



***Islamic Republic of Afghanistan***  
***Ministry of Energy and Water (MEW)***

***Irrigation Restoration and Development Project***  
***(IRDP)***

***Resettlement Policy Framework***

***December 15, 2010***

# **Irrigation Restoration and Development Project (IRDP)**

## **Resettlement Policy Framework**

**Prepared by: Ministry of Energy and Water, Islamic Republic  
of Afghanistan**

**This resettlement policy framework is a document of the borrower. The views expressed herein do not necessarily represent those of the World Bank's Board of Directors, Management, or staff, and may be preliminary in nature.**

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## Abbreviations

ADB Asian Development Bank  
AP (Project) Affected Person including all persons in an affected household  
CWDA Community Water Development Assistant  
EA Executing Agency  
EIRP Emergency Irrigation Rehabilitation Project  
EMA External Monitoring Agency  
ESSU Environmental and Social Safeguards Unit  
GRC Grievance Redress Committee  
ha hectare  
IC International Consultant  
IOL Inventory of Losses  
IRA Islamic Republic of Afghanistan  
IRDPI Irrigation Restoration and Development Project  
LARP Land Acquisition and Resettlement Plan  
LLE Law on Land Expropriation  
MAIL Ministry of Agriculture, Irrigation and Livestock  
MEW Ministry of Energy and Water  
MoF Ministry of Finance  
NGO Non-governmental organization  
PIU Project Implementing Unit  
PMU Project Monitoring Unit  
RAP Resettlement Action Plan  
RPF Resettlement Policy Framework  
RP Resettlement Plan  
TOR Terms of Reference

## Definitions of words and phrases used in the RPF

**Affected Persons (APs)** mean all the people affected by a project through land acquisition, relocation, or loss of incomes and includes any person, household (sometimes referred to as project affected family), firms, or public or private institutions who on account of a development project would have their; (i) standard of living adversely affected; (ii) right, title or interest in all or any part of a house, land (including residential, commercial, agricultural, plantations, forest and/or grazing land), water resources or any other moveable or fixed assets acquired, possessed, restricted or otherwise adversely affected, in full or in part, permanently or temporarily; and/or (iii) business, occupation, place of work or residence, or habitat adversely affected, with or without displacement. APs therefore include; i) persons affected directly by the right of-way 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.

**Census** means the pre-appraisal population record of potentially affected people, which is prepared through a count based on village or other local population data or census.

**Compensation** means payment in cash or kind for an asset to be acquired or affected by a project at replacement costs.

**Cut-off-date** means the date after which people will not be considered eligible for compensation, that is they are not included in the list of APs as defined by the census. Normally, the cut-off date for the titleholders is the date of the detailed measurement survey.

**Displacement** means either physical relocation or economic displacement in which the impact of loss of incomes force people to relocate in order to initiate alternative strategies of income restoration.

**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.

**Income Restoration** means the measures required to ensure that APs have the resources to *at least* restore, if not improve, their livelihoods. Restoration of incomes of all affected persons is one of the key objectives of ADB's resettlement policy. It requires that after resettlement, all of the affected persons should have incomes that are at least equivalent to their pre-project income levels or otherwise improvement. Though resettlement programs should be designed to help improve the standards of living and income levels of the affected population, they must as a minimum be restored.

**Inventory of Losses** means the pre-appraisal inventory of assets as a preliminary record of affected or lost assets.

**Jerib** means the traditional unit of measurement of Afghanistan. One Jerib is equivalent to 2,000 square meters of land. One hectare is equivalent to 5 jeribs.

**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 prompt and 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.

**Poor** Those falling below the UN poverty line of 1 dollar per person per day or equivalent to AF 52.

**Relocation** means the physical shifting of APs from his/her pre-project place or residence, place for work or business premises.

**Rehabilitation** means the assistance provided to severely affected APs to supplement payment of compensation for acquired assets in order to improve, or

at least achieve full restoration of, their pre-project living standards and quality of life to pre-project level.

**Replacement Cost** means the method of valuation of assets that helps determine the amount sufficient to replace lost assets and cover transaction costs. In applying this method of valuation, depreciation of structures and assets should not be taken into account. For losses that cannot easily be valued or compensated for in monetary terms (e.g., access to public services, customers, and suppliers; or to fishing, grazing, or forest areas), attempts are made to establish access to equivalent and culturally acceptable resources and earning opportunities.

**Resettlement** means all social and economic impacts that are permanent or temporary and are (i) caused by acquisition of land and other fixed assets, (ii) by change in the use of land, or (iii) restrictions imposed on land as a result of the project.

**Resettlement Plan** means the time-bound action plan with budget setting out resettlement strategy, objectives, entitlements, actions, responsibilities, monitoring and evaluation.

**Severely Affected APs** means APs that are affected by significant impacts within the meaning of the definition below.

**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).

**Sharecropper and/or Tenant cultivator** is a person who cultivates land they do not own for an agreed proportion of the crop or harvest.

**Structures** mean all structures affected, or to be acquired, by the project – living quarters, wells, hand pumps, agricultural structures such as rice bins, animal pens, stores/warehouses, commercial enterprises including roadside shops and businesses.

**Squatters** mean the same as non-titled person i.e. those people without legal title to land and/or structures occupied or used by them. World Bank policy explicitly states that such people cannot be denied compensation based on the lack of title.

**Vulnerable** means any people who might suffer disproportionately or face the risk of being marginalized from the effects of resettlement i.e; (i) single household heads with dependents; (ii) disabled household heads; (iii) poor



households; (iv) elderly households with no means of support; (v) the landless or households without security of tenure; and (vi) ethnic minorities.

## Preface

This draft Resettlement Policy Framework (RPF) sets out the general principles and policies to be followed in connection with any land acquisition and resultant resettlement which will occur during the implementation of the proposed Irrigation Restoration and Development Project scheduled to commence in 2011. It has drawn on the work done by the Social Safeguards consultant and the report of that consultancy – Compliance with Social Safeguards Requirements in the Emergency Irrigation Rehabilitation Project (EIRP) and by the Environmental consultant and the report of that consultancy – Report on Compliance with Environmental Safeguards in the Emergency Irrigation Rehabilitation Project (EIRP).

This draft has also drawn on several Resettlement Planning Documents (RPD) prepared both by the Ministry of Energy and Water and the Ministry of Public Works in connection with projects being funded by the Asian Development Bank (ADB). It seemed to the consultant that there was both common sense and considerable merit in developing an RPF which had close affinities to existing and acceptable RPDs, while taking account of the different functions of an RPF and the different funder – the World Bank – to whom the document is addressed.

Common standards and approaches to resettlement across government increase efficiency and effectiveness in the administration of such programmes. Officials can more easily grasp what is required; capacity can be enhanced (a matter stressed to the consultant by the Minister of Energy and Water when he met with the consultant on the inception mission in November); and affected persons (APs) in all projects will have greater confidence that they are being treated fairly, so reducing the likelihood of grievances and legal and other challenges to resettlement which can delay the implementation of projects. Common standards in practice will also make it easier to develop a national law on resettlement as and when the government decides to move in that direction.

It should however be emphasised that this RPF is designed solely for the IRDP. It may have wider uses but these are a by-product of and not the main purpose of this framework.

## **Irrigation Restoration and Development Project (IRDP) Resettlement Policy Framework**

### **1. Outline of the IRDP project**

#### **1.1 Key development issues and rationale for Bank involvement**

Over 70 percent of the population of Afghanistan lives in rural areas largely dependent on agriculture and livestock, which together account for approximately 40 percent of the total GDP. Improved agricultural performance offers significant prospects for raising farmer incomes, improving food security, providing rural employment, and reducing vulnerability. However, agriculture and livestock productivity has declined significantly as a result of decades of conflict, systematic destruction of productive rural infrastructure, insufficient basic services, low availability of inputs and a major reduction in irrigated area as compared to pre-war levels.

Irrigation is key to agriculture recovery. With only 12 percent of the total land being arable and the country's arid climate, irrigation is essential for reliable agricultural production in most of the country. Irrigated agriculture -which accounts for the bulk of the total production of cereals and other crops -was the worst affected by the continuing insurgency, as maintenance was neglected leaving the irrigation systems in a state of disrepair. Irrigated area decreased by almost 70 percent and crop productivity fell below 50 percent of the pre-war levels. In 2008, the wheat crop failed because of delayed and low precipitation (rain and snow) resulting in a wheat deficit of over two million tons, further highlighting the critical importance of irrigation supplies for food security in the country.

The Afghanistan National Development Strategy (ANDS) assigns high priority to increasing agricultural productivity, combating food shortages, achieving self-sufficiency in food grains, promoting high value horticulture and value chains, and providing alternative sources of livelihood to poppy growing farmers.

While Afghanistan needs to invest in developing new water resources for irrigated agriculture and other multi-sector needs, restoration of existing systems is a high priority.

Despite significant achievements in rehabilitation to date, Afghanistan's remaining needs for irrigation rehabilitation are still large. The total irrigated area in the country prior to 1979 was about 3.2 million ha but in 2007 it was only 1.8 million ha although water availability in the rivers was good. Until now only about 0.9 million ha has been rehabilitated. The World Bank has been assisting the Government of Afghanistan in rehabilitating irrigation systems all over the country under the EIRP since 2004. This project is due to close on March 31, 2011.

The overall performance of this project has been satisfactory with over 750 irrigation schemes of varying sizes covering about 0.65 million ha rehabilitated, 105 hydrological stations installed, and a capacity building program initiated in the Ministry of Energy and Water (MEW) supported by one IDA Credit and three IDA grants amounting to US\$ 127.5 million. Monitoring data indicate that the rehabilitation interventions have resulted in an increase of over 130,000 ha in irrigated area; substantial increases in crop yields, and a substantial reduction in water related disputes. In view of this, the proposed IRDP project is being formulated to continue the rehabilitation program as well as to initiate a small dams program to develop water resources together with necessary capacity building activities.

## **1.2. Proposed objective(s)**

The proposed objective of the IRDP project is *to increase agriculture productivity and production in the project areas*. The strategy for achieving the PDO would include:

- (i) assisting local communities/farmers to rehabilitate irrigation schemes;
- (ii) re-establishing hydro-meteorological services in the country to provide improved access to hydro-met data to enable preparation of improved and more cost effective designs of rehabilitation and development works; and
- (iii) continuing capacity building in MEW for preparing and implementing irrigation/water resource development projects.

## **1.3. Preliminary description**

The project would build upon and scale up activities supported under the on-going EIRP. In addition, it would also support MEW in making a modest start towards developing Afghanistan's water resources for irrigation comprising a small dam development programme in closed river basins that are free of trans-boundary riparian issues. The project would have the following components:

**Component A: Rehabilitation of Irrigation Infrastructure:** This component would support the rehabilitation of medium and large irrigation schemes. *Medium Schemes* would serve a culturable command area (CCA) of up to 1000 ha, while *large schemes* would serve CCA of more than 1000 ha. This component will be designed and implemented using the successful model that is being followed under the EIRP all over the country. Typical rehabilitation works include improving canal intake structures, conveyance channels (main canals), wash structures (super passages to protect canals from hill torrents), siphons, aqua ducts and other river crossing structures, culverts, and control structures. The schemes to be rehabilitated under the proposed project have been identified. Detailed design preparation work is already underway and bidding documents for the works to be implemented during the first two years of the project would be ready before Board presentation. Irrigation scheme designs would be closely coordinated with on-farm development works that would be implemented by the Ministry of Agriculture Irrigation and Livestock (MAIL) under the proposed On-farm Water Management (OFWM) Project that is currently under preparation.

**Component B: Small Dam Development:** This component would support the design and construction of a limited number of multi-purpose small dams and appurtenances, and associated irrigation conveyance and distribution systems. The selected dams would be located in closed river basins that are free of trans-boundary riparian issues. Identification of small dam sites in closed river basins is proceeding and a framework would be developed for screening and selection for further preparation. This component would also support development of the capacity of MEW's Survey and Design Department to manage the Ministry's small dam development program.

**Component C: Establishment of Hydro-Meteorological Facilities and Services:** This component would support the establishment of an efficient and effective Hydro-meteorological Service including the provision of hardware and software, field equipment and transport facilities, and training of MEW staff in data collection, analysis and dissemination. Twinning arrangements would be considered with countries with well developed hydro-meteorological services to help develop capacity of MEW's hydro-meteorological department.

**Component D: Technical Assistance and Institutional Strengthening:** This component would include the following four sub-components:

(i) **Provision of technical assistance to the Project Coordination Unit (PCU) and provincial water management departments (PWMDs)** involved in project implementation, including project management, procurement, contract management, financial management, survey and design of irrigation schemes and small dams, construction supervision and quality control, and environmental and social management. Construction supervision would be of two broad types:

- (a) *top supervision* of the construction of medium schemes; and
- (b) *resident supervision* of large schemes, small dams and supply and installation contracts for the hydro-met component.

FAO has been successfully providing technical assistance under the EIRP. Based on this good experience and to maintain continuity, MEW has proposed selection of FAO on a single source basis.

(ii) **Support for building capacity in MEW in various technical fields**, including the proposed small dams program, as well as in procurement, contract management, financial management, internal audit, monitoring and evaluation, and management of environmental and social issues.

(iii) **Support for building capacity of local institutions** including *Mirabs* (traditional community water managers), farmer/community groups, university faculties, and local construction industry.

(iv) **Support for the continuation and strengthening of monitoring and evaluation activities** started under the EIRP, including input, output, process, and outcome monitoring. Progress of various components would be monitored as an integral part of project implementation. The PCU will be responsible for monitoring physical progress and collation of progress reports. Monitoring of Results/Outcomes would be carried out by an M&E Unit independent of the PCU. This Unit will be responsible for collection and analysis of panel data, conducting a limited number of case studies, and for providing continuous feedback to the PCU. The M&E Unit would be strengthened through training and provision of specialists and field staff.

#### **1.4 Why a Resettlement Policy Framework?**

The components of the project for which a Resettlement Policy Framework (RPF) are required are components A and B, both of which will likely involve acquisition of land and/or loss of assets from persons living and farming near dams to be built and irrigation schemes to be rehabilitated. Following the EIRP approach, these components will be largely demand-driven so that it is not possible at this stage of developing the project to prepare a resettlement plan with the full details of all affected persons who are likely to have to be relocated or who are going to suffer some losses or diminution of the value of land and other assets which will entitle them to compensation. The purpose of the RPF is to clarify resettlement principles, organizational arrangements, and design criteria to be applied to sub-projects to be prepared during project implementation. In this way a consistent approach to resettlement practice will be ensured over the course of the project.

There are several interlinked issues that must be addressed by way of introduction to the policy. First, the resettlement policy framework is required to be consistent both with the World Bank's Operating Policies 4.12 which deal with Involuntary Resettlement and with existing local laws and policies. Where there is inconsistency between the two, then if creative interpretation of the local law cannot reconcile the differences, the practice in Afghanistan, at least in relation to inconsistencies between the law and Asian Development Bank (ADB) equivalent policies on involuntary resettlement, is to prefer the ADB policies. The first step however is to analyse and compare OP 4.12 and relevant laws before making any judgement on incompatibilities.

Second, before the details of the RPF can be outlined and explained, the basic principles and objectives of the RPF must be set out. But whereas OP 4.12 contains such principles and objectives, no laws or policies in Afghanistan deal with resettlement. There are relevant laws that will be discussed later – principally a Law on Managing Land Affairs of 2008 and a Law on Land Expropriation of 2009 but neither deal with involuntary resettlement. So setting out the principles of an RPF at the outset of developing one is unavoidably to give priority to World Bank policies on resettlement. These principles then must be in a sense tentative – used in order to get the substance of the policy under way – without prejudice to later adjustment in the light of discussions of Afghan law and policy on resettlement.

Radhika Srinivasan of ECSSD, World Bank summarises the principles of an RPF as being to

- first, avoid or minimise adverse impacts on persons and families likely to be affected by the project (APs)
- second, ensure that where land acquisition is unavoidable, APs are
  - consulted on the operation of the project
  - compensated for lost assets at replacement costs
  - provided with assistance to improve/restore livelihoods and standards of living to pre-displacement levels in the event of displacement.

The RPF spells out how these principles will be met. It should be said at the outset that while the relevant laws of Afghanistan might not cover these matters in any detail there would appear to be nothing in the laws to stop these principles being given effect to in practice.

## **2. Legal & Policy Framework for Resettlement**

### **2.1 Afghan Law & Policy on Land Acquisition**

There is no country specific resettlement policy in Afghanistan. A comprehensive land policy was approved in 2007 by the cabinet; however it has yet to be fully operationalised. Ratified in early 2004, the Constitution of Afghanistan has three articles that closely relate to compensation and resettlement. For public interest purposes, such as the establishment/construction of public infrastructure or for acquisition of land with cultural or scientific values, land of higher agricultural productivity, large gardens, the Law on Land Expropriation (LLE) enacted in 2009 provides that:

- (i) The acquisition of a plot or portion of a plot for public purpose is decided by the Council of Ministers and is compensated at fair value based on current market rates (Section 2);
- (ii) The acquisition of a plot or part of it should not prevent the owner from using the rest of the property or hamper its use. If this difficulty arises, the whole property will be acquired (Section 4);



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

(iv) In cases of land acquisition, the following factors shall be considered for compensation:

- (a) value of land;
- (b) value of houses and buildings on the land;
- (c) value of trees, orchards and other assets on land (Section 8);

(v) The value of land depends on the category and its geographic location (Section 11);

(vi) A person whose residential land is subject to acquisition will receive a new plot of land of the same value. He/she has the option to get residential land or a house on government property in exchange, under proper procedures (Section 13);

(vii) If a landowner so wishes his/her affected plot can be swapped with unaffected government land and if this is valued less than the plot lost, the difference will be calculated and reimbursed to the affected plot owner (Section 15);

(viii) The values of orchards, vines and trees on land under acquisition shall be determined by the competent officials of the local body (Section 16); and

(ix) A property is valued at the current rate at the locality concerned. The owner or his/her representative must be present at the time of measuring and valuing of property.

Compensation is determined by the Council of Ministers. The decision is based on the recommendation of a “committee” consisting of the following

- (i) The landlord or person who uses the land or their representatives;
- (ii) Official representative of agency who needs to acquire the land (viz., MEW);
- (iii) Representative of local municipality;
- (iv) Representative of Ministry of Finance; and
- (v) Representative of Ministry of Justice.

## **2.2 Principles of World Bank OP 4.12 on acquisition, resettlement and compensation**

### **2.2.1 Introduction**

This part of the RPF will discuss the World Bank's Operating Policies 4.12. Rather than attempting to repeat OP 4.12 verbatim, it will be more helpful to attempt to set out the requirements of OP 4.12 in a form in which they might be provided for in any set of legal provisions or how they might be addressed by an administrative agency following a logical approach to land acquisition.

The fundamental principles of policy which inform the Bank's position on resettlement and land acquisition are :

- (a) Involuntary resettlement should be avoided where feasible, or minimized, exploring all viable alternative project designs
- (b) Where it is not feasible to avoid resettlement, resettlement activities should be conceived and executed as sustainable development programs, providing sufficient investment resources to enable the persons displaced by the project to share in project benefits. Displaced persons should be meaningfully consulted and should have opportunities to participate in planning and implementing resettlement programs.
- (c) Displaced persons should be assisted in their efforts to improve their livelihoods and standards of living or at least to restore them, in real terms, to pre-displacement levels or to levels prevailing prior to the beginning of project implementation, whichever is higher.

#### **Step 1: Preliminary issues: is acquisition necessary**

The first step addressed by OP 4.12 is avoidance of land acquisition and resettlement if possible. Land acquisition and resettlement should not be seen as the easy first option; rather it should be seen as a last resort.

From the point of view of what governmental action might be necessary to meet this first step, it is necessary that alongside an environmental impact assessment, a social impact assessment and a financial analysis of the proposed project that is required to be undertaken,

- a preliminary investigation and assessment of the land that may be acquired must be undertaken;
- persons likely to be affected by the project (APs) and other interested parties should be given an opportunity to contribute to or comment on the location of the proposed project and the necessity of acquiring the proposed land for the project. This involvement is separate and distinct from APs participating in the planning of any resettlement that has to take place;
- a cut off date for any ultimate assistance and compensation for APs must be determined and announced. After that date, no one coming into or obtaining land or a house in the potential project area will be entitled to compensation. In the case of this particular project, this step will have to be taken several times over with respect to each sub-project. There will be a risk that there may be some speculative encroaching as word gets out unofficially about likely sub-projects in the future. This will need careful handling. The best way forward will be to plan for sub-projects to take place in a specific area or district and for the cut-off date to apply to the whole district even if specific sub-projects within the district are executed over a period of time.

## **Step 2: Preparing an acquisition and resettlement plan**

The second step in the process is to prepare a land acquisition and resettlement plan which must include measures to ensure that APs are, in the words of OP 4.12:

- (i) informed about their options and rights pertaining to resettlement;
- (ii) consulted on, offered choices among, and provided with technically and economically feasible resettlement alternatives; and
- (iii) provided prompt and effective compensation at full replacement cost for losses of assets attributable directly to the project.

If the impacts include physical relocation, the resettlement plan or resettlement policy framework includes measures to ensure that the displaced persons are

- (i) provided assistance (such as moving allowances) during relocation; and

- (ii) provided with residential housing, or housing sites, or, as required, agricultural sites for which a combination of productive potential, locational advantages, and other factors is at least equivalent to the advantages of the old site.

Where necessary to achieve the objectives of the policy, the resettlement plan should also include measures to ensure that displaced persons are

- (i) offered support after displacement, for a transition period, based on a reasonable estimate of the time likely to be needed to restore their livelihood and standards of living; and
- (ii) provided with development assistance in addition to compensation measures such as land preparation, credit facilities, training, or job opportunities.

In terms of what must be contained in either or both law and administrative arrangements to ensure that these requirements are met, the following would need to be in any land acquisition and resettlement plan:

- the land to be acquired
- the persons who will be suffering any losses of assets, income, sources of livelihoods
- the persons to be required to move
- the place or places to which such persons are to be moved to
- the circumstances of the place to which persons are to be moved to: viz
  - whether the land is occupied and by whom
  - what the land is presently being used for
  - the condition of the land and its facilities
- the arrangements to be made to facilitate resettlement and integration
- the manner and form in which compensation is to be assessed and paid
- the heads of compensation payable
- an estimate of the compensation payable and of the resettlement expenses
- the procedures to be followed in executing the plan
- the arrangements for the involvement of APs in plan execution
- what opportunities there will be to challenge plan execution and compensation

In practice, the preparation of this plan should commence as part of the exercise of developing sub-projects for it is regarded as a part of the sub-project but in terms of

process, it is sensible to keep separate the issue of whether any land acquisition and resettlement is necessary from the issue of what resettlement will take place and how it will be conducted.

This second step however is also to involve APs in participation in the preparation of the plan and not just in being given a chance to object to a plan made by officials. OP 4.12 spells this out very clearly as follows:

(a) Displaced persons and their communities, and any host communities receiving them, are to be provided with timely and relevant information, consulted on resettlement options, and offered opportunities to participate in planning, implementing, and monitoring resettlement. Appropriate and accessible grievance mechanisms are to be established for these groups.

(b) In new resettlement sites or host communities, infrastructure and public services are provided as necessary to improve, restore, or maintain accessibility and levels of service for the displaced persons and host communities. Alternative or similar resources are to be provided to compensate for the loss of access to community resources (such as fishing areas, grazing areas, fuel, or fodder).

(c) Patterns of community organization appropriate to the new circumstances must be based on choices made by the displaced persons. To the extent possible, the existing social and cultural institutions of resettlers and any host communities should be preserved and resettlers' preferences with respect to relocating in preexisting communities and groups honoured.

The preparation of a plan must be preceded by and involve in its development meetings with potential APs and more general public consultation. There will be informal day-to-day meetings among APs, MEW local staff, and other stakeholders. The more formal consultation process in the sub-project areas will be through: (a) village meetings; and (b) public consultations with government officials. Informative materials will have to be prepared and distributed within the sub-project areas before the meetings. This is set out in more detail below.

### **Step 3: Paying compensation, resettling the dispossessed, acquiring the land**

The third step is the execution of the plan: that is the acquisition of the land and the resettlement of those persons displaced by the acquisition. This is the central part of the

process of acquisition and resettlement and must be broken down into several sub-steps. Not all these sub-steps are set out specifically in OP 4.12; they are however a necessary part of land acquisition and resettlement and must be written into the RPF to take place.

Before each sub-step is summarised, a general point about the legal framework must be made. There will need to be in place a set of clear rules on the whole of step 3. This code will need to cover –

- the empowerment of institutions to execute, regulate and monitor the process
- which officials are empowered to take actions and give orders
- what actions and orders must or may these officials take or give
- the processes and institutions of participation and consultation
- to which APs and others will these actions and orders apply
- what must APs do to comply with orders and take required actions
- what must APs do to gain benefits and assert rights under the law
- with respect to compensation
  - the scope and form of compensation
  - the manner of assessment of compensation
  - the manner and timing of claiming and paying compensation
  - the process of decision-making and appeals on compensation
- with respect to resettlement
  - process and procedures on resettlement
  - financial and other assistance with resettlement
- processes and institutions relating to challenging and contesting decisions.

The ensuing discussion of the sub-steps assumes that such a code will be in place.

## **Sub-step 1**

The first sub-step is the process of acquiring the land; informing all the qualified owners and occupiers of the land of the intention to acquire the land and pay compensation for any land so acquired. This will involve intensive personal contact with owners and occupiers of land and oral explanations of what is happening and what owners and occupiers should do in order to ensure that they obtain recognition for their occupation of land and compensation for same. Acquisition of land will also necessitate full and clear documentation of what is happening.

This is especially relevant where some land may be ‘donated’ by PAPs. There must be very clear documentation that any person who has ‘donated’ land to the project was made fully aware of his or her right to receive compensation for any land which he or she is losing to a project and specifically waived that right. The Social Safeguards report indicated that there had been inadequate documentation of this practice and that there have been some disputes arising out of the practice.

While not going so far as to suggest that voluntary donations should be rejected or banned, it will be essential to make certain that they are genuinely voluntary and that the giver of the land does not expect some special benefit or treatment from the project as a result of the donation. Where there is any possibility of such special treatment or the expectation of same, the donor of land should receive compensation under the resettlement plan rather than obtain special treatment outside the plan; in other words, a donor will be treated as if he or she had had their land acquired compulsorily.

With respect to references to ‘occupiers’ of land OP 4.12 states that these embrace

- (a) those who have formal legal rights to land (including customary and traditional rights recognized under the laws of the country);
- (b) those who do not have formal legal rights to land at the time the census begins but have a claim to such land or assets—provided that such claims are recognized under the laws of the country or become recognized through a process identified in the resettlement plan;
- (c) those who have no recognizable legal right or claim to the land they are occupying.

OP 4.12 states that the first two categories of occupiers are entitled to receive compensation for loss of their land; the third category is entitled to receive resettlement assistance. However, this provision must be read in the light of the requirement in OP 4.12 that at the time of the identification of the project area, a census must be carried out within the area of those who will be affected by the project and will be eligible for assistance. Persons who encroach on the project area after the cut-off date which will be the completion of the census will not be entitled to any compensation or other assistance.

OP 4.12 thus makes clear that squatters must receive some compensation and assistance with resettlement. The rationale for this is that such persons are usually the poorest

members of the community and those most likely to be the hardest hit by having to move. OP 4.12 is not making any policy statement about whether such persons should be given property rights; indeed it is making clear that such persons are not regarded as having any rights in any land in the project area.

## Sub-step 2

The second sub-step involves determining claims to compensation, assessing amounts of compensation and paying compensation. OP 4.12 distinguishes between compensation and assistance, financial or otherwise, in connection with resettlement. This is perfectly logical as it makes clear that persons are entitled to compensation for lost assets etc whether they are being relocated or not. However, if compensation is understood as money, money's worth or land and/or other assistance to put a person back into the position as near as may be as he/she was prior to having his/her land (including buildings and natural resources on the land) acquired and or the value of retained land diminished and or having to vacate his/her land and move elsewhere, then we can deal with monetary compensation for loss of assets along with what may be called resettlement expenses.

In order to comply with OP 4.12, the content of this sub-step should include:

- making claims for compensation
- provision of assistance to APs in making claims
- assessment of claims
- determining claims and dealing with appeals
- the payment of compensation

Compensation will include

- full replacement cost of land taken at its market value so far as possible
- alternative land of the same quantity and quality so far as possible
- compensation for 'injurious affection'<sup>i</sup> of land not taken
- resettlement expenses which in turn may include
  - costs of moving (disturbance compensation)
  - financial and other assistance in provision of housing
  - income support and livelihood replacement including retraining



The issue of replacement cost is dealt with in OP 4.12 which states:

“Replacement cost” is the method of valuation of assets that helps determine the amount sufficient to replace lost assets and cover transaction costs. In applying this method of valuation, depreciation of structures and assets should not be taken into account. For losses that cannot easily be valued or compensated for in monetary terms (e.g., access to public services, customers, and suppliers; or to fishing, grazing, or forest areas), attempts are made to establish access to equivalent and culturally acceptable resources and earning opportunities.

The details of how to calculate various heads of compensation are dealt with below

### **Sub-step 3**

The third sub-step involves the actual taking of the land – the entering into possession of the land by the acquiring authority – and the departure and resettlement of APs. This will need to be handled sensitively with plenty of notice given to APs. OP 4.12 does not specifically deal with this sub-step but it is a necessary part of the process of acquisition and resettlement.

Assistance with resettlement will include

- assistance with packing up and moving
- provision of transport for those being resettled
- working with and providing additional resources for the ‘host’ community
- advice and assistance to those being resettled
- preparation of land, provision of accommodation and facilities

The whole process of leaving one’s land, moving to another area, relating to a new community, getting started again is likely to be extremely stressful. There will need to be constant contact with APs both individually and via their representatives where there are substantial numbers of APs involved. A consensual rather than a confrontational approach must be taken to decision-making on awards of compensation.

To what extent does law and practice in Afghanistan conform to the model of land acquisition and resettlement provided for by OP. 4.12? It is to this matter this report now turns via a table which compares the two systems suggesting ways of reconciling them.

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**A table of comparison between the Law on Land Expropriation and OP 4.12 with proposals for reconciliation**

<b>Law on Land Expropriation (LLE)</b>	<b>WB Operating Procedure 4.12 (OP 4.12)</b>	<b>Gaps between LLE and OP 4.12 with comments</b>	<b>Possible solutions to gaps</b>	<b>What RPF should provide</b>
<b>PART</b>	<b>ONE:</b>	<b>PRE</b>	<b>ACQUISITION</b>	<b>PROCEDURES</b>
1. No legal opportunities provided to potential APs and others to challenge or discuss proposed acquisition and resettlement or for any public debate and approval on proposals. In practice early discussions do take place.	Principle that involuntary resettlement to be avoided where possible implies discussion of necessity for and alternatives to acquisition and resettlement	The principle behind OP 4.12 is followed in practice in Kabul but the law is silent on the matter.	No reason why practice in Kabul could not be applied in the project areas	Potential APs must be able to discuss need for acquisition with officials from the PIU and the Ministry
2. Officials visit area <i>before</i> any official action to assess land values; values so assessed are the basis of compensation. This is practice as the LLE is completely silent on pre-acquisition procedures and processes.	Land values assessed as at pre-project or pre-displacement value whichever is higher	No real gaps; just different approaches to the same need to limit claims and compensation.	No gaps	A date set prior to the commencement of acquisition should be fixed for land values. This should be the cut-off date
3. As a matter of practice in Kabul efforts are made to determine those entitled to compensation and resettlement	Census conducted of persons in the area to determine eligibility for assistance, and to limit inflow of people ineligible for assistance; encroachers	No real gap here.	Given the practice in Kabul, there would be no problem in adopting OP 4.12 as the practice to be followed in the project.	A legal framework will require a census of eligible APs to be undertaken at the immediate pre-project stage.
4. By article 6 of LLE, the right to own or use land is terminated three months prior to the actual start of the project. So information on land to be acquired is sent to APs three months before acquisition. Informal discussions and negotiations occur both on land to be	Prepare resettlement plan on how project to be implemented and resettlement etc provided for. Emphasis on participation by APs in preparation of process and in project implementation Emphasis on early information to be given to potential APs of possible resettlement	LLE does not provide for what OP 4.12 requires. Some pre-planning of project will exist and informal discussions with APs involves participation. 3 months notice may be too little where relocation is likely but not rigidly adhered to.	There is nothing in LLE to prevent a more participative approach to acquisition as is called for in OP 4.12. The three month rule could be interpreted to mean “not less than three months” which would allow for discussions on acquisition and its consequences.	A legal framework within the RPF allowing for a participatory approach to acquisition and resettlement planning and implementation would not contradict the LLE and is the best way forward.

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acquired and on compensation. It is at this point that donations of land may be 'invited'.				
5. No special provision in LLE for a resettlement plan or any special arrangements for resettlement	Prepare resettlement plan: contents to include – Involvement of and ensure APs their rights to compensation relocation assistance development assistance in new location. Distinction drawn between short and full plans, depending on numbers to be resettled.	Major gap of substance	1. The LLE is silent on resettlement but there is nothing in the law to suggest that a resettlement plan or action to implement a resettlement plan would be illegal. 2. Provide for resettlement plan administratively but 3. Backed up by some regulations	2 and 3 the preferred option.
<b>PART</b>	<b>TWO:</b>	<b>ACQUIRING</b>	<b>THE</b>	<b>LAND</b>
6. The Council of Ministers approves expropriation of land. Unlike the former law, there is no provision for the owner/user and or agent to be present throughout all stages of acquisition. It follows that acquisition may proceed whether the owner etc is present or not. However under article 5 LLE ,a commission is to be formed “by the Municipality” on which the owner is represented to “determine damage incurred due to land expropriation” which is differentiated from compensation. Damage is explained in article 18 LLE. Under article 22, the owner etc	No specific procedures required by OP 4.12 but content of resettlement plan implies APs will be involved in all stages of acquisition	The spirit of OP 4.12 conflicts with LLE’s non-provision of involvement of the owner apart from that provided for in article 5. it is not clear why that is confined to “the Municipality”. Given many absentee owners ,it may be unavoidable to allow absentee acquisition.	Spirit of OP 4.12 could be met by more protective provisions and or practice on dealing with absentee acquisition. The silence of LLE on the details of acquisition may be taken quite legitimately as providing a gap which can be filled by appropriate participatory arrangements. There is no reason why the damage provisions of article 18 shouldn’t equally apply to all acquisitions of land.	Involvement of owners present on the land to be acquired and greater protection for absentee owners should be provided by a legal framework developed as part of the RPF which could also serve as a prototype for regulations made under article 22(5) of the new law.

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obliged to hand over all documentary evidence relating to land to the acquiring authority				
7. Under article 6 LLE after transfer of ownership, owner may enter acquired land and harvest crops except where urgent use of land prevents this	Not mentioned	LLE ahead of OP 4.12 on this:	A good provision	No change
<b>PART</b>	<b>THREE:</b>	<b>COMPENSATION</b>	<b>PAYMENT</b>	<b>PROCEDURES</b>
8. The bulk of LLE deals with compensation but says nothing about who is entitled to compensation. The assumption is that “owners” are entitled to compensation but the law does not define “owners”. The old law drew a clear distinction between those with legal title and those with customary title or no title with respect to the payment of compensation. Practice in rural areas was quite accommodating to those with customary titles. Practice in Kabul is to acquire documentary evidence for a claim for compensation.	Fundamental principle of OP 4.12 is that all those on land are to be entitled to fair compensation and assistance with resettlement irrespective of their title to land.	Major gap of substance in the law but given practice in rural areas, it is not unbridgeable.	Accommodate OP 4.12 by changing practices where necessary. Advantage may be taken of absence of legal definition of “owner” to accommodate those with customary titles which is likely to be the majority in project areas.	Given huge numbers of people not having and not going to get formal legal titles to their land in the foreseeable future, LLE should be interpreted so those living and or working on land at the census date receive fair compensation and resettlement assistance. As with 6 above, the RPF can develop a legal framework for compensating all those on the land and this can be a model for future regulations to be made under LLE. This is the one major area where there is considerable divergence between LLE and OP 4.12. It will be necessary to comply with OP 4.12.
9. The Constitution provides for payment of prior and just compensation. (English translation).The LLE at article 2 provides for the payment of prior and adequate compensation. If there is a	OP 4.12 requires prompt and effective cash compensation sufficient to replace the lost land and other assets at full replacement cost in local markets. Compensation for lost	There does appear to be a gap between the LLE and OP 4.12. The LLE has a lot of gaps in it. Sensible not to insist on market value in the absence of reliable functioning markets. Biggest gap is compensation	1. OP 4.12 must be accommodated. Other resettlement plans developed in connection with ADB projects more or less ignore the LLE and provide detailed frameworks for assessment	Article 40 of the Constitution suggests that option 3 should be the preferred one. It should be supplemented by guidance on how to apply the code in practice.

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<p>distinction between just and adequate, then the constitutional provision of just compensation prevails. Article 8 provides that compensation shall be “the price” of land or houses or trees etc and article 10 provides that the Council of Ministers shall determine the price. But article 15 provides that the municipality and the administration for agriculture determine the compensation for trees etc. Article 13 sets out detailed provisions for obtaining residential plots where a person has had land acquired; the more land acquired the more residential plots are paid as compensation. Disturbance compensation not provided for. Compensation can be land for land. Unlike the former law which provided for compensation may be paid into a bank, LLE is silent on the mechanics of paying compensation. No assistance for APs to access bank for their compensation. Practice on the ground is careful and painstaking.</p>	<p>livelihoods required Disturbance compensation required Land for land compensation encouraged. Resettlement costs and ‘start up’ expenses required.</p>	<p>for squatters and even there best practice does provide some compensation to those with no legal title. Practice of paying compensation into a bank even when APs not absentee difficult to reconcile with prompt payment of compensation.</p>	<p>and payment of compensation. 3. The ADB models should be adapted for use in the project. The lack of any detail in LLE on how to assess compensation and the content of compensation (apart from article 13) allows for the creation of a clear comprehensive and fair code on compensation applicable to all acquisitions including resettlement costs which can be a part of the RPF without doing violence to the existing law.</p>	
<p>10. No provision in the law on resettlement support. Practice seems a little</p>	<p>OP 4.12 requires implementation of resettlement plan the contents of which are</p>	<p>Major gap of substance as noted in 4 above.</p>	<p>If preferred option at 4 above accepted, resettlement plan implementation is issue:.</p>	<p>The RPF should provide for the making of a resettlement plan (5 above) which should</p>

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haphazard and tends to turn on legality of occupation of APs who are to be relocated	noted at 4 above		Choice is between formal top-down and participative involvement of APs which OP 4.12 requires.	be based on a guided participative approach to implementation.
<b>PART</b>	<b>FOUR:</b>	<b>ADMINISTRATIVE</b>	<b>&amp; JUDICIAL</b>	<b>PROCEDURES</b>
11. LLE provides for administrative agencies to manage acquisition processes and deal with compensation. APs are part of some committees dealing with compensation. No provision for courts to be involved or for appeals. In practice, committees may act to solve grievances No provisions for e.g. legal aid to assist APs to make claims. Practice at least in Kabul does appear to try and help PAPs.	OP 4.12 silent on judicial and administrative arrangements. It requires appropriate and accessible grievance mechanisms to be established for those being resettled. Logic of OP 4.12's references to 'meaningful consultation' with APs and making use of CBOs and NGOs suggests preference for decision-making process which is not just part of the administration.	A major gap on grievance mechanisms and current administrative arrangements in LLE difficult to reconcile with the participative approach of OP 4.12. Earlier laws involved payment of compensation in the presence of a judge and allowed an appeal albeit from the judge to a Minister.	Develop grievance handling practices but keep them administrative rather than legal. Make legal provision for appeals from administrative decisions and decisions on compensation to an independent body.	A combination of law and practice guidance would be the best way forward. Grievance mechanisms to provide for co-operation with <i>shuras</i> and community councils in areas where APs are. RPF to provide for these
12. LLE does not provide for any external monitoring body or process	OP 4.12 states that the borrower is responsible for adequate monitoring and evaluation of the activities set forth in the resettlement instrument.	Major gap on procedures but arguably, monitoring is not part of land acquisition so no legal impediment to providing for same.	Provide monitoring for WB projects as required by OP 4.12 Establish specialist monitoring agency for all projects involving acquisition and resettlement Empower provincial and local institutions to monitor projects.	Meaningful monitoring is required by OP 4.12. New institutions should be kept to a minimum. Consideration should be given to use provincial authorities and NGOs. Regular reports should be made and published

### **3. Eligibility for compensation**

#### **3.1 General eligibility**

General eligibility is defined as, “people who stand to lose land, houses, structures, trees, crops, businesses, income and other assets as a consequence of the project as of the formally recognized cut-off date will be considered as project affected persons (APs)”.

APs who will be entitled to compensation or at least rehabilitation under the project are:

- (i) All APs losing land with or without title, formal land-use rights or traditional land use rights;
- (ii) Tenants and sharecroppers whether registered or not;
- (iii) Owners of buildings, crops, plants, or other objects attached to the land; and
- (iv) APs losing business, income, and salaries.

Compensation eligibility will be limited by the cut-off date. All APs who settle in affected areas after this date and who cannot prove that they are displaced users of affected plots will not be eligible for compensation. MEW will inform local communities regarding this cut-off date through their local offices and through the relevant local government agencies. Those that settle after the cut off date however will be given sufficient advance notice to vacate premises/dismantle affected structures prior to project implementation. Their dismantled structures will not be confiscated and they will not pay fines or sanctions.

#### **3.2 Land Tenure and Compensation Entitlements**

In the case of all the sub-projects, persons who may principally be entitled to compensation will be those who may lose small amounts of land. It is necessary therefore to consider the types of interests in land that such persons may have and whether those interests would entitle them to compensation. It is important to understand the prevailing land relationships and the documents and/or declarations that evince these rights over land and the various assets. The following paragraphs summarise the different types of formal and informal land ownership/possession in Afghanistan. This will be the basis for the land impacts and the more important question of who are entitled for compensation of land affected by the project.

The system of Afghan property rights is broadly divided into two categories: formal and informal. Under the *formal system*, the land law defines ownership of immovable property as *private, public and Mawat lands*. Written evidences of land ownership under the formal system of property rights are different kinds of deeds or legal documents with copies in the Court Registries. Other formal written documentation may also be utilised for this purpose. Details are to be found in article 5 of the Law on Land Management.

Immovable property owned by an individual is considered as private property. According to Shari'a, private property can be owned individually or collectively. Private ownership may be acquired through (a) purchase, (b), allocation from a municipality, (c) transfer of ownership of which the most common form is inheritance. In addition, private land can be acquired through the principle of "dead land" or "*zameen-e-Bayer*." This classification entitles all legal owners to compensation for affected land.

Public land is classified as (a) owned by the state, (b) owned by public juridical persons, (c) allocated for public interests, and (d) recognized by law as public property. In addition to the above, cultivable land which has no owner is deemed to be public land. The law prohibits acquisition of such land without the permission of the government. The state has recently strengthened its grip over land based on a statute of limitation which states that all individual claims to land that has been held by the state for a period exceeding 37 years shall be barred and the state shall be considered the owner of the property. The decree provides that all land in which the ownership of individuals is not established legally shall be considered the property of the state. This classification does not entitle an occupant to compensation for the affected land but such a person is entitled to compensation for all immovable assets which are permanently fixed on the land.

*Mawat Land* meaning "dead land". In practice, this term refers to land which is not suitable for cultivation. The concept of *mawat* requires three elements: 1) the ownership history of the land is not known; 2) it has not been cultivated and constructed, and 3) currently the land is not owned by any person. Even barren land (*zameen-e-bayer*) that does not have an owner may only be acquired with the permission of the government. The person who acquires and develops barren land with the permission of the government shall own the land. Shari'a generally recognizes *mawat* land as property neither owned by a private individual nor by the state and which could be acquired through renovation. Consistent with this, *mawat* land is recognized under the laws, but



whoever wants to acquire *mawat* land must first secure permission from the President. In theory then, private property may be acquired in accordance with this concept. If *mawat* land is in the process of being legally acquired or have been acquired by an individual but some formal legal requirements have not been complied with, the possessor/owner is entitled to compensation for his/her affected land.

**Informal System of Property Rights** – There are two types of owners/possessors under the informal system that will be entitled for compensation over land affected by the project. The first group entitled for compensation is the customary or traditional owners of land and their heirs. These are individuals who inherited land that their ascendants occupied for more than fifty years. The original owners were either individuals who received royal land grants (*Firman*) in the form of decrees or legal letters, etc from the ruler of the time, or the original settlers of the land or their survivors who peacefully occupied the land for many generations. In the rural areas, these occupants may have (1) tax receipts or are included in the tax records, (2) unofficial land deeds and (3) been declared or recognised as legitimate users of lands by community development councils, jirgas or local elders. Households or persons who hold customary or traditional deeds for their properties are people who acquired *de facto* ownership of their land through purchase from customary or traditional owners of land.

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

The two types of ownership/possession under the informal system of property rights have customary documents called “*orfi*” to prove their ownership/possession. These documents are usually witnessed by their neighbours, and especially local village and/or religious leaders. These documents include bills of sale and purchase, pawn agreements, wills subdivision agreements, etc. These two types of informal ownership/possession will receive compensation for land affected by the project.

These two types of land rights under the informal system cannot be classified any more as public land. In the customary or traditional rights, the adverse, open, continuous and interrupted possession of owners over a very long time has effectively vested in them legal rights over the lands they occupy through acquisitive prescription. In the second type of land rights under the informal system, the lands involved have been effectively segregated from the classification of public land because the lands have been titled by the former owners and the failure of the new owners to comply with the formal requisites to register the lands under their names do not change the private character of these lands. Hence, the two types of land under the formal system are by their very nature private lands and as a consequence, owners will be compensated.

The other occupants of lands outside of the classifications of legal and legalisable occupancy or possession such as squatters will not be compensated for the lands that they occupy but will be compensated for the permanent improvements they may have introduced in the affected lands and restoration assistance. The other type of land occupants are encroachers. These are 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.

### **3.3 Entitlements to Compensation & Livelihood Restoration**

The APs in the project are entitled to various types of compensation and resettlement assistance that will assist in the restoration of their livelihoods, at least, to the pre-project standards. They are entitled to a mixture of compensation measures and resettlement assistance, depending on the nature of lost assets and scope of the impact, including social and economic vulnerability of the affected persons. All APs are equally eligible for cash compensation and rehabilitation assistance, irrespective of their land ownership status, to ensure that those affected by the project shall be at least as well off, if not better off, than they would have been without the project. The compensation packages shall reflect replacement costs for all losses (such as land, crops, trees, structures, businesses, incomes, etc.) as detailed below:

- ***Agricultural land impacts*** -- These impacts will be compensated at replacement value in cash based on current market rates plus an additional . indemnity for 3 months as

transitional livelihood allowance. MEW will shoulder all fees, taxes, and other charges, as applicable under relevant laws incurred in the relocation and resource establishment.

- ***Severe Agricultural Land Impacts*** -- When >10% of an AP's agricultural land is affected, APs (owners, leaseholders and sharecroppers) will get an additional allowance for *severe impacts equal to* the market value of a year's net income crop yield of the land lost.

- ***Residential/commercial land impacts*** -- These impacts will be compensated at replacement value in cash at current market rates free of deductions for transaction costs.

- ***Houses, buildings, structures damages*** -- These impacts will be compensated in cash at replacement cost free of depreciation, salvaged materials, and transaction costs deductions. Compensations will include the cost of lost water supply, electricity or telephone connections. Renters/leaseholders will receive an allowance of geared to the rent they are paying . for 3 months to cover emergency rent costs.

- ***Income from crops losses*** -- These impacts will be compensated through cash compensation at current market rates for the full harvest of 1 agricultural season. In case of sharecropping, crop compensation will be paid both to landowners and tenants based on their specific sharecropping agreements.

- ***Tree losses*** -- These impacts will be compensated in cash based on the principle of income replacement. Fruit trees will be valued based on age of the tree in two categories: (a) not yet productive; and (b) productive. Productive trees will be valued at gross market value of 1 year income for the number of years needed to grow a new tree with the productive potential of the lost tree. Non-productive trees will be valued based on the multiple years investment they have required. Non-fruit trees will be valued at dry wood volume basis output and its current market rates.

- ***Businesses losses***—Compensation for business losses will be based on actual income to be established by pertinent receipts or other documents if demonstrable, otherwise based on business loss allowance computed as AF 6, 000 a month. Permanent business losses will be based on actual income loss or in cash for the period deemed necessary to re-establish the business (6 months). Compensation for temporary business losses will be cash covering the income of the interruption period up to 6 months based on a monthly

allowance of AF 6,000. Business loss is computed at AF 200 per day (AF 6,000/month) as average net income of typical road businesses such as small stores, repair and vulcanizing shops and small food establishments.

- ***Income losses for agricultural workers and employees*** -- Indemnity for lost wages for the period of business interruption up to a maximum of 3 months.

- ***Agricultural land leaseholders, sharecroppers, and workers*** -- Affected leaseholders will receive cash compensation corresponding to one year's crop yield of land lost. Sharecroppers will receive their share of harvest at market rates plus one additional crop compensation. Agricultural workers, with contracts which are interrupted, will get an indemnity in cash corresponding to their salary in cash and/or kind or both as applicable, for the remaining part of the harvest up to a maximum of 3-months.

- ***House owners/renters*** -- House owners/renters who are forced to relocate their houses will be provided with relocation allowance equivalent to AF5,000 for 3 months and will be assisted in identifying alternative accommodation.

- ***Community Structures and Public Utilities*** -- Will be fully replaced or rehabilitated so as to satisfy their pre-project functions.

- ***Vulnerable Households*** -- Vulnerable people (APs below the poverty line, women household heads, mentally challenged headed households, etc.) will be given assistance in the form of a one-time allowance for vulnerable APs equivalent to AF 5,200 and priority in employment in project-related jobs.

- ***Impacts on irrigation canals*** -- Project will ensure that irrigation channels are diverted and rehabilitated to previous standards.

- ***Transitional Livelihood allowance*** -- APs forced to relocate will receive a livelihood allowance of AF 5,200 a month for three months. Transitional livelihood allowance is computed based on the prevailing wage rate of AF 200.00 per day times 26 days or AF 5,200 per month. This is also the basis for cash compensation on lost wages.

Land replacement values will be assessed based on a survey of land sales in project areas over the last 3 years and of government rates (if any) as per local revenue papers. Land

values and compensation for other assets, will be negotiated between APs and competent authorities if concrete data on land market rates are unavailable.

## **4. Unit Compensation Rates and Budget**

### **4.1 Establishing Rates for Land Acquisition & Resettlement**

As noted in the table above at paragraphs 9 and 10, the Law on Land Expropriation refers to prompt and adequate compensation but is silent on the details of compensation, has no specific provisions on resettlement and provides for the Council of Ministers to make decisions on compensation. These provisions fall some way short of what is required by OP 4.12 but it was suggested in the table that the absence of detail could be used to the advantage of developing rules and principles of compensation. The Law does not forbid the development of detailed rules on compensation and the fact that regulations may be made under the Law suggests that that is where details may ultimately be developed. In the absence of detailed rules, it does not do violence to the Law for details to be developed in the context of this RPF and applied to the project.

To comply with the World Bank's OP. 4.12, rates used to compensate for lost land and assets must be *replacement cost at current market value*, in order to meet the policy objective of "at least" restoring people's livelihoods and ensuring that people affected by a project are not left worse off. According to OP 4.12, "replacement cost" is the method of valuation of assets that helps determine the amount sufficient to replace lost assets and cover transaction costs. In applying this method of valuation, depreciation of structures and assets should not be taken into account. For losses that cannot easily be valued or compensated for in monetary terms (e.g., access to public services, customers, and suppliers; or to fishing, grazing, or forest areas), attempts are made to establish access to equivalent and culturally acceptable resources and earning opportunities.

In the absence of any survey of any likely project affected community or any consultations carried out with potential stakeholders, the figures which follow are drawn from a Resettlement Planning Document prepared in October 2009 for the North-South Corridor Project Mazar-i-Sharif-Pul-e-Baraq Road Section by the Ministry of Public Works in respect of a contract to be funded by the ADB. These figures would not necessarily be the same for the IRDP project but the principles are the same and the methods of calculation of the rates of compensation are it is suggested sound and may be followed in this RPF.

Equally, the problems involved in arriving at valuation of assets are likely to be encountered in the IRDP so that the ‘how to’ aspect of the process is as important as the ultimate result in setting out how to proceed. The MPW project document did discuss the Law on Land Expropriation but in very general terms and not in the context of the valuation of land and assets. The various heads of compensation dealt with in the MPW project are more than those likely to be encountered in the IRDP but it is desirable that all the heads are set out in case they are needed at some point over the course of the project.

A further point must be made about the rates. In a project, there would have been, as part of the process of putting a project document together, at the very least a preliminary survey of the land to be affected by the project and the numbers of APs likely to be affected and the way in which they would be affected; e.g. loss of land, loss or diminution of assets, loss of livelihood etc. Discussions would have taken place with such persons so a reasonable estimate could be made of what they would be likely to claim as compensation. So alongside an explanation of the rates that are to be applied to the determination of compensation, a budget would be developed showing the amount of money that would be needed at the proposed rates to satisfy the requirements of compensation for the APs in the project area.

But an RPF is different. As Srinivasan has pointed out an RPF is prepared “when it is not possible to identify precise siting alignments or specific impacts/affected population during project preparation (financial intermediary operations, and projects with multiple subprojects)” and “a Resettlement Action Plan (RAP) is [then] prepared for each subproject that may involve land acquisition, before the subproject is accepted for Bank financing.” So an RPF cannot be accompanied by a budget showing the probable total project costs of the rates of compensation which the RPF is suggesting should be applied. The budget would be a part of each RAP which would come forward once the RPF had been accepted and the project had started.

The rates for land, structures, crops and trees that have been used in the cost estimates prepared in the MPW plan were derived through rapid appraisal and consultation with affected parties through the census and inventory of loss survey and relevant local authorities. The affected households were asked about their personal valuation of the affected lands and other assets. This would be an essential preliminary aspect of an RAP.

## **4.2 Valuation of Land**

The location of the land influences the actual price per square meter. the nearer the land to a build-up area (e.g. a village ), the higher the valuation and perception of the affected households. Hence, the valuation of the land is pegged on an average, the actual value depending on the nearness to a build up area. In the valuation of agricultural land, the availability of water is very important to determine the fair value or market rates. Residential and commercial lands are largely dictated by the existing road alignment for accessibility rather than crop potential. The land prices are based on the district land prices in the district government. The prices follow the trend that the nearer the land to a population centre, the higher the price of the land.

## **4.3 Valuation of Structures**

In the study area of the MPW project, almost all structures were made of mud or mud and bricks except for some government-owned structures that used cement as the binder in lieu of mud, straw and lime. The classification of structures (temporary, semi-permanent and permanent) refers to the materials used in construction. The valuation of structures into class 1 (mud/brick/wood walls, mud/tin roof), 2 (tiled roof and normal cement floor) and 3 (RCC, single/double storey building) were determined after various consultations with some owners who recently build their houses, local contractors and some local civil engineers.

## **4.4 Valuation of Crops and Trees**

This was quite problematic because of lack of reliable data in terms of yield. The results of the socio-economic survey were not reliable because the majority of the respondents were not aware of size of their land holdings. Their measurements of farm lots are determined on the basis on the amount of seeds they use in sowing. Hence, they know that a certain parcel will require one kilogram of seeds and expected to yield a certain amount. Hence, in computing crop losses, a combination of four main crops was used to get the average yield and price. The unit price for crop losses for a square meter of land devoted to the four main crops was estimated at AF 5.00 per sqm.

The compensation for productive trees is based on the gross market value of 1 year income for the number of years needed to grow a new tree with the productive potential

of the lost tree. Non-productive trees will be valued based on the multiple years investment they have required. However, during interviews on trees, the fluctuation of the value of tree products was influenced largely by the supply and demand and the absence of post harvest facilities. Farmers are forced to sell tree crops when everyone else is doing so. During off-season months, the prices of tree crops quadrupled. The compensation rate for a fruit bearing tree is the average yield per tree (AF 1,500) times the age of the tree.

For the non-fruit bearing trees, the usual propagation method is grafting. Farmers buy these saplings and these are ready to be transferred in the fields after two years. On the fourth year of the tree, the tree starts to produce fruits. Hence, it is on this basis that the valuation of non-bearing fruit trees was determined. The compensation for non-productive fruit bearing tree is the cost of the sapling plus the cost of maintaining the tree up to the time that the tree was cut because of the project.

## **4.5 Income Restoration Allowances**

The resettlement strategy is to provide compensation for all lost assets at replacement cost in order that APs' incomes and livelihoods are not adversely affected and where possible improved. All APs whose livelihood are affected will be supported for income losses and those whose livelihoods are affected adversely provided with livelihood restoration measures (including allowances and interventions for severely affected, poor and vulnerable APs).

***Income Restoration Allowance for Crops Losses*** -- These impacts will be compensated through cash compensation at current market rates for the full harvest of 1 agricultural season. In case of sharecropping, crop compensation will be paid both to landowners and tenants based on their specific sharecropping agreements.

***Income Restoration Allowance for Business Losses*** -- compensation for permanent business losses will be in cash for the period deemed necessary to re-establish the business (6 months). Permanent business will receive AF 6,000 a month for 6 months. Compensation for temporary business losses will be cash covering the income of the interruption period up to 3 months based on a monthly allowance of AF 6,000.



***Income Restoration Allowance for Business workers and employees*** -- Indemnity for lost wages for the period of business interruption up to a maximum of 3 months.

***Income Restoration Allowance for Severe Agricultural Land Impacts*** -- When >10% of an AP of the agricultural land is affected, AP (owners, leaseholders and sharecroppers) will get an additional allowance for *severe impacts equal to* the market value of a year's net income crop yield of the land lost.

***Vulnerable Group Allowance*** -- Vulnerable people (APs below the poverty line, women household heads, mentally challenged headed households, etc.) will be given assistance in the form of a one-time allowance for vulnerable APs equivalent to AF 5,200 and priority in employment in project-related jobs.

***Transitional Livelihood Allowance*** -- APs losing land or losing a house and forced to relocation will receive a livelihood allowance of AF 5,200 a month for 3 months.

***Rental Allowance*** – House Renters forced to relocate will receive a rental allowance equivalent to three (3) months' rent at the prevailing market rate (AF 5,000/mo) and will be assisted in identifying alternative accommodation.

Project-related employment (for unskilled and semi-skilled tasks during construction) - severely affected and vulnerable groups will be given priority for project-related employment opportunities as drivers, carpenters, masons, clearing and digging work, and if possible as clerks or basic administration support staff.

## **5. Institutional Arrangements**

### **5.1 General**

The resettlement and rehabilitation program described in this RPF involves distinct processes, dynamics and different agencies. This section deals with the roles and responsibilities of different institutions for the successful implementation of the project. The primary institutions that are involved in the land acquisition and resettlement process are the following;

1. Islamic Republic of Afghanistan (IRA)
2. Ministry of Energy and Water (MEW)

3. Project Management Unit (PMU)
4. Environment and Social Safeguards Unit (ESSU) at PMU level
5. Project Implementation Unit (PIU)
6. Implementing Non Government Organization (NGO)
7. Local level MEW
8. Local Government Units (LGUs)

The agencies involved in the planning and implementation of resettlement and rehabilitation program are MEW as the EA and the Provincial and District governments together with the appointed NGO. MEW will be acting in the project through the project management office. In the field, it will act and implement through the PIU with the support of a consulting engineer and the implementation consultant who will co-ordinate all activities related to resettlement implementation. All activities will be coordinated with the relevant local government agencies and community *shura* in which the package will be implemented.

## **5.2 Overall Organization – Ministry of Energy and Water (MEW)**

The Ministry of Energy and Water will be the executing agency (EA). The minister and deputy minister will be responsible for the overall policy level decision, planning, implementation and coordination of project activities. The EA will have proper coordination with other departments of the Government of Afghanistan to resolve the following issues:

1. *Land Records and Ownership.* To resolve issues related to land records and ownership, a land management committee will be formed in the central level and will include members from the MEW, Ministry of Finance, and the Geology and Cartography Department.
2. *Assets Valuation.* Values of land and other assets for compensation is determined by the Council of Ministers under the LLE on the basis of the principles set out in this RPF. The decisions are based on the recommendation of a committee consisting of the following (i) the landlord or person who uses the land or their representatives, (ii) an official representative of the agency that needs to acquire the land (e.g. MEW), (iii) a representative of the local municipality, (iv) a representative of the Ministry of Finance, and (v) a representative of the Ministry of Justice.

### **5.3 Project Implementation**

#### **5.3.1 Ministry of Energy and Water**

MEW, through the project management unit (PMU) will be responsible for the implementation of the LARP. Within the PMU, LARP tasks will be handled by two units described below. Local MEW office and local governments will be responsible to coordinate activities in the field including the organization of surveys, consultation meetings, and the fixing of specific compensation rates based on the principles set out in the RPF. The provision of the LARP compensation finances will be the responsibility of MEW and the physical delivery of compensation to the APs will be assigned to a committee selected by the MEW which will include members such as the local governments but under the supervision of the PMU and of the Supervision consultants.

There will be two units within the PMU that will be involved in the implementation of the LARP, namely the Environment and Social Safeguards Unit (ESSU) and the Project Implementing Unit (PIU). The ESSU will be primarily responsible for the social safeguard issues. The PIU will be responsible for the daily field level activities, getting all the necessary clearances required to initiate and implement all resettlement works. It will coordinate with the ESSU in the implementation of the project. As necessary, the ESSU/PIU will coordinate with MAIL, Cadastre Survey Department, local Governorates, NGOs and the community shuras, locally elected councils and local water user associations established under the Water Law. The PIU will be responsible for ensuring that all stages of the processes of resettlement, determining and paying compensation, and acquiring land are fully documented and that hard and soft copies of the records are at all times kept in a safe and secure environment.

An international social safeguards and resettlement specialist will be recruited as an advisor to the ESSU for resettlement issues. In addition, a national safeguards officer will be appointed and local safeguards officers will be located in each of the regional offices. The international safeguards adviser will have overall responsibility for ensuring/monitoring compliance with safeguards. The international adviser would be responsible for mentoring/building the capacity of regional safeguards officers to (i) work with regional technical teams to ensure adherence to safeguard requirements at each stage of sub-project development and (ii) facilitate outreach to other development agencies.

## 5.3.2 Implementing NGO

The specific tasks of the implementing/supervisory NGO will be as follows:

1. Work under close coordination with the ESSU/PIU, local government units and MPW local staff to implement the LARP.
2. Assist the ESSU/PIU in dissemination of the LARP and other resettlement related information.
3. Generate awareness about livelihood restoration activities and assist the APs to make informed choices including participating in government development programs.
4. Identify training needs of APs for income generation activities and ensure that these are properly funded.
5. Provide counselling and awareness generation to resolve LARP related grievances and assist in seeking redress to unresolved grievances from land acquisition and resettlement disputes with the Grievance Committee.
6. Assist the APs in claims for just compensation including the collection of timely and complete payments.
7. Submit periodic implementation reports on LARP.
8. Conduct and/or undertake any other activities that may be required in the successful implementation of the LARP.

The implementing NGO must be a non-profit organization; be legally registered (at least years) as an NGO in Afghanistan; have operated for at least 3 years; have a minimum of five paid staff; be committed to the principles of gender equality in terms of its own staffing; have a management or advisory board; maintain a proper accounting and financial system; have a long term presence and credibility in districts relevant for the project area; have work with government focal agencies; and must be willing to undergo training in resettlement work for project implementation.

## 5.3.3 Local Government

The cooperation and coordination of the local government units (LGUs) are vital in LARP implementation. These are the provincial government, district provincial government, villages and local community Shuras. Issues relating from land records and ownership and assets valuation originate from this level and will only be taken to the Council of Ministers if these issues are not resolved locally. The provincial government,

in cases of disputes on valuation of land will constitute a land valuation committee to determine the disputes on rates.

In cases of disputes regarding land ownership, land records goes through 3 offices at district level, (1) District administrator, (2) Revenue collector (Mstowfiet) and (3) the District Court. These offices have the jurisdiction on any matters related with land acquisition and verification of land entitlements. Staff of the Revenue Department (Mstowfiet), with local municipality will carry out the tasks of identifying the titles and verification of ownership. The Office of Wloswal (the appointed District head) is expected to play a coordinating role.

### **5.3.4 Gender**

It is appropriate to draw special attention to gender issues within the context of project implementation. What follows draws heavily on the report of the Social Safeguards Requirements Review of the EIRP. Irrigation governance in Afghanistan is an almost exclusive preserve of men. Initial consultations on EIRP sub projects were with village elders which, while representing the community, do not necessarily reflect the social realities or world views of different groups within it, particularly those of women. Despite playing a key role in agriculture women do not seem to have been either directly informed/consulted at the design stage of EIRP projects or involved in subsequent stages of a project's development.

Discussions with women in projects/villages visited as part of the Social Safeguards Requirements Review confirmed that they have important, although varying, roles in agriculture. Factors such as absence of male family members from the village, ethnicity and local cultural norms all affect women's role in agriculture. For example, in Herat the consultant heard that women had primary responsibility for cultivating vegetables and fruit trees as well as looking after sheep. Women considered sheep the second most important household asset after land. In some Mazar villages it was also accepted practice for women to carry out agricultural work in the fields ( e.g. weeding and harvesting) where their husbands or other male family members were absent from the village. In Jalalabad women said they have responsibility for looking after animals and poultry close to their home although examples were given of poor women and widows working in the fields away from the immediate household.

Representatives from women's Community Development Councils (CDCs) in villages visited in Herat said that they had some knowledge of the EIRP irrigation schemes through their husbands or other family members. In Mamizal (Turkmani) and Shahara Khiz (Tajik) women CDC members expressed the view that if EIRP projects were beginning in their villages now, they would be consulted from the outset and much better informed about the project's progress as a result of membership of the CDC. In both villages women CDC members said that the head of the men's CDC regularly consulted the head of the women's CDC on planned projects for the village and that women were able to influence the prioritisation of these projects. For example, in Shahara Khiz, following consultation with the Head of the Women's CDC, the top priority development project was changed from an electricity to a potable water supply project favoured by the women. In sharp contrast a meeting with women CDC representatives in Mirza Khil (Pashto) village in Jalalabad revealed virtually no knowledge of the EIRP project. The women there also reported no link with the men's CDC in the village.

The government's commitment to addressing gender equality principles in social and economic development is evident in the Water Sector Strategy and the Afghan National Development Strategy (ANDS). Using established community structures to involve women meaningfully in the new IRDP project will be a challenge and will need to be approached with renewed effort and imagination. Working with women can be done only with female staff and currently there are no female CWDAs employed in the programme. Women's CDCs should be explored as a possible vehicle for increasing women's participation in the project.

The current EIRP consultation approach tends to assume that communities are essentially homogenous. Specific efforts are not made to seek the views of those groups within communities who are not usually involved in decision-making processes, particularly women. In IRDP, special attention will be paid to female-headed households, both those with and without land, as they are generally amongst the most vulnerable in communities and risk having their rights ignored. Although women's ownership of land is not widespread it is important to ensure that their land rights receive equal recognition in the project and in any resettlement activities. Thus, the ESSU within the PMU will have special responsibility to

- Ensure that the IRDP uses women's CDCs to enhance outreach to women.

- Revisit incentives in order to attract women to work as CWDAs and in other capacities at regional level.
- Identify NGOs working with women in locality and consider whether/how to ‘piggy-back’ on their work in order to increase the effectiveness of the IRDP project.
- Ensure implementing NGOs have female project officers

## **6. Public Consultation and Participation**

### **6.1 General Public Consultation**

This section describes the mechanisms for public consultation process with the APs, disclosure of the LARP through distribution of informative material to create awareness among the APs regarding their entitlements and compensation payment procedures and grievances redress mechanism.

### **6.2 Public Consultation**

In addition to informal day-to-day meetings among APs, MEW local staff, and other stakeholders, the formal consultation process in the project area will be ongoing and will be undertaken by supervising consultants and the PMU through village meetings, meetings with water user associations and public consultations with government officials. All these mechanisms and approaches will also be used during the collection of baseline socio-economic data from the APs; and the preparation of LARP and disclosure of LARP to the APs, as explained below.

### **6.3 Village Meetings**

A series of village meetings will be held, where the census and socio-economic surveys will be explained and later carried out. The aims and objectives of the IRDP will be explained as will the necessity for, processes and outcomes of any resettlement. The village elders and stakeholders meetings will be scheduled based on the availability of the participants. The ESSU will be responsible for conducting village consultations.

The project had already conducted an inventory of losses of affected assets and socio-economic survey. In the socio-economic survey, the project will list the names of the

owners/users of assets likely to be acquired or damaged for which compensation will be payable and the MEW will prepare a land acquisition and resettlement plan (LARP) for each sub-project that will ensure that all these affected assets are justly compensated. The approved LARP will be presented and explained to all affected households and persons and other interested parties. The census survey will be conducted in the affected lands

At all times, all people will be encouraged to express their own options about resettlement. These will be relevant to the resettlement options of the APs themselves. The primary purpose of these meetings will be to provide the affected households and persons and host communities the opportunities to air and ventilate their issues, concerns and opinions about the project while on the side of the supervision consultants, it is also an opportunity to clarify and elucidate initial results of surveys as well as inquire on subject matters that were not sufficiently covered by questionnaires.

## **6.4 Consultations with Government Officials and Other Stakeholders**

The supervising consultants will meet with provincial and local officials to ensure that they are fully apprised about the project including the formulation and details on the implementation of the LARP. The PIU will coordinate with land valuation committees. There will be coordination with the district governors which have jurisdiction over the sub-project areas as well as village leaders. Information about the entitlement provisions and compensation packages will be shared with these government officials and other stakeholders.

## **6.5 Preparation of Project Specific Informative Material**

Project specific informative materials will be prepared and distributed to the APs to create awareness among the APs regarding their entitlements and compensation payment procedures and grievances redress mechanism. They will cover the following:

- After approval of this RPF by the World Bank, it will be translated into local languages and disclosed to the stakeholders especially affected persons by the MEW through consultants and at village meetings. LARPs for sub-projects will be made available to the concerned district governments and village leaders and MEW's field offices as an official public document. This RPF will also be disclosed on the MEW website.



- A summary of this RPF will be prepared specifically for this purpose and will be translated into local languages and presented to all APs in the form of a pamphlet/ brochure, to enable the APs and local communities to read it by themselves and be aware of the IRDPs benefits/compensations to be made to available for various types of APs, as given in the 'entitlement matrix'. MEW field staff/consultant will distribute the brochures through the village meetings and will explain the mechanisms and procedures of the consultation programme and how APs will be engaged in resettlement activities and the overall process.
- A cheque disbursement schedule explaining the date, time and venue for disbursement of compensation cheques of each AP will be prepared in local languages and distributed to all APs. This will also be disclosed in the village meetings.
- A package containing following information material will be prepared for each AP.
  - Inventory of AP's losses
  - Schedule for compensation cheque disbursement explaining the date, time and venue for receiving cheque, vacating land and demolition of structures
  - Pamphlet/ brochure in local languages
  - Any other relevant information for the AP

## 6.6 Disclosure

Key features of this RPF will be disclosed to the APs through the village meetings, and informal interaction between the APs, consultants and PIU staff. After its approval by the World Bank, the disclosure plan will be followed:

- Provision of the RPF in local languages and English to PIU, MEW field offices, APs, provincial officers and district provincial offices, other local and district level offices of the concerned agencies.
- Disclosure of the RPF in village meetings
- The RPF will be available in all public institutions for general public information
- Posting of RPF on MEW website
- Publicity will be given to the RPF through all forms of media
- Provision of information packet to all APs

The local safeguards officers will again conduct meetings with the PIU staff, local government units and other government agencies as part of the disclosure process to

acquaint them of the substance and mechanics of the RPF. They will be responsible to return to the affected villages and communities once this RPF is approved by MEW and the World Bank and conduct disclosure activities through village meetings and meetings with water users' associations to ensure that affected households will be familiar with this plan before the actual implementation commences.

## **7. Preparatory Actions and Implementation Schedule**

### **7.1 Preparation Actions**

MEW/PMU will begin the implementation process of each sub-project immediately after its approval by the World Bank. It will initiate some actions as groundwork and certain preparatory tasks regarding implementation of the LARP as follows:

- Establishment of a Project Management Unit (PMU) and Project Implementation Unit (PIU)
- Creation of post of National Safeguards Officer (NSO)
- Creation of posts of regional safeguards officers (RSOs)
- Appointment of two types of resettlement specialists (consultants)
- Establishment of Affected Persons Committees (APCs)
- Establishment of official cut off date for the first sub-project
- A series of public consultative meetings and workshops with APs and local representatives and active involvement APs in preparing a final RP
- Endorsement of the first LARP by PMU and PIU and its submission to World Bank for approval
- The process for developing the budget for compensation of land, trees, and crops will have already been coordinated with the Ministry of Finance
- Establishment of criteria, requirements and procedure for disbursement of compensation cheques
- Identification of the implementing consultant that will assist MEW in LARP implementation
- Identification of external monitoring agency who will undertake independent monitoring

MEW is also committed to provide adequate advance notice to the APs and pay their due compensation based on the eligibility criteria defined in this RPF for resettlement including relocation and income restoration/assistance prior to start of construction work. The APs of affected structures/assets (houses, shops, etc.) will be paid their due

compensations at least three months (90 days) prior to demolition of the structures. This time will allow them to dismantle and remove all salvageable material for rebuilding of houses and reestablishment of businesses.

Payment of compensation of assets other than structures (land, crops, and trees) will be made at least 90 days prior to actual possession of the space being utilized by the APs. However, in case of a dispute, up to 70% of the assessed/allocated amount of compensation will be paid to APs and the rest pledged in the names of the concerned APs, pending the resolution of the dispute. . In such an exceptional case, the MEW may possess the land without full payment of compensation. Grievances or objections (if any) will be redressed as per grievance redress procedure adopted in this RPF.. However, all activities related to land acquisition and resettlement will be completed prior to initiation of civil works for irrigation infrastructure rehabilitation and dam building with resettlement impacts.

## **7.2 Process of LARP Implementation**

The following paragraphs explain in detail how compensation will be delivered to APs and the prerequisites needed in triggering the release of financial resources to the ultimate beneficiaries. These steps are formulated in the light of the assumed availability of finance, the security situation, and travelling time. No account is taken of the likely situation in any province or district where sub-projects might take place.

The steps for the delivery of compensation for all eligible APs will be the following:

- i. Obtain financial resources based on the final budget of each LARP. PMU shall obtain the needed money for its counterpart to fund the land acquisition component from the Ministry of Finance.
- ii. Verification of the list of qualified APs: PMU through the implementing consultant will verify the list of APs provided in the LARP to ensure that all eligible APs will be properly compensated and non-eligible APs will be excluded. To ensure that identification and qualifications are guaranteed, village elders and community Shuras will be consulted to resolve issues rising from the list.
- iii. Notification of a detailed compensation package: PMU through the implementing consultant will prepare and provide each APs with a detailed breakdown of affected

assets, and the unit cost of each asset affected and the total compensation that they will receive.

iv. Final conciliation/expropriation: APs who disagree with the amount of the detailed compensation package and how it was arrived at will be provided with a last or final chance to settle these issues with the implementing consultant facilitating this meeting. In the event that PMU and the APs still cannot agree, the PMU will file expropriation proceedings in the appropriate court, asking that MEW be permitted to take possession of the affected asset. The PMU will pay the AP 70% of the contested sum and deposit the remaining amount in an escrow account in a bank.

v. Locate absentee owners: The PMU through the implementing consultant and village leaders shall try to locate absentee owners of affected assets. There are some cases where owners are residing or working in other places and every effort must be undertaken to locate these absentee owners.

vi. Notification to the public: available media and community bulletin boards will be utilized to inform the public that lands with the corresponding owners will be affected by the project. These will provide sufficient time for any adverse claimants on lands that will be affected to raise their opposition or claims over the affected lands.

vii. Preparation of invoices: Invoices for each of the eligible APs will be prepared by PMU/Implementing consultant. This document entitles each of the APs to receive the amount indicated in the invoice.

viii. Delivery of the money to local bank: the money from MEW/MoF will be remitted to a local bank in the nearest town to the sub-project site. However, the MEW/PMU may remit the money for compensation to any bank of its choice. The bank account will be opened by PMU which will receive from Kabul the compensation in behalf of the APs.

ix. Payment: the APs will each receive a cheque for the whole amount of compensation from the PMU. The AP will sign a document acknowledging the receipt of the whole compensation and a waiver attesting that he/she has no longer any pending claim over the affected property. A photograph shall be taken with the AP receiving the cheque as part of project documentation.

x. The AP will cash the cheque by presenting their national identification card (NIC) and/or election registration card to the bank. Persons without NICs will have to explain to the pertinent authorities the reasons why they are not in possession of the NIC.

APs will be encouraged to open a bank account in any bank and only carry necessary money to their respective villages to avoid unnecessary exposure to those who might

wish illegally or with force to relieve them of their cash. The benefits of having a saving account will be part of the information to be provided by the implementing consultant.

## **8. Complaints and Grievance Redress**

Based on the LLE when private landholdings are acquired for public purposes such as dam building, compensation is paid to the owner based on the category and location of the affected land and the values of land for compensation are determined by the Council of Ministers. The decision is based on the recommendation of a land acquisition committee (LAC) consisting of the following members:

- Affected person who uses the land or his/her representative,
- Representative of Ministry of Energy and Water,
- Representative of the Ministry of Finance,
- Representative of the Ministry of Justice, and
- Representative of the local municipality,

The land acquisition process is initiated with the constitution of the land acquisition committee. As land and other assets are acquired for a public purpose, the law does not permit any objection to the acquisition of an individual's property by the state. Usually, there are dissatisfactions that arise with these acquisitions, mostly relating to the value of compensation. The LAC inquires into the matter and reviews the valuation and tries to arrive at a win-win solution. The whole process is based on a negotiated approach and as the AP or his/her representative is a member of this legally constituted LAC, a consensus is reached on the replacement value of the land and assets lost. The LAC thus also performs the tasks of a grievance redress committee.

However, if after this negotiated approach, the issue remains unresolved, the affected person may elevate the matter to a Grievance Redress Committee (GRC) to try to resolve the issue. It should be pointed out however, that this committee does not possess any legal mandate or authority to resolve land issues but rather acts as an advisory body or facilitator to try to resolve issues between the affected household and the MEW/PMU who would implement the valuation based on the decision of the LAC. The GRC will be composed of the following members:

- Affected person or his/her duly appointed representative,
- Representative of the local administration (from the office of the governor),
- Representative from MEW - ESSU,

- Representative from the local legal department,
- Representative of the implementing NGO

The grievance redress committee will register the unresolved matter and meet to try to resolve the issue. A recommendation should be made within 7–10 working days. In the case of the absence of any of the members during the decision-making process, an appropriate candidate will be nominated by the original representative. If no decision has been promulgated after 10 working days from the last meeting of the grievance redress committee, the affected person may take the issue to the next level. The AP always has the final recourse to seek redress through the legal system. However, every effort must be exerted to avoid this alternative because it entails loss of time and expenses of the part of the AP.

As the concept of just compensation for affected assets for public works such as dams is new to Afghanistan, the ESSU and the implementing consultant (NGO) will assist in disseminating this concept to APs, its procedures and prerequisites in filing the proper complaints. The process of grievance redress has been made simple to hasten the process of decision-making and facilitate getting on with the works. The grievance redress committee includes a representative from the local administration and the affected individual. Grievances are expected to be redressed locally within the existing framework.

## **9. Monitoring & Evaluation**

### **9.1 General**

Project activities will undergo both internal and external monitoring. Internal monitoring will be conducted by the PIU, assisted by the Supervision Consultant. External monitoring will be assigned to an independent External Monitoring Agency (EMA) to be hired by MEW/PMU, and approved by the World Bank.

### **9.2 Internal Monitoring**

Internal monitoring will be carried out routinely by the PMU through the PIU and results will be communicated to World Bank through the regular project implementation reports. Indicators for the internal monitoring will be those related to process, immediate outputs and results. This information will be collected directly from the field and reported

monthly to the PMU to assess the progress and results of LARP implementation, and to adjust the work program, if necessary. The monthly reports will be consolidated every quarter in standard supervision reports and submitted to the World Bank. Specific monitoring benchmarks will be:

- Information campaign and consultation with APs;
- Status of land acquisition and payments on land compensation;
- Compensation for affected structures and other assets;
- Relocation of APs;
- Payments for loss of income;
- Income restoration activities.

### **9.3 External Monitoring**

The implementation of the IRDP will take several years. It will therefore be necessary that external monitoring is carried out on a regular basis with the results communicated to the PMU and the World Bank through a bi-annual compliance report. The EMA will be responsible for the preparation of the compliance report confirming that all compensation and related resettlement assistance in cash or kind are being delivered to the affected households. Based on the results of the compliance report, the EMA will recommend to MEW/the World Bank if the necessary civil works on irrigation rehabilitation and dam building with resettlement impacts can commence. A copy of the compliance report and its recommendations will be submitted to the PMU, supervising consultant and the World Bank simultaneously.

The EMA will also assess the status of project affected vulnerable groups such as female-headed households, disabled/elderly and poor families. The following will be considered as the basis to develop the indicators for monitoring and evaluation of the project:

- Socio-economic conditions of the APs in the post-resettlement period;
- Communications and reactions from APs on entitlements, compensation, options, alternative developments and relocation timetables etc.;
- Changes in housing and income levels;
- Rehabilitation of squatters (if any);
- Valuation of property;
- Grievance procedures and outcomes;
- Disbursement of compensation; and
- Level of satisfaction of APs in the post resettlement period.

For each subproject, the EMA will carry out a post-implementation evaluation of the LARP about 1 year after its implementation to find out whether the LARP objectives were attained or not. The socio-economic survey base-line will be used to compare pre- and post- project conditions. The EMA will recommend supplemental assistance for the APs in case the outcome of the study shows that the objectives of the LARP have not been attained.

## **9.4 Management Information Systems**

All information concerning resettlement issues related to land acquisition, socio-economic information of the acquired land and affected structures, inventory of losses by APs, compensation and entitlements, payments and relocation will be collected by the implementing consultant. This data bank would form the basis of information for RAP implementation, monitoring and reporting purposes and facilitate efficient resettlement management.

## **9.5 Reporting Requirements**

The implementing consultant will be responsible for supervision and implementation of LARP and prepare monthly progress reports on resettlement activities and submit to the PMU for review. The implementing consultant will also monitor RAP implementation and submit quarterly reports to MEW/PMU and the World Bank. The external monitoring agency (EMA) will submit bi-annual reviews directly to the World Bank and determine whether or not resettlement goals have been achieved, more importantly whether livelihoods and living standards restored/enhanced and suggest suitable recommendations for improvement.



## 10.1 Matrix of Actions under the RPF

### ACTIONS, MEASURES, COMPENSATION ENTITLEMENTS AND CATEGORIES IN THE RPF

ACTIONS	TO	IMPLEMENT	THE	IDRP
Who	What	When	Why (Objective)	Comments
MEW	Establish liaison arrangements with other Ministries which will necessarily be involved in IRDP: MAIL; MOF; MOJ;	Assuming these arrangements already exist with respect to EIRP, they can be utilised as soon as possible to bring these Ministries up to date on IRDP	To facilitate the smooth implementation of the beginning and operation of the IRDP	The vital first step in the process of developing the IRDP
MEW	Establish PMU in two divisions: 1. ESSU 2. PIU	On approval of RPF by World Bank	Creation of the internal Ministry arrangements to implement RPF	Preparatory work to be done before approval of RPF
MEW	Appoint national safeguards officer and regional safeguards officers	Desirable to appoint these officers well before the commencement of IRDP	Creation of internal Ministry arrangement to implement RPF	Early appointment will facilitate training of these officers. Training organised by ESSU
MEW	Commence the preparation of materials on the RPF for distribution to probable APs	At commencement of 2011	To give as much advance publicity to IRDP as possible and to alert probable APs of resettlement	No need to wait for approval of RPF by World Bank. This work should start as soon as possible
MEW	Prepare terms of reference for international social safeguards consultant	At commencement of 2011. Advertisements can go out before RPF approved but appointment would be dependent on RPF approval	To ensure rapid recruitment processes once RPF approved	There will need to be considerable consultation on this post so action needs to start early on
MEW	Appoint the implementing NGO which is going to carry out the processes of resettlement	Initial work on appointment – terms of reference; basic requirements for an NGO to be qualified to apply; vetting applicants – can start in early 2011. Appointment would not be made until RPF approved	The implementing NGO will have an important role to play in all significant resettlement exercises.	For sub-projects where no or very small-scale resettlement will take place, the ESSU and the regional safeguards officer could be the implementers but anything over that and the implementing NGO would be involved.

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MEW	Continue with process of locating sites and preparing technical plans etc for sub-projects under the IRDP	ongoing	To ensure no delay in beginning implementation of IRDP	No comment needed. Self-evident action. PIU
MEW	Where likely resettlement will be involved in a site located for action under IRDP begin preparation of RAP under the RPF	This action should begin to be incorporated into plans developing the sites for action under IRDP	To ensure no delay in beginning of implementation of IRDP	Processes for preparing RAP set out in the text of RPF
MEW	Census of residents and probable APs within sub-project area	As early as possible once sub-project site identified	An essential first step in the process of resettlement	Explanation of the importance of this in the RPF
MEW	Begin the processes of publicity and consultation with APs.	Alongside taking the census of APs	An essential first step in the process of planning resettlement and developing a resettlement action plan	Consultation must be genuine. As much information as possible must be given to APs. Utilise village meetings
MEW	Consult and liaise with local governments and regional offices of associated Ministries on above actions.	Alongside consultation with APs	Essential to ensure that Ministries and local governments know of what is happening	These bodies will be needed to assist with village meetings and consultation with APs.
MEW	Undertake the process of inviting APs to submit claims for compensation; assessing discussing and settling claims with APs	Part of the process of consultation and preparing an RAP as an RAP must contain precise details of the compensation and resettlement payments	Compensation and the process of resettlement is at the heart of an RAP and its implementation.	ESSU and NGO will be involved here
GRC	The GRC will be involved in attempting to settle any grievances which APs may have over the compensation that they are being offered	The GRC should be ready to be involved from the commencement of the process of assessing and determining the compensation payable to APs	To assist in the process of settling claims to compensation	The GRC must be prepared to work speedily and flexibly so as to ensure that a sub-project does not get bogged down in never-ending disputes about compensation.
MEW	Finalise RAP	Preparation of RAP is a continuous process commencing with consultation in connection with census taking	A necessary step to commencing action on the ground	RAP must be approved by World Bank

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MEW	Prepare information pack for each AP	The information pack to be distributed when RAP approved	The pack provides all the basic information which an AP will need to know. What is to occur on resettlement; how much compensation will be provided; how the compensation will be provided and the opportunities for complaints and settling same.	This is a vital component of an RAP. The details of what must be in the information pack are contained in the RPF
MEW	Implement the compensation and resettlement processes of the RAP	Everything should be ready to be rolled out once the RAP is approved	Once the APs have been paid their compensation and been resettled, infrastructural activities on the ground may commence	<i>It is absolutely vital to bear in mind that all APs claims must be settled (subject to the limited exception of payment of only part of compensation if a dispute is going to court as set out in the RPF) before entry may be made on to land from which APs have been moved and infrastructural activities may commence.</i>
Implementing NGO	1. Work closely with ESSU in generating awareness of all aspects of resettlement and compensation 2. Work closely with APs in assisting in making, negotiating and if necessary taking to the GRC claims for compensation 3. Submit regular reports on the process to MEW and the monitors	Throughout the execution of the RAP	The presence of an independent agency whose prime function is to act on behalf of and support APs in their claims for compensation is designed as a guarantee that the process complies with principles of substantive and procedural (administrative) justice	This is a key element in the RPF. It will be important that a reputable and effective NGO is appointed and that the external monitoring body has terms of reference that embrace the monitoring on the NGO
GRC	Handle AP grievances over compensation	During the process of determining compensation.	As with the implementing NGO, a GRC is a further	Another key element on the RPF. Important that the

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		Meet regularly and settle disputes within 10 days.	guarantee to APs that the process is both substantively (a second and independent opinion on compensation) and procedurally ( an AP can have a hearing and put his/her case) fair	members of the GRC see themselves as independent and operate accordingly. They are not there 'to save government money'.
MEW	Internal monitoring conducted by PMU	Throughout the process of the implementation of an RAP with regular reports to the World Bank	The PMU is responsible for managing the IRDP. It will not have the major hands-on role which will be that of the implementing NGO. So it is in a good position to monitor and report on what is happening and will do that via officers of MEW in the field	An essential aspect of the RPF as it provides an element of project assurance to the World Bank with respect to the implementation of the IDRP
EMA. Must be independent of all bodies involved in the implementation of the IDRP and with independent standing in its own right. Could be a University department or a consortium of departments.	External monitoring conducted by the EMA.	Throughout the process of the implementation of the IDRP with regular reports to the World Bank and guaranteed access to sites; APs; documents; officials in MEW and other relevant public and private bodies	An independent overview of the implementation of the IDRP	The independence of the EMA must be assured in the contract between it and the MEW. The World Bank has a substantial interest in the EMA and its outputs so will likely be involved in the selection process.

## 10.2 Matrix of Compensation Entitlements and Rates

<b>ELIGIBILITY</b> Who is eligible	<b>CRITERIA</b> What are they eligible for	<b>FOR</b> How to determine eligibility and compensation levels	<b>IDENTIFYING</b> What's the objective	<b>APs</b> Comments
Landowners	Loss of land and rights to land	1. Official documentation issued by or on behalf of government 2. Customary documents; i.e. documents recognised by both official and customary law as giving rise to ownership rights 3. Oral and other evidence with probative value that the claimant and his/her family have been in occupation of the land for at least 35 years. 4. Open, continuous and interrupted possession of persons over a very long time which effectively vests in them legal rights over the lands they occupy through acquisitive prescription.	The aim of OP. 4.12 is to compensate all those who have lost 'their' land. OP 4.12 goes beyond technical rules of law or evidence which in part are designed to bring disputes over land to an end and ensure security to title. OP 4.12 aims at simple and substantive justice: "if you've been on this land for a long time and there is good evidence of that then you should be compensated for losing it"	As the matrix on the comparison of the LLE and OP 4.12 shows, there is nothing in LLE which prevents the approach of 4.12 being adopted here
Squatters	Permanent improvements they have made to the land they have occupied	Observance of permanent improvements; questioning the squatter and neighbours on when improvement made; consulting maps and other relevant documents	The objective here is to compensate the squatter for expenditure on the land but not for the value of the land itself	Ditto to above.
Agricultural tenants	Loss of income	cash compensation corresponding to one year's crop yield of land lost.	A fair approximation of loss of income	Ditto
Sharecroppers	Loss of income	their share of the harvest at market rates plus one	Ditto to above	Ditto

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		additional crop compensation.		
House owners/renters	Costs of relocation to other accommodation	relocation allowance equivalent to AF5,000 for 3 months and assistance in identifying alternative accommodation	This is a very standard element of compensation in all systems	Not specifically provided for in LLE but nothing to stop is being paid
Loss of livelihoods by agriculturalists	Replacement costs for all losses	1. losses will be compensated at replacement value in cash based on current market rates plus an additional . indemnity for 3 months as transitional livelihood allowance. 2. When >10% of an AP's agricultural land is affected, APs will get an additional allowance for <i>severe impacts equal to</i> the market value of a year's net income crop yield of the land.	The aim is to provide a reasonable measure of compensation for loss of livelihoods but on the assumption that APs will make a go of things on their new land. It provides temporary relief but not an amount which invites future indolence	This is already an approach which has been accepted in Afghanistan
Residential/commercial land impacts	Replacement costs for all losses	Replacement value in cash at current market rates free of deductions for transaction costs	See above. The same reasoning applies	Ditto
Those who lose or have buildings damaged	Replacement costs	These impacts will be compensated in cash at replacement cost free of depreciation, salvaged materials, and transaction costs deductions. Renters/leaseholders will receive an allowance geared to the rent they are paying . for 3 months to cover emergency rent costs.	See above.	Ditto
Those who lose income from crop	Replacement of lost income	These impacts will be	See above	Ditto

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losses		compensated through cash compensation at current market rates for the full harvest of 1 agricultural season. In case of sharecropping, crop compensation will be paid both to landowners and tenants based on their specific sharecropping agreements.		
Those who have lost income from loss of trees	Replacement of lost income	Income replacement based on types of trees lost.	See above	Ditto
Those who have suffered business losses	Replacement of lost income	Compensation for business losses will be based on actual income to be established by pertinent receipts or other documents if demonstrable, otherwise based on business loss allowance computed as AF 6, 000 a month.	See above	Ditto
Thos who have suffered loss of wages	Replacement of lost wages for a limited period	Up to three months wages	See above	Ditto
Vulnerable households	Additional compensation over and above strict loss of income	Vulnerable people (APs below the poverty line, women household heads, mentally challenged headed households, etc.) will be given assistance in the form of a one-time allowance for vulnerable APs equivalent to AF 5,200 and priority in employment in project-related jobs.	This is a recognition that those classified as vulnerable households will likely suffer losses over and above income loss and will find it especially hard to get started again somewhere else.	Ditto
Transitional living allowance for APs forced to relocate	Disturbance compensation	APs forced to relocate will receive a livelihood allowance of AF 5,200 a month for three months. Transitional livelihood allowance is computed based on the prevailing wage rate of	This is a standard head of compensation in most systems of compensation.	Ditto

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		AF 200.00 per day times 26 days or AF 5,200 per month.		
<b>ESTABLISHING</b>	<b>VALUATION</b>	<b>RATES</b>	<b>FOR</b>	<b>ACQUISITION</b>
<b>What is being valued</b>	<b>How is valuation conducted</b>	<b>Input of APs</b>	<b>Indicative figures</b>	<b>Comments</b>
Matters common to all specific types of valuation	Rapid appraisal; consultation with APs; information derived from census and from local authorities	Yes but not necessarily decisive	Where figures are given the are indicative only being based on a 2009 valuation exercise. They will almost certainly be changed when budgets for RAPs are developed under the IDRP	none
Land	Valuation of the land is pegged on an average, the actual value depending on the nearness to a build up area. Land prices are based on the district land prices in the district government	Land values are so far as possible determined on the basis of 'objective' factors but it is not possible to ignore the assumptions of APs about land values which do play a part in valuation	None	Land values are dealt with after a fashion in the LLE.. The Council of Ministers determines values but there is a local process that valuation goes through.
Structures	Structures may be classified (temporary, semi-permanent and permanent) based on the materials used in construction. They may be classified into class 1(mud/brick/wood walls, mud/tin roof), 2 (tiled roof and normal cement floor) and 3 (RCC, single/double storey building)	In the project from which these classifications are based, they were arrived at after various consultations with some owners who recently build their houses, local contractors and some local civil engineers.	None	This approach to structures seems a good one to adopt. Some APs considered that the length of time a structure had been standing should affect value but this was not a factor used in valuation
Crops	in computing crop losses, a combination of four main crops was used to get the average yield and price..		The unit price for crop losses for a square meter of land devoted to the four main crops was estimated at AF 5.00 per sqm.	Valuation was problematic because of lack of reliable data in terms of yield. The results of the socio-economic survey were not reliable because the majority of the respondents were not aware



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				of size of their land holdings.
Trees	<p>Compensation for productive trees is based on the gross market value of 1 year income for the number of years needed to grow a new tree with the productive potential of the lost tree.</p> <p>Non-productive trees are valued based on the multiple years investment they have required.</p> <p>Compensation for non-productive fruit bearing tree is the cost of the sapling plus the cost of maintaining the tree up to the time that the tree was cut because of the project.</p>	<p>During interviews with APs on trees, it was pointed out that the fluctuation of the value of tree products was influenced largely by the supply and demand and the absence of post harvest facilities. Fruit was sold when all other farmers sold their fruit. In the off-season, prices were higher but few farmers could store their crops until then</p>	<p>The compensation rate for a fruit bearing tree is the average yield per tree (AF 1,500) times the age of the tree.</p>	<p>The same point as above applies here too</p>
Restoration of income 1. Crop losses	<p>cash compensation at current market rates for the full harvest of 1 agricultural season. In case of sharecropping, crop compensation will be paid both to landowners and tenants based on their specific sharecropping agreements.</p>	<p>No apparent input from APs. But there may be disputes between owners and sharecroppers which officers from the implementing NGO and possibly from ESSU might become involved in</p>	<p>No figures can be given</p>	<p>As noted in column 3 this may not be as straightforward as it seems. Inter-AP disputes may erupt and the GRC called into action.</p>
2. Business losses	<p>compensation for permanent business losses will be in cash for the period deemed necessary to re-establish the business (6 months). Compensation for temporary business losses will be cash</p>	<p>The figures in the next column do not seem to admit of negotiation but there will be an issue of whether a business is permanent or temporary on which APs will wish to be consulted and have their views</p>	<p>Permanent business will receive AF 6,000 a month for 6 months. Temporary business losses will be paid for up to 3 months at AF 6,000 a month</p>	<p>This is another area where disputes could arise but between those offering and those receiving compensation.</p>

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		taken on board		
3. Income restoration for workers and employees	Indemnity for lost wages for the period of business interruption up to a maximum of 3 months	This does not admit of much negotiation although there may be differences of opinion of what count as wages	No figures because wages differ depending on the work being done	Ditto but in addition, there could be disputes between employer and employee on wages which the project will have to arbitrate on.
Income Restoration Allowance for Severe Agricultural Land Impacts	When >10% of the agricultural land of a AP is affected, APs will get an additional allowance for <i>severe impacts equal to</i> the market value of a year's net income crop yield of the land lost.	Given the problems of measurement of APs' holdings – see above column 5 on crop losses – this may be difficult to compute and careful negotiations with the APs will be necessary	No figures because the exact sums of money involved will depend on the use to which the land is being put	Although this has the appearance of objectivity for reasons noted in column 3 there may be disputes which will need to be handled sympathetically.
Vulnerable group allowance	Vulnerable people (APs below the poverty line, women household heads, mentally challenged headed households, etc.) will be given assistance.	There will need to be careful and sympathetic consultation and negotiation with these APs	A one-time allowance for vulnerable APs equivalent to at least AF 5,200 and priority in employment in project-related jobs.	Whether this will be seen as adequate will depend on the income forgone. It might be advisable to build in some flexibility here hence the 'at least'.
Transitional livelihood allowance	APs losing land or losing a house and forced to relocate will receive a livelihood allowance.	Disturbance is a standard head of compensation but it will need a willingness to be flexible on rates as disturbance is not an objective matter.	At least AF 5,200 a month for 3 months	This is very much a 'guestimate'. It may be the best that can be done in the circumstances. Here too the words 'at least' have been added to provide for some flexibility
Rental allowance	House renters forced to relocate will receive a rental allowance and will be assisted in identifying alternative accommodation	Negotiations with APs central to the operation of this head of compensation	3 months' rent at the prevailing market rate which in the project area from which these figures are taken was AF 5,000/mo	What the prevailing market rent is must differ from place to place. It is probably not worth while trying to create a 'shadow' market. As with other heads of 'allowances' some flexibility must be built into the outcome.

## **11.1 A draft Resettlement Code made under the authority of article 22(5) of the Law on Land Expropriation and based on the principles and processes set out in this RPF.**

### **1. Duty to resettle**

The duty to resettle requires that an acquiring authority make all necessary arrangements whether through a plan or otherwise to ensure that project affected persons who are to be relocated as a consequence of the acquisition of their land are –

- informed about their options and rights to be resettled;
- consulted on and offered choices and provided with realistic and feasible resettlement alternatives;
- assisted to resettle; and
- provided with compensation at full replacement cost in accordance with the Code for losses attributable directly to the acquisition of their land.

### **2. Project affected person not obliged to accept resettlement under this Code**

1. A project affected person who has a right to be resettled under this code is under no obligation to accept resettlement under and in accordance with this code but may instead apply to receive compensation in lieu of resettlement under this code.

2. A project affected person may decide not to avail him- or herself of resettlement under this code at the commencement of, or at any time during the preparation of, or on the completion of a resettlement plan.

3. The acquiring authority shall, after satisfying itself that the project affected person is making an informed decision on the matter and has considered the needs and interests of any dependents, pay such compensation as that project affected person is entitled to in lieu of resettlement under this code.

4. A project affected person who is paid compensation under this article shall on receipt of the compensation sign a disclaimer of any entitlement to resettlement under this code.

### **3. Circumstances when resettlement plan required**

1. Where the numbers of project affected persons required to vacate certified land and move to some other land exceeds two hundred persons, the acquiring authority shall

be under a duty to prepare in accordance with the provisions of this code a resettlement plan.

2. In determining the number of project affected persons required to leave certified land, the acquiring authority shall calculate the number taking into account the entirety of the project notwithstanding that the project may be planned to be implemented in several sub-projects over a number of years.

#### **4. Resettlement committee**

1. An acquiring authority shall, in any case specified in regulation 3 and after consulting with and taking account of the advice of the provincial and local authorities having jurisdiction within the area of certified land, arrange for and assist in the establishment of a resettlement committee consisting of not less than seven nor more than twenty project affected persons for each sub-project.

2. The functions of a resettlement committee shall be to –

- be involved in the preparation and implementation of a plan;
- represent to the acquiring authority and all persons and organisations working with the acquiring authority the concerns and interests of all project affected persons;
- undertake such other activities as are calculated to further the interests of project affected persons.

3. The Ministry shall make rules providing for the mode of establishing a committee and the rules shall be designed to ensure that the members of a committee shall be representative of all project affected persons and for the procedures for the conduct of the committee.

#### **5. Preparation of plan**

1. The acquiring authority shall cause to be prepared a plan in any case referred to in regulation 3 where it is necessary for a plan to be prepared.

2. A plan shall be prepared by any person or organisation with the necessary social and technical skills and knowledge from the public or private sector, including a non-governmental organisation or an association of persons from the area concerned and such a person or organisation shall be referred to in this code as ‘the planner’.

3. The planner shall –
  - prepare a plan within three months of being appointed to prepare a plan;
  - comply with the provisions of sub-articles 4 to 10 in preparing a plan;
  - comply with the provisions of paragraphs 4 and 7 to 10 in preparing a guide,and shall be responsible for arranging public meetings, village meetings, water associations meetings and meetings of the resettlement committee referred to in sub-regulations 4 to 10 with such timings so as to comply with the time-scales for the preparation of the plan or guide.
4. The planner shall conduct a survey of the certified land, the project affected people and any land which may be used for purposes of resettlement to ascertain the conditions, circumstances and wishes of the project affected persons and the persons already in occupation of the land which may be used for resettlement in relation to any resettlement.
5. The planner may hold such public meetings with project affected persons and persons in areas which may be used for resettlement as will in its opinion contribute to he understanding of the circumstances and needs of such persons.
6. The survey, together with a report of any public meetings referred to in sub-article 4, shall be placed before and considered by the resettlement committee.
7. The planner shall prepare a draft of a plan or guide on the basis of the survey, other relevant information, the views of the acquiring authority and any comments made at any meetings referred to in paragraph 3 and by the resettlement committee.
8. A draft plan shall be placed before one or more public meetings on or near to the certified land and any land planned to be used for resettlement to enable the project affected persons and other persons to comment on and suggest additions and amendments to that draft plan or guide.
9. The draft plan or guide together with a report of the public meetings referred to in paragraph 8 shall be placed before and considered by the resettlement committee.

10. The planner shall have regard to any comments and suggestions for changes to the plan or guide made at any public meetings and by the resettlement committee and shall amend the plan accordingly.

11. The planner shall submit the plan or guide to the acquiring authority which shall be responsible for its implementation.

12. The acquiring authority shall hold regular meetings with the resettlement committee in connection with the implementation of the plan.

## **6. Content of plan and guide**

1. A resettlement plan prepared to give effect to the duty referred to in regulation 4 shall include measures to ensure that project affected persons are provided with –

- financial and practical assistance during relocation;
- housing, or housing sites, or, as required, agricultural sites or sites for commercial premises which are at least equivalent to the advantages of the place which the project affected persons are leaving;
- where necessary, income and other support after displacement, for a transition period, based on a reasonable estimate of the time likely to be needed to restore their livelihood and standards of living; and
- where necessary, development assistance in addition to compensation measures including but not limited to land preparation, credit facilities, training, and job opportunities.

2. A plan which requires that project affected persons shall be resettled in places which are already occupied shall include measures to assist the existing occupiers of the land to adjust to and not be disadvantaged by the arrival of project affected persons and such measures may include or be similar to the measures specified in paragraph 1.

3. A plan shall include a detailed programme for the phased relocation and resettlement of project affected persons.

## **7. Assessment of cost of plan or guide**

1. The planner shall, as part of the plan, prepare an estimate, to be known as a compensation assessment, of the cost of implementing that plan.

A compensation assessment shall include:

- the rights and interests in land which all project affected persons have or claim to have, including rights and interests to use land in common;
- the rights and interests in plants and trees which all project affected persons have or claim to have;
- the livestock and other moveable property which project affected persons will be taking with them when they are resettled;
- the income and the sources of income which project affected persons have;
- the preferences which project affected persons have for the nature of the compensation which they may receive;
- an estimate of the value of each claim and of the amount of compensation and the nature of the compensation which will be required to meet the claims set out in the assessment;
- an estimate of the costs of providing such other services and facilities to mitigate the costs of, and provide assistance for, relocation and resettlement;
- such other matters as in the opinion of the planner should be the subject of a compensation assessment or as may be directed to be included by the acquiring authority.

3. A compensation assessment shall not affect any claim to compensation made by a project affected person or the amount of compensation that may be awarded to such a person.

## **8. Implementation of plan**

The implementation of a plan shall involve all or any of the following actions depending on the nature of the resettlement and the numbers of persons to be resettled –

- where the land to which project affected persons (in this regulation referred to as “settlers”) are to be relocated is already occupied by existing occupiers, regular meetings shall be arranged between the resettlement committee and settlers and existing occupiers to settle any disputes and ensure a harmonious atmosphere prevails during and after resettlement;
- the acquiring authority shall cause to be prepared sites and houses for settlers and basic services of water and electricity in such time that such sites and housing are usable before settlers move in;
- notice of not less than ninety days shall be given to settlers before they are required to move to their new sites and houses;

- assistance is provided to settlers to dismantle any structures on their existing land which they wish to re-erect on their new sites;
- transport is provided for the movement of settlers, their possessions, building materials if any, and livestock, if any, in sufficient quantity so that settlers are not required to wait on the day scheduled for their relocation for a period in excess of six hours before being transported to their new sites;
- advice and assistance from local safeguards officers from the area from which settlers are being relocated and from other persons with qualifications relevant to resettlement are available both at the site from which settlers are being relocated and at the new site at the time of relocation and from time to time thereafter at the new site to deal with any problems and disputes arising out of resettlement;
- settlers are paid any lump sum compensation due to them before the time of relocation;
- arrangements are in place and have been explained to settlers for the payment of any sums of money or other things as compensation on a regular basis for a specific period of time;
- such other matters are provided for as may be agreed upon between the acquiring authority and the resettlement committee after good faith negotiations on such matters.

## **9. Grievance Redress Committee**

1. There shall be established a Grievance Redress Committee (the Committee) for the project.
2. The Committee shall be composed of
  - the project affected person or his/her duly appointed representative,
  - a representative of the local administration
  - a Representative from ESSU,
  - a Representative from the legal department of the province or district
  - a Representative of the implementing NGO
3. The Committee shall register any complaint made by a project affected person on any matter connected with a resettlement plan and its implementation as it affects him or her.



4. The Committee shall consider any registered complaint and shall have power to call for any documentation relating to the resettlement plan.
5. The Committee may permit the complainant and a representative of the acquiring authority or any organisation carrying out functions connected with the implementation of the resettlement plan on behalf of the acquiring authority to appear before it and participate in discussions and negotiations about the complaint.
6. The Committee shall issue its recommendation on the complaint within ten days of the complaint being made to it.
7. If a complainant is not satisfied with the recommendation of the Committee he or she may take the complaint to a local court.

## **10. Monitoring resettlement**

1. An external monitor shall have the duty of monitoring resettlement and the preparation and implementation of a plan and guide.
2. In pursuance of the duty set out in paragraph 1, the external monitor is empowered to –
  - attend any meeting of the planner and of the resettlement committee and any public meeting;
  - have access to, review and comment on any plan or other document produced in connection with the preparation of a plan;
  - meet with and discuss any aspect of resettlement with the acquiring authority;
  - meet with and discuss any aspect of resettlement with any project affected person;
  - be present at any phase of the implementation of a plan;
  - make representations on any aspect of the implementation of a plan to the acquiring authority which representations shall be acted upon in a timely manner by the acquiring authority; and
  - prepare full and regular reports on the preparation and implementation of a plan or guide which shall be submitted to the acquiring authority and shall be made available to the public.

## 11.2 Commentary on the draft Resettlement Code

This code deals with resettlement; the relocation of PAPs from their land which is being acquired to other land. This code builds on practice in Afghanistan as evidenced by existing resettlement plans and on international best practice as set out in World Bank OP 4.12.

### **Regulation 1 : Duty to resettle**

establishes the duty to resettle PAPs that have to be moved and sets out the content of the duty; basically, to involve PAPs in the preparation and execution of any plan of resettlement, to pay compensation and to assist PAPs in their move and in their resettlement.

### **Regulation 2: Project affected person not obliged to accept resettlement under this code**

This regulation provides that a PAP is not obliged to accept resettlement but can take his or her compensation and 'go it alone.' If he or she does that then when receiving compensation, they must sign a disclaimer to the effect that they accept the State is under no obligation to resettlement them once they have received their compensation.

### **Regulation 3 : Circumstances when resettlement plan required**

This regulation provides that a resettlement plan will be required where more than 200 PAPs are to be resettled. There is no particular magic in the number 200 but its used in OP 4.12 and given that the figure is used in an influential statement of international best practice, it is sensible to follow it.

### **Regulation 4 : Resettlement committee**

establishes a resettlement committee of PAPs and provides for its functions. If participation is the key to successful and co-operative resettlement, it is clearly sensible to provide for a committee of PAPs with whom the acquiring authority, its officials and resettlement planners can work. The committee must itself keep in touch with the PAPs and be involved in the planning and implementation of a resettlement plan.

### **Regulation 5 : Preparation of plan**

sets out the process for the making of plans. The acquiring authority is responsible for the plan but may appoint a firm or some other body (the planner), e.g. an NGO to prepare a

plan. The regulation provides a fairly simple straightforward process of plan making: survey; public meetings; report on same to committee; draft plan; public meetings on draft; committee to consider draft plan in light of views of public meetings; revised plan to acquiring authority which is responsible for implementing it.

## **Regulation 6 :           Content of plan**

sets out the content of the plan. Financial and other assistance during relocation; provision of sites in the relocation area for housing and other activities; income and other support during a transitional phase and compensation for losses. Where the relocation area is already occupied, the plan must contain measures to assist existing occupiers and to assist in the integration of newcomers into the existing community. A programme of implementation must also be included.

## **Regulation 7 :           Assessment of cost of plan**

provides for the financial aspects of a plan. The plan must contain an assessment of the costs and this regulation sets out what any such assessment must contain. It is basically the value of what PAPs will be losing; the costs of moving; the costs of resettlement; the costs of income support in the new location; the costs of compensation and general administrative costs. This paragraph puts the onus on the planner who has to go round to the project affected persons (PAP), discuss with them what their likely losses are and what type and form of compensation they would want. The exercise is a co-operative exercise in which the PAP are to play an important part putting forward their ideas and requirements.

## **Regulation 8 :           Implementation of plan**

sets out the steps required for the implementation of a plan or guide. These involve regular meetings with PAPs and existing occupiers of the relocation land; help to PAPs to dismantle moveable buildings and pack up; transport of livestock (if any); of the PAPs with due and fair notice; help with resettlement; payment of compensation; and arrangements in place for income support to be provided once PAPs have moved.

## **Regulation 9:           Grievance Redress Committee**

This regulation establishes a Grievance Redress Committee which provide a semi-formal avenue for a project affected person who considers that he or she has not been treated fairly in the resettlement process to make a complaint about the treatment received. The GRC will adopt a conciliatory and negotiating approach to the grievance and try to ensure

that the matter is not taken further. It has the powers to call for any documentation and will usually invite both sides to its meeting to try and reach an acceptable resolution to the complaint. A project affected person still dissatisfied by the recommendation of the GRC may take the matter further to a local court.

## **Regulation 10:        Monitoring resettlement**

creates a duty on the acquiring authority to monitor resettlement. Monitoring will be both internal and external. This regulation deals with external monitoring and gives an external monitor all necessary powers to monitor and check on the resettlement plan and its implementation by being able to interview PAPs, by accessing documents; visiting relocation sites. The external monitor must produce a regular reports for the acquiring authority which must also be made available to the public.

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<sup>i</sup> A good explanation of injurious affection is provided by a Canadian judicial decision given in 1916: “The basis of a claim for lands injuriously affected by severance must be that the lands taken are so connected with or related to the lands left that the owner of the latter is prejudiced in his ability to use or dispose of them to advantage by reason of the severance.” The value of the lands left is reduced by virtue of the taking and that must be compensated for. B. Denyer-Green (2003) *Compulsory Purchase and Compensation* 7<sup>th</sup> ed (Estates Gazette, London), 234.