



Subproject Proposal

Project Number: 44140
March 2012

TA 7566-REG: Strengthening and Use of Country
Safeguard Systems

TIM: Developing Resettlement Safeguards Capacity
in the Transport Sector in Timor-Leste

**TA 7566-REG: Strengthening and Use of Country Safeguards Systems
SUBPROJECT PROPOSAL**

A. BASIC DATA
1. Date: 21 March 2012
2. Subproject Title: Developing Resettlement Safeguards Capacity in the Transport Sector in Timor-Leste
3. Subproject Officer: Nogendra Sapkota
4. Division/Department: PATE/PARD
5. Country/Region: Timor-Leste/ the Pacific
6. Implementing Organization: <input checked="" type="checkbox"/> ADB <input type="checkbox"/> CSO <input type="checkbox"/> Others (Specify)
7. Amount Requested: \$350,000
8. Period this funding request will cover: April 2012 to September 2013
B. NAME AND DESCRIPTION OF IMPLEMENTING ORGANIZATION
<p>The Transport, Energy and Natural Resources Division (PATE) of ADB's Pacific Department (PARD) will implement the subproject in coordination with ADB's Special Office in Timor-Leste (SOTL). PATE's Safeguards Specialist (Nogendra Sapkota) will administer the subproject activities as the subproject officer. SOTL will coordinate with the Government of Timor-Leste and other stakeholders at the country level.</p> <p>The Ministry of Infrastructure (MOI) will be the focal agency to implement the subproject on behalf of the government in coordination with the Ministry of Justice (MOJ), the National Directorate of Land, Property and Cadastre Services (DLPCS) under MOJ, the Ministry of Finance (MOF), and other relevant agencies and stakeholders. MOI is the key government agency responsible for formulation of policy and development of infrastructures including the transport sector. MOJ is responsible for overall legal aspects and DLPCS is responsible for land administration. The section C (5) describes the implementation arrangements.</p>
C. SUBPROJECT DESCRIPTION
1. Background and Rationale:
<p>Timor-Leste's Strategic Development Plan 2011-2030 has a vision of building a modern and diversified economy of Timor-Leste by 2030. To achieve this vision, the government has started several initiatives on development of physical infrastructures (ports, roads, etc.) as well as necessary laws to support this process.</p> <p>Section 141 of the Constitution of Timor-Leste states that the ownership, use and development of land as one of the factors for economic production shall be regulated by law. Section 54 of the Constitution provides for rights to private property, including: (i) citizen's rights to own and transfer private property; and (ii) expropriation of private property for public purposes following fair compensation in accordance with the law.</p> <p>The <i>Law No. 1/2003: Juridical Regime of Real Estate</i> was Timor-Leste's first land law, which was designed to serve as an umbrella law for the rest of the land and property regime. This law established DLPCS under MOJ as a land administration legal entity, and articulated general rules concerning land tenure and property rights to be further developed by ensuing legislation. Effectively this law vests all land that belonged to the Portuguese state and all state property</p>

acquired or built under the Indonesian regime in the new state of Timor-Leste.

The *Decree Law No. 6/2011: Compensation for Evacuating State Real Property* was issued in February 2011 and provides for granting compensation to relocate unlawful occupants of state property based on humanitarian considerations. MOJ has started the process to establish the basis for calculating for such compensation.

The *Decree Law No. 27/2011: Regime for Regularization of Ownership of Immovable Property in Undisputed Cases* was promulgated in July 2011. This degree law allows private property rights registration to landowners/claimants for land parcels that have been already surveyed, cadastred, and confirmed by DLPCS that claims to the land are undisputed. Among about 47,000 claims registered so far in the urban areas, some 92 per cent of claims have been found without disputes. The United States Agency for International Development (USAID) has been supporting MOJ/DLPCS through the *Ita Nia Rai* (Our Land) program to register the landownership claims as well as develop several land laws.

The *Civil Code* has been approved and promulgated in 2011, which comes in force in March 2012. This law includes a section governing day-to-day land decisions such as the sale and lease of land.

The following legislations relating to land have been approved by the Parliament in 2012 and are waiting for the promulgation by the President¹:

- The *Land Law* that provides a legal framework on who owns what land and in the case of conflicting claims who has the strongest right to the land;
- The *Expropriation Law* that allows the State to acquire land for public purposes; and
- The *Real Estate Finance Fund* that provides compensation as determined under the other laws.

The government faces many challenges on land acquisition and resettlement aspects. The main issues are discussed in the following paragraphs:

1. **Inadequate laws on land acquisition and resettlement.** Although the Constitution gives the power to the State to acquire private land for public purposes paying due compensation in accordance with the law, there are no adequate laws in place to regulate this process. The two decree laws issued in 2011 provide for compensation to relocate unlawful occupants of state property and granting private ownership titles in undisputed cases, respectively. Laws related to overall landownership (including disputed cases), expropriation and compensation have been recently approved by the Parliament, but they are yet to be promulgated by the President. The government may be able to expropriate private land for infrastructure projects only after these laws are promulgated and declared effective and subsequent regulations and guidelines issued.

The Expropriation Law emphasizes that the expropriation of private property for public

¹ These laws were approved recently in February 2012, and the final texts are not yet available. After promulgation by the President and publication in the official journal, the land law will become effective in 3 months and the expropriation law will become effective the day after the publication.

purposes should only take place when there is no possibility of negotiated acquisition of that property.² If the property cannot be acquired through negotiation, the government could expropriate the property following the provisions prescribed in the law, including: fair compensation to affected parties; preparing a list of property to be expropriated; publication of a notice of public purpose; substantiation of required land and properties; classification of land for compensation; and an appeals process and means to object to both compensation amount and to expropriation decision itself. However, the law doesn't address currently several aspects that are considered essential under resettlement safeguard policies of international development agencies such as ADB and the World Bank, including: social assessment, preparation of a resettlement plan (RP), rehabilitation assistance, participation of and disclosure of information to affected persons (APs), special attention to vulnerable groups, grievance redress mechanism at project level, and compensation/assistance to non-titleholders.

A detailed legal analysis of the country safeguard system (CSS) is necessary to identify gaps and recommend specific measures to strengthen the legal framework on land acquisition and resettlement safeguards. While the government has embarked on developing several laws on land administration and expropriation, it would be appropriate for ADB to support a legal analysis of the CSS to strengthen resettlement safeguards particularly in the transport sector. This will not duplicate the activities of other development partners, but will serve as a complementary process.

- 2. No regulations and guidelines.** There are currently no regulations or guidelines to implement land acquisition, compensation and resettlement. The acquisition of private property is currently only possible through negotiated settlement with owners of undisputed land parcels. The project executing agencies often negotiate with affected landowners on a case by case basis, but they face many constraints in acquiring land in the absence of clear regulations and guidelines. The government has adopted donors' resettlement policies and guidelines as an interim practice for the projects supported by donor agencies (e.g. ADB, JICA, WB). However, this is not a long-term solution because this ad hoc approach often leads to inconsistencies in terms of resettlement standards across projects.

Once the expropriation law is promulgated and comes into force, the government will be able to acquire land through both negotiation and expropriation means. However, no regulations or guidelines have been developed yet to implement the expropriation law. While the government and its development partners including ADB are developing and implementing national priority projects in the transport sector involving land acquisition (e.g. road widening and alignment), there is an immediate need to develop guidelines to implement land acquisition and resettlement particularly in the transport sector.

- 3. Weak capacity of MOI and DLPCS.** MOI and DLPCS lack adequate capacity to manage land acquisition and resettlement safeguards. There is limited awareness of the government's recent laws as well as international best practices on land acquisition and resettlement safeguards among staff of MOI, DLPCS, district administration offices, and other stakeholders. MOI and DLPCS do not have sufficient resources to implement land acquisition and resettlement activities. Staff of these agencies have limited experience in understanding and implementing the legal processes, social assessments, preparation

² The Expropriation Law uses the term "private acquisition" for the process to acquire private property through negotiation before declaring of a public purpose for expropriation.

of RPs, compensation and rehabilitation activities, and monitoring compliance. The stakeholders including civil society organizations have limited information about the ongoing legal reforms related to land.

In view of potential rapid growth of the transport sector in the country, the government aims to strengthen the legal framework, formulate necessary guidelines, and build capacity of MOI and DLPCS to ensure that transport projects are implemented smoothly and in line with international best practices on land acquisition and resettlement safeguards.

The USAID has provided support to the government for *Ita Nia Rai* (Our Land) program to develop land cadastre register and to develop several land laws. The *Ita Nia Rai* program has been integrated now under MOJ and the USAID project will be completed by mid 2012. United Nations Integrated Mission in Timor-Leste has been assisting in developing basic legislative framework and jurisprudence following Timor-Leste's independence. The World Bank is supporting the Justice for the Poor program at national level. ADB and several development partners including the European Union, Japan International Cooperation Agency, and the World Bank are supporting in development of physical infrastructures particularly in the transport sector. ADB's existing portfolio includes several grant and technical assistance projects in the transport sector.³ ADB's Country Partnership Strategy (CPS) recognizes the transport sector as the ADB's top priority sector in Timor-Leste and emphasizes on continued capacity building in this sector. While the ongoing projects are providing support on development and implementation of individual transport projects, currently there is no specific project or program supporting the government to develop legal and institutional capacity to implement land acquisition and resettlement safeguards in the transport sector. It is proposed that ADB provide technical assistance on developing capacity on land acquisition and resettlement safeguards in the transport sector, which is the government's priority and ADB's core sector of operations in Timor-Leste.

An ADB mission in August 2011 discussed with MOI, MOJ, DLPCS, WB, JICA and other stakeholders about the need to support Timor-Leste to review the existing legal framework, prepare guidelines and develop capacity of MOI and DLPCS on land acquisition and resettlement safeguards particularly in the transport sector. A draft subproject proposal was subsequently developed and shared with MOI and MOJ. The government has endorsed to participate in ADB's TA 7566.

2. Outcome:

The outcome will be improved legal framework and implementation capacity on land acquisition and resettlement safeguards in the transport sector in Timor-Leste. This will be measured by the government's approval of (i) Guidelines on land acquisition and resettlement safeguards in the transport sector; and (ii) Action Plan for strengthening legal framework and implementation capacity on land acquisition and resettlement safeguards in the transport sector.

3. Outputs:

The following outputs will be prepared under the subproject:

³ ADB projects in infrastructure/transport sector include: Grant 0180-TIM: Road Network Development Sector Project; Grant 9142-TIM: Our Roads Our Future - Supporting Local Governance & Community-Based Infrastructure Works; ADB 4942-TIM: Infrastructure Project Management; and PATA 7698-TIM: Supporting Road Network Development.

Output 1. Legal analysis for CSS strengthening and institutional capacity assessment
Output 2. Guidelines on land acquisition and resettlement safeguards in the transport sector
Output 3. Action plan for strengthening legal framework and implementation capacity on land acquisition and resettlement safeguards in the transport sector

The assumption is that the government remains committed to strengthen the CSS on land acquisition and resettlement safeguards. The subproject will follow participatory approach to discuss different views and priorities of the stakeholders and try to reach consensus on the outputs.

4. Key Activities and Inputs:

Output 1: Legal Analysis for CSS Strengthening and Institutional Capacity Assessment.

The subproject will undertake a legal analysis of the country's existing legal framework and assessment of implementation capacity of MOI and DLPCS on land acquisition and resettlement safeguards in the transport sector. The main activities will comprise as follows:

- 1.1 Participatory review of existing legal framework of Timor-Leste, comparative analysis with international best practices and recommendations to improve legal framework on land acquisition and resettlement safeguards.

An inventory of laws, decrees, regulations, administrative orders, and other mandates related to land acquisition and resettlement safeguards will be compiled. Aspirational policy statements, such as those found in the Constitution, framework, or sector policies will also be inventoried for their potential correspondence to international best practices. Legal instruments in draft form such as bills and draft regulations will also be identified, not as legally binding instruments, but as potential measures for CSS strengthening. A comparative analysis of Timor-Leste's legal instruments and practices with international best practices on land acquisition and resettlement safeguards will be conducted by utilizing the methodology for strengthening CSS as set out in ADB's *Guidance Note for Review of CSS*. The analysis will make a reference to ADB's Safeguard Policy Statement (SPS) as a benchmark. The legal analysis report will include: (i) comparative analysis of Timor-Leste's legal framework and international best practices; and (ii) recommendations to enhance greater coherence of the CSS with international best practices.

- 1.2 Participatory assessment of institutional capacity of MOI and DLPCS. Also includes identification of necessary capacity building measures in consultation with relevant agencies and stakeholders.

The subproject will assess institutional capacity of MOI and DLPCS to implement land acquisition and resettlement safeguards for infrastructure projects and particularly in the transport sector. Key tasks will include: (i) assessment of the capacity of MOI and DLPCS in term of their relevant responsibilities, resources and tools; (ii) assessment of existing implementation practices and procedures; and (iii) assessment of their performance on land acquisition and resettlement safeguards. Selected case studies will highlight what is being done in the actual situation for transport projects, and what should be done in order to improve the implementation capacity.

- 1.3 Consultation workshop to discuss draft legal analysis and capacity assessment report.

Workshops will be organized to discuss draft reports on the legal analysis for CSS strengthening and assessment of institutional capacity of MOI and DLPCS. The objective is to discuss key issues and try to reach consensus on recommended actions among government agencies, development partners, civil society organizations and other relevant stakeholders. The subproject will also raise awareness of the participants on international resettlement safeguard standards.

- 1.4 Finalize reports on legal analysis and capacity assessment taking into account the results of stakeholder consultation.

Output 2: Guidelines on Land Acquisition and Resettlement Safeguards in the Transport Sector. The subproject will support in drafting guidelines on land acquisition and resettlement safeguards in the transport sector based on Output 1 and review of key issues in the transport sector. Their key activities will comprise as follows:

- 2.1 Prepare draft Guidelines on land acquisition and resettlement safeguards in the transport sector.

The draft guidelines will be developed by elaborating policy principles and procedures on relevant aspects of land acquisition and resettlement safeguards in the transport sector, including, (i) strategies to avoid or minimize land acquisition and resettlement impacts; (ii) process to acquire land, assess impacts and prepare resettlement planning documents, (iii) principles on compensation and rehabilitation entitlements, including methods to calculate compensation at replacement cost, (iv) special measures for vulnerable groups, (v) mechanisms for information disclosure, consultations, and grievance redress, (vi) institutional arrangements, (vii) monitoring and evaluation systems, and (viii) financial requirements. The guidelines will be developed addressing broader issues resulting from loss of land, property, and livelihoods, and will be developed in accordance with international best practices and applicable national laws.

- 2.2 Undertake stakeholder workshops to consult with government agencies, NGOs, and other stakeholders on the draft Guidelines.

Discussions with relevant government agencies, development partners and civil society organizations will be held to solicit their views on the draft guidelines. A number of workshops and meetings will be organized for this purpose. At the national level consultative workshops will be organized in Dili. Additional consultative workshops will be organized at appropriate regional centers outside Dili. Specific meetings will be organized among stakeholder groups, including NGOs and project implementation agencies. Bilateral and multilateral funding agencies (e.g. World Bank) will also be consulted. The guidelines will be prepared and circulated both in English and local languages.

- 2.3 Finalize Guidelines taking into account the results of the stakeholder consultations.

- 2.4. Translate Guidelines in relevant local language(s).

Output 3: Action Plan for Strengthening Legal Framework and Implementation Capacity on Land Acquisition and Resettlement Safeguards in the Transport Sector. The detailed activities include as follows:

- 3.1 Prepare draft action plan based on outputs 1 & 2 to improve the legal framework and develop capacity of MOI and DLPCS.

The draft action plan will be prepared based on Outputs 1 and 2 articulating a set of specific interventions to improve the legal framework and develop capacity of MOI and DLPCS to implement land acquisition and resettlement safeguards particularly in the transport sector.

- 3.2 Organize consultation workshops to discuss the draft action plan.

The draft action plan will be discussed with relevant stakeholders, including key government agencies, development partners (e.g. World Bank), and NGOs. The consultation workshops will be conducted in the form of facilitated discussions and efforts will be made to reach a general consensus on the action plan. Development partners, including World Bank, will also be invited to the consultation workshop to provide their views and clarify how they can support the action plan.

- 3.3 Prepare final action plan taking into account the results of the stakeholder consultations.

- 3.4 Submission of Action Plan and Guidelines for government approval.

- 3.5 Subproject completion and dissemination.

5. Implementation Arrangements, Timetable, and Reporting Plan:

PATE will manage the subproject in coordination with SOTL. PATE's Safeguards Specialist (Nogendra Sapkota) will administer the subproject. SOTL will coordinate with the government and other stakeholders at country level. The subproject will be carried out over 18 months, from April 2012 to September 2013.

As the key agency mandated to develop and implement infrastructure policies and projects in the country, MOI will implement the subproject on behalf of the government in coordination with MOJ, DLPCS, MOF, and other relevant agencies and stakeholders. The Project Management Unit (PMU) of MOI will serve as the focal unit to implement the subproject activities in coordination with MOJ/DLPCS and other stakeholders. The PMU will provide office space to TA consultants and coordinate their activities. The PMU will also be responsible for communicating about the subproject implementation including providing ADB with necessary endorsements on behalf of MOI (e.g. endorsement of subproject proposal, no objection to ADB's recruitment of consultants, etc.). MOJ in particular its DLPCS will actively participate and play a key role in the subproject. A working group will be established by the government in consultation with relevant stakeholders to coordinate the subproject activities. It will be chaired by MOI, and will comprise representatives from MOJ/DLPCS, MOF and other relevant government ministries/agencies and civil society groups. Specific terms of reference and membership of the working group will be specified during subproject inception. The TA consultants will provide necessary support to the working group. The TA team leader will act as secretary of the working group and will serve as a channel of effective communication between the consultants and the working group.

The subproject will use existing coordination mechanisms (e.g. NGO Network and Donor Group on land issues) at country level to coordinate, consult, and report on subproject activities among relevant government agencies, development partners, and other stakeholders (e.g. NGOs).

The subproject will require a total of 16 person-months of consulting services. Two international consultants (total of 8 person-months) and a national consultant (total of 8 person-months) will form the subproject consulting team. The international consultants will have expertise in respective areas of safeguards (i.e., resettlement safeguard, and legal aspects). National consultant will assist in CSS assessment, preparation of guidelines and action plan, and overall implementation of the subproject. The consultants will be recruited as individuals and engaged by ADB in accordance with its *Guidelines on the Use of Consultants* (2010, as amended from time to time). Disbursements will conform to ADB's *Technical Assistance Disbursement Handbook* (2010, as amended from time to time). Procurement of equipment, if any, will follow ADB's *Procurement Guidelines* (2010, as amended from time to time).

The consultants will submit reports on the legal analysis for CSS strengthening and institutional capacity assessment, guidelines on land acquisition and resettlement safeguards in the transport sector, and action plan to strengthen legal framework and capacity building of MOI and DLPCS by the target dates as specified in the subproject monitoring framework. The consultants will also submit semi-annual progress reports and a subproject completion report. For each report, the consultants will submit first a draft report for review by ADB and the government, and then a final report after incorporating ADB's and the government's comments on the draft report. The international resettlement specialist will act as TA team leader and coordinate activities and outputs of the TA and act as a secretary to the Working Group.

The government will provide in-kind contribution such as office accommodation and counterpart staff (including remuneration and per diem).

Major assumptions include: (i) the government remains committed to strengthen CSS, and (ii) development partners, NGOs and other stakeholders support CSS strengthening.

6. Subproject Completion and Information Dissemination:

The key outputs of this subproject will be the legal analysis for CSS strengthening and institutional capacity assessment of MOI and DLPCS, guidelines on land acquisition and resettlement safeguards for transport sector, and action plan to strengthen legal framework and capacity development of MOI and DLPCS. These documents will be discussed with government agencies, civil society organization and other relevant stakeholders to reach consensus. The subproject will widely disseminate the information for public awareness and consultation at various stages of the subproject. The dissemination activities will include workshops, seminars and specific meetings. The final subproject outputs will be posted on ADB website.

PATE will submit a subproject completion report to RSDD at the end of the subproject.

D. COST ESTIMATE

Item	Partner Contribution	TA 7566 Contribution	Total
1. Consultants			
a) Remuneration and per diem			
i) International consultants			
Legal/policy specialist 2mX18k		36,000	36,000
Resettlement Specialist 6mX18k		108,000	108,000
ii) National consultants			
Safeguard Specialist 8mX5k		40,000	40,000
b) International and local travel		46,000	46,000
c) Reports and communication		5,000	5,000
2. Equipment		-	
3. Trainings, workshops, seminars*		75,000	75,000
4. Targeted studies, study tours		-	
5. Administration and support costs	50,000 ⁱ	20,000	70,000
6. Contingencies		20,000	20,000
Total Expenses	50,000	\$350,000	\$400,000

ⁱIn kind contribution for office accommodation and counterpart staff (remuneration and per diem)

* A total of 10 training/workshops/seminars are planned tentatively 5 in Dili at \$10,000 per event and 5 outside Dili at \$5,000 per event.

Source: ADB estimate

E. PROPOSED SUBPROJECT MONITORING FRAMEWORK			
Design Summary	Performance Targets/Indicators	Data Sources/Reporting Mechanisms	Assumptions/Risks
<p>Outcome Improved legal framework and implementation capacity on land acquisition and resettlement safeguards in the transport sector in Timor-Leste.</p>	<p>By September 2013: Government approves: (i) Guidelines on land acquisition and resettlement safeguards in the transport sector; and (ii) Action Plan for strengthening legal framework and implementation capacity on land acquisition and resettlement safeguards in the transport sector.</p>	<p>Focal government agency for the TA</p>	<p>Assumption The Government is committed to build CSS on land acquisition and resettlement.</p>
<p>Outputs</p> <p>Legal analysis for CSS strengthening and institutional capacity assessment</p> <p>Guidelines on land acquisition and resettlement safeguards in the transport sector</p> <p>Action plan for strengthening legal framework and implementation capacity on land acquisition and resettlement safeguards in the transport sector</p>	<p>By September 2013: Assessment of relevant legal framework and capacity of DLPCS and MOI undertaken and discussed with stakeholders.</p> <p>The guidelines prepared, discussed, and agreed among key stakeholders.</p> <p>Action plan drafted for strengthening legal framework and implementation capacity of MOI and DLPCS based on outputs 1 and 2, discussed and finalized among stakeholders.</p>	<p>Government agencies participating in the TA</p>	<p>Assumption The Government and CSOs remain supportive of TA activities.</p> <p>Risk Stakeholders have different views and priorities on CSS strengthening.</p>
<p>Activities with Milestones</p> <p>Output 1: Legal analysis for CSS strengthening and institutional capacity assessment. 1.1 Participatory review of existing legal framework of Timor-Leste, comparative analysis with international best practices and recommendations</p>		<p>Inputs</p> <p>ADB TA grant: \$350,000 ADB staff time (3 person months) Review missions (2) Government's in-kind contribution: \$50,000</p>	

to improve legal framework on land acquisition and resettlement safeguards by July 2012.

- 1.2 Participatory assessment of institutional capacity of MOI and DLPCS by August 2012. Also includes identification of necessary capacity building measures in consultation with relevant agencies and stakeholders.
- 1.3 Consultation workshop to discuss draft legal analysis and capacity assessment report by September 2012.
- 1.4 Finalize reports on legal analysis and capacity assessment taking into account the results of stakeholder consultation by October 2012.

Output 2: Guidelines on land acquisition and resettlement safeguards in the transport sector

- 2.1. Prepare draft Guidelines on land acquisition and resettlement safeguards in the transport sector by November 2012.
- 2.2 Undertake stakeholder workshops to consult with government agencies, NGOs, and other stakeholders on the draft Guidelines by January 2013.
- 2.3 Finalize Guidelines taking into account the results of the stakeholder consultations by February 2013.
- 2.4. Translate Guidelines in relevant local language(s) by February 2013.

Output 3: Action Plan for Strengthening Legal Framework and Implementation Capacity on Land Acquisition and Resettlement Safeguards in the Transport Sector.

- 3.1. Prepare draft action plan based on outputs 1 & 2 to improve the legal framework and develop capacity of MOI and DLPCS by March 2013.
- 3.2 Organize consultation workshops to discuss the draft action plan by April 2013.
- 3.3 Prepare final action plan taking into account the results of the stakeholder consultations by May 2013.
- 3.4 Submission of Action Plan and Guidelines for government approval by August 2013.
- 3.5 Subproject completion and dissemination, as required, by September 2013.

**TA 7566-REG: Strengthening and Use of Country Safeguards Systems
ELIGIBILITY CRITERIA CHECKLIST**

Eligibility Criteria	State how the proposed subproject meets the TA's subproject eligibility criteria	RSES Comments
1.) Intervention is in one or more of the TA's priority areas (please mark one or more of the following criteria):		
[X] legal and regulatory framework, rules, and/or procedures on environmental assessment and management, ⁴ involuntary resettlement, and Indigenous Peoples safeguards	The subproject will conduct a legal analysis and recommend measures to strengthen legal framework for land acquisition and resettlement safeguards. This will also support to develop guidelines on land acquisition and resettlement safeguards in the transport sector.	
[X] institutional strengthening and capacity development of relevant government institutions or agencies, CSOs, and/or other stakeholder groups to implement, enforce, and comply with national laws and regulations on environmental assessment and management, involuntary resettlement, and Indigenous Peoples; ⁵	The subproject will assess institutional capacity of MOI and DLPCS and prepare an action plan to strengthen their implementation capacity on land acquisition and resettlement safeguards.	
[] state-owned and/or private sector companies' environmental and social management systems; ⁶		
[] public awareness and participation in environmental and social assessment, planning, and implementation processes;		
[] targeted training programs and/or studies on environmental and social safeguards for governments including the judiciary, CSOs, media, academia, and/or other stakeholder groups;		
[] demonstration activities ("South-South initiatives", such as through twinning arrangements).		
2.) The subproject is fully in line with and	The infrastructure development	

⁴ This may include the environmental assessment process, pollution prevention and abatement, biodiversity conservation and sustainable natural resources management, occupational and community health and safety, and physical cultural resources.

⁵ This may include activities for improved institutional arrangement and administrative procedures, inter-agency coordination and governance, and for effective compliance monitoring and enforcement.

⁶ This may include activities for enhanced corporate environmental and social policies, project safeguard review, and monitoring and reporting system.

supportive of DMCs' priorities identified in their development plans and programs and with ADB's country partnership strategies.	is priority of Timor-Leste's periodic development plans, which also include land and resettlement aspects. It is also consistent with ADB's Pacific Approach (2010-2014), and Country Partnership Strategy for Timor-Leste.	
3.) The subproject balances the use of international and national consultants and emphasizes the transfer of international experience and knowledge to governments, CSOs, and staff of other domestic organizations in the DMC.	A balance team of international and national consultants is proposed, who will work with and transfer international knowledge and experience to Timor-Leste government agencies and other stakeholders.	
4.) The subprojects is complementary but does not substitute nor duplicate ADB ongoing or pipeline activities (i.e., the TA does not finance subprojects that are normally financed by project preparatory TA work or by other funds managed by ADB, including the Japan Special Fund).	The TA will support ADB's operation in the country and will not substitute or duplicate ADB's ongoing or pipeline activities.	
5.) The proposed subproject cost does not exceed \$500,000.	The budget doesn't exceed the ceiling.	
6.) Counterpart funds for the subproject (in cash and/or in kind) are expected to be committed by the DMC.	The Government will provide in-kind contribution such as office space and counterpart staff.	
7.) The DMC has been requested to endorse the TA and to appoint a focal point.	The Government has endorsed to participate in the TA.	

PREPARED BY:

Nogendra Sapkota, Safeguards Specialist, PATE, PARD

(Name, Signature and Date)

ENDORSED BY DIVISION DIRECTOR:

Robert Guild, Director, PATE, PARD

(NAME, SIGNATURE AND DATE)

Reviewed by RSES TA Team:

(Name, Signature and Date)

OUTLINE TERMS OF REFERENCE FOR CONSULTANTS

1. Two international consultants (total of 8 person-months) and a national consultant (total of 8 person-months) will be recruited, all individually and on an intermittent basis. One international consultant will have expertise in resettlement safeguards, and other one will have expertise on legal aspect. The national consultant will have knowledge of CSS in Timor-Leste and will assist in implementation of the subproject activities at country level.

1. Resettlement Safeguard Specialist (international, 6 person-months)

2. The consultant will have a degree in social science and at least ten years' experience in resettlement safeguards including experience in Asia and the Pacific. The consultant will have a good understanding of international best practices in resettlement safeguards.

3. **CSS Review, Guidelines in the Transport Sector, and Action Plan.** The consultant will be primarily responsible to undertake the CSS review on land acquisition and resettlement safeguards following ADB's *Guidance Note for Review of Country Safeguards Systems*, to prepare draft guidelines on land acquisition and resettlement safeguards in the transport sector, and to prepare an action plan to strengthen legal framework and capacity of MOI and DLPCS. The tasks include:

- (i) Coordinate with the legal specialist for **legal analysis for CSS strengthening** on land acquisition and resettlement safeguards, including (a) comparative analysis of Timor-Leste's legal framework and international best practices; and (b) recommendations to enhance greater coherence of the CSS with the international best practices.
- (ii) Coordinate with the legal specialist for **assessment of implementation capacity of MOI and DLPCS**, including: (a) assessment of the capacity of DLPCS and MOI in term of their responsibilities, resources (human, financial, etc.) and tools (guidelines, checklists, etc.); (b) assessment of implementation practice and procedures used for acquisition of land and resettlement; (c) assessment of the performance with respect to delivering desired outputs (preparing RP, etc.) and achieving desired outcome (e.g. restoring living standard) of the resettlement safeguards. Undertake selected case studies to highlight what is being done in the actual situation for projects; and what should be done in order to improve the implementation capacity. Discuss the assessment results with relevant project stakeholders, with the aim to raise their awareness and build their capacity to implement CSS.
- (iii) Prepare draft **guidelines on land acquisition and resettlement safeguards in the transport sector** based on the tasks (i) and (ii) above as well as detailed review of key issues in the transport sector. Identify detailed measures on relevant aspects of land acquisition and resettlement safeguards for incorporation in the guidelines, including: (a) strategies to avoid or minimize land acquisition and resettlement impacts; (b) process to acquire land, assess impacts and prepare resettlement planning documents, (c) principles on compensation and rehabilitation entitlements, including methods to calculate compensation at replacement cost, (d) special measures for vulnerable groups, (e) mechanisms for information disclosure, consultations, and grievance redress, (f) institutional arrangements, (g) monitoring and evaluation systems, and (h) financial requirements. Ensure that the guidelines address broader issues resulting from

loss of land, property, and livelihoods, and are in line with international best practices and applicable national laws.

- (iv) Undertake meaningful consultations with government agencies, development partners, civil society and other relevant stakeholders to solicit their views particularly on the draft subproject outputs. Organize stakeholder workshops for this purpose, including consultative workshops at national level in Dili and consultative workshops at regional centers outside Dili. Organize specific meetings among focus groups, including NGOs, project affected people and project implementation agencies. Consult with bilateral and multilateral funding agencies (e.g. World Bank) during implementation of the TA. Prepare and circulate consultative draft documents both in English and local languages to facilitate the informed discussion.
- (v) Prepare **an action plan** to strengthen legal framework and develop capacity of MOI and DLPCS on land acquisition and resettlement safeguards. Finalize the action plan in consultation with the stakeholders.
- (vi) Work with the working group to develop and finalize the guidelines and action plan. Facilitate meetings of the working group to discuss key issues.
- (vii) Prepare a draft report on the **legal analysis and capacity assessment** (in coordination with legal specialist), **guidelines** on land acquisition and resettlement safeguards for the transport sector, and **action plan** for presentation at stakeholder workshop. After review by the Government, ADB, and other stakeholders, prepare final reports on the same.

4. **Guidance to National Consultants.** The consultant will:

- (i) Guide the national consultant to compile, review, and analyze basic information, including existing policy, legislative, institutional, and budgetary frameworks for land acquisition and resettlement, and assessment on inter-agency coordination, cooperation, and effectiveness.
- (ii) Manage national consultant's activities and inputs.

5. **Consultation, Liaison, and Advice.** The consultant will:

- (i) Consult with relevant ADB staff, development partners (e.g. World Bank), government agencies and other stakeholders.
- (ii) Liaise with development partners, including World Bank, and government agencies on the subproject outputs and recommendations.
- (iii) Act as a resource person for ADB and the government on land acquisition and resettlement safeguards.
- (iv) Liaise with the international legal specialist.
- (v) Act as a secretary to the government's working group and facilitate effective communication between the government and TA consultants.

6. **Dissemination.** The consultant will:

- (i) Undertake necessary consultations to disseminate information to stakeholders on the subproject process and outputs.
- (ii) Organize and make presentations in workshops and seminars as part of dissemination activities.

7. **Team Leadership.** The consultant will:
- (iii) Act as subproject Team Leader and coordinate subproject activities.
 - (iv) Prepare consolidated draft subproject reports (all outputs) and finalize these incorporating comments from ADB, the government and other relevant stakeholders.
 - (v) Submit semi-annual progress reports and a subproject completion report to ADB.

2. Legal Specialist (international, 2 person-months)

8. The consultant will have a degree in law or equivalent qualification and at least ten years experience including working in Asia and the Pacific. The consultant will have a good understanding of international best practices in land acquisition and resettlement safeguards.

9. **Legal Analysis for CSS Strengthening and Institutional Capacity Assessment.** The consultant will be primarily responsible for preparation of the legal analysis and institutional capacity assessment and to recommend measures to strengthen the CSS on land acquisition and resettlement safeguards in accordance with ADB's *Guidance Note for Review of Country Safeguards Systems*. The tasks includes:

- i) **Legal inventory.** Compile an inventory of relevant laws, decrees, regulations, administrative orders, and other mandates related to land acquisition and resettlement safeguards. Prepare an inventory of aspirational policy statements, such as those found in the Constitution, framework, or sector policies for their potential correspondence to international best practices on resettlement safeguards. Identify legal instruments in draft form such as bills and draft regulations, not as legally binding instruments, but as potential measures for CSS strengthening. Complete the inventory after consultations with Timor-Leste legal experts to ensure the inventory is comprehensive and up-to-date.
- ii) **Legal Analysis.** Prepare a thorough and objective legal analysis using ADB's SPS (objectives, scope, and policy principles) as a benchmark for Timor-Leste's legal instruments related to land acquisition and resettlement safeguards. The legal analysis will: (a) develop a matrix arranging relevant safeguard elements; (b) identify and quote corresponding provisions in the CSS legal framework; (c) characterize the extent of equivalence with international best practices; and (d) recommend measures that would provide greater consistent of the CSS with international best practices.
- (iii) Undertake an **assessment of institutional capacity of MOI and DLPCS**. Key tasks will include: (a) assessment of the capacity of DLPCS and MOI in term of their responsibilities, resources (human, financial, etc.) and tools (guidelines, checklists, etc.); (b) assessment of implementation practice and procedures used for acquisition of land and resettlement; and (c) assessment of the performance with respect to delivering desired outputs and achieving desired outcome of the resettlement safeguards. Undertake selected case studies to highlight what is being done in the actual situation for projects; and what should be done in order to improve the implementation capacity. Discuss the assessment results with relevant project stakeholders.
- (vi) Recommend measures for strengthening legal framework for land acquisition and resettlement safeguards.

- (vii) Prepare a draft report on the legal analysis and institutional capacity assessment including recommendations to strengthen the CSS on land acquisition and resettlement safeguards.
- (viii) Organize workshops to discuss the draft report on legal analysis and institutional capacity assessment.
- (i) After review by the Government, ADB, and other stakeholders, prepare a final report on legal analysis and institutional capacity assessment and recommendations.

10. **Consultation, Liaison, and Advice.** The consultant will:

- (i) Consult with relevant ADB staff, development partners (e.g. World Bank), participating government agencies and other stakeholders.
- (ii) Liaise with development partners and government agencies to promote coordination and consistency on the legal analysis and institutional capacity assessment.
- (iii) Liaise with other specialists, particularly with the international resettlement specialist to coordinate TA activities and reports.

11. **Dissemination.** The consultant will:

- (i) Undertake necessary consultations to inform and solicit input from stakeholders for the legal analysis and institutional capacity assessment.
- (ii) Organize and make presentations in workshops and seminars as part of dissemination activities.

3. National Safeguard Specialist (national, 8 person-months)

12. **Qualifications.** The national safeguard specialist will be recruited to support the international consultants and undertake subproject activities at national level. The consultant should have an understanding of land acquisition and resettlement safeguards in Timor-Leste.

13. **Specific Terms of Reference.** The national safeguard specialist will be responsible for country specific inputs into the legal analysis for CSS strengthening and institutional capacity assessment, draft guidelines on land acquisition and resettlement safeguards in the transport sector, and the action plan for strengthening legal framework and capacity building of MOI and DLPCS. (S)he will:

- (i) Assist the international consultants in (a) collecting, reviewing, and analyzing relevant information for legal analysis (including existing policy, legislative, and institutional frameworks); (b) assessment of capacity, implementation practices, and performance on land acquisition and resettlement safeguards; (c) preparation of Guidelines on land acquisition and resettlement safeguards in the transport sector; and (d) preparation of an action plan to strengthen legal framework and capacity building of MOI and DLPCS.
- (ii) Assist in organization of workshops, meetings, etc. to consult with stakeholders to solicit their views/inputs.
- (iii) Prepare necessary materials in local language(s) for information dissemination and consultation related to TA activities.
- (iv) Provide inputs into the TA reports.

- (v) Facilitate in-country dissemination activities.
- (vi) Facilitate in country liaison activities.