sapary road (about 50 km) was planned to be taken up under MFF-1 (Road Network Development Investment Program) and accordingly, the LARP was finalized and approved in October 2009. However, due to other priorities of the Government, the funds available under MFF-1 were diverted to another road project and accordingly, the implementation of the Bagramy—Sapary road project could not be taken up earlier. At the request of the Government, ADB provided funds under a new MFF for implementation of various road projects including for the Bagramy—Sapary road project.

2. The updating of LARP for the project was taken up since the project was part of a new MFF and the earlier survey was conducted about 24 months ago. A survey was conducted from 15 March to 31 May 2011 to assess the baseline impact and socio-economic profile of the affected people in the project, to update the earlier LARP. The cut-off date for the entitlement for compensation is considered as 31 May 2011.

D. Issues encountered during updating of LARP

3. During the course of the second survey, a significant reduction was registered in the number of affected households as compared to the previous survey concluded in October 2009. As compared to 446 AHs reported in the earlier LARP, there were only 162 AHs registered during the second survey, resulting in a reduction of 284 households. There was, however, very little impact on the total area of land affected. \textit{Prima facie}, the following reasons were noted for the reduction in the number of 284 AHs -

(a) In the earlier survey, different plots were shown as owned by more than one person in the family (e.g., father and sons were shown as owners for different plots). However, during the second survey, all the plots are considered owned by only one owner (e.g., father) based on the documentary evidence now collected, and hence, there was a reduction of 153 AHs;

(b) Since road construction was coming up, many of the AHs holding small pieces of land sold their land to other AHs, so that they can concentrate on cultivation in other areas and as such, there was reduction of 17 AHs. This was however, considered violating the ADB’s policy requirements. Generally, after the cut-off date, the sale or purchase of land should be disallowed by the local authorities due avoid any land speculative transactions;

(c) At some locations, minor re-alignments were considered to improve the geometrics of the road or there was a change in the Centre-line at some locations, due to which the land area under ROW changed. Due to this, there was reduction of 21 AHs;

(d) In the earlier report, 93 agricultural laborers were included as AHs inadvertently whereas they were actually working in non-affected areas since no cultivation has taken place in the affected land for more than 4-5 years. As such, there was a reduction of 93 AHs.

4. 17 households, who were considered affected in the earlier survey, sold their land (measuring 2,347 m\(^2\)) in Khaki Jabbar/Sourbi to other AHs in order to concentrate on cultivation in other areas. However,

\(^5\) In respect of the past projects, ADB’s extensive discussions with the government officials, especially the Ministry of Finance and the EAs, could help in their understanding of the ADB policy requirements for LAR to approve the appropriate budgets for LARPs and make payments as per the modalities set out in the LARP.
they were required to be paid differential compensation i.e., the difference between the compensation as per the land rate in the LARP and the sale value realized by them. In the LARP, a provision for payment of the differential compensation was, therefore, made.

B. Poor AP consultation and Census

5. It was noted that AP consultation had not been effective and that the census for assessment of loss of land and non-land losses was not carried out effectively. This happened due to the fact that the LAR team involved in the previous census was not fully familiar with ADB and LAR policy requirements. The NGO, which took up the survey work in the field for the second time, was adequately trained and guided by the ADB and consultants with respect to the ADB’s policy requirements.

CASE STUDY – 3

A. Background

1. The construction of Jabul Saraj–Nijrab road (about 50 km) was planned to be taken up under MFF-1 (Road Network Development Investment Program) and accordingly, the LARP was finalized and approved in early 2010. However, due to other priorities of the Government, the funds available under MFF-1 were diverted to another road project and accordingly, the implementation of the Jabul Saraj–Nijrab road project could not be taken up earlier. At the request of the Government, ADB provided funds under a new MFF for implementation of various road projects including for the Jabul Saraj–Nijrab road project.

2. The updating of LARP for the project was taken up since the project was part of a new MFF and the earlier survey was conducted about 24 months ago. A survey was conducted from 15 March to 31 May 2011 to assess the baseline impact and socio-economic profile of the affected people in the project, to update the earlier LARP. The cut-off date for the entitlement for compensation is considered as 31 May 2011.

B. Issues encountered during updating of LARP

3. During the second survey, it was observed that the number of AHs, affected structures and trees increased significantly from the previous survey. This was mainly due to the following three factors:

   (i) many of the AHs were not present in Afghanistan during the previous survey and had been excluded in the previous survey;

   (ii) omission of AHs/structures and trees in the last survey due to inadequate interpretation of the ADB’s policy requirements and the entitlement matrix by the LAR team (surveyors); and

   (iii) at many locations, re-alignments were proposed by the EA and hence, increase in AHs, affected structures and businesses and

C. Poor AP consultation and Census

4. It was noted that AP consultation had not been effective and that the census for assessment of loss of land and non-land losses was not carried out effectively. This happened due to the fact that the LAR team involved in the previous census was not fully familiar with ADB and LAR policy requirements. The NGO, which took up the survey work in the field for the second time, was adequately trained and guided by the ADB and consultants with respect to the ADB’s policy requirements.

D. Treatment of un-disbursed LARP compensation

5. The implementation of LARP is in progress and the payment of land compensation and assistance will be made in accordance with the modalities set out in the LARP. However, in case payment to any
affected households is not possible due to lack of some details or for similar reasons, for such cases, the amount will be kept in an escrow account to enable payment of compensation once the issue has been resolved.

CASE STUDY – 4

A. Background

1. At the request of the government, ADB approved in September 2009 funding for construction of a 75 km railway line between Hairatan and Mazar-e-Sharif. This was the first railway project in Afghanistan. At appraisal, the project involved minor land acquisition and resettlement since the railway line passed mostly through uninhabited and unused government land. Only 2 households were affected and accordingly, a short LARP prepared in 2009. The project was classified as a category B project.

B. Implementation of the Project

2. During the implementation, the alignment of the railway line was slightly changed. Further, the project team also made an effort to avoid any impact of land acquisition and resettlement. This was in line with the ADB’s policy requirements to avoid any involuntary resettlement wherever possible.

3. Accordingly, during the change in alignment due to technical reasons, the alignment was also modified so that no household was affected due to the project. Though the project was classified as a category B project at the time of appraisal, the project was implemented similar to a category C project since the project involved neither land acquisition nor resettlement.