

Resettlement Plan

Proposed Sewage Waste Treatment Plant for Port Vila

June 2011

Republic of Vanuatu: Port Vila Urban Development Project

RESETTLEMENT PLAN

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ABBREVIATIONS

ADB	-	Asian Development Bank
ADF	-	Asian Development Fund
AF	-	Affected Family
AH	-	Affected Household
AP	-	Affected persons/people
APE	-	Affected private entity
APF	-	Affected Private Firm
AusAID	-	Australian Agency for International Development
CBD	-	Central Business District
CBO	-	Community Based Organisation
DD	-	Due Diligence
DMS	-	Detailed Measurement Surveys
DP	-	Displaced Person
EA	-	Executing Agency
GAP	-	Gender Action Plan
GIS	-	Geographical Information Systems
GNI	-	Gross National Income
GRC	-	Grievance Redress Committee
HDI	-	Human Development Index
HH	-	Households
HIES	-	Household Income and Expenditure Survey
IMR	-	Infant Mortality Rate
IR	-	Involuntary Resettlement
M&E	-	Monitoring & Evaluation
MIPU	-	Ministry of Infrastructure and Public Utilities
MLNR	-	Ministry of Lands and Natural Resources
NGO	-	Non-Government Organization
NOC	-	No Objection Certificate (to commence construction)
NSO	-	National Statistics Office (Vanuatu)
NZAID	-	New Zealand Agency for International Development
PIU	-	Project Implementation Unit
PPTA	-	Project Preparation Technical Assistance
PVUDP	-	Port Vila Urban Development Project
RP	-	Resettlement Plan
TOR	-	Terms of Reference
TA	-	Technical Assistance
UNDP	-	United Nations Development Program
USD	-	United States Dollars
VG	-	Valuer General
ZOI	-	Zone of Influence

Glossary

Compensation	means payment in cash or kind for an asset to be acquired or affected by a project at replacement cost at current market value.
Cut-off-date	means the date after which people will NOT be considered eligible for compensation i.e. they are not included in the list of APs as defined by the census. Normally, the cut-off date is the date of the detailed measurement survey.
Displaced Persons (DP)	also known as Affected Persons (AP) mean all the people affected by the project through land acquisition, relocation, or loss of incomes and include any person, household (sometimes referred to as project affected family), firms, or public or private institutions. APs therefore include; i) persons affected directly by the safety corridor, right-of-way, tower or pole foundations or construction work area; (ii) persons whose agricultural land or other productive assets such as trees or crops are affected; (iii) persons whose businesses are affected and who might experience loss of income due to the project impact; (iv) persons who lose work/employment as a result of project impact; and (v) people who lose access to community resources/property as a result of the project.
Detailed measurement survey	means the detailed inventory of losses that is completed after detailed design and marking of project boundaries on the ground.
Encroachers	mean those people who move into the project area after the cut-off date and are therefore not eligible for compensation or other rehabilitation measures provided by the project.
Entitlement	means the range of measures comprising cash or kind compensation, relocation cost, income rehabilitation assistance, transfer assistance, income substitution, and relocation which are due to /business restoration which are due to APs, depending on the type and degree nature of their losses, to restore their social and economic base.
Inventory of losses	means the pre-appraisal inventory of assets as a preliminary record of affected or lost assets.
Land acquisition	means the process whereby a person is compelled by a public agency to alienate all or part of the land s/he owns or possesses, to the ownership and possession of that agency, for public purposes, in return for fair compensation.
Non-titled	means those who have no recognizable rights or claims to the land that they are occupying and includes people using private or state land without permission, permit or grant i.e. those people without legal title to land and/or structures occupied or used by them. ADB's policy explicitly states that such people cannot be denied compensation for non-land assets and resettlement assistance.
Poor	means those falling below the official national poverty line.
Replacement cost	means the method of valuing assets to replace the loss at current market value, or its nearest equivalent, and is the amount of cash or kind needed to replace an asset in its existing condition, without deduction of transaction costs or for any material salvaged.
Sharecropper	means the same as tenant cultivator or tenant farmer, and is a person who cultivates land they do not own for an agreed proportion of the crop or harvest.
Significant impact	means 200 people or more will experience major impacts, which are defined as; (i) being physically displaced from housing, or (ii) losing ten per cent or more of their productive assets (income generating).
Vulnerable	means any people who might suffer disproportionately or face the risk of being marginalized from the effects of resettlement and includes; (i) female-headed households with dependents; (ii) disabled household heads; (iii) poor households (within the meaning given previously); (iv) landless; (v) elderly households with no means of support; (vi) households without security of tenure; (vii) ethnic minorities; and (viii) marginal farmers (with landholdings of five acres or less).

EXECUTIVE SUMMARY

1. The Government of Vanuatu has requested the Asian Development Bank (ADB), Australian Agency for International Development (AusAID) and other co-financing institutions for funding for the Port Vila Urban Development Project to implement the first stage of the Drainage and Sanitation Master Plan. The aim of the Project is to assist the Government of Vanuatu to improve drainage, roads and sanitation systems within Port Vila Municipality and adjacent urban and peri-urban areas in the Shefa Province. Five outputs or project components¹ have been selected for the loan, one of which involves “Improved sanitation in greater Port Vila” (Output 2). This includes the construction of a sludge treatment facility. The Executing Agency (EA) for the Project is the Ministry of Infrastructure and Public Utilities (MIPU). This Resettlement Plan (RP) has been prepared for this subproject in accordance with the provisions set out by the ADB’s safeguard requirements on involuntary resettlement as embedded in the Safeguards Policy Statement (2009) and the laws of Vanuatu. This RP is based upon information gathered through field observations, surveys and consultations with stakeholders conducted from July 2010 until March 2011.

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

3. The basic resettlement policy principles set in the RP are: (i) Land acquisition will be avoided or at least minimised; (ii) Compensation will ensure maintenance of pre-project living standards of affected persons (APs) / affected private firm (APF) ; (iii) APs/APF will be fully consulted/informed on compensation options; (iv) APs/APF socio-cultural institutions will be supported/utilised wherever possible; (v) Resettlement and land acquisition procedures will equally apply to women and men; (vi) Lack of formal title will not prevent providing compensation for non-land assets and resettlement assistance under the entitlement matrix; (vii) Land acquisition and resettlement will be conceived and executed as an integral part of the Project, with budgets for land acquisition and resettlement to be included in Project (subproject) costs; (viii) impact to structures will be avoided; (ix) All land acquisition, resettlement and compensation payments will be completed prior to civil works commencement in the sub-project.

4. MIPU, as the executing agency, will be responsible for overall guidance and project implementation. A Project Implementation Unit (PIU), headed by a Project Director, will be responsible for overall planning, implementation, management, coordination, supervision and progress monitoring of the Subproject including the RP update and implementation. The PIU will be supported by a team of international and national Project Management consultants. The PIU will ensure compliance with assurances, including safeguards and preparing and submitting the resettlement plan update, reports, and resettlement plan monitoring reports. The PIU will internally monitor and report to the EA on a monthly basis and the EA will then report quarterly to ADB.

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

Table 1: Entitlement Matrix

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

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

5. This RP is based on several site visits and consultations with representatives of the Affected Private Enterprise (Lessee) and the Lessor, represented by the Government Ministry of Land and Natural Resources (MNRM) as trustees of the land. The RP will be disclosed on the ADB website, and will be made available to the Affected Private Enterprise, at the MIPU office and MLNR office. Furthermore, at the time of the RP update, the disclosure process will similarly occur. Great care will also be taken to prevent grievances. First level of grievance redress only in the event that any person/community submit the objection, will be a committee made up of AP representatives, community representatives and representatives of the customary owners shall be set up and will meet to resolve the issue. Level two is to the PIU located at MIPU and decision made on advice of the MLNR. If still not satisfied a third and fourth level of grievance involves the Customary Land Tribunals and through the Supreme Court respectively.

Table 2: Summary of impacts

Impact Category	Magnitude of Impacts
Permanently affected	1 affected firm and a customary lease currently in Government trust (customary land holder/owner not identified).
Permanent Land Acquisition	6.5 Ha
Improved Pasture loss	6.5 Ha
Land rental losses	20 years remaining on lease for Lessor and Lessee losing profit on investment
Income losses by Lessee	Beef cattle bred and sold over 20 years remaining investment is lost
Trees	To be removed – compensated for wood/timber value as are adult unproductive or wood product trees
Vulnerable Families Affected	Nil
Budget costs	Vatu 27,188,039.12 (approximately USD 280,290.00)

I. INTRODUCTION

A. Background and Project Description

1. Port Vila is situated on the south coast of the island of Efate in Shefa Province, Vanuatu. With an area of about 5 km², Port Vila city serves as home to a multi-cultural population, and is the economic and commercial centre of Vanuatu. Port Vila Municipality has already outgrown its original urban boundaries due to the substantial population growth, along with urban migration and rapid development of squatter and informal settlements, increasing the extent of the commercial and infrastructural requirement. Poor urban planning and ineffective plan implementation for urban development in Vanuatu is also attributed to the institutional responsibilities that are not clearly delineated among the relevant agencies. Hence, a Master Plan for Port Vila's Urban Development² was prepared, focusing on drainage and sanitation; followed by preparing the Feasibility study for investment in the Master Plan' first phase implementation, taking into consideration the technical, socio-economic, environmental and institutional issues.

2. The Government of Vanuatu has requested ADB, AusAID and other co-financing institutions for funding for the Port Vila Urban Development Project for the implementation of the first stage of the Drainage and Sanitation Master Plan. The aim of the Project is to assist the Government of Vanuatu to improve drainage, roads and sanitation systems within Port Vila Municipality and adjacent urban and peri-urban areas in the Shefa Province. Five outputs or project components have been selected for the loan, one of which involves "Improved sanitation in greater Port Vila" (Output 2). This includes the construction of a sludge treatment facility. The proposed sludge treatment facility requires an area of approximately 6.5 Hectares (250 x 250 m), inclusive of the area for expansion during subsequent stages of Master Plan implementation. The cost of this first stage of the sludge treatment facility will be financed by ADB. The Executing Agency (EA) for the Project is the Ministry of Infrastructure and Public Utilities (MIPU). The Resettlement Plan (RP) for this subproject is associated with the relevant land acquisition and compensation for the construction of a new sewage treatment facility. The subproject is located at North North West (NNW) of Port Vila Central Business District (CBD), close to the airport (Map - Figure 1). The site is agricultural, leased by 1 company, with no encroachers or communities using this plot of land which is managed by the Government appointed trustee³ under the Kastom Policies set out by the Vanuatu Constitution⁴.

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

4. During implementation of the subproject, the Project Implementation Unit (PIU) under the MIPU, with the support of international and national consultants, will be responsible for

² The Port Vila Urban Development Master Plan (Drainage and Sanitation) was prepared under the current ADB PPTA 7345 VAN in 2010.

³ In this case is the Land Survey Department of the MLNR.

⁴ Under Kastom since 1980 all land in Vanuatu is Customary Ownership. However, in many cases, the customary owners of land have not yet been, or cannot be, identified in order to pass on title to the rightful customary owner. However, the Government must hold on to profits from rents and land sales etc, on behalf of the yet to be identified customary owners, and these profits will be handed over from the Government run trust to the customary owners when or if identified.

supervising and conducting internal monitoring of this RP (or its update) associated with the Project. They will also be responsible for updating this RP based on the detailed design. The contractor will not be permitted to commence civil works in impact areas until the land acquisition and compensation payments have been completed.

B. Measures to Minimise Resettlement and Land Acquisition

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

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

C. Objectives of Resettlement Plan

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

Figure 1 – Map of the Subproject site and Port Vila



7. The key tenets that will guide the compliance with involuntary resettlement provisions during the project are: (i) land acquisition will be avoided or at least minimised; (ii) compensation will ensure maintenance of pre-project living standards of displaced/affected persons (APs) / Affected Private Firm (APF); (iii) APs/APF will be fully consulted/informed on compensation options; (iv) APs/APF socio-cultural institutions will be supported/utilised wherever possible; (v) Resettlement and land acquisition procedures will equally apply to women and men; (vi) Lack of formal title will not prevent compensation and assistance prescribed in the entitlement matrix; (vii) Land Acquisition and Resettlement will be conceived and executed as an integral part of the Project, with budgets for land acquisition and resettlement to be included in Project (subproject) costs; (viii) impact to structures will be avoided; (ix) All land acquisition, resettlement and compensation payments will be completed prior to civil works commencement in the sub-project.

II. SCOPE OF LAND ACQUISITION AND RESETTLEMENT

A. General Description of Impacts

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

9. Originally, during Master Plan design stage, three sites were proposed across Port Vila: adjacent to Port Vila Golf Course, in the area of Blacksands (to the north of Port Vila) and Pango on the southern side of Port Vila. The 6.5 hectare site selected is adjacent to Port Vila Golf course, on an area of leased agricultural land. After discussions with leaseholders and Government⁵ trustees of the site, the current area was confirmed.

10. Calculations for assessing the impacts are based on technical design requirements for the proposed sludge treatment facility and biogas plant and the future full-scale sewage treatment facility, as designed in the Master Plan. This will require a total area of 6.5 Hectares. Since the lease-holding is specifically for a business investment over a 50 year period, with 20 years remaining on the lease, all calculations have assumed compensation related to a 20-year period business loss⁶. The affected area is approximately 1.17% of the total land holding leased by the affected firm. No additional area for temporary impacts for construction space has been considered, given that this is an adequate land area and is located on an existing public roadway access.

B. Permanent and Temporary Land Impacts

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

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

⁵ Government of Vanuatu are the current trustees of the land under customary lands acts and land legislation.

⁶ This was discussed and agreed, as per Vanuatu law, during consultations with a Vanuatu Valuer Generals Office representative.

- iii. **Loss of income** – The Company (Lessee) grazes cattle on the land at approximately 3 head per hectare or approximately 20 head for 6.5 Ha, for income. This is almost the maximum number the lease allows per hectare of cattle for grazing. The loss of business/income from the reduced number of livestock as a result of the reduced land available, for the remaining lease period will be compensated, particularly because this is a long-term investment with little opportunity available for replacement land to be leased.
- iv. **Temporary impacts** - There are no temporary impacts expected as a result of the project. Areas for construction space will be limited to the permanently acquired 6.5 Hectares and accessibility to site from the existing road.
- v. **Loss of Trees** - There are a few trees that will be permanently affected. On the proposed site for acquisition are 14 mature unproductive coconut trees, 4 banyan trees and two fuel wood trees each to be compensated at their adult productive rates.
- vi. **Houses and structures** - No impacts on buildings or structures will occur. The detailed design, during implementation will ensure that no structures will be affected or no APs will be relocated, as a result of the Project development. However, as a part of the construction specifications, a fence will be constructed around the site.

Table 1: Scope of Impacts and Losses

Type of Impact	Detail	Unit	Total
Land	Loss to land owners 250 x 250 square metre plot ⁷ (Lessor)	Hectares	6.5 Ha
Pasture	Loss of improved 250 x 250 square metre plot to Leaseholder (Lessee)	Hectares	6.5 Ha
Income	Annual income loss of 3 x beef cattle per ha per year of lease (Lessee)	Hectares	6.5 Ha
Income from Rental investment	- Lessor – Interest accrued for 20 years at 8% discount rate - Loss of profit from rental income under existing lease for the Lease' remaining 20-year validity - Lessee – Interest accrued for 20 years at 8% discount rate - Loss of profits from investment income after developing the land for beef cattle production income for remaining 20-years	Hectares	6.5 Ha
Trees	Coconut (mature unproductive) for timber (Lessee)	Trees	14
	Fuel wood – mature size - Lessee	Trees	2
	Banyan Trees (adult) - Lessee	Trees	4

⁷ Land ownership, like all of Vanuatu is Customary. Since customary owners are not identified, land holding and any profits for this is managed by the Government trustee and will all be handed over to customary owners if and when identified in future.

C. Project Affected Persons / Affected Firm

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

D. Other Impacts

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

III. INFORMATION ON THE LEASE STATUS

14. Generally a Resettlement Plan records the socioeconomic status of the DPs, in order to ensure that elements of vulnerability are identified and that a baseline of the DPs is recorded to monitor the DPs are the same or better status than prior to the Project and this RP preparation. However, for the purposes of this RP, only 1 company, as Lessee and the Government holding the land in trust (as a Lessor) are involved. Therefore, this section notes some of the issues relating to the Lease of the affected plot of land.

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

16. Based on “Due Diligence” (DD) discussions with the Ministry of Lands and Natural Resources (MLNR) in Port Vila, and viewing of the MLNR files regarding the plot and its land titling, the subproject area is yet to be claimed by its customary owners and has no registered private trustee’s⁸ involvement. The Government, as required by Kastom Law, must hold all these lands “in trust”, with a specific Bank account, into which leasehold rents are deposited along with any other profits from the land in question. Therefore, the Government, through a Department of the MLNR, acts as trustee for this specific plot of land and deposits all profits from leases and from any approved land sales into a special trust fund for the customary owners, once a claim is made, proven and title deeds are handed over. Given this, if the land to be acquired is purchased for the State, then the profits from the land purchase will be deposited into this account for the benefit of the land claimants, when and if found.

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

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

19. Given the land use and ownership status of this land holding, the purchase of land and any interest due to loss of the remaining years of rent (20 years) will be held for the Lessor, or the customary owner, when identified; whilst the improved pasture, value of livestock profits and interest lost on income from the rental of the land over the future 20 years of the lease period and compensation for the trees on the site to be acquired will be eligible for the Lessee. This information is explained further in the ensuing sections of the RP below.

⁸ Some communities have set up corporations as Trustees to land plots, managing the leases for a fee. These trustee companies are run as businesses.

IV. LEGAL AND POLICY FRAMEWORK

A. Policy and Legal Framework for Land Acquisition and Resettlement

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

B. Legal Instruments in Land Acquisition and Resettlement in Vanuatu

21. Land acquisition, resettlement and associated land issues are recognized, in legal terms in Vanuatu, by the Constitution and more than 10 laws (or Acts). This section presents a brief overview of the salient national legal instruments pertaining to land acquisition and resettlement.

(i) *Constitution of Vanuatu*

22. The Constitution of the Republic of Vanuatu came into being on 30 July 1980. The Constitution, "as the supreme Law of Vanuatu", contains 2 relevant sections which have relation to land acquisition and resettlement.

23. Chapter 5, Articles 29 to 32, of the Constitution refers to the "National Council of Chiefs". Of relevance is the Article 30 which recognizes the National Council of Chiefs membership having the competence to discuss, and may be consulted on, any issue related to customs, culture and its preservation in any matter, as required by the National Government. When described under the constitution, the Council is NOT a decision-making body but rather a high-level advisory group.

24. Although a very short Chapter, considering the traditional ties between Vanuatu nationals and the land, Chapter 12 of the Constitution of the Republic of Vanuatu is devoted to Land. Most discussions related to Land have centered on Articles 30 (in Chapter 5) and Articles 73, 74, 75 and 76 of Chapter 12. However, of relevance to Land Acquisition and Resettlement are all nine articles (Article 73 to 81), but dependent upon the situation. This includes that all land is owned by its traditional, customary owners; parliament prescribes the criteria for compensation payment for land; the Government may own and acquire land for State interest and may redistribute land away from traditional owners, in such cases as informal settlements and relocating of residents from other islands; and disputes in land ownership.

(ii) *Legal Acts Pertaining to Land Acquisition and Resettlement*

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

- a. The Land Acquisition Act No. 5 of 1992 (Amendment Act No. 34 of 2000): is the key law directly related to Land Acquisition and Resettlement. This Act, gives the Minister for Lands and Natural Resources, full discretionary powers to acquire land on the Government' behalf. It covers to an extent, that which will be compensated under the Act; compensation for damages made during the process of land valuation; compensation entitlements for land and for rents and business losses; basic rights for grievance and appeals; and notice periods, as mentioned in Section 3.2 above. This Act does recognize market value compensation for

land but is very vague in compensation entitlements for rents and businesses, making it very open to misinterpretation. There is well documented evidence as to how compensation is determined for land acquisition and structures. However, there is no published compensation method that could be identified determining how compensation is determined for losses in income to business and for vulnerable (female headed households, poor, elderly and landless) affected people.

- b. Land Reform Act 35 (1980 and updated 1981, 1983, 1985, 1992 & 2000) : This Act specifies that all land titles will be customary or transferred to the traditional owners, whose percentage can be traced back locally to 200 years. It outlines specifically about indigenous owners and the non-indigenous land users. This Act, like the Land Acquisition Act is an important one to understand, when preparing an RP for involuntary land acquisition and resettlement.
- c. Customary Land Tribunal Act No. 7 (2001): As per the title, this Act details the set-up of the Customary Land Tribunal at village, Island etc. level, its basic terms of reference, especially for dispute resolution and process for affected person to appeal the tribunal decision.
- d. Valuation of Land Act No. 22 (2002): relates to the organization of the “Valuer General” Office and their role. The Act does not stipulate minimum approach to valuation of the land, which is more directly specified in the “Land Acquisition Act”. Furthermore, this Act is unclear about the role of the Valuer General office in terms of relocation/involuntary resettlement of households as well as valuation of structures, incomes and businesses.
- e. Land Surveyors Act No. 11 (1984): This is basically a code of conduct, or a terms of reference for registered land surveyors, whom must be registered through the Land Surveyors Board.

C. Current Practices in Resettlement and Land Acquisition for Government Purposes in Vanuatu

(i) Identification of areas for acquisition

26. A majority of Government land acquisition in Vanuatu has been for smaller social services projects such as for village health facilities and educational institutions. More recently, apart from Tanna airport, in Port Vila the Government has acquired land along the river at Freswota, in order to maintain a level of river protection and reduce urban encroachment issues. However, apart from this, in Port Vila the land acquisition legislation and process have not been utilized for urban development infrastructure projects.

27. In the year prior to an infrastructure development project, each Ministry and other Government agencies will develop their work plans for the following fiscal year. This is inclusive of the other feasibility study requirements such as budgeting, environmental, engineering etc. At this time proposals for projects where land acquisition is involved should be submitted. This is subject to the approval of the Council of Ministers. There is no minimum standard that requires the projects to minimize land acquisition and impact on the community.

28. Interestingly, the “Council of Chiefs”, which is the peak body representing customary issues, including land in Vanuatu at a national, does not necessarily have an input at this or any other stage of the process. At the same time, the MLNR is in the process of developing “Customary Lands Tribunals” in each Province of the country especially to assist in settling

customary land disputes. Customary lands identification is still an ongoing process, since 1980, given that there are limited records to prove the ties of people to a certain plot(s) of Land that, by law, must show to go back over 200 years.

(ii) *The process for relocation or acquiring of land*

29. On an annual basis, the Government allocates in its National budget 200 Million Vatu for Government Land Acquisition projects. According to MLNR, if the budget is not spent the remaining amount accrues on top of the normal, annual 200 million Vatu budget. In the event that the budget is used up, with finances still required, the Government and Ministry executing a project, is responsible to find further finances to cover the necessary Land Acquisition budget requirement.

30. Once an area of Land is selected by the Government for the Government Project, a notice signed by the Minister of MLNR is provided to the customary owners/title holders and a public notice is erected in full public view. The notice is made for a minimum of 30 days.

31. After this period, the land is assessed and valued. The land valuation is stipulated by Law (refer to 3.3), but generally involves valuing of the following:

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

32. According to the MLNR, valuations include both Land and structures affected and may include value of income produced from land. However, this does not include “non-land producing” incomes such as income from shop business etc.

33. Any damage to the Land, caused by valuation investigations, is by law, liable for compensation to the existing owners. Once the valuation has been made and signed by the Minister, the owners have 30 days to file objections, at the same time, the MLNR must disclose information on the valuation and proposed land acquisition over a 30-day period by Radio at least 3 times on separate occasions, in one national newspaper each week, on the main notice boards and on the land itself. Objections must be lodged within this 30 days period, and on decision by the Minister, the objector, if dissatisfied, may appeal the Ministers decision through the Supreme Court of Vanuatu. However, if the issues are related to tradition and custom, then the National Council of Chiefs may be consulted if necessary, although not compulsory.

(iii) *Carrying out the acquisition of land/structures*

34. After a 30 day notice period, and as long as all conflict claims and complaints are resolved, the physical compensation processes can then commence. The Ministry of Lands is responsible for this process, monitored by the Ministry of Finance and Economic Management (MFEM). However, problems in moving through this stage may include complaints about the process of valuation to compensation itself; and process of the assessment of disputes. This is generally supposed to be settled through the Customary Lands Tribunal or if unresolved through the Supreme Court system.

D. ADB's Policy on Involuntary Resettlement

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

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

- Screen early the projects resettlement impacts and risks
- Carry out meaningful consultations with participation of affected persons (APs)/Displaced persons (DPs), inform all APs/DPs of their entitlements and resettlement options. Pay particular attention to the needs of vulnerable groups.
- Establish a grievance mechanism
- Improve, or at least restore the livelihoods of all APs/DPs through (i) land-based resettlement or cash compensation at replacement value as relevant, (ii) prompt replacement of assets, iii) Prompt compensation at full replacement cost, and iv) additional revenues and services through benefit sharing schemes where possible.
- Provide APs/DPs with needed assistance including i) if there is relocation, secured tenure to relocation and better housing; ii) transitional support and development assistance; and iii) civic infrastructure and community services as required.
- Improve the standards of living of the displaced poor and vulnerable groups to at least national minimum standards
- Develop procedure in a transparent, consistent and equitable manner if land acquisition is through negotiated settlement
- Ensure that APs/DPs without titles are eligible for resettlement assistance and compensation for loss of non-land assets
- Prepare a RP elaborating on APs/DPs entitlements, income and livelihood restoration strategy and so on
- Disclose a RP in an accessible place and a form and languages understandable to the APs/DPs and other stakeholders
- Conceive and execute resettlement as part of a development project or program
- Provide compensation and other entitlements before physical or economic displacement
- Monitor and assess resettlement outcomes and their impacts on the standards of living of APs/DPs.

E. Policy Differences and Reconciliation

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

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

SN	ADB SPS 2009 Safeguards	Comparisons to Vanuatu Law	Reconciliation Provisions
1	Avoid resettlement impacts wherever possible.	There is no minimum standard that requires the projects to avoid resettlement impacts.	The Project will ensure all resettlement and land acquisition and impacts on community and business/productive interests

SN	ADB SPS 2009 Safeguards	Comparisons to Vanuatu Law	Reconciliation Provisions
			are avoided, wherever possible.
2	Minimize impacts by exploring project design alternatives	There is no minimum standard that requires the projects to minimise land acquisition and impact on the community	The Project will ensure all resettlement and land acquisition and impacts on community and business/productive interests are minimised wherever possible.
3	Enhance, or at least restore the livelihoods of all APs/DPs in real terms relative to pre-project levels.	Compensation is determined based on issues including land type, crops etc. However, this does not include “non-land producing” incomes such as income from shop business etc. It also does not necessarily require that compensation be provided and that conditions of the affected people be the same level or better than pre-project situation.	For this project, compensation for losses by businesses and for employees’ salaries will be considered in the entitlement. Land is valued by Valuer General in MLNR. The VG will be used (refer to SN 8).
4	Improve the standards of living of the affected poor and other vulnerable. It covers both economic and physical displacement	Laws and practices in Vanuatu do not recognise the standards of living of the poor and vulnerable, in determining compensation for land acquisition and resettlement per-se.	ADB SPS 2009 will be enforced in that assistance will be provided to vulnerable APs/DPs, if any identified, to ensure that living standards the same as, or wherever possible better than, pre-project levels
5	Screen early, the projects resettlement impacts and risks	Laws and practices in Vanuatu, relating to Government Capital Works Projects, require that the Project budget consider and includes associated resettlement and land acquisition costs. However, there are no other assessments of resettlement impacts required prior to budget approval, hence capital works commencing.	ADB SPS 2009 will be enforced to recognise resettlement impacts and risks, including through this RP and subsequent RP updates.
6	Carry out meaningful consultations with participation of APs/DPs, inform all APs/DPs of their entitlements and resettlement options. Pay particular attention to the needs of vulnerable groups.	The law, and current practices, does require the land acquisition and relocation orders to be disclosed several times over radio and in the printed media over a 1-month period, as well as display on-site. However, there is no recognition of vulnerable groups nor the consultation with, or participation of, APs/DPs at any part of the process, except in the case of people given opportunity to make objections	ADB SPS 2009 will be enforced in that the prepared RP and its implementation will require a level of participation and consultation
7	Establish a grievance	Vanuatu already has a Grievance	ADB SPS 2009 will be enforced

SN	ADB SPS 2009 Safeguards	Comparisons to Vanuatu Law	Reconciliation Provisions
	mechanism	redress system for general village matters, followed by the chief. MLNR has also recently been set up at Provincial level, through the Customary Land Tribunal.	to ensure an appropriate multiple level grievance redress system, which allows AP/DP participation, relatively rapid action and results, as well as encompassing existing grievance procedures.
8	Improve, or at least restore the livelihoods of all APs/DPs through (i) land-based resettlement or cash compensation at replacement value as relevant, (ii) prompt replacement of assets, iii) Prompt compensation at full replacement cost, and iv) additional revenues and services through benefit sharing schemes where possible.	<p>In Vanuatu valuation of land is stipulated by Law, and is conducted based on several factors regarding that specific plot of affected land such as lease and ownership type; location of property; amenities; market price of nearby properties; physical land characteristics; and intangibles.</p> <p>The law specifically points out times for disclosure prior to valuation, time for objection to valuation and acquisition of lands and assets. However, the law does not provide any clauses for compensation, income restoration and entitlements to be provided to the AP/DP in "prompt" manner.</p>	<p>Land is valued by Valuer General in MLNR. The VG will be used to determine compensation requirements relating to land, land-based income losses. All other compensation, such as non-agricultural business and employee entitlements will be at the existing market rates.</p> <p>At the end of the disclosure period, as soon as practicably possible, as per ADB SPS 2009, compensation will be provided promptly.</p>
9	Provide APs/DPs with needed assistance including i) if there is relocation, secured tenure to relocation and better housing; ii) transitional support and development assistance; and iii) civic infrastructure and community services as required.	In Vanuatu, land acquisition, resettlement and compensation for land-based losses are included under the law. However, impacts on business and their employees are less clear and there is no recognisable transitional support mechanism under the law	ADB SPS 2009 will be enforced in supplementing the Law of Vanuatu, in order to cover transition assistance requirements, business and employees impacted, as required.
10	Develop procedure in a transparent, consistent and equitable manner if land acquisition is through negotiated settlement	As a project under the Government of Vanuatu, all lands by law must be acquired for capital works, based on the orders of the Minister for MLNR.	This aspect of the SPS 2009 relating to "Negotiated Land acquisition" is not applicable. Therefore Vanuatu laws and practices will be adopted for this purpose.
11	Ensure that APs/DPs without titles are eligible for resettlement assistance and	Laws have no clauses that recognise encroachers in any way to be entitled or NOT entitled to compensation or rehabilitation.	ADB SPS 2009 will be enforced to recognise encroachers, who are legitimately affected at the time of the census/detailed measurement survey

SN	ADB SPS 2009 Safeguards	Comparisons to Vanuatu Law	Reconciliation Provisions
	compensation for loss of non-land assets		conducted.
12	Prepare an RP elaborating on APs/DPs entitlements, income and livelihood restoration strategy and so on	Under Vanuatu Law, land acquisition and resettlement and compensation is carried out focussing on households affected and the values of the land a structures affected. However, an RP per-se is not necessarily require.	ADB SPS 2009 will be enforced to ensure an RP is prepared and is updated at the time of detailed design
13	Disclose a RP in an accessible place and a form and languages understandable to the APs/DPs and other stakeholders	Although the Law does not require an actual RP to be prepared, its clauses do necessitate notices and official valuations by the MLNR to be prepared. The law, and current practices, also requires that land acquisition and relocation orders for a specific site be disclosed several times over radio and in the printed media over a 1-month period, as well as display on-site. However, only the radio would be useful for the illiterate to become informed of any pending land acquisition and resettlement activity on a specific site.	This practice will be maintained in addition to the RP being disclosed on the ADB website. If APs are found to have low literacy a further disclosure through public meeting may be held.
14	Conceive and execute resettlement as part of a development project or program	The MLNR does have a 200 Million Vatu budget for Land acquisition and resettlement for Capital Works Projects allocated on an annual basis. The year prior to an infrastructure development project, Government agencies will develop their work plans for the following fiscal year. At this time proposals for projects where land acquisition is involved should be submitted. This is subject to the approval of the Council of Ministers.	Laws and practices in Vanuatu, relating to Government Capital Works Projects, require that the Project budget consider, and includes, associated resettlement and land acquisition costs. No supplementary measure required.
15	Provide compensation and other entitlements before physical or economic displacement	Compensation is to be provided after a period of disclosure and a period for objection has finished. However, legislation does not clearly state that compensation will be provided prior to commencement of construction, which would force physical/economic displacement impacts to occur.	ADB SPS 2009 will be enforced to ensure land acquisition, resettlement and / or compensation measures are completed prior to construction commencing.
16	Monitor and assess resettlement outcomes and their impacts on the	There is no specific clause in the law of practice in Vanuatu that required Monitoring and assessment of APs/DPs during or after land acquisition and	ADB SPS 2009 will be enforced to ensure that internal monitoring and evaluation programme is set up for this

SN	ADB SPS 2009 Safeguards	Comparisons to Vanuatu Law	Reconciliation Provisions
	standards of living of APs/DPs.	resettlement commences	Sub-project. Although not expected under the current project design conditions, external monitoring program may be required if land acquisition and resettlement impacts became significant, based on SPS 2009 policy definitions.

F. Principles and Policies for the Project

38. Given the assessment of the Vanuatu laws and practices and the ADB policy differences referred to above, some additions have been made on top of the provisions set out under the Vanuatu laws, in order to ensure consistency with the resettlement principles of the ADB's SPS (2009), especially safeguards on Land Acquisition and compensation. For the reference of MIPU in preparing and subsequent implementation of resettlement activities under the project, the following project principles and policies will apply:⁹

- (i) Involuntary resettlement and loss of land, structures and other assets and incomes shall be avoided and minimized by exploring all viable options.
- (ii) APs shall be provided with compensation for their lost assets, incomes and businesses, and provided with rehabilitation measures sufficient to assist them to improve or at least maintain their pre-project living standards, income levels and productive capacity.
- (iii) Lack of legal rights to the assets lost will not preclude affected persons receiving entitlement in form of compensation for non-land assets and/or rehabilitation measures.
- (iv) Affected land assets shall be replaced at their current market values, based on Valuer Generals approval.
- (v) Preparation of resettlement plans and their implementation shall be carried out with participation and consultation of affected people and the Vanuatu government and authority – Ministry of Lands and Natural Resources.
- (vi) Schedule of budget for resettlement planning and implementation will be incorporated into MIPU's budgetary cycle as required at the time of financing. This will require close consultation with MFEM, MLNR and approvals by the Council of Ministers of Vanuatu
- (vii) Payment of compensation or replacement of affected assets and any resettlement to new locations will be completed prior to civil works implementation.
- (viii) Rehabilitation measures will also be in place before start of civil works, but not necessarily completed, as these may be ongoing activities. There will be no perceived negative impact on both DPs and host community, if any, otherwise mitigation measures should be introduced.
- (ix) Compensation and rehabilitation assistance for socially disadvantaged such as households headed by women, the disabled and elderly will be carried out with respect for their cultural values and specific needs.

⁹ These are the project's general resettlement principles which will be applied to different project components/subproject to varying degrees. As this subproject involves only a private firm and a government trust, all of these principles may not apply in this particular case.

- (x) Where significantly large or entire land holdings are affected by a project, the general mechanism for compensation for affected agriculture, residential or commercial land shall be through provision of "land for land" arrangements of equivalent size and productivity and at location acceptable to the AP, if possible.
- (xi) If a house or other structure is only partially being affected by the Project and the remaining structure is rendered unviable for continued use or in area less than the minimum relevant structure size under the prevailing standards, the AP shall be entitled to surrender the entire structure and to compensation for the entire structure at full replacement cost without depreciation or deductions for salvaged material.
- (xii) APs whose land or assets are temporarily taken by the works under the project shall be fully compensated for their net loss of income, damaged assets, crops and trees, as the case may be. The contractor shall also ensure that all temporarily acquired land and structures are returned in its pre-project state.
- (xiii) Compensation for affected populations dependent on land and natural resource-based activities will be land-based or access-based¹⁰ wherever possible.
- (xiv) Affected populations that stand to lose only part of their physical assets will not be left with a proportion that will be inadequate to sustain their current standard and convenience of living; such a minimum size being identified and agreed during the resettlement planning process.
- (xv) Affected populations will be systematically informed and consulted about the Project, the rights and options available to them and proposed mitigating measures.
- (xvi) Adequate budget support by MIPU, with MFEM of Vanuatu approvals and guarantees, will be fully committed and made available to cover the compensation and resettlement with the agreed implementation period. Clear budget commitments are required for critical activities such as formal detailed physical surveys and administrative functions associated with compensation and resettlement.
- (xvii) Community facilities and infrastructure damaged due to the Project shall be restored or repaired as the case may be, at no cost to the community.
- (xviii) Where local communities or individuals elect to make voluntary contribution of affected land without compensation, or in accordance with traditional practices, this shall be acceptable only if the following safeguards are in place:
 - Full consultation with landowners and any non-titled affected people on site selection;
 - Voluntary donations should not severely affect the living standards of affected people
 - Any voluntary "donation" will be confirmed through written record and verified by an independent third party such as an NGO or legal authority; and
 - Adequate grievance redress mechanism should be in place.

G. Compensation and Rehabilitation Eligibility

39. Affected people or affected private entities (APE- e.g. Private firm) entitled to compensation or at least rehabilitation provisions under the project are:

- All those losing land or crops or income with or without title, formal land use rights or traditional land use rights.
- Tenants whether registered or not.

¹⁰ This is to ensure coverage of affected communities whom rely on traditional accessibility to marine-based livelihoods.

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

H. Compensation and Rehabilitation Entitlement

41. Entitlement provisions apply to APEs/APs losing land, crop losses, loss of business income and relevant interest as a result of permanently acquiring land for the construction of the sewage treatment facility. There is no need for temporary land acquisition for any reason, including for workspace or accessibility to the site. The budget was calculated in consultation with, and assistance of, a MLNR registered land Valuer working with the Valuer Generals Office and with the Ministry of Agriculture. The entitlements are detailed below:

- **Land permanently acquired:** cash compensation will be paid to the land title holder at market replacement rate, for the permanent acquisition purchase of the 6.5 Hectare plot of land. This will be held by the Government trustee, as required by law, for the specific customary land users (Lessor) when identified. As there is existing Lease, for which a profit is being collected, the Lessor, title holder, will be entitled to the interest calculated as a result of the lost contract rent income over the next 20 years, calculated using the present value 8% discount rate, as per the law of Vanuatu.
- **Loss of land-use rights on permanently acquired land:** The leaseholder (Lessee) has signed a 50 year agreement which was done purely as a business income investment, gaining profit through rental of land and usage of a land plot, which will be lost for the last 20-years of investment. Therefore, the Lessee will be entitled to loss of land use rights calculated as the interest payable from loss of rental use of the land area for business profit (at 8% discount rate). Furthermore, the Lessee will receive the value of the improved pasture, calculated based on the pasture loss against yield on the cattle production over the 20 year lease period.
- **Loss of Income** in potential cattle production at 20 head of cattle (3 head per Ha) based on the average weight and price of a steer. This is converted to net operating income for the 20 head of cattle and is then calculated in terms of the loss foreseen over the remaining 20 year lease.
- **Loss of Coconut trees** – Compensation for 14 mature, unproductive¹¹ coconut trees will be payable to Lessee, who is responsible for preparing and developing the land for agricultural purposes. These will be valued based on the market value of the coconut wood provided through the Vanuatu Ministry of Agriculture. This will be payable to the leaseholder, whose lease includes preparing land.
- **Losses of fuel wood trees** – The 2 wood trees are valued based on the average wood volume x the market value of the tree's wood from an adult tree. This value is provided through the Ministry of Agriculture. This will be payable to the leaseholder.

¹¹ The coconut trees on the affected area are mature and past the coconut producing age.

- **Loss of banyan trees** – The valued based on the average wood volume x the market value of the tree’s wood from an adult tree. This value is provided through the Ministry of Agriculture. This will be payable to the leaseholder

I. Entitlement Matrix

42. The entitlement matrix (Table 3) below provides for compensation and entitlements as described in the likely impacts of the Project. In the update of this Resettlement Plan, changes in impacts may necessitate a change in this entitlement matrix.

Table 3 - Entitlement Matrix

Type of Losses	Entitled Person	Entitlement	Entitlement Issues/Guidelines
Agricultural Land – landowners	Legal owner(s) of land at the time Minister of Lands and Natural Resources serving Notice of Land Acquisition as per the Land acquisition law of Vanuatu	<p>4. Current Market Value of affected land in cash compensation to be provided through Government Trustee, for future customary land owner claimant, when and if identified.</p> <p>5. Loss of potential rent income value.</p> <p>6. Changing of title to reflect 6.5 Ha transferred to Government, and to reflect a non-agricultural or “industrial Land-use”, without cost to the land holders’ account.</p>	<p>a. Assessment of type and quantity of land to be carried out jointly by the Valuer General from the MLNR and the PIU resettlement Specialist(s).</p> <p>b. Calculated through interest from contract rent for the remaining period of the Lease (20 years) (using the accepted National Government discount rate of 8%).</p> <p>c. Title updating</p>
Agricultural Land (Loss of Pasture land use) – Leaseholder	The Leaseholder - the firm / company raising cattle on the site, as part of a larger 50 year lease-holding	<p>1. Paid cash compensation, based on the production yield of the cattle using the improved pasture that would be lost over the next 20 years of the lease. Rate will be equal to the cut value of the pasture.</p> <p>2. Cash payment for the interest on the loss of the profit from land use over the next 20 years remaining on the lease.</p>	<p>a. Valued based on net income of from the pasture use.</p> <p>b. Based on the interest calculated on the profit made from the rental investment, or profit rent, using 8% discount rate, as accepted by Government</p>

Type of Losses	Entitled Person	Entitlement	Entitlement Issues/Guidelines
		3. Change in the Lease removing the 6.5ha land area from the leasehold, at no cost to the leaseholder	c. Updating of Lease
Loss of income from livestock - Leaseholder	The Leaseholder - the firm / company who is the landuser raising the livestock on the site	Value of lost income on beef cattle for the remaining period of the lease.	Valued, based on net income from beef cattle.
Trees	The Leaseholder - the firm / company who is the land user, who is charged to develop the land as per instructions on the Lease	1. Unproductive mature Coconut tree: cash compensation based on wood production – wood volume x market value. 2. Wood trees – cash compensation based on value of wood volume x market value of the wood. 3. Banyan trees – at Government valued price	Values determined by the Ministry of Agriculture, who has set annual valuations for each type of tree, fruit and vegetable species, based on wood, fruit or aesthetic value of certain tree and plant types.

V. CONSULTATION, PARTICIPATION AND DISCLOSURE

A. Consultation

43. This RP has been prepared in close consultation with representatives of the affected parties – representatives of the leaseholder and the land owners¹². Two sections of the MLNR have also been consulted, one being those responsible for holding land in trust on behalf of the Customary land owners prior to there being identified and the separate Valuer Generals Department. The project team has also visited the affected site. The following consultations were conducted:

- Meeting with representatives of the affected firm (10th March 2011) – Issues discussed included potential sites, on the leasehold land that were being considered for the sub-project; the leaseholders recognition and endorsement gained for the proposed acquisition; and the leaseholders preferred site for land to be acquired for the subproject (Annex 3).
- Meeting with MLNR, Land Survey Department¹³ (Customary Lands Ownership representative) – Discussion regarding potential of existing Customary Land Claim on the site, of which there are none¹⁴; and the process of how the land is managed in trust, when customary owners are yet to be identified, under the land laws of Vanuatu which recognizes that all Vanuatu Lands are customary (Annex 4).
- The Land Valuers Department was consulted in July 2010, as part of the PPTA Master Plan Preparation in order to discuss the processes by which the Government acquires Land according to the laws of Vanuatu (refer to Section IV C above). The Valuer Generals office also assisted in preparing the compensation entitlements valuations for this RP.

44. The review of this RP during the detailed design and the update of impacts and AP surveys will be carried out along with a new round of AP/APE information/consultation to ensure full stakeholder participation in project preparation. This task will be carried out by international and national specialists engaged for updating the RP in coordination with the PIU project management (MIPU) and MLNR Valuer Generals Office, who are in charge of the land acquisition and compensation process under the laws of Vanuatu.

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

¹² Customary Land Owners yet to be identified. Under the law land and its Profits are held in trust by a Government appointed trustee, that may be a section of the MLNR or a private trustee, until such times that the Customary owners are identified and the land, with profits accumulating will be handed over to them.

¹³ Land Survey Department is responsible for identifying Customary Land owners and providing them with the legal titles to their land, they also represent the interests of those customary owners yet to be identified.

¹⁴ this was confirmed by documents obtained from MLNR

B. Disclosure

46. Disclosure of the Resettlement Plan will be carried out. It will be disclosed to affected parties in English, with the notices including summary of land acquisition translated to other 2 official local languages – Bislama and French as required by Vanuatu law. A copy of the RP will be made available at the MIPU office and MLNR office. If an affected party requests, the summary of the RP may also be translated into French and/or Bislama.

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

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

VI. GRIEVANCE REDRESS

48. Grievance and Complaints Procedures are set up to:

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

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

- I. Community Level (in the case of any community residents having a Grievance) – A community committee made up of AP/APE representatives, community representatives and representatives of the customary owners shall be set up and will meet in the case a complaint is lodged.¹⁵ A decision should be made with 7-days of the complaint being lodged. The committee will be chaired by the Village Chief. In the event that the Village Chief is a “customary owner” (if identified in future), the chair of the committee may be represented by the community’ religious leader.
- II. Project level – If not satisfied with the decision, the complainant has the option to appeal to the Project level, represented by a Project Management Unit in MIPU and on advice of MLNR. This will be the first level of entry, in the case of the Affected Firm having a Grievance. The Grievance from the affected firm must be submitted in writing to the PIU Project Director. A decision must be made with 14 days of receipt of appeal.
- III. Customary Land Tribunal - If not satisfied with the Project level decision, the complainant may choose to appeal to the Customary Land Tribunal and MLNR, as per the current Land acquisition Law. Under the Law and current procedures in Vanuatu, the complaints procedure can last up to 30-days. The decision of the tribunal is generally final, unless the tribunal procedures are challenged.
- IV. Legal Procedures – Further appeal may be made through the Supreme Court of Vanuatu, only in the case that the Customary Tribunal procedures were faulty in the specific case.

¹⁵ A complaint may be lodged with the MIPU, PIU if the complaint is to be lodged prior to a committee being set-up, which in this case, the PIU will be obligated to set up the community level committee to hear the Grievance. The PIU will set up the Community level committee immediately within 5 days of the complaint submission.

VII. INSTITUTIONAL FRAMEWORK

A. Institutional Arrangements

50. The MIPU will be the executing agency responsible for overall guidance and project implementation. A PIU headed by a Project Director will implement the project and will be overall responsible for overall planning, management, coordination, supervision and progress monitoring of the Subproject including the RP update and implementation. The PIU will be supported by a team of international and national Project Management consultants. The PIU will ensure compliance with assurances, including safeguards and preparing and submitting the resettlement plan update, reports, resettlement plan monitoring reports.

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

52. The MFEM will work also together with the MIPU PIU and the MLNR at the time of actual handing over of compensation money.

B. Implementation Arrangements

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

- i) Update the resettlement plan, based on the detailed design of the sewage treatment plant.
- ii) Coordinate with MLNR Valuer General Office regarding land ownerships, titles and compensations.
- iii) Assist the PMU management in RP implementation and preparing an internal monitoring report to be submitted to ADB confirming compliance with the RP.

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

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

C. Resettlement Database Records

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

D. Post-Resettlement Plan Implementation

57. Monitoring of compliance of the project policies is the main agenda in this phase. Internal monitoring is the responsibility of the PIU, but will be conducted with the assistance of the resettlement specialist. Given the small magnitude of just 1 affected firm and the customary title being kept by a Government trustee, no external monitoring is recommended. Internal monitoring reports will be submitted to ADB with the quarterly progress reports and with the final internal monitoring report will be also submitted by the EA. The ADB will issue to the EA/PIU a no objection, which will then signify for the contractor to commence civil works in the affected area. The details of Monitoring and Evaluation are discussed in Section VII below. During mid-term review ADB will also ensure that there are no other adverse involuntary resettlement effects.

VIII. RESETTLEMENT BUDGET

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

59. The EA (MIPU) will be responsible for obtaining financing for all the costs of the compensation/rehabilitation program for the impacts caused by the Project through its own budgetary sources. This includes compensating land, crop, trees and relative administration costs. The EA (MIPU), with the ni-Vanuatu Government, through the MFEM, will set aside and provide the funds for RP implementation in an efficient and timely manner during the course of the Project.

60. The following Table 4 summarizes the cost estimates and budget of land acquisition and resettlement plan. The provisions for administrative cost and contingencies are included in this budget. Total Estimated Budget for implementation of Resettlement Plan is Vatu 27,188,039.12 or 280,289.06 USD (approximately).

Table 4 - Summary Costs Budget

Land Acquisition and Resettlement Plan Budget				
Details	Unit	Total amount	Unit Rate- (in Vatu)	Total Amount- (in Vatu)
<u>Agricultural Land (A)</u>				
Permanent Acquisition	Hectares	6.5	2,000,000	13,000,000.00
Plus Interest (land loss to Owners)	Hectares	6.5	21448.38	139,414.50
Sub-Total (A)				13,139,414.50
<u>Pasture (B)</u>				
Land-use – Loss of improved Pasture	Hectares	6.5	350517.69	2,278,365.00
Plus interest – loss of Land-use	Hectares	6.5	312,557.00	2,031,622.00
Sub-Total (B)				4,309,987.00
<u>Trees (C)</u>				
Coconut	Mature unproductive	14	950.00	13,300.00
Banyan	Adult	4	1000.00	4,000.00
Fuel wood	Adult	2	1000.00	2,000.00
Sub-Total (C)				19,300.00
<u>(D) Loss of Livestock</u>				
Income loss from Cattle Production	Head of cattle	20	113,918.25	2,278,365.00
Sub-Total (D)				2,278,365.00
Total - Impacts compensation (A+B+C+D)				19,747,066.50
Administrative (E) (10%)				
Personnel (F)				
International	Person Month	1	1,440,000.00	1,440,000.00
National	Person Month	1	480,000.00	480,000.00
Sub-total (F)				1,920,000.00
(H) Total(A+B+C+D+E+F)				23,641,773.15
Contingency (15%) (G)				3,546,265.97
Grant Total (H+G)				27,188,039.12

Grant Total (United States Dollars)
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280,289.06

IX. IMPLEMENTATION SCHEDULE

61. The orderly undertaking of the resettlement activities, as laid out in this Resettlement plan, is essential in order to prevent undue delays to construction schedule. It has been prepared based on the time requirements set out by the Laws of Vanuatu such as notices of intent to acquire land and required minimum disclosure periods. At the same time the schedule has been prepared to reduce any time lag between tasks and ensure AP/APEs are compensated as fast as possible. The schedule will be updated after the detailed design.

TASKS	Months									
	1	2	3	4	5	6	8	9	10	
A. Finalization of detailed design	—									
B. Final LARP Preparation										
Initial Notice of Land Acquisition (30 days)		—								
Detailed surveys			—							
Resettlement Plan Updating			—							
ADB Review/approval				●						
Government approves RP				●						
Disclosure of approved RP (30 days)				—						
C. RP implementation										
Allocation of funds	—	—	—	—	—	—				
Internal Monitoring							→			
Compensation delivery						—	—			
Preparation of compliance report								●		
Notice of Approval									●	
Commence Civil Works										→

X. MONITORING AND EVALUATION AND REPORTING

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

63. Monitoring will be conducted by the EA/PIU. Monitoring and evaluation (M&E) reporting will cover the following:

- compliance with resettlement and land acquisition compensation policies;
- adequacy of the organisational mechanism for implementing the Resettlement Plan;
- the handling of complaints and grievances;
- the AP (company) and Trust Fund will have been fairly compensated, as per the RP; and

64. Monitoring will be carried out for a baseline, mid-term and end of land acquisition and compensation period. Monitoring will be reported to ADB mainly on a baseline, mid-term and end of land acquisition and compensation period basis, but summary status will be reported with the quarterly and monthly reporting of the EA to ADB. The EA/PIU will be responsible for determining if any follow-up actions are necessary and ensuring these actions are undertaken.

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

ANNEX 1 – GENERIC ToRs FOR LAND ACQUISITION AND RESETTLEMENT SPECIALIST

1. Introduction

This TOR has been prepared for resettlement specialists to assist the Project in preparing/updating and implementation of the Resettlement Plan during implementation of the project..

Following ADB and Government of Vanuatu policies on recruitment of consultants, the resettlement specialists will be recruited with the implementation consultants bidding and will be made up of qualified international and national specialists.

2. Scope of Works

Main responsibility of the consultants will be to ensure that the project is implemented in accordance with Resettlement Framework/Plan prepared during the PPTA and relevant safeguard policies, handbooks, and guidelines of ADB and the Government. The consultants' scope of works includes, but is not limited to the following tasks:

- Review previous loan and PPTA documentation with the view of improving methodology for preparing social safeguards of the project.
- Coordinate with engineers and other Team members on-site to identify land and household areas that will be impacted by the project activities, requiring temporary and permanent resettlement or land acquisition. Significance of impact on APs will be categorized as per ADB's safeguard policy on involuntary resettlement
- Undertake Socio-Economic Survey of 10% DPs, and 20% DPs with major impacts due to resettlement and/or land acquisition by the Project.
- Conduct Census/Detail Measurement Survey of 100% of Affected Persons recording all losses of land and structures and livelihood as a result of the project
- Prepare a Resettlement Plan and updates, as per ADB's safeguard policies on involuntary resettlement; the Project Resettlement Framework; and GOV Laws.
- Prepare budget for Resettlement and Land Acquisition, as per entitlement matrix and update entitlement matrix to suit sub-project situation. Salvageable materials should not be Included in costing.

3. Staffing Inputs and reporting

The Resettlement Team will consist of one international and one national specialists with demonstrated experience in resettlement following ADB safeguard policies. A registered valuer from the MLNR will also be involved in order to ensure all compensations are calculated and approved within the laws of Vanuatu. Furthermore, the RP and any updates, and its implementation compensation completion will be approved by ADB at the completion of each of these stages.

The following reports will be required for submission:

- a. Contribution to Inception Report of detailed design Study Team
- B. Resettlement Plan and any necessary updates with budget
- c. Full details of persons consulted
- d. Awareness Materials
- e. Internal evaluation reports and completion report

ANNEX 2 – INVENTORY OF LOSSES FORMAT RECOMMENDATION

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

(Source: Asian development Bank, 2004)

ANNEX 3 – CONSULTATION WITH LESEE REPRESENTATIVE

Port Vila Urban Development Project.

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

Date : 10th March 2011

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

Subject : Land for Sewage Treatment Plant Site.

Points discussed :

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

The following points were confirmed.

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

ANNEX 4 – CONSULTATION WITH LAND OWNER REPRESENTATIVE

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

Date : 14th March 2011

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

Subject : Land for Sewage Treatment Plant Site.

Points discussed

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

The following points were confirmed.

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