



## Consultant's Report

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TA-7566-REG: Strengthening and Use of Country  
Safeguard Systems (44140-012)

Land Acquisition and Resettlement Safeguards in the  
Transport Sector in Timor-Leste

Report by Legal Specialist

Asian Development Bank

## ABBREVIATIONS

CSR	Country Safeguard Review
CSS	Country Safeguard System
DLPCS	Directorate of Land, Property and Cadastral Survey
DMC	Developing Member Country
draft Land Fund Law	draft Land Fund Law ( <i>Fundo Financeiro Imobiliário</i> ) (2012)
draft Land Law	draft Special Regime for Determining Ownership of Immovable Property ( <i>Regime Especial para a Definição da Titularidade de Bens Imóveis</i> ) (2012)
draft EL	draft Expropriation Law ( <i>Lei das Expropriações</i> ) (2012)
EL	draft Expropriation Law ( <i>Lei das Expropriações</i> ) (2012)
FFI	<i>Fundo Financeiro Imobiliário</i> (Land Fund)
GOTL	Government of Timor-Leste
IR	Involuntary Resettlement
MOJ	Ministry of Justice
MSS	Ministry of Social Solidarity
SPS	Safeguard Policy Statement (ADB)

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## EXECUTIVE SUMMARY

Involuntary resettlement under development projects, if unmitigated, could give rise to severe economic, social and environmental risks, including loss of production, impoverishment through loss of productive assets or income sources, relocation to environments where productive skills are less applicable, and disruption of community institutions and social networks. For these reasons, it is important that a country's safeguard systems are well structured and well administered. To assist development member countries to establish such safeguard systems in relation to land expropriation and resettlement, ADB has adopted a Safeguard Policy Statement. This sets out international best practice for involuntary resettlement safeguards.

Timor-Leste is now developing a Land Expropriation law, drawing on an earlier draft but with a number of amendments. The draft law is currently available for public comment, and is to be revised after that comment is received.

The draft law incorporates important safeguards, consistent with international best practice. These include a public consultation process at the project establishment stage, monitoring of compliance by the Ministry of Justice, support to the displaced poor and provision of replacement land. The draft law establishes the important objective that expropriation must leave affected persons in circumstances such that their standard of living is equal to or higher than the one they enjoyed before the expropriation took place.

During the revision stage, the draft law would be improved by the incorporation of further amendments. An important revision would be to require project proponents to prepare project planning documents, to form the basis for consultation. These would be specified in Ministerial Regulations or Guidelines, and would include resettlement plans. The Law should require project proponents to comply with resettlement plans, and to monitor and assess resettlement outcomes. The Law should also be revised to extend the definition of "affected person" to include displaced occupiers of State land. There should be power to make Ministerial Regulations and Guidelines, consistent with the Law, on a range of issues: these should be reviewed and revised on an on-going basis.

The reforms will impose considerable demands on government institutions. Legal reform without institutional capacity and the will to implement that reform is unproductive: it merely creates false expectations and confusion about rights and responsibilities. It should be an objective of the GOTL to provide effective institutional support to the principled, equitable and legally sound administration of land expropriation and resettlement law during the next 5 years, and beyond.

## I. INTRODUCTION

1. This is a report by the Legal Specialist assigned undertake legal analysis and institutional capacity assessment and to provide recommendations for an action plan for strengthening country safeguard systems applying to land acquisition and resettlement in the transport sector in Timor-Leste.

2. There is no expropriation law in effect in Timor-Leste.<sup>1</sup> Projects which are now in development are likely to require the expropriation of land, so the establishment of an expropriation law is now an issue of immediate importance for the country. Considerable law reform work has been undertaken in the past, but little has resulted. In 2010 a draft Expropriation Law was submitted to Parliament and, with some amendments, was passed and submitted to the President. The President, however, refused to give assent to it, so it has lapsed. Other laws have been made and are in effect, providing for negotiated land transactions and for removal of squatters from Government land – however, none provides for expropriation of land.

3. A bundle of three inter-related draft laws is now under development: they are a draft land law, a draft expropriation law and a draft land fund law. The three draft laws were made available for stakeholder comment in November 2012, which is being sought by 15 February 2013. After revision following stakeholder consultation, they are to be submitted to the Council of Ministers in April 2013. If approved, they will be submitted to Parliament. If they are passed by Parliament and endorsed by the President, they will become law, creating a legal framework for land expropriation and resettlement. There will then follow an implementation phase, requiring the development of Ministerial Regulations and Guidelines, as well as institutional capacity to implement the laws.

4. The work of the consultant under this project included consultation with the Government to assist in the establishment of a legal framework based on these laws which is consistent with international best practice as set out in the ADB IRS SPS. Much of that consultation has been with the Ministry of Justice, and in particular its consultant Mr Bernardo.

5. The proposed legal reforms will impose demands on public administration for line agencies and, especially, for the Ministry of Public Works and the Ministry of Justice (especially the Land Directorate, an agency of the Ministry of Justice). Presently, institutional capacity is weak, in part because there is no existing land expropriation law and hence no institutional experience in administering land expropriation. A related cause of weaknesses is the poor quality of land ownership records. As a result, if the proposed laws are enacted, institutional capacity will become a major issue for Timor-Leste and a major consideration in any assessment of its CSS.

### A. COUNTRY SAFEGUARD SYSTEMS AND THE ADB SAFEGUARD POLICY

6. The ADB involuntary resettlement safeguard policy, set out in the 2009 *Safeguard Policy Statement*<sup>2</sup> recognizes that developing member countries have developed their own systems for delivering safeguards in varying degrees and made efforts to strengthen and

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<sup>1</sup> As discussed in Appendix 1, in theory Indonesian law, as at 2002, is in force but cannot, in practice, be applied.

<sup>2</sup> ADB. 2009. *Safeguard Policy Statement*. Manila.

effectively use such systems. Those efforts enhance country ownership, reduce transaction costs, and extend development impacts over the long term. ADB is committed to supporting the strengthening of effective application of the Country Safeguard System (CSS), established by the legal and institutional framework of laws, regulations, rules and procedures. At the same time, developing member countries need to ensure that application of CSSs in ADB projects does not undermine the achievement of ADB policy objectives and principles. Application of CSS in ADB-financed projects is not mandatory: however, ADB may consider application of a CSS, if the system is equivalent to ADB safeguard system based on the results of both equivalence assessment and acceptability assessment. Acceptability assessment indicates whether the country has the acceptable implementation practices, track record, and capacity and commitment to implement its laws, regulations, rules and procedures as well as the recommended safeguard measures after the review of the CSS.<sup>3</sup>

7. The *Safeguard Policy Statement* consolidated, into a single statement, three safeguard policies – those dealing with involuntary resettlement, indigenous peoples and environment. There are commonalities between these policies, and as consolidated in the *Safeguard Policy Statement*, they are covered by a single “Overarching Statement on ADB’s Commitment and Policy Principles”<sup>4</sup>. The overarching objectives of the safeguards are to:

- a) avoid adverse impacts of projects on the environment and affected people, where possible;
- b) minimise, mitigate and/or compensate for adverse project impacts on the environment and affected people where avoidance is not possible; and
- c) help borrowers/clients to strengthen their safeguard systems and develop the capacity to manage environmental and social risks.

8. The involuntary resettlement safeguard policy has objectives, scope and triggers and 12 policy principles:

- a) **objectives:** the objectives, consistently with the overarching objectives of the consolidated safeguards, seek to avoid involuntary resettlement where possible, to minimise involuntary resettlement, to enhance or at least restore the livelihoods of affected persons, and to improve the standard of living of the displaced poor and other vulnerable groups;
- b) **scope and triggers:** these specify the actions which are covered by the involuntary resettlement policy. The policy covers two forms of displacement (physical displacement and economic displacement) resulting from involuntary acquisition of land or involuntary restrictions on land use on access to designated parks and protected areas.
- c) **policy principles:** the 12 policy principles deal with process (early screening, consultation and grievance redress, transparency of process, monitoring and assessment), IR planning and specific measures to be taken (including measures in relation to livelihood rehabilitation and resettlement).

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<sup>3</sup> Page, 24, Safeguard Policy Statement, ADB, June 2009.

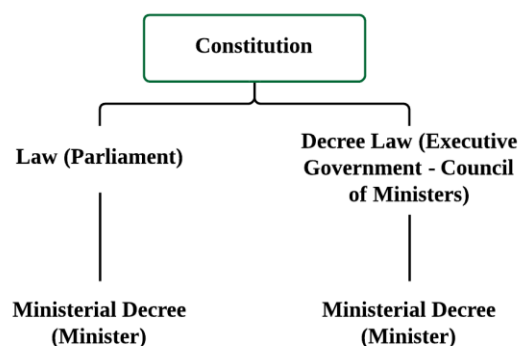
<sup>4</sup> SPS, pages 14-15.

## B. THE LEGAL FRAMEWORK

### *The structure of legislation in Timor-Leste*

A three-tier system of legislation applies in Timor-Leste, comprising the Constitution, laws and decrees. Although a structure similar to this applies in many countries, a feature of the structure which is less common is that Executive Government (acting through the Council of Ministers) has power to make laws which have the same position in the hierarchy as laws made by Parliament. This is shown in Figure 1.

**Figure 1: The hierarchy of laws in Timor-Leste**



9. The power to make decree laws is conferred on the Council of Ministers by section 116 c) of the Constitution, subject to some limitations.<sup>5</sup> The GOTL has used the power to make laws in relation to land and resettlement, but not expropriation, such as:

- i) Decree Law 5/2011: Environmental Licensing;
- ii) Decree Law 6/2011: Compensation for Resettlement from State Land. As shown in Figure 1, a Decree Law can be supported by a Ministerial Decree – however, this has not occurred. The absence of a supporting Ministerial Decree appears to be a reason why this Decree Law has had little or no use;
- iii) Decree Law 26/2012: Basic Environmental Decree Law.

### ***Land Expropriation and Involuntary Resettlement***

10. The legal framework for land expropriation in Timor-Leste is set out in Annex 1. The framework is sparse, particularly in respect of privately held land. The problem is compounded by lack of an effective legal framework for land ownership (in Timor-Leste land ownership is complicated by the history of land ownership laws, from pre-colonial times, through Portuguese administration, Indonesian administration and post-independence administration). Land ownership laws are important to the effective operation of expropriation laws.

<sup>5</sup> Section 95 provides that some issues can be dealt with only by the National Parliament. One of these (“rights, freedoms and guarantees”) is considered by some to have a wide meaning: however, another interpretation (apparently preferred by GOTL) is that it refers only to civil liberties such as freedom of expression and freedom of assembly. Section 96 sets out another list of topics in respect of which the National Parliament can authorise the Executive Government to make laws. One of these (paragraph k)) is “General rules and regulations for requisition and expropriation for public purposes.” Without this authorization it appears that the Executive Government cannot make a decree law for land expropriation.



11. However, much recent work has been undertaken in the development of three new laws, drafts, dealing with land ownership, land expropriation and the administration of a fund to support the operation of land ownership and land expropriation laws. These draft laws are based on three laws which were passed by Parliament in 2012 but vetoed by the President. They were presented at a technical workshop in Dili on 23 November 2012 for stakeholder comment, with a view to presentation to Parliament in 2013. In this report, a draft equivalence assessment has been prepared, based on the draft EL which was presented at that Workshop.

## II. LAND OWNERSHIP IN TIMOR-LESTE

### A. INTRODUCTION

12. Timor-Leste was under Portuguese colonial administration for over 400 years, until November 1975 when independence was declared. Indonesia then occupied East Timor, from December 1975 until August 1999.<sup>6</sup> This historical legacy has resulted in four sources of claim to land ownership – traditional title, title recognised under Portuguese administration, title recognised under Indonesian occupation and title recognised since 1999.

13. This complexity is compounded by the lack of property records and absence of a fully developed legal framework for land ownership.

14. Of an estimated 200,000 land parcels in East Timor as a whole, less than 25% have ever been formally registered (as at 2004). Most parcels have been held by traditional landowners, mostly as community ownership. Among registered parcels, the majority originated during the Indonesian era, and fewer during the Portuguese.

### B. CUSTOMARY TENURE<sup>7</sup>

15. Despite Timor-Leste's often violent turmoil, a system of customary and communal ownership, particularly in rural areas, has been remarkably resilient. The largest part of the country's land is governed by local customary systems of tenure, which has been estimated to be up to 97% of all land. Where land is under customary tenure, authority over land ownership and transactions rests with local traditional leaders.

16. Land use is allocated by community leaders and the sale of land to outsiders is generally not permitted. Community members still retain "highly individuated rights to land" within community areas, even if these do not equate to statutory rights. They function like inheritable usage rights. State practice has often been at odds with this understanding.

17. The Portuguese colonial administration gave little recognition of community land rights. In its late stages, it granted preferential rights to the families of liurai (or kings, above the level of suco (village) leaders) who had generally pledged loyalty to the colonial government, but this could often be at the expense of community holdings. Indonesian law during the occupation included notional recognition of community land (most commonly known as tanah ulayat), but very little was ever legally recognised.

### C. HISTORY OF DISPLACEMENT

18. A history of repeated displacements has further complicated patterns of land ownership and how they are locally understood. Major displacements include:

- i) Portuguese colonial administration. Movement beginning in the early twentieth century included forcible relocation to improve agricultural productivity, as well as to weaken traditional leaders and control the population in the wake of a rebellion launched in Manufahi in 1912. Other displacement was voluntary, including

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<sup>6</sup> For more detailed analysis, see "Report on Research Findings, Policy Options and Recommendations for a Law on Land Rights and Title Restitution", East Timor Land Law Program (USAID), July 2004.

<sup>7</sup> See: "Managing Land Conflict in Timor-Leste", Policy Briefing, International Crisis Group", September 2010, and *Land Claims in East Timor*, Daniel Fitzpatrick, 2002.

away from the mountainous areas towards more productive plains, where families opened up new land for cultivation.

- ii) Indonesian invasion, annexation and administration. The December 1975 invasion by Indonesian forces led a large part of the population to flee Dili and other urban centres for the mountainous interior. As Indonesia worked to establish greater control over the territory during the following three years, many Timorese were forcibly resettled along major coastal roads and away from the interior. Even those who were not resettled were forced to change their way of life. Rather than maintain separate patches of land for living, tending crops and allowing animals to graze, as was customary in some areas, all personal interests had to be within a single 200<sup>m</sup> area. Transmigration programs that resettled small groups from other Indonesian provinces also confused understandings of land use and ownership;
- iii) Post-1999 referendum. Violence following the 30 August referendum displaced over half the population. An estimated 250,000 were driven over the border into West Timor and some 300,000 fled homes in urban areas, particularly Dili. Following the restoration of order in the capital and elsewhere, but amid the confusion ushered in by the end of what many considered an illegal occupation, many Timorese moved into properties abandoned by the Indonesian state and those who had fled the country;
- iv) 2006 crisis and following: Insecurity in the capital in April and May 2006 displaced up to 150,000 people. Many took up residence in camps for internally displaced or sought shelter with relatives elsewhere in the city or countryside. They had difficulty returning to properties that had sometimes been occupied in their absence.

#### **D. CONFLICTING CLAIMS**

19. Efforts at constructing a new land tenure system in Timor-Leste have had to contend with the titles issued by two previous administrations. The Portuguese and the Indonesian governments issued a range of usage and ownership rights that continue to form the basis of many official claims to land ownership. An added challenge is that the bulk of the relevant records were destroyed in the post referendum violence in 1999, making independent verification and cross-checking of these titles impossible in most instances.

20. About 3,000 land titles were issued by the Governor of Portuguese Timor; over half were issued in the last 25 years of Portuguese rule and a similar amount concerned land in the capital district of Dili. A large proportion were not full ownership rights (*propriedade perfeita*) but a form of limited-term lease with an option to buy (*aforamento*) that frequently stipulated how the land would be used. Recognition of community land rights were limited, and civil society groups today underscore this as one reason a blanket recognition of Portuguese land rights would be unjust. One division between the opposing parties in the country's 1975 civil war was FRETILIN's support for land redistribution.

21. A far larger number of titles (some 45,000) were issued by the Indonesian administration. These were roughly evenly split between titles of full ownership (*hak milik*) and a wider range of usage rights, including several types of leases for state land. A large proportion of companies developing land were closely linked to the military. Until a full-scale conversion process began for Portuguese titles in 1991, decisions on land holdings were based on a decree issued by the armed forces commander that gave the military power to make allocations. Other notable features in this period were a heavy presumption in favour of state ownership, the

widespread practice of state expropriation of land in the public interest without proper compensation, and the perception of endemic corruption in the issuance of titles.

22. Weak recognition of customary rights to land was twinned with strong state rights to appropriate property “in the public interest”. Even where owners were offered compensation, it is difficult to determine if it was consensual: it is said that a suco chief in Lautem told of a request by Indonesian authorities, backed by military force, to expropriate his land for a local health centre (*puskesmas*). They placed 3 million rupiah on the table and on top of the money a pistol, and told him that with or without his permission they were going to take the land. There has been little discussion of formal restitution in cases like this, even though there is a long list of such claims. After independence, many Indonesian-era village-level administrative buildings were reoccupied by those who claimed previous rights to the land. Such cases are important to understanding how people may perceive the strength of the state’s future claims to what they believe to be their land.<sup>8</sup>

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<sup>8</sup> “Managing Land Conflict in Timor-Leste”, Policy Briefing, International Crisis Group”, September 2010.

### III. COMMENTS ON THE DRAFT EXPROPRIATION LAW

#### A. INTRODUCTION

23. Timor-Leste has no Land Expropriation Law: however, a draft Expropriation Law is currently in preparation. In an important sense, this project is well timed – it has been possible to consider and comment on draft laws prior to their introduction into Parliament. However, it is also the case that there is no land expropriation law to analyse, so. Instead, the Consultant's inception report included analysis of a 2010 draft law and this report includes, in the Annex, an equivalence analysis based on a 2012 revision of that draft. This is not a merely theoretical exercise: the 2012 revision is being developed with a view to its introduction into Parliament.

24. The 2010 Draft Expropriation Law. At the commencement of the Consultant's first input the draft Expropriation Law introduced into Parliament in 2010, translated into English, ("the 2010 draft Expropriation Law") was available for consideration. This draft, with amendments, was passed by Parliament but vetoed by the President.

25. It is understood that the 2010 draft Expropriation Law was prepared by a law firm. It is well drafted, but limited in scope. Its major shortcomings were:

- a) no provision for consultation about the decision to expropriate (as distinct from a requirement to attempt to acquire by negotiation prior to expropriation);
- b) no provision for support to persons without legal rights to ownership or occupation of the expropriated land;
- c) no provision about resettlement, whether resettlement planning or resettlement support;
- d) valuation of land for the purpose of calculating compensation to be according to a fixed scale (and not by internationally accepted standards for land valuation).

26. The 2012 Draft Expropriation Law. A draft Expropriation Law was released by the Ministry of Justice at a Workshop on 23 November 2012. Comments from stakeholders by 15 February 2012 are now being sought, so that a revised draft can be prepared and, with the approval of the Council of Ministers, introduced into Parliament.

27. The 2012 Draft is a development of the 2010 draft, incorporating revisions. These include:

- a) a revised screening process, including requirements for consultation prior to project establishment;
- b) introduction of a concept of affected persons, with protection against eviction being provided;
- c) valuation, for compensation purposes, to be determined in respect of each plot (and not by reference to a table of values);

- d) inclusion of a definition of “public purpose”<sup>9</sup>, so that expropriation can occur only for one of the enumerated purposes. These include public roads, motorways, tunnels, railways and ancillary facilities.

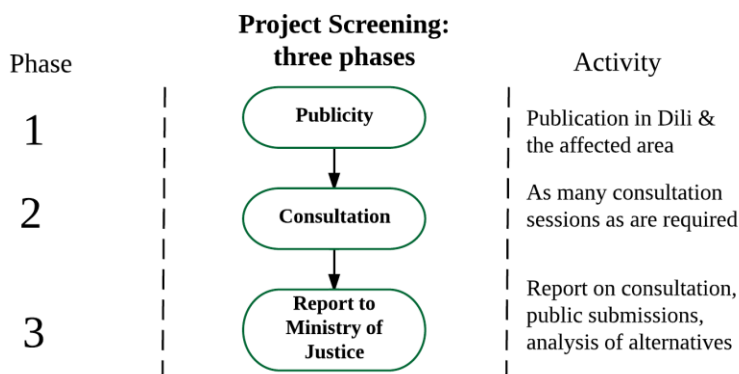
## B. SPECIFIC ISSUES

### *The revised screening process*

28. The revised draft Expropriation Law includes a new Chapter dealing with project screening. It includes a three phase consultation process, comprising:

- i) publication of the proposal (in Dili and in the affected area);
- ii) consultation, with as many consultation sessions as are required, including the opportunity to make written submissions about the proposal. This includes a requirement that at least one of the public hearings take place in the locality of the proposed acquisition<sup>10</sup>; and
- iii) a report by the line agency to the Ministry of Justice, providing information about the actions taken in phases 1 and 2, a summary of submissions made and analysis of alternatives to the expropriation of land. The three phases proposed in the revised draft Expropriation Law are depicted in Figure 2.

**Figure 2: Project Screening (proposed)**



29. This is an important improvement from the 2010 Draft, which provided for consultation *after* a decision to expropriate land, so that largely consultation was limited to determining the amount of compensation to be paid to land owners.

### Issues canvassed during project consultation

30. An issue of importance under the SPS is resettlement planning. Policy Principle 1 provides (in part) for the acquiring authority to “determine the scope of resettlement planning through a survey and/or census of displaced persons, including a gender analysis, specifically related to resettlement impacts and risks”.

31. The draft EL provides for project planning, and it establishes consultation mechanisms relating to the project. Further, it makes provision about resettlement -

<sup>9</sup> Article 1(3) of the draft EL.

<sup>10</sup> Article 16.2 of the draft EL.

### **Affected persons**

32. The draft Expropriation Law uses the concept of “affected person”<sup>11</sup> in several Articles. Importantly, under Article 4 an expropriation must not reduce the standard of living of affected persons, and under Article 6.2 the due diligence for an expropriation process takes place with the owner of the expropriated asset and with other affected persons.

33. The term “affected person” is defined in Article 6 of the draft Expropriation Law. Under this Article, affected persons are:

- i) the expropriated party;
- ii) a person who has an interest (including an encumbrance securing a loan) in the asset to be expropriated;
- iii) a person who occupies the asset and fulfils the requirements to be considered to be a resident in a family home as set out in the draft Land Law.

34. This third class of affected persons is defined by reference to the term “resident in a family home” as set out in the draft Land Law. The relevant provision of the draft Land Law is Article 58, which provides that a “family residence” is:

- i) an immovable structure intended to house the person who is in possession of it, with or without dependents, who does not have another residence or adequate means to obtain it; or
- ii) an immovable structure considered to be essential for the sustenance of the holder and his or her dependents, with no capacity to find a suitable alternative.

35. The scope of this third class of affected persons is difficult to interpret: although the terms “resident” and “family home” are used, the cross-reference makes it clear that it is intended to include poor, but not wealthy, residents as well as poor, but not wealthy, non-business operators.

36. To illustrate the meaning of these provisions, some possible scenarios, and the application of the draft EL to those scenarios, are set out in Table 1.

**Table 1: “Affected Person” – Possible Scenarios**

<b>The person’s status</b>	<b>“Affected person”?</b>	<b>Comment</b>
<b><i>Included in the definition</i></b>		
Owner of expropriated land	Yes	This is an “expropriated party” under Article 6 of the draft EL.
Mortgagee of the expropriated land (for example, a bank)	Yes	A mortgagee holds an “encumbrance” (a mortgage), and therefore is an “expropriated party” under Article 5 of the draft EL.

<sup>11</sup> The term used in the Portuguese language draft is *interessados*, which sounds to be cognate with “interested” (persons) in English, and this is the expression used by the translator of the English language version of the Expropriation Law. The term “affected” (person) is more appropriate in this context as it carries no connotation of a legal interest – this connotation is clearly not intended in the Portuguese language draft.

<b>The person's status</b>	<b>"Affected person"?</b>	<b>Comment</b>
A person who, prior to the cut-off date, <sup>12</sup> was a tenant of a building located on the expropriated land	Yes	A tenant holds a "real property interest" and therefore is an "expropriated party" under Article 5 of the draft EL.
A resident on expropriated land who does not have another residence or adequate means to obtain one	Yes	This person is a "resident in a family home" referred to in Article 6(1) of the draft EL. For the meaning of this term it is necessary to refer to Article 58 of the draft Land Law.
A person who, prior to the declaration date, operated a food kiosk on expropriated land without the permission of the owner of the land	Yes	This person is a "resident in a family home" referred to in Article 6(1) of the draft EL. For the meaning of this term it is necessary to refer to Article 58 of the draft Land Law.  Despite the use of the term "resident in a family home", the referenced provision of the draft Land Law extends the operation of the term to include a person who has an immovable structure which is not a residence. This applies if the structure is considered to be essential for the sustenance of the person and his or her dependents and the person has no capacity to find a suitable alternative.
<b><i>Excluded from the definition</i></b>		
A well-resourced person who, without the permission of the owner, resides on expropriated land	No	This person would be excluded from the definition of "resident in a family home" as he or she has adequate means to obtain another residence.
The owner of a kiosk on State land next to a road carriageway who does not have approval of the GOTL to be there	No	The land is not expropriated land (the state cannot expropriate from itself). A structure on the land forms part of the land, so, for the same reason, the structure is not expropriated.
A tenant of the GOTL who occupies, under a lease, a structure on state land	No	The land is not expropriated land (the state cannot expropriate from itself). A structure on the land forms part of the land, so, for the same reason, the structure is not expropriated.  However, the State would need to terminate the lease in order to lawfully require the person to vacate the land, giving the person remedies under commercial law for early termination of a lease.
A person who occupies expropriated land under a lease made after the cut-off date.	No	The definition of "affected person" is limited to persons who acquired to relevant interest before the cut-off date.

37. The ADB SPS defines an "affected person" to include a person:

"who is physically displaced (by relocation, loss of residential land or loss of shelter) or economically displaced (by loss of land, assets, access to assets, income sources, or means of livelihoods) as a result of (i) involuntary acquisition

<sup>12</sup> This is the date of publication of the notice provided for in Article 14(2) – see Article 6(1). It is intended that this will be the date of the cadastral survey.



of land, or (ii) involuntary restrictions on land use or on access to legally designated parks or protected areas.”

38. As currently drafted, the draft EL excludes some persons who would be “affected persons” under the ADB SPS. These are i) occupiers of expropriated land who do not have an interest in that land and are not poor, and ii) occupiers of State land. If the draft EL is to be made consistent with the SPS, Article 6 should be amended to include all affected persons. This could be achieved by amending Article 6 so that it contains a broader definition of “affected person”, as set out in Annex 2 to this Report.

39. An alternate approach would be to enable the definition to be broadened by Ministerial Regulation. An approach of this type was included in the 2010 draft EL. This approach could be used to achieve the same outcome, but in a less transparent manner.

### **Project Planning**

40. Policy Principle 1 under the ADB SPS requires that a project be screened early on to determine impacts and risks. This principle includes determination of the scope of resettlement planning through a survey and/or census of displaced persons, including a gender analysis, specifically related to resettlement impacts and risks.

41. The draft EL, unlike the 2010 draft, includes detailed requirements for pre-project consultation. The draft EL will be brought into full equivalence with Policy Principle 1 if it is amended to require that a project proponent prepare project planning documents which conform with requirements of the law, Ministerial Regulations and Approved Guidelines made under the law – with the Regulations or Guidelines, prepared during the implementation phase, requiring that project proponents undertake resettlement planning consistently with Policy Principle 1. A draft Article to this effect is included in this report at page 35.

### **Valuation**

42. The 2010 Draft EL<sup>13</sup> provided for land valuation to be made according to a table of values, calculated on an area basis (an amount *per square metre* was to be payable). In the 2012 Draft EL, Article 19.3 instead provides:

“3. Compensation must be calculated on the basis of the market value of the real estate property at the time of the expropriation, in accordance with the definition of market value which existed at the time based on international best practices such as those established in the Handbook of Valuation Standards of the International Valuation Standards Council (IVSC).”

43. This provision refers to the definition of market value which, at the time of calculation, accords with international best practice. The presently understood “international best practice” meaning of “market value”, in relation to an asset, is the amount for which the asset should exchange on the date of valuation between a willing buyer and a willing seller in an arms’ length transaction, after proper marketing, if the parties have acted knowledgeably, prudently and without compulsion<sup>14</sup>. In effect, Article 19.3 mandates the use of this concept, and equally could be drafted to use this expression. However, as drafted, the reference to Handbook of Valuation

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<sup>13</sup> Article 18.

<sup>14</sup> Section 3.7.3.7 and section 4 of the Report of the International Valuation Specialist.

Standards of the International Valuation Standards Council is also an effective way to require the payment of market value, as it provides an example of international best practice.<sup>15</sup>

44. Article 19(3) is supported by further articles:

- i) Financial costs – Article 19(4) a) provides for payment of compensation for financial costs, including costs associated with re-housing and commercial losses;
- ii) Value of buildings and plants – Article 20(1) provides that, in calculating the amount of compensation for an acquired property, the value of the land is to be supplemented by the “cost to replace existing buildings or plantations”. If this is a figure higher than the market value of the land and buildings, it will result in payment of higher compensation than would be available if just market value was paid. If it is lower, it will result in payment of compensation which is less than market value. Although this circumstance may never arise, it would be more complete if Article 20 provided that
 

“In the event that the amount calculated under Article 20(1) is lower than market value, compensation must be calculated at market value”;
- iii) Partial expropriations – Article 21 deals with partial expropriations of properties. This should deal with the issues of injurious affection (diminution in the value of the remainder of a person’s property) and severance (diminution in value by the separation of parts of the expropriated party’s remaining land). As drafted, this provision refers to loss suffered by a non-expropriated party: this should refer to an affected person, and the Article should provide for the compensation to be paid to *that* person. If this revision is made, Article 21(2) will be as follows:<sup>16</sup>

“If an affected person suffers loss due to the division of a property or if other loss results from that division [...], the amount of the loss must be added to the compensation to be paid to the affected person.”;
- iv) Leases – Article 22 provides for separate compensation for lessees, based on the market value principle;
- v) Various rights of *propriedade plena* – Article 24 provides for payment of compensation for various rights of *propriedade plena*. If surface use rights have been created, the effect of Article 24 is that compensation will be payable to each of the owner of the land and the owner of the surface rights (the amount of the compensation payable to the owner would be a reduced amount).

45. The compensation provisions of the draft EL raise two questions: i) whether the provisions are consistent with Policy Principle 3 of the ADB SPS; and ii) whether they are capable of being applied.

### Consistency with Policy Principle 3

46. Under Policy Principle 3, Key element (1), the livelihoods of displaced persons should be restored or improved through land-based resettlement strategies where possible. Key

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<sup>15</sup> The International Valuation Standards Council is an independent, not for profit, private sector organisation incorporated in the US and with its headquarters in London. It develops and promotes technical and ethical standards for the conduct of valuations on which investors and others rely.

<sup>16</sup> This recommendation is based on the English language translation. The only proposed changes are those underlined.

element (1) further provides that cash compensation at replacement value for land is to be paid when the loss of land does not undermine livelihoods. Under Key element (2), restoration or improvement of livelihood is to be achieved through prompt replacement of assets with access to assets of equal or higher value. Under Key element (3), restoration or improvement of livelihoods is to be achieved through prompt compensation at full replacement cost for assets that cannot be restored.

47. In many circumstances, the draft EL will provide outcomes that are consistent with Policy Principle 3. This might occur in one of two ways:

- i) where replacement land is provided,<sup>17</sup> leading to restoration or improvement of livelihoods; or
- ii) in circumstances where the SPS does not require resettlement (for example, under Key element (1), where the loss of land does not undermine livelihoods) – where the level of compensation meets or exceeds the cash compensation requirements of the SPS.

48. Further, the calculation of compensation for expropriation of land with buildings is to be based on replacement cost of the buildings.<sup>18</sup>

49. There is a possibility, however, of outcomes which are not consistent with the SPS. This might occur for the following reasons:

- i) if replacement land is provided under the EL but is inadequate to produce restoration or improvement of livelihoods;
- ii) if replacement land is not provided, in circumstances the SPS requires that resettlement should be available. This could be a significant failure if compensation paid for expropriated land is inadequate to enable acquisition of suitable replacement land – the affected person’s livelihood may be destroyed.

50. In both of these circumstances, the outcome would be in breach of the objectives of the draft EL – Article 4, which provides that an expropriation must leave affected persons in circumstances such that their standard of living is equal to or higher than that which they enjoyed before the expropriation took place. If the provision is well administered, consistently with any Ministerial Regulations or Guidelines, it will produce outcomes which are consistent with the SPS.

#### Application of the “market value” provisions of the Act

51. The provision of compensation based on market value requires that: i) the land have a market value. For this to be the case, there must be a “market” existing at the time, within the meaning of Article 19.3; and ii) suitably qualified persons are available to make the assessment.

52. If it is considered by the GOTL that supporting Ministerial Regulations are required, care should be taken to ensure that the Regulations do not re-introduce the concept of tables of values based on a standard rate for each square metre of area. Land varies in value over time, and by location – some land has a higher value per square metre than other land. The use of

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<sup>17</sup> Article 22 of the draft EL provides for tenants to have an option whether to accept replacement land with features similar to the expropriated land (including any buildings on the land), or financial compensation. (Note: the cross reference in Article 26(3) to “Article 20(2)” should be to “Article 22(2)”. Article 47 establishes that the parties may agree that compensation is to be paid in part or in full by the provision of a property with features similar to those of the expropriated land.

<sup>18</sup> Article 20(1) of the draft EL.

tables would be inconsistent with the proposed provisions of the draft EL which will require payment based on market value and would be inconsistent with the “replacement value” concept in Key element (1) of Policy Principle 3.

53. If Ministerial Regulations or Guidelines are made, the “market value” concept would be strengthened if they provide that, in determining market value of an asset, the assessment must be made on the basis of the highest and best use of the asset.

54. There is an issue as to the availability of valuers who are adequately skilled to assess the market value of land. It is desirable that the line agency have access to valuation advice for project preparation purposes. It is also desirable that affected persons have access to independent valuation advice so they can assess offers made to them and make informed decisions. For these reasons, for each acquisition, at least two qualified valuers should be available.

### ***Monitoring, implementation and review of resettlement***

55. The draft EL has revised provisions for project screening and project approval. However, it has no provision for ongoing implementation, monitoring and evaluation of the project. In Annex 2, it is recommended that a new Article 13 be included, requiring that the project proponent must comply with project planning documents (such as a resettlement plan) in the planning, implementation, monitoring and evaluation of the project.

## **IV. INSTITUTIONAL CAPACITY**

### **A. THE OBJECTIVE TO BE ACHIEVED**

56. Legal reform without institutional capacity and the will to implement that reform is unproductive: it merely creates false expectations and confusion about rights and responsibilities. This is particularly the case with a law which imposes demands on government agencies for its effective administration, and which, if not well administered, has the potential to undermine rights of property ownership, and to cause dislocation, loss of livelihood on a range of affected persons, including the poor. If these adverse effects are to be avoided, it should be an objective of the GOTL to provide effective institutional support to the principled, equitable and legally sound administration of land expropriation and resettlement law during the next 5 years, and beyond.

57. If this objective is to be achieved, the following issues will require attention:

- i) legal reform – the making of necessary laws (particularly, the Expropriation Law and the Land Law) and supporting Ministerial Regulations and Guidelines. This reform will occur over a long period of time, from development of proposals for new laws, stakeholder consultation (these steps have already been taken), revision of the draft law, consideration by the Council of Ministers, consideration by Parliament, approval by the President, to be followed by implementation. The implementation phase will also call for legal reform, with the making of Ministerial Regulations, and with the making of Guidelines which are legally sound (that is, consistent with Laws and Ministerial Regulations);
- ii) engagement of staff – implementing agencies (particularly MOJ and MPW) will require additional staff to implement the legal reform;
- iii) co-ordination – relevant agencies of government will need to co-ordinate their activities, and they should act in a consistent manner. Two mechanisms (operating together) will assist in this: an active and proactive approach by MOJ as the central agency, and the effective, continuing operation of the Ministerial Working Group which has recently been established;
- iv) financial resources – responsible agencies will require the resources necessary to engage staff and perform their functions;
- v) implementation mechanisms – the means by which functions will be carried out. An example is contracting out some functions, such as preparation of project planning documents.

### **B. DEMANDS IMPOSED BY THE EXPROPRIATION LAW**

58. The draft Expropriation Law does not replace an existing law – for that reason, all of the capacity requirements it imposes on institutions of Government are new requirements. This fact, alone, indicates that there will be institutional capacity demands created by this proposed law. However, the context also needs to be considered: land ownership is not well recorded, and in some cases is disputed, institutional capacity to record land transactions is weak, and new law dealing with Land transactions (the proposed Land Law) will be introduced at the same time as the proposed Expropriation Law – that law also will need to be implemented.

59. Within government, the institutional demands created by the proposed legislation can be grouped into categories: i) those imposed on the line agency, referred to in the draft EL as the “expropriating entity”; ii) those imposed on MOJ as the central agency; iii) those imposed on the MSS, again as a central agency, in relation to relocation; and iv) those imposed on the Ministry of Finance, in relation to administration of the Land Fund (“FFI”). These institutional demands are shown in Table 2.

**Table 2: Institutional Demands, by category**

<b>Government institution</b>	<b>Function</b>	<b>Reference</b>
Line agency	Prepare project documents and make them available for inspection	Articles 13, 14 EL
	Conduct public consultation	Articles 13, 15 EL
	Report on the public consultation	Articles 13, 16 EL
	Inspect and report on appropriated asset	Articles 17, 18 EL
	Calculate compensation to be offered	Articles 19, 20 EL
	Negotiate to acquire by agreement	Article 26 EL
	Acquire by agreement	Articles 27, 28 EL
	Decide to expropriate	Articles 31, 32 EL
	File a request to expropriate (including supporting documents)	Article 33 EL
Central agency (MOJ)	Administer land registration system and record changes in land ownership	Draft LL
	Assemble and provide data as part of the budget cycle	Article 75 EL
	Provide technical support to line agencies	Article 74 EL
	Identify a property with features similar to the expropriated land to be available as an alternative to payment of financial compensation (the responsible agency is NDLPCS)	Article 47 EL
	Assess request to expropriate and prepare a written opinion to be forwarded to the Council of Ministers	Articles 5(2) and 33 EL
Resettlement agency (MSS)	Review the circumstances of occupants of land to determine whether they are to have the status of “resident in a family home”	Article 6.4 EL
Ministry of Finance	Administer Real Estate Finance Fund	Draft Real Estate Finance Fund Act

60. This analysis, based on provisions of the draft EL, can be used to develop a functional analysis, setting out the functions to be performed by agencies of the GOTL. This functional analysis is set out in Table 3, which sets out the functions in greater detail. The table can provide the basis for the agencies to analyze the skills which will be needed, current status and HR and training needs.

**Table 3: Functional analysis of demands to be imposed on agencies**

<b>Function</b>	<b>Agency</b>
Implementation of the Expropriations Law	Ministry of Justice and DLPCS
Application for Expropriation	Project Proponent (MPW)
Preparations for negotiated purchase	Project Proponent
Review of Application	MOJ, DLPCS
Approval of Expropriation	MOJ, DLPCS
Consultations under EL	Project Proponent
Preparation of Resettlement Plan (RP)	Project Proponent (MPW)
Cadastral Survey	DLPCS
Valuation of compensation	DLPCS
Review and Approval of RP	Project Proponent and DLPCS
Implementation of RP	Project Proponent, DLPCS
Land acquisition	DLPCS with Project Proponent
Funding of RP	Project Proponent, MOF
Payment of compensation	DLPCS, Project Proponent, Local State Administration
Resettling affected persons	Project Proponent, DLPCS
Grievance Redress	Project Proponent, MOJ, DLPCS, State Administration
Internal monitoring of RP implementation	Project Proponent
External monitoring of RP implementation	Independent outside agency

### **C. THE WORKING GROUP**

61. The Minister of Public Works has established a Working Group to co-ordinate the implementation of the Expropriation Law. The Working Group has an initial membership comprising two nominees of each of the Ministry of Justice, Ministry of Public Works, Ministry of Social Solidarity, Ministry of Environment and the Ministry of Finance. Its first meeting is likely to take place soon. At that meeting it will consider its terms of reference. As initially proposed, those were to be:

- i) development of a co-ordinated, whole of government approach to establishing and administering projects which will require expropriation of land;
- ii) prioritization of projects and development of implementation capacity;
- iii) identification of resource needs for the implementation of projects;
- iv) to oversee, facilitate and review the work of consultants engaged work in this area;
- v) to provide a forum of discussion, between agencies, of issues arising from the enactment and implementation of land expropriation and resettlement laws.

#### **D. MINISTRY OF JUSTICE AS THE CENTRAL AGENCY**

62. The draft EL provides that only the State can expropriate. This is consistent with the nature of expropriation, which involves taking away property rights and displacement of people and businesses.

63. It is desirable that this important power be exercised in a consistent manner, and that suitable legal requirements be established and complied with. The draft EL is intended to provide a legal basis for consistency of action by the State, with the Ministry of Justice as the central agency. This approach is better than the enactment of multiple, overlapping laws which enable individual sectoral agencies to expropriate land following procedures set out in those laws. The enactment of multiple laws would inevitably lead to inconsistencies.

64. The draft EL confers three distinct administrative functions on the Ministry of Justice – oversight, technical assistance and central data recording. Further, it is the agency which will have responsibility for the proposed Land Law: the effective and efficient recording of land ownership and transfers of ownership is of great importance to the operation of land expropriation legislation. Under Article 76 it is the expropriating authority for the purposes of the Law.

65. In addition to these specific functions, the Ministry of Justice is to be the agency with responsibility for administration of the EL, and should therefore have policy development and analysis skills, as well as access to all necessary information about the operation of the CSS.

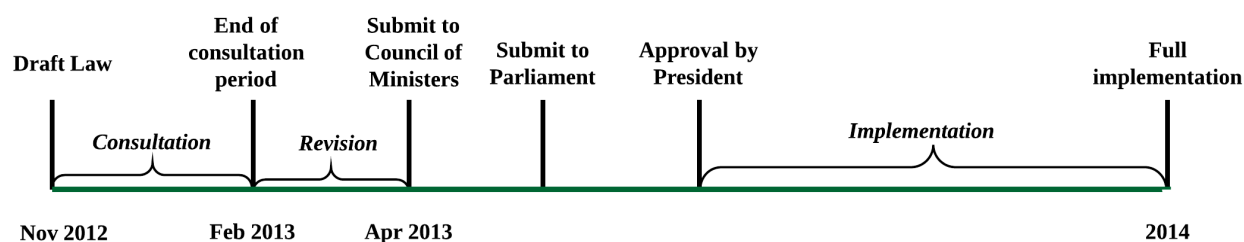


## V. LEGAL ASPECTS OF AN ACTION PLAN

### A. TIME LINE FOR FINALIZATION AND IMPLEMENTATION

66. An action plan for strengthening CSS and implementation capacity should be based on finalization and implementation of draft laws. The time-line for finalization of draft EL is summarised in Figure 3.

**Figure 3: Time line for Finalization and Implementation of draft EL**



### B. THE CONSULTATION, REVISION AND IMPLEMENTATION PHASES

#### *Consultation, Revision and Making*

67. Three draft laws (including the draft Land Law and draft Expropriation Law) were presented for public comment in late 2012, with comments being sought by 15 February 2013. Following revision they will be submitted to the Cabinet of Ministers, possibly in March or April 2013. If approved by Cabinet of Ministers, they will be submitted to Parliament for its consideration. Within Parliament, they will be considered by Commission “A”. If approved by Parliament, they will be considered by the President, who has power to disallow them. They will come into force if approved by the President.

68. The timing of these events is difficult to predict. In particular, it is difficult to predict how long the draft law will be under consideration by the Council of Ministers, and how long it will be under consideration by the Parliament. A similar draft law has been considered by both the Council of Ministers and by the Parliament in the recent past, so there will be some existing familiarity with the issues. During the Parliamentary phase, the draft EL will be considered in committee (the relevant committee is Committee “A”: that Committee will seek comments from Committee “D”).

#### *The Implementation Phase*

69. The draft EL contains provision for supporting Ministerial Regulations to supplement provisions of Chapter II, relating to compensation (Article 26). As drafted, it does not refer to the making of guidelines. However, guidelines are a useful adjunct to decision-making under a law, producing consistency of procedure and of decisions. They operate in support of legislation, but do not require recognition in it.

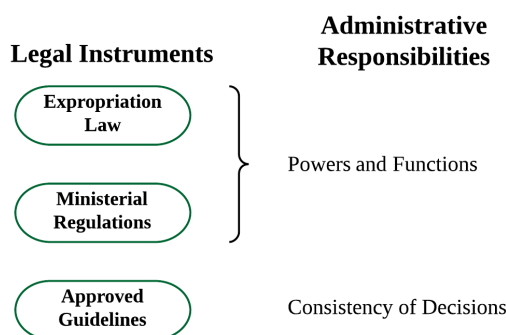
70. Laws, made by Parliament, should set out issues of public policy. This approach, correctly, is taken in the draft EL, which includes statements of important principle, including (Article 2) observance of legal rights, (Article 3) limitation of expropriations to action necessary

to achieve the purpose, (Article 4) the principle that an expropriation must leave affected persons in circumstances where their standard of living has not diminished and (Article 5) the limitation that only the State can order expropriation. The necessary detail, to give effect to these principles, is found partly in later provisions, and partly is to be provided by Ministerial Regulations and by administrative decisions made in exercise of the powers conferred by the Law and by Ministerial Regulations.

71. It is important that administrative decisions be made consistently, so that people are treated in a consistent way (that is, to ensure horizontal equity). An important means of ensuring this consistency is the use of guidelines. Guidelines provide administrators with a guide to how to exercise discretions under the Act – they do not remove administrative discretion, but they do encourage consistency of approach. The Consultant recommends that guidelines be made. Further, to ensure that the guidelines are well known and are observed, they should be referred to in the Expropriation Law. Further, to ensure that they are made in a considered manner, with checks to ensure consistency with the Expropriation Law, they should be approved at a high level and published (see draft Article 75 included in this Report at page 36).

72. The relationship between Laws, Ministerial Regulations and guidelines is summarised in Figure 4.

**Figure 4: Legal instruments and administrative responsibilities**



## C. INSTITUTIONAL NEEDS FOR IMPLEMENTING THE EXPROPRIATION LAW

### ***Current structure***

73. Presently, DLPCS is not structured to administer an Expropriation Law. The Secretary of State for Land, Property and Cadastral Services is responsible for the DLPCS, supported by the Director General and five division chiefs. The five divisions are: Administration and Finance, State Property, Land Title (which has responsibility for land claims and disputes, and for legislation), Cadastral Information and Evaluations and Land Management and Spatial Data Development.

### ***Meeting the new demands***

74. The Expropriation Law, when made will impose new institutional demands on line agencies and central agencies (as shown in Table 2 at page 20 above), and, specifically, on the MOJ and DLPCS, MSS and line agencies such as MPW (as shown in Table 3 at page 21 above). Particular attention should be given to DLPCS as i) it presently has little institutional capacity, ii) it will have technical demands placed on it by the new legislation, such as an increased number of cadastral surveys; and iii) it will have new co-ordination and support functions.

75. A proposal which has been under consideration by DLPCS is the establishment of a Special Unit/Task Force, within the Department, to be responsible for major projects, including appraisal of land and land acquisition for all infrastructure projects, using the methodology created by *Ita Nia Rai* for the land claims identification. The proposed making of the Expropriation Law gives this proposal new importance, as the proposed unit could be given responsibility for Expropriation Law functions, either directly or by interaction with existing Departments.

76. The establishment of a specialized unit, if it is to occur, should occur soon, so that it is able to take responsibility for implementation of the Expropriation Law. There is no apparent reason why the establishment of the unit, and implementation of the reforms should not commence immediately: many of the reforms (such planning, establishment of project documents and public consultation procedures) could be implemented before the Law comes into effect.

77. In addition, two other reforms, currently being implemented under this project, should be carried forward after project completion:

- i) an inter-agency Working Group has been established, as a forum for consultation, development of common approaches and networking. The Working Group was established by the Minister for Public Works, with the agreement of the Minister of Justice. This project team leader is supporting the Working Group as its secretary. It is important that this work be carried forward after completion of the project;
- ii) as proposed in this report, the Expropriation Law should make provision for Approved Guidelines. The project team leader, during coming months, will be developing proposed Guidelines, which will be reviewed and revised consistently with any revisions of the draft Expropriation Law and it progresses through revision and making. After completion of this project, this work should be continued, with the Guidelines being reviewed and revised in light of experience and future developments.

## **ANNEX 1: LEGAL INVENTORY**

### ***Constitutional Provisions***

#### Section 54 of the Constitution

78. Provides for rights of private property, including i) citizens' rights to own and transfer private property and ii) expropriation of private property for public purposes following payment of fair compensation in accordance with law.

#### Section 141 of the Constitution

79. States that the ownership, use and development of land as one of the factors for economic production shall be regulated by law.

#### Other Constitutional provisions

80. Also of relevance in the Constitution are sections 95 and 96 deal with issues which can be regulated by decree laws, either with or without Parliament's authorization (see page 6, footnote 5 above). Customary rights are recognized in the Constitution so long as they do not contradict the Constitution and legislation that regulates them.

### ***Land Title and Registration Laws***

#### The Civil Code

81. The Civil Code 2011, as with the Civil Code of civil law legal systems generally, establishes the fundamental characteristics of the country's civil (as distinct from criminal) legal system. This includes the regulatory system under which contractual transactions occur as well as the basic concepts of property law – that is, the ownership of real (land) and personal property. The Civil Code provides for rights of property ownership as well as the right to buy and sell land. Although it does not directly deal with expropriation of land it does affect transactions involving transfer of land ownership. Provision in the draft Expropriation Law to an "attempt to acquire by private law"<sup>19</sup> is a reference to a transaction conducted in accordance with the Civil Code.

82. The Civil Code establishes that there can be multiple rights in respect of one area of land. These can include surface rights and use rights. This distinction is referred to in Article 24 of the draft EL, which provides for payment of compensation to both the owner of the land and the owner of surface rights. This distinction does not derogate from the general principle that, unless surface rights have been created, ownership of land includes ownership of buildings on that land.

83. In addition, the Civil Code has abolished the concept of temporary land ownership, which was a concept introduced during Indonesian occupation.

#### Law 01/2003 Juridical Regime for Immovable Property

84. This law establishes the legal jurisdiction for addressing land issues; defines land law-related legal terms; defines State property; established the DLPCS and its substantive powers

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<sup>19</sup> Article 12.1d) of the draft EL.

and allowed for future legislation to enhance the juridical regime of immovable property. One of the functions allocated to the DLPCS is the status to settle disputes between parties via non-judicial mediation. However, it does not provide a legal basis for customary land to be declared as public state land as this would be inconsistent with the takings clause of the Constitution. This law also includes provision about:

- i) definitions of immovable property, private domain immovable property, public domain immovable property, and the State's private immovable property;
- ii) illegal appropriation and illegal occupation of immovable property, including eviction from the State's immovable property;
- iii) claims to immovable property owned by citizens and foreigners;
- iv) the administration of abandoned immovable property; and
- v) past acts relating to State's immovable properties.

#### Decree Law 19/2004 Regulating Leases of State Land

This Decree Law provides that State property cannot be handed over for exclusive use of individuals, except through lease concession or temporary exploitation provided by law.

#### Law 12/2005 On Leasing Between Private Individuals

This Law establishes minimum conditions for lease agreements of private property between individuals. It also establishes temporary housing for homeless citizens, processes to ensure access by national or overseas investors to property, and the normalization of State property to be used in commerce and industry.

#### Decree Law 27/2011 Regime to Regulate Ownership of Immovable Property in Undisputed Cases

This Decree Law, combined with Ministerial Diplomas 16/2011 and 23/2011, establishes a legal background for the process of identification of land claims, with the objective of create a National Cadastre. Despite recognizing land rights only for undisputed land claims, it sets the basis for all land claims, and therefore the established procedure needs need to be followed.

This law was passed to give effect to the work of the *Ita Nia Rai* project (funded by USAID). A difficulty with this law is the absence of supporting regulations, which are needed to facilitate transactions involving registered land. The recital at the commencement of the Decree Law provides the following statement of the context in which it was made:

In its article 54, the Constitution of the Democratic Republic of Timor-Leste ensures that every citizen has the right to private ownership of land. The full exercise of this right is conditional upon clarification by the State of the situation of uncertainty as regards ownership of real estate in the national territory.

Since October 2008, the National Directorate of Land, Property and Cadastral Services of the Ministry of Justice has initiated an intense work of collecting information on ownership of real estate with the objective of establishing the National Register of Property and clarifying the factual and legal situation of real estate in our country.

That data collection exercise, referred to as cadastral surveying process, enables all citizens to claim their right to ownership of real estate by submitting "statements of ownership". Such statements and the cadastral maps identifying each piece of land or real estate are published locally, on boards placed in easily accessed public places, as well as at the national level in newspapers, internet sites, and through radio and television campaigns. Such broad publication enables the authorities to verify the

existence of possible disputes over rights of ownership of registered real estate as perceived by the population.

In April 2011, after surveying more than 35,000 pieces of real estate, the Government was able to verify that in 92% of the cases no dispute had occurred on the ownership of registered real estate. For this overwhelming majority of Timorese nationals, the right of ownership over their land or house is consensual. In other words, such right is not questioned by third parties at the hamlet, Suco, District or country level.

With the objective of extending the appropriate legal recognition to this vast majority of cases and regulating the status of the claimants in the undisputed cases introduced in the Cadastre database, this Decree Law intends to recognise the right of ownership of real estate whenever such right is not disputed.

Thus, pursuant to articles 54.1 and 115.1 (b) of the Constitution of the Republic, the Government enacts the following to have the force of law.”

85. The main features of Decree Law 27/2011 are as follows:
- i) there is to be provision for issuance of ownership certificates in undisputed cases (Article 8);
  - ii) litigious settlement of disputed cases is conditional upon specific legislation. In the event of settlement of a dispute, recognition of the rights of ownership for the purposes of registration is to be regulated by Ministerial Regulations (Article 9);
  - iii) The property registration database must be updated whenever alteration in the ownership of land occurs: formal requirements for transferring land ownership are to be determined by Ministerial Regulation (Article 10);
  - iv) all Indonesian legal norms regulating the transfer of land ownership rights are revoked so far as they would apply to land registered under the Decree Law (Article 15).

#### Draft Land Law

This draft law, although widely referred to as “the land law”, will not constitute a codification of requirements about land title and ownership. It has been released for public comment, and is likely to follow a making and implementation path in tandem with the draft EL.

The principle objective of this proposed law is to clarify and promote the first registration of parcels of land. It aims to achieve this by establishing a process to be followed, which will include the making of a cadastral survey and establishing processes for resolution of claims. It includes a provision which will affect interpretation of the Expropriation Law – a component of the definition of “affected person” in Article 6 of the draft EL relies on the concept of “a resident in a family home” as set out in the Land Law.

#### ***Land Expropriation Laws***

86. Timor-Leste effectively has no land expropriation laws. Indonesian laws which were in force in 2002 are incapable of application as they refer to institutions which do not exist, and have not been used since independence. The laws are dated, and refer to Indonesian institutions, not to current institutions of Timor-Leste. It appears most unlikely that there would be any willingness by the GOTL to apply those laws if they were capable of implementation. For these reasons, the Indonesian expropriation laws are not considered in the equivalence analysis in this report.

Decree Law No. 6/2011: Compensation for Resettlement from State Land<sup>20</sup>

87. This Decree Law provides for the Minister to authorise the payment of compensation to unlawful occupants of state property to resettle elsewhere. It does not provide for expropriation, and the payment of compensation is not mandatory. Its effective operation would be facilitated if a Ministerial Decree were made under it to provide detail on compensation to be paid, but this has not occurred. It does not appear that this Decree Law has ever been used, and it is to be revoked on the making of the proposed Expropriation Law.

The 2010 Draft Expropriation Law

88. A draft Expropriation Law was approved by the Council of Ministers in March 2010 and was sent to Parliament. That law was amended by Parliament in some minor respects, and enacted: however it was subsequently disallowed by the President. The 2010 Draft Expropriation Law provided the basis for the preparation of the 2012 Draft Expropriation Law.

The 2012 Draft Expropriation Law

89. The 2012 draft EL was released by the MOJ for public comment on 24 November 2012. It provides for expropriation of land in the public interest. It comprises 78 Articles, providing for:

- a) expropriation of land in the public interest, as stated in the attributes, purposes or object of the expropriating entity, on timely payment fair compensation (Article 1);
- b) the principle that an expropriation must leave affected persons in circumstances such that their standard of living is equal to or higher than the one they enjoyed before the expropriation took place (Article 4);
- c) the concept of an affected person includes expropriated persons, holders of property interests (such as leases) and encumbrances (such as mortgages) and persons who lose residence or a business without ability to replace it (Article 6);
- d) acquisition power included acquisition of easements (Article 10) and temporary occupation (Article 11);
- e) prior requirements for expropriation, including consultation (Article 12 and Section 1 of Chapter II);
- f) process for acquisition (commencing at Article 17, including inspection and report);
- g) the State is to guarantee "fair compensation", (Article 19), based on market value. However, without prejudice to that principle (Article 20), the amount of compensation is calculated using the value of the land and adding the cost to replace existing buildings and plantations;
- h) a leasehold interest is a separate interest to be compensated (Article 22);
- i) compensation was to be payable for interruption of commercial activities (Article 23);
- j) an expropriating entity was required to attempt to acquire by negotiation before declaration of a public interest (that is, before it has power of expropriation)(Article 26);

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<sup>20</sup> Issued February 2011.

- k) generally, declaration of public interest is required before expropriation (Article 31): however, this is not required in the case of public calamity or demands relating to homeland security or national defence (Article 35). “Administrative possession” is to be obtained on publication of the declaration of public interest (Article 36). On deposit of the amount of fair compensation at a banking institution the expropriated party must vacate the land within 30 days (Article 39);
- l) Part 4 (commencing at Article 40) deals with determination of compensation in the absence of agreement. The procedure is for arbitration, limited in scope to the amount of compensation to be paid;
- m) Part 5 (commencing at Article 46) provided for payment of compensation. Article 45(1) provides that compensation is to be provided “in case or in kind by assigning an equivalent asset, in a single transfer” unless otherwise provided in the Part. In the case of compensation by assignment of real estate assets, DLPCS is responsible for identifying a property with features similar to the expropriated property from within the properties of private domain of the State (Article 47);
- n) in the case of non-payment or objection, an affected person is to be able to lodge an appeal (Article 49). Similarly, either party was to be able to lodge a claim with a court claiming for irregularities (Article 51). Articles 52 to 60 deal with procedures on appeal;
- o) Article 61 creates a procedure for reversion of acquired land if it is not used for the purpose specified in the declaration of public interest;
- p) Article 70 creates a procedure for an affected person, who has part of a parcel expropriated, to petition for expropriation of the entire property;
- q) Under Article 74, the Ministry of Justice is responsible for rendering all the necessary technical support to the acquiring authorities during the various stages of expropriation;
- s) Article 75 provides for line Ministries to send to the Ministry of Justice, 60 days before the date of submittal to the Council of Ministers of the State Budget Bill, a list of expropriations planned for the year associated with the Budget, with estimated compensation liability. Based on this information, the Ministry of Justice is to prepare a consolidated list, to be approved by resolution of the Council of Ministers. That data is to be used for administration of the FFI;
- t) Article 76 provides that the Ministry of Justice is the expropriating authority for all the purposes of the EL.

### ***Environmental Laws***

#### Environmental Licensing Decree Law (5/2011)

90. This law, replacing earlier Indonesian legislation<sup>21</sup>, requires the preparation of an initial environmental assessment for projects, the requirements varying according to whether the project is categorized by the Ministry of Environment as “Category A” or “Category B”, based on criteria set out in the Law, as follows:

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<sup>21</sup> The Environmental Management Act No. 23/1997 and regulations and Ministerial Decrees under it. These included the Environmental Impact Assessment Regulation No. 51/1993 and the Guidelines for Analysis of Environmental Impacts of Proposed Projects No. 50/1987 (Ministerial Decree).



- a) Category A: large scale projects, such as those in the petroleum sector or associated with energy infrastructure, mining, industry, large-scale tourism, and large transport projects such as major roads, bridges, ports. For these projects the project proponent must prepare an Environmental Impact Assessment and Environmental Management Plan and conduct public consultation;
- b) Category B: these are medium scale projects such as industry, mining, energy projects, and transport projects with less impact than Category A projects, such as rehabilitation of existing roads and construction of small bridges. The proponent of a Category B project must prepare an Initial Environmental Examination and an Environment Management Plan. For a Category B plan public consultation is not mandatory. As with a Category A plan, the licensing authority must refuse license if negative impacts cannot be mitigated, and if costs outweigh benefits.

91. The law includes an obligation, for a category A project, for the proponent to enter an Impact and Benefits Agreement with representatives of communities affected by the project. An agreement is to address community rights and provide for compensation for impacts identified in the Environmental Impact Statement.

#### Basic Environmental Decree Law (26/2012)

92. This recent law establishes the legal framework for environmental laws in Timor-Leste. Although made after the Environmental Licensing Decree Law, it does not repeal that law, which can continue in operation consistently with the new law. The Basic Environmental Decree law includes provision for:

- a) general responsibilities of the State, institutional arrangements, guiding environmental principles;
- b) basic foundation for future laws to be developed, such as biodiversity, air, water, noise pollution, waste management, mining and land-use planning;
- c) requirements for public participation, access to information, education, monitoring and inspections, enforcement and offences;
- d) decree laws, including laws to protect the biodiversity, manage waste and control pollution.

#### ***Transport Sector Laws***

##### Decree Law 2/2003: Basic Law on the Road Transport System

93. This Law provides for the organization and operation of the road transport system. Under Article 7, the planning, funding, management and control of infrastructure and the operation of the road transport system is to be governed by the this Decree Law and other applicable legal and regulatory rules, safeguarding the rules of international treaties and conventions in force in the East Timorese domestic legal system. The Directorate of Land Transport, within the Ministry of Transport, Communications and Public Works, is responsible for planning and controlling the various types of road transport and, under the legal and regulatory terms, it is incumbent on it to approve technical directives on services and operations, to monitor the services and operations in order to ensure their effectiveness thereof and to impose penalties for the breach of applicable legislation.

Port Authority Act Decree Law 3/2003

94. This establishes the Port Authority of Timor-Leste, providing it with functions and powers. Included among these (Annex, Article 16 r)) is power to “acquire, alienate, or rent immovable property located either within or outside its area of jurisdiction, under the terms of the applicable legislation, following a favourable opinion from the Monitoring Committee”. (The Monitoring Committee is established under the Law as part of the management structure). This Law does not confer an expropriation power, but will enable the Port Authority to act as an expropriating agency under the Expropriation Law.

## ANNEX 2: REVISED LEGAL PROVISIONS

### A. INTRODUCTION

95. This Annex sets out provisions, extracted from the draft EL, incorporating recommended amendments. The recommended amendments are intended to bring the draft EL into conformity with the ADB SPS, as set out in this report. Table A.1 summarises the draft amendments and their purpose.

**Table A.1 Summary of Draft Amendments**

Purpose of Amendment	Article	Comment
Extend the definition of “affected person”	6	The purpose of this amendment is to include within the definition all occupiers of State land who are displaced by a project.
Project proponents must prepare project planning documents and comply with them	12, 13	The amendments require the expropriating authority to prepare project planning documents. Ministerial Regulations and Approved Guidelines will set out the detailed requirements, which should include the requirement that a resettlement plan be prepared. Under the Guidelines, It should be sufficient compliance with this requirement to submit an environmental impact assessment prepared under the Environmental Licensing Law if this incorporates a resettlement plan.
Widen the power to make Ministerial Regulations and provide for the making of Approved Guidelines	25, 75	In the draft EL, Article 25 provides for Ministerial Regulations to be made for the purposes of the compensation Chapter of the Law. These recommended amendments widen that power so that Ministerial Regulations may be made for the purposes of the EL generally.  In addition, the proposed new Article provides for the making of Approved Guidelines to assist in the making of consistent and principled decisions.
Provide for monitoring and assessment of resettlement outcomes <sup>22</sup>	40	The draft EL currently makes no provision for monitoring and assessment of projects. The proposed new Article establishes the requirement: detail is to be set out in Ministerial Regulations or Guidelines.
Suggested technical corrections	19	Article 19 should apply to “affected persons” rather than to “expropriated parties” – otherwise, the compensation provisions will be limited to “expropriated persons”.

<sup>22</sup> Policy principle 12 of the ADB SPS.

## B. DRAFT PROVISIONS

96. In this Annex, selected provisions from the draft EL are reproduced, with recommended amendments highlighted with underlining.

### Article 6

#### Concept of affected persons

1. For the purposes of this Law, affected persons are:
  - i) the expropriated party;
  - ii) a person who has an interest (including an encumbrance securing a loan) in the asset to be expropriated;
  - iii) any other person who is physically displaced (by relocation, loss of residential land or loss of shelter) or economically displaced (by loss of land, assets, access to assets, income sources, or means of livelihoods) as a result of (i) involuntary acquisition of land, or (ii) involuntary restrictions on land use or on access to legally designated parks or protected areas."

~~interested parties shall be, besides the expropriated party, anyone who, prior to the declaration of public utility, holds any real property interest or encumbrance on the asset to be expropriated or occupies the asset on the date of the publication provided in Article 14(2) and fulfills the requirements to be considered a resident in a family home as set out in the Special Regime for Determination of Ownership of Immovable Property (Regime Especial para a Definição da Titularidade dos Bens Imóveis).~~

[...]

4. ~~The award to the occupants of the real estate property of the status of resident in a family home shall be initiated by means of a request submitted by the expropriating entity to the Ministry of Social Solidarity, asking the latter to review the circumstances of all the occupants. The deadlines and provisions set out in Article 61(3) and (4) of Special Regime for Determination of Ownership of Immovable Property.~~

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### Article 12

#### Prior requirements for expropriations

1. Except in circumstances set out in this Law related to special expropriation cases, in accordance with Article 35, an expropriation shall include the following procedures, to be performed in sequential order, as follows:
  - a) Preparation of project planning documents;
  - b) Presentation of the project and public consultation with a view to discussing the project with interested parties; [...]

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## CHAPTER II

### PROJECT PLANNING, PUBLIC CONSULTATION, RECORD OF INSPECTION, REPORT ON THE ASSET TO BE EXPROPRIATED AND APPRAISAL

**SECTION I**  
**PROJECT PLANNING**

**Article 13**

**Project planning**

1. Before implementing a project requiring the expropriation of private or community real estate assets, the expropriating authority must prepare project planning documents.
2. Project planning documents must conform with any requirements set out in this Law, Ministerial Regulations or Approved Guidelines.
3. The project proponent must comply with the project planning documents in the planning, implementation, monitoring and evaluation of the project.

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**Article 15**

**Public hearings**

1. Within the time period provided in Article 14(1) above, public hearings shall be convened to present the project and to seek the views of interested parties.
2. A sufficient number of public hearings shall be convened to give a chance to all those affected by the project to be duly informed and to express their views on it. At least one of the public hearings shall take place at the location of the asset that would be affected by the project.
3. Information concerning the public hearings referred to in Article 14(2) above shall be made available at least 10 days before the public hearing.
4. The proposed project planning documents, ~~Besides a detailed description of the project, any environmental, social or economic impact assessment studies that may have been undertaken,~~ as well as any other documents which are relevant for interested parties to get a full picture of the project shall be presented at the public hearings. [...]

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**Article 19**

**Fair compensation**

- 1 The State shall guarantee the payment of a fair compensation pursuant to the provisions in this Law.
- 2 The payment of compensation is intended to ensure that an affected person ~~expropriated party~~ is not left in worse circumstances than the ones it would find itself in if the expropriation had not taken place.
3. The compensation shall be calculated on the basis of the market value of the real estate property at the time of the expropriation, in accordance with the definition of market value which existed at the time based on best international practices such as those established in the Handbook of Valuation Standards of the International Valuation Standards Council (IVSC).
4. For a fair compensation to be paid, the following compensation principles shall also apply:

- a) Compensation of the affected person ~~expropriated party~~ for the financial costs incurred as a result of the expropriation, such as costs associated to re-housing, commercial losses, etc.
- b) Compensation of the affected person ~~expropriated party~~ for a disproportionate loss of value in cases where a partial expropriation of the asset takes place, as well as under the provisions of Article 21.
- c) Compensation of the affected person ~~expropriated party~~ for values that are of a non-property nature.

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#### **Article 25**

#### **Further regulations**

~~Regulations supplementing the provisions in this chapter may be adopted by means of a Ministerial Order of the Ministry of Justice.~~

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### **TITLE IV**

### **MONITORING AND ASSESSMENT**

#### **Article 40**

#### **Resettlement Outcomes**

1. The Expropriating Agency must monitor and assess resettlement outcomes, their impacts on the standard of living of displaced persons and whether the objectives of the resettlement plan have been achieved, taking into account the baseline conditions and the results of resettlement monitoring.
2. The Expropriating Agency must provide copies of monitoring reports to the Ministry of Justice and must ensure that copies are available for inspection by interested persons.

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#### **Article 75**

#### **Regulations and Approved Guidelines**

1. Regulations supplementing the provisions in this Law may be adopted by means of a Ministerial Order of the Ministry of Justice.
  2. The Minister of Justice may approve Guidelines for the administration of the Law and the Regulations.
  3. Regulations and Approved Guidelines must be published in the Official Journal (*Jornal da Republica*).
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### ANNEX 3: EQUIVALENCE ANALYSIS

97. In this Annex there are several references to the scope of the definition of “affected person”. This issue is discussed at page 13 of this report. The draft EL does not include, in the definition, displaced untitled occupiers of State land: an example of a person in this category is the operator of a kiosk in a road right-of-way who is displaced by a road widening project. That person is an “affected person” under the ADB SPS, but not under the draft EL. Some ratings in this Annex are subject to the qualification that this category of affected person is not protected under the proposed CSS.

98. The analysis is based on the assumption that the draft EL and the draft Land Law are made in their current form.

<b>(A)</b> <b>ADB Safeguard Policy</b>	<b>(B)</b> <b>Corresponding Provisions in National Policy and Legal Instruments<sup>23</sup></b>	<b>(C)</b> <b>Extent of Equivalence<sup>24</sup></b> <b>Review comments</b>	<b>(D)</b> <b>Recommendations</b>
<b>Involuntary Resettlement Safeguards</b> <b>Objectives:</b> To avoid involuntary resettlement wherever possible; to minimize involuntary resettlement by exploring project and design alternatives; to enhance, or at least restore, the livelihoods of all displaced persons in real terms relative to pre-project levels; and to improve the standards of living of the displaced poor and other vulnerable groups.			
	<b>Article 1.3</b> The nature of expropriation is always exceptional and it shall only be used when it is not possible to acquire or use another real estate property for another purpose.  <b>Article 3</b>	<b>Partial Equivalence</b> The EL identifies land expropriation as being something which should occur only to the extent necessary to achieve its purpose.  The SPS objectives refer to the	Articles 1.3, 3 and 4 should be supported by effective administration of the EL, with Ministerial Regulations providing necessary detail. These can be supported, where appropriate, by administrative guidelines.

<sup>23</sup> Cited text is used to indicate key terms that demonstrate extent of equivalence.

<sup>24</sup> “Full Equivalence” denotes that the national policy documents and legal instruments are in complete harmony with the corresponding ADB Safeguard Objective, Scope and Trigger, Policy Principle or Key Element. “Partial Equivalence” denotes that the national policy documents and legal instruments are in partial harmony with the corresponding ADB Safeguard Objective, Scope and Trigger, Policy Principle or Key Element; and “No Equivalence” denotes that no policy provision or legal requirement can be found that corresponds to the particular ADB Safeguard Objective, Scope and Trigger, Policy Principle or Key Element. In some cases, there may be full equivalence for one issue, but only partial equivalence or no equivalence for one or more of the other issues governed by a legal instrument. In those cases, the degree of equivalence for the issue is indicated.

<b>(A)</b> <b>ADB Safeguard Policy</b>	<b>(B)</b> <b>Corresponding Provisions in National Policy and Legal Instruments<sup>23</sup></b>	<b>(C)</b> <b>Extent of Equivalence<sup>24</sup></b> <b>Review comments</b>	<b>(D)</b> <b>Recommendations</b>
	<p>Expropriation must be limited to the actions necessary to achieve its purpose [...].</p> <p><b>Article 4</b></p> <p>An expropriation shall leave the affected persons [...] in circumstances such that their standard of living is equal to or higher than the one that they enjoyed before the expropriation took place.</p>	<p>livelihood of <u>displaced persons</u> and the standards of living of <u>displaced poor</u> and other <u>(displaced) vulnerable groups</u>.</p> <p>The EL refers to <u>affected persons</u>, using a limited definition, that is, “as defined in Article 6”. As discussed in this report (at page 13), the concept of affected persons excludes persons who reside on State land.</p>	<p>A broader definition of “affected persons” should apply, as discussed in this report at page 13. As drafted, Article 4 does not extend the protections of the EL to displaced poor and other vulnerable groups who are occupiers of State land.</p>
<p><b>Key element (1):</b></p> <p>Avoid involuntary resettlement wherever possible</p>	<p><b>Article 1.3</b></p> <p>The nature of expropriation is always exceptional and it shall only be used when it is not possible to acquire or use another real estate property for another purpose.</p> <p><b>Article 3</b></p> <p>An expropriation must be limited to the actions necessary to achieve its purpose [...].</p> <p><b>Article 14.3</b></p> <p>Throughout the [60 day consultation period] all affected persons taking part in public consultation proceedings may submit in writing alternative proposals and any questions or comments that they deem relevant regarding the project.</p> <p><b>Article 16</b></p> <p>1. At the completion of public consultation proceedings, the expropriating party must produce a report on the public consultation.</p> <p>2. The following items are mandatory in a</p>	<p><b>Full Equivalence</b></p> <p>The principle in Article 3 is in complete harmony with key element (1) as involuntary resettlement is the consequence of expropriation: if expropriation is limited to actions necessary to achieve the purpose, so too is involuntary resettlement.</p> <p>The law supports the principle with consultation requirements that encourage alternatives to be considered.</p>	<p>-</p>



<b>(A)</b> <b>ADB Safeguard Policy</b>	<b>(B)</b> <b>Corresponding Provisions in National Policy and Legal Instruments<sup>23</sup></b>	<b>(C)</b> <b>Extent of Equivalence<sup>24</sup></b> <b>Review comments</b>	<b>(D)</b> <b>Recommendations</b>
	<p>report [...]</p> <p>d) A critical assessment of the proposals, comments and questions submitted by affected persons during the public consultation, whether orally or in writing;</p> <p>e) A description of the changes made to the project as a result of the public consultation.</p> <p><b>Article 32.1</b></p> <p>The decision to expropriate must be justified and must specifically mention the following [...]:</p> <p>c) The need to expropriate pursuant to Article 1(3), including consideration of other alternatives and the proposals submitted during public consultation;”.</p>		
<p><b>Key element (2):</b></p> <p>Minimize involuntary resettlement by exploring project and design alternatives</p>	<p><b>Article 1.3</b></p> <p>The nature of expropriation is always exceptional and it shall only be used when it is not possible to acquire or use another real estate property for another purpose.</p> <p><b>Article 14.3</b></p> <p>Throughout the [60 day consultation period] all affected persons taking part in public consultation proceedings may submit in writing alternative proposals and any questions or comments that they deem relevant regarding the project.</p> <p><b>Article 16</b></p> <p>1. At the completion of public consultation</p>	<p><b>Full Equivalence</b></p> <p>If expropriation is minimized as set out in Article 1.3 involuntary resettlement will generally be minimised.</p>	<p>As with key element (1), it is desirable to distinctly state a policy objective that involuntary resettlement should be minimized (see suggested Article 2.2).</p>

<b>(A)</b> <b>ADB Safeguard Policy</b>	<b>(B)</b> <b>Corresponding Provisions in National Policy and Legal Instruments<sup>23</sup></b>	<b>(C)</b> <b>Extent of Equivalence<sup>24</sup></b> <b>Review comments</b>	<b>(D)</b> <b>Recommendations</b>
	<p>proceedings, the expropriating party must produce a report on the public consultation.</p> <p>2. The following items are mandatory in a report [...]</p> <p>d) A critical assessment of the proposals, comments and questions submitted by affected persons during the public consultation, whether orally or in writing;</p> <p>e) A description of the changes made to the project as a result of the public consultation.</p> <p><b>Article 32(1)</b></p> <p>The decision to expropriate must be justified and must specifically mention the following [...]:</p> <p>c) The need to expropriate pursuant to Article 1(3), including consideration of other alternatives and the proposals submitted during public consultation;”.</p>		
<p><b>Key element (3):</b></p> <p>Enhance, or at least restore, the livelihoods of all displaced persons in real terms relative to pre-project levels</p>	<p><b>Article 4 Consequences of Expropriation</b></p> <p>An expropriation shall leave affected persons as defined in Article 6 in circumstances such that their standard of living is equal to or higher than the one that they enjoyed before the expropriation took place.</p> <p><b>Article 19 Fair Compensation</b></p> <p>2. The payment of compensation is intended to ensure that the expropriated party is not left in worse circumstances</p>	<p><b>Full equivalence</b></p> <p>The objectives set out in Articles 4 and 19.2 are consistent with Key element (3). Further, it is supported by provisions in Article 19 under which compensation (additional to market value) is paid for disruption of business.</p>	<p>The achievement of these objectives will be dependent on effective administration by line agencies, MSS and MOJ, as well as Ministerial Regulations and Guidelines to require effective planning, implementation and monitoring of resettlement planning.</p>

<b>(A)</b> <b>ADB Safeguard Policy</b>	<b>(B)</b> <b>Corresponding Provisions in National Policy and Legal Instruments<sup>23</sup></b>	<b>(C)</b> <b>Extent of Equivalence<sup>24</sup></b> <b>Review comments</b>	<b>(D)</b> <b>Recommendations</b>
	<p>than would be the case if the expropriation had not taken place.</p> <p>3. Compensation shall be calculated on the basis of the market value of the real estate property at the time of the expropriation [...].</p> <p>4. For a fair compensation to be paid, the following compensation principles shall also apply:</p> <p>a) compensation of the expropriated party for the financial costs incurred as a result of the expropriation, such as costs associated with re-housing, commercial leases, etc;</p> <p>b) compensation of the expropriated party for disproportionate losses where partial expropriation takes place;</p> <p>c) compensation of the expropriated party for loss of a non-property nature.</p> <p><b>Article 21</b> provides for compensation in the case of partial expropriation.</p> <p><b>Article 22</b> provides for compensation for tenants.</p> <p><b>Article 23</b> provides for compensation for interruption of commercial, industrial, professional activities.</p>		
<p><b>Key element (4):</b></p> <p>Improve the standards of living of the displaced poor and other vulnerable</p>	<p><b>Article 4:</b></p> <p>An expropriation shall leave interested parties as defined in Article 6 in circumstances such that their standard of living is equal to or higher than the one that they enjoyed before the expropriation</p>	<p><b>Full equivalence.</b></p>	<p>See comments in relation to Key element (3).</p>

<b>(A)</b> <b>ADB Safeguard Policy</b>	<b>(B)</b> <b>Corresponding Provisions in National Policy and Legal Instruments<sup>23</sup></b>	<b>(C)</b> <b>Extent of Equivalence<sup>24</sup></b> <b>Review comments</b>	<b>(D)</b> <b>Recommendations</b>
groups.	took place.		
<p><b>Scope and Triggers:</b> The involuntary resettlement safeguards cover physical displacement (relocation, loss of residential land, or loss of shelter) and economic displacement (loss of land, assets, access to assets, income sources, or means of livelihoods) as a result of (i) involuntary acquisition of land, or (ii) involuntary restrictions on land use or on access to legally designated parks and protected areas. It covers them whether such losses and involuntary restrictions are full or partial, permanent or temporary.</p>			
<p><b>Policy Principle 1:</b> Screen the project early on to identify past, present, and future involuntary resettlement impacts and risks. Determine the scope of resettlement planning through a survey and/or census of displaced persons, including a gender analysis, specifically related to resettlement impacts and risks.</p>			
<p><b>Key element (1):</b> Screen the project early on</p>	<p><b>Article 12 Prior Requirements for expropriations</b></p> <p><b>Article 12.1</b></p> <p>Except in circumstances specified in this Law relating to special expropriation cases, in accordance with Article 35, an expropriation must include the following procedures to be performed in sequential order, as follows:</p> <p>a) Presentation of the project and public consultation with a view to discussing the project with interested parties.</p> <p><b>Article 14</b></p> <p>1. The expropriating entity shall make a project that requires expropriation available at a national and regional level for a period of at least 60 days so that it may be inspected by all interested parties.</p> <p>2. The availability of the project for inspection and its deadline as well as the dates for the public hearings referred to in Article 15 must be announced in advance</p>	<p><b>Full equivalence.</b></p> <p>The draft EL contains provision for public consultation, which provides for early screening of the project.</p>	-

<b>(A)</b> <b>ADB Safeguard Policy</b>	<b>(B)</b> <b>Corresponding Provisions in National Policy and Legal Instruments<sup>23</sup></b>	<b>(C)</b> <b>Extent of Equivalence<sup>24</sup></b> <b>Review comments</b>	<b>(D)</b> <b>Recommendations</b>
	<p>by the expropriating entity by means of a notice in the Official Journal (<i>Jornal da Republica</i>) as well as by adequate notices in the media.</p> <p><b>Article 16</b></p> <p>1. At the end of the public consultation proceedings, the expropriating entity must produce a report on the public consultation.</p> <p>2. The following items must be in the report: [...]</p> <p>d) A critical assessment of the proposals, comments and questions submitted by interested parties during the public consultation, whether orally or in writing.</p>		
<p><b>Key element (2):</b> Identify past, present, and future involuntary resettlement impacts and risks</p>	<p><b>No corresponding policy provision or legal requirement.</b></p>	<p><b>No equivalence.</b></p>	<p>It is recommended that a project proponent be required to produce project documents, consistently with Ministerial Regulations and Guidelines – see draft provisions in Annex 2. The Ministerial Regulations and Guidelines, to be made during the implementation phase, should require resettlement planning.</p> <p>It should be sufficient compliance with this requirement to include a resettlement plan prepared under Environmental Laws.</p>
<p><b>Key element (3):</b> Determine the scope of resettlement planning through a survey and/or census of displaced persons,</p>	<p><b>No general corresponding policy provision or legal requirement.</b></p> <p>However, for a “Category A” project under the Environmental Licensing Decree Law (5/2011) an Environmental Impact Assessment and Environmental</p>	<p><b>No equivalence.</b></p>	<p>See comments in relation to Key element (2).</p>

<b>(A)</b> <b>ADB Safeguard Policy</b>	<b>(B)</b> <b>Corresponding Provisions in National Policy and Legal Instruments<sup>23</sup></b>	<b>(C)</b> <b>Extent of Equivalence<sup>24</sup></b> <b>Review comments</b>	<b>(D)</b> <b>Recommendations</b>
including a gender analysis, specifically related to resettlement impacts and risks.	Management Plan must be prepared. The scope of these will depend on implementing decrees which have not yet been made.		
<p><b>Policy Principle 2:</b> Carry out meaningful consultations with affected persons, host communities, and concerned nongovernment organizations. Inform all displaced persons of their entitlements and resettlement options. Ensure their participation in planning, implementation, and monitoring and evaluation of resettlement programmes. Pay particular attention to the needs of vulnerable groups, especially those below the poverty line, the landless, the elderly, women and children, and Indigenous Peoples, and those without legal title to land, and ensure their participation in consultations. Establish a grievance redress mechanism to receive and facilitate resolution of the affected persons' concerns. Support the social and cultural institutions of displaced persons and their host population. Where involuntary resettlement impacts and risks are highly complex and sensitive, compensation and resettlement decisions should be preceded by a social preparation phase.</p>			
<p><b>Key element (1):</b></p> <p>Carry out meaningful consultations with affected persons, host communities, and concerned nongovernment organizations</p>	<p><b>Article 15 EL Public hearings</b></p> <ol style="list-style-type: none"> <li>1. Within the time period provided for in Article 14(1) above, public hearings shall be convened to present the project and to seek the views of interested parties.</li> <li>2. A sufficient number of public hearings shall be convened to present the project and to seek the views of interested parties.</li> <li>3. Information concerning the public hearings referred to in Article 14(2) above shall be made available at least 10 days before the public hearing.</li> <li>4. In addition to a detailed description of the project, any environmental, social or economic impact assessment studies that may have been undertaken, as well as any other documents which are relevant for interested parties to get a full picture of the project shall be presented at the public</li> </ol>	<p><b>Full equivalence</b></p> <p>The public hearing provisions are well structured, including requirements for publicity about the proposed public hearings in the Official Journal and in the media. A report of the consultation is to be made, including a description of the public hearings (Article 16).</p> <p>These provisions are additional to the provisions relating to negotiated property acquisition.</p>	

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	hearings.		
<p><b>Key element (2):</b> Inform all displaced persons of their entitlements and resettlement options</p>	<p><b>Article 12 EL Preconditions for expropriation</b></p> <p>1. Except in events set out in this Law related to special expropriation cases, [...], expropriations will include the following procedure, to be performed in sequential order, as follows:</p> <p>a) presentation of the project and public consultation with a view to discussing the project with interested parties;</p> <p>b) presentation of a report on the public consultation;</p> <p>c) inspection of the asset to be expropriated;</p> <p>d) drafting of the report and appraisal of the asset to be expropriated, based on the inspection mentioned in the paragraph 12(1)(c), which must include a proposal for the compensation to be paid to the expropriated party;</p> <p>e) drafting of the decision to expropriate;</p> <p>f) attempt to acquire by private law, based on the amount stated in the assessment; [...]</p> <p><b>Article 18 Report on the asset to be expropriated</b></p> <p>1. The expropriating entity and beneficiary of the expropriation shall draft a report containing concrete and</p>	<p><b>Full equivalence</b></p> <p>The draft EL provides for information to be provided to affected persons before expropriation occurs.</p> <p>A resettlement plan would operate in support of these provisions.</p>	

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	<p>individualized description of the asset to be expropriated, which must include all the material and legal aspects of the assets or rights they deem necessary for the expropriation.</p> <p>2. The communication to the interested parties shall be accompanied by a copy of the elements referred to in paragraphs a), b) and e) of Article 32(1) and, wherever possible, information about the cadastral and estate description.</p> <p>3. The report on the asset to be expropriated must be completed within 15 days after the date of inspection.</p>		
<p><b>Key element (3):</b> <b>Ensure the participation of displaced persons</b> in planning, implementation, and monitoring and evaluation of resettlement programmes</p>	<p><b>Article 12 EL Preconditions for expropriation</b></p> <p>1. Except in events set out in this Law related to special expropriation cases, [...], expropriations will include the following procedure, to be performed in sequential order, as follows:</p> <p>a) presentation of the project and public consultation with a view to discussing the project with interested parties;</p> <p>b) presentation of a report on the public consultation.</p>	<p><b>Partial equivalence.</b></p> <p>The draft EL provides for early consultation. However, it makes no provision for monitoring and evaluation of resettlement programs.</p>	<p>A requirement for monitoring, implementation and review of resettlement programmes should be provided for in the EL, as set out in Annex 2 of this report.</p>
<p><b>Key element (4):</b> <b>Ensure the participation in consultations</b> of vulnerable groups,</p>	<p><b>Article 12 EL Preconditions for expropriation</b></p> <p>1. Except in events set out in this Law related to special expropriation cases, [...], expropriations will include the</p>	<p><b>Full equivalence</b></p> <p>The draft law has a three-stage consultation process, which includes publicity and local consultation. The quality of the consultation is supported</p>	



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especially those below the poverty line, the landless, the elderly, women and children, and Indigenous Peoples, and those without legal title to land	following procedure, to be performed in sequential order, as follows: a) presentation of the project and public consultation with a view to discussing the project with interested parties; b) presentation of a report on the public consultation.	by the requirement for reporting to the Ministry of Justice.	
<b>Key element (5):</b> Establish a grievance redress mechanism to receive and facilitate resolution of the affected persons' concerns	<b>Article 40</b> provides for establishment of the amount of compensation by arbitration, with appeal to the common courts. <b>Chapter II of Title IV</b> sets out the grievance redress mechanism in detail.	<b>Full equivalence.</b>	-
<b>Key element (6):</b> Support the social and cultural institutions of displaced persons and their host population	<b>No corresponding policy provision or legal requirement.</b>	<b>No equivalence.</b>	As set out in Annex 2, the EL and Ministerial Regulations and Guidelines made under it should require that a resettlement plan be made. That plan should include provision which implements key element (6).
<b>Key element (7):</b> Where involuntary resettlement impacts and risks are highly complex and sensitive, compensation and resettlement decisions should be	<b>No corresponding policy provision or legal requirement.</b>	<b>No equivalence.</b>	As set out in Annex 2, the EL and Ministerial Regulations and Guidelines made under it should require that a resettlement plan be made. That plan should include provision which implements key element (7).

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preceded by a <b>social preparation phase</b> .			
<b>Policy Principle 3:</b> Improve, or at least restore, the livelihoods of all displaced persons through (i) land-based resettlement strategies when affected livelihoods are land based where possible or cash compensation at replacement value for land when the loss of land does not undermine livelihoods, (ii) prompt replacement of assets with access to assets of equal or higher value, (iii) prompt compensation at full replacement cost for assets that cannot be restored, and (iv) additional revenues and services through benefit sharing schemes where possible.			
<p><b>Key element (1):</b></p> <p>Improve, or at least restore, the livelihoods of all displaced persons through <b>land-based resettlement strategies</b> when affected livelihoods are land based, where possible, or <b>cash compensation at replacement value for land</b> when the loss of land does not undermine livelihoods</p>	<p><b>Article 4:</b></p> <p>An expropriation shall leave interested parties as defined in Article 6 in circumstances such that their standard of living is equal to or higher than the one that they enjoyed before the expropriation took place.</p> <p><b>Article 56(1) of the draft Land Law Principles</b></p> <p>1. Residents of a family property whose ownership has been recognized or assigned to a third party, can only be evicted after an alternative residence has been provided or after the expiry of eighteen months of recognition or assignment of property rights, whichever occurs first.</p> <p><b>Article 15 of the EL</b></p> <p>1. The State guarantees payment of fair compensation in conformity with this Law.</p> <p>2. Fair compensation is not intended to compensate the benefit achieved by the acquiring authority, but to reimburse the expropriated person for the</p>	<p><b>Partial equivalence.</b></p> <p>There is provision for land-for-land compensation, and there is provision for cash compensation.</p>	<p>As set out in Annex 2, the EL should require project planning documents, which, under Ministerial Regulations and Guidelines, include resettlement planning. The resettlement plan should supply the missing components of key element (1).</p>

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	<p>damages resulting from the expropriation in an amount corresponding to the real and current value of the asset, in accordance with its actual or potential use under normal economic usage circumstances on the date of publication of the declaration of public interest, taking into consideration the circumstances existing on that date. [...]</p> <p>5. [...] the value of the assets, calculated in accordance with the criteria set out in articles 16 and following, must correspond with their real and current value in a normal market.</p> <p><b>Article 16 of the EL</b></p> <p>1. The amount of compensation is calculated using the value of the soil and adding the cost to replace buildings.</p>		
<p><b>Key element (2):</b> Improve, or at least restore, the livelihoods of all displaced persons through <b>prompt replacement of assets with access to assets of equal or higher value</b></p>	<p><b>Article 20 Calculation of the amount of compensation</b></p> <p>1 [...] the amount of compensation is calculated using the value of the land and adding the cost of replacing existing buildings or plantations.</p> <p><b>Article 47 Providing assets or rights</b></p> <p>1 The parties may agree that compensation is to be paid in part or in full by the provision of assets or rights to the expropriated party or other affected persons.</p>	<p><b>Full equivalence.</b></p> <p>If properly administered, the draft EL will achieve the objective set out in Key element (2).</p>	

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<b>Key element (3):</b> Improve, or at least restore, the livelihoods of all displaced persons through <b>prompt compensation at full replacement cost for assets that cannot be restored</b>	<b>Article 20 Calculation of the amount of compensation</b> 1 [...] the amount of compensation is calculated using the value of the land and adding the cost of replacing existing buildings or plantations. <b>Article 47 Providing assets or rights</b> 1 The parties may agree that compensation is to be paid in part or in full by the provision of assets or rights to the expropriated party or other affected persons.	<b>Full equivalence.</b> If properly administered, the draft EL will achieve the objective set out in Key element (3).	
<b>Key element (4):</b> Improve, or at least restore, the livelihoods of all displaced persons through <b>additional revenues and services through benefit sharing schemes</b> where possible	<b>Article 4:</b> An expropriation shall leave affected persons as defined in Article 6 in circumstances such that their standard of living is equal to or higher than the one that they enjoyed before the expropriation took place.	<b>Partial equivalence</b> The draft EL establishes the principle of livelihood restoration. There is potential for negotiated settlements, and, if the power conferred by the draft Law is exercised, for resettlement planning.	The amendments proposed in Annex 2 to this report should be made to the EL. To give effect to the principle in Article 4, Approved Guidelines to be made to the Act should specify that resettlement planning must be in accordance with key element (4).
<b>Policy Principle 4:</b> Provide physically and economically displaced persons with needed assistance, including the following: (i) if there is relocation, secured tenure to relocation land, better housing at resettlement sites with comparable access to employment and production opportunities, integration of resettled persons economically and socially into their host communities, and extension of project benefits to host communities; (ii) transitional support and development assistance, such as land development, credit facilities, training, or employment opportunities; and (iii) civic infrastructure and community services, as required.			
<b>Key element (1):</b> Provide physically and economically displaced persons, if	<b>Article 45 Forms of Payment</b> 1. The payment of compensation due for public interest expropriations is made in case or in kind by assigning an	<b>Partial equivalence.</b> The EL does provide for the provision of land as compensation for expropriation.	The amendments proposed in Annex 2 to this report should be made to the EL. To give effect to the principle in Article 4, Approved Guidelines to be

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<p>there is relocation, with <b>secured tenure to relocation land, better housing</b> at resettlement sites with <b>comparable access to employment and production opportunities</b>, integration of resettled persons economically and socially into their host communities, and <b>extension of project benefits to host communities</b></p>	<p>equivalent asset in a single operation except as provided in this Article.</p> <p>2. In the case of amicable expropriation, the acquiring authority and other interested parties may agree to pay the compensation in installments or by assigning assets or rights in accordance with the following Article.</p> <p><b>Article 46 Assignment of Assets or Rights</b></p> <p>1. The parties may agree that the compensation is satisfied in total or in part by the assignment of assets or rights to the expropriated or other interested party.</p> <p>2. In the case of compensation by assignment of real estate assets, the National Directorate of Land, Property and Cadastral Survey is responsible for identifying a property with features similar to the expropriated property from within the properties of private domain of the State.</p> <p>3. The assignment of rights over real estate assets is regulated by State legislation applicable to use of private domain.</p>	<p>However, the components of key element (1) are not included in the EL.</p>	<p>made to the Act should specify that resettlement planning must be in accordance with key element (1).</p>
<p><b>Key element (2):</b> Provide physically and economically displaced persons with <b>transitional support and development assistance</b>, such as</p>	<p><b>Article 4:</b> An expropriation shall leave affected persons as defined in Article 6 in circumstances such that their standard of living is equal to or higher than the one that they enjoyed before the expropriation took place.</p>	<p><b>Partial equivalence</b></p>	<p>It is possible that this support will be provided by the Ministry of Social Solidarity. However, the EL should provide for this support to be provided to displaced persons (both physically and economically displaced).</p>

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land development, credit facilities, training, or employment opportunities	<b>Article 19 Fair Compensation</b> (2) The payment of compensation is intended to ensure that the expropriated party is not left in worse circumstances than the ones it would find itself in if the expropriation had not taken place.		
<b>Key element (3):</b> Provide physically and economically displaced persons with <b>civic infrastructure and community services</b>	<b>Article 19 Fair Compensation</b> (2) The payment of compensation is intended to ensure that the expropriated party is not left in worse circumstances than the ones it would find itself in if the expropriation had not taken place.	<b>No equivalence.</b>	It is possible that this support will be provided by the Ministry of Social Solidarity. However, the EL should provide for this support to be provided to displaced persons (both physically and economically displaced).
<b>Policy Principle 5:</b> Improve the standards of living of the displaced poor and other vulnerable groups, including women, to at least national minimum standards. In rural areas provide them with legal and affordable access to land and resources, and in urban areas provide them with appropriate income sources and legal and affordable access to adequate housing.			
<b>Key element (1):</b> Improve the standards of living of the displaced poor and other vulnerable groups, including women, to at least national minimum standards	<b>Article 4</b> An expropriation shall leave the affected persons [...] in circumstances such that their standard of living is equal to or higher than the one that they enjoyed before the expropriation took place.	<b>Partial equivalence.</b>	As set out in Annex 2, the EL and Ministerial Regulations and Guidelines made under it should require that a resettlement plan be made. That plan should include provision which implements key element (1).
<b>Key element (2):</b> In rural areas provide them with <b>legal and affordable access to</b>	<b>No corresponding policy provision or legal requirement.</b>	<b>No equivalence.</b>	As set out in Annex 2, the EL and Ministerial Regulations and Guidelines made under it should require that a resettlement plan be made. That plan should include provision which implements key element (2).

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<b>land and resources</b>			
<b>Key element (3):</b> in urban areas provide them with <b>appropriate income sources and legal and affordable access to adequate housing</b>	<b>No corresponding policy provision or legal requirement.</b>	<b>No equivalence.</b>	As set out in Annex 2, the EL and Ministerial Regulations and Guidelines made under it should require that a resettlement plan be made. That plan should include provision which implements key element (3).
<b>Policy Principle 6:</b> Develop procedures in a transparent, consistent, and equitable manner if land acquisition is through negotiated settlement to ensure that those people who enter into negotiated settlements will maintain the same or better income and livelihood status.			
<b>Key element (1):</b> Develop procedures in a transparent, consistent, and equitable manner if land acquisition is through negotiated settlement	<b>Article 26 Acquisition by private law</b> 1. Before requesting a declaration of public interest, the beneficiary of the expropriation, together with the expropriating entity, shall attempt to acquire the assets using private law, except in the case of special expropriation cases set out in Article 35.	<b>Partial equivalence</b> The draft EL, in its current form, will allow for this to occur, as a matter of good administration. If amended as proposed in this report, project planning documents, consistently with approved guidelines, will require that procedures are developed consistently with key element (1).	The EL should provide for the establishment of guidelines for negotiated acquisition procedures, as set out in Annex 2.
<b>Key element (2):</b> Ensure that those people who enter into negotiated settlements will maintain the same or better income and livelihood status	<b>Article 4:</b> An expropriation shall leave interested parties as defined in Article 6 in circumstances such that their standard of living is equal to or higher than the one that they enjoyed before the expropriation took place.	<b>Full equivalence</b>	The EL should provide for the establishment of guidelines for negotiated acquisition procedures, as set out in Annex 2.

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<b>Policy Principle 7:</b> Ensure that displaced persons without titles to land or any recognizable legal rights to land are eligible for resettlement assistance and compensation for loss of nonland assets.			
	<b>Article 6(1) Concept of affected persons</b>  1. For the purposes of this Law, affected persons shall be, besides the expropriated party, anyone who, prior to the declaration of public utility, ... occupies the asset on the date of the publication provided for in Article 14(2) and fulfils the requirements to be considered to be a resident in a family home as set out in the [draft Land Law].	<b>Full equivalence</b>  A non-titled displaced person who lacks substantial resources will be considered to be an affected person under Article 6(1) of the draft EL.  Note the comment (at the commencement of this Annex) about displaced persons on State land.	-
<b>Policy Principle 8:</b> Prepare a resettlement plan elaborating on displaced persons' entitlements, the income and livelihood restoration strategy, institutional arrangements, monitoring and reporting framework, budget, and time-bound implementation schedule.			
	<b>No corresponding policy provision or legal requirement.</b>	<b>Partial equivalence</b>	The draft EL should be amended as set out in Annex 1. This will have the effect of requiring project proponents to prepare project documents in accordance with Ministerial Regulations or Approved Guidelines. These should require that the project documents include a draft resettlement plan.
<b>Policy Principle 9:</b> Disclose a draft resettlement plan, including documentation of the consultation process in a timely manner, before project appraisal, in an accessible place and a form and language(s) understandable to affected persons and other stakeholders. Disclose the final resettlement plan and its updates to affected persons and other stakeholders.			
<b>Key element (1):</b> Disclose a draft	<b>No corresponding policy provision or legal requirement.</b>	<b>No equivalence.</b>	The draft EL should be amended as set out in Annex 1. This will have the effect of requiring



<b>(A)</b> <b>ADB Safeguard Policy</b>	<b>(B)</b> <b>Corresponding Provisions in National Policy and Legal Instruments<sup>23</sup></b>	<b>(C)</b> <b>Extent of Equivalence<sup>24</sup></b> <b>Review comments</b>	<b>(D)</b> <b>Recommendations</b>
resettlement plan, before project appraisal, in an accessible place and a form and language(s) understandable to affected persons and other stakeholders			project proponents to prepare project documents in accordance with Ministerial Regulations or Approved Guidelines. These should require that the project documents include a draft resettlement plan.
<b>Key element (2):</b> Disclose the final resettlement plan and its updates to affected persons and other stakeholders.	<b>No corresponding policy provision or legal requirement.</b>	<b>No equivalence.</b>	The draft EL should be amended as set out in Annex 1. This will have the effect of requiring project proponents to prepare project documents in accordance with Ministerial Regulations or Approved Guidelines.
<b>Policy Principle 10:</b> Conceive and execute involuntary resettlement as part of a development project or programme. Include the full costs of resettlement in the presentation of project's costs and benefits. For a project with significant involuntary resettlement impacts, consider implementing the involuntary resettlement component of the project as a stand-alone operation.			
<b>Key element (1):</b> Conceive and execute involuntary resettlement as part of a development project or programme	<b>No corresponding policy provision or legal requirement.</b>	<b>Partial equivalence</b> The EL establishes a process which requires consultation and project justification (which must be supplied by the expropriating agency to the MOJ). However, it does not require that involuntary resettlement be conceived and executed as part of a development project or programme.	The draft EL should be amended as set out in Annex 1. This will have the effect of requiring project proponents to prepare project documents in accordance with Ministerial Regulations or Approved Guidelines.
<b>Key element (2):</b> Include the full costs of resettlement in the	<b>No corresponding policy provision or legal requirement.</b>	<b>Partial equivalence</b> The EL establishes a process which requires consultation and project	The draft EL should be amended as set out in Annex 1. This will have the effect of requiring project proponents to prepare project documents in

<b>(A)</b> <b>ADB Safeguard Policy</b>	<b>(B)</b> <b>Corresponding Provisions in National Policy and Legal Instruments<sup>23</sup></b>	<b>(C)</b> <b>Extent of Equivalence<sup>24</sup></b> <b>Review comments</b>	<b>(D)</b> <b>Recommendations</b>
presentation of project's costs and benefits		justification (which must be supplied by the expropriating agency to the MOJ). However, it does not require that involuntary resettlement be conceived and executed as part of a development project or programme.	accordance with Ministerial Regulations or Approved Guidelines.
<b>Key element (3):</b> For a project with significant involuntary resettlement impacts, consider implementing the involuntary resettlement component of the project as a stand-alone operation	<b>No corresponding policy provision or legal requirement.</b>	<b>Partial equivalence</b> The EL establishes a process which requires consultation and project justification (which must be supplied by the expropriating agency to the MOJ). However, it does not require that involuntary resettlement be conceived and executed as part of a development project or programme.	The draft EL should be amended as set out in Annex 1. This will have the effect of requiring project proponents to prepare project documents in accordance with Ministerial Regulations or Approved Guidelines.
<b>Policy Principle 11:</b> Pay compensation and provide other resettlement entitlements before physical or economic displacement. Implement the resettlement plan under close supervision throughout project implementation.			
<b>Key element (1):</b> Pay compensation and provide other resettlement entitlements before physical or economic displacement	<b>EL Article 39(1)</b> The formal administrative bestowal of possession of the asset will not become effective without the following prior requirements: [...] c) Deposit of the amount of fair compensation at a banking institution to the order of the expropriated and other interested parties, if the latter are known and there is no doubt about the title to the rights affected.	<b>Full equivalence.</b> The requirement to pay compensation does not extend to unlawful occupiers (squatters).	-

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	<p><b>EL Article 38.3</b></p> <p>The expropriated parties must be granted a reasonable period of time to vacate the expropriated asset, but that period cannot be longer than 30 days counting from the publication of the declaration of public interest [although in some instances a longer period can be granted].</p>		
<p><b>Key element (2):</b></p> <p>Implement the resettlement plan under <b>close supervision</b> throughout project implementation</p>	<p><b>Article 74 Support from the Ministry of Justice</b></p> <p>Without prejudice to the specific powers assigned to it under this Law, namely as regards the organization and performance of the expropriation proceedings, the Ministry of Justice shall be responsible for providing all necessary technical support to the beneficiaries of an expropriation during its various stages.</p>	<p><b>Partial equivalence</b></p> <p>The supervisory function of MOJ is adequately expressed in Article 74: however, the EL does not require that a resettlement plan be established or implemented.</p>	<p>The EL should require the establishment of project planning documents, which (under Ministerial Regulations and Guidelines) would include resettlement plans. The EL should require the project proponent to comply with the plan, as set out in Annex 2, and this should be supervised by MOJ under Article 74.</p>
<p><b>Policy Principle 12:</b> Monitor and assess resettlement outcomes, their impacts on the standards of living of displaced persons, and whether the objectives of the resettlement plan have been achieved by taking into account the baseline conditions and the results of resettlement monitoring. Disclose monitoring reports.</p>			
<p><b>Key element (1):</b></p> <p>Monitor and assess resettlement outcomes, their impacts on the standards of living of displaced persons, and whether the objectives of the resettlement plan have been achieved by taking into account</p>		<p><b>No equivalence</b></p>	<p>The draft EL should be amended to include a requirement for monitoring and assessment in accordance with Ministerial Regulations and Approved Guidelines, as set out in Annex 2 (page 33).</p>

<b>(A)</b> <b>ADB Safeguard Policy</b>	<b>(B)</b> <b>Corresponding Provisions in National Policy and Legal Instruments<sup>23</sup></b>	<b>(C)</b> <b>Extent of Equivalence<sup>24</sup></b> <b>Review comments</b>	<b>(D)</b> <b>Recommendations</b>
the baseline conditions and the results of resettlement monitoring			
<b>Key element (2):</b> Disclose monitoring reports	<b>No corresponding policy provision or legal requirement.</b>	<b>No equivalence</b>	The draft EL should be amended to include a requirement for monitoring and assessment in accordance with Ministerial Regulations and Approved Guidelines, as set out in Annex 2 (page 33).

